

COMMONWEALTH OF MASSACHUSETTS

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

MICHAEL T. DUNN,
Appellant
v.

B2-24-007

HUMAN RESOURCES DIVISION,
Respondent

Appearance for Appellant:

Michael T. Dunn, *Pro Se*

Appearance for Respondent:

Tracy Conlon, 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 and Education (E&E) component of the statewide Police Sergeant’s examination as “incomplete” because the Appellant failed to submit the necessary E&E on-line claim form, erroneously believing that emailing information to HRD would be sufficient compliance with the exam instructions.

DECISION ON RESPONDENT’S MOTION FOR SUMMARY DECISION

On January 11, 2024, the Appellant, Michael T. Dunn, a Holyoke police officer, appealed to the Civil Service Commission (Commission)¹, after HRD denied his request for review of his score on the Experience and Education (E&E) component of the September 23, 2023 statewide Police Sergeant’s examination. I held a remote pre-hearing conference on this appeal on January 30, 2024. On February 27, 2024, pursuant to a Procedural Order dated January 31, 2024, HRD filed a Motion

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.

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. The Appellant did not file any response to HRD's Motion. 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, Michael T. Dunn, is a sworn police officer with the City of Holyoke's Police Department (HPD).
2. Holyoke is a city in Hampden County, MA with a population of less than 50,000.
3. The Appellant initially took the 2022 statewide Police Sergeant's promotional exam administered by the Massachusetts Human Resources Division (HRD).
4. The 2022 statewide Police Sergeant promotional exam was rescheduled for and readministered on September 23, 2023. The Appellant sat for the readministered exam.
5. The statewide Police Sergeant promotional exam contained three components: (1) a Technical Knowledge (TK) component worth a maximum of 56 points (56%) toward a maximum final exam score of 100; (2) a Situational Judgement Test (SJT) component worth a maximum of 24 points (24%) toward the final exam score; and (3) an E&E component worth a maximum of 20 points (20%) toward the final exam score.
6. A final exam score of 66 was required to pass the exam.
7. The E&E component required the submission of an online claim form, together with certain supporting documentation to claim points for E&E credit in three categories: Job Experience, within and outside the candidate's current department; Certifications and Training; and Education. A maximum of 100 E&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.

8. The deadline to submit the on-line E&E claim form expired on September 30, 2023.

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

10. Candidates received an email on September 1, 2023, stating, in relevant part, the following E&E instructions:

The E&E Claim application is a scored, weighted, examination component and is separate from the Written Exam application you submitted to take the exam.

As stated in the exam poster, all E&E claims must be submitted electronically through the ONLINE application using the application link below. There are separate E&E applications for those participating in the 2023 Police Promotional Exams and those participating in the readministered 2022 Police Promotional Exams. Please ensure that you are submitting the correct one for your exam year. Failure to submit the correct E&E application could result in your test component not being scored.

To assist you in filling out the E&E online application, an E&E Prep Guide is available on the Civil Service website as well as under the Resource Section below. Please be advised that, in order to ensure that no one receives any type of unfair advantage in the claim process, we are unable to provide individualized assistance to any applicant. **THIS IS AN EXAMINATION COMPONENT** and it is the responsibility of each candidate to carefully review and follow the instructions.

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

1. Click this application link to access the E&E Claim;
2. Carefully read all information in the posting;
3. Click "Apply";
4. Log in to your account; if you are unable to log into your account, contact the applicant support team for assistance at (855) 524-5627.
5. Complete the online E&E claim as instructed electronically.
6. You have successfully electronically completed and electronically submitted the E&E Claim application when you receive a confirmation email acknowledging receipt of the E&E Claim.

(AN APPLICATION IS NOT COMPLETE UNTIL YOU HAVE ELECTRONICALLY COMPLETED AND SUBMITTED THE ONLINE E&E CLAIM THROUGH THE APPLICATION LINK PROVIDED ABOVE, AND RECEIVED A CONFIRMATION EMAIL)

The claim application must be electronically submitted online THROUGH THE APPLICATION LINK ABOVE and no later than 11:59 pm on **Saturday September 30, 2023**. Late applications will not be accepted. If you do not receive an automated confirmation email after you submit your claim, your E&E claim application has not been received by Civil Service and will not be scored. If you have not received a confirmation mail, you must resubmit your online application THROUGH THE APPLICATION LINK ABOVE, prior to the submission deadline, until you have received a confirmation email. 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 E&E claim application and supporting documentation.

Information on how to provide supporting documentation:

- 1) Scan and attach documents to your online E&E claim application at time of submission.
- or
- 2) Email scanned documents to civilservice@mass.gov and please include E&E in the subject line, provide your name, personal identification number, and exam you have applied for.

(HRD Motion, Attch. 1, emphasis in original)

11. On September 19, 2023, candidates were again provided with the E&E instructions by email, with the instructions stating:

YOU ARE RECEIVING THIS EMAIL AS A REMINDER TO SUBMIT YOUR ONLINE EDUCATION AND EXPERIENCE CLAIM IF YOU HAVE NOT ALREADY DONE SO.

...

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.

As stated in the exam poster, all E&E claims must be submitted ONLINE.

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

- a. Click here to access the application
- b. Carefully read all information in the posting;
- c. Click "Apply";
- d. Log in to your account;
- e. Complete the online E&E claim as instructed.
- f. 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)

The claim application must be submitted online and no later than 11:59 pm on **Saturday September 30, 2023**. Late applications will not be accepted. If you do not receive an automated confirmation email after you submit your claim, your E&E claim application is considered incomplete and will not be accepted.

Information on how to provide supporting documentation:

1. Scan and attach documents to your online E&E claim application at time of submission
2. Email scanned documents to civilservice@mass.gov

Please note that E&E is an exam component, and therefore, you must complete the online E&E claim. Supporting documentation will **NO LONGER** be collected at the exam site. Information must be attached to your online application or emailed to civilservice@mass.gov.

Inquiries regarding completion of the claim will not be accepted or responded to. It is the responsibility of each candidate to carefully review and follow the instructions.

(HRD Motion, Attch. 2, emphasis in original)

12. On September 28, 2023, candidates were provided with the E&E instructions for a third time by email, with the instructions, again, stating:

YOU ARE RECEIVING THIS EMAIL AS A REMINDER TO SUBMIT YOUR ONLINE EDUCATION AND EXPERIENCE CLAIM IF YOU HAVE NOT ALREADY DONE SO.

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.

As stated in the exam poster, all E&E claims must be submitted **ONLINE**.

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

1. Click here 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)

The claim application must be submitted online and no later than 11:59 pm on Saturday September 30, 2023. Late applications will not be accepted. If you do not receive an automated confirmation email after you submit your claim, your E&E claim application is considered incomplete and will not be accepted.

Information on how to provide supporting documentation:

1. Scan and attach documents to your online E&E claim application at time of submission
2. Email scanned documents to civilservice@mass.gov

Please note that E&E is an exam component, and therefore, you must complete the online E&E claim. Supporting documentation will NO LONGER be collected at the exam site. Information must be attached to your online application or emailed to civilservice@mass.gov.

Inquiries regarding completion of the claim will not be accepted or responded to. It is the responsibility of each candidate to carefully review and follow the instructions.

(HRD Motion, Attch. 3, emphasis in original)

13. On December 21, 2023, HRD issued its score notice to the Appellant, informing him that he had received a TK score of 30.28 (out of 56 possible maximum points), received an SJT score of 18.57 (out of 24 possible maximum points), and scored INCOMPLETE on the E&E component due to failure to complete the on-line E&E claim form, resulting in a zero E&E component score. Thus, the Appellant's combined TK and SJT score was 48.85, rounded to a final exam score of 49. This final exam score is 17 points short of the passing final score of 66. The Appellant was informed that he had failed the exam.²

14. On December 29, 2023, the Appellant timely filed an E&E appeal with HRD email to the HRD Civil Service Unit. His email stated: . . .[A]bove are the documents that I sent to you on September 29, 2023 to you [sic]. I . . . show that it went through and I have saved the e

² As a veteran, the Appellant would be entitled to an additional two points added to his final exam score, but only if his overall score on the three exam components equaled a passing grade.

mail in my files. I made several phone calls, left messages and no phone calls back until yesterday and was instructed to e mail you again. . . .”

15. By email on December 29, 2023, HRD’s Civil Service Unit responded to the Appellant explaining that HRD did, indeed, receive the emails and attachments, but that “you failed to submit an E&E application [on-line] by the deadline of September 30, 2023” as required, noting the three reminders described above that were sent to him prior to the deadline.

16. HRD has no record, and the Appellant has provided no proof that, prior to September 30, 2023, he submitted an E&E on-line claim form in accordance with the instructions he received; nor that he received an email confirming the submission of his E&E claim; nor that he contacted HRD via the email link civilservice@mass.gov to explain the technical problem he encountered.

17. Based on the HRD Scoring Guide used to score the E&E component of the Statewide Police Sergeant exam, and the information filed by the Appellant to the Commission in this appeal, my I am unable to conclude that the Appellant’s potential E&E score would reach the 17+ E&E score he needed to pass the Sergeant’s exam.³ Moreover, even if he achieved that minimum passing score, it would place him near the bottom of the current eligible list for HPD Police Sergeant established by HRD on February 24, 2024, below approximately 20 other candidates who achieved higher scores on the September 2023 exam. Thus, I conclude that, even with full E&E credit, the Appellant was unlikely to achieve a passing score and, even if he did, his chances for promotion to HPD Sergeant during the life of the current eligible list are remote at best.

³ According to the HRD Scoring Guide and the data provided by the Appellant, he arguably would have been able to claim 40.75 “Job Experience” Points for 23+ years of service as a reserve and permanent HPD Police Officer and 21.00 “Education” points for a Bachelor’s Degree in Criminal Justice. When these raw points are converted to the maximum E&E test component scale of 20, that produces a rough estimate for the Appellant’s total E&E test score in the range of 12.35 (i.e., 61.75×0.2), well below the target needed for the Appellant to earn a passing overall exam score.

18. On January 12, 2024, the Appellant filed this timely appeal with the Commission.

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 E&E claim. I understand the Appellant’s frustration with the mechanics of completing an E&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 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).⁴

⁴ I have not overlooked the anomaly that HRD’s decision to award zero points to a candidate who did not comply with the E&E on-line claim submission process ignores the fact that G.L. c. 31, § 59 requires, in order for HRD to have allowed the Appellant to sit for the statewide police sergeant examination, he must have been a sworn SPD patrol officer for a minimum period prescribed by the statute – here, one year. I believe there is a legitimate question whether, denying a candidate the minimum credit for such job experience he needed to be allowed to take the exam could be found arbitrary and unreasonable. The Commission does not need to address this

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 E&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 Case No. B2-24-007 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, and Tivnan, Commissioners) on April 18, 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:

Michael T. Dunn (Appellant)
Tracy Conlon, Esq. (for Respondent)

anomaly, here, as a credit for the minimum one year of service would produce an E&E score of only one point or so, well below any threshold required to raise the Appellant to a passing score. The Commission reserves consideration of this point, however, in any future case where it would make a difference.