

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

100 Cambridge Street – Suite 200
Boston, MA 02114
617-979-1900

DANIEL R. ADJEMIAN,
Appellant

B2-23-088

v.

HUMAN RESOURCES DIVISION,
Respondent

Appearance for Appellant:

Daniel R. Adjemian, *Pro Se*

Appearance for Respondent:

Sheila B. Gallagher, Esq.
Labor Counsel
Human Resources Division
100 Cambridge Street, Suite 600
Boston, MA 02114

Commissioner:

Paul M. Stein

Summary of Decision

The Commission dismissed the Appellant’s promotional examination appeal as the civil service law expressly provides that HRD’s determination on the grading of multiple-choice questions is final and the Commission is not vested with jurisdiction to hear an appeal from such a determination.

DECISION ON RESPONDENT’S MOTION TO DISMISS

On July 2, 2023, the Appellant, Daniel R. Adjemian, appealed to the Civil Service Commission (Commission)¹, contesting the grading of three multiple choice questions on the Technical

¹ The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.01 (formal rules), apply to adjudications before the Commission with G.L. c. 31, or any Commission rules, taking precedence.

Knowledge (TK) and Situational Judgment (SJ) components of the Boston Fire Lieutenant Promotional Exam administered by the Human Resources Division (HRD) on March 25, 2023.²

I held a remote pre-hearing conference on this appeal on July 17, 2023. HRD thereafter filed a Motion for Summary Decision on the grounds that the Commission lacked jurisdiction to hear appeals from the grading of multiple-choice examination questions. The Appellant filed no response to the Motion to Dismiss.

UNDISPUTED FACTS

Based on the submission of the parties, the following facts are not disputed:

1. The Appellant, Daniel R. Adjemian is a Firefighter with the Boston Fire Department (BFD).
2. FF Adjemian took and passed the Boston Fire Lieutenant Promotional Exam and received an overall rounded score of 86 which placed him in 48th place (tied with 8 other candidates out of 212 total candidates who took and passed that examination). (*Stipulated Facts*)
3. On March 30, 2023, FF Adjemian filed a request with HRD for review of three multiple choice questions on the Boston Fire Lieutenant Promotional Exam. After review, HRD determined that the challenged questions were valid. (*HRD Motion*)
4. On June 15, 2023, HRD issued the score notice to FF Adjemian. (*Stipulated Facts; HRD Motion*)
5. On June 30, 2023, FF Adjemian filed a request for HRD review of the grading of “recording and grading” of the three multiple choice questions. He also raised a question about the “validity of the study material” related to the questions involved and “not being able to prove which is or

² The Appellant also subsequently filed another appeal from the scoring of the ECT&E component of his Boston Fire Lieutenant Promotional Exam which is being addressed separately in Adjemian v. HRD, CSC No. B2-23-122.

isn't the correct answer" to questions in the SJ component. (*HRD Pre-Hearing Submission, Attachment C; HRD Motion: Appellant's Pre-Hearing Memo*)

6. On July 2, 2023, FF Adjemian filed this appeal with the Commission, asserting a "Multiple Choice Review Technical & Situational". He attached his prior notices to HRD. (*Claim of Appeal*)

APPLICABLE LEGAL STANDARD

The Commission may, on motion or upon its own initiative, dismiss an appeal at any time for lack of jurisdiction or for failure to state a claim upon which relief can be granted. 801 CMR 1.01(7)(g)(3). A motion to resolve an appeal before the Commission, in whole or in part, via summary decision may be filed pursuant to 801 C.M.R. 1.01(7)(h). An appeal may be disposed of, however, on summary disposition only when, "viewing the evidence in the light most favorable to the non-moving party", the undisputed material facts affirmatively demonstrate that the non-moving party has "no reasonable expectation" of prevailing on at least one "essential element of the case". See, e.g., Milliken & Co. v. Duro Textiles LLC, 451 Mass. 547, 550 n.6 (2008); Maimonides School v. Coles, 71 Mass. App. Ct. 240, 249 (2008); Lydon v. Massachusetts Parole Board, 18 MCSR 216 (2005).

ANALYSIS

The undisputed facts, viewed in a light most favorable to the Appellant, establish that, for the reasons stated within HRD's Motion for Summary Judgment, this appeal must be dismissed. The gravamen of the Appellant's appeal seeks to determine whether his answers to three multiple choice questions on the TK and SJ component of the exam were correctly "graded" and "recorded." The civil service law expressly provides that HRD's determination on the grading of multiple-choice questions is final and the Commission is not vested with jurisdiction to hear an appeal from such a determination. See G.L. c. 31, § 24. Although it might be possible to construe the

Appellant’s June 30, 2023 appeal to HRD and the July 2, 2023 appeal to the Commission as purporting to raise an additional concern about the validity of the “study material” and an inability “to prove which is or isn’t the correct answer” to certain questions, the statute requires that such a purported “fair test” challenge, if it is to be timely, must be made within seven days after the date of the examination - March 25, 2023. See G.L c. 31, §22-24. Here, the Appellant’s requests came more than two weeks after he received his exam scores on June 15, 2023 and are untimely, which is also a statutory barrier to the Commission’s exercise of jurisdiction.

CONCLUSION

For the reasons stated above, HRD’s Motion to For Summary Decision is *allowed*, and the Appellant’s appeal under Case No. B2-23-088 is *dismissed*.

Civil Service Commission

/s/Paul M. Stein

Paul M. Stein, Commissioner

By vote of the Civil Service Commission (Bowman, Chair; Dooley, McConney, Stein, and Tivnan, Commissioners) on October 5, 2023.

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:

Daniel R. Adjemian (Appellant)

Sheila B. Gallagher, Esq. (for Respondent)