

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

One Ashburton Place - Room 503
Boston, MA 02108
(617) 727-2293

ALFREDA WILLIAMSON

Appellant

v.

CASE NO: D1-09-64

**DEPARTMENT OF TRANSITIONAL
ASSISTANCE,**

Respondent

Appellant:

Alfreda Williamson, Pro Se

Appointing Authority Representative:

Rhett J. Cavicchi, Labor Rel. Specialist
Executive Office of HHS
Department of Transitional Assistance
600 Washington Street
Boston, MA 02111

Commissioner:

Paul M. Stein

DECISION ON MOTION TO DISMISS

The Appellant, Alfreda Williamson, purporting to be acting pursuant to G.L.c.31, §42 and §43, asserts an appeal against the Department of Transitional Assistance of Commonwealth (DTA), the Appointing Authority, challenging the procedures and reasons for the termination of her employment as Benefits Eligibility and Referral Social Worker A/B (BERS A/B). On March 25, 2009, DTA filed an “Appointing Authority’s Motion to Dismiss”, which asserts that the Commission lacks jurisdiction of the appeal because the Appellant’s appeal was untimely and because the Appellant was not discharged, but, rather, resigned her employment. A hearing on the motion was held by the Civil Service Commission (Commission) on July 20, 2009, which was digitally recorded. The Appellant filed no opposition to DTA’s motion and did not appear at the hearing.

FINDINGS OF FACT

Based on the information provided in DTA's motion and the inferences reasonably drawn from the evidence, I find the following material facts to be undisputed:

1. The Appellant, Alfreda Williamson, was employed by the DTA as a BERS A/B. (*DTA Motion; Claim of Appeal*)

2. On December 20, 2007, the DTA notified Ms. Williamson that it was placing her on paid administrative leave, and was contemplating taking disciplinary action against her up to and including termination of her employment. (*DTA Motion*)

3. On January 10, 2008, prior to the Appointing Authority level hearing at DTA, scheduled for that day, the DTA, Ms. Williamson and her collective bargaining unit representative entered into a settlement agreement. (*DTA Motion*)

4. Pursuant to the settlement agreement, Ms. Williamson agreed to voluntarily resign her position at DTA, effective January 14, 2008, and Ms. Williamson submitted a handwritten notice of her resignation to that effect on January 10, 2008. (*DTA Motion*)

5. Ms. Williams filed the present appeal on February 28, 2009. (*Claim of Appeal*)

6. Ms. Williams acknowledged receipt of the decision from which she was appealing to have been received by her on January 13, 2008. (*Claim of Appeal*)

CONCLUSION

The party moving for summary disposition pursuant to 801 C.M.R. 7.00(7)(g)(3) or (h) in an appeal pending before the Commission is entitled to dismissal as a matter of law under the well-recognized standards for summary disposition, i.e., "viewing the evidence in the light most favorable to the non-moving party [i.e. Ms. Williamson], DTA has presented substantial and credible evidence that Ms. Williamson has "no reasonable

expectation” of prevailing on at least one “essential element of the case”, and that Ms. Williamson has not produced sufficient “specific facts” to rebut this conclusion. See, e.g., Lydon v. Massachusetts Parole Board, 18 MCSR 216 (2005). cf. Milliken & Co., v. Duro Textiles LLC, 451 Mass. 547, 550n.6, 887 N.E.2d 244, 250 (2008); Maimonides School v. Coles, 71 Mass.App.Ct. 240, 249, 881 N.E.2d 778, 786-87 (2008).

The Commission’s jurisdiction to hear disciplinary appeals is limited by statute to cases in which a tenured employee is “discharged, removed, suspended . . . laid off, transferred from his position without his written consent . . . lowered in rank or compensation without his written consent [or] his position be abolished.” G.L.c.31, §41. The Commission has consistently held that a civil service employee who voluntarily chooses to resign his employment is not entitled thereafter to the benefit of a hearing pursuant to Section 42 of the Civil Service Law before the appointing authority and may not appeal the termination to the Commission pursuant to Sections 42 or 43, even though the resignation was prompted by impending discipline or discharge of the employee by the appointing authority. See, e.g., Travers v. City of Fall River, 21 MCSR 182 (2008) (EMT’s appeal dismissed from resignation “under protest” after learning that appointing authority intended to terminate him); Liswell v. Registry of Motor Vehicles, 20 MCSR 355 (2007) (appeal of teller dismissed after resignation prompted by appointing authority’s initiating of investigation of cash discrepancies for which larceny charges were subsequently brought); Crowell v. City of Woburn, 14 MCSR 167 (2001) (highway foreman’s appeal dismissed despite claim of a lack of mental capacity to understand the consequences of a resignation); Maynard v. Greenfield, 6 MCSR 165 (1996) (police officer resigned in lieu of termination proceedings for substandard performance)

Moreover, even if the Appellant's termination were considered to be a discharge decision within the scope of Section 41 of Chapter 31, her appeal from such decision would clearly be deemed untimely. G.L.c.31, §43 requires that a person aggrieved by a decision of an appointing authority under Section 41 "shall, within ten days after receiving written notice of such decision, appeal in writing to the commission . . ." Here, more than one year has elapsed since the DTA terminated Ms. Williamson's employment.

Accordingly, for the reasons stated above, the DTA's Motion to Dismiss is hereby, allowed, and the appeal of the Appellant, Alfreda Williamson is hereby, *dismissed*.

Civil Service Commission

Paul M. Stein
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, Stein and Taylor, Commissioners) on July 23, 2009.

A True Record. Attest:

Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of a 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 the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

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 to:
Alfreda Williamson, Pro Se (Appellant)
Rhett J. Cavicchi (for Appointing Authority)