

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

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

CHRISTOPHER DEANE,
Appellant

v.

G1-07-268

BOSTON PUBLIC SCHOOLS,
Respondent

Appellant's Attorney:

Pro Se
Christopher Deane

Respondent's Attorney:

Brendan M. Greene, Esq.
Boston Public Schools
Office of Labor Relations
26 Court Street
Boston, MA 02108

Commissioner:

Donald R. Marquis

DECISION ON RESPONDENT'S MOTION TO DISMISS

Procedural Background

The Appellant, Christopher Deane, (hereafter "Appellant" or "Deane") filed an appeal with the Civil Service Commission seeking to be "reinstated" as a junior custodian by the Boston Public Schools (hereafter "School Department" or "Appointing Authority"). Specifically, the Appellant's appeal to the Commission stated, "I resigned in early June of 2007 due to personal problems. I took care of my personal problems and attempted to get my job back in July 2007 through my union and was told that the School Department...no longer wanted me back."

A pre-hearing conference was held at the Commission on October 15, 2007 at which time the Appointing Authority filed a Motion to Dismiss. The pro se Appellant was given 14 days to respond to the Motion to Dismiss, but the Commission did not receive any response from the Appellant.

Factual Background

It is undisputed that the Appellant resigned from his position as a junior custodian in the Boston Public Schools on June 1, 2007. The Boston Public Schools accepted his resignation and processed the appropriate forms indicating that the Appellant had resigned. The Appellant sent an email to the Appointing Authority one month later seeking to be re-hired and the Appointing Authority declined his request.

Conclusion

The Commission does not have jurisdiction to hear the Appellant's instant appeal. Since the Appellant resigned from his position, and was not terminated or disciplined, G.L. c. 31, §§ 41-45 do not apply. Further, G.L. c. 31, § 39 does not apply as the Appointing Authority took no action against the Appellant to separate him from his employment.

Finally, it appears that the Appellant was under the mistaken belief that he was entitled to "reinstatement" pursuant to G.L. c. 31, § 46 which states, in relevant part,

"A permanent employee who becomes separated from his position may, with the approval of the administrator, be reinstated in the same or in another departmental unit in a position having the same title or a lower title in the same series, provided that the appointing authority submits to the administrator a written request for such approval which shall contain the reasons why such reinstatement would be in the public interest."

The plain language of Section 46 indicates that the reinstatement of a civil service employee is at the discretion of the Appointing Authority, which, in this case, has opted not to reinstate the Appellant. As such, Section 46 is not applicable in the instant appeal.

For all of the above reasons, the Appointing Authority's Motion to Dismiss is allowed and the Appellant's appeal under Docket No. G1-07-268 is hereby *dismissed*.

Donald R. Marquis
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Guerin, Henderson, Marquis and Taylor, Commissioners) on November 15, 2007.

A True copy. 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)(I), 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:
Christopher Deane (Appellant)
Brendan M. Greene, Esq. (for Appointing Authority)
John Marra, Esq. (HRD)