

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

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

MICHAEL GOGGIN,

Appellant

v.

B2-15-110

**BOSTON POLICE DEPARTMENT *and*
HUMAN RESOURCES DIVISION,**

Respondents

Appearance for Appellant:

Michael Goggin, *Pro Se*

Appearance for Respondent, HRD:

Melissa Thomson, Esq.
Human Resource Division
One Ashburton Place
Boston, MA 02108

Appearance for Respondent, BPD:

Nicole I. Taub, Esq.
Boston Police Department
1 Schroeder Plaza
Boston, MA 02120-2014

Commissioner:

Paul M. Stein

DECISION ON HRD' S MOTION FOR SUMMARY DECISION

The Appellant, Michael Goggin, acting pursuant to G.L.c.31,§2(b) & §24, appealed to the Civil Service Commission from the decision of the Massachusetts Human Resources Division (HRD) to deny his request to add Education and Experience (E&E) points to his score on the competitive examination he took for promotion to the position of Police Sergeant with the Boston Police Department (BPD). Following the pre-hearing conference held by the Commission on June 30, 2015, HRD moved for Summary Decision on the grounds that the Appellant's request was not supported by any facts that qualified him for the E&E points he sought and, therefore, the appeal failed to state a claim upon which relief can be granted.

FINDINGS OF FACT

Based on the submission of the parties, I find the following facts are not in dispute:

1. The Appellant, Michael Goggin, is a BPD Police officer who took and passed the promotional examination for Police Sergeant administered by the BPD under a Delegation Agreement with HRD on June 28, 2014. (*HRD Motion [LeFort Aff't]*; *Claim of Appeal*)

2. E&E claims were one component of the promotional examination. E&E points are awarded based on education, training and work experience as determined by a candidate's self-reporting of the information, including any required supporting documentation, that qualifies him or her for points according to the provisions of BPD's E&E Rating Sheet. (*HRD Motion [LeFort Aff't]*)

3. In the education category, BPD's E&E Rating Sheet Instructions notified candidates that points were granted "only for whole and conferred degrees from regionally accredited higher education institutions, and not for individual, semester hours or degree credits. Semester hours earned in an unfinished degree program or in a non-degree (Certificate) program are not eligible for E&E credit." The instructions also state:

If you have multiple conferred degrees and have applied the same course credits from one degree to another, you must provide official transcripts for those degrees. Upon reviewing your transcripts, BPD/HRD will grant you full education and experience points for one degree, but will prorate the points for your additional degrees to account for any course overlap.

(*HRD Motion [LeFort Aff't]*)

4. HRD received 713 E&E claims from BPD police officers who took the three promotional examinations for BPD Sergeant, Lieutenant and Captain administered in 2014. The same scoring principles were applied to all candidates. All candidates were awarded education points only for whole and conferred degrees. No points were granted for individual credits and/or semester hours in an unfinished degree program. (*HRD Motion [LeFort Aff't]*)

5. Officer Goggin submitted a request to be awarded education points for his studies at the University of Massachusetts at Boston where he was enrolled in the College of Management. The documentation he submitted to support his claim disclosed that he had “149 credits toward a Bachelor’s Degree in Management with an additional major in Criminal Justice, and will need four courses after the Spring 2015 semester to complete my academic requirements.” (*HRD Motion, p. 2; Appellant’s Memo to Devin Taylor dated 4/1/15 and attachments*)

6. Officer Goggin also stated:

I have also provided a handwritten letter from a Criminal Justice Advisor at UMass Boston. This letter states that the university does not award Associate’s degrees but many institutions award Associate’s degrees upon the attainment of 60 semester hour [sic] and that I have exceed the 60 credit threshold. . . .

. . .

I ask that my total educational points reflect that I have attained an Associate’s degree in both the field of Criminal Justice and Management. I have also attained additional semester hours and ask that these point [sic] also be reflected in my score.

(*Appellant’s Memo to Devin Taylor dated 4/1/15 and attachments*)

7. Officer Goggin provided letters from the UMass Boston College of Management and the Department of Criminal Justice attesting to his status and, specifically, that, although the University of Massachusetts does not award Associate’s Degrees, he had earned more than the number of credits typically required (60) at other institutions that do confer such a degree. He also supplied a letter from the UMass Boston Office of the Registrar, along with an attested copy of his official Transcript and Enrollment Verification that he remained enrolled and was expected to complete his undergraduate requirements at the end of the current Spring Semester on or about 5/29/2015. The transcript identified that, among the 149 semester hour credits he had earned (including approved transfer credits earned at Nichols College) were: Criminal Justice – 27 credits; Law – 3 credits; Management – 36 credits; Information Management – 9 credits; Sociology/Psychology – 15 credits; and Expository Writing/Effective Speaking – 6 credits. The

other credits related to courses in Mathematics, Economics, Accounting and Finance – 24 credits and miscellaneous other courses – 29 credits. (*Appellant’s Memo to Devin Taylor dated 4/1/15 and attachments*)

8. By letter dated May 12, 2014, Officer Goggin was informed that his request for education credits had been reviewed by HRD and his appeal was denied. The reason for the denial was stated: “Education: No credit for individual, semester hours or degree credits, ONLY whole and conferred degrees.” This appeal duly ensued. (*HRD Motion, p. 2-3; Claim of Appeal*)¹

STANDARD OF REVIEW

An appeal before the Commission may be disposed of summarily, in whole or in part, pursuant to 801 C.M.R. 1.01(7)(g) and 801 C.M.R.1.01(7) (h) when, as a matter of law, the undisputed material facts affirmatively demonstrate that there is “no reasonable expectation” that a party can prevail 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)

ANALYSIS

Pursuant to G.L.c.31, §22, HRD “determine[s] the passing requirements of examinations.” G.L.c. 31, §3 directs that HRD shall make rules which include provisions for “open competitive and other examinations to test the practical fitness of applicants.” According to the Personnel Administration Rules (PAR) promulgated by HRD, “[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

¹ HRD had originally sent Officer Goggin two conflicting letters, one indicating that his final score reflected an addition for education credit and one reflecting that no addition had been granted. This mistake was clarified and, in fact, the Appellant’s final score does not reflect any credit for the education points he requested that are at issue in this appeal. (*HRD Motion, p. 2*)

administrator [HRD] which shall include credits for elements of training and experience related to the position for which the examination is held.” PAR.6(1)(b) (*emphasis added*)

The Commission has consistently deferred to HRD’s discretion in designing and administering competitive civil service examinations. As stated in Carroll v. Human Resources Division, 27 MCSR 157 (2014):

“There can be little doubt that the cited [civil service] statutes reflect a Legislative intent to endow HRD with considerable discretion in crafting, administering and scoring examinations, as well as crediting education as part thereof.”

Id. 27 MCSR at 161-62 and cases cited. See also Merced v. Human Resources Division, 28 MCSR 396 (2015) (affirming HRD’s requirement that university teaching credit required faculty status of adjunct professor or higher); Cataldo v. Human Resources Division, 23 MCSR 617 (2010) (noting HRD’s broad authority to determine the “type and weight” given to training and experience) While HRD’s discretion is not unfettered, so long as the rule has been clearly established, it is reasonable and firmly grounded in common sense”, and HRD has uniformly applied it, the Commission will not disturb HRD’s rational judgment in matters that directly involve its technical expertise in the administration of examinations. E.g., Clarke v. Boston Police Dep’t, CSC No. B2-15-58, 29 MCSR --- (2016); Merced v. Human Resources Division, 28 MCSR 396 (2015)

Here, HRD’s rule that a candidate for promotion to a superior officer in the BPD will be allowed education credit only for “whole and conferred degrees” has clearly been uniformly applied and fairly disclosed to all candidates. HRD’s proffered justification for the rule, however, is not based on a considered expert opinion that only conferred degrees, and not individual courses, carry the necessary indicia of the “practical fitness” of a candidate to be used as “elements of training and experience related to the position” of a BPD police Sergeant. Rather, HRD argues that it “does not have the expertise required to review course credits earned

by Appellant and determine whether his courses appropriately comprise an Associate's degree program in Appellant's majors."

HRD'S position puts the Commission in a difficult position and makes this a closer case than it might otherwise have been. As noted below, the Commission will accept HRD's reasonable judgment in a matter within its technical expertise, but, here, HRD disavows having the expertise to judge whether Officer Goggin's record demonstrates relevant "elements of training and experience" worthy of credit toward an examination that tests his "practical fitness" for a promotion. Moreover, Officer Goggin's argument for allowing him credit is well-reasoned and logical. He contends, in effect, that it does not meet the test of being "reasonable and firmly grounded in common sense" to award additional points to the exam score of a peer who chose to complete an Associate's Degree (and even may have gone further in his education), but to award no credit to someone in his position who chose to transfer from a two-year program prior to graduation and continue, diligently, to pursue a university conferred Bachelor's Degree instead.

The record is clear that, in some circumstances, HRD does review transcripts and assesses their content in order to apportion the record of a candidate with more than one conferred degree. HRD also distinguished the fields of study that get more weight (Category 1- Business administration, management, public administration, political science, law, criminal justice, criminology, sociology, human services, psychology, education, or computer science) from all other fields (Category 2). Taken to the extreme, a candidate who received a Category 2 Associate's in Science Degree, say in Culinary Arts from Bunker Hill Community College, will have earned 63 course credits, of which 6 credits are required in College Writing, 3 credits in Math, and 3 credits in the field of the "Individual and Society", with all the rest in the fields of nutrition, culinary arts and hospitality. See <http://www.bhcc.mass.edu/programsofstudy/>

[programs/culinaryartsoption/](#) Under the current HRD rules, such a candidate would qualify for a Category 2 education credit. Even a candidate with a Category 1 Associate's Degree in Criminal Justice is required to have earned about 18 course credits in the field of Criminal Justice. <http://www.bhcc.mass.edu/programsofstudy/programs/criminaljusticeprogram/> Yet, by HRD's current rules, a candidate, such as Officer Goggin, whose record, on its face, demonstrated that he has some 90 course credits under his belt in Category 1 fields of study (Criminal Justice, Law, Management, Information Management, Sociology), gets zero education credit for these substantially greater and directly relevant "elements of his education and training". This result seems both illogical and inconsistent with "basic merit principles" that govern the civil service system, which requires, among other things the "advancing of employees on the basis of their relative ability, knowledge and skills" and "assuring that all employees . . . are protected from arbitrary and capricious actions." G.L.c.31, §1.

I am mindful of the limited resources available to HRD and the difficult job it has to manage those resources to fulfil its statutory duties under civil service law as best it can. That said, however, civil service rights should not be sacrificed solely for administrative convenience.² The addition of education credits has real meaning to the career advancement potential of a BPD police officer. Those points can make the difference between a candidate's placement on the eligible list and, since civil service law requires that the BPD may consider only a specific number of candidates for promotion (the so-called "2n+1 rule), the differences could put the candidate with a Category 1 or 2 Associates Degree in high enough position for consideration, but leave those in Sgt. Goggin's situation lower on the list and out of contention for the position.

²It is worth noting that the 2014 promotional examination administered through a Delegation Agreement between HRD and BPD was the product of a "comprehensive" collaborative analysis that addressed long-standing concerns with the examination process and that over \$1,600,000 was spent in its development. See Findings of Fact, Rulings of Law and Order, Smith v. City of Boston, -- F.Supp.3d --, 2015 WL 7194554 at 9-10 (November 16, 2015). See also, Lopez v. City of Lawrence, 2014 U.S. Dist. LEXIS 124139, appeal pending, No. 14-1952 (1st Cir. 2014)

The Commission is confident that HRD can apply its expertise to design a rational method that provides fair credit to the valuable training and experience of a candidate such as Officer Goggin without undue burden on the administrative process. To be sure, there is considerable room for judgment to define the criteria to measure what cumulative credits ought to qualify as an equivalent to a “conferred” Associate’s Degree, what documentation is required to substantiate that courses are “elements of training and experience” that are relevant to a candidate’s “practical fitness” for a position, or what process will most efficiently ensure that proper “credit is given where credit is due.” Whatever the appropriate standard may be, however, there can be no reasonable doubt that Officer Goggin’s record is well above that standard. He has been enrolled, and, at the time he claimed credit, remained diligently enrolled in, a course of study that included completion of approximately 50% more education credits than the total credits required for most Associate’s Degrees, all of which he earned in fields that HRD has determined to be directly relevant to the fitness of a Police Sergeant, with an expected completion date only a few months away. Thus, on the undisputed facts presented here, the Commission is persuaded that Officer Goggin has established he should be granted the same education credit for his continuously diligent study, completing some 90 credits in Category 1 fields, as a candidate who received an Associate’s Degree after earning far fewer credits in even one of those fields.

CONCLUSION

Accordingly, for the reasons stated, HRD’s Motion for Summary Decision is **denied** and the Appellant’s appeal under Docket No. B2-15-110 is **allowed**. HRD is ordered to adjust Officer Goggin’s overall examination score to add the same number of education credits as granted to candidates who received such credit for having a “conferred” Associate’s Degree in a Category

1 field of study. Nothing in this Decision is intended to preclude HRD from developing another rule for awarding education credits consistent with merit principles as expressed above for future competitive examinations.

Civil Service Commission

/s/ Paul M. Stein

Paul M. Stein
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein & Tivnan, Commissioners) on February 4, 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 a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the Commission's 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:

Michael Goggin (Appellant)
Melissa A. Thomson, Esq. (for HRD)
Nicole Taub, Esq. (for BPD)