

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

WILLIAM P. HEALEY,
Appellant
v.

B2-14-156

HUMAN RESOURCES DIVISION,
Respondent

Appearance for Appellant:

Pro Se
William P. Healey

Appearance for Respondent:

Andrew Leverault, Esq.
Human Resources Division
One Ashburton Place: Room 207
Boston, MA 02108

Commissioner:

Christopher C. Bowman

DECISION ON HRD's MOTION TO DISMISS

On July 14, 2014, the Appellant, William Healey (Mr. Healey), pursuant to G.L. c. 31, §§ 2(b) and 24, filed an appeal with the Civil Service Commission (Commission), contesting the decision of the state's Human Resources Division (HRD) to give him a failing score for the promotional examination for police sergeant.

On August 5, 2014, I held a pre-hearing conference which was attended by Mr. Healey and counsel for HRD. On August 11, 2014, I issued a Procedural Order giving HRD thirty (30) days to file a motion to dismiss and Mr. Healey was given thirty (30) days thereafter to file a reply. HRD filed its motion to dismiss on August 26, 2014 and Mr. Healey did not file an opposition to the motion.

Based on the statements of the parties, HRD's motion and the documents submitted, the following appears to be undisputed, unless otherwise noted:

1. Mr. Healey is a permanent, full-time police officer for the Town of Stoughton (Town) with a civil service seniority date of July 12, 2004.
2. On or around September 12, 2013, Mr. Healey applied to sit for the examination for the title of permanent, full-time police sergeant.
3. The 2013 police sergeant's examination was composed of two parts. First, a candidate was to complete a written examination that counts for eighty percent (80%) of the candidate's score. The second part consists of an online Education and Experience Claim (E&E Claim) that counts for twenty percent (20%) of the candidate's total score.
4. Applicants were notified of the online E&E claim at the test site, by e-mail, and by a test announcement poster. The applicable online filing period opened on October 11, 2013 and closed on October 26, 2013. Applicants were also required to submit supporting documentation to substantiate their E&E claim. Applicants could send their supporting documentation through e-mail, first class mail, or at the test site.
5. Mr. Healey took the written examination on October 19, 2013.
6. Mr. Healey did not submit any of the required E&E information online, via mail, or in-person at the test site by October 26, 2013.
7. On February 24, 2014, HRD notified Mr. Healey that he failed the promotional examination due to his failure to complete the E&E claim or submit any supporting documentation.
8. On February 27, 2014, in response to an inquiry from Mr. Healey, HRD informed Mr. Healey that his failure was the result of his failure to submit the required E&E

information and informed Mr. Healey of his right to file an appeal with the Commission.

9. On March 7, 2014, Mr. Healey attempted to submit his E&E information to HRD. The information submitted was signed by the Stoughton Police Chief on March 4, 2014.
10. On July 14, 2014, Mr. Healey filed the instant appeal with the Commission.

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.”

G.L.c.31, § 16 provides that, “A person who has taken a civil service examination pursuant to this paragraph shall not have recourse to the review procedures set forth in section twenty-two”. Furthermore, G.L.c.31, § 22 states that:

“In any competitive examination, an applicant shall be given credit for employment or experience in the position for which the examination is held. In any examination, the applicant shall be allowed seven days after the date of such examination to file with the administrator a training and experience sheet and to receive credit for such training and experience as of the time designated by the administrator.”

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).”

G.L. c. 31, § 24 provides that a person may appeal certain HRD actions regarding tests. Specifically:

“ ... Such appeal shall be filed no later than seventeen days after the date of mailing of the decision of the administrator The commission shall refuse to accept any petition for appeal unless the request for appeal, which was the basis for such petition, was filed in the required time frame and form and unless a decision on such request for review had been rendered by the administrator. In deciding an appeal pursuant to this section, the 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 O’Neill v. Civil Service Commission, 10-P-384 (February 15, 2011; per Rule 1:28), the Appeals Court ruling established that “ ... a fair reading of the entire statute ‘indicated that an intent by the Legislature that training and experience scores may be appealed under § 24, and applied the seventeen day time limit to [the Appellant’s] training and experience appeal.’”

Analysis

Mr. Healey’s appeal must be dismissed for two reasons. First, the appeal is not timely. By February 27, 2014, Mr. Healey had been informed by HRD that he had failed the promotional examination, the reason for said failure (his failure to submit E & E information); and that he had a right to file an appeal with the Commission. Section 24 provides exam takers with seventeen (17) days from the date of mailing of HRD’s decision to file an appeal with the Commission. Mr. Healey did not file an appeal with the Commission until July 14, 2014, over four (4) months after receiving the HRD determination. As such, Mr. Healey’s appeal to the Commission is not timely.

Even assuming for the sake of argument that his appeal was timely, his appeal would be denied as it is undisputed that Mr. Healey failed to submit the required E&E information within the time period established by HRD.

Conclusion

For these reasons, HRD’s Motion to Dismiss is allowed and Mr. Healey’s appeal under Docket No. B2-14-156 is hereby *dismissed*.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell, and Stein, Commissioners) on November 13, 2014

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)(1), 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:

William Healey (Appellant)
Andrew Levrault, Esq. (for Respondent)