

**COMMONWEALTH OF MASSACHUSETTS**

**CIVIL SERVICE COMMISSION**

100 Cambridge Street – Suite 200  
Boston, MA 02114  
617-979-1900

**DAVID M. DiGIANDO,**

*Appellant*

v.

**HUMAN RESOURCES DIVISION,**

*Respondent*

**Docket Number:**

**B2-24-111**

Appearance for Appellant:

David M. DiGiando, *Pro Se*

Appearance for Respondent:

Aezad Aftab, Esq.  
Labor Counsel  
Human Resources Division  
100 Cambridge Street, Suite 600  
Boston, MA 02114

Commissioner:

Paul M. Stein

**SUMMARY OF DECISION**

The Commission upheld HRD’s scoring of the Appellant’s Experience, Certification, Training and Education (ECT&E) component of the statewide Fire Lieutenant’s examination as “incomplete” because the Appellant failed to submit the necessary on-line claim form in compliance with the exam instructions.

**DECISION ON RESPONDENT’S MOTION FOR SUMMARY DECISION**

On July 10, 2024, the Appellant, David M. DiGiando, a firefighter with the Milford Fire Department, appealed to the Civil Service Commission (Commission)<sup>1</sup>, after the state’s Human Resources Division (HRD) denied his request for review of his score on the Experience, Certification, Training & Education (ECT&E) component of the April 27, 2024 statewide Fire

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<sup>1</sup> The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.01 (formal rules), apply to adjudications before the Commission with G.L. c. 31, or any Commission rules, taking precedence.

Lieutenant's examination. I held a remote pre-hearing conference on this appeal on July 29, 2024 and by Procedural Order issued that day, I deemed HRD's Pre-Hearing Memorandum to be considered a Motion for Summary Decision on the grounds that the Appellant had failed to follow the instructions and never filed the required on-line E&E form necessary to receive any credit for that component of the exam. On August 6, 2024, the Appellant filed an opposition. After review of the motion and the opposition, I issued a further Procedural Order seeking clarification of certain ambiguities in HRD's submissions. HRD subsequently identified an error in the scoring of the Appellant's examination. Although HRD continued to assert that the Appellant's ECT&E score did not change, after correction, his overall score was corrected to a passing mark and he was placed 13<sup>th</sup> on the eligible list. The Appellant presses the issue of being awarded an INCOMPLETE on the ECT&E component. For the reasons stated below, HRD's motion 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, David M. DiGiando, is a firefighter with the Town of Milford's Fire Department (MFD).
2. The Appellant took the April 27, 2024 statewide Fire Lieutenant's promotional examination administered by HRD.
3. The statewide Fire Lieutenant's promotional exam contained three components: (1) a Technical Knowledge (TK) component and (2) a Situational Judgement Test (SJT) component, together worth 80% toward the final exam score; and (3) an ECT&E component worth a maximum of 20% toward the final exam score.

4. The ECT&E component required the submission of an online claim form, together with certain supporting documentation to claim points for ECT&E credit in three categories: Job Experience, within and outside the candidate's current department; Certifications/Training/Licenses; and Education. A maximum of 100 ECT&E points could be claimed, which would be converted by a formula toward the maximum of 20 points that potentially would be added to the candidate's TK and SJT scores to produce the candidate's final exam score.

5. The deadline to submit the on-line ECT&E claim form expired on May 5, 2024.

6. HRD provided all candidates, including the Appellant, with written reminders of the obligation to submit an on-line ECT&E claim form and provided specific instructions on how to access, complete and confirm submission of the E&E claim form.

7. A Candidate Preparation Guide for ECT&E Claims for the Statewide Fire Promotional Exams is accessible on the HRD website. The guide is intended to help candidates familiarize themselves with the ECT&E component of the examination. The "Claim Submission" portion of the Guide begins on page 3 and makes clear that:

"The online ECT&E Claim application is not complete until you have electronically completed and submitted the online ECT&E claim and received a confirmation email acknowledging receipt of the ECT&E Claim application. If you have not received a confirmation email, you must resubmit your online application prior to the submission deadline, until you have received a confirmation email. Candidates should retain a copy of their email for their records. The confirmation email is confirmation that your application has been received. It is not confirmation that all your supporting documents have been accepted. Please review the preparation guide carefully to ensure all the proper documentation is submitted."

8. On April 5, 2024, an ECT&E Claim Instructions email with the subject line "2024 Fire Lieutenant Promotional – ECT&E Instructions" was sent to all applicants including the Appellant. The second paragraph of the 4/5/24 reminder email states: "All ECT&E claims must be submitted electronically through the ONLINE application using the application link below."

The fifth paragraph of the 4/5/24 reminder email provides further instructions on how to submit a claim application and what an applicant must do if there are technological problems.

“The claim application must be electronically submitted online THROUGH THE APPLICATION LINK ABOVE and no later than 11:59 pm on Saturday, May 4, 2024. Late applications will not be accepted. If you do not receive an automated confirmation email after you submit your claim, your ECT&E claim application has not been received by Civil Service and will not be scored. If you have not received a confirmation email, you must resubmit your online application THROUGH THE APPLICATION LINK ABOVE, prior to the submission deadline, until you have received a confirmation email. This will ensure your application is processed under the accurate Person ID number. In the event an unforeseen technological problem prevents you from successfully submitting the online claim, you must notify Civil Service at [civilservice@mass.gov](mailto:civilservice@mass.gov) prior to the deadline above, requesting consideration of the claim, describing the technical issue, and attaching your completed ECT&E claim application and supporting documentation.”

9. Two additional ECT&E reminders were emailed to the Appellant and all other applicants.

Both emails include the following relevant language: “The ECT&E Claim application is an examination component and is separate from the Written Exam application you submitted to take the exam . . . . All ECT&E claims must be submitted electronically through the ONLINE application using the application link below.”

10. On April 28, 2024, the Appellant emailed copies of documents containing his Associate’s Degree in Fire Science, Employment Verification Form and several training certificates. He did not, however, complete the on-line ECT&E form.

11. On June 24, 2024, the Appellant received a notice from HRD informing him of the results of the examination he took on April 27, 2024. The score notice stated (erroneously) that the examination scores were weighted TK (39% or a maximum 39 points), SJT (21% or a maximum of 21 points) and ECT&E (40% or a maximum of 40 points). As the Appellant did not complete an ECT&E Form, he received an INCOMPLETE on that component.

12. The Appellant does not dispute that he failed to complete the on-line ECT&E form and submit it before the deadline of May 4, 2024, as detailed in the instructions he received; nor does he dispute that he received an email confirming the submission of his ECT&E claim; nor does he assert that he contacted HRD via the email link [civilservice@mass.gov](mailto:civilservice@mass.gov) to explain any technical problem he encountered.

13. On June 25, 2024, the Appellant requested that HRD review his ECT&E score. HRD's Civil Service Unit responded to the Appellant explaining that HRD did, indeed, receive the emails and attachments, but that: "Your Civil Service account shows that there was no ECT&E application filled out. Reminders were sent to you on 4/5/2024, 4/19/2024, and 4/30/2024."

14. This appeal to the Commission duly ensued.

15. I deemed HRD's Pre-Hearing Memorandum to be a Motion for Summary Judgment to which the Appellant filed an Opposition on August 8, 2024.

16. After further review of the Appellant's test record, pursuant to Procedural Order dated August 13, 2024, HRD reported that the weights assigned to the components of the examination had been reported incorrectly. In fact, the ECT&E component should have been weighted 20%, and the TK & SJT components together worth 80% of the final score. After recalculating the Appellant's score applying the correct weights, he received an overall passing mark on the examination. HRD placed his name ranked 13<sup>th</sup> on the eligible list established from that examination.

17. On September 16, 2024, the Appellant reported that he still pressed the appeal on the "INCOMPLETE" score awarded to him on the ECT&E component.

## **APPLICABLE LEGAL STANDARD**

The Commission may, on motion or upon its own initiative, dismiss an appeal at any time for lack of jurisdiction or for failure to state a claim upon which relief can be granted. 801 CMR 1.01(7)(g)(3). 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**

The undisputed facts, viewed in a light most favorable to the Appellant, establish that this appeal must be dismissed.

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]”.

Here, the Appellant did not follow HRD’s instructions for submitting an ECT&E claim. I understand the Appellant’s frustration with the mechanics of completing an ECT&E claim, but HRD argues that following instructions is a reasonably required part of the examination process. I agree.

The Commission defers 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, generally, 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).<sup>2</sup>

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<sup>2</sup> I have not overlooked the anomaly that awarding zero points to a candidate who did not comply with the ECT&E on-line claim submission process ignores the fact that, by statute, in order to qualify to take the fire service lieutenant examination, HRD must have confirmed that the candidate had served as a sworn firefighter for a minimum period prescribed by the statute – here, one year. It is not clear that the small difference such an allowance could make in each candidate’s final place on an eligible list would affect the bottom line of this, or any other, case in which the adjusted ranking of an affected candidate would still fall far below the level at which promotions

In sum, consistency and equal treatment are important hallmarks of basic merit principles under civil service law. The present appeal presents no basis for the Commission to deviate from its well-established line of decisions directly on point; instead, it will defer to HRD's exercise of reasonable expertise in the matter of ECT&E claim design and scoring.

## CONCLUSION

For the reasons stated above, HRD's Motion For Summary Decision is *allowed*, and the Appellant's appeal under Case No. B2-24-111 is *dismissed*.

Civil Service Commission

/s/Paul M. Stein

Paul M. Stein

Commissioner

By vote of the Civil Service Commission (Bowman, Chair; Dooley, McConney & Stein, Commissioners; [Markey, Commissioner – Absent]) on October 17, 2024.

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 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:

David M. DiGiando (Appellant)

Aezad Aftab, Esq. (for Respondent)

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are actually made. It would behoove HRD to review whether it would be logical and feasible to reconsider this point, however, so that it is prepared to explain why it does or does not chose to make such an allowance in future promotional examinations.