

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION
One Ashburton Place – Room 503
Boston, MA 02108
(617) 727-2293

JULIO BARBOSA,
Appellant

v.

B1-13-276

HUMAN RESOURCES DIVISION,
Respondent

Appearance for Appellant:

Julio Barbosa
Pro Se

Appearance for Respondent:

Melinda Willis, Esq.
Human Resources Division
Legal Department
One Ashburton Place, 2d Floor
Boston, MA 02108

Commissioner:

Cynthia A. Ittleman, Esq.

DECISION ON RESPONDENT’S MOTION TO DISMISS

Julio Barbosa (“Appellant”) filed this appeal on December 2, 2013 seeking training and experience credit for the 2013 Municipal Police Officer and State Police examination which credit the Human Resources Division (“HRD”) did not allot him. A prehearing conference in this case was held on January 21, 2014 at which the Appellant indicated he took the exam to obtain a position as a State Trooper and not an entry-level position within a municipality other than the one where he is currently employed. HRD filed a Motion to Dismiss (“Motion”) the appeal on January 21, 2014. I emailed the parties, informing the Appellant that his written opposition to the Motion was due January 28, 2014.

By notice dated January 22, 2014, the parties were informed that a hearing would be held on the Motion on February 19, 2014 beginning at 11:00 a.m. The Appellant did not submit a written statement in opposition to the Motion by the January 28 deadline but he was allowed to file one at the Motion hearing and he did so. At the hearing, I took administrative notice of any and all matters in the file. In addition, the Appellant offered two exhibits that were entered into the record, although I advised the parties that the Appellant’s two exhibits would receive little, if any weight because the Appellant had submitted them to HRD in support of a municipal police

promotional exam he had taken at another time. HRD offered no exhibits beyond those in the file.

HRD's Motion avers that the Appellant is not "aggrieved," as required under G.L. c. 31, § 2(b) because he took the exam to obtain a position as a State Trooper. Pursuant to G.L. c. 22C, § 10, a statute relating to the appointment of State Troopers, "... [t]he appointments of the officers herein provided for shall be by enlistment and such appointees shall be exempt from the requirements of chapter thirty-one" *Id.* Consequently, training and experience credit is not available for people seeking appointment as a State Trooper, the Commission lacks jurisdiction over this matter, and the Appellant has failed to state a claim upon which relief may be granted. *See Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 547 (2007); *Iannacchino v. Ford Motor Co.*, 451 Mass. 623, 636 (2008); and 801 CMR 1.01(7)(g)(3). Moreover, HRD asserts and I find that even if the credit was available in such circumstances, the Appellant failed to timely provide all of the information required, as indicated in the exam materials. *See* G.L. c. 31, §§ 22 – 24.

All that said, there is a troubling practical problem reflected in this case. Specifically, believing that he was entitled to credit in his State Police examination for experience as a current municipal police officer, Mr. Barbosa contacted HRD to inquire how he could obtain such credit. The HRD staff person he spoke with instructed Mr. Barbosa to obtain the detailed information required, and referenced in the exam announcement, from the appropriate official at the police department where is currently employed. It appears that Mr. Barbosa dutifully and promptly obtained the information. Mr. Barbosa subsequently received a letter from HRD stating that his service "... may be creditable but [his] documentation is incomplete" and indicated the specific additional information that Mr. Barbosa needed to provide to HRD, which Mr. Barbosa subsequently obtained and submitted to HRD. In the end, HRD did not award Mr. Barbosa the credit he sought. Thereafter, the Appellant filed the instant appeal with the appropriate filing fee, took time off from work in New Bedford to attend the prehearing conference on one day and the hearing on another day at the Commission's office in Boston, and incurred the expenses involved in driving a considerable distance to and from the Commission twice, as well as parking expenses in Boston twice. Fortunately, it appears that a limited number of applicants were affected in this manner. However, this is avoidable and should be remedied.¹

Based on the undisputed facts and the applicable law above, the Motion is granted and the appeal is *dismissed*.

Civil Service Commission

Cynthia A. Ittleman
Commissioner

¹ I leave the remedy to HRD. One option may be for HRD staff to ask if an applicant calling about employment experience credit took the police examination to seek employment as a State Police officer and informing them that the credit is not available for that purpose. Another option may be to add a brief statement to the police exam explicitly stating that employment experience credit is not available for State Police applicants.

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell, and Stein, Commissioners on March 6, 2014.

A True Record. Attest:

Commissioner

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)(l), 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 as stated below.

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 from the effective date specified in 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.

Notice to:

Danny R. Brito (Appellant)
Melina Willis, Esq. (for Respondent)
John Marra, Esq. (HRD)