

**COMMONWEALTH OF MASSACHUSETTS**

**CIVIL SERVICE COMMISSION**  
100 Cambridge Street, Suite 200  
Boston, MA 02114  
(617) 979-1900

MATTHEW K. SULLIVAN,  
*Appellant*

v.

D-21-226

DEPARTMENT OF STATE POLICE,  
*Respondent*

Appearance for Appellant:

*Pro Se*  
Matthew K. Sullivan

Appearance for Respondent:

Keith A. Paquette, Esq.  
Department of State Police  
470 Worcester Road  
Framingham, MA 01702

Commissioner:

Christopher C. Bowman

**SUMMARY OF DECISION**

The Commission dismissed the appeal of a State Trooper who was suspended for five days for not complying with the COVID-19 vaccination requirement in place at the time, finding that the Appellant effectively waived any right of appeal to the Commission where he previously admitted to engaging in misconduct (insubordination) in the underlying Trial Board proceeding.

**DECISION ON RESPONDENT’S MOTION FOR SUMMARY DECISION**

***Background***

On November 27, 2021, Matthew K. Sullivan (Appellant) filed an appeal with the Civil Service Commission (Commission), contesting the action of the Department of State Police (Department) to suspend him for five days for failing to comply with [Executive Order 595](#) (EO

595), which required all executive branch employees to become vaccinated against COVID-19 (and maintain “full” COVID-19 vaccination) as a condition of continuing employment.

On February 15, 2022, I held a remote pre-hearing conference which was attended by the Appellant and by counsel for the Department. As part of the pre-hearing conference, the parties stipulated certain facts and provided an overview of their arguments. A remote status conference was scheduled for July 11, 2023. The Appellant failed to attend the remote status hearing. After the Appellant failed to respond timely to an order to show cause as to why his appeal should not be dismissed for lack of prosecution, the Commission dismissed the Appellant’s appeal for lack of prosecution. The Appellant subsequently filed a motion to reconsider, the Department failed to respond to that motion, and the Commission re-opened the Appellant’s appeal. A status conference was then held on September 26, 2023, which was attended by the Appellant and counsel for the Department. On October 26, 2023, the Department filed a Motion for Summary Decision and the Appellant failed to file a reply / opposition.

***Facts Underlying the Instant Appeal***

1. The Appellant was appointed as a State Police Trooper on April 1, 2016.
2. On September 26, 2021, the Appellant requested a religious exemption from EO 595.
3. The Department notified the Appellant on October 25, 2021, that his request for a religious exemption was denied.
4. The Department informed the Appellant that he had three business days (*i.e.*, until October 28, 2021) to comply with EO 595, resign, or be relieved from duty and subject to progressive discipline.

5. The Appellant failed to comply with EO 595 on or before October 28, 2021. The Appellant was subsequently charged with unsatisfactory performance and insubordination for his noncompliance with EO 595.
6. On November 9, 2021, prior to the initiation of a trial board hearing, the Appellant plead guilty to the charge of insubordination. That same day, the Trial Board issued findings and recommendations stating in part: “Where Trooper Sullivan pled Guilty to the charge of insubordination, the Board finds Trooper Sullivan Guilty.”
7. On November 23, 2021, the Appellant was notified that the State Police Colonel had accepted the findings and recommendations of the Trial Board, and that the Appellant was being suspended for five days.
8. On November 27, 2021, the Appellant filed an appeal with the Commission.
9. On November 29, 2021, the Appellant received a COVID-19 vaccination and returned to duty the same day with no further discipline.

***Respondent’s Motion for Summary Decision***

The Department presented two arguments in its Motion to Dismiss:

- A. The Department had just cause to suspend the Appellant for five days.
- B. The Commission lacks jurisdiction to hear this appeal as the Appellant waived his right to a trial board hearing and tendered a plea of guilty. Therefore, according to the Department, the Appellant “was not suspended pursuant to a trial board order” which is a prerequisite for the Commission to assume jurisdiction of a discipline matter related to a uniformed member of the State Police.

### ***Summary Decision Standard***

When a Respondent before the Commission is of the opinion that there is no genuine issue of disputed material fact relating to the Appellant’s stated claim, no viable ground of appeal on the facts stated, and the Respondent is entitled to prevail as a matter of law, this party may move, with or without supporting affidavits, either to dismiss the entire appeal or for summary decision on a particular claim. 801 CMR 1.01(7)(h). Such motions are decided under the well-recognized standards for summary disposition as a matter of law—i.e., “viewing the evidence in the light most favorable to the non-moving party,” the substantial and credible evidence established that the non-moving party has “no reasonable expectation” of prevailing on at least one “essential element of the case,” and has not rebutted this evidence by “plausibly suggesting” the existence of “specific facts” to raise “above the speculative level” the existence of a material factual dispute requiring an evidentiary hearing. *See, e.g., Nigro v. City of Everett*, 30 MCSR 277 (2017); *Lydon v. Massachusetts Parole Bd.*, 18 MCSR 216 (2005). *Accord Milliken & Co., v. Duro Textiles LLC*, 451 Mass. 547, 550 n.6 (2008); *Maimonides School v. Coles*, 71 Mass. App. Ct. 240, 249 (2008). *See also Iannacchino v. Ford Motor Co.*, 451 Mass. 623, 635-36 (2008) (discussing standard for deciding motions to dismiss); *cf. R.J.A. v. K.A.V.*, 406 Mass. 698 (1990) (factual issues bearing on plaintiff’s standing required denial of motion to dismiss).

### ***Analysis***

The Department argues that “the Appellant waived his right to a trial board” by pleading guilty at the outset and that the Appellant’s suspension was not a result of a trial board order. That is not accurate. Rather, while the exact contours of what transpired before the Trial Board are unclear, the Trial Board did indeed issue findings and recommendations, including a recommended

five-day suspension. The Colonel then implemented the five-day suspension based on the findings and recommendations of the Trial Board.

As part of that Trial Board proceeding, however, the Appellant did indeed plead guilty to the charge of insubordination and the Trial Board relied on that admission to recommend a five-day suspension, which was adopted by the Colonel. Thus, the question before me is whether the Appellant has presented the existence of “specific facts” to raise “above the speculative level” the existence of a material factual dispute requiring an evidentiary hearing. Absent a showing that duress, coercion, or fraud resulted in the Appellant’s undisputed admission of guilt to the Trial Board the Appellant’s argument that he was not guilty of insubordination must fail. The Appellant had not opposed the Department’s Motion for Summary Decision and nothing in the record provides any reasonable expectation that the Appellant would be able to show his admission to insubordination was not freely given or that duress, coercion or fraud caused him to admit to the misconduct. He clearly understood that, by admitting to the misconduct, he would be subject to a five-day suspension, he had time to consider the consequences of making that admission and he had access to counsel. Further, there is no evidence that the Department treated other similarly situated employees differently. See *Zachary v. Civ. Serv. Comm’n & Dept. of Correction*, Suffolk Sup. Ct. No. 07-3197 (2008) (Commission was justified in upholding a 5-day suspension without a full hearing when the Appellant admitted that he engaged in the alleged misconduct.)

### ***Conclusion***

Based on the undisputed fact that the Appellant voluntarily admitted, as part of the underlying proceedings, that he engaged in misconduct (insubordination) and because there is no evidence that any other similarly situated employee was treated differently in regard to the discipline imposed, the Appellant has no reasonable expectation of prevailing in his appeal to the

Commission. For that reason, the Department's Motion for Summary Decision is allowed and the Appellant's appeal under Docket No. D-21-226 is hereby *dismissed*.

Civil Service Commission

/s/ Christopher Bowman  
Christopher C. Bowman  
Chair

By vote of the Civil Service Commission (Bowman, Chair; Dooley, McConney, Stein and Tivnan, Commissioners) on December 14, 2023.

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision. After initiating proceedings for judicial review in Superior Court, the plaintiff, or their attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d).

Notice:  
Matthew K. Sullivan (Appellant)  
Keith A. Paquette, Esq. (for Respondent)