

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, ss.

**CIVIL SERVICE COMMISSION**

One Ashburton Place: Room 503  
Boston, MA 02108

BRICE ADAMS,  
Appellant

v.

D1-11-226

CITY OF NEWTON,  
Respondent

Appellant's Attorney:

*Pro Se*  
Brice Adams

Respondent's Attorney:

Donnalyn B. Lynch Kahn, Esq.  
City Solicitor  
City of Newton  
City Hall  
1000 Commonwealth Avenue  
Newton Centre, MA 02459

Commissioner:

Christopher C. Bowman

**DECISION ON RESPONDENT'S MOTION TO DISMISS**

The Appellant, Brice Adams (hereinafter "Adams" or "Appellant"), pursuant to G.L. c. 31, § 43, filed an appeal (in-hand) with the Civil Service Commission (hereinafter "Commission") on July 7, 2011, contesting the decision of the City of Newton (hereinafter "City" or "Appointing Authority") to terminate him from his position as a firefighter.

On July 28, 2011, the City filed a Motion to Dismiss the Appellant's appeal based on timeliness. On August 9, 2011, the Appellant filed a reply to the Motion to Dismiss. A pre-hearing conference was held at the offices of the Commission on September 6, 2011

at which time I heard oral argument from the parties regarding the Motion to Dismiss. The parties also summarized their positions regarding whether there was just cause for the termination.

The following facts appear to be undisputed:

1. The Appellant has been employed by the City as a full-time firefighter since October 2006.
2. On March 26, 2011, the Appellant was arrested for Operating Under the Influence of Alcohol.
3. According to the City, police reports indicate that the Appellant, at the time of his arrest, used strong profanity and racial slurs.
4. The Appellant subsequently admitted to sufficient facts regarding the OUI and the matter was continued without a finding. He received one-year probation and was ordered to participate in a 16-week alcohol treatment program.
5. On April 15, 2011, the City, after conducting an investigation, held a hearing to determine if the Appellant should be disciplined, up to and including termination.
6. Although the parties dispute how this information came to light, the City learned prior to the local hearing that the Appellant was allegedly smoking when he was stopped by police on March 26, 2011.
7. G.L. c. 41, § 101A prohibits firefighters from smoking tobacco products while employed by a Fire Department.
8. The City subsequently amended the potential charges against the Appellant to include violation of G.L. c. 41, § 101A.

9. A local hearing was conducted on April 15, 2011. The Appellant did not testify at this local hearing.
10. On April 27, 2011, an officer from the Newton Fire Department hand-delivered a notice of termination to the Appellant's home address and left the notice with a family member.
11. The City also mailed the termination notice to the Appellant's home address on April 27, 2011.
12. The notice of termination referenced and attached the applicable service law regarding appeal rights.
13. On July 7, 2011, the Appellant filed an appeal (in-hand) with the Commission.
14. As part of his appeal form, the Appellant indicated that he received the City's notice of termination on April 29, 2011.
15. On July 28, 2011, the City filed a Motion to Dismiss the Appellant's appeal as it was not filed within ten (10) business days of him receiving the notice of termination.
16. On August 9, 2011, the Appellant filed a reply to the City's Motion to Dismiss.
17. In his reply, the Appellant stated that he had "recently moved prior to the alleged incident" and that he was not "properly served by hand or by mail in accordance with the rules of Civil Procedure."
18. At the pre-hearing conference, the Appellant stated that he received the notice of termination "within a week" of April 27, 2011. (One full week after April 27, 2011 is May 4, 2011.)

*Appointing Authority's Argument*

The City argues that since the Appellant did not file an appeal with the Commission within ten business days of receiving the notice of termination, his appeal should be dismissed.

*Appellant's Argument*

The Appellant argues that he did not read the civil service law outlining his appeal rights when he received the notice of termination and did not know at the time that he could file an appeal with the Commission. He argues that he was attending an intensive rehabilitation program until on or about May 1, 2011. Further, citing various court decisions, he argues that pro se litigants should not be held to the same standard as lawyers in regard to such requirements as filing deadlines.

*Conclusion*

The civil service law allows for a hearing before the commission "[i]f a person aggrieved by a decision of an appointing authority made pursuant to [s. 41] shall, within ten days after receiving written notice of such decision, appeal in writing to the commission . . . ." G.L. c. 31, § 43. See also *Falmouth v. Civ. Serv. Comm'n*, 447 Mass. 814, 817 (2006).

The Appellant acknowledges that he received the City's decision no later than May 4, 2011. Even if the Commission used this date, the statutory ten-day period to appeal from the City's decision, excluding weekends as required under the statute, would have expired on May 18, 2011. The Appellant's appeal was not filed with the Commission until July 7, 2011, over two months after the latest possible date that he received the City's decision.

Further, none of the cases cited by the Appellant support his argument that the Commission is authorized to waive a statutory ten-day filing deadline. The Appellant's appeal to the Commission failed to meet this ten-day filing requirement. Thus, his appeal under Docket No. D1-11-226 is hereby *dismissed*.

Civil Service Commission

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Christopher C. Bowman  
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, Stein, Commissioners [McDowell – Absent]) on September 22, 2011.

A true Copy. Attest:

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Commissioner  
Civil Service Commission

Either party may file a motion for reconsideration within ten days of the receipt of this 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 this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision.

Notice to:  
Brice Adams (Appellant)  
Donnalyn Lynch Kahn, Esq. (for Appointing Authority)