COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

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

JEFFREY A. CHAPSKI,
Appellant

v.

D1-06-338

WOBURN PUBLIC SCHOOLS,
Respondent

Appellant's Attorney:

Pro Se
Jeffrey A. Chapski
[redacted]

Respondent's Attorney:

Joseph T. Bartulis, Esq.
Murphy, Hesse, Toomey & Lehane
300 Crown Colony Drive, Suite 410
Quincy, MA 02169

Commissioner:

Donald R. Marquis

DECISION ON APPOINTING AUTHORITY'S MOTION TO DISMISS

Procedural Background

Pursuant to the provisions of G.L. c. 31, § 43, the Appellant, Jeffrey Chapski, (hereafter "Appellant" or "Chapski") is appealing the decision of the Woburn Public Schools (hereafter "Appointing Authority" or "School Department") to terminate him from the position of custodian.

A pre-hearing conference was held before the Commission on March 19, 2007 and the Appointing Authority subsequently filed a Motion to Dismiss with the Commission on

September 5, 2007. The Appellant filed an Answer to the Motion to Dismiss with the Commission on September 19, 2007.

Factual Background

The Appellant was hired as a custodian in the Woburn Public Schools on October 19, 2006, subject to passing a drug and alcohol test. According to the Appellant, he began working for the School Department on October 20, 2006. The Appellant underwent the required drug and alcohol test on October 27, 2006 at Health Resources in Woburn. According to the Appellant, no instructions were given to him in preparation for this test. Assuming that he would be given a urine test, the Appellant states that he consumed two bottles of water prior to the test in question. On November 17, 2006, the School Department received the results of the Appellant's tests. While the report indicated that the Appellant's test results were within acceptable limits, it also indicated that the urine specimen provided by the Appellant was "dilute". According to the report, a specimen is considered "dilute" if it has a specific gravity less than 1.003 and creatinine levels less than 20 mg/dl. According to the Appellant, he never received the results of this test.

Based on results of the above-referenced drug and alcohol test, the School Department ordered the Appellant to undergo the test again. According to the Appellant, he reported to work for the 11:00 P.M. to 7:00 A.M. on November 30, 2006. Again according to the Appellant, a co-worker handed him a letter shortly after the Appellant reported to work on November 30, 2006 at 11:00 P.M. and stated, "Jeff, this is for you". The Appellant argues that he mistakenly assumed the letter was in reference to the retirement of a head custodian, as the head custodian that night was purportedly announcing his intent to retire to all the employees present. The Appellant states that he put the letter away without

reading it and proceeded to work his 11:00 P.M. to 7:00 A.M. assigned shift, which ended on the morning of December 1, 2006. At the conclusion of his overnight shift, the Appellant states that he went home and slept until 2:00 P.M. on December 1, 2006. Upon awaking at 2:00 P.M., the Appellant states that he read the letter in question, which informed him of the follow-up drug and alcohol test, scheduled for 9:30 A.M. on December 1, 2006, 4 ½ hours earlier, and only 2 ½ hours after the conclusion of an overnight 11:00 P.M. to 7:00 A.M. shift. The Appellant states that he immediately went to the high school and told his supervisor, Jim Gallivan, that he missed the appointment. According to the Appellant, he was informed shortly thereafter by Roy Robblee, Director of Building Facilities, that it was too late to take the drug and alcohol test.

According to the Appellant, he attempted to contact the Superintendent of Schools the same day. Unable to reach the Superintendent by phone, the Appellant states that he went to the Superintendent's office to meet with the Superintendent. Again according to the Appellant, Roy Robblee, the above-referenced Director of Building Facilities, came out of the Superintendent's office, walked the Appellant outside, admonished the Appellant for not "owning up" to the error and stated it was too late to reschedule the drug and alcohol test.

On December 4, 2006, the Appellant states that he received a call from Mr. Robblee telling him to return his keys and pick up his last paycheck. At this time, the Appellant states that he told Mr. Robblee that he had a learning disability and that was part of the reason he did not immediately read the letter on the night in question. The Appellant alleges that Mr. Robblee responded by saying he would not have hired the Appellant if had been aware of his learning disability.

As part of the record of this case, the Appellant submitted a "Notice of Decision" from the Social Security Administration dated October 28, 2003 which states in part, "[Chapski] suffers [redacted]." My observations of this pro se Appellant during the pre-hearing conference were consistent with the above-referenced decision from the Social Security Administration. As such, this Commissioner sought to ensure that the Appellant fully understood the appeals process and the issues before the Commission. Further, I received assurances from the Appellant that he, possibly with the assistance of others, would be able to respond to an anticipated Motion to Dismiss from the Appointing Authority. In fact, a person attended the pre-hearing conference with the Appellant, answered some questions for him and apparently prepared the Appellant's Answer to the Appointing Authority's Motion to Dismiss.

Argument of the Appointing Authority in support of Motion to Dismiss

The Appointing Authority states that, because the Appellant is not a tenured employee, the Commission should dismiss the action. Specifically, the Appointing Authority argues that the Appellant was not employed long enough (six months) to attain the status of a tenured employee and the Commission has no jurisdiction to hear this appeal and thus should dismiss the action.

Argument of Appellant

The pro se Appellant does not address the issue of the Commission's jurisdiction to hear his appeal in his Answer to the Motion to Dismiss. Rather, the Appellant addresses the underlying issue of whether the Appointing Authority had reasonable justification to terminate him, given the facts recited above by the Appellant.

Conclusion

Pursuant to G.L. c. 31, § 41, an employer may not impose certain types of discipline, including discharge, upon a "tenured employee" without "just cause". In addition, the employer may not take such action without providing the employee with written notice and an opportunity for a hearing. After such hearing, if the Appointing Authority determines that there is just cause to impose the discipline, the employee is entitled to appeal such decision to the Commission pursuant to G.L. c. 31, § 43. These provisions provide tenured civil service employees with greater due process protections than they would otherwise have.

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.

Pursuant to G.L. c. 31, § 34, "a person shall actually 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."

In the present case, the Appellant was terminated well before he had served in his position for six months. As such he was not a "tenured employee" for purposes of G.L. c. 31, § 41, and the School Department was not obligated to follow the procedures of that section in carrying out its decision to terminate him. For the same reason, the Appellant has no standing to appeal the School Department's decision to the Civil Service Commission.

While the Appointing Authority must prevail on its Motion to Dismiss based on the civil service law, the Commission is chagrined by the actions of the Appointing Authority regarding this matter. Having served over three decades as a Town Manager, this Commissioner understands the need to ensure high standards and accountability from its employees. I also understand the importance of equity and good conscience, however, and that has not been exhibited in this case. After listening to the Appellant during the pre-hearing conference held regarding this matter, I found the Appellant to be a sincere individual who is challenged by a documented learning disability. As such, I am deeply troubled by the chronology of events in this matter as described by the Appellant. If, as the Appellant alleges, he was simply handed a notice at the beginning of an overnight shift on November 30, 2006 to attend a drug and alcohol screening on the morning of December 1, 2006, a little more than 2 hours after the conclusion of his overnight shift, then equity and good conscience demands that the Appellant be given another opportunity to take the test in question and that he be returned to his position should he successfully pass the test. As referenced above, however, such an order is beyond the Commission's scope as it lacks jurisdiction to hear the instant appeal of an employee who was still in a probationary status. While the Commission lacks jurisdiction to hear this appeal, there may be other appropriate venues for the Appellant to pursue his complaints.

For all of the above reasons, the Appellant's appeal under Docket No. D1-06-338 is hereby ***dismissed.***

Civil Service Commission

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Donald R. Marquis, Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Guerin, Henderson, Marquis and Taylor, Commissioners) on September 27, 2007.

A true record. Attest:

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Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of a Commission order or decision. 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:
Jeffrey Chapski (Appellant)
Joseph T. Bartulis, Jr., Esq. (for Appointing Authority)
Carl R. Batchelder, Ed.D., Superintendent of Schools