

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

100 Cambridge Street – Suite 200
Boston, MA 02114
617-979-1900

KATIE HARRINGTON,
Appellant

G2-24-071

v.

HUMAN RESOURCES DIVISION,
Respondent

Appearance for Appellant:

Pro Se
Katie Harrington

Appearance for Respondent:

Ashlee Logan, Esq.
Human Resources Division
100 Cambridge Street, Suite 600
Boston, MA 02114

Commissioner:

Christopher C. Bowman

SUMMARY OF DECISION

The Commission upheld HRD's decision that the Appellant was ineligible to take the March 25, 2023, Worcester Fire Captain examination because she failed to meet the statutory requirement of being employed in the Worcester Fire Department for at least one year *after being certified for the position of Fire Lieutenant* prior to the date upon which the Worcester Fire Captain examination was initially scheduled to be held.

DECISION ON RESPONDENT'S MOTION FOR SUMMARY DECISION

On May 22, 2024, the Appellant, Katie Harrington, a fire lieutenant in the City of Worcester (City)'s Fire Department, appealed to the Civil Service Commission (Commission)¹, after she

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.

was informed that her eligibility to participate in the Fire Captain promotional examination, originally scheduled for November 2022, and finally administered on March 25, 2023 by the state's Human Resources Division (HRD), had been revoked. I held a remote pre-hearing conference on this appeal on June 25, 2024. HRD filed a Motion for Summary Decision and the Appellant filed what I deemed to be a Cross Motion for Summary Decision. For the reasons stated below, HRD's motion is allowed, and the Appellant's appeal is dismissed.

UNDISPUTED FACTS

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

1. The Appellant is employed in the Worcester Fire Department.
2. While serving as a firefighter, and during a period in which there was no eligible list in place for Worcester Fire Lieutenant, the Appellant served as a *provisional* fire lieutenant beginning on November 30, 2020.
3. As a result of passing a Worcester Fire Lieutenant examination, the Appellant's name first appeared on an eligible list for Worcester Fire Lieutenant on March 4, 2022.
4. On March 20, 2022, the Appellant was promoted to Worcester Fire Lieutenant.
5. Solely for the purpose of deciding this appeal and viewing the facts in the light most favorable to Appellant, I find that the Appellant was first "certified" for Worcester Fire Lieutenant on March 4, 2022.²

² There is a distinction between an eligible list and a certification. A candidate does not become "certified" until they appear on a certification. In the case of promotional appointments, creating a "certification" of names from the eligible list is the responsibility of the Appointing Authority. Applied here, the Appellant would not have been certified until sometime *after* HRD forwarded the eligible list to the City on March 4, 2022 and the City created an actual certification on or before the promotional appointment date of March 20, 2022. Since that information is not part of the record, and because it has no bearing on the outcome of this appeal, I have found, solely for the purposes of deciding this appeal, that the Appellant was first "certified" on March 4, 2022, the date that HRD forwarded the eligible list to the City. That finding should not be

6. The Worcester Fire Captain examination was initially scheduled to be held in November 2022.

7. The City had provided HRD with the name of the Appellant as one of the fire lieutenants eligible to take the November 2022 Worcester Fire Captain examination and she was registered to sit for that examination.

8. In November 2022, due to the decision of the Massachusetts Superior Court in the so-called “*Tatum* litigation”, HRD canceled the examination, issued a notice to those who had registered, including the Appellant, that the examination would not go forward as scheduled, and a new examination would be given at a future date, for which all those who registered for the original exam would be automatically registered.

9. The Appellant sat for the rescheduled Worcester Fire Captain examination on March 25, 2023.

10. On July 24, 2023, HRD notified the Appellant that she had passed the Worcester Fire Captain examination.

11. On July 31, 2023, HRD established the Worcester Fire Captain examination upon which the Appellant’s name appeared.

12. On April 19, 2024, the City notified HRD that the Appellant was ineligible to sit for the Worcester Fire Captain examination.

13. On April 24, 2024, HRD notified the Appellant that her name had been removed from the Worcester Fire Captain eligible list.

considered precedent setting regarding other examination appeals that come before the Commission. It should, however, reinforce to Appointing Authorities the importance of following the certification handbook and creating actual certifications prior to making promotional appointments.

14. On May 22, 2024, the Appellant filed the instant appeal with the Commission.

SUMMARY DISPOSTION 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 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 decided 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). 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 . . . 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 facts and the law, viewed in a light most favorable to the Appellant, establish that this appeal must be dismissed.

Eligibility to sit for a promotional examination is regulated by civil service law. Section 59 of G.L. c. 31 prescribes that “. . . no such [promotional] examination shall be open to any person

who has not been employed in such force for at least one year *after certification* in the lower title or titles to which the examination is open ...".

Thus, pursuant to civil service law, to be eligible to take the Fire Captain examination, the Appellant must have been "employed in such force" for at least one year *after being certified* for the position of the next lower title of Worcester Fire Lieutenant.

The Appellant, when viewing the facts in the light most favorable to her, was first certified for the position of Worcester Fire Lieutenant on March 4, 2022.³ Therefore, as of November 19, 2022, the initially scheduled date of the Worcester Fire Captain examination, the Appellant had only been "employed in such force" for a little more than eight months *after being first certified for the position of Worcester Fire Lieutenant*.

The Appellant first argues that, since she spent at least one year serving as a *provisional* Worcester Fire Lieutenant prior to November 19, 2022, that should somehow deem her eligible to sit for the Fire Captain examination. While that service is commendable, the only service that counts toward the required one-year of "employment in such force" (in any title) is that which occurs *after* being certified for the position of Worcester Fire Lieutenant. As referenced above, the Appellant, at best, was not first certified for Worcester Fire Lieutenant until March 4, 2022.

The Appellant then argues that the cut-off date for calculating the one-year requirement should end on March 25, 2023, the date of the re-scheduled examination, as opposed to November 19, 2022, the date the examination was first scheduled to be held. The civil service law vests HRD with broad authority to design and administer civil service examinations. G.L. c. 31, §§ 3 through 5; § 16 and § 22; Personnel Administration Rules, PAR.06. Generally, absent a

³ Subsequent to the parties submitting their motions, I reviewed additional records submitted to HRD at my request which verify that the Appellant was never certified for Worcester Fire Lieutenant as part of prior examination cycles.

finding that HRD has acted unreasonably, arbitrarily, or otherwise in violation of basic merit principles, the Commission has consistently deferred to HRD's technical expertise in matters involving the design, administration, and interpretation of civil service examinations. See, e.g., Ralph v. HRD, 32 MCSR 73 (2019), *aff'd sub nom. Ralph v. Civil Service Comm'n*, 100 Mass. App. Ct. 199 (2021); Carroll v. HRD, 27 MCSR 157 (2018); Peters v. HRD, 23 MCSR 647 (2010). See also Ash v. Police Comm'r of Boston, 11 Mass. App. Ct. 650, 652 (1981) ("the Personnel Administrator [HRD] is the skilled professional authorized by G. L. c. 31 to decide technical matters such as the scoring and interpretation of examinations.")

Thus, the Commission previously has determined that HRD's decision to use the date that an examination was initially scheduled to be held as the eligibility date for a rescheduled examination is reasonable. See, e.g., Ranahan v. Human Resources Division, 36 MCSR 88 (2023) ("candidates should be able to take the promotional examination and have an eligible list established with the original complement of test takers as had been expected from the original administration.").

Here, HRD initially relied upon erroneous information provided by the City in allowing the Appellant to register for the November 19, 2022, examination and then sit and take the rescheduled examination on March 25, 2023. I do not discount the considerable time and effort that the Appellant diligently invested in studying for and taking a civil service promotional examination in reliance on an error that was not of her doing.⁴ As a general rule, however, the

⁴This situation, once again, illustrates that appointing authorities cannot be presumed to follow all of the nuanced interpretations, frequent changes, and clarifications to civil service law and rules and it would behoove HRD to ensure that appointing authorities regularly receive updates about such matters, especially when they can have significant career consequences for the men and women who have given years of service in vital – and dangerous – public safety positions, such as involved in this appeal. (See [Pasquarello v. HRD](#))

Commission accords HRD discretion to establish reasonable requirements, consistent with basic merit principles, in administering and scoring examinations.

Consistency and equal treatment are important hallmarks of basic merit principles under civil service law. Here, HRD's error was one of omission, not commission, it did not involve affirmatively misleading the Appellant, but in failing to catch the City's erroneous representation that the Appellant was eligible to take the 2022 test until after HRD administered and scored the March 2023 test. In sum, although HRD might have been more vigilant, under the facts and law, the Commission defers to HRD's expertise in decisions involving the administration of civil service examinations.

After submitting her cross motion for summary decision, the Appellant sent email correspondence to the Commission raising a third argument. Specifically, the Appellant submitted an MOA between the City and the local firefighters' union which, in part, set an *additional* requirement to qualify for promotion to Fire Captain, (i.e. – "lieutenants must work 3 years at the rank of Lieutenant to be eligible for promotion to the rank of Captain")—arguably beyond what is required by the civil service law. Regarding this additional requirement, the MOA goes on to state: "Members may take the Civil Service promotional exam prior to achieving eligibility as set forth herein but will not be eligible for promotion until meeting these promotional eligibility criteria."

First, the above provisions in the MOA pertain only to the 3-year in grade requirement to be considered for promotion to Worcester Fire Captain. This additional requirement in the MOA does not conflict with the civil service law to sit for the promotional exam. In fact, the MOA is consistent with civil service law in that regard. As stated above, the civil service law requires that a candidate must be employed in the force for one year after certification in the lower title of

lieutenant in order to be eligible to sit for the Fire Captain examination. Nothing in basic merit principles of civil service law guarantees a promotion or conflicts with Worcester's requirement for minimum service to be promoted to Captain, so long as the requirement does not impair a candidate's ability to take the exam after one year of employment in the force after certification and be certified on an eligible list for future promotion to Captain, which is not the case here.

In sum, the Appellant's appeal foundered on the undisputed fact that she did not meet the statutory civil service requirement of being employed as a Worcester Fire Lieutenant for one year after her name appeared on a certification for promotion to that lower title, a civil service requirement for sitting for the Captain's exam, not on the conditions imposed by Worcester under a CBA for future promotion to Captain after taking an passing the test.

CONCLUSION

For the reasons stated above, HRD's Motion for Summary Decision is ***allowed***, and the Appellant's appeal under Case No. G2-24-071 is ***dismissed***.

Civil Service Commission

/s/ Christopher C. Bowman
Christopher C. Bowman
Chair

By vote of the Civil Service Commission (Bowman, Chair; Dooley, McConney, Stein, and Tivnan, Commissioners) on September 5, 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)(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 to:

Katie Harrington (Appellant)

Ashlee Logan, Esq. (for Respondent)

Theresa M. Reichert, Esq. (for City of Worcester)