

COMMONWEALTH OF MASSACHUSETTS

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

MATTHEW M. JOYCE,
Appellant

v. B2-20-176

HUMAN RESOURCES DIVISION,
Respondent

Appearance for Appellant: *Pro Se*
Matthew M. Joyce

Appearance for Respondent: Patrick Butler, Esq.
Human Resources Division
100 Cambridge Street, Suite 600
Boston, MA 02114

Commissioner: Christopher C. Bowman

DECISION ON MOTION FOR SUMMARY DECISION

1. On December 4, 2020, the Appellant, Matthew M. Joyce (Appellant), filed an appeal with the Civil Service Commission (Commission), seeking an order from the Commission allowing him to re-take the Entry Level Physical Abilities Test (ELPAT) portion of the firefighter examination.
2. On January 19, 2021, I held a remote pre-hearing conference via Webex videoconference which was attended by the Appellant and counsel for the state's Human Resources Division (HRD).
3. As part of the pre-hearing conference, the parties agreed to the following unless indicated otherwise:
 - A. The Appellant served in the United States Marine Corps (Marines).
 - B. According to the Appellant, while he was on active military duty between June 1, 2019 and June 14, 2020, he injured his shoulder.
 - C. After being released from active military duty, the Appellant consulted with a physician, discussed the possibility of surgery, and ultimately opted for physical therapy.

- D. The Appellant applied with HRD to take the 2020 / 2021 firefighter examination, which consists of two parts: a written examination and an ELPAT, each of which is weighted 50%.
 - E. The Appellant had taken the ELPAT as part of a previous firefighter examination cycle.
 - F. As part of this examination cycle, the Appellant attended an ELPAT preview offered by HRD.
 - G. Prior to taking the examination, the Appellant signed an HRD authorization form, indicating that it he did not have any medical conditions that would prevent him from taking the ELPAT.
 - H. According to HRD, individuals with medical conditions / injuries can ask to take the ELPAT at a later date.
 - I. At no time prior until taking this appeal, did the Appellant request a retake from HRD based on emergency or medical reasons.
 - J. According to the Appellant's written submission to the Commission: "Due to the firefighter exam being available just once every two years, and the unfortunate affects [sic] COVID-19 has made to the schedule of exams, I made the decision not to disclose my injury and give the ELPAT my best shot. I was afraid to risk disclosing an injury that may take months to heal, and miss my chance at becoming a firefighter for another two years."
 - K. Also according to the Appellant's written submission to the Commission: "During the exam just after 3/7 events I was unable to continue, and was afraid if I had it would make my injury worse."
 - L. There is no pass / fail score for the ELPAT. Based on the information provided by the Appellant, he would receive an ELPAT score of 43, which will be weighted 50% toward his final score.
 - M. On January 13, 2021^[SP(1)], the Appellant took the written portion of the examination.
 - N. If he receives a total (ELPAT + written) score of 70 or more, the Appellant, who is a disabled veteran, will appear on the eligible list for firefighter above all veterans and non-veterans.
- 4. As part of the pre-hearing conference, the Appellant argued that the Commission should issue an order giving him an opportunity to re-take the ELPAT portion after completing another round of physical therapy.
 - 5. Based on the facts here, and assuming all of the evidence in the light most favorable to the Appellant, I informed the Appellant that it was unlikely that he could show that he was an aggrieved person (harmed through no fault of his own) and/or that it would be fair and impartial to other exam applicants for the Appellant to be given the opportunity to re-take the ELPAT.
 - 6. The Appellant indicated that he wanted to move forward with his appeal.
 - 7. As discussed at the prehearing, HRD submitted a motion for summary decision. The Appellant did not submit an opposition.

Legal Standard for Summary Disposition

An appeal may be disposed of on summary disposition 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).

Applicable Civil Service Law

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.”

Pursuant to G.L. c. 31, § 5(e), HRD is charged with: “conduct[ing] examinations for purposes of establishing eligible lists.” In Cataldo v. Human Resources Division, 23 MCSR 617 (2010), the Commission stated that “ ... under Massachusetts civil service laws and rules, HRD is vested with broad authority to determine the requirements for competitive civil service examinations ... ”.

Analysis

Based on the undisputed facts, and for the reasons cited by HRD in their motion for summary decision, the Appellant’s appeal is dismissed. As argued by HRD, the Appellant, on the day of the examination, signed documents indicating that he was capable of completing the

examination; he made no disclosure of his injury; and, after being unable to complete the examination, he left the site without notifying testing administrators. The relief requested by the Appellant is not warranted as he was not harmed through no fault of his own and the ELPAT was administered in a fair, uniform manner.

The Appellant's appeal under Docket No. B2-20-176 is *dismissed*.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on May 21, 2021.

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:

Matthew M. Joyce (Appellant)

Patrick Butler, Esq. (for Respondent)