

**COMMONWEALTH OF MASSACHUSETTS  
CIVIL SERVICE COMMISSION**

SUFFOLK, ss

KEVIN D. BRITT,  
Appellant

v.

D-06-54

DEPARTMENT OF PUBLIC HEALTH,  
Respondent

Appellant's Attorney:

Timothy F. Stark, Esq.  
805 Turnpike Street, Suite 101  
North Andover, MA 01845

Respondent's Attorney:

Robert R. Wagner, Esq.  
Department of Mental Health  
25 Staniford Street  
Boston, MA 02114

Commissioner:

John J. Guerin, Jr.

**DECISION**

Pursuant to G.L. c. 31, § 2(b), the Appellant, Kevin Britt, (hereafter "Britt" or "Appellant"), is appealing an action taken by the Respondent, Department of Public Health (hereafter "the Department" or "Respondent") as Appointing Authority, terminating him from his position as an Electrician I at Tewksbury State Hospital. The appeal was timely filed. A full hearing was held on February 26, 2007 at the offices of the Civil Service Commission (hereafter "Commission"). As no written notice was received from either party, the hearing was declared private. Two (2) audiotapes were

made of the hearing. Witnesses were not sequestered. Proposed Decisions were submitted by the parties following the hearing, as instructed.

**FINDINGS OF FACT:**

Based on the documents entered into evidence (Joint Exhibits 1-11), and the testimony of the Appellant and Marianne Dill (“Dill”), a Labor Relations Specialist at the Executive Office of Health and Human Services for both the Departments of Mental Health and Public Health, I make the following findings of fact:

1. The Appellant was employed in a permanent civil service position of Electrician I at the Department’s Tewksbury State Hospital (“the hospital”). He was hired by the Department on September 14, 1997. Throughout the Appellant’s employment, his performance evaluations were at least satisfactory. (Testimony of Appellant and Dill and Exhibit 4)
2. The hospital is a state owned facility operated by the Massachusetts Departments of Public and Mental Health. (Testimony of Dill)
3. The Appellant’s job description as an Electrician I indicated that his responsibilities included performing all duties necessary for planning, designing, installing, modifying, repairing and removing electrical, TV cabling, alarm and CCTV systems. (Exhibits 4, 8 and 9).
4. In his position, the Appellant handled day to day electrical issues for the Maintenance Department. He performed a range of electrical work, at times working independently and without direct supervision by his supervisor. (Testimony of Appellant and Dill)

5. As of a condition of employment, the Appellant was required to have a current and valid Massachusetts Journeyman or Master Electricians license. (Exhibits 8 and 9)
6. On July 31, 2004 the Appellant's Journeyman Electrician license expired. The expiration was due to the Appellant's failure to take required continuing education classes. (Testimony of Appellant and Exhibit 1)
7. On February 4, 2006, the Appellant inquired of his supervisor whether a co-worker Electrician had a valid electrician's license and informed the supervisor that he could check the status of a license on the website of the Board of State Examiners of Electricians. (Testimony of Dill)
8. On or about February 5, 2006, the supervisor checked the license status of all electricians working under his supervision. He learned that the Appellant's license had expired on July 31, 2004. (Testimony of Dill)
9. The Respondent asked the Appellant about his license status and the Appellant indicated that he had a valid license. The Appellant testified that he believed that he had a current license from July 2004 through February 2006 and did not know that his license had lapsed. (Testimony of Dill and Appellant)
10. The Appellant testified that never received a license renewal form from the Board of State Examiners of Electricians. He stated that he did not realize he had missed a fifteen hour continuing education class for such renewal, and that, actually, he believed he had taken the class. (Testimony of Appellant)
11. By letter dated February 6, 2006, the hospital's Chief Operating Officer ("COO") informed the Appellant that he was being placed on unpaid administrative leave

- pending a show cause hearing to determine his employment status. The letter noted that the Appellant's leave was unpaid due to the fact he did not possess the required license to perform his job as an electrician at the hospital. (Exhibit 2)
12. By letter dated February 8, 2006, the Appellant was informed by the COO of the charges against him. The charges stated were: 1) deceiving his employer by falsely representing himself as a licensed electrician for eighteen months; 2) failure to maintain required license for Electrician I; 3) willfully exposing his employer to liability; and 4) violating Massachusetts General Law by working as an Electrician without a license as it violates G.L. c. 141, §1A to perform the duties of a licensed electrician when a license is expired. (Exhibit 3)
  13. On February 16, 2006, a show cause hearing was held regarding the four charges, and on March 9, 2006, the hearing officer issued a recommendation that the Appellant be terminated. (Exhibit 4)
  14. The hospital accepted the hearing officer's recommendation and by letter dated March 9, 2006, notified the Appellant of his termination. (Exhibit 5)
  15. Dill testified that no one was allowed to work with a lapsed license. (Testimony of Dill)
  16. During the eighteen months his license was lapsed, the Appellant continued to be paid by Respondent.
  17. Besides the Appellant, the hospital employed three other electricians: two of whom had Journeyman Electrician licenses and one of whom, the foreman, who possessed a Master Electrician's license. (Testimony of Dill)

18. Dill was an extremely credible witness who was well spoken and knowledgeable with a very professional manner. She offered detailed information in her testimony.
19. The Appellant was polite and respectful. He answered questions with little hesitation and appeared to have adequate recall of the details and events in question. However, he simply was not convincing in reconciling why he did not inform his employer in a timely fashion of issues with his licensure.
20. Appellant's Journeyman Electrician license was reinstated on February 23, 2007.  
(Exhibit 11)

## **CONCLUSION**

The role of the Civil Service Commission is to determine "whether the appointing authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority." City of Cambridge v. Civil Service Commission, 43 Mass. App. Ct. 300, 304 (1997). See Town of Watertown v. Arria, 16 Mass. App. Ct. 331 (1983); McIsaac v. Civil Service Commission, 38 Mass. App. Ct. 473, 477 (1995); Police Department of Boston v. Collins, 48 Mass. App. Ct. 411 (2000); City of Leominster v. Stratton, 58 Mass. App. Ct. 726, 728 (2003). An action is "justified" when it is done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind; guided by common sense and by correct rules of law." Id. at 304, quoting Selectmen of Wakefield v. Judge of First Dist. Ct. of E. Middlesex, 262 Mass. 477, 482 (1928); Commissioners of Civil Service v. Municipal Ct. of the City of Boston, 359 Mass. 211, 214 (1971). The Commission

determines justification for discipline by inquiring, "whether the employee has been guilty of substantial misconduct which adversely affects the public interest by impairing the efficiency of public service." Murray v. Second Dist. Ct. of E. Middlesex, 389 Mass. 508, 514 (1983); School Committee of Brockton v. Civil Service Commission, 43 Mass. App. Ct. 486, 488 (1997). The Appointing Authority's burden of proof is one of a preponderance of the evidence which is established "if it is made to appear more likely or probable in the sense that actual belief in its truth, derived from the evidence, exists in the mind or minds of the tribunal notwithstanding any doubts that may still linger there." Tucker v. Pearlstein, 334 Mass. 33, 35-36 (1956). In reviewing an appeal under G.L. c. 31, §43, if the Commission finds by a preponderance of the evidence that there was just cause for an action taken against an appellant, the Commission shall affirm the action of the appointing authority. Town of Falmouth v. Civil Service Commission, 61 Mass. App. Ct. 796, 800 (2004).

The issue for the Commission is "not whether it would have acted as the appointing authority had acted, but whether, on the facts found by the commission, there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the Appointing Authority made its decision." Watertown v. Arria, 16 Mass. App. Ct. 331, 334 (1983). *See* Commissioners of Civil Serv. v. Municipal Ct. of Boston, 369 Mass. 84, 86 (1975) and Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-728 (2003).

In the present case, the Respondent has shown that it had just cause to terminate the Appellant. The evidence showed that possessing an electrician's license was a

requirement of the Appellant's Electrician I job, that his license expired in July 2004 and that he continued working while failing to renew it for eighteen months and failing to inform his employer that he was working without a valid license. Although it was not clear that the Appellant's intention was to deceive his employer, by working as an electrician without a valid electrical license, the Appellant was not meeting the conditions required by the Department for him to perform his job as an Electrician I at the hospital.

Although the Appellant alleged that he was subjected to disparate treatment because others whose licenses had lapsed were not treated similarly, he did not submit evidence to support this claim. Nor did he submit evidence that the decision to terminate him had objectives unrelated to merit standards or neutrally applied public policy.

Based on the above, the Commission determines that, by a preponderance of the credible evidence, adequate reasons sufficiently supported the Department's termination of the Appellant.

Therefore, the appeal under Docket No. D-06-54 is hereby *dismissed*.

Civil Service Commission

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John J. Guerin, Jr.  
Commissioner

By vote of the Civil Service Commission (Taylor, Guerin, Marquis and Bowman, Commissioners) on June 14, 2007.

A true record. Attest:

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Commissioner

A motion for reconsideration may be filed by either Party within ten days of the receipt of a Commission order or decision. A motion for reconsideration shall be deemed a motion for rehearing in accordance with M.G.L. c. 30A § 14(1) for the purpose of tolling the time for appeal.

Any party aggrieved by a final decision or order of the Commission may initiate proceeding for judicial review under section 14 of chapter 30A 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 commission's order or decision.

Notice to:

Timothy F. Stark, Esq.

Robert R. Wagner, Esq

