

COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION
100 Cambridge Street – Suite 200
Boston, MA 02114
617-979-1900

JERMAIN GRAHAM,
Appellant

B2-23-153

v.

HUMAN RESOURCES DIVISION,
Respondent

Appearance for Appellant:

Jermain Graham, *Pro Se*

Appearance for Respondent:

Melissa Thomson, Esq.
Labor Counsel
Human Resources Division
100 Cambridge Street, Suite 600
Boston, MA 02114

Commissioner:

Paul M. Stein

Summary of Decision

The Commission dismissed as untimely the appeal of the scoring of the Appellant's education, certifications, training / licenses and education (ECT&E) component of the Boston Fire Lieutenant Promotional Examination.

DECISION ON RESPONDENT'S MOTION TO DISMISS

On August 17, 2023, the Appellant, Jermain Graham, appealed to the Civil Service Commission (Commission)¹, pursuant to G.L. c. 31, §§ 22-24, from the review by the Human Resources Division (HRD) of certain portions of the Education, Certifications, Training / Licenses and Education (ECT&E) component score on the Boston Fire Lieutenant Promotional Examination administered by HRD on March 25, 2023. A remote pre-hearing conference (Webex) was held on September 11, 2023. On September 27, 2023, HRD filed a Motion to Dismiss the Appeal, to which the Appellant responded on October 4, 2023. After considering HRD's Motion to Dismiss and the Appellant's response, I have determined that,

for the reasons stated below, the Appellant's appeal should be dismissed.

UNDISPUTED FACTS

Based on the submissions of the parties, the following facts are not disputed:

1. The Appellant, Jermain Graham (FF Graham), is a Firefighter with the Boston Fire Department. (BFD).

2. FF Graham took the Boston Fire Lieutenant Promotional Exam, which consisted of three components – a Technical Knowledge (TK) written examination and Situational Judgment (SJ) written exercises, administered by HRD on March 25, 2023, and the ECT&E component, which required completion of the prescribed claim form and submission of supporting documentation on or before April 1, 2023.

3. On June 15, 2023, HRD issued the score notice to FF Graham. As to his ECT&E score, HRD stated:

Your ECT&E was amended in the following way: Q(3): Work experience recalculated Claimed (5 years) Amended (No experience) No supporting documentation; Q(4): Work experience recalculated Claimed (3 months up to 6 months) Amended (7 months up to 1.5 years); Q(6): Supervisor Work experience not within Fire Dept. recalculated Claimed (15 years) Amended (No experience) No supporting documentation; Q(7): Certifications earned recalculated Claimed (8 or more Certifications earned) Amended (1 Certification earned) - Certs of attendance, completion and/or training not creditable; Q(10): Related Degree Claimed (Related Bachelor's degree) Amended (No degree) Insufficient verification. (emphasis added)

4. On June 15, 2023, supplemented on June 23, 2023, FF Graham filed a request for HRD review of the rejection of his claims to supervisory experience outside a fire department (Q6); certifications (Q7); and a related bachelor's degree (Q10). HRD also confirmed that FF Graham had been credited his veteran's preference points.

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.

5. On July 18, 2023, HRD issued FF Graham a revised ECT&E score notice which modified the prior notice and allowed him credit for 4 years of documented fire service supervisory time during his service in the United States Coast Guard (Q6).

6. On August 17, 2023, 30 days after receiving his revised ECT&E score from HRD, FF Graham filed this appeal with the Commission. His appeal sought review of his claims to credit for employment with a fire service other than Boston, i.e., five years prior services with the Brookline Fire Department (Q3), his certifications (Q7), and his bachelor's degree (Q10).

7. FF Graham did not submit documentation to support his Q3 claim for prior Brookline Fire Department experience because he assumed HRD had all the necessary information in its NEOGOV (civil service) electronic file to verify his experience in another civil service job.

8. Prior to the pre-hearing conference, HRD counsel conferred with FF Graham. As a result, on September 9, 2023, HRD further corrected FF Graham's ECT&E score and gave him full credit for his bachelor's degree (Q10) and one additional certification (Q7).

9. Based on the revised ECT&E scores, and veteran's preference points, FF Graham's rank on the eligible list at the time of the pre-hearing conference appeared with 16 others in the 147th tie group (out of 200-plus candidates who took and passed the examination).

10. At the pre-hearing conference, HRD explained that the criteria for ECT&E "certification" experience credits on the March 25, 2023 examination was significantly different from the "certificate" credits that HRD had awarded for "E&E" claims in prior examinations. HRD noted that only the certifications issued by two specific accredited bodies in certain specific subjects were eligible for credit.² HRD reviewed all the certificates

² The new ECT&E claim form stated: "Q[7]: Fire Department Promotional Exam Fire Training and Certificates: You may claim those certification and training courses you have passed as of the date of the written exam. You must submit documentation of certifications and training. The following certifications are eligible for credit either through MA Fire

submitted by FF Graham under Q7 and explained why only two of them met the new ECT&E criteria, and that his corrected ECT&E score included credit for both.

11. The Boston Fire Lieutenant Candidate Preparation Guide states, in relevant part, as to work experience documentation:

“Work Experience Outside the Candidate’s Department Documentation

“Claims for work experience can be entered only once; multiple entries of the same work experience will not be scored. Claims may be submitted for firefighter work outside of the candidate’s department, for example military, maritime, auxiliary, cadet, reserve, or non-civil service fire experience. Documentation for that work should be a letter on official letterhead with an original signature indicating start/end dates of service, whether it was a full-or part-time position, and any other relevant information.

“Resumes will not be accepted in lieu of a work verification letter. Leaves of absences or breaks in service will not be counted toward work experience.”

(emphasis added)

12. The instructions on the ECT&E claim form state:

“**VERIFYING EMPLOYMENT/CERTIFICATION/TRAINING/EXPERIENCE CLAIMS:** Supporting documentation must be provided in the form of a dated letter, signed by the appointing authority or your employer (past or present), identifying the position title, type of job responsibilities, dates (MM/DD/YYYY) of experience, whether the experience was full or part-time and other pertinent information concerning your experience. . . . Supporting documentation may be submitted on-line through the ECT&E claim application or emailed to civilservice@mass.gov by 11:59pm on April 1, 2023. Applicants must submit work verification from all employers the applicant is claiming experience. (Note: Resumes are not considered acceptable work verification) Service performed in other departments prior to transferring to the current, specified department, may be claimed only in experience outside your department and be credited only upon having met the criteria. (emphasis added)

Academy, or National Board of Fire Service Professional Qualifications: Firefighter I, Firefighter II, Firefighter I/II, Fire Instructor I, Fire Instructor II, Fire Instructor III, Fire Officer I, Fire Officer II, Fire Officer III, Fire Officer IV, Fire Prevention Officer I, Fire Prevention Officer II, Fire Prevention Officer Credentialing I, Fire Prevention Officer Credentialing II, Basic Fire Investigation, Advanced Fire Investigation, Safety Officer, Public Fire Educator, Fire Inspector I, Fire Inspector II, Haz Mat Technician, Hazardous Materials: Operations Level Responder, Driver Operator/Pumper, Driver Operator/Aerial, Incident Safety Officer, Technical Rescuer: Rope Rescue I/II, Confined Space Rescue I/II, Trench Rescue I/II, Surface Water I/II, Swift Water Rescue I/I.”

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 resolve an appeal before the Commission, in whole or in part, via summary decision may be filed pursuant to 801 C.M.R. 1.01(7)(h). An appeal may be disposed of, however, on summary disposition only 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).

ANALYSIS

Examination appeals are governed by Sections 22 through 24 of Chapter 31 of the General Laws. The undisputed facts, viewed in a light most favorable to FF Graham, establish that, as a matter of law, his appeal to this Commission is untimely and must be dismissed.

First, the statutes provide that an appeal to the Commission from HRD’s “marking of the applicants training and experience” must be filed “no later than seventeen days after the date of mailing of the decision of the administrator [HRD]”. G.L. c. 31, §§ 23 & 24. Here, the Appellant’s appeal to the Commission was filed 30 days after receipt of HRD’s July 18, 2023 notice to him of its decision on his request for HRD’s review of his ECT&E score.

Second, it is a prerequisite to the Commission’s jurisdiction to hear this examination appeal concerning training and experience credits that FF Graham have perfected his right of appeal by duly claiming the credit on his ECT&E claim form and having sought initial review and obtained a decision on such claim from HRD. Section 24 of Chapter 31 specifies:

“The commission shall refuse to accept any petition for appeal [from a decision by HRD on an examination issue] unless the request for appeal, which was the basis for such petition, was filed in the required time and form and *unless a decision on such request for review has been rendered by [HRD]*. In deciding an appeal pursuant to this section, the commission shall not allow credits for training *and experience unless such training or experience was fully stated in the training and experience sheet filed by the applicant at the time designated by [HRD]*.”

G.L. c. 31, § 24 (*emphasis added*)

The Appellant neither “fully” completed the ECT&E claim form (which required detailed employment information and employer verification) nor duly requested a review by HRD of that issue prior to taking this appeal to the Commission.³

Third, as to the Appellant’s claims, other than his Brookline Fire Department service, I am satisfied that, as corrected by HRD, FF Graham has been treated equally with all other candidates and that his corrected ECT&E score duly reflects the credits he claimed and to which he is entitled.

Fourth, I note that, even were FF Graham’s ECT&E score adjusted for his prior service with the Brookline Fire Department, given his position on the eligible list, it is entirely speculative whether any increase in his ECT&E score would make any difference in his chances for promotion from the current eligible list. In future exam cycles, FF Graham will have the opportunity to ensure that he does not make the same errors that tripped him up here.

CONCLUSION

For the reasons stated above, HRD’s Motion to Dismiss is *allowed*, and the Appellant’s appeal under Case No. B2-23-153 is *dismissed*.

³ This decision does not mean to cast any doubt on the veracity of FF Graham’s prior service with the Brookline Fire Department or on the fact that such service is duly documented in HRD’s NEOGOV records. As I have informed the parties, nothing prevents HRD from deciding, in fairness, to accept an amendment to FF Graham’s Brookline Fire Department claim, in its discretion, provided it is not deemed to amount to giving him an unfair advantage

Civil Service Commission

/s/ Paul M Stein

Paul M Stein, Commissioner

By vote of the Civil Service Commission (Bowman, Chair; Dooley, McConney, Stein and Tivnan, Commissioners) on October 19, 2023.

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:

Jermain Graham (Appellant)

Melissa Thomson, Esq. (for Respondent)

Robert J. Boyle, Jr., Esq. (for BFD)

over other candidates who timely complied with the letter of the requirements in the Examination Guide and ECT&E claim form.