

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

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

FRED J. CINTRON,
Appellant

v.

D1-11-4

CITY OF HOLYOKE,
Respondent

Appellant's Attorney:

Pro Se
Fred Cintron

Respondent's Attorney:

Adam Pudelko, Esq.
City of Holyoke
536 Dwight Street
Holyoke, MA 01040

Commissioner:

Christopher C. Bowman¹

DECISION ON RESPONDENT'S MOTION TO DISMISS

Procedural Background

Pursuant to G.L. c. 31, §43, the Appellant, Fred J. Cintron, (hereinafter "Appellant") appealed the decision of the City of Holyoke (hereinafter "City") to terminate him to the Civil Service Commission (hereinafter "Commission") on December 29, 2011. A pre-hearing conference was conducted via telephone on January 26, 2011. On February 25, 2011, the City submitted a Motion to Dismiss the Appellant's appeal. On March 31, 2011, the City submitted its Renewed Motion to Dismiss. On April 12, 2011, Appellant submitted his response thereto. On April 13, 2011, the Commission held a Motion

¹ The Commission acknowledges the assistance of Law Clerk, Tanya Mustacchio, in the drafting of this decision.

Hearing at the Springfield State Building, in Springfield, MA. The hearing was digitally recorded and a copy is retained by the Commission. CDs were sent to the parties.

Factual Background

Appellant began his employment as a student police officer with the City on December 5, 2010 and entered the police academy on December 13, 2010. He was terminated from his position on December 21, 2010. The City submits that Appellant was terminated due to his failure to complete a required assignment and participate in mandatory physical training on the first day at the academy, as a result of continuing employment with a second job at U.S. Tsubaki, Inc. Appellant contests some of the reasons for his termination.

City's Motion to Dismiss

The City argues that the Commission has no jurisdiction to hear this appeal, as Appellant was a student officer. The City contends that in order to be considered a full-time tenured police officer, pursuant to G.L. c. 31, §61, he must “actually perform the duties of [a police officer] on a full-time basis for a probationary period of twelve months before he shall be considered a full-time tenured employee.” Since G.L. c. 41, §96B prohibits a student officer from performing police duties, any time while Appellant was in academy training would not count toward the twelve-month probationary period required under G.L. c. 31, §61. City argues that it acted within its authority to terminate the Appellant under G.L. c. 41, §133, which deems police officers in their probationary period to be “employees at will whose removal or dismissal shall be without recourse at any time during such initial appointment.”

Appellant's Response

The Appellant did not address the jurisdictional issue. He argues that his failure to resign from his position at U.S. Tsubaki, Inc. prior to beginning his employment with the City was a misunderstanding of the requirements. Appellant further argues that he was bypassed in 2008 for the police academy and that the Commission should consider his complaint as a bypass appeal.

Conclusion

G.L. c. 41, § 96B states in relevant part:

“Every person who receives an appointment to a position on a full-time basis in which he will exercise police powers in the police department of any city or town, shall, prior to exercising police powers, be assigned to and satisfactorily complete a prescribed course of study approved by the municipal police training committee. The provisions of chapter thirty-one and any collective bargaining agreement notwithstanding, any person so attending such a school shall be deemed to be a student officer and shall be exempted from the provisions of chapter thirty-one and any collective bargaining agreement for that period during which he is assigned to a municipal police training school, provided that such person shall be paid the regular wages provided for the position to which he was appointed and such reasonable expenses as may be determined by the appointing authority and be subject to the provisions of chapter one hundred and fifty-two.” (emphasis added)

Here, it is undisputed that the Appellant was terminated from employment while he was a student officer. Thus, he is not afforded any of the protections of the civil service law under G.L. c. 31, §§ 41 – 45 to contest his termination.

Since the Commission lacks jurisdiction to hear his appeal, the Appellant's appeal under Docket No. D1-11-4 is hereby *dismissed*.

Civil Service Commission

Christopher C. Bowman
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, McDowell and Stein, Commissioners) on June 16, 2011.

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)(1), 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:
Fred J. Cintron (Appellant)
Adam Pudelko, Esq. (for Respondent)