

**COMMONWEALTH OF MASSACHUSETTS  
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

KEVIN J. SULLIVAN,  
Appellant

v.

D1-07-167

TOWN OF SANDWICH,  
Respondent

Appellant's Attorney: Jean E. Zeiler, Esq.  
Int'l Brotherhood of Police Officers  
159 Burgin Parkway  
Quincy, MA 02169

Respondent's Attorney: Matthew R. Tobin, Esq.  
Murphy Lamere & Murphy, P.C.  
Ten Forbes Road West  
P.O. Box 859003  
Braintree, MA 02185

Commissioner: Donald R. Marquis

**DECISION ON APPELLANT'S MOTION FOR RECONSIDERATION**

On March 28, 2008, the Appellant filed a Motion for Reconsideration with the Commission Service Commission (hereinafter "Commission"), after said Commission voted to allow the Appointing Authority's Motion to Dismiss on March 13, 2008.

A Motion for Reconsideration must identify a clerical or mechanical error in the decision or a significant factor the Commission or the presiding officer may have overlooked in deciding the case.

The Appellant identified two (2) instances which they believe warrant reconsideration of the Commission's decision:

1. "Form 56 of the Commonwealth Human Resources Division (HRD) states that a leave of absence over one-month, including probationary employees on military leave, must be reported 'immediately.' The Form 56 from the Appointing Authority regarding Sullivan's military leave was dated February 14, 2007, and has no indication of the date it was received by the HRD. It makes no mention of extending the probationary period."

The Appellant's argument here is unclear at best. Regardless of the assertion, the Appellant's argument is flawed because it misquotes the "Instructions" on Form 56. The instructions on page two of Form 56 state:

“(Leave of absence can be granted only to a permanent employee who has served a probationary period except in certain cases, that is, for personal illness, military leave, educational leave or to a person holding elective State Office or elected by the people to the office of Mayor.) All other absences and terminations must be reported immediately on this form.” (Exhibit C)

These instructions *explicitly* provide that military and educational leave are both circumstances in which immediate reporting is not required. The Appointing Authority properly submitted this form after the Appellant returned from military school. The Appellant's argument here is without evidentiary support and does not amount to a significant factor for reconsideration by the Commission.

2. "In regard to the extension of probation, the Commission ignored the fact that the Appointing Authority in the Town of Sandwich is the Board of Selectmen, which may delegate authority to the Town Administrator." Therefore, the Appointing Authority did not extend the probationary period and the Appellant was tenured at the time of termination.

In this second instance, the Appellant's argument again does not constitute a significant factor for reconsideration by the Commission. The Appellant relies on Brouillard v. Holyoke Police Department, 19 MCSR 28 (02/16/06), to support its position. In Brouillard, the Commission

rejected a termination letter signed by a police chief because the chief in that town was not the Appointing Authority, pursuant to G.L. c. 31 s 1. However, regarding the Town of Sandwich, the Town Administrator has been delegated the authority to appoint or employ personnel and the notification letter was to extend the Appellant's probationary period, not to terminate him. (*See* Exhibit C). Pursuant to Chief Miller's request, the Appellant reported to his supervisor, Lieutenant Guillemette, that he would be away from work to attend military school for 41 days. (Exhibit D). This request was confirmed to the Appellant by the Chief of Police Michael Miller, and forwarded to Luz Henriquez of the Human Resources Division (HRD). Furthermore, the Discharge letter (Exhibit G) was also sent to the Human Resources Director and Personnel Administrator, HRD. The Record clearly establishes that the Town Administrator is an appointing authority in the Town of Sandwich.

Since the Appellant has failed to identify a clerical or mechanical error in the decision, or a significant factor the Commission or presiding officer may have overlooked in deciding the case, the Motion for Reconsideration is hereby *denied*.

Civil Service Commission

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Donald R. Marquis  
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Marquis, Stein, and Taylor, Commissioners [Henderson – Abstain]) on June 19, 2008.

A true record. Attest:

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Commissioner

Under the provisions of G.L. c. 31, § 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the Commission's order or decision.

Notice sent to:

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