

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

100 Cambridge Street – Suite 200

Boston, MA 02114

617-979-1900

MICHAEL A. COTE,

Appellant

v.

HUMAN RESOURCES DIVISION,

Respondent

Docket number:

B2-25-056

Appearance for Appellant:

Micheal A. Cote

Pro Se

Appearance for Respondent:

Erik Hammarlund, Esq.

Labor Counsel

Human Resources Division

100 Cambridge Street, Suite 600

Boston, MA 02114

Commissioner:

Paul M. Stein

SUMMARY OF DECISION

The Commission allowed the examination appeal of a candidate who had taken the promotional examination for Environmental Police Officer D (Lieutenant) and ordered that HRD grant him E&E credit for his prior outside law enforcement experience as an active duty “sworn law enforcement officer” with the USAF Security Forces and recalculate his examination score accordingly.

DECISION ON RESPONDENT’S MOTION FOR SUMMARY DECISION

On February 26, 2025, the Appellant, Michael A. Cote, an Environmental Police Officer C (EPO C) with the Massachusetts Environmental Police (MEP), appealed to the Civil Service Commission (Commission) after the state’s Human Resources Division (HRD) denied his request for credit for certain prior employment on the Experience/Training & Education (E&E) component of the December 14, 2024 EPO D (Lieutenant) promotional examination. I held a remote pre-

hearing conference on this appeal on March 18, 2025. Pursuant to the colloquy with the parties at the pre-hearing conference, HRD requested additional time to review the Appellant's Pre-Hearing Memorandum and documentation submitted by the Appellant with a view to reconsidering the Appellant's claim to E&E credit for his active-duty service with the USAF Security Forces. On April 8, 2025, the Appellant moved to default HRD for failing to provide any response, which I deemed a Motion for Summary Decision on behalf of the Appellant and I provided HRD until April 18, 2025 to file an opposition. No response from HRD has been received. I conclude that the Appellant's service with the USAF Security Services was service as a "sworn law enforcement officer" that qualified for E&E credit under the E&E claim form. Accordingly, the Appellant's Motion for Summary Disposition is granted and his appeal is allowed.

UNDISPUTED FACTS

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

1. The Appellant, Michael C. Cote, is an EPO C (Sergeant) with the Massachusetts Environmental Police.
2. The Appellant took and passed the December 14, 2024 EPO D (Lieutenant) promotional examination administered by HRD. His name currently appears tied for second place on the current EPO D eligible list.
3. As part of the Experience/Training/Licenses & Education (E&E) component of the examination, the Appellant claimed four years for his experience as a military police officer under Question 7 [Outside Law Enforcement Experience] "as a sworn law enforcement officer outside of the EPO agency in a nonrelated environmental field."
4. A sworn law enforcement officer is defined by HRD as a person with "full police powers serving in a recognized federal, state or municipal police department . . . such as a Natural Resource

Officer, Environmental/Conservation Law Enforcement Officer, Police Officer, Sheriff, Court Officer, Federal Marshall, Campus Police Officer, Military Police Officer”

5. The Appellant served a four-year active tour of duty with the United States Air Force (USAF), assigned to the USAF Security Forces. He was honorably discharged in the rank of E-4 (Senior Airman), while holding the functional job title of Security Forces Journeyman.

6 On January 22, 2025, HRD informed the Appellant that his claim for E&E credit for his USAF active-duty experience was denied because: “Experience does not qualify under this category”.

7. On February 5, 2025, the Appellant sought a review of his E&E score by appeal to HRD. His appeal provided a detailed description of his job with the USAF Security Services. In particular, he attached a job description fact sheet from <https://www.af.mil>., the official USAF website that described the duties of the Security Forces and states it is “the USAF’s version of Military Police.” The website also states:

Security Forces personnel conduct all police activities associated with an Air Force base, This career field directly leads into a civilian job of law enforcement

8. The Appellant’s appeal to HRD also extensively described his training, authority and specific duties, including supervisory responsibility as a Security Forces Journeyman:

Security Forces personnel begin their military careers by attending a 65-day (13.5 week) academy at the Air Force Security Forces Academy[C]andidates undergo rigorous law enforcement training that includes use of force, handcuffing and apprehension techniques, directing traffic, motor vehicle stops and issuing of traffic tickets, first aid/CPR, domestic violence response, report writing, evidence chain of custody, lethal and nonlethal compliance tools, laws to include the US Constitution, the Uniform Code of Military Justice (UCMJ), Miranda warnings and federal case law that has shaped law enforcement both in the military and civil realms. Upon completion, they take an oath and are sworn in to uphold the laws and regulations set forth on USAF bases worldwide in a law enforcement capacity and at many USAF bases in the United States enforce local laws.

After successful completion of the Air Force Security Forces Academy members are given the title Security Forces Apprentice or a 3-level. USAF has continuing education for Security Forces in which members . . . become Journeymen 5-level, Craftsmen 7-level, Superintendent 9-level . . . instilling leadership qualities and more in depth law enforcement knowledge. . . . Security Forces also undergo yearly quality control evaluations . . . where members must pass written examinations followed by practical exercises that could be anything from responding to alarm activations, domestic violence situations, high risks traffic stops, etc....

To support the recognition of the law enforcement training, Security Forces are recognized by the rest of the USAF as base law enforcement. This is recognized by their uniforms that include the wearing of a beret, a metallic law enforcement badge called the Security Forces Shield, and associated law enforcement equipment. Associated law enforcement equipment includes wearing and carrying of a ballistic vest, a duty belt with handcuffs, OC spray, baton, sidearm, and handheld radio. Along with uniforms, Security Forces operate law enforcement vehicles that are outfitted with blue lights, a siren, a vehicle mounted radio, PA device and are fully marked law enforcement vehicles. These vehicles include marked emergency notification procedures “Call 911 in Case of Emergency”.

The authority of Security Forces derives from the US Constitution, the UCMJ, the Posse Comitatus Act, Federal Laws, and Executive Orders. “Security Forces are representatives of the US Government, the US Armed Forces, the installation commander and DFC. The Manual for Court Martial, Rules for Court Martial (MCM), MCM Rule 302(b)(1), and UCMJ Article 7(b) give Security Forces the authority to apprehend individuals” (Attachment 3 pg. 21, 5.1.1). Furthermore, Security Forces have the authority to detain, apprehend, report and correct individuals who are in violation of law. Additionally in some jurisdictions, Security Forces are deputized by State and Local Governments as uniformed law enforcement personnel. Per my enlisted enforcement evaluation dated September 17, 2006, it is documented that I enforced “punitive articles of the UCMJ and Texas Law” (Please refer to Attachment 3 Chapter 5 for reference to this paragraph).

To further support my claim that Security Forces are sworn law enforcement, I would like to refer you to Air Force Manuals 31-201 Security Police Standards and Procedures, 31-201 Vol 2 Legal Considerations, 31-201 Vol 4 High Risk Response, 31-201 Vol 7 Security Forces Response and Administration and Air Force Instruction 31-118 Security Forces Standards and Procedures. These instructions and manuals refer to the duties and responsibilities of Security Forces which are in comparison to the policy and procedures used in civilian law enforcement. Some of the duties and responsibilities located within these manuals and instructions include but are not limited to apprehension, detention and custody, searches, seizures and preservation of evidence, booking procedures, rights advisement, interviews, testifying, report writing, disaster response, barricaded subjects, domestic violence and abuse response and forms to include evidence tags, incident reports, suspect/witness statements, alcohol influence reports, and traffic tickets. AF manuals and instructions ensure that airmen are held to a high standard.

Security Forces are held to an even higher standard as they are the sole law enforcement agency on USAF bases enforcing laws and regulations and must be held to this high standard to maintain integrity and the readiness to respond ensuring the safety of all personnel and USAF assets on base.

Throughout my Air Force career as Security Forces, I held and maintained a law enforcement role. Some of these highlights are documented on my Enlisted Performance Evaluations and Letter of Evaluation. Some highlights from my evaluations include the following:

- Excelled in every aspect of Law Enforcement operations while assigned to the 890th Expeditionary Security Forces Squadron
- Maintained a highly visible law enforcement presence for over 400 civilian and military personnel on Eskan Village, Saudi Arabia
- Responded as a Law Enforcement Patrol to unannounced alarm activations
- Initial responder to two assaults; interviewed key witnesses/gathered evidence – suspects identified and prosecuted
- Attended Suicide Awareness Instructor Course
- Conducted 16k ID checks; identified fraudulent ID – apprehended individual
- First Responder to fire alarm; vacated 100 dorm residents – protected lives/expedited fire department checks
- First responder to a military vehicle riddled from small arms fire by suspected terrorists – secured crime scene

Also contained within my evaluations were my duties and responsibilities as my career progressed. These duties and responsibilities are list[ed] as follows:

- Responds to emergencies situations and investigates incidents within his area of responsibility
- Controls vehicular and pedestrian traffic
- Issues traffic citations, maintains law and order, enforces standards of conduct, and adherence to laws and instructions within boundaries of assigned posts
- Performs supervisory duties supporting Protection Level 1-4 resources
- Provides immediate response and investigates alarms
- Maintains surveillance for suspicious activities within his assigned areas of responsibility
- Supervises approximately 10 posted sentries and patrol members
- Investigates offenses and traffic accidents
- Apprehends and accepts custody of military personnel apprehended by other agencies
- Seizures, collects and preserves evidence
- Interviews witnesses and personnel suspected of committing violations of the UCMJ
- Escorts government funds and weapons
- On-scene commander for all responses within his assigned area
- Makes critical assessments to provide rapid initiation of the security reporting and alerting system
- Investigates major and minor vehicle accidents
- Gathers facts of reported and observed incidents and writes clear, concise reports
- Coordinates with other patrols while responding to alarm activations and disaster incidents

- Protects and control entry into crime scenes until the arrival of medical and investigative personnel
- Enforces the punitive articles of the UCMJ and Texas Laws

9. On February 14, 2025, HRD informed the Appellant that his appeal for review of his USAF experience claim was denied, stating: “Experience does not qualify under this category – No full police powers under the title of journeyman.”

10. This appeal to the Commission duly ensued.

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 Board, 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

Section 22 of Chapter 31 of the General Laws prescribes that “[t]he administrator [HRD] shall determine the passing requirements of examinations.” According to the Personnel Administration

Rules (PAR) 6(1)(b), “[t]he grading of the subject of training and experience as a part of a promotional examination shall be based on a schedule approved by the administrator [HRD] which shall include credits for elements of training and experience related to the position for which the examination is held.” Pursuant to Section 24 of Chapter 31, “. . . the commission shall not allow credit for training or experience unless such training or experience was fully stated in the training and experience sheet filed by the applicant at the time designated by the administrator [HRD]”.

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. Specifically, in deciding prior appeals, the Commission has concluded that, as a general rule, HRD’s insistence on compliance with its established examination requirements for claiming and scoring training and experience credits was neither arbitrary nor unreasonable. See, e.g., Kiley v. HRD, 36 MCSR 442 (2023); 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).

Here, however, HRD’s decision is arbitrary and capricious. HRD appears to have simply misunderstood the law enforcement duties and supervisory responsibilities that the Appellant exercised as a USAF Security Forces military police officer. The Appellant’s appeal to HRD, and to the Commission, contains overwhelming proof that throughout his military service, he exercised “full police powers”, which included enforcement of both military justice rules as well as local traffic and other municipal and state laws. HRD evidently took the Appellant’s functional job title

of “Security Forces Journeyman” to imply that the Appellant was an apprentice, when a more thorough review of his claim showed that, in fact, the functional title of Journeyman was a step above the entry level position and actually included supervisory responsibility. Moreover, HRD’s own exam bulletin clearly specifies that “Military Police” is one of the related federal jobs entitled to E&E credit as outside “full law enforcement experience.”

CONCLUSION

For the reasons stated above, the Appellant’s Motion for Summary Decision is *granted* and the Appellant’s appeal under Docket Number B2-25-056 is *allowed*. HRD is ordered, forthwith, to recalculate the Appellant’s E&E score on the EPO D promotional examination taken December 14, 2024 to include full credit under E&E Claim Q7 for the period of his employment as a Security Forces Journeyman with the USAF Security Forces, and to adjust his final exam score and his place on the current EPO D eligible list accordingly.

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 May 29, 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:
Michael A. Cote (Appellant)
Erik Hammarlund, Esq. (for Respondent)