

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

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

JAMES DEFRANCESCO,
Appellant

v.

G1-08-54

HUMAN RESOURCES DIVISION,
Respondent

Appellant's Attorney:

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Assonet, MA 02702-1948

Human Resources Division's Attorney:

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Commissioner:

Christopher C. Bowman

DECISION ON HRD'S MOTION FOR SUMMARY DECISION

Procedural History before the Commission

Pursuant to G.L. c. 31, § 2(b), the Appellant, James DeFransesco, (hereinafter "Appellant") is appealing the decision of the state's Human Resources Division (hereinafter "HRD") not to grant him two (2) additional training and experience points on his promotional examination for lieutenant under G.L. c. 31, § 59.

HRD filed a Motion for Summary Decision on April 3, 2008 and the Appellant filed an Opposition on April 18, 2008. A motion hearing was conducted at the offices of the Civil Service Commission (hereinafter "Commission") on June 16, 2008.

Factual Background

The Appellant was a special police officer for the MIT Police Department from May 18, 1981 through May 22, 1983. On May 23, 1983, the Appellant became a police officer in the Cambridge Police Department (a civil service community) and was subsequently promoted to the position of sergeant on March 24, 2004.

On October 20, 2007, the Appellant took the civil service promotional examination for lieutenant. At the time of the exam, he requested that HRD grant him two (2) additional training and experience points pursuant to G.L. c. 31, § 59. On December 21, 2007, HRD denied this request, indicating that as of the day of the examination, the Appellant had served as a police officer in Cambridge for 24 years, 5 months and had not reached the 25 years of service required by Section 59.

HRD's December 21, 2007 letter to the Appellant stated in relevant part:

“In order to receive the additional 2 points to your passing score...HRD must be able to verify twenty five years of civil service status as a member of a Commonwealth Police Force. Only time worked as a Permanent Reserve / Intermittent, or a Temporary Police Officer **after certification** may be applied to an applicant's eligibility for this preference. The seniority date needed to meet that twenty-five year eligibility requirement, and to receive the preference points is October 20, 1982. Time as a Reserve, Intermittent or Temporary Police Officer must be submitted in the number of days or shifts worked for each year of the additional service. In accordance with M.G.L. Chapter 31, Section 59, HRD counts two hundred fifty days, or the equivalent thereof, of permanent reserve/intermittent service to be equivalent to one year of permanent full-time service in a regular police or fire force.”
(**emphasis** in original)

On January 15, 2008, HRD received a letter from the Appellant appealing its initial ruling. On February 11, 2008, HRD denied the Appellant's appeal in a letter to the Appellant which stated in relevant part:

“...Although the time you served as a Special Police Officer for the Massachusetts Institute of Technology (May 18, 1981 through May 22, 1983)

was with full police powers, this time cannot be counted as time worked as a civil service Police Officer in such force. Because you were not hired under the rules and regulations of civil service, did not work under the auspices of civil service, or did not have civil service status as a Cambridge police officer during that time, we are not able to grant you the preference under MGL Chapter 31: section 59.”

Summary of Issues

The Appellant claims that his time worked as a special police officer for the MIT Police Department should be counted as part of his service as “a member of a regular police force,” thereby making him eligible for the 25-year (2 additional points) preference pursuant to G.L. c. 31, § 59.

If the Commission finds that the Appellant’s time working as a special police officer does not count towards the 25-year preference, the Appellant argues that the 25 years of service should be calculated at the time the Appointing Authority requisitions the certification from HRD, rather than the date of the examination.

HRD’s Argument

HRD argues that 1) time served as a special police officer, a non civil service position, does not count toward the Appellant’s service as “a member of a regular police force”, and 2) the 25 years of service is calculated as of the date of the examination. Thus, because the Appellant would not have had the 25 years of service as a member of a regular police force until May 23, 2008, he could not have qualified for the 25-year preference found in G.L. c. 31, § 59.

Appellant’s Argument

The Appellant argues that: 1) his time working as a special police officer pursuant to G.L. c. 22C, § 63 for the MIT Police Department counts as “a member of a regular police force”; or, in the alternative, 2) the overall time worked for purposes of the 25-year

preference should be calculated at the time of the date the Appointing Authority requisitions a certification. Under either of these arguments, the Appellant would qualify for the 25-year preference of 2 additional points.

Analysis and Conclusion Regarding 25-Year Time Calculation

G.L. c. 31, § 22 provides in relevant part:

“The administrator shall determine the passing requirements of examinations. In any competitive examination, an applicant shall be given credit for employment or experience in the position for which the examination is held. In any examination, the applicant 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 of the time designated by the administrator.” (Emphasis added)

The plain language of Section 22 allows the Administrator (HRD) to designate the cut-off time to be used for calculating an applicant’s credit, such as the credit in Section 59, for employment or experience in the position for which the examination is held. In comparison, Section 58, which involves a minimum age cut-off date for taking a police or fire civil service exam, does not grant HRD this discretionary authority, stating in relevant part, “ No person shall be eligible to take an examination for original appointment to the position of firefighter in any city or town if he will not have reached his nineteenth birthday on or before the final date for the filing of applications for such examination, as so stated. No person shall be eligible to take an examination for original appointment to the position of police officer in any city or town if he will not have reached his twenty-first birthday on or before the date of such examination.” (emphasis added)

The “Education and Experience Rating Sheet Instructions” for the promotional examination in question specifically states the cut-off date used by HRD to calculate the

25-year credit stating in relevant part, “you rate your experience as of the date of the examination based on type, amount and recency.” (emphasis added) Because the statute allows HRD to designate how applicants are to receive credit for training and experience and the instructions clearly indicate that the applicant’s experience is calculated “as of the date of the examination,” the Appellant’s experience and training is calculated as of the date of the examination and not as of the Appointing Authority’s requisition.

The Commission ruled on this matter in Clark v. Department of Employment and Training, 7 MCSR 261 (1994). In that case, the Appellant argued that she would have possessed the required experience “had the cut-off date been the date on which the eligible list was established rather than the date of examination.” The Commission, however, based on the plain reading of Section 22, specifically held that training and experience is computed as of the date established by HRD, which, in that case, was also the date of the examination. Id.

Analysis and Conclusion Regarding the Definition of “Regular Police Force”

G.L. c. 31, § 59 states in relevant part:

“Notwithstanding the provisions of any law or rule to the contrary, a member of a regular police force or fire force who has served as such for twenty-five years and who passes an examination for promotional appointment in such force shall have preference in promotion equal to that provided to veterans under the civil service rules.” (emphasis added)

The terms “regular police force” or “regular police officer” are not defined in Section 1 of the civil service law, although these terms are referenced in Sections 60, 60A and 61, in addition to Section 59.

Throughout the General Laws, the legislature has distinguished different police officer designations, using the terms “regular,” “permanent,” “full-time,” “temporary,”

“reserve,” “special,” etc. to describe police officers. In Jones v. Town of Wayland, 374 Mass. 249 (1978), the SJC heard a case in which the Town of Wayland denied a police officer disability benefits based on the fact that he was designated a “special police officer” rather than a “regular police officer”, pursuant to G.L. c. 41, § 111F, which states, in relevant part, “[w]henver a police officer is incapacitated for duty...,” and determined that the legislature intended for § 111F to cover all police officers, not only regular police officers. Jones, 374 Mass. at 255. Its rationale for its holding was that, [t]here are numerous instances in the General Laws where the term ‘police officer’ has been qualified by antecedents such as, inter alia, ‘regular,’ ‘permanent,’ and ‘full time’...We think the absence of any similar restrictive terms in § 111F is significant.” Id. At 156; See also, Jones v. Wayland, 4 Mass. App. Ct. 725, 730-31 (1976).

In the case at bar, the Appellant was given his police powers as an MIT Police Officer pursuant to G.L. c. 22C, § 63 which states in relevant part:

“The colonel [of the State Police] may, upon such reasonable terms and conditions as may be prescribed by him, at the request of an officer of a college, university, other educational institution or hospital licensed pursuant to section fifty-one of chapter one hundred and eleven, appoint employees of such college, university, other educational institution or hospital as special state police officers. Such special state police officers shall serve for three years, subject to removal by the colonel, and they shall have the same power to make arrests as regular police officers for any criminal offense committed in or upon lands or structures owned, used or occupied by such college, university, or other institution or hospital.” (*emphasis* added)

Chapter 22C clearly distinguishes the term “regular police officer” from “special police officer.”

In Figueiredo v. Human Resources Division , 14 MCSR 174 (2001), the Commission found that Figueiredo was entitled to employment credit on the police officer exam for her work on the MIT police force because the Appellant had “full police powers” while

serving as an MIT police officer. Although touching on similar issues, it does not appear that Figueiredo related to the 25-year credit under Section 59, as the Figueiredo decision references an “open competitive examination for the (entry level) position of police officer”, where Section 59 pertains only to *promotional* appointments.

HRD, as stated in the above-referenced correspondence, argues that in order for the employment credit to be granted under Section 59, the applicant’s prior police work must have been performed in a civil service position. In making this conclusion,

HRD argues that § 59 must be read together with the provisions of G.L. c. 31, §33 which states in relevant part:

“For the purposes of this chapter, seniority of a civil service employee shall mean his ranking based on length of service, computed as provided in this section. Length of service shall be computed from the first date of full-time employment as a permanent employee, including the required probationary period, in the department unit, regardless of title”

HRD did not offer any case law in support of its contention that the requirements of Section 33 for length of service for seniority purposes must be read into Section 59 regarding the 25 years of service for promotional preference. I see no reason to deviate from the plain language of Section 59. (See Neville v. Town of Wilmington, 18 MCSR 188, 189 (2005)) Section 59 does not require prior service in a regular civil service police force, but, rather, simply a “regular police force”, which, for example, could include a police force in a Massachusetts city or town that has opted out of civil service.

Although Section 59 does not require that the prior employment be completed in a civil service police force, it does require that the department be deemed a “regular police force”. As referenced above, the plain reading of G.L. c. 22C, § 63, under which the Appellant was given the authority to serve as a special (MIT) police officer, refers to the

position of “special police officer” and “regular police officer” as two separate positions. Further, it appears to be undisputed that all of the officers employed by MIT are deemed “special police officers” thus allowing for the reasonable inference that MIT maintains a “special police force” as opposed to a “regular police force.”

Although these “special (MIT) police officers” may, on MIT property, exercise the same arrest powers as “regular police officers”, and may perform some similar functions, this does not deem them to be “regular police officers” for the purposes of Section 59.

For all of the above reasons, HRD’s decision to deny the Appellant the 25-year employment credit in this particular case was correct and should not be reversed.

Therefore, the Appellant’s appeal under Docket No. G1-08-54 is hereby *dismissed*.

Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman, Henderson, Marquis, Stein and Taylor, Commissioners), on December 4 , 2008.

A true Copy. Attest:

Commissioner
Civil Service Commission

Either party may file a motion for reconsideration within ten days of the receipt of a 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 the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

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.

Notice:
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John Marra, Esq. (HRD)
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