

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

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

DANIEL HART,
Appellant

v.

CASE NO. B2-15-27

**MASSACHUSETTS HUMAN
RESOURCES DIVISION,**
Respondent

Appearance for Appellant:

Daniel Hart, Pro Se

Appearance for Respondent:

Patrick G. Butler, Esq.
Labor Counsel
HRD-Legal
One Ashburton Place
Boston MA 02108

Commissioner:

Paul M. Stein

DECISION ON RESPONDENT’S MOTION TO DISMISS

The Appellant, Daniel Hart, a Sergeant in the Waltham Police Department, appealed to the Civil Service Commission (Commission) to contest the action of the Massachusetts Human Resources Division (HRD) in scoring his written civil service examination for Police Lieutenant. The Commission held a pre-hearing conference on March 3, 2015. The parties agreed that the examination consisted entirely of multiple choice questions and that there was no dispute that the answers on Sgt. Hart’s score sheet corresponded to the answers that HRD stated had been recorded in its computerized record system, as reported in its letter to Sgt. Hart dated January 23, 2015. Sgt. Hart contended that, since the same score sheets were used by candidates taking simultaneous examinations for Police Sergeant, Police Lieutenant and Police Captain, with some

questions overlapping and some different sets of questions applicable to each different category, he thought that perhaps the wrong template had been used to score his examination. Sgt. Hart requested that he be permitted to see the answer key to confirm that his test had been properly scored. Sgt. Hart had no other dispute with the testing process.

HRD contended that the Commission lacked jurisdiction to review the scoring of a multiple choice examination, and, even if there were jurisdiction, the disclosure of the answer key was prohibited by exception to the Public Records Law. HRD moved to dismiss the appeal on those grounds. At my request, HRD agreed to consider taking further voluntary steps to verify that Sgt. Hart's score was properly calculated and I deferred action on the motion without prejudice.

On March 9, 2015, HRD counsel reported that two individuals employed with the HRD Civil Service Unit had independently manually rescored Sgt. Hart's test sheet using the applicable Police Lieutenant's scoring key. Each individual produced the same test score as Sgt. Hart originally received when the exam was processed electronically. HRD renewed its motion to dismiss, which Sgt. Hart opposed.

Applicable Legal Standard

A motion to dismiss an appeal before the Commission, in whole or in part, may be filed pursuant to 801 C.M.R. 1.01(7)(h). These motions are decided under the well-recognized standards for summary disposition as a matter of law, i.e., "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

The Commission has been granted the authority, pursuant to G.L.c.31,§2(b), to “hear and decide appeals by a person aggrieved by any decision, action, or failure to act of the administrator [HRD], except as limited by the provisions of section twenty four relating to the grading of examinations.” (*emphasis added*) G.L.c.31, §24 provides that an appeal may be taken to the Commission from a decision by HRD regarding civil service examinations on only three grounds: (a) a dispute over marking of essay questions, (b) claims that HRD erroneously found the applicant did not meet minimum entrance requirements for the position, and (c) claims that the examination was not a “fair test” of the applicant’s fitness for the position. *Id.* The Commission has construed the provisions of civil service law and rules to mean that, but for these three grounds, HRD’s decisions regarding the scoring of multiple choice examination questions are final and not reviewable by the Commission. G.L.c.31, §§22 through 24; Personnel Administration Rules, PAR.02. See, e.g., Hickey v. Human Resources Division, 60 Mass.App.Ct. 1104 (2003) (Rule 1:28), affirming 12 MCSR 1 (1998); Stallworth v. Boston Fire Dep’t, 19 MCSR 9 (2006); Jones v. Boston Fire Dep’t, 19 MCSR 5 (2006).

These principles apply squarely to this appeal, which challenges whether HRD properly applied the correct answer key to score a multiple-choice examination. Nothing suggests any systemic mistakes such as might be raised in a “fair test” appeal or claim of bias or other question about the integrity of the examination process. Indeed, by its own voluntary agreement to re-score Sgt. Hart’s test, for which it is to be commended, HRD has demonstrated its good faith and leaves any possible chance of error nearly impossible to imagine in this case.

The Commission need not address HRD’s other contention, namely, that the Public Records Law, G.L.c.4,§7, clause 26(l) permits HRD to withhold disclosure of “questions and answers,

scoring keys and sheets and other materials used to score a test” provided that “such materials are intended to be used for another test . . .” It is noted, however, that the Commission has previously questioned HRD’s exceptionally broad interpretation of the Public Records Law to withhold disclosure of information about civil service tests, including the non-disclosure even to appointing authorities and this Commission of civil service test scores of applicants for civil service positions and appellants in bypass cases. See Rodrigues v. Human Resources Division, 25 MCSR 152 (2012) It would seem to be within HRD’s purview to “intend” to repeat the same set of multiple choice questions used in the subject exam in exactly the same form and order on a future test, but that intention certainly poses questions of its own. The Commission will continue to monitor these issues and renews its request that HRD review its policies so that it can ensure that all appropriate information is made available as needed to ensure both the integrity of the examination process as well as transparency and informed hiring and promotional decisions.

In sum, for the reasons stated herein, the Commission lacks jurisdiction to hear this appeal. Therefore, HRD’s Motion to Dismiss is hereby ***granted*** and the appeal of the Appellant, Daniel Hart, is ***dismissed***.

Civil Service Commission

/s/Paul M. Stein

Paul M. Stein, Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell, and Stein, Commissioners) on April 2, 2015.

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.

Notice:
Sergeant Daniel Hart (Appellant)
Patrick G. Butler, Esq. (for HRD)