

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

100 Cambridge Street – Suite 200

Boston, MA 02114

617-979-1900

ROBERT FALETRA,

Appellant

v.

HUMAN RESOURCES DIVISION,

Respondent

DOCKET No.:

E-24-136

Appearance for Appellant:

Robert Faletra, *pro se*

Appearance for Respondent:

Sheila B. Gallagher, Esq.

Labor Counsel

Human Resources Division

100 Cambridge Street – Suite 600

Boston, MA 02114

Commissioner:

Paul M. Stein

SUMMARY OF DECISION

The Commission dismissed the Appellant's appeal challenging his place on the Peabody Police Lieutenant's Eligible List, based on the alleged failure to award him credit for 25-years of service that HRD had allowed to another similarly situated candidate. The results of a related investigation opened by the Commission revealed that neither the Appellant nor the other candidate qualified for the credit, and the Appellant has not been aggrieved.

DECISION

On July 31, 2024, the Appellant, Robert Faletra, a Police Sergeant with the City of Peabody Police Department (PPD), appealed to the Civil Service Commission (Commission)¹, after HRD denied his request for two points to be added to his score on the Police Lieutenant's Promotional Examination for 25-years of service. A pre-hearing conference was held before Commission Chair

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.

Bowman on September 17, 2024. By Procedural Order dated September 23, 2024, HRD was substituted for the City of Peabody. Following a Status Conference before Chair Bowman on November 12, 2024, the Commission opened an investigation (CSC No. I-24-173) into whether HRD's calculation of the 25-year preference was made in compliance with civil service law and then placed this appeal in abeyance pending further proceedings in the investigation. This appeal and the related investigation were assigned to me. As a result of the information discovered through the related investigation, it now appears that the Appellant has been correctly placed on the eligible list, HRD will be correcting other errors it made in establishing that list, and the Appellant is not aggrieved by any of HRD's actions. Accordingly, the Commission exercises its discretion, pursuant to 801 CMR 1.01(7)(g)(3), to dismiss this appeal on its own initiative for lack of jurisdiction or for failure to state a claim upon which relief can be granted.

UNDISPUTED FACTS

1. Between June 29, 1993, and December 12, 1999, Sergeant Faletra served as a Peabody reserve police officer and worked approximately 7,400 private detail hours during that time period.
2. On December 12, 1999, Sergeant Faletra was appointed as a permanent, regular, full-time PPD Police Officer.
3. On September 22, 2023, Sergeant Faletra electronically submitted an Employment Verification Form (EVF) to HRD as part of a promotional examination for PPD Police Lieutenant.
4. Section V of the EVF has the heading "Reserve or Intermittent Time as Police Officer" and provides fields for the candidate to enter their "rank", "total # of hours (include if part-time)"; and "dates of service".
5. Sergeant Faletra left Section V of the EVF Form, which was signed by PPD Chief Griffin, blank. Another Peabody Police Sergeant, Sergeant Stephen Zampitella, who sat for the same

promotional examination submitted an EVF to HRD at or around the same time. Sgt. Zampitella did include private detail hours worked as a Peabody police officer.

6. On September 23, 2023, HRD administered the examination for Peabody police lieutenant. Prior to May 15, 2024, HRD released the scores to the candidates.

7. Sergeant Zampitella, who had claimed additional time based on time served working details as a reserve PPD Police Officer, filed an appeal with HRD.

8. HRD reviewed Sergeant Zampitella's appeal and granted him two additional points for 25 years of service.

9. In fact, Sergeant Zampitella had a total of 24 years and four months of service. Even counting his reserve time, he is not eligible for the 2-point preference for 25 years of service.

10. On May 15, 2024, HRD established the Peabody Police Lieutenant's Eligible List. The rank order of the candidates, as set forth below, placed the Appellant tied in 5th place with one other candidate and placed Sgt. Zampitella in 3rd place:

- I Javier Sanchez
- 2 Timothy Sullivan
- 3 Stephen Zampitella**
- 4 James Harkins
- 5 Robert Faletra**
- 5 Stephanie Lane

11. If service only as a full-time regular PPD police officer, but not reserve time, was counted for purposes of the 25-year preference, the rank order of the candidates on the current PPD Police Lieutenant's eligible list would be as follows:

- 1 Javier Sanchez
- 1 Timothy Sullivan
- 3 James Harkins
- 4 Robert Faletra**
- 4 Stephanie Lane
- 4 Stephen Zampitella**

12. The PPD has three vacancies for PPD Police Lieutenant. The PPD Police Chief had been awaiting the outcome of this matter prior to making the promotions.

13. HRD now has confirmed and, on December 19, 2024, in the related investigation, the Commission has ordered, that the proper rank order of candidates in the Peabody Police Lieutenant's eligible list is the order set forth in Paragraph 11 above.

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.

First, the Appellant's E&E claim did not include sufficient information to entitle him to a 2-point credit for 25 years of service. HRD acted within its discretion to deny the Appellant's subsequent attempt to claim that credit. 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]."

Second, to allow the Appellant a credit for 25 years of service based, in part, on a period of reserve time in which he exclusively performed details, but did not perform any other duties of a full-time regular police officer would be inconsistent with the statutory requirements for such a credit prescribed in G.L. c. 31, Section 59, as recently construed by the Appeals Court in Ralph v. Civ. Serv. Comm'n & another, 100 Mass. App. Ct. 199, 205-206 (2021). In Ralph, a published and therefore binding decision, the court concluded in part that:

[T]he Legislature considered "member of a regular police force" as referring to a person's status as a regular police officer, rather than, for example, a reserve, intermittent, or call officer. See Lawrence v. Civil Serv. Comm'n, 66 Mass. App. Ct. 309, 313 (2006) ("In the first sentence of the third paragraph of § 59 . . . , the Legislature has provided a means by which police officers who are not on the regular force, but are instead on either the reserve or intermittent police forces,

may be included on the list" [emphasis added]). . . . [Likewise,] auxiliary police officers are akin to reserve, intermittent, or call officers and are not members of a regular police force within the meaning of G.L. c. 31, § 59.

Third, HRD has agreed, or will be ordered, to correct the eligible list so that Sgt. Zamparelli is moved from 3rd place to a tie with the Appellant in 5th place on the Peabody Police Lieutenant's Eligible List. Thus, if the three candidates eventually selected for promotion to PPD Police Lieutenant do not include Sgt. Faletra, the selection of any of those other candidates will not be a bypass of the Appellant for which he would have a right of appeal to the Commission. If Sgt. Faletra is not selected, however, his name would then move up to within the so-called 2n+1 formula so that he would be guaranteed consideration for the next appointment of a PPD police lieutenant during the life of the current eligible list.

CONCLUSION

For the reasons stated above, the Appellant's appeal under Case No. E-24- 136 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 & Stein, Commissioners) on December 19, 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)(1), 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:
Robert Faletra
James Harkins
Stephen Zampitella
Police Chief Thomas Griffin
Donald L. Conn, Jr., Esq. (City of Peabody)
Sheila Gallagher, Esq. (HRD)
Erik Hammerlund, Esq. (HRD)