

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

MATTHEW DUPONT,
Appellant

B1-16-157

v.

HUMAN RESOURCES DIVISION,
Respondent

Appearance for Appellant:

Pro Se
Matthew Dupont

Appearance for Respondent:

Mark Detwiler, Esq.
Human Resources Division
One Ashburton Place: Room 211
Boston, MA 02108

Commissioner:

Christopher C. Bowman

ORDER OF DISMISSAL

1. On September 17, 2016, the Appellant, Matthew Dupont (Mr. Dupont), took the civil service examination for Environmental Police Officer (EPO) which was administered by the state's Human Resources Division (HRD).
2. The EPO civil service examination consisted of seventy (70) multiple choice questions.
3. According to Mr. Dupont, the study guide for the examination contained color photographs, including color photographs of a large mouth bass and a small mouth bass.
4. According to Mr. Dupont, the civil service examination questions contained black and white photographs, including one asking the exam taker to look at the black and white picture of a fish and identify the fish's species.
5. Mr. Dupont believes he may have answered the question wrong as a result of the study guide photographs being in color while the photographs on the examination were in black and white.
6. HRD has not yet notified applicants of their examination marks.

7. On September 20, 2016, Mr. Dupont filed an appeal with the Civil Service Commission (Commission).

Legal Standard

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

“Except as otherwise provided by sections sixteen and seventeen, an applicant may request the administrator to conduct one or more of the following reviews relating to an examination: (1) a review of the marking of the applicant's answers to essay and multiple choice questions; (2) a review of the marking of the applicant's training and experience; (3) a review of a finding by the administrator that the applicant did not meet the entrance requirements for the examination; provided, however, that the administrator may deny such request in the case of a competitive examination for original appointment if, at the time such request is made, the administrator is currently accepting applications for a subsequent examination of the same type for the same position.

Such request for review of the marking of the applicant's answers to essay questions, of the marking of the applicant's training and experience, or of a finding that the applicant did not meet the entrance requirements for appointment to the position shall be filed with the administrator no later than seventeen days after the date of mailing by the administrator of the notice to the applicant of his mark on the examination or his failure to meet the entrance requirements for appointment to the position.” (*emphasis added*)

G.L. c. 31, § 23 states in relevant part

“Within six weeks after receipt of a request pursuant to section twenty-two, the administrator shall, subject to the provisions of this section, conduct such review, render a decision, and send a copy of such decision to the applicant. If the administrator finds that an error was made in the marking of the applicant's answer to an essay question, or in the marking of the applicant's training and experience, or in the finding that the applicant did not meet the entrance requirements for appointment to the position, the administrator shall make any necessary adjustment to correct such error.”

G.L. c. 31, § 24 states in relevant part

“An applicant may appeal to the commission from a decision of the administrator made pursuant to section twenty-three relative to (a) the marking of the applicant's answers to essay questions; (b) a finding that the applicant did not meet the entrance requirements for appointment to the position; or (c) a finding that the examination taken by such applicant was a fair test of the applicant's fitness to actually perform the primary or dominant duties of the position for which the examination was held. Such appeal shall be filed no later than seventeen days after the date of mailing of the decision of the administrator. The commission shall determine the form of the petition for appeal,

provided that the petition shall include a brief statement of the allegations presented to the administrator for review. After acceptance of such an appeal, the commission shall conduct a hearing and, within thirty days, render a decision, and send a copy of such decision to the applicant and the administrator.”

The commission shall refuse to accept any petition for appeal unless the request for appeal, which was the basis for such petition, was filed in the required time and form and unless a decision on such request for review has been rendered by the administrator. In deciding an appeal pursuant to this section, 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.”

Analysis

Mr. Dupont took the EPO examination, but has not yet received his examination marks from HRD. *Upon receiving his examination marks from HRD*, he will have seventeen days from the date of mailing to request a review of the marking of his answers to essay and multiple choice questions; training and experience; or any finding by HRD that he did not meet the entrance requirements for the examination.

In regard to any further appeal to the *Commission*, Mr. Dupont would not be able to contest any adverse decision by HRD related to *multiple choice questions* as Section 24 does not provide for such review. See Hickey v. Civ. Serv. Comm'n & Human Resources Division, 60 Mass.App.Ct 1104 (2003) (Issued Pursuant to Rule 1:28).

Conclusion

For these reasons, Mr. Dupont’s appeal under Docket No. B1-16-157 is hereby *dismissed*.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan) on October 27, 2016.

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:

Matthew Dupont (Appellant)

Mark Detwiler, Esq. (for Respondent)