

**COMMONWEALTH OF MASSACHUSETTS  
CIVIL SERVICE COMMISSION**

**One Ashburton Place - Room 503  
Boston, MA 02108  
(617) 979-1900**

**JOSHUA M. ULRICH,**  
*Appellant*

v.

**CASE NO: D-22-022**

**DEPARTMENT OF STATE POLICE,**  
*Respondent*

Appearance for Appellant:

Ernest H. Horn, Esq.  
Horn & O'Loughlin Law Office LLC  
12 Asylum Street  
Mendon, MA 01756

Appearance for Respondent:

Siobhan E. Kelly, Esq.  
Office of the Chief Legal Counsel  
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Commissioner:

Paul M. Stein

Summary of Decision

The Commission dismissed the appeal of a Massachusetts State Trooper who resigned his position after he was suspended for refusing to comply with the vaccination mandate of Executive Order 595 for lack of subject matter jurisdiction and mootness.

**DECISION ON MOTION TO DISMISS**

On February 14, 2022, the Appellant, Joshua M. Ulrich, appealed to the Civil Service Commission (Commission) from two decisions of the Massachusetts Department of State Police (MSP): (a) an administrative suspension from his position as an MSP Trooper imposed on December 2, 2020; and (b) a five-day suspension imposed on January 31, 2022, following an MSP Trial Board hearing conducted pursuant to G.L. c. 22C, in which the MSP found that it was unable to accommodate his religious beliefs that he asserted prevented him from complying with the vaccination mandate of Executive Order 595. On January 31, 2022, the Appellant resigned from his position.

A remote pre-hearing conference was held by the Commission on May 17, 2022. The Appellant also filed a Charge of Discrimination with the Massachusetts Commission Against Discrimination (MCAD), although reportedly the MCAD has no record of that. Pursuant to the Commission's Procedural Order dated June 30, 2022, the MSP filed a Motion to Dismiss dated August 19, 2022, seeking to dismiss the appeal for lack of subject matter jurisdiction. The Appellant filed an Opposition to the Motion to Dismiss on September 13, 2022.

After careful review of the Motion to Dismiss and the Appellant's Opposition, I conclude that, under the applicable facts and law, the Appellant's appeal must be dismissed. Claims arising from the administrative suspension and the Appellant's resignation must be dismissed because neither arose as a result of discipline imposed by an MSP Trial Board. In addition, the Appellant's appeal from the five-day Trial Board suspension must be dismissed as moot.

For purposes of the decision on this motion, I adopt the following relevant facts set forth in the Motion to Dismiss and the Opposition:

1. On August 19, 2021, Governor Baker issued Executive Order 595 requiring all Executive Branch Employees to be vaccinated against the COVID-19 virus by October 17, 2021. (*Motion to Dismiss, Exhibit A*).

2. On September 22, 2021, MSP Superintendent Christopher Mason issued Superintendent's Memo 21-SM-14, requiring all Department members, Sworn and Civilian, to comply with Executive Order 595 by October 17, 2021. (*Motion to Dismiss*)

3. On October 6, 2021, the Appellant requested a religious exemption from the vaccine requirement. (*Motion to Dismiss; Opposition; Claim of Appeal*)

4. On November 27, 2021, the Appellant received notification that his request for a religious exemption was denied. The Appellant was notified that he had three days to come into compliance with Executive Order 595 or resign. If the Appellant did not exercise either option by December 1, 2021, an internal affairs investigation would be initiated against the Appellant. (*Motion to Dismiss*)

5. When the Appellant did not resign, after a “duty status hearing” held pursuant to G.L. c. 22C, § 13, the MSP imposed a 60-day administrative suspension without pay on the Appellant. (*Opposition*)

6. The Appellant was subsequently charged with insubordination and unsatisfactory performance. On January 28, 2022, the Department held a Trial Board hearing on the Appellant’s non-compliance with Executive Order 595 and 21-SM-14. The Appellant was found to be in violation of the Colonel’s order and suspended without pay for five days. A personnel order for his suspension issued on January 31, 2022. (*Motion to Dismiss, Exhibit C*)

7. On January 31, 2022, the Appellant resigned from the Department of State Police. A personnel order reflecting his separation was issued on the same day. (*Motion to Dismiss, Exhibit D*)

8. The Appellant filed this appeal with the Commission on February 14, 2022. (*Motion to Dismiss; Claim of Appeal*)

### **The Administrative Suspension**

State Troopers are not expressly included in the definition of a “Civil service employee,” a “Permanent employee” or a “Tenured employee,” under Massachusetts civil service law, G.L. c. 31, § 1, and likewise the position of a Massachusetts State Trooper is not a “Civil service position” within “Official service” or a position made

by “Civil service appointment” as defined by G.L. c. 31, § 1. Section 10 of G.L. c. 22C provides that the appointment of State Troopers “ ... shall be exempt from the requirements of chapter thirty-one.”

Instead, the Commission’s purview over the discipline of State Troopers is defined by the State Police statute. That statute, G.L. c. 22C, § 13, provides, in relevant part:

Section 13. (a) A uniformed member of the state police who has served for at least 1 year and against whom charges have been preferred shall be tried by a board to be appointed by the colonel or . . . a board consisting of the colonel. A person aggrieved by the finding of the trial board under this subsection may appeal the decision of the trial board under sections 41 to 45, inclusive, of chapter 31. . . .

(b) Notwithstanding subsection (a), the colonel may administratively suspend without pay a uniformed member who has served for at least 1 year if: (i) the uniformed member had a criminal complaint or indictment issued against them; (ii) the department has referred the uniformed member to a prosecutorial agency for review for prosecution; or (iii) there are reasonable grounds to believe that the uniformed member has engaged in misconduct in the performance of the uniformed member's duties that violates the public trust.

Prior to such administrative suspension, the department shall provide the uniformed member notice of, and the underlying factual basis for, the administrative suspension. After such notice, the colonel or the colonel's designee shall hold a departmental hearing at which the uniformed member shall have an opportunity to respond to the allegations. Following the departmental hearing and upon a finding that there are reasonable grounds for such administrative suspension without pay, the colonel may administratively suspend without pay such uniformed member immediately. The administrative suspension without pay shall not be appealable under sections 41 to 45, inclusive, of chapter 31; provided, however, that the administrative suspension without pay may be appealed as provided in section 43.<sup>1</sup>

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<sup>1</sup> G.L. c. 22C, § 43 provides: Any person affected by an order of the department or of a division or officer thereof, may, within such times as the colonel may fix, which shall not be less than ten days after notice of such order, appeal to the colonel who shall thereupon grant a hearing, and after such hearing the colonel may amend, suspend or revoke such order. Any person aggrieved by an order approved by the colonel may appeal to the superior court; provided, that such appeal is taken within fifteen days from the date when such order is approved or made. The superior court shall have jurisdiction in equity upon such appeal to annul such order if found to exceed the authority of the department or upon petition of the colonel to enforce all valid orders issued by the department. Nothing herein contained shall be construed to deprive any person of the right to pursue any other lawful remedy. (*emphasis added*)

Id. (*emphasis added*).

In Massachusetts Dep't of State Police v. Civil Service Comm'n, 2020 WL 3106264 (Mass. Super. Ct. 2020), the Court held that State Troopers may appeal to the Commission under G.L. c. 31, §§ 41-45, *after they have been both charged before and aggrieved by the finding of a MSP Trial Board*. The Court stated that, in the absence of such a charge and finding, the Commission simply has no jurisdiction. Id.

The Court expressly rejected the Commission's argument that it could, in some circumstances, exercise jurisdiction over an appeal brought by a State Trooper who alleged that he had been unlawfully suspended or terminated even if no charges had been "preferred" against the Trooper and the Trooper had not been found guilty of such charges by a Trial Board. In the absence of an appellate decision or legislative clarification of Chapter 22C, the Commission will hew to the holding in Massachusetts Dep't of State Police v. Civil Service Comm'n, *supra*.

Thus, insofar as the Appellant seeks to appeal the administrative suspension imposed on December 2, 2021, the Commission must dismiss the appeal as it lacks subject matter jurisdiction to review such a matter. The Appellant's remedy, if any, is limited to direct judicial review as set forth in G.L. c. 22C, § 43.<sup>2</sup>

### **Five-Day Suspension**

Appeals to the Commission from disciplinary actions are governed by G.L. c. 31, §§ 41 to 43. Section 41 provides, in relevant part:

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<sup>2</sup>The Appellant argues that the Commission is authorized to hear appeals from an administrative suspension under the proviso in G.L. c. 22C, § 13(a) which states: "The administrative suspension without pay shall not be appealable under sections 41 to 45, inclusive, of chapter 31; provided, however that the administrative suspension without pay may be appealed as provided in section 43." The Appellant has misread the statute. The reference in the statute is to Section 43 of *Chapter 22C*, not to Chapter 31.

“Except for just cause . . . , a tenured employee shall not be discharged, removed, suspended . . . , laid off, transferred from his position without his written consent . . . , lowered in rank or compensation without his written consent, nor his position be abolished.”<sup>3</sup>

Section 43 of Chapter 31 provides in relevant part:

“If a person aggrieved by a decision of an appointing authority made pursuant to section forty-one shall, within ten days after receiving written notice of such decision, appeal in writing to the commission, he shall be given a hearing . . . .”

Section 42 of Chapter 31 requires that “complaint[s] . . . be filed within ten days, exclusive of Saturdays, Sundays, and legal holidays, after said action has been taken, or after such person first knew or had reason to know of said action.”

The ten-day filing deadlines are jurisdictional and are strictly enforced. *See, e.g., Town of Falmouth v. Civil Service Comm’n*, 64 Mass. App. Ct. 606, 608-609 (2005), *rev’d other grounds*, 447 Mass. 814 (2006); McGoldrick v. Boston Police Dep’t, 30 MCSR 161 (2017); Poore v. City of Haverhill, 29 MCSR 260 (2016); Stacy v. Department of Developmental Services, 29 MCSR 164 (2016); Volpicelli v. City of Woburn, 22 MCSR 448 (2009); Williamson v. Department of Transitional Assistance, 22 MCSR 436 (2009).

In this case, the Appellant was found guilty of misconduct after a Trial Board hearing held on January 28, 2022. He resigned his position on January 31, 2022, after receiving written notice on that day of his 5-day suspension. His appeal to the Commission was mailed (postmarked) to the Commission on February 14, 2022. Exclusive of Saturdays

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<sup>3</sup> Resignation is not one of the employment actions enumerated in Section 41. A tenured employee who voluntarily resigns from a civil service position has no right to invoke the notice, hearing, and appeal provisions of Sections 41 through Section 45 of Chapter 31. The MSP also argues that the Commission’s review of the Appellant’s resignation is precluded for the same reasons as an appeal from his administrative suspension – it involves no Trial Board decision from which he may appeal. The Appellant’s Opposition does not set forth any reason why he is entitled to seek review by the Commission for the loss of his employment due to resignation. *See generally, Spencer v. Civil Service Comm’n*, 479 Mass. 210 (2018).

and Sundays, this was 10 days, after he received written notice of his suspension. The appeal of his 5-day suspension, therefore, was timely.

Here, however, the Appellant resigned the same day as he was notified of his five-day suspension. Thus, his civil service rights have not been prejudiced, as he has lost no compensation or other benefits as a result of a suspension which he did not serve. See Gray v. Department of State Police, 21 MCSR 332 (2008) (appellant retired after he was ordered to be suspended and demoted by order and was not “aggrieved” because he had suffered no “loss of compensation or other rights” that needed to be restored); Bishop v. Department of State Police, 23 MCSR 613 (2010) (appeal dismissed when trooper retired before suspension was served); Grover v. Department of State Police, 21 MCSR 153 (2008) (trooper retired three days before suspension was ordered). Accordingly, the appeal from the five-day suspension must be dismissed as moot.<sup>4</sup>

Civil Service Commission

*/s/ Paul M. Stein*  
Paul M. Stein  
Commissioner

By vote of the Civil Service Commission (Bowman, Chair; Stein & Tivnan, Commissioners) on October 20, 2022.

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)(1), 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.

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<sup>4</sup> As the Appellant’s appeal must be dismissed, in total, for lack of jurisdiction and mootness, the Commission is not required to address the other arguments raised in the MSP’s Motion to Dismiss—i.e., that, if the appeal were to proceed to a full hearing, the Commission lacks authority to address questions of constitutional law or claims of discrimination that fall within the purview of the MCAD.

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:

Ernest H. Horn, Esq. (for Appellant)

Siobhan E. Kelly, Esq. (for Respondent)