

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION
One Ashburton Place: Room 503
Boston, MA 02108
(617) 979-1900

DUSTIN BOCASH &
DILLON BOCASH,
Appellants

v.

B2-21-050 & B2-21-051

HUMAN RESOURCES DIVISION,
Respondent

Appearance for Appellants:

Pro Se
Dustin Bocash
Dillon Bocash

Appearance for Respondent:

Emily Sabo, Esq.
Human Resources Division
100 Cambridge Street, Suite 600
Boston, MA 02114

Commissioner:

Christopher C. Bowman

DECISION ON MOTION FOR SUMMARY DECISION

1. On March 2, 2021, the Appellants, Dustin Bocash and Dillon Bocash (Appellants), who are brothers, filed appeals with the Civil Service Commission (Commission) regarding their failing scores on the written portion of the 2020 firefighter examination that was administered by the state's Human Resources Division (HRD).
2. On April 6, 2021, I held separate pre-hearing conferences for each appeal that were attended by the Appellants and counsel for HRD.
3. As part of the pre-hearing conferences, both Appellants stated that they had taken a previous examination for firefighter; both had studied diligently; and both were surprised to receive a

failing score that was the same or only 1 point higher than the failing scores on the prior examinations.

4. Both Appellants asked for a further explanation regarding their scores, including, but not limited to, a copy of the questions with a list of which questions they did not answer correctly.
5. Neither of the Appellants filed a timely appeal with HRD, but, rather, only filed an appeal with the Commission.
6. Appellant Dillon Bocash stated that the information regarding how and when to file an appeal with HRD was not clear.
7. Based on the fact that the Commission lacks jurisdiction to hear examination appeals that have not first been filed with HRD, and because the relief being sought (production of the questions) would not be ordered as it could infringe upon the integrity of the testing process, both Appellants were given the opportunity to reply to a motion to dismiss to be filed by HRD, or to withdraw their appeals.
8. Appellant Dustin Bocash stated that he would be withdrawing his appeal which he never did.
9. Appellant Dillon Bocash stated that he wanted the opportunity to respond to a motion to dismiss by HRD.
10. For the above reasons, I ordered the following: a) these two appeals were consolidated; b) HRD had thirty days to file a dispositive motion; and c) the Appellants had thirty days thereafter to file a reply.
11. HRD filed a motion for summary decision. Neither of the Appellants filed a reply.

Summary Disposition Standard

An appeal may be disposed of on summary disposition 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).

Applicable Civil Service Law

G.L. c. 31, § 22 states in part:

“An applicant may request the administrator to conduct a review of whether an examination taken by such applicant was a fair test of the applicant's fitness actually to perform the primary or dominant duties of the position for which the examination was held, provided that such request shall be filed with the administrator no later than seven days after the date of such examination. (emphasis added)

The administrator shall determine the form of a request for review. Each such request shall state the specific allegations on which it is based and the books or other publications relied upon to support the allegations. References to books or other publications shall include the title, author, edition, chapter and page number. Such reference shall also be accompanied by a complete quotation of that portion of the book or other publication which is being relied upon by the applicant. The administrator may require applicants to submit copies of such books or publications, or portions thereof, for his review.”

G.L. c. 31, § 24 states:

“An applicant may appeal to the commission from a decision of the administrator made pursuant to section twenty-three relative to (a) the marking of the applicant's answers to essay questions; (b) a finding that the applicant did not meet the entrance requirements for appointment to the position; or (c) a finding that the examination taken by such applicant was a fair test of the applicant's fitness to actually perform the primary or dominant duties of the position for which the examination was held. Such appeal shall be filed no later than seventeen days after the date of mailing of the decision of the administrator. The commission shall determine the form of the petition for appeal, provided that the petition shall include a brief statement of the allegations presented to the administrator for review. After acceptance of such an appeal, the commission shall

conduct a hearing and, within thirty days, render a decision, and send a copy of such decision to the applicant and the administrator.

The commission shall refuse to accept any petition for appeal unless the request for appeal, which was the basis for such petition, was filed in the required time and form and unless a decision on such request for review has been rendered by the administrator.” (emphasis added)

Analysis

These consolidated appeals must be dismissed for two reasons. First, the Appellants never filed an appeal with HRD. As referenced in Section 24, the Commission “shall refuse” to accept an examination-related appeal unless the Appellant has first filed an appeal with HRD. For this reason alone, the Commission lacks jurisdiction to hear these appeals.

Second, the Commission has previously decided that HRD is not required to release (non-essay) examination questions as part of an examination appeal, which is the crux of what the Appellants are seeking here. (See *Rodriguez v. Human Resources Division*, 25 MCSR 152 (2012) (“HRD is on solid ground when it shields information that could potentially undermine the integrity of the examination process (i.e. – not releasing copies of prior examinations when certain questions may be used on future examinations).”))

Conclusion

For these reasons, HRD’s motion for summary decision is allowed and the Appellants’ appeals are *dismissed*.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chair

By vote of the Civil Service Commission (Bowman, Chair; Camuso, Ittleman, Stein and Tivnan, Commissioners) on July 1, 2021.

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.

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:

Dustin Bocash (Appellant)

Dillon Bocash (Appellant)

Emily Sabo, Esq. (for Respondent)