

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

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

WILLIAM TRAVERS,
Appellant

v.

D1-07-90

CITY OF FALL RIVER,
Respondent

Appellant's Attorney:

Michael J. Maccaro, Esq.
AFSCME Council 93
8 Beacon Street
Boston, MA 02108

Respondent's Attorney:

Gary P. Howayeck, Esq.
City of Fall River Law Department
One Government Center
Fall River, MA 02722

Commissioner:

Donald R. Marquis

DECISION ON RESPONDENT'S MOTION TO DISMISS

Procedural Background

The Appellant, William Travers, (hereinafter "Appellant" or "Travers") filed an appeal with the Civil Service Commission appealing his "discharge" as an Emergency Medical Technician ("EMT") from the City of Fall River's Fire Department (hereinafter "City" or "Appointing Authority").

A prehearing conference was held at the Commission on May 7, 2007 and the City subsequently filed a Motion to Dismiss the Appellant's Appeal on May 29, 2007. The Appellant filed an Opposition to the City's Motion to Dismiss on June 20, 2007 and a

motion hearing was held before the Commission on February 21, 2008. Oral argument was heard from counsel for both parties. The Appellant did not attend the hearing.

Factual Background

On December 5, 2006, Dr. Wayne Christiansen, Medical Director for the City of Fall River's Fire Department, sent a letter to the Appellant stating, in its entirety:

“Dear Mr. Travers:

This letter is to inform you that, effective immediately, I hereby revoke your Privilege to Practice for the City of Fall River Emergency Medical System. As your medical director I have based this decision upon the Events of 11/27/2006 run #3236, and a review of the previous incidents involving you that were serious enough to require either OEMS investigations or remedial training.

I have concluded that I no longer have confidence in your judgment as an EMT to continue extending your privileges.

Most Sincerely,

Dr. Wayne C. Christiansen
Medical Director, Fall River, EMS” (Attachment B, City's Motion to Dismiss)

On December 11, 2006, the Appellant submitted a letter of resignation to the City stating, in its entirety:

“I William Travers as of 0956 hours on this date of December 11, 2006 do hereby resign under protest my position, of Fall River Fire Department / EMT-Intermediate.

William Travers” (Attachment C, City's Motion to Dismiss)

City's Argument in Favor of Motion to Dismiss

The City argues that there is nothing in the civil service law or rules that allows an individual who resigns to appeal to the Civil Service Commission. Further, had the Appellant not resigned, the City argues that the Appellant would have lacked the

necessary certification to continue as an EMT, as the City has no discretion to contradict or challenge the decision of the Medical Director.

Appellant's Argument in Opposition to Motion to Dismiss

The Appellant argues that his letter of resignation was submitted under duress and that the circumstances surrounding his separation from employment constitute a "constructive discharge," thus providing the Commission with jurisdiction to hear the instant appeal.

Conclusion

The Commission has the statutory authority to hear and decide appeals by a person aggrieved by the actions of an appointing authority. G.L. c. 31, s. 2(c). An "aggrieved person" is one whose employment status has suffered actual harm because of an action by the appointing authority in violation of the provisions of the Civil Service Law. G.L. c. 31, § 2(b).

The Commission finds that the Appellant tendered his resignation, which the Appointing Authority accepted. Any public employee may voluntarily tender their resignation. Jones v. Town of Wayland, 374 Mass. 249, 259 (1978). Campbell v. City of Boston, 337 Mass. 676, 678 (1958). When the Appointing Authority accepts the resignation, the employee's employment status is conclusively severed. Jones at 260.

The Commission has two possible means by which to grant relief to a terminated employee, pursuant to the provisions of G.L. c. 31, § 42 and/or pursuant to the provisions of c. 31, § 43. An individual seeking review of a discharge in violation of the civil service rules must avail themselves of the remedies afforded by the rules. Massa v. Board of Selectmen of Fairhaven, 832 Mass. App. Ct. 5 (1977); Canney v. Municipal Ct. of Boston, 368 Mass. 648, 653 (1975); Nevins v. Board of Welfare in Everett, 301 Mass.

502, 504 (1938). Section 42 provides a remedy when the Appointing Authority fails to exercise due process when engaged in termination procedures. The relief offered by Section 43 is only available when the Commission has found that the Appointing Authority lacked the requisite just cause to terminate the employee. An Appointing Authority has not discharged an employee if the employee in fact resigns from that position. Crowell v. City of Woburn, 14 MCSR 167 (2001).

The Appellant understood that the Appointing Authority intended to terminate him, and that information influenced his decision to resign. However, the existence of a future intent to possibly terminate an employee does not constitute a termination for the purposes of obtaining relief under the civil service law. *See* Director of Civil Defense Agency and Office of Emergency Preparedness v. Civil Service Commission, 373 Mass. 401, 411 (1977) (The court made a determination as to when an employee was terminated for purposes of determining when the statute of limitations to file an appeal began). If the Appointing Authority's contemplation of future action were deemed an action for purposes of appeal under the civil service law, then the Appointing Authority would be held responsible for conduct it had yet to (or may never have intended) undertake. Liswell v. Registry of Motor Vehicles, 20 MCSR 355 (2007).

Even assuming *arguendo* that the Appellant was terminated, which the Commission concludes he was not, it is undisputed that the City's Medical Director revoked the Appellant's "Privilege to Practice" for the City of Fall River Emergency Medical System. Thus, the Appellant lacked the necessary certification to be employed as an EMT.

For all of the above reasons, the Appointing Authority's Motion to Dismiss is allowed

and the Appellant's appeal under Docket No. D1-07-90 is hereby *dismissed*.

Donald R. Marquis
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis and Taylor, Commissioners [Guerin – Absent]) on April 17, 2008

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)(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 J. Maccaro, Esq. (for Appellant)
Gary P. Howayeck, Esq. (for Appointing Authority)