

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

One Ashburton Place: Room 503
Boston, MA 02108

SUZANNE TIBBETTS,
Appellant

v.

D-15-164

TOWN OF DANVERS,
Respondent

Appearance for Appellant:

Richard W. Kendall, Esq.
348 Park Street
Suite 2013
North Reading, MA 01864

Appearance for Respondent:

Geoffrey P. Wermuth, Esq.
Murphy, Hesse, Toomey &
Lehane, LLP
300 Crown Colony Drive, Suite 410
Quincy, MA 02169

Commissioner:

Christopher C. Bowman

ORDER OF DISMISSAL

On June 12, 2015, the Appellant, Suzanne Tibbetts (Ms. Tibbetts), a police officer in the Town of Danvers (Town), at the request of the then-Town's Fire Chief, ran the license plate of a vehicle and told the then-Fire Chief the name of the vehicle's registered owner. As a result, the Town's Acting Police Chief conducted an internal affairs investigation.

On July 23, 2015, the Town and Ms. Tibbetts executed a settlement agreement that was signed by Ms. Tibbetts, the local Union President and the Acting Police Chief. The agreement explicitly states that Ms. Tibbetts agrees to accept a two (2)-day suspension and "waives any appeal to the Appointing Authority or Civil Service Commission ..."

Counsel for Ms. Tibbetts subsequently submitted an "appeal" to the Civil Service Commission (Commission) which was postmarked August 6, 2015. Since 2003, the

Commission has required a \$50.00 filing fee for disciplinary appeals. (812 CMR 4.00; <http://www.mass.gov/anf/hearings-and-appeals/oversight-agencies/csc/appeal-filing-fees.html>). On August 17, 2006, the Commission issued a “Clarification of Commission Policies”, stating that appeals received without a filing fee would be returned to the Appellant or the attorney who submitted it. (<http://www.mass.gov/anf/hearings-and-appeals/civil-service-appeals-process/filing-your-appeal/clarification-of-commission-policies.html>). See also [Flynn v. Attleboro](#), 23 MCSR 279 (2010) and [McKeon v. City of Quincy](#), 24 MCSR 395 (2011).. Further, the Commission’s [appeal form](#) also explicitly states that a filing fee is required.

Counsel for Ms. Tibbets did not include a filing fee with the disciplinary appeal that was postmarked August 6, 2015. Upon receipt of this disciplinary appeal on August 11, 2015, the Commission, consistent with its standard practice, contacted counsel for Ms. Tibbetts the same day and notified him that the appeal was being returned as the \$50.00 filing fee was not included.

The Commission subsequently received a FedEx envelope with a ship date of August 11, 2015 that contained an appeal form and \$50.00 filing fee.

On August 27, 2015, the Town submitted a Motion to Dismiss Ms. Tibbett’s appeal, citing the settlement agreement signed by Ms. Tibbetts on July 23rd.

On September 1, 2015, I held a pre-hearing conference which was attended by Ms. Tibbetts, her counsel, counsel for the Town and the Town’s Police Chief. At that time, I provided the Town with seven (7) days to submitted an amended Motion to Dismiss to include the issue of timeliness. Counsel for Ms. Tibbetts was given seven (7) days thereafter to submit a reply.

On September 2, 2015, the Town, via email, with a copy to counsel for Ms. Tibbetts, submitted an amended Motion to Dismiss. On September 8, 2015, I sent an email to counsel for Ms. Tibbetts, reminding him that his reply was due on September 9th, seven (7) days after the Commission had received the Town’s amended Motion to Dismiss. Counsel for Ms. Tibbetts, via email, stated that he hadn’t received the Town’s motion and, regardless, he believed he had until September 15th to submit a reply. I deemed his email as a request for a continuance, which I allowed.

On September 21, 2015, having received no reply from counsel for Ms. Tibbetts, I sent both parties an email confirming that I had received no reply and informing both parties that a decision would issue shortly.

On September 22, 2015, counsel for Ms. Tibbetts submitted a reply to the Town’s motion, stating that: a) he was unaware of any deadline date; and b) he was hampered with medical issues, which I infer prevented him from filing a reply.

The Commission has no jurisdiction to hear this appeal for the reasons discussed below.

First, the appeal is not timely. G.L. c. 31, § 43 requires that disciplinary appeals be filed with the Commission “within ten [business] days after receiving written notice of such [local] decision.” Ms. Tibbetts received notice of her two (2)-day suspension on July 23, 2015. To be timely, an appeal form, with the required filing fee, needed to be submitted to the Commission on or before August 6th. The Commission did not receive an appeal, with the required filing fee, from Ms. Tibbetts until August 11, 2015. I carefully reviewed the reply submitted by counsel for Ms. Tibbetts, including his assertion that he was either confused by or unaware of the need to submit a filing fee. Respectfully, the filing fee is required by regulation and the need to submit the fee at the time the appeal is filed is clearly stated in language that was crafted to ensure that all parties, including Pro Se Appellants, understood the requirement. In regard to a lack of knowledge regarding the filing fee, it is noteworthy that counsel for Ms. Tibbetts has served as counsel for Appellants in four (4) other appeals before the Commission (See CSC Case Nos. C-09-51 (2009); G1-12-61 (2012); B2-13-247 (2013); and D1-14-57 (2014)).

Second, setting aside the issue of the settlement agreement, persons who receive a suspension of five (5) days or less are required to request a hearing before the local appointing authority (within forty-eight hours of receipt of notice) *prior* to filing an appeal with the Commission. (G.L. c. 31, § 41; [See also Hurley v. Lynn](#), 23 MCSR 251 (2010)). Ms. Tibbetts did not do so.

Third, even if this appeal was timely, which it is not, and even if Ms. Tibbetts had requested a local hearing, which she did not, she does not dispute that she was given time to review the settlement agreement and that she consulted with the local Union President before signing the agreement. In her reply brief, Ms. Tibbetts cites a comment made by the Police Chief “along with others made by Union Representatives” after speaking with the Police Chief that caused an “unsettling feeling” to come over her, apparently causing her to sign the agreement under duress.

While the Commission lacks jurisdiction to hear this appeal as it is untimely and because Ms. Tibbetts failed to request a local hearing, a clarification is warranted in regard to the chronology of events regarding the duress claim. At the pre-hearing conference, there was no dispute that, *after* Ms. Tibbetts was given time to review the settlement agreement with the local Union President, either she or the local Union President stated to the Police Chief that Ms. Tibbetts would be comfortable signing the agreement if this was “the end of it.” The Police Chief does not dispute that he assured Ms. Tibbetts that this was indeed the “end of it” in regard to the Danvers Police Department, but that he could not make any assurances regarding possible actions by other agencies such as “the FBI”. The assertion, now, that this statement is what prompted her to sign the agreement is simply not logical nor, do I believe, accurate.

Since this appeal is not timely and since Ms. Tibbetts did not first request a local hearing, as required, the Commission lacks jurisdiction to hear this appeal. For these reasons, this appeal is *dismissed*.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell and Stein, Commissioners) on October 1, 2015.

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 his / her 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 to:
Richard Kendall, Esq. (for Appellant)
Geoffrey Wermuth, Esq. (for Respondent)