

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 appeal from the Human Resources Division’s decision to credit only one of his two academic degrees in scoring the Experience, Certifications, Training and Education (ECT&E) component of the Boston Fire Lieutenant’s Promotional Examination, as the Appellant did not establish that he was aggrieved by the denial of credit for the second degree.

ORDER OF DISMISSAL

On July 26, 2023, the Appellant, Daniel R. Adjemian, a Firefighter with the Boston Fire Department (BFD), appealed to the Civil Service Commission (Commission)¹ to contest the denial of his claims to credit for certain certifications and academic degrees in scoring his Experience, Certifications, Training and Education (ECT&E) component of the Boston Fire Lieutenant

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.

Promotional Exam administered on March 25, 2023 by the state's Human Resources Division (HRD).²

I held a remote pre-hearing conference on August 21, 2023. As a result of the pre-hearing conference, HRD satisfied the Appellant that he had received credit for the certifications to which he was entitled. After review of the parties' responses to Procedural Orders issued on September 18, 2023 and October 6, 2023 and an Information Request to the BFD, the Appellant's claim in regard to additional credit for both of his academic degree did raise a bona fide issue. However, even assuming the Appellant were allowed such additional credits, based on his standing on the eligible list, he would be no more likely to be reached for promotion to Fire Lieutenant. Accordingly, although the Commission recommends that HRD revisit its methodology for calculating credit for academic degrees, the Appellant's appeal must be dismissed for lack of jurisdiction as HRD's error, if any, has not infringed his civil service rights for which the Commission should grant him relief.

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. The Appellant took and passed the Boston Fire Lieutenant Promotional Exam and received an overall rounded score of 86 which ranked him in 48th place out of 212 total candidates who took and passed that examination, tied with 8 other candidates. (*Stipulated Facts*)

² The Appellant also filed another appeal from the scoring of multiple-choice questions on the Technical Knowledge (TK) component of the Boston Fire Lieutenant Promotional Exam which has been addressed and decided in Adjemian v. HRD, CSC No. B2-23-088.

3. On June 15, 2023, HRD issued the score notice to the Appellant. The score notice included the following information about his ECT&E score:

Your ECT&E was amended in the following way: Q(6): Supervisor Work experience not within Fire Dept. recalculated Claimed (12 years) Amended (4 years); Q(7): Certifications earned recalculated Claimed (8 or more Certifications earned) Amended (5 Certifications earned) Certs of attendance, completion and/or training not creditable.

(Stipulated Facts; HRD Pre-Hearing Memo)

4. The Appellant filed a timely request for HRD review of his ECT&E score and, on July 18, 2023, HRD denied his request. (*HRD Pre-Hearing Memo: Appellant's Pre-Hearing Memo*)

5. On July 26, 2023, the Appellant filed this appeal with the Commission. He asserted two grounds for appeal: (a) failure to grant full credit under ECT&E Q7 for certifications earned: and (b) failure to grant credit under ECT&E Q10 for two related academic degrees. (*Claim of Appeal; Appellant's Pre-Hearing Memo; HRD's Pre-Hearing Memo*)

6. The instructions for ECT&E Q7 listed the specific types of certificates HRD accepted for the Boston Fire Lieutenant Promotional Exam Section, as follows:

Fire Department Promotional Exam Fire Training and Certificates: You may claim those certification and training courses you have passed as of the date of the written exam. You must submit documentation of certifications and training. The following certifications are eligible for credit either through MA Fire Academy, or National Board of Fire Service Professional Qualifications: Firefighter I, Firefighter II, Firefighter I/II, Fire Instructor I, Fire Instructor II, Fire Instructor III, Fire Officer I, Fire Officer II, Fire Officer III, Fire Officer IV, Fire Prevention Officer I, Fire Prevention Officer II, Fire Prevention Officer Credentialing I, Fire Prevention Officer Credentialing II, Basic Fire Investigation, Advanced Fire Investigation, Safety Officer, Public Fire Educator, Fire Inspector I, Fire Inspector II, Haz Mat Technician, Hazardous Materials: Operations Level Responder, Driver Operator/Pumper, Driver Operator/Aerial, Incident Safety Officer, Technical Rescuer: Rope Rescue I/II, Confined Space Rescue I/II, Trench Rescue I/II, Surface Water I/II, Swift Water Rescue I/II.

(HRD Pre-Hearing Memo) (emphasis added)

7. After reviewing the Appellant's certifications with him at the Pre-Hearing Conference, HRD provided a satisfactory explanation for the decision to grant credit for only five out of the

eight certifications that he claimed, as the three disallowed “certifications” did not meet the criteria set forth in the instructions. (*Undisputed Facts; Appellant’s Pre-Hearing Memo*)

8. The instructions for ECT&E Q10 regarding academic degrees provided:

If as of the date of the examination you have a related conferred degree from a regionally accredited college or university in any of the majors listed here, please check the highest degree you have attained. Conferred academic degree in one of the following related degree fields: Fire Service, Fire Safety/Protection, Fire Administration, Nursing, Paramedic Medicine, Emergency Management, Homeland Security, Occupational Safety, Business Administration, Business Management, Computer Science, Public Administration, Engineering (Civil, Chemical, Structural, Electrical, Building Construction, Fire Prevention), Chemical, Physical, or Biological Sciences.

- Related Associate's Degree
- Related Bachelor's Degree
- Related Master's or higher Degree

(*HRD Pre-Hearing Memo: HRD Boston Fire Lieutenant ECT&E Claim*) (*emphasis added*)

9. ECT&E Q11 also allowed credit for “unrelated” academic degrees:

As of the date of the written examination you have a conferred degree in a major not listed in the prior question from a regionally accredited college or university. Please check the highest degree attained.

- Associate's Degree
- Bachelor's Degree
- Advanced Degree Master's or higher

(*HRD Boston Fire Lieutenant ECT&E Claim*) (*emphasis added*)

10. The Appellant earned two “related” academic degrees. He earned a Bachelor of Science degree in Safety Studies (Occupational Safety) conferred by Keene State College on 5/9/2011 and a Master of Arts degree in Homeland Security/Emergency Management conferred by Northeastern University on 12/14/2019. The coursework completed for each degree was distinct and did not overlap. (*Appellant’s Claim of Appeal; Transcript; HRD Response to Procedural Order*)

11. HRD awarded the Appellant ECT&E credit on Q10 only for his “related” Master’s degree (worth 15 points toward his ECT&E score). (*HRD Pre-Hearing Memo; Appellant’s Pre-Hearing Memo*)

12. The Appellant objected to HRD’s scoring because he believed that he should be credited for both of his academic degrees in different, but both “related” majors. (*Appellant’s Claim of Appeal; Appellant’s Pre-Hearing Memo*)

13. HRD’s explanation for its decision was that a Bachelor’s Degree was a pre-condition to obtaining a Master’s Degree, and that the rules it established provided for credit under Q10 for only the “highest” degree conferred. (*HRD Pre-Hearing Memo; HRD Response to Procedural Order*)

14. HRD acknowledged that its scoring system awarded more ECT&E points to a candidate with one degree in a “related” subject and one in an “unrelated” subject (e.g., Political Science), than a candidate, such as the Appellant, who had earned two “related” degrees in different subjects. For example, according to HRD’s ECT&E Scoring Guide, a candidate who had earned a related Master’s Degree and a second unrelated degree, could have claimed more education points than the 15 points the Appellant received, i.e., 15 points under Q10 for the related degree, and additional points under Q11 for the unrelated degree. For example:

Q10 – Related Master’s Degree 15 points

Q11 – Unrelated Associate’s Degree (3 points); Unrelated Bachelor’s Degree (6 points);
Unrelated Master’s Degree (7.5 points)

(*HRD ECT&E Scoring Guide*)

15. After further inquiry, HRD provided me with a hypothetical calculation of what the Appellant’s ECT&E would have been had he been given additional credit for his Bachelor’s degree. This information indicated that the additional credit could, hypothetically, have raised his overall rounded score and, potentially, moved him up one place on the BFD Fire Lieutenant eligible list, from 48th to 45th. (*HRD Response to Second Procedural Order*)

16. In response to my inquiry of the BFD as to the history of permanent promotions to Fire Lieutenant over the past three years, the BFD made 26 such promotions in 2021, 17 such

promotions in 2022 and 15 such promotions in 2023 to date, or about one or two a month. (*BFD Response to Commission Request for Information*)

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). See also Mangino v. HRD, 27 MCSR 34 (2014) and cases cited (“The notion underlying the summary decision process in administrative proceedings parallels the civil practice under Mass.R.Civ.P.56, namely, when no genuine issues of material fact exist, the agency is not required to conduct a meaningless hearing.”); Morehouse v. Weymouth Fire Dept., 26 MCSR 176 (2013) (“a party may move for summary decision when . . . that there is no genuine issue of fact relating to his or her claim or defense and the party is entitled to prevail as a matter of law.”)

ANALYSIS

The undisputed facts, even when viewed in a light most favorable to the Appellant, establish that his appeal must be dismissed. The Appellant has raised a legitimate question about a potential anomaly in the design of the newly created ECT&E component for measuring the training and

experience of candidates for promotional appointments in the fire service, namely, that the ECT&E scoring guide unreasonably and arbitrarily appears to allow a candidate with two academic degrees in different fields that are both directly related to the job of a firefighter to earn fewer ECT&E points than another candidate with multiple degrees, only one of which is related to the job of a firefighter. The difference between the Appellant's actual score and one that would have included additional consideration for both his Master's Degree and his Bachelor's Degree is minimal and, in the Appellant's case would not materially change his chances for a promotion. Thus, the Appellant's contention that he has been aggrieved by this alleged ECT&E design anomaly is merely speculative and he is not entitled to any relief at this time by the Commission. Going forward, however, in order to preserve confidence in the integrity of the police and fire service promotional examination process, I suggest that it would behoove HRD either to further justify or modify the ECT&E scoring guide to rectify the anomaly that the Appellant has articulated.

Among other responsibilities delegated to HRD under civil service law, HRD is vested with broad authority to design and administer civil service examinations. See G.L. c. 31, §§ 3 through 5; § 16 and § 22; Personnel Administration Rules, PAR.06. Generally, absent a finding that HRD has acted unreasonably, arbitrarily, or otherwise in violation of basic merit principles, the Commission has consistently deferred to HRD's technical expertise in matters involving the design, administration, and interpretation of civil service examinations. See, e.g., Ralph v. HRD, 32 MCSR 73 (2019), *aff'd sub nom. Ralph v. Civil Service Comm'n*, 100 Mass. App. Ct. 199 (2021); Carroll v. HRD, 27 MCSR 157 (2018); Peters v. HRD, 23 MCSR 647 (2010). See also Ash v. Police Comm'r of Boston, 11 Mass. App. Ct. 650, 652 (1981) ("the Personnel Administrator [HRD] is the skilled professional authorized by G. L. c. 31 to decide technical matters such as the scoring and interpretation of examinations.")

HRD's broad authority over the administration of examinations is not absolute. See Mahan v. HRD, 34 MCSR 278 (2021) (fair test appeals dismissed as untimely but Commission noted concern that nine candidates had legitimate questions about the relevancy and accuracy of certain questions on a Parole Officer promotional examination and encouraged HRD to take proactive measures to address them so as to bolster future confidence in the examination process); Nugent v. HRD, 31 MCSR 114 (2018) (noting that when HRD's actions, apparently motivated to save administrative costs, may have had the unintended consequence of creating a process that potentially lacks the type of transparency that instills confidence in the examination process, it "warranted a second look").

The Appellant has a fair point that it is unreasonable and arbitrary for HRD to employ an ECT&E scoring system that, in some cases, allows a candidate who holds one academic degree related to the job of a firefighter to earn more ECT&E points than a candidate who holds two related degrees, merely because the candidate with one related degree happens to have also earned another unrelated degree. In the case of the Appellant, he asserts that his Bachelor's degree in Occupational Safety and his Master's degree in Homeland Security/Emergency Management (both of which are listed in HRD's ECT&E scoring guide as "related" fields) earned him fewer points than a candidate with a related Bachelor's degree and an unrelated degree (e.g., a Bachelor's degree in Political Science). I do see his point.

The Appellant, however, faces an unsurmountable obstacle that precludes the Commission from granting him relief at this time. His standing on the current eligible list, either with or without any additional ECT&E points for his Bachelor's degree, cannot place him in a position that provides any reasonable expectation that he will be reached for promotion. The BFD has made no more than 26 promotions annually to permanent Fire Lieutenant in the past three years. The

Appellant now stands tied in 48th place on the BFD Fire Lieutenant eligible list. Even if he were to receive additional points for his Bachelor's degree, he would move no higher than tied for 45th place. Thus, the chances that the Appellant will be reached for permanent promotion over the next 19 months before the current list expires in or about July 2025 are merely speculative. (The chances of being appointed to a temporary Lieutenant's position are even more unpredictable.) Thus, he has no expectation to establish that he has been aggrieved by the alleged error in the calculation of his ECT&E score.

That said, although the Commission cannot grant relief to the Appellant at this time, the anomaly in HRD's methodology for scoring educational ECT&E points deserves further scrutiny before it is applied to any future promotional examinations. In the future, the Commission will expect that HRD will have seriously reviewed the anomaly raised by the Appellant and either justify it as reasonable and not arbitrary or see to it that it is changed.

CONCLUSION

For the reasons stated above, 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 December 14, 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)
Robert J. Boyle, Jr., Esq. (BFD)