

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

WARREN P. FORD,
Appellant

v.

D-05-46

TOWN OF BROOKLINE,
Respondent

Appellant's Attorney:

Richard Heavey, Esq.
Heavey, Houlihan, Kraft & Cardinal
229 Harvard Street
Brookline, MA 02446

Respondent's Attorney:

Brian Magner, Esq.
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99 Summer Street
Boston, MA 02110

Commissioner:

Donald R. Marquis

**DECISION ON RESPONDENT'S MOTION FOR SUMMARY
DECISION**

Pursuant to the provisions of G.L. c. 31, §§ 42 and 43, the Appellant, Warren P. Ford (hereafter "Ford" or "Appellant") appealed the decision of the Respondent, the Town of Brookline (hereafter "Respondent" or "the Town"), terminating him from his position as a Senior Building Custodian. The appeal was timely filed on January 14, 2005. On January 16, 2007, the Department submitted a Motion to Dismiss. The

Appellant did not submit an opposition. A status conference was conducted at the offices of the Civil Services Commission on January 24, 2007.

Factual Background

The Appellant was hired by the Respondent in December 1990. In June 2003, the Appellant went out on a leave of absence from his Senior Building Custodian position as the result of an injury. He began an unpaid leave of absence from the Town beginning on March 5, 2004. On January 4, 2005, the Town held a hearing to consider terminating the Appellant due to his continued inability to perform the essential functions of his position, with or without a reasonable accommodation, and subsequently determined that there was just cause to terminate the Appellant as his physical restrictions were permanent. The Town terminated Ford from his Senior Building Custodian position, effective January 12, 2005. He filed his appeal with this Commission on January 14, 2005 and filed an application for Accidental Disability Retirement with the Brookline Retirement Board on January 20, 2005. In the fall of 2006, the Appellant's claim for Accidental Disability Retirement was allowed, retroactive to March 5, 2004, the last date the Appellant received compensation from the Town.

Respondent's Grounds for Dismissal

The Respondent moves for summary decision on the basis that the Appellant's appeal has become moot. Specifically, the Town asserts that, consistent with prior Commission decisions and relevant case law, the Appellant's appeal is moot because the effective date of his retirement, March 5, 2004, occurred more than ten (10) months prior to his date of termination, January 5, 2005.

The Respondent's motion should be granted. In Sheehan v Hudson, D-03-389, the Town requested that the Commission dismiss that appeal on the grounds that the subsequent decision of the Retirement Board rendered the Appellant's appeal moot. In that case, the Appellant's retirement became effective on December 2, 2002, nearly ten (10) months prior to the date of his termination in October 2003. The Commission stated that, because the Appellant's retirement date was effectuated retroactively to a date preceding his termination, his retirement was relevant to the issue of whether the Appellant had the standing necessary to further pursue his appeal and found that the retroactive effect of the Appellant's retirement was to nullify his termination by virtue of the fact that he was no longer in service on the date of said termination.

The Commission has previously dismissed appeals for reasons of mootness. See Gillan v. Quincy Police Department, 17 MCSR 34 (2004). Marchionda v. Town of North Reading, 10 MCSR 110 (1996). "Ordinarily, litigation is considered moot when the party who claimed to be aggrieved ceases to have a personal stake in its outcome." Blake v. Massachusetts Parole Board, 369 Mass. 701, 703 (1976). Attorney General v. Commissioner of Insurance, 403 Mass. 370, 380 (1988). Marchionda, supra. Chapter 31 defines a "person aggrieved" as an individual whose "rights were abridged, denied or prejudiced in such a manner as to cause actual harm to the person's employment status." G. L. c. 31, Sec. 2.

Here, as in the Hudson case, the Appellant's retirement predated his termination. Therefore, the retroactive effect of the Appellant's retirement eliminates any harm done to his employment status, thus the Appellant is no longer aggrieved for the purposes of

pursuing an appeal before the Commission. Therefore, the Commission lack jurisdiction to hear this appeal.

For the above reasons, the Respondent's Motion for Summary Decision is allowed and the appeal under Docket D-05-46 is hereby *dismissed*.

Civil Service Commission

Donald R. Marquis
Commissioner

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

A true copy. Attest:

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 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 proceedings 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 the commission's order or decision.

Notice to:

Richard Heavey, Esq.

Brian Magner, Esq.

