

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

MICHAEL FOLEY,
Appellant

v.

B2-18-005

HUMAN RESOURCES DIVISION,
Respondent

Appearance for Appellant:

Pro Se
Michael Foley

Appearance for Respondent:

Patrick Butler, Esq.
Human Resources Division
One Ashburton Place: Room 211
Boston, MA 02108

Commissioner:

Christopher C. Bowman

DECISION

On January 4, 2018, the Appellant, Michael Foley (Mr. Foley), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the state's Human Resources Division (HRD) to deny him any points for the Education and Experience (E&E) exam component, resulting in his receipt of a failing score on the 2017 Police Sergeant exam and exclusion from the eligible list.

On January 30, 2018, I held a pre-hearing conference at the offices of the Commission which was attended by Mr. Foley and counsel for HRD. A status conference was held on February 6, 2018 and a full hearing was held at the same location on March 12, 2018.¹ CDs were made of

¹ The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§ 1.00, *et seq.*, apply to adjudications before the Commission with G.L. c. 31, or any Commission rules, taking precedence.

the digitally-recording hearing. A copy was retained by the Commission and both parties were provided with copies as well.²

FINDINGS OF FACT:

Based upon the documents entered into evidence, the testimony of:

Called by HRD:

- Gilbert LeFort II, HRD Civil Service Unit;

Called by Mr. Foley:

- Michael Foley, Appellant;

and taking administrative notice of all matters filed in the case and pertinent statutes, regulations, policies, and reasonable inferences from the credible evidence, I make the following findings of fact:

1. Mr. Foley is currently employed as a police officer for the City of Everett (City)'s Police Department.
2. On August 8, 2017, Mr. Foley applied online to take the promotional examination for police sergeant.
3. On September 16, 2017, Mr. Foley sat for the written component of the police sergeant promotional examination, administered by HRD.
4. Prior to the examination, on September 8, 2017, HRD notified Mr. Foley (and other exam applicants) via email that he had from September 8, 2017 through September 23, 2017 to take the "education and experience" component of the examination.

² If there is a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to supply the court with a transcript of this hearing to the extent that he/she wishes to challenge the decision as unsupported by substantial evidence, arbitrary or capricious, or an abuse of discretion. In such cases, this CD should be used by the plaintiff in the judicial appeal to transcribe the recording into a written transcript.

5. The September 8, 2017 notice instructed applicants to click on a link to access the “applications page” of HRD’s candidate tracking program, known by HRD as NEOGOV, and to “select the posting titled ‘2017 Police Department Promotional Education and Experience Claim’”.
6. The September 8, 2017 notice also stated in part:

“8. 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).** **(EMPHASIS IN ORIGINAL).**”
7. The September 8, 2017 correspondence again reiterates, “[i]f 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.”
8. When a candidate clicks on the link (in the 9/8/17 email) to access the “Applications Page” of NEOGOV, the first link is always titled: “Update Civil Service Account”. Selecting this link directs the applicant to his/her personal information section where he/she can update information related to name, address, etc. The application may also upload documents through this “Update Civil Service Account” section.
9. For those applicants, such as Mr. Foley, who had previously signed up for the police sergeant promotional examination, the next link stated: “2017 Police Department Promotional Education and Experience Claim.”
10. On September 22, 2017, one (1) day prior to the deadline for completing the E&E component of the examination, Mr. Foley clicked on the link from the September 8, 2017 email to access the “Applications Page” of NEOGOV.

11. After reviewing all of the evidence, including a simulated demonstration by HRD at the full hearing, I find that, when he accessed the “Applications Page” on September 22, 2017, Mr. Foley clicked on the first link titled “Update Civil Service Account” (as opposed the “2017 Police Department Promotional Education and Experience Claim”) and proceeded to upload the supporting documentation for the E&E component of the promotional examination.
12. Further, based on the same review, I find that Mr. Foley either did not access (at all) the “2017 Police Department Promotional Education and Experience Claim” link or, in the alternative, he accessed this link, but failed to complete the process by answering all of the questions and then clicking “Certify and Submit”.
13. It is undisputed that Mr. Foley never received a confirmation email stating that he had completed the E&E component of the examination.
14. As a result of not completing the E&E component of the examination, Mr. Foley received a failing score for this component, which resulted in him receiving a failing score on the overall examination.
15. This appeal followed.

Legal Standard

G.L. c. 31, § 2(b) addresses appeals to the Commission regarding 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, *inter alia*,

“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.

G.L. c. 31, § 22 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.”

G.L. c. 31 § 24 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 Mr. Foley, and all applicants who took this most recent police sergeant promotional examination, had until September 23, 2017, to complete the E&E component of the examination.

As part of the full hearing before the Commission, HRD employee Gil LeFort walked through a demonstration of the E&E online module that all applicants must navigate in order to file their E&E claim. Based on that demonstration, the documentation submitted and the testimony of Mr. LeFort and Mr. Foley, I have concluded that, on September 22, 2017, Mr. Foley: a) logged into his account; b) accessed the “Update Civil Service Account” section; c) uploaded supporting documentation for the E&E component via this section; and d) either failed to access or accessed and failed to complete the E&E component of the examination, by either failing to answer the questions and/or failing to click certify and submit.

Here, as in Pavone v. HRD, 28 MCSR 611 (2015), I am required to determine whether Mr. Foley is an aggrieved person. To do so, I must find that he was harmed through no fault of his own. He was not.

HRD informed all candidates, including Mr. Foley, that a confirmation email is sent upon successful submission of the E&E exam component. Unequivocally, the September 8, 2017 of E&E Claim instructions put Mr. Foley on more than adequate notice, by twice stating in the same email, that the E&E claim is not complete unless a confirmation email is received. Mr. Foley never received such a confirmation email as he never completed the E&E component. For these reasons, Mr. Foley is not an aggrieved person and relief by the Commission is not warranted.

Conclusion

Mr. Foley's appeal under Docket No. B2-18-005 is hereby ***denied***.

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, Commissioners) on March 29, 2018.

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:

Michael Foley (Appellant)

Patrick Butler, Esq. (for Respondent)