

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

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

STEVEN RAE,
Appellant
v.

Case No.: D-17-183

TOWN OF ARLINGTON,
Respondent

ORDER OF DISMISSAL

On September 14, 2017, the Appellant, Steven Rae (Mr. Rae), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the Town of Arlington (Town) to suspend him for five (5) days from the position of Forestry Supervisor, an official service position.

On October 17, 2017, I held a pre-hearing conference that was attended by Mr. Rae, counsel for Mr. Rae, a union representative, counsel for the Town, the Town Manager and the Town's Director of Human Resources.

As part of the pre-hearing, I asked the parties to provide me with information regarding whether Mr. Rae had ever obtained permanency in his position as a Forestry Supervisor. The parties agreed that Mr. Rae had permanency in a lower, labor service position of Tree Climber, but that he had been serving as a provisional Forestry Supervisor since 2005.

Since the disciplinary action imposed here did not impact Mr. Rae's permanency as a Tree Climber (i.e. – he was not discharged), the Commission has no jurisdiction to hear this appeal. (See Le Francois v. Department of Revenue, 23 MCSR 639 (2010) (a permanent Corporate Analyst who was serving as a provisional Tax Auditor I could not contest her one-day suspension imposed while she was serving in her provisional position; see also McNulty v. City of Lynn, 28 MCSR 114 (2015) (a permanent building custodian who was serving as a provisional senior building custodian could not contest his three-day suspension imposed while he was serving in his provisional position); contrast with McDowell v. City of Springfield, 23 MCSR 124 (2010), upheld in relevant part and reversed in part, City of Springfield v. Civil Serv. Comm'n, 469 Mass. 370 (2014) (a permanent Carpenter provisionally promoted to an official service position could contest his termination).

For this reason, Mr. Rae's appeal under Docket No. D-17-183 is hereby *dismissed*.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on October 26, 2017.

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:
Maureen Medeiros, Esq. (for Appellant)
Nicholas Dominello, Esq. (for Respondent)