

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

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

FREDRIC VAN COPPENOLLE,
Appellant

v.

D1-15-92

CITY OF BOSTON,
Respondent

Appearance for Appellant:

Pro Se
Fredric Van Coppenolle

Appearance for Respondent:

David LaChappelle, Esq.
Labor Counsel
City of Boston Office of Labor Relations
Boston City Hall, Room 624
Boston, MA 02201

Commissioner:

Christopher C. Bowman¹

ORDER OF DISMISSAL

On May 20, 2015, the Appellant, Fredric Van Coppenolle (Mr. Van Coppenolle), pursuant to G.L. c. 31, § 43, filed an appeal with the Civil Service Commission (Commission), contesting the decision of the City of Boston (City) to terminate him from his position as a Heavy Motor Equipment Operator (HMEO).

On June 9, 2015, I held a pre-hearing conference at the offices of the Commission, which was attended by Mr. Van Coppenolle, counsel for the City and a representative from the City.

¹ The Commission acknowledges the assistance of Law Clerk Todd M. Hirsch in the drafting of this decision.

Prior to the pre-hearing conference, the City filed a Motion to Dismiss Mr. Van Coppenolle's appeal. Based on the City's motion and the statements of the parties at the pre-hearing conference, the following facts do not appear to be disputed:

1. On October 27, 2014, Mr. Van Coppenolle began his employment with the City as a HMEO.
2. On April 3, 2015, Mr. Van Coppenolle was terminated from his employment with the City.
3. Mr. Van Coppenolle received the notice of termination on April 7, 2015.

Legal Standard

Pursuant to G.L. c. 31, §41, an Appointing Authority may not impose certain types of discipline, including discharge, upon a "tenured employee" without "just cause." By the terms of the civil service statute, a "tenured employee" is defined as one "who is employed following... an original appointment to a position on a permanent basis and the actual performance of the duties of such position for the probationary period required by law." G. L. c. 31 § 1 (emphasis added). After receiving an original appointment as a permanent full-time civil service employee, a person must "perform the duties of such position on a full-time basis for a probationary period of six months before he shall be considered a full-time tenured employee..." G. L. c. 31, §34 (emphasis added). The Commission only has jurisdiction to hear disciplinary appeals of tenured employees. See Selectmen of Brookline v. Smith, 58 Mass. App. Ct. 813, 815 (2003). This is clear from the structure and content of the civil service law, which "provide an administrative hearing for tenured employees, G. L. c. 31 § 43, but not for probationary employees." New Bedford v. Civil Service Comm'n, 6 Mass. App. Ct. 549, 551 (1978). If a person is a probationary employee when he files an appeal of his termination with the Commission, the Commission, accordingly, lacks jurisdiction over the appeal. See Brouillard v. City of Holyoke, 74 Mass. App. Ct. 1128 (2009).

Analysis

The Commission does not have jurisdiction to hear Mr. Van Coppenolle's appeal. Mr. Van Coppenolle was not a tenured employee because he began his employment with the City on October 27, 2014 and was terminated on April 3, 2015. This was within the six-month probationary period.

In order for the Commission to hear an appeal under G. L. c. 31 § 41, the Appellant must have been a tenured employee at the time of termination. At the time of his termination, Mr. Van Coppenolle had been employed with the City as a probationary employee for less than six months, which means that Mr. Van Coppenolle was not a tenured employee at the time of his termination. As Mr. Van Coppenolle was not a tenured employee at the time of his termination, the Commission cannot hear his appeal.

Conclusion

Based on the facts and the law provided herein, the Commission does not have jurisdiction to hear Mr. Van Coppenolle's appeal. Therefore, Mr. Van Coppenolle's appeal to the Commission under Docket No. D1-15-92 is hereby *dismissed*.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

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)(l), 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 to:
Frederic Van Coppenolle (Appellant)
David LaChappelle, Esq. (for Respondent)