

**BEFORE THE CIVIL SERVICE COMMISSION OF THE
METROPOLITAN BOARD OF PUBLIC HEALTH**

IN THE MATTER OF:)
)
 ERIC MCCANN)
)
 Grievance)

**ORDER GRANTING THE METROPOLITAN GOVERNMENT’S MOTION FOR
INVOLUNTARY DISMISSAL**

This case arises from the grievance filed by Petitioner, Eric McCann, on March 1, 2023. On March 24, 2023, Mr. McCann appealed his grievance to the Metropolitan Board of Health. The appeal of the grievance came to be heard on September 11, 2023 and October 3, 2023, before the Personnel Committee of the Board of Health consisting of members Marie R. Griffin, Tené Hamilton Franklin, and Lloyd B. Williamson. The Respondent Metropolitan Public Health Department (“MPHD”) was represented by Assistant Metropolitan Attorney, Matthew Garth, and Eric McCann represented himself.

Upon conclusion of Eric McCann’s case in chief, counsel for MPHD moved the Personnel Committee for an involuntary dismissal pursuant to Tenn. R. Civ. P. 41.02. MPHD’s Motion for Involuntary Dismissal was based upon the following:

1. Mr. McCann failed to present evidence that his position was improperly reclassified to a lower-ranking position and failed to cite to any provision of the Civil Service Rules violated by MPHD regarding the reclassification of his position.
2. Mr. McCann presented no evidence that he was formally assigned duties, responsibilities, and/or work assignments of a higher job classification.

3. Mr. McCann failed to present evidence that either he or anyone on his behalf sought or received written approval from the Director of Health and from the Finance and Administration Bureau Director for out-of-class pay.
4. Mr. McCann did not present evidence that the out-of-class pay was necessary due to the absence of an incumbent or vacancy in a budgeted position of the Engineer 2 – Health classification.
5. Mr. McCann failed to present evidence that he met the minimum requirements of the Engineer 2 – Health position.
6. Mr. McCann presented no evidence his promotion was improperly delayed by MPHD and did not support that such a claim was grievable under the Civil Service Rules.

Rule 4.10 of the Civil Service Rules of the Metropolitan Public Health Department (“Civil Service Rules”) governs the eligibility of an employee to receive out-of-class pay. Civil Service Rule 4.10 states, “if an employee is formally assigned duties, responsibilities, and/or work assignments of a higher job classification than his/her current classification, the employee shall receive ‘out-of-class’ compensation in accordance with the guidelines below.” The guidelines in Civil Service Rule 4.10(B) provide:

In order to qualify for out-of-class compensation, the assignment:

1. Must receive prior written approval from the Director and from the Finance and Administration Bureau Director;
2. Must have become necessary due to the absence of an incumbent or vacancy in a budgeted position of the higher classification; and,
3. Must be made to an employee who meets the minimum requirements of the higher position.

During the presentation of his case, Mr. McCann failed to present any evidence of the above factors. Mr. McCann did not present evidence that prior approval for out-of-class compensation was sought or received from the Director of Health and the Finance and

Administration Bureau Director. Mr. McCann failed to present evidence that the out-of-class pay was necessary due to the absence of an incumbent or vacancy in a budgeted position of a higher classification. Nor did Mr. McCann provide evidence that he met the minimum requirements of the Engineer 2 - Health position. Furthermore, Mr. McCann did not present evidence that he was formally assigned duties, responsibilities, and/or work assignments of a higher job classification than his current classification. As such, Mr. McCann failed to present any evidence that he met the requirements of Civil Service Rule 4.10 to qualify for out-of-class pay. Therefore, Mr. McCann failed to carry the burden of proof that he is entitled to out-of-class pay under the Civil Service Rules.

Additionally, Mr. McCann did not present any evidence to the Personnel Committee that the reclassification of his position was improper under the Civil Service Rules or that his promotion was treated in a way that violated the Civil Service Rules. Therefore, Mr. McCann did not provide any evidence sufficient to establish a grievance under the Civil Service Rules.

Accordingly, for the reasons discussed herein, the Metropolitan Government's Motion for Involuntary Dismissal is **GRANTED** and Mr. McCann's grievance is **DISMISSED**.

IT IS SO ORDERED.

ENTERED this _____ day of _____, 2023.

TENÉ HAMILTON FRANKLIN
CHAIR, BOARD OF HEALTH

APPROVED FOR ENTRY:

THE DEPARTMENT OF LAW OF THE
METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY
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CERTIFICATE OF SERVICE

I hereby certify that the above was hand delivered, mailed, via U.S. Mail first class, postage pre-paid, faxed and/or emailed on this 16th day of October 2023 to:

Eric McCann
2500 Charlotte Ave.
Nashville, TN 37209

Matthew Garth

Matthew Garth