

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, ss.

**CIVIL SERVICE COMMISSION**  
One Ashburton Place: Room 503  
Boston, MA 02108  
(617) 979-1900

CATHERINE EVANS,  
Appellant

v.

B2-21-144

HUMAN RESOURCES DIVISION,  
Respondent

Appearance for Appellant:

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Appearance for Respondent:

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Commissioner:

Christopher C. Bowman

**DECISION ON CROSS-MOTIONS FOR SUMMARY DECISION**

On August 13, 2021, the Appellant, Catherine Evans (Appellant), a Fire Alarm Operator at the Boston Fire Department (BFD), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the state's Human Resources Division (HRD) to award her no education and experience (E&E) points on a recent promotional examination for Senior Fire Alarm Operator. On September 7, 2021, I held a remote pre-hearing conference which was attended by the Appellant, her co-counsel, two other Appellant representatives, and counsel for HRD. I issued two procedural orders and the parties submitted cross motions for summary decision.

Based on the submissions of the parties, the statements made at the pre-hearing conference and a review of the entire record, it appears that the following facts are undisputed, unless otherwise noted:

1. On May 28, 2021, HRD administered the written portion of the Senior Fire Alarm Operator examination (examination). The examination had a registration deadline of April 20, 2021.
2. Two individuals were allowed to sign up to take the examination after April 20, 2021; one on April 21<sup>st</sup> and the other on April 22<sup>nd</sup>.
3. The examination consisted of two components: the written examination and the E&E claim.
4. The examination poster notified candidates that the written examination was weighted 60% and the E&E was weighted 40%.
5. The examination poster specifically addressed the E & E claim component:

**Education & Experience (E&E):** *All candidates must complete the 2021 Fire Alarm Operator Promotional Series E&E Claim application online. Instructions regarding this E&E Claim application will be emailed to candidates prior to the examination date. A confirmation email will be sent upon successful submission of an E&E Claim application.*

All claims and supporting documentation must be received within seven calendar days following the examination. Please read the instructions for submitting claims and supporting documentation carefully. Supporting documentation must be scanned and attached to your application or sent to [civilservice@mass.gov](mailto:civilservice@mass.gov) no later than June 4, 2021.

Please note that:

- a. E&E is an examination component, and therefore must be completed by the examinee.
- b. *Failure to complete this component as instructed will result in a candidate not receiving any credit for E&E.*
- c. Credit for E&E will be calculated for all candidates.

*Please be sure to read the instructions carefully. No phone calls or email inquiries regarding the content of this exam component will be accepted or responded to. Once you receive your examination mark, you will have 17 calendar days from the mailing of your*

mark to appeal in writing your E&E score. (emphasis added).

6. Another examination poster specifically outlined instructions for submitting an E & E claim. It stated that the deadline for filing a claim is by 11:59 pm on June 4, 2021. *Id.* In relevant part it stated:

ONLY ONLINE EDUCATION AND EXPERIENCE CLAIMS WILL BE ACCEPTED.  
SUBMITTING AN E&E CLAIM IN A WAY OTHER THAN THROUGH THE  
ONLINE CLAIM PROCESS WILL RESULT IN A FAILING E&E COMPONENT  
SCORE.

....

**Summary Of The Online Education & Experience (E&E) Claim Process:**

**You Will Rate Yourself:** In this examination component you will rate your own education, training, and work experience against a standard schedule. You will do so by filling out this Online Education & Experience (E&E) Claim. A standard schedule is a list of all types and levels of education, training, work experience, licensure, and other credentials which demonstrate your qualifications for the examination title and for which you may receive credit toward your overall final examination score. Everything that will receive credit is outlined in this Online E&E Claim. Each section of the standard schedule is preceded by specific instructions. The amount of credit that corresponds to each item on the schedule will receive has been determined in advance and is displayed in parentheses next to each response. E&E credit will be scored for all candidates.

IT IS IMPORTANT THAT YOU READ ALL THE INSTRUCTIONS BEFORE  
COMPLETING THE ONLINE E&E CLAIM. FAILURE TO DO SO MAY RESULT IN

A LOWER SCORE.

....

IF YOUR CLAIM AND SUPPORTING DOCUMENTATION ARE NOT RECEIVED  
BY **11:59PM ON JUNE 4, 2021**, IT WILL NOT BE CONSIDERED.

**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. The Senior Fire Alarm Operator classification requires the ability to read and understand instructions and takenecessary steps to remember and implement them. Failure to follow any instructions in regards to this examination component is cause for disqualification.

7. On May 7, 2021, HRD emailed all applicants, including the Appellant,  
instructions on completing the E & E component. The email stated:

Please pay close attention to the following regarding the submission of your Education & Experience (E&E) Claim.

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 Friday, June 4, 2021. 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.

or

2) Email scanned documents to [civilservice@mass.gov](mailto: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](mailto: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. *Id.*

8. On May 19, 2021, HRD emailed all applicants, including the Appellant, instructions on submitting a multiple choice item review or fair test appeal.

Attachment 4 (May 19, 2021 Fair Test Appeal Instructions Email). The email stated:

Dear 2021 Senior Fire Alarm Operator-Boston Applicant,

If, following the upcoming examination, you wish to submit a multiple choice item review or a fair test appeal, you must go to the civil service website linked below.

**2021 Promotional Exam Review:**

<https://www.governmentjobs.com/careers/massachusetts/jobs/2944087/2021->

promotional-exam-

review?keywords=promotional&pagetype=jobOpportunitiesJobs"

Go through the application process, attach any relevant documents, and then submit.

Sincerely,

Civil Service Unit

9. On May 28, 2021, HRD emailed all applicants, including the Appellant, reminder instructions about submitting their E & E claims.
10. On May 28, 2021, the Appellant completed the written portion of the examination.
11. The deadline for completing the E&E claim of the examination was June 4, 2021 (seven days after the written examination).
12. On May 29, 2021, the Appellant received an email with information regarding how to file an examination appeal with HRD with a link to access the online form.
13. On June 4, 2021, the deadline for completing the E&E portion of the examination, the Appellant apparently opened the May 29, 2021 email on her phone and clicked on the link to file an examination appeal, which she was not seeking to do.
14. The Appellant submitted a 2021 Promotional Exam review, stating that she was seeking a Multiple Choice Item Review and attached documentation of her education and experience.<sup>1</sup>

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<sup>1</sup> The Appellant's brief states that the "link brought her to a page that she described as appearing to fill out a new application, where she was asked to fill in her work history and education." Based on the statements at the pre-hearing, it is overwhelming clear that the link that the Appellant clicked on that day was the examination appeal link and NOT the E&E module, as referenced in Finding 6.

15. As the Appellant never accessed and completed the online E&E portion of the examination (by accessing the link in either the May 7<sup>th</sup> or May 28<sup>th</sup> emails, there was no E&E component for HRD to score.
16. HRD has no record of the Appellant completing an online E & E claim.
17. On July 9, 2021, the Appellant received her scores from HRD: 90 for the written portion of the examination (60%); and 0 for the E & E portion of the examination (40%).
18. As a result of receiving 0 points for the E & E portion of the examination, the Appellant received a total (failing) score of 54.
19. Other candidates who did not complete online E & E claims received a 0 for that portion of the examination and failed the examination.
20. On July 13, 2021, the Appellant filed an E & E appeal with HRD, attaching the same E&E supporting documentation that she submitted as part of her examination appeal on June 4, 2021.
21. On July 27, 2021, HRD denied the Appellant's E & E appeal.
22. HRD also denied the E & E appeals of other candidates who did not complete online E & E claims and received a 0 for that portion of the examination.
23. On August 13, 2021, the Appellant filed an appeal with the Commission, again including the supporting E&E documentation.

### *Motion for Summary Decision Standard*

When a party is of the opinion there is no genuine issue of fact relating to all or part of a claim or defense and he or she is entitled to prevail as a matter of law, the party may move, with or without supporting affidavits, for summary decision on the claim or defense. 801 CMR 1.01(7)(h). These motions are decided under the well-recognized standards for summary disposition as a matter of law i.e., "viewing the evidence in the light most favorable to the non-moving party", the substantial and credible evidence established that the non-moving party has "no reasonable expectation" of prevailing on at least one "essential element of the case", and has not rebutted this evidence by "plausibly suggesting" the existence of "specific facts" to raise "above the speculative level" the existence of a material factual dispute requiring an evidentiary hearing. See e.g., Lydon v. Massachusetts Parole Board, 18 MCSR 216 (2005). Accord Milliken & Co., v. Duro Textiles LLC, 451 Mass. 547, 550 n.6 (2008); Maimonides School v. Coles, 71 Mass.App.Ct. 240, 249, (2008). See also Iannacchino v. Ford Motor Company, 451 Mass. 623, 635 36, (2008) (discussing standard for deciding motions to dismiss); cf. R.J.A. v. K.A.V., 406 Mass. 698 (1990) (factual issues bearing on plaintiff's standing required denial of motion to dismiss).

### *Applicable Civil Service Law*

Section 2(b) of G.L. c. 31 authorizes appeals to the Commission from persons aggrieved by "... any decision, action or failure to act by the administrator, except as limited by the provisions of section twenty-four relating to the grading of examinations ...". It provides, in relevant part, as follows:

"No decision of the administrator involving the application of standards established by law or rule to a fact situation shall be reversed by the commission except upon a finding that such decision was not based upon a preponderance of evidence in the record."

Pursuant to G.L. c. 31, § 5(e), HRD is charged with: “conduct[ing] examinations for purposes of establishing eligible lists.”

Section 22 of G.L. c. 31 states in relevant part: “In any competitive examination, an applicant shall be given credit for employment or experience in the position for which the examination is held.”

Section 24 of G.L. c. 31 allows for review by the Commission of exam appeals. Pursuant to § 24, “...[t]he 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.”

In *Cataldo v. Human Resources Division*, 23 MCSR 617 (2010), the Commission stated that “... under Massachusetts civil service laws and rules, HRD is vested with broad authority to determine the requirements for competitive civil service examinations, including the type and weight given as ‘credit for such training and experience as of the time designated by HRD.’ G.L. c. 31, § 22(1).”

### *Analysis*

It is undisputed that Ms. Evans, and all applicants who took this examination, had until June 4, 2021 to file an E&E Claim with HRD. All applicants were to have completed the E&E portion of the examination *online*. HRD has no record of the Appellant completing the online E&E module and, as of the filing deadline, had no recorded responses to the questions in the E&E module for the Appellant. That distinguishes this appeal from another decision being issued by the Commission today, *Silva v. Human Resources Division*, B2-21-247. In *Silva*, the Appellant did indeed access the E&E module, downloaded the questions, provided answers to

each question and then provided those answers to HRD via email prior to the E&E submission deadline. Here, consistent with information gathered at the pre-hearing conference, HRD has a record of Ms. Evans clicking on the link to file an *examination appeal* on June 4, 2021 and attaching documentation to support what she erroneously believed was her E&E application.

What occurred here falls more squarely with the facts in a series of appeals denied by the Commission in which the Appellant, for whatever reason, failed to complete the online E&E component of the examination<sup>2</sup>, which all applicants were on notice included:

“A standard schedule [with] a list of all types and levels of education, training, work experience, licensure, and other credentials which demonstrate your qualifications for the examination title and for which you may receive credit toward your overall final examination score. Everything that will receive credit is outlined in this Online E&E Claim. Each section of the standard schedule is preceded by specific instructions. The amount of credit that corresponds to each item on the schedule will receive has been determined in advance and is displayed in parentheses next to each response.”

Ms. Evans has not produced any evidence to show that she answered the questions to complete this E&E module online, nor did she receive a confirmation email from HRD stating that she did so. The simple explanation for this is that the Appellant never accessed the E&E module to complete the questions. Rather, using her phone, she clicked on the wrong link and erroneously filed an examination appeal, which she was not intending to do.

While I am not unsympathetic to the Appellant’s plight here, the facts clearly establish that the Appellant is not an aggrieved person as she was not harmed through no

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<sup>2</sup> See, e.g., *Wetherbee v. Human Resources Division*, 34 MCSR 173 (2021); *Amato v. Human Resources Division*, B2-21-044 (2021); *Flynn v. Human Resources Division*, B2-20-039 (2020); *Whoriskey v. Human Resources Division*, B2-20-028 (2020) (“Since the Appellant cannot show that he followed HRD’s instructions regarding E & E component, he cannot show that he has been harmed through no fault of his own.”); *Pavone v. Human Resources Division*, 28 MCSR 611 (2015).

fault of her own. Rather, she unfortunately failed to follow the instructions on a component of the examination that comprised 40% of the examination.

Finally, I simply don't believe that HRD's decision to allow two individuals to sign up to take the examination shortly after the filing deadline is inconsistent with HRD's decision to deny the Appellant's E&E appeal. Rather, what is more compelling is that HRD denied the appeals of all other applicants who did not complete the online E&E module in the manner and timeframe required.

### *Conclusion*

For all the reasons cited above, HRD's Motion for Summary Decision is allowed and the Appellant's appeal is hereby *dismissed*.

Civil Service Commission

/s/ Christopher Bowman  
Christopher C. Bowman  
Chair

By a vote of the Civil Service Commission (Bowman, Chair; Camuso, Stein and Tivnan, Commissioners) on May 20, 2022.

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:  
Devin R. McDonough, Esq. (for Appellant)  
Douglas Louison, Esq. (for Appellant)  
Melissa Thomson, Esq. (for Respondent)