

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

100 Cambridge Street – Suite 200

Boston, MA 02114

617-979-1900

ADOLFO BRITO,

Appellant

v.

BOSTON POLICE DEPARTMENT,

Respondent

Docket number:

B2-25-089

Appearance for Appellant:

James W. Gilden, Esq.

173 N. Main Street

Sharon, MA 02067

Appearance for Respondent:

Joseph A. McClellan, Esq.

Office of the Legal Advisor

Boston Police Department

One Schroeder Plaza

Boston, MA 02120

Commissioner:

Paul M. Stein

SUMMARY OF DECISION

The Commission denied an appeal brought by a Boston Police Department (BPD) Officer who requested to take a make-up examination of the Oral Board component of the BPD Police Sergeant promotional examination, finding that the BPD properly determined that the officer's choice to perform outside employment on the originally scheduled date of the component of the examination he missed was not a justifiable excuse to allow the candidate to take a make-up examination.

DECISION ON RESPONDENT'S MOTION FOR SUMMARY DECISION

On April 2, 2025, the Appellant, Adolfo Brito, a police officer with the Boston Police Department (BPD), appealed to the Civil Service Commission (Commission), pursuant to G.L. c. 31, § 2(b)¹, after the BPD -- which was delegated by the state's Human Resources Division (HRD)

¹ The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§1.00, *et seq.*, apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

to administer a promotional examination for BPD Police Sergeant -- denied the Appellant's request to take a make-up examination of the Oral Board component of the BPD Sergeant departmental promotional examination. I held a remote pre-hearing conference on this appeal on April 22, 2025. On May 6, 2025, the BPD filed a Motion to Dismiss, to which the Appellant filed an Opposition on May 27, 2025. After careful review of the parties' submissions, BPD's Motion to Dismiss is allowed and the Appellant's appeal is dismissed.

UNDISPUTED FACTS

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

1. The Appellant, Adolfo Brito, is a tenured full-time BPD police officer.
2. Pursuant to Section 33 of BPD Rule 102, the BPD approved the Appellant for outside employment as a Resident Liaison Agent for Major League Baseball, providing liaison work to local law enforcement when teams travel. He worked primarily with the Boston Red Sox.
3. BPD Rule 102, Section 33.F provides:

Responsibility to the Boston Police Department is paramount for its employees. Each employee shall consider the Boston Police Department its primary employer. In no case shall an employee permit responsibilities to a secondary employer to interfere with the employee's responsibilities to the Department, including, but not limited to, the requirement to be available to work mandatory overtime.

1. Off-duty employment shall constitute no more than thirty-two (32) hours' work per week. This limitation does not apply during any week that the employee does not report for duty because the employee is serving an unpaid suspension. Additionally, employees on administrative duty shall not work more than 90 hours per week, between their employment with the Boston Police Department and a secondary employer, during the period of their administrative leave / duty.

(Administrative Notice) [[Rules & Procedures – Boston Police Department](#)]) (*emphasis added*)

4. On April 9, 2024, the BPD and HRD entered into a Delegation Agreement pursuant to which the BPD was delegated the responsibility (with support of a vendor retained by BPD) to design, administer, and score a departmental police sergeant promotional examination, to consist of a Written test, an Assessment Center and an Experience and Education (E&E) component.

5. The Appellant duly registered to take the departmental police sergeant promotional examination.

6. On September 19, 2024, BPD provided notice to candidates who registered to take the departmental police sergeant promotional exam that the examination schedule would be as follows:

October 25, 2024 thru December 28, 2024 – Window for submitting Education and Experience

December 21, 2024 – Written Technical Knowledge test

March 1, 2025 – Assessment Center – In-Basket exercise

March 23-28, 2025 – Assessment Center – Oral Board exercises

7. The Appellant completed the Written Technical Knowledge test, the Assessment Center In-Basket exercise and the E&E component.

8. In December 2024, the Boston Red Sox announced that the team would play two exhibition games in Mexico City on March 24 & 25, 2025.²

9. At some time prior to March 16, 2025, the Appellant made arrangements to travel with the Boston Red Sox to Mexico City to work his outside job for Major League Baseball as a Resident Liaison Agent. The travel arrangements were made and paid for by the Boston Red Sox.³

10. On March 16, 2025, the BPD sent all candidates for the BPD Police Sergeant promotional examination, including the Appellant, a Notice to Appear for the Oral Board exercises. The exercises were scheduled to take place on two days – a Situational Exercise on Monday and

² Major League Baseball had announced in 2022 that the Red Sox would play exhibition games in Mexico in March 2025 but the specific dates and details were not announced at that time for security reasons.

³ I requested information from the Appellant about when the trip was booked but he did not supply any. I presume the team flew to Mexico on a charter flight, but neither party provided those details.

Tuesday, March 24 and 25, 2025 and an Oral Tactical Exercise on Wednesday and Thursday March 26 and 27, 2025.

11. Candidates were randomly assigned to one of two sessions. The Appellant was assigned the afternoon session for the March 25, 2025 exercise (11:30 am arrival) and the morning session for the March 27, 2025 (6:30 am arrival).

12. The Notice to Appear stated, in relevant part:

You have been randomly assigned to this specific schedule for the week. If you have an **unavoidable conflict** on one of the assessment days, please email promoexam24@pd.boston.gov with the **Subject Line: Oral Board Scheduling Conflict**. As reminder, all Candidates will have two sessions for the Oral Boards: Day 1 - Situational Exercise, Day 2 - Oral Tactical Exercise.

13. After receiving the Notice to Appear, the Appellant sent the BPD the following email:

From: Adolfo Brito <adolfo.brito@pd.boston.gov>
Date: Sun, Mar 16, 2025 at 9:13 PM
Subject: Sergeant Oral Board Date change!
To: <promoexam24@pd.boston.gov>

Good morning,

I received my notice to appear for the sergeant oral board on Tuesday, March 25, 2025, and Thursday, March 27, 2025. Unfortunately, I have a long-standing commitment. Fourteen months ago, I made a commitment that requires me to travel overseas; I have a flight booked for departure on Saturday, March 22, 2025, at 6:00 a.m. and returning on Wednesday, March 26, 2025, at 11:00 p.m. Could the date for my appearance on Tuesday, March 25, be moved to the 27th or any later date?

Thank you in advance for your understanding!

14. The BPD did not respond to the Appellant's March 16, 2025 email before he departed at approximately 6:00 pm on his scheduled flight to Mexico City on March 22, 2025.

15. The Appellant departed Boston on March 22, 2025 and flew to Mexico City as stated in his March 16, 2025 message to BPD.

16. On March 26, 2025, still hearing no response from the BPD, the Appellant sent another email to the BPD's Human Resources Director, which stated:



Adolfo Brito <adolfo.brito@pd.boston.gov>

Sergeant Oral Board Date change!

Adolfo Brito <adolfo.brito@pd.boston.gov>

Wed, Mar 26, 2025 at 7:25 AM

To: Natasha Gumbs-Levarity <natasha.levarity@pd.boston.gov>

Good morning,

Director Gumbs-Levarity, Esq.

On March 16, I received my notice to appear for the sergeant oral boards with two dates: March 25, 2025, and March 27, 2025. I emailed asking if it was possible to change the date from March 25th to the 27th or later due to a conflict with a long-standing commitment I had booked 14 months ago. I have not received a reply to my petition. I am wondering if my petition was granted. I will be in transit most of today and land in Boston tonight at midnight.

Thank you for your time and consideration.

17. The BPD's Human Resources director replied to the Appellant that the first part of the Oral Board examination, which he missed, had been completed and that he could not sit for the second part.

18. The Appellant arrived home in Boston on Thursday, March 27, 2025 at approximately 1:00 am and went to sleep, arising about 6:00 am.

19. When the Appellant reported to the examination site the next morning, he was excluded from taking the second part of the Oral Board exercise because he missed the first part administered on Tuesday, March 25, 2025.

APPLICABLE LEGAL STANDARD

A motion to dispose of an appeal, in whole or in part, via summary decision may be allowed by the Commission pursuant to 801 C.M.R. 1.01(7)(h) 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 Bd, 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 Commission generally has deferred to HRD’s expertise and discretion to establish reasonable requirements, consistent with basic merit principles, for crafting, administering, and scoring examinations. In deciding prior appeals, the Commission has concluded that, as a general rule, HRD’s insistence on compliance with established examination requirements was neither arbitrary nor unreasonable. See, e.g., Helms v. HRD, B2-24-178 (5/15/2025), Bell v. HRD, B2-24-180 (2/20/2025); Donovan v. HRD, B2-24-117 (1/9/2025); Weaver v. HRD, 37 MCSR 313 (2024); DiGiando v. HRD, 37 MCSR 252 (2024); Medeiros v. HRD, 37 MCSR 56 (2024); Dunn v. HRD, 37 MCSR (2024); Kiley v. HRD, 36 MCSR 442 (2024); Evans v. HRD, 35 MCSR 108

(2022); Turner v. HRD, 34 MCSR 249 (2022); Amato v. HRD, 34 MCSR 177 (2021); Wetherbee v. HRD, 34 MCSR 173 (2021); Russo v. HRD, 34 MCSR 156 (2021); Villavizar v. HRD, 34 MCSR 64 (2021); Holska v. HRD, 33 MCSR 282 (2020); Flynn v. HRD, 33 MCSR 237 (2020); Whoriskey v. HRD, 33 MCSR 158 (2020); Bucella v. HRD, 32 MCSR 226 (2019); Dupont v. HRD, 31 MCSR 184 (2018); Pavone v. HRD, 28 MCSR 611 (2015); and Carroll v. HRD, 27 MCSR 157 (2014).

As HRD's delegated authority to design, administer and score the BPD Sergeant departmental promotional examination, as well as to ensure the integrity of the examination as required by the Delegation Agreement, the BPD has the same responsibility and is given the same discretion as HRD would have in the circumstances.

Here, the BPD correctly determined that the Appellant had lost his opportunity to compete in the Oral Board component of the BPD Sergeant promotional examination.

First, the Appellant's emails, as a matter of form, did not comply with the requirement to be excused from the originally scheduled administration of the March 25, 2025 Oral Board Situational Judgment exercise. His messages did not indicate the subject was a "Scheduling Conflict". In fact, he was less than candid about the reason for asking for a change in his examination date, stating that "fourteen months ago" he "made a commitment that requires me to travel overseas" and he had "a flight booked for departure at 6:00 am on March 22, 2025 . . . and returning on March 26, 2025 at 1100 pm." His message omitted that the purpose of his trip was to work an outside employment opportunity in Mexico with Major League Baseball.

Second, the Appellant's claim that his commitment was made well in advance and created an "unavoidable conflict" is not supported by the evidence. The Appellant was informed of the March 2025 Oral Board component dates in September 2024. It was not until December 2024 that the

Boston Red Sox exhibition games in Mexico City were set. Thus, any travel arrangements for the Appellant to go to Mexico City for the March 2025 Red Sox exhibition games must have been made after December 2024 and with full knowledge of the dates of the scheduled Oral Board exercises during that same time. Yet the Appellant waited until March 16, 2025 to inform the BPD of the “conflict” or make any attempt to be granted a make-up.

Third, the Appellant’s request to move his first part of the Oral Board to March 27, 2025 was a non-starter. All candidates were scheduled to take the first part of the Oral Board exercises on one of two days – Group 1 on March 24 and 26, 2025 and Group 2 on March 25 and 27, 2025. There was no window for the Appellant to take the first part on March 27, 2025.

Fourth, no candidate has an absolute right to take a make-up examination. In general, HRD grants a make-up request only in cases of military deployments or other unforeseen emergency situations. Absent such extenuating circumstances, the risk of giving a candidate additional time to take a make-up could appear to have an unfair advantage over other candidates who took the examination as scheduled and tends to outweigh a candidate’s make up request. Here, the Appellant chose to take a four-day trip to Mexico to work an outside job, especially knowing ahead of time that doing so would preclude him from being able to take the Oral Board. The BPD’s decision that the Appellant’s choice to work his outside job and miss the reasonable, pre-scheduled conditions for taking a promotional examination, does not amount to the type of extenuating circumstances that warranted the exercise of discretion by HRD or the BPD to allow the Appellant to take a make-up examination.

CONCLUSION

For the reasons stated above, HRD’s Motion for to Dismiss is *granted* and the Appellant’s appeal under Docket Number B2-25-089 is *dismissed*.

Civil Service Commission

/s/Paul M. Stein

Paul M. Stein

Commissioner

By vote of the Civil Service Commission (Bowman, Chair; Dooley, Markey, McConney and Stein, Commissioners) on June 12, 2025.

Either party may file a motion for reconsideration within ten days of 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:

James W. Gilden, Esq.(for Appellant)

Joseph A. McClellan, Esq. (for Respondent)