

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 11-00978CITY OF WORCESTER,
Plaintiffvs.MASSACHUSETTS CIVIL SERVICE
COMMISSION and KAREN WALSH,
Defendants**MEMORANDUM OF DECISION**
ON PLAINTIFF, CITY OF WORCESTER'S
MOTION FOR JUDGMENT ON THE PLEADINGS

This matter came on for hearing upon the plaintiff, City of Worcester's (City) motion for judgment on the pleadings. At issue is the decision of the Civil Service Commission (Commission) that the defendant, Karen Walsh, was improperly removed from her position as a Senior Sanitary Inspector of the City and that ordered she be returned to her position without any loss of pay or benefits. From this decision the City filed a complaint for judicial review and seeks, pursuant to G.L. c. 30A, § 14(7) that the decision be reversed.

After hearing at which the court heard arguments of the respective positions of the parties, and careful review of the pleadings, the record of the proceedings and the written submissions of the parties, I find and rule as follows:

DISCUSSION

Pursuant to G.L. c. 30A, § 14(7), this court may reverse, remand, or modify an agency decision if "the substantial rights of any party may have been prejudiced" because the agency decision is based on an error of law or on unlawful procedure, is arbitrary and capricious or unwarranted by facts found by the agency and supported by substantial evidence. The City bears the

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burden of demonstrating the invalidity of the Commission's decision. Merisme v. Board of Appeal on Motor Vehicle Liab. Policies and Bonds, 27 Mass. App. Ct. 470, 474 (1989). In reviewing an agency decision, the Court is required to "give due weight to the experience, technical competence, and specialized knowledge of the agency, as well as to the discretionary authority conferred upon it" by statute. G.L. c. 30A, § 14(7) (1997); Flint v. Commissioner of Pub. Welfare, 412 Mass. 416, 420 (1992); Seagram Distillers Co. v. Alcoholic Beverages Control Comm'n, 401 Mass. 713, 721 (1988). The reviewing court may not substitute its judgment for that of the agency. Southern Worcester County Regional Vocational Sch. v. Labor Relations Comm'n, 386 Mass. 414, 420-21 (1982), citing Olde Towne Liquor Store, Inc. v. Alcoholic Beverages Control Comm'n, 372 Mass. 152, 154 (1977). Nor may a court reject an administrative agency's choice between two conflicting views, even though the court justifiably would have made a different choice had the matter been presented de novo. Zoning Bd. of Appeals v. Housing Appeals Comm'n, 385 Mass. 651, 657 (1982) (citations omitted).

The City contends that Walsh resigned her position as Senior Sanitary Inspector on August 8, 2008, which resignation was accepted by the Acting Commissioner of Health and Human Services by letter dated July 21, 2008 and received by Walsh on July 22. The City further alleges that Walsh's appeal to the Commission was untimely and that the Commission committed errors of law in finding that Walsh did not resign from her position.

1. Resignation. The hearing examiner for the Commission (hearing examiner) concluded, after full hearings held on December 4, 2008 and January 22, 2009, that the City acted with unjustified haste when it formed the mistaken assumption that Walsh had voluntarily resigned her position and that this mistake effectively removed Walsh from her position. (Finding No. 65). This

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conclusion was supported by the hearing examiner's findings that James Gardiner (Gardiner), the Acting Commissioner of the City's Health and Human Services (HHS) department, declared in his letter of July 21, 2008 his conclusion that Walsh had resigned, which resignation was effective August 8, 2008, upon erroneous information. Gardiner had not spoken to Walsh about resignation, nor had he received her resignation in writing (Finding Nos. 37, 41, 47 and 58). Instead, Gardiner based his conclusion on information from Walsh's husband as learned by Gardiner through his staff members. (Finding No. 17). Gardiner never spoke with Walsh's husband concerning his wife's employment or resignation. (Finding No. 58). Gardiner's staff members, however, learned from Walsh's husband, only that Walsh had an intention to resign in the future. (Finding No. 38). Gardiner knew this also (Finding No. 50), but believed that this expressed intention of future resignation and her present actions (presumably her using of accrued leave time) indicated that she was resigning. (Finding No. 51). The hearing examiner found that Walsh had never voluntarily resigned (Finding No. 59), that the City effectively removed Walsh from her position (Finding No. 64) and that this constituted a "harmful error in the application of the appointing authority's procedure [or], an error of law" under G.L. c. 31, § 43.

The hearing examiner's decision is supported by substantial evidence and is warranted by the facts found by the hearing examiner.

2. Timeliness of Walsh's appeal to the Commission. The City argues that the Commission was without jurisdiction to hear Walsh's appeal as her appeal was untimely. This issue was raised in the City's Motion to Dismiss on the ground of lack of jurisdiction (late/untimely filing of appeal) on the first day of the hearing before the Commission. Walsh objected to the late filing of the motion as it had been required in the Hearing Conference notice that such dispositive motions be

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filed prior to the Pre-Hearing Conference held on November 5, 2008. No decision on the motion was rendered by the hearing examiner, but the Commission did proceed to hold two full days of hearings on the appeal. In doing so, the Commission effectively denied the motion, presumably for the motion's untimeliness or upon its merits that Walsh's appeal was filed in a timely manner from the date of the City's failure to comply with the demand of Walsh for her return to employment. As the hearing examiner found, and this court accepts, it was the City's mistaken assumption that Walsh had resigned that constituted its harmful act. Therefore, the City's failure or refusal to correct its mistake despite Walsh's written notification that she had not resigned from her position and the rejection of her demand for reinstatement is the appropriate time of the accrual of her appellate rights. See, Town of Falmouth v. Civil Service Commission, 447 Mass. 814, 821-822 (2006); Gateley's Case, 415 Mass. 397, 399 (1993)(deference shall be given by a court to the reasonable interpretations of an agency of the rules and statutes the agency is charged with administering). Walsh's appeal to the Commission was filed within ten days of that date. Upon this record the court does not find that the Commission committed an error of law or was without jurisdiction to hear the appeal

ORDER

For the above stated reasons, the Motion of the City of Worcester for Judgment on the Pleadings is DENIED. The decision of the Civil Service Commission that Karen Walsh was improperly removed from her employment and that she was entitled to a restoration of her employment with all back pay and benefits is AFFIRMED.

Date: January 11, 2012



Richard T. Tucker, Justice Superior Court