

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK,ss.

CIVIL SERVICE COMMISSION

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

NANCY DALRYMPLE,
Appellant

v.

D1-10-301

TOWN OF WINTHROP,
Respondent

Appellant's Attorney:

Michael Manning, Esq.
IBPO / NAGE
159 Burgin Parkway
Quincy, MA 02169

Respondent's Attorney:

Howard Greenspan, Esq.
200 Broadway, Suite 304
Lynnfield, MA 01940

Commissioner:

Christopher C. Bowman

DECISION ON RESPONDENT'S MOTION TO DISMISS

On September 7, 2008, the Appellant, Nancy Dalrymple (Appellant), was suspended by the Town of Winthrop (Town) as a police officer for five (5) days and placed on administrative leave without pay for her failure to participate in a medical examination to determine her fitness for duty and allow the complete findings of the examination to be submitted to the Town. The actual suspension notice from the Town stated in part that if the Appellant fails to “ ... provide an appropriate release to allow Dr. Kales [who had conducted the evaluation] to issue his report to the Town of Winthrop you will be placed on administrative leave without pay ... which will continue until a release if provided to the Town.”

On September 11, 2009, the Civil Service Commission (Commission) denied the Appellant's appeal of her indefinite suspension. See Dalrymple v. Town of Winthrop, 21 MCSR 458 (2008). The Superior Court affirmed the Commission's decision. (See Dalrymple v. Massachusetts Civil Serv. Comm'n, Suffolk Sup. Ct., No. 09-4334-B (June 29, 2010).)The Appellant has appealed the Superior Court decision and that appeal is still pending. (See Dalrymple v. Massachusetts Civil Serv. Comm'n, Appeals Court, No. 11-P-580).

On September 23, 2010, the Town Manager met with the Appellant and her counsel at which time the Appellant, according to her, offered to comply with the Town's order to provide a release to Dr. Kales. Given the passage of time, however, it was apparent that another medical evaluation would need to be completed and the Appellant apparently agreed to have a new evaluation if the Town so desired.

In a letter dated October 19, 2010, the Town's Police Chief notified the Appellant that he would be scheduling the Appellant for a new medical evaluation. After some scheduling hurdles, the physical evaluation was conducted on December 14, 2010. Subsequently, the Town was notified that the Appellant had successfully demonstrated that she could perform the essential functions of her position. The Town's Police Chief notified the Appellant on December 17, 2010 that she should be reinstated to her shift on December 23, 2010.

Appellant's Argument

The Appellant argues that she was in full compliance with the Town's orders as of September 23, 2010 and that her unpaid suspension should have ended as of that date.

Town's Argument

The Town argues that they acted in good faith to return the Appellant to work following an absence from her duties since May 2007 and that she should not receive any retroactive compensation prior to December 23, 2010.

Conclusion

The parties have chosen to expend additional and unnecessary resources regarding a limited issue that comes at what appears to finally be the end of this protracted litigation. Since neither party can lay claim on a clear and unambiguous interpretation of when the Appellant should have been restored to the payroll, this matter would have been more appropriately resolved through a mutual agreement of the parties. That did not happen. Thus, the Commission hereby issues and order.

ORDER

The Appellant shall be restored to the payroll and receive pay and benefits retroactive to October 19, 2010, the date upon which the Town notified her that it would be scheduling her for a new medical evaluation.

Civil Service Commission

Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman, Henderson, Stein, McDowell and Marquis) on June 16, 2011.

A True copy. Attest:

Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of this 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:

Michael Manning, Esq. (for Appellant)

Howard Greenspan, Esq. (for Appointing Authority)