

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, ss.

**CIVIL SERVICE COMMISSION**  
One Ashburton Place Room 503  
Boston, MA 02108  
(617) 727-2293

RICHARD ZIMMERMAN,  
*Appellant*

D-19-112

v.

CITY OF WALTHAM,  
*Respondent*

Appearance for Appellant:

*Pro Se*  
Richard Zimmerman

Appearance for Respondent:

Luke Stanton, Esq.  
City of Waltham  
119 School Street  
Waltham, MA 02451

Commissioners:

Christopher C. Bowman

**ORDER OF DISMISSAL**

On May 14, 2019, the Appellant, Richard Zimmerman (Mr. Zimmerman), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the City of Waltham (City) to suspend him for three (3) days from his position as Public Health Nurse, an “official service” civil service position.

On June 11, 2019, I held a pre-hearing conference at the offices of the Commission which was attended by Mr. Zimmerman, counsel for the City and a City representative.

At the pre-hearing conference, the parties agreed that Mr. Zimmerman was appointed through a provisional appointment, as there has been no examination and/or eligible list for the position of Public Health Nurse in many years.

*Analysis*

G.L. c. 31, §§ 41-45 provide certain protections to permanent, tenured civil service employees, including the right to contest a suspension to the Commission. Mr. Zimmerman is not a permanent, tenured civil service employee. Rather, he is a provisional employee.

Provisional employees do not enjoy the same protections that tenured civil service employees enjoy, including the right to appeal a disciplinary decision to the Commission (see Rose v. Executive Officer of Health and Human Services, 21 MCSR 23 (2008) (provisional employee had no right to appeal her termination to the Commission even though she had been treated as a tenured civil service employee throughout her almost 30 year career); see also Hampton v. Boston, Case No. D-05-430 (2006) (provisional employee had no right to appeal his 3-month suspension to the Commission)).

The limited protections afforded to provisional employees under the civil service law have also been confirmed by numerous judicial decisions. See Dallas v. Commissioner of Public Health & others, 1 Mass. App. Ct. 768, 771 (1974), referring to Sullivan v. Commissioner of Commerce and Dev. 351 Mass. 462, 465 (1966) (in the case of provisional employees, there is “no tenure, no right of hearing, no restriction of the power to discharge”). See also Raffery v. Comm’r of Pub. Welfare, 20 Mass.App.Ct. 718, 482 (1985) (terminated provisional employee has right to an informal hearing by the Appointing Authority, but no further right to appeal to the Civil Service Commission).

Based on a plain reading of the statute and the above-referenced Commission and court decisions, the Commission does not have jurisdiction to hear this appeal. For this reason, Mr. Zimmerman’s appeal under Docket No. D-19-112 is ***dismissed***.

Civil Service Commission

/s/ Christopher Bowman

Christopher C. Bowman  
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners] on June 20, 2019.

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.

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:

Richard Zimmerman (Appellant)  
Luke Stanton, Esq. (for Respondent)