

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

SHAWN GLEASON,
Appellant

v.

B2-15-163

HUMAN RESOURCES DIVISION,
Respondent

Appearance for Appellant:

Pro Se
Shawn Gleason

Appearance for Respondent:

Michael Downey, Esq.
Human Resources Division
One Ashburton Place: Room 211
Boston, MA 02108

Commissioner:

Christopher C. Bowman

DECISION

On August 11, 2015, the Appellant, Shawn Gleason (Mr. Gleason), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the state's Human Resources Division (HRD) to deny him credit for his Education and Experience (E&E) exam component, resulting in his receipt of a failing score on the 2015 Correction Officer III (CO III) exam and exclusion from the eligible list.

On September 1, 2015, I held a pre-hearing conference at the offices of the Commission which was attended by Mr. Gleason and counsel for HRD. A full hearing was scheduled for September 10, 2015.¹ Prior to the commencement of the hearing, the parties stipulated to various

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.

facts. Based on those stipulations, which are dispositive of this appeal, no full hearing was necessary. HRD submitted a post-hearing proposed decision; Mr. Gleason opted not to.

FINDINGS OF FACT:

HRD submitted seven (7) documents. Based upon the documents entered into evidence, the undisputed facts 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. Gleason is presently employed as a Correction Officer II (CO II) with the Massachusetts Department of Correction (DOC). Exhibit 1.
2. The 2015 CO III exam consisted of two (2) components: a written exam component, administered on May 16, 2015; and the Education and Experience (E&E) component. The passing score for the exam is a 70. The weight afforded to the written exam component is 60% and the E&E exam component is 40%. Exhibit 2, p1.
3. On or about April 14, 2015, Mr. Gleason applied for the 2015 CO III written exam. Exhibit 3.
4. By correspondence dated May 8, 2015², HRD notified Mr. Gleason to appear at John W. McDevitt Middle School in Waltham, MA on May 16, 2015 for the written component of the CO III exam. Exhibit 4.
5. The May 8, 2015 notice states as follows:

**You will receive an email with instructions on how to file your
E&E Claim today, Friday, May 8, 2015. All E&E supporting
documentation can be uploaded at the time when the E&E**

² All communications and notices regarding civil service exams are communicated electronically, by email.

Claim is submitted. To confirm that your E&E Claim was received successfully, you will receive a confirmation email after submission. E&E documents MUST BE SUBMITTED no later than 11:59pm on MAY 23, 2015. Exhibit 4 (emphasis in original).

6. By correspondence dated May 8, 2015, HRD notified Mr. Gleason of the instructions for submitting the E&E claim. The notice states:

Please pay close attention to the following regarding the submission of your Education and Experience Claim.

The Education and Experience claim is a separate application than the Written Exam application. In order to receive a final score for the 2015 Correction Officer III Promotional Series examination and to be placed on an eligible list, you must complete an Education and Experience (E&E) claim. Exhibit 5 (emphasis in original).

7. The May 8, 2015 correspondence gives numbered instructions on accessing the E&E exam component. The last instruction, number 8, states:

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).

Exhibit 5 (emphasis in original).

8. The May 8, 2015 correspondence again reiterates, “[i]f you do not receive an individual automated confirmation email after you submit your claim, your E&E claim application is considered incomplete.” Exhibit 5.
9. The May 8, 2015 correspondence further states, “[p]lease note that the *E&E is an examination component*, and therefore, you must complete the Online E&E Claim yourself... Please read the instructions carefully. Exhibit 5 (emphasis added).
10. The deadline for all candidates for the CO III exam to complete the E&E exam component, including the online submission of the E&E Claim and submission to HRD of supporting documentation, was May 23, 2015, seven (7) days after the written exam component was administered. Exhibits 4 & 5.
11. Mr. Gleason sat for the written exam component on May 8, 2015.
12. On or about July 3, 2015, the scores of the Correction Officer III promotional examination were emailed to the candidates, including Mr. Gleason.
13. Mr. Gleason’s examination results notice notified him that he failed the CO III exam. Under the “Score by Subject,” it indicated that the E&E exam component was “NOT SCORED; FAILURE TO COMPLETE EDUCATION AND EXPERIENCE CLAIM.” Exhibit 6 (emphasis in original).
14. Mr. Gleason filed an Examination Appeal, acknowledged as filed by the Civil Service Commission on July 13, 2015, a timely appeal. Exhibit 7.
15. On October 26, 2015, the day of the scheduled full hearing, Mr. Gleason acknowledged that he did not submit the online CO III E&E exam component. Rather, he erroneously believed that he completed this component when he first registered for the examination.

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. Gleason, and all applicants who took this most recent CO III examination, had until March 28, 2015 to file an E&E Claim with HRD. With the exception of supporting documentation, all applicants, as of this examination cycle, must complete the E&E

application *online*, using an off-the-shelf software program (NEOGOV) that was purchased by and customized for HRD.

Mr. Gleason acknowledges that he never completed the online E&E component of the examination. Rather, he now realizes that he erroneously thought that he had completed this component when he first registered for the promotional examination.

I am not unsympathetic to Mr. Gleason's plight here. When first registering for the examination, all applicants are required to respond to certain questions such as their highest educational achievement, etc. While it is understandable that this might initially cause Mr. Gleason to think he completed the online E&E component, HRD, on multiple occasions throughout the examination process, explicitly instructs candidates on how and when the E&E online component must be completed. It appears that Mr. Gleason disregarded those multiple notifications.

Empathy aside, I am required here to determine whether Mr. Gleason is an aggrieved person. To do so, I must find that he was harmed through no fault of his own. He was not. Despite receiving multiple notifications on how and when to complete the E&E online component, Mr. Gleason failed to do so.

Further, relief is not appropriate because the E&E Claim is a scored exam component comprising 40% of the overall examination score; not simply a formality.

HRD is vested with broad authority pursuant to M.G.L. c. 31 § 22 to determine the passing requirements of exams. Here, HRD determined that submission of the online E&E Claim is a requirement to passing the CO III promotional examination. Mr. Gleason's failure to follow HRD's instructions cannot be excused on an exam component where part of the measured abilities is the implementation of instructions.

Conclusion

Mr. Gleason's appeal under CSC Docket No. B2-15-163 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 January 7, 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:

Shawn Gleason (Appellant)
Michael Downey, Esq. (for Respondent)