

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

100 Cambridge Street – Suite 200

Boston, MA 02114

617-979-1900

MICHAEL A. DONOVAN,

Appellant

v.

HUMAN RESOURCES DIVISION,

Respondent

Docket Number:

B2-24-117

Appearance for Appellant:

Nourhene Chtourou, Esq.
Barrault and Associates, LLC
3 Boulevard Street
Milton, MA 02108

Appearance for Respondent:

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

Commissioner:

Paul M. Stein

DECISION ON RESPONDENT’S MOTION FOR SUMMARY DECISION

On July 16, 2024, the Appellant, Michael A. Donovan, a Lieutenant with the City of Cambridge, MA Fire Department (CFD), appealed to the Civil Service Commission (Commission)¹, 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 Captain examination. I held a remote pre-hearing conference on this

¹ 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.

appeal on July 29, 2024. Pursuant to a Procedural Order issued that day, on August 9, 2024, the Appellant submitted an offer of proof containing the facts that he contended would excuse the Appellant's failure to file the required on-line ECT&E form necessary to receive any credit for that component of the exam within the time allowed by HRD's instructions. On September 6, 2024, HRD responded to the offer of proof and filed a Motion for Summary Decision—to which the Appellant filed an Opposition on October 11, 2024. On October 21, 2024, I held a hearing on HRD's Motion for Summary Decision via remote videoconference. After carefully reviewing the submissions and oral arguments of the parties, I have determined that the Appellant has not raised sufficient issues of fact and law that would warrant a full evidentiary hearing and that HRD's Motion for Summary Decision should be allowed.

UNDISPUTED FACTS

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

1. The Appellant, Michael A. Donovan,² is a CFD Fire Lieutenant.
2. The Appellant took the April 24, 2024 statewide Fire Captain's promotional examination administered by HRD.
3. The statewide Fire Lieutenant's promotional exam contained a Technical Knowledge (TK) component and a Situational Judgement Test (SJT) component together worth a total of 80% toward the final exam score, plus 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

² Different submissions by or on the Appellant's behalf contain different spellings of the Appellant's last name. I have chosen to adopt the spelling contained in the Affidavit personally signed by the Appellant.

Experience, within and outside the candidate's current department; Certifications/Training/Licenses; and Education.

5. The deadline to submit the on-line ECT&E claim form expired at 11:59 P.M. on May 4, 2024. At that time, the ECT&E link is automatically programmed to close and no longer is accessible to candidates.

6. On April 5, 2024 and, again, on April 19, 2024 and April 30, 2024, HRD provided all candidates, including the Appellant, with email 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 ECT&E claim form. The emails contained, among other instructions, the following:

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. ... *In the event an unforeseen technological problem prevents you from successfully submitting the online claim, you must notify Civil Service at civilservice@mass.gov prior to the deadline above, requesting consideration of the claim, describing the technical issue, and attaching your completed ECT&E Application and supporting documentation. (Emphasis added)*

7. On May 4, 2024, the Appellant logged on to the HRD Application Link and proceeded to prepare the on-line ECT&E claim form and attached documentation.

8. The Appellant had been waiting to receive documentation from a former employer that was needed to complete the on-line claim process. For personal reasons attributed to the employer, and through no fault of the Appellant, he did not receive the necessary documentation until about 10 pm on May 4, 2024.

9. The Appellant's Offer of Proof established that he logged on to the Application Link at 4:53:44 pm on May 4, 2024 and downloaded information from that site and that from 11:28:23 pm

on May 4, 2024 through 11:59:56 on May 4, 2024, the Appellant visited the Application Link multiple times.

10. The Appellant “completed the uploads and submitted the application” but “[t]he application froze several times during the multiple steps where the applicant was instructed to save and proceed. ... It eventually freed-up and allowed me to access the final submission screen, which I did immediately, which led to a blank screen as the clock struck 11:59 PM.”

11. The Appellant had “received the reminder emails” and knew from his review of the claim instructions that “the Captain Exam Prep Guide . . . indicated that if a technical problem prevents uploading, I was instructed to scan and upload all documents to an email, then submit to the email address provided.”

12. At 12:12 am on May 5, 2024, the Appellant sent an email to civilservice@mass.gov:

I have encountered an issue where after several attempts, I was unable to certify and submit my ECT&E Form. I am unsure of the issue and require assistance. Please advise. I am unsure if my department security protocols on my laptop are interfering with Civil Service servers, but it seems that may be the issue. I utilize this device for management of all documents and have not experienced this before.

If someone could assist me at their earliest convenience, I would greatly appreciate it.

13. On Monday, May 6, 2024, at 12:21 am, the Appellant received notice that his message to civilservice@mass.gov was not delivered.

14. On Monday May 6, 2024, at 3:24 pm, the Appellant sent another email to civilservice.@mass.gov in which he stated:

Please see the message below. I am resending two emails (this is 1 of 2) from Saturday May4th night/early Sunday May 5th morning.³ The technical issue I

³ The record includes a copy of only one prior email sent by the Appellant to civilservice@mass.gov. Neither the May 5, 2024 email nor the May 6, 2024 email make reference to any enclosures or attached documents.

have been experiencing also seems to be affecting emails, as these two were rejected by the server. I imagine others [sic] candidates are experiencing this as well. Thank you in advance, for your consideration.

15. On May 7, 2024, HRD’s civil service unit responded to the Appellant:

Unfortunately, we are unable to open the application once it is closed. There have been no other emails regarding a technical issue. Three notices were sent to your email in the month of April with instructions on this exam component. Please refer to your appeal rights once scores are issued.

16. As a result of his failure to submit a completed ECT&E claim, the Appellant received an INCOMPLETE score on the ECT&E component. As his marks on the other two components did not put him above the passing grade, he received an overall failing score on the examination.

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 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 Dep’t, 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. Nor does it appear disputed that the Appellant knew that, when he encountered technical difficulties submitting his ECT&E claim, he needed to inform HRD of this problem by email and to attach all the necessary documents needed to process his claim prior to the 11:59 pm deadline. He does not appear to have done so.⁴ I understand the Appellant’s frustration with the mechanics of completing

⁴ I understand that the record may be a bit ambiguous as to what, precisely, the Appellant sent to HRD on May 5, 2024 and May 6, 2024. On this record, however, I must find that there was only one email sent on May 5, 2024 and one on May 6, 2024, neither of which attached the required claim forms or supporting documents. If there is something that I have overlooked, however, the Appellant is free to raise that matter by way of a timely motion to reconsider. Otherwise, under the standards for decision of a motion for summary decision, I must conclude that there is no “reasonable expectation” that the Appellant can dispute HRD’s position that no such claim or supporting documents were provided either on-line or by email.

an ECT&E claim, but HRD argues that following instructions is a reasonably required part of the examination process. I agree, especially as it applies to a candidate for a senior fire service command position, where good judgment and response under pressure are critical parts of the job.

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 particular, 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).

In sum, consistency and equal treatment are important hallmarks of basic merit principles under civil service law. The present appeal presents no basis to deviate from its well-established line of decisions directly on point. Instead, I 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 to For Summary Decision is ***allowed***, and the Appellant's appeal under Docket Number B2-24-117 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 January 9, 2025.

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:

Nourhene Chtourou, Esq (for Appellant)

Ashlee Logan, Esq. (for Respondent)