

**COMMONWEALTH OF MASSACHUSETTS  
CIVIL SERVICE COMMISSION**

**SUFFOLK, ss.**

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

**MICHAEL BUCCELLA,**  
*Appellant*

**B2-19-036**

v.

**MASSACHUSETTS HUMAN  
RESOURCES DIVISION,**  
*Respondent*

Appearance for Appellant:

Michael Buccella, Pro Se

Appearance for Respondent:

Mark P. Detwiler, Esq.  
Labor Counsel  
Human Resources Division  
100 Cambridge Street – Suite 600  
Boston, MA 02114

Commissioner:

Paul M. Stein

**DECISION ON MOTIONS FOR SUMMARY DECISION**

The Appellant, Michael Buccella, a sworn Police Officer with the Avon Police Department, brought this appeal to the Civil Service Commission (Commission) to contest the decision of the Massachusetts Human Resources Division (HRD) which determined that he had failed the 2018 Police Sergeant Promotional Examination.<sup>1</sup> After a pre-hearing conference on March 12, 2019 and, pursuant to Procedural Order of that date, HRD filed a Motion for Summary Decision, which the Appellant opposed on May 7, 2019 by Motion to Approve Appeal, to which HRD submitted a Rebuttal on May 14, 2019. For the reasons explained below, I conclude that HRD's Motion For Summary Disposition should be granted and the appeal be dismissed.

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<sup>1</sup> The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§ 1.00, *et seq.*, apply to adjudications before the Commission with G.L. c. 31, or any Commission rules, taking precedence.

## **FINDINGS OF FACT**

Based on the submissions of the parties and viewing the evidence most favorably to the Appellant, I find the following material facts are not in dispute:

1. The Appellant, Michael Bucella, is a tenured Police Officer who has been employed with the Town of Avon Police Department since 1999.

2. On June 18, 2018, HRD posted a bulletin for the 2018 promotional examination for Police Sergeant open to Police Officers in various civil service municipalities (one of which was the Town of Avon). The examination contained two components: (1) a written portion administered on September 15, 2018, worth 80% of the applicant's score and (2) an Education and Experience (E&E) Claim, worth 20% of the applicant's exam score, that was required to be submitted by completing a separate online E&E Claim application within seven (7) days following the written examination.

3. In order to qualify to take the 2018 Police Sergeant examination, applicants were required to submit an application and a \$250 examination fee on or before the deadline of August 7, 2018.

The examination bulletin stated:

Once your application is successfully submitted, click on the "click to pay" button to pay for your examination. You will receive a payment confirmation email . . . If you do NOT receive this confirmation, your payment has NOT been received and you will need to log back into your application and click "Click to Pay".

4. The examination bulletin also stated::

*EDUCATION & EXPERIENCE (E&E): All applicants must complete the 2018 Police Promotional Series E&E Claim application online. Instructions regarding this E&E Claim application will be mailed to candidates prior to the examination date. A confirmation email will be sent upon successful submission of an E&E Claim application. (emphasis added)*

All claims and supporting documentation must be received within 7 calendar days following the examination. *Please read the instructions for submitting claims and supporting documentation carefully. Supporting documentation must be scanned and*

attached to your application or sent to [civilservice@mass.gov](mailto:civilservice@mass.gov) no later than September 22, 2018. (emphasis added)

Please note that:

- E&E is an examination component, and therefore must be completed by the examinee.
- Failure to complete this component as instructed will result in a candidate not receiving any credit for E&E.
- Credit for E&E is applicable only to individuals who achieve a passing score on all other examination components, and will not be calculated for a candidate with a failing written examination score. (emphasis added)

Please be sure to read the instructions carefully. No phone calls or email inquiries regarding the content of this exam component will be accepted or responded to. Once you receive your examination mark, you will have seventeen calendar days from the mailing of your mark to appeal in writing your E&E score. (emphasis added)

5. On July 26, 2018, Officer Buccella duly submitted an examination application and paid the examination fee by the deadline as instructed in the examination bulletin. When he submitted this initial application, he attached a PDF document containing an attested copy of his college transcript and a copy of a Verification Form attested to by the Avon Police Chief to his tenured service as an Avon Police Officer since 1999.

6. On August 27, 2018, HRD issued an individually addressed email notice entitled “Education and Experience (E&E) Claim for Departmental Police Promotional Examination” to all applicants who had duly applied to take the 2018 Sergeant’s Examination, including Officer Buccella. This notice stated, in relevant part (**all bolding in original**):

Please pay close attention to the following regarding the submission of your Education & Experience (E&E) Claim.

The E&E claim application is separate from the Written Exam application you submitted to take the exam. THIS IS AN EXAMINATION COMPONENT. Complete your Online E&E Claim on your own and to the best of your ability. Accurate completion of the education and experience claim is a scored, weighted, examination component. In order to ensure that no one receives any type of unfair advantage in the claim process, be advised that we are unable to provide individualized assistance to any applicant. (emphasis added)

**The Online E&E Claim is now available. To access this exam component:**

1. Click here [hyperlink] to access the application;
2. Carefully read all information in the posting;

3. Click “Apply”
4. Log in to your account;
5. Complete the online E&E claim as instructed.
6. If you have successfully completed and submitted the E&E claim application you will receive a confirmation email. (AN APPLICATION IS NOT COMPLETE UNTIL YOU RECEIVE THIS CONFIRMATION EMAIL)

Information on how to provide supporting documentation:

- 1) Scan and attach documents to your online E&E claim application at the time of submission.
- 2) Email scanned documents to [civilservice@mass.gov](mailto:civilservice@mass.gov)

**Please note that E&E is an exam component, and therefore, you must complete the online E&E claim. Information must be attached to your online application or emailed to [civilservice@mass.gov](mailto:civilservice@mass.gov).** . . .

7. On August 31, 2018, HRD issued another individually addressed email entitled “**NOTICE TO APPEAR**” to all candidates eligible to take the 2018 Police Sergeant Examination, including Officer Buccella. In addition to informing candidates of the date, time and place of the written examination, the email also stated (**all bolding in original**):

**You should have received an email with instructions on how to file your Education & Experience (E&E) Claim on or about Monday, August 27<sup>th</sup>, 2018. E&E is only applied to those with a passing score on the written examination portion of this examination.**

8. On September 14, 2018, one day before the written examination date, and on September 19, 2018, three days before the E&E Claim was due, HRD reminded all applicants of the obligation to submit an E&E Claim and, again, stating, in part: “The E&E claim application is separate from the Written Exam application you submitted to take the exam. . . . Be advised that this is a separate exam component and must be completed. . . .{Y]ou must complete the online E&E claim. Supporting documentation . . . must be attached to your online claim application or emailed to [civilservice@mass.gov](mailto:civilservice@mass.gov). Documents submitted via any other method that the two listed above will NOT be considered in your claim.”

9. Officer Buccella sat for the Police Sergeant examination. He did not at any time complete the on-line E&E Claim form.

10. On or about December 4, 2018, HRD informed Officer Buccella that he had failed the Police Sergeant Examination with a final score of 61.6 (with 70 needed to pass the examination).

This score was calculated as follows:

(A) Written Examination Component (80%)	$77.00 \times 0.8 = 61.6$
(B) E&E Examination Component (20%)	$00.00 \times 0.2 = 00.0$
<u>FINAL SCORE (A) + (B)</u>	<u>61.6</u>

11. On or about December 13, 2018, Officer Buccella duly appealed to HRD for a review of his Police Sergeant examination score. After review, on January 31, 2019, HRD denied the appeal. This appeal to the Commission duly ensued.

### **STANDARD OF REVIEW**

The Commission may dispose of an appeal summarily, as a matter of law, pursuant to 801 C.M.R. 1.01(7) when undisputed facts affirmatively demonstrate “no reasonable expectation” that a party can prevail on at least one “essential element of the case”. See, e.g., Milliken & Co., v. Duro Textiles LLC, 451 Mass. 547, 550 fn.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,§3 directs HRD to “make and amend rules which shall . . . include provisions for . . . (c) Open competitive and other examinations to test the practical fitness of applicants . . .”

Pursuant to this authority, Personnel Administration Rule PAR.06 provides, in relevant part:

#### **PAR.06. EXAMINATIONS**

##### **(1) Procedure**

- (a) The administrator shall establish procedures for competitive and other examinations to test the practical fitness of applicants.

- . . .
- (b) The grading of the subject of employment or experience as part of a promotional examination shall be based on a schedule approved by [HRD] which shall include credits for elements of training an experience related to the positon for which the examination is held.

. . .

(2) Content of Examinations

- (a) All selection procedures shall be practical in character and shall relate directly to those matters which fairly determine the relative ranking of the persons examined based on the knowledge, abilities and skills required to perform the primary duties (critical and frequent tasks) of the position title or occupational group as determined by reliable and representative job information available to [HRD]. Examinations may . . . include written, oral, practical or performance tests, training and experience rating . . . other generally accepted selection procedures, or combinations of these, which, in the discretion and judgment of [HRD], are appropriate for the position title or occupational group being tested.

. . .

(3) Examination Results

The passing mark for each examination shall be established by [HRD] in accordance with generally accepted selection procedures.

Also, G.L.c.31,§22 provides, in relevant part, that HRD “shall determine the passing requirements of examinations” and, in particular, “an applicant shall be given credit for employment and experience in the position for which the examination is held” and “*shall be allowed seven days after the date of such examination to file with the administrator a training and experience sheet* and to receive credit for such training and experience as to the time designated by the administrator.” (*emphasis added*)

Section 22 also grants applicants the right to seek review of their examination marks by HRD and, in some cases, to seek further appeal to the Commission.

**ANALYSIS**

The Commission has construed the applicable Massachusetts civil service laws and rules to vest HRD with broad, although not unfettered, discretion to determine the technical requirements for competitive civil service examinations, including the type and weight given as credit for training and experience, subject to scrutiny solely when HRD’s decisions, actions or failure to

act are devoid of any rational explanation, are not firmly grounded in common sense, have not been uniformly applied, are arbitrary, capricious or otherwise run afoul of basic merit principles of civil service law. See, e.g., Borjeson v. Human Resources Div., 31 MCSR 267 (2018) (Interim Decision), 31 MCSR 297 (Final Decision) (allowing appeal and requiring rescoring of E&E when HRD had arbitrarily changed its long-standing traditional methodology for reasons that were neither “persuasive nor logical”); Clarke v HRD, 29 MCSR 1 (2016) (allowing appeal, in part, to grant education credit when documentation submitted indistinguishable from information previously found sufficient to grant such credit); Merced v. Human Resources Div., 28 MCSR 396 (2015) (affirming HRD’s requirement that university teaching credit required faculty status of adjunct professor or higher); Carroll v. Human Resources Div., 27 MCSR 157 (2014)(deferring to HRD’s technical expertise in defining criteria for educational credit); Cataldo v. Human Resources Div., 23 MCSR 617 (2010) (allowing E&E appeal, in part, for education credit that HRD denied for reasons that could not be reconciled with a reasonable construction of HRD’s examination instructions). See generally, G.L.c.31,§1 (basis merit principles means “recruiting, selecting and advancing of employees on the basis of their relative ability, knowledge and skills”, “assuring fair treatment of all applicants” and protecting employees from “arbitrary and capricious actions”); City of Cambridge v. Civil Service Comm’n, 43 Mass.App.Ct. 300, 303, rev.den., 426 Mass. 1102 (1997) (decision “is arbitrary and capricious when it lacks any rational explanation.”)

In this appeal, the question presented is whether HRD is justified to treat Officer Buccella’s E&E Claim as a separate examination component and to award him no points for that component because he failed to follow the instructions provided to him and never completed, submitted and received confirmation of receipt of the required on-line E&E Claim application form, despite the

fact that he did, at the time of submitting his Written Examination application, attach the underlying supporting documents attesting to all of the education experience credit he would have been entitled to claim on the E&E Claim application form.

The Commission has previously considered similar appeals from candidates claiming that their failure to strictly comply with the requirements for submitting the E&E Claim should not be cause to give them a failing grade on that component.. In every case, the Commission has sustained HRD's position that the completing the E&E Claim form on-line and obtaining confirmation that it was received is a separate examination component and, therefore, HRD is justified within its broad technical authority over the administration of examinations to give a candidate who does not follow the instructions required to satisfactorily complete the E&E component a failing grade on that component. See Sinopoli v. Human Resources Div., CSC No. B2-19-044, 32 MCSR --- (2019); Reese v. Human Resources Div., CSC No. B2-19-046, 32 MCSR --- (2019); Silva v. Human Resources Div., 30 MCSR247 (2017); Pavone v. Human Resources Div., 28 MCSR 611 (2015).

After carefully considering the facts of this present appeal, I conclude that there are no significant distinctions here that warrant any different result.

First, Officer Buccella erroneously contends that he failed the Police Sergeant's examination solely because of how he handled the E&E Claim component, citing Silva v. Human Resources Div., supra. In fact, HRD appears to have taken notice of the Commission's prior criticism about the approach of automatically giving a failing overall exam score to someone who didn't file an E&E Claim. Now, as in the case of the Police Sergeant's examination, HRD no longer does so. Rather, failure to complete the E&E Claim component now triggers a "zero" score on that component. It was the weighted score of both components (77.0 on the Written Exam and 0.00



on the E&E Component) that resulted in Officer Buccella's failing score of 61.6. Had Officer Buccella scored ten points higher on the Written Exam (i.e. 87), he would have received a weighted score of 69.6, which rounded would have given him a passing grade of 70. I fully appreciate that Officer Buccella may yet believe that failing him is still unfair. However, HRD's choice to award a candidate who fails to follow the instructions in completing the E&E component a "zero" for that component (thereby requiring a candidate to score well above 70 on the Written Component to offset the consequences of that mistake) does not rise to the level of being so devoid of reason that it falls outside the legitimate purview of HRD expertise on such a technical matter.

Second, I give considerable weight to the fact that the instructions about the requirements for submitting and obtaining confirmation of a separately completed E&E Claim form as a condition to passing the examination are clear and unambiguous. Nothing in the instructions could lead a reasonable person to conclude that submitting documents, alone, without the E&E Claim form, satisfied HRD'S requirement for passing the E&E Claim component. It also bears notice that 457 of the 461 police officers who took the same examination complied fully with the instructions and duly filed a confirmed E&E Claim form. Thus, this case is not one in which the Commission is warranted to exercise discretion to grant "Chapter 310" statutory relief to an appellant whose civil service rights have been infringed "through no fault of his own." HRD has good reason to hold Officer Buccella to the same standard as all other similarly situated candidates.

### **CONCLUSION**

Accordingly, for the reasons stated, HRD's Motion for Summary Decision is allowed and Officer Buccella's Motion to Approve Appeal is denied. The appeal of Michael Buccella, under Docket No. B2-19-036, is *dismissed*.

Civil Service Commission

/s/ Paul M. Stein

Paul M. Stein  
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman, Camuso, Ittleman, Stein & Tivnan, Commissioners) on June 6, 2019.

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 a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the Commission's 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:

Michael Buccella (Appellant)

Mark Detwiler, Esq. (for Respondent)