

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

One Ashburton Place: Room 503
Boston, MA 02108

LEO PROKOP,
Appellant

v.

D-15-216

BOSTON HOUSING AUTHORITY,
Respondent

Appearance for Appellant:

Ira Sills, Esq.
Segal Roitman, LLP
111 Devonshire St., 5th Floor
Boston, MA 02109

Appearance for Respondent:

Jay Koplove, Esq.
Boston Housing Authority
52 Chauncy Street
Boston, MA 02111

Commissioner:

Christopher C. Bowman

ORDER OF DISMISSAL

On November 6, 2015, the Appellant, Leo Prokop (Mr. Prokop), pursuant to G.L. c. 31, § 43 and G.L. c. 121B, § 29, filed an appeal with the Civil Service Commission (Commission), contesting the decision of the Boston Housing Authority (Housing Authority) to suspend him for thirty (30) days. A pre-hearing was scheduled to be held on November 24, 2015, but was continued to and held on December 8th at the request of counsel for Mr. Prokop. The pre-hearing was attended by Mr. Prokop, his counsel and counsel for the Housing Authority.

Based on the statements of the parties, it is undisputed that Mr. Prokop has been employed by the Housing Authority for more than five (5) years and that, after a local hearing by the Housing Authority, he was suspended for thirty (30) days.

Pursuant to the Standard Adjudicatory Rules of Practice and Procedure 801 CMR 1.01 (7)(g)(3), “The Presiding Officer may at any time, on his own motion or that of a Party, dismiss a case for lack of jurisdiction to decide the matter...”

G.L. c. 121B, § 29 states in relevant part:

“No employee of any housing authority, except an employee occupying the position of executive director, who has held his office or position, including any promotion or reallocation therefrom within the authority for a total period of five years of uninterrupted service, shall be involuntarily separated therefrom except subject to and in accordance with the provisions of sections forty-one to forty-five, inclusive, of said chapter thirty-one to the same extent as if said office or position were classified under said chapter.”

(emphasis added)

Here, Mr. Prokop was not “involuntarily separated” within the meaning of Section 29, which the Commission interprets as being a termination or layoff. Rather, he was *suspended* for thirty (30) days, a disciplinary action that does not give rise to a cause of action under Section 29. See Santiago v. Worcester Housing Authority, 28 MCSR 323 (2015); Jeraud v. Waltham Housing Authority, 21 MCSR 573 (2008); Johnson v. Worcester Housing Authority, 23 MCSR 555 (2010).

The Commission does not have jurisdiction to hear the instant appeal. For this reason, the Appellant’s appeal under Docket No. D-15-216 is hereby *dismissed*.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Camuso, Ittleman, Stein and Tivnan, Commissioners [Bowman, Chairman – Absent]) on January 21, 2016..

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)(1), 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. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d)

Notice to:

Ira Sills, Esq. (for Appellant)

Jay Koplove, Esq. (for Respondent)