

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

JILLIAN BOWLES,
Appellant

v.

B2-15-235

HUMAN RESOURCES DIVISION,
Respondent

Appearance for Appellant:

Pro Se
Jillian Bowles

Appearance for Respondent:

Mark Detwiler, Esq.
Human Resources Division
One Ashburton Place: Room 211
Boston, MA 02108

Commissioner:

Christopher C. Bowman

ORDER OF DISMISSAL

On December 11, 2015, the Appellant, Jillian Bowles (Ms. Bowles), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the state's Human Resources Division (HRD) to not extend the period of time that her name appeared on an eligible list for police officer.

On January 5, 2016, I held a pre-hearing conference at the offices of the Commission which was attended by Ms. Bowles and counsel for HRD.

The parties stipulated to the following:

1. In June 2013, HRD administered a civil service examination for police officer.
2. At the time of this June 2013 examination, Ms. Bowles was on active military duty.

3. On November 1, 2013, HRD established an eligible list of candidates for police officer based on the June 2013 examination.
4. In April 2014, Ms. Bowles filed a request with HRD to take a make-up examination based on the fact that she was on active military duty when the June 2013 police officer examination was administered.
5. HRD allowed Ms. Bowles's request and, in June 2014, Ms. Bowles took a make-up examination for police officer.
6. On July 29, 2014, HRD added the name of Ms. Bowles to the police officer eligible list, which was first established on November 1, 2013.
7. In April 2015, HRD administered the next examination for police officer. Ms. Bowles did not take this subsequent examination.
8. On November 1, 2015, HRD established a new eligible list of police officer candidates based on the April 2015 examination.
9. Since Ms. Bowles did not take the April 2015 examination, her name did not appear on the new eligible list.

Parties' Positions

Ms. Bowles states that, when she took the make-up examination in June 2014, she asked the proctor if, assuming she passed the examination, her name would appear on the eligible list in effect at the time for two (2) years and that the proctor replied "yes". This statement, along with what Ms. Bowles considers to be ambiguous language on the HRD website, led her to believe that her name would remain on the eligible list through July 2016. Thus, according to Ms. Bowles, she did not take the subsequent examination in April 2015. For these reasons, she seeks

an order from the Commission allowing her to take a make-up examination, allowing her name to potentially be added to the current eligible list.

HRD argues that, based on its interpretation of the civil service law, Ms. Bowles is not entitled to any extension of time on the eligible list that expired on November 1, 2015. Further, HRD claims that its website clearly states this and that any purported statement by a proctor cannot override their uniform practice in this regard.

Analysis

Pursuant to G.L. c. 31, § 5(e), HRD is charged with: “conduct[ing] examinations for purposes of establishing eligible lists.”

G.L. c. 31, § 25 states in relevant part:

“Persons on an eligible list shall be eligible for certification from such list for such period as the administrator shall determine, but in any event not to exceed two years, unless one of the following exceptions applies: (1) such eligibility is extended by law because such persons are in the military or naval service; (2) the administrator is temporarily enjoined by a court order from certifying names from an eligible list, in which case eligibility of persons on such list shall be extended for a period equal to the duration of such order; or (3) no new list is established, in which case eligibility of all persons on such list shall be extended until a new list is established for the same position for which the original list was established; provided, however, that the administrator may revoke the eligibility of the entire list or of any persons on such list subsequent to said two-year period if he shall determine that the effective maintenance of the merit system so requires such revocation and, provided further, that a written notice and explanation for said revocation is sent to the clerks of the senate and house of representatives.”
(emphasis added)

According to HRD, the language highlighted above in Section 25 pertains to protections for individuals on active military duty whose names already appear on an eligible list as outlined in Chapter 708 of the Acts of 1941 which states in relevant part:

“Section 4. Any person whose name is on any eligible list or register of the division of civil service at the time of his commencing said military or naval service shall, upon his request in writing filed with the director of civil service within one year after the termination of said service, be continued on or restored to such list or register for a period following such request

equal to the remainder of the term of his eligibility thereon at the time he commenced said military or naval service; and any person who otherwise becomes entitled to have his name placed on an eligible list or register on account of an examination or registration prior to commencing such service shall, upon a like request in writing filed within a similar period, be entitled to have his name placed upon the proper eligible list or register as of the date of such request, and it shall thereafter remain thereon for the full regular period of eligibility provided for by the civil service law and rules; provided, that he files with the director of civil service the certificate of a registered physician that he is not physically disabled or incapacitated for performing the duties of the office or position.” (emphasis in original)

According to HRD, it uniformly enforces Section 25, applies it only to individuals whose name already appears on an eligible list when the active military duty begins, and informs all make-up examination applications through its written publications.

The applicable section of HRD’s website states:

“INSTRUCTIONS FOR CURRENT MILITARY PERSONNEL TO REQUEST A MAKE-UP EXAMINATION FOR PUBLIC SAFETY.

Before making your request, please be aware of the following:

It is our policy that candidates who take the military makeup exam are subject to the same timeframe of eligibility as those candidates who took the regularly schedule (sic) exam. As exams are reviewed and adjusted each time they are administered, it is in the best interest of applicants and departments that all eligible candidates take the most recent exam that we offer.”

Ms. Bowles understood “the most recent exam we offer” to mean the first available make-up examination, as opposed to the next regularly scheduled examination, which was administered in April 2015.

While it may be helpful if HRD provided some additional, clarifying language here, such as: “Your eligibility on the eligible list will expire at the same time as those individuals who took the regularly scheduled examination”, the language sufficiently informs individuals such as Ms. Bowles that she is indeed subject to the same timeframe of eligibility as those candidates who took the regularly scheduled examination.

More importantly, it is clear that HRD has a longstanding practice of only extending the eligibility of active military candidates whose name already appeared on the eligible list at the time. That practice appears reasonable and logical as it ensures that individuals who have already passed an examination and, but for their military service, would have been eligible to appear on a Certification generated from that eligible list, have their eligibility extended. Even if a proctor provided Ms. Bowles with erroneous information, which, for the purposes of this decision, I accept as true, that would not justify ordering HRD to provide an advantage to Ms. Bowles over other similarly situated individuals who heeded HRD's written instructions and took the next scheduled examination in April 2015.

Since the undisputed facts, and any disputed facts viewed in the light most favorable to Ms. Bowles, show that Ms. Bowles is not an aggrieved person, her appeal under Docket No. B1-15-235 is hereby *dismissed*.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By a vote of the Civil Service Commission Camuso, Ittleman, Stein and Tivnan, Commissioners [Bowman, Chairman – Absent]) on January 21, 2016.

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:

Jillian Bowles (Appellant)

Mark Detwiler, Esq. (for Respondent)