

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

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

FAWZI BAYYAT,
Appellant

v.

D1-09-234

DEPARTMENT OF CORRECTION,
Respondent

Appellant's Attorney:

Barrando Butler, Esq.
Davids & Cohen
40 Washington Street, Suite 20
Wellesley, MA 02481

Respondent's Representative:

Jeffrey Bolger
Department of Correction
P.O. Box 946: Industries Drive
Norfolk, MA 02056

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, Fawzi Bayyat, (hereinafter "Appellant" or "Bayyat") is appealing the decision of the Department of Correction (hereinafter "Appointing Authority" or "DOC") to terminate him from the position of Systems Programmer / Systems Supervisor PDPP.

A pre-hearing conference was held before the Commission on July 2, 2009. Prior to pre-hearing conference, the Appointing Authority filed a Motion to Dismiss the Appellant's appeal and the Appellant filed an opposition. I heard the parties' oral

argument on DOC's Motion to Dismiss as part of the pre-hearing conference on July 2, 2009.

Factual Background

The Appellant was hired as a provisional Systems Programmer / System Supervisor PDPP by DOC on August 24, 2008. Less than six months after commencing his employment, the Appellant was terminated by DOC on February 19, 2009. The Appellant requested and was granted an informal hearing by DOC. The DOC hearing officer upheld the termination.

Argument of the Appointing Authority in support of Motion to Dismiss

DOC argues that because the Appellant is not a tenured employee, the Commission has no jurisdiction to hear this case. Specifically, DOC 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. Further, DOC argues that the Appellant was appointed as a provisional employee, as there has been no examination for the position in question for several years. Hence, the Appellant was not hired off of a civil service certification

Argument of Appellant

The Appellant argues that during the informal hearing conducted by DOC, the Appellant's supervisor at one point stated that she would be willing to reinstate the Appellant and extend his probationary period. According to the Appellant, that offer was rescinded approximately thirty (30) minutes later and the hearing officer upheld the termination. The Appellant argues that since he agreed to accept the extension of his probationary period as a condition of being reinstated, the Commission should deem him to be reinstated to his position.

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 not employed following an original appointment to a position on a permanent basis. Rather, he received a provisional appointment. Even if the Appellant was appointed from a certification to a permanent position, he had not served in his position for six months at the time of his termination. As such, he was not a “tenured employee” for purposes of G.L. c. 31, § 41, and DOC 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 DOC's decision to the Civil Service Commission.

For all of the above reasons, the Appellant's appeal under Docket No. D1-09-234 is hereby *dismissed*.

Civil Service Commission

Donald R. Marquis, Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, Stein and Taylor, Commissioners) on July 9, 2009.

A true record. Attest:

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:

Barrando Butler, Esq. (for Appellant)

Jeffrey Bolger (for Appointing Authority)