

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

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

DANIEL KENNEALLY,
Appellant

B2-23-115

v.

HUMAN RESOURCES DIVISION,
Respondent

Appearance for Appellant:

Daniel Kenneally, *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 the appeal of a Boston Fire Lieutenant who disputed the score he received on the education, certifications, training/licenses, and experience (ECT&E) component of the 2023 Boston Fire Captain Promotional Examination after determining that HRD had properly calculated all the elements of his ECT&E claim.

DECISION ON RESPONDENT’S MOTION FOR SUMMARY DECISION

On July 24, 2023, the Appellant, Daniel Kenneally, a Fire Lieutenant with the Boston Fire Department (BFD), appealed to the Civil Service Commission (Commission)¹, contesting eight categories in the marking of the ECT&E component of the Boston Fire Captain Promotional Exam

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.

administered by the state's Human Resources Division (HRD) on March 25, 2023.² I held a remote pre-hearing conference on this appeal on September 11, 2023, at which HRD counsel as well as representatives of the BFD attended but, due to some confusion on his part, the Appellant did not appear. Based on the submission of the parties, including the Pre-Hearing Memorandum submitted by HRD, it appeared that some of the ECT&E issues raised by the Appellant could be satisfactorily resolved by further explanations by HRD and, prior to conducting further hearings, I issued a Procedural Order for additional information from the parties that I expected would narrow the issues that would require further consideration by the Commission. After reviewing the additional information submitted by HRD and the Appellant, by further Procedural Order, I deemed HRD's response as a Motion for Summary Disposition on the grounds that HRD had provided an adequate explanation for the scoring of the contested elements of Appellant's ECT&E claim and no material issues of fact existed as to those elements. On October 5, 2023, the Appellant filed an opposition that pressed the education claim as well as four other elements of his claim.

For the reasons stated below, HRD's Motion for Summary Disposition is allowed, and the Appellant's appeal is dismissed.

UNDISPUTED FACTS

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

1. The Appellant, Danniell Kenneally, is a Fire Lieutenant with the Boston Fire Department (BFD). (*Stipulated Facts*)

² The Appellant also filed a request for investigation into certain other alleged irregularities in the March 25, 2023 Fire Promotional Examination which has been addressed separately. See Request to Investigate Certain Alleged Irregularities in the March 25, 2023 Boston Fire Promotional Examination, CSC Tracking No. I-23-091.

2. The Appellant took and passed the Boston Fire Captain Promotional Exam administered by HRD on March 25, 2023. He received an overall rounded score of 84, which placed him 26th (tied with 9 other candidates) out of 94 total candidates who took and passed that examination.

(Stipulated Facts)

3. The Appellant filed a timely ECT&E claim with HRD which sought the following credits:

- Q(2) – 14 full years’ experience in current department (BFD)
- Q(3) – 4 full years’ experience as firefighter experience in a department other than BFD
- Q(4) – 5 full years’ permanent Lieutenant experience with BFD
- Q(5) – 7 months to 1.5 years’ experience as “acting” Captain with BFD
- Q(6) – 2 full years supervisory experience in another fire department (other than BFD)
- Q(7) – 6 full years supervisory experience outside the fire service
- Q(8) – 8+ certifications
- Q(9) – Active EMT Basic Advanced license
- Q(10)- No trade licensed
- Q(11) – Related Bachelor’s Degree
- Q(12) – Unrelated conferred degrees: Answer left blank

(HRD Pre-Hearing Memo, Attachment A)

4. On June 15, 2023, HRD notified the Appellant of his ECT&E score, informing him that his claim had been amended in the following ways:

- Q(2): Work experience recalculated: Claimed (14 years), Amended (11 years);
- Q(4): Work experience recalculated: Claimed (5 years), Amended (4 years);
- Q(6): Supervisor Work experience recalculated: Claimed (2 years), Amended (No Experience) - No supporting documents provided;
- Q(7): Supervisor Work experience not within Fire Dept. recalculated: Claimed (6 years), Amended (No Experience) - Insufficient verification; and
- Q(11): Claimed (Related Bachelor's Degree), Amended (No degree) - No valid supporting documents provided (*i.e.*, official transcript).

(Stipulated Facts; HRD Prehearing Memo)

5. On June 24, 2023, the Appellant duly appealed to HRD for a review of his ECT&E claim.

(Stipulated Facts; HRD Pre-Hearing Memo, Attachment B)

6. On July 18, HRD issued a revised score notice partially accepting the Appellant’s ECT&E appeal, allowing his Q(11) claim by accepting certain documentation pertaining to a related

bachelor's degree. HRD did not change the credits allowed on Q(2), Q(4), Q(6), or Q(7). (*HRD Pre-Hearing Memo*)

7. On July 24, 2023, the Appellant filed this appeal with the Commission. (*Claim of Appeal*)
8. In support of his appeal, the Appellant provided, in relevant part, the following:
 - a. An employment verification letter from the BFD stating that he was: (1) originally appointed as a BFD Firefighter on 11/05/07; (2) he was made a permanent BFD Fire Lieutenant on 5/14/18; and (3) he served as a Temporary Captain for 2170 hours from 1/10/19 to 3/25/23.
 - b. Documentation of his tenure in the U.S. Coast Guard from July 2004 to July 2010, during which time his duties included supervisory and fire service responsibility.³
 - c. An official transcript from Massasoit Community College (MCC) showing transfer credits for his Firefighter I & II certification and his EMT certification, as well as 54.00 earned GPA hours From Spring 2021 through Spring 2022, with a Major in Fire Science Technology.
 - d. An official transcript from American Military University (AMU) showing a conferred degree of Bachelor of Science in Fire Science Management on 02/01/2023 (magna cum laude). The transcript also shows a "Total Transfer Credit Accepted But Not Program Eligible" of 72.00 semester hours (including 54.00 semester hours transfer credit from MCC), and 45.00 semester hours earned at AMU from Spring 2022 through Fall 2022.

³ The Coast Guard documentation consists of three official letters, one attesting to the Appellant's service as a firefighter from December 2005 to July 2010 (4.6 years); another letter attests to his position as a Petty Officer from July 2004 to July 2010 acting in a supervisory role/leadership position, responsible for "training new members, ensuring qualifications, running a repair shop, maintenance, fire fighting and emergency care." (*Attachments to Claim of Appeal*)

- e. Documents describing leadership experience as a volunteer with various AMU and MCC campus groups and other charitable organizations.

(Attachments to Claim of Appeal)

9. In HRD's response to the Commission's procedural orders, HRD explained that the Appellant's claims for ECT&E credits for his BFD service were amended because the Appellant had included his time as a Fire Lieutenant as part of his claim as a Firefighter Q(2) and also "double counted" the time as a permanent Fire Lieutenant Q(4) with the time he served as a Temporary Captain, for which he received separate credit under Q(5). HRD's adjusted scores reflected time served in each position:

Q(2) - 10 years and 6 months as a Firefighter (11/06/07 – 5/14/18), rounded to 11 years;

Q(4) - 4 years and 10 months as a permanent Fire Lieutenant, minus 12.6 months (the full time equivalent of 2170 hours) served as Temporary Captain, or 3 years and 9 months, rounded to 4 years; and

Q(5) - 2170 hours as a Temporary Captain which, applying HRD's convention of 172 hours per month, equaled 1.5 years full time experience, which is what the Appellant had claimed and received full credit for under Q(5).

(Appellant's Additional Documents filed 9/18/2023; HRD Response to Procedural Order)

10. As to the Appellant's claim to fire department experience outside of the BFD, HRD explained that it had granted the Appellant credit for the four years of USCG service he had claimed on Q(3), and that the Appellant did not request review of his Q(3) credit in his June 24, 2023 appeal to HRD. HRD explained that the Appellant could not "double count" that same experience as "supervisory" experience in another fire department under Q(7). *(HRD Pre-Hearing Memo; HRD Response to Procedural Order)*

11. As to the Appellant's claim to "non-fire" supervisory experience as a volunteer with various campus and charitable organizations, HRD explained that such volunteer work was not considered "employment" within the scope of Q(7). In addition, the documentation submitted did

not contain the required details—in particular, the specific number of hours worked that would enable HRD to calculate an accurate full-time equivalent amount of experience. (*HRD Pre-Hearing Memo; HRD Response to Procedural Order*)

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). 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 . . . that 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 undisputed facts, viewed in a light most favorable to the Appellant, establish that this appeal must be dismissed.

HRD has been delegated broad authority under civil service law to design and administer civil service examinations. G.L. c. 31, §§ 3 through 5, § 16, and § 22; Personnel Administration Rules, PAR.06. As a general rule, absent a 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.”)

After careful review, I am satisfied that HRD has acted reasonably and consistently in its scoring of the Appellant's ECT&E claim. The Appellant has received full credit for all ECT&E claims to which he is entitled and there is no further relief that the Commission could grant to him.

First, HRD calculated the Appellant's ECT&E points for his years of service with the BFD correctly, in compliance with HRD's Scoring Guide and the dates of service provided on the BFD's Employment Verification Form, and without “double counting”—namely: 10 years and six months as a Firefighter, rounded to 11 years of credit; 4 years and 10 months as a Fire Lieutenant, minus his 2170 hours (1.5 years) as a Temporary Captain, rounded up to 4 years of credit; and 1.5 years of credit for the full-time equivalent of his 2170 hours of Temporary Captain time. Thus, HRD properly adjusted the Appellant's ECT&E claim on Q(2), Q(4) and Q(5).

Second, the credits allowed by HRD for the Appellant's U.S. Coast Guard service are less clear-cut as there is conflicting information about the length of the Appellant's military service, the full-time or part-time nature of the service, and for how long he served as in a supervisory

position (i.e., Petty Officer). Two of the letters documenting his military service suggest he was assigned to firefighting duty as a Petty Officer from December 2005 to July 2010 (or 4.5 years).

Another letter stated:

*“ET1⁴ Kenneally, Daniel, ACTED IN A SUPERVISORY ROLE/LEADERSHIP POSITION DURING HIS TIME IN THE COAST GUARD, AS A PETTY OFFICER AND THE COAST GUARD RESERVE. This time SPANS FROM JUL 2004 – JUL 2010.”
(emphasis added)*

I also note that the Appellant was appointed as a full-time BFD firefighter in November 2007. Thus, even viewing the documentation in this record most favorably to the Appellant, whether he actually served even four full time years in the USCG is open to doubt. Ultimately, HRD gave the Appellant the benefit of the doubt and treated the Appellant’s USGC service as full-time fire service outside his department and awarded the Appellant for all four full years of credit he claimed in that capacity (Q3). It was not unreasonable for HRD to conclude that there was insufficient information to ascertain the amount of time (full time or part-time hours) he served in a “supervisory” capacity, i.e., when was he first promoted to Petty Officer? Declining to grant additional credit for such fire service supervisory time under Q(3) or Q(6) was not unreasonable, arbitrary or capricious.⁵

Third, HRD also reasonably denied the Appellant’s claim to six years of supervisory experience outside a fire department under Q(7). The documentation purporting to support this claim consisted of generic letters about student campus and other volunteer work. HRD was not

⁴ ET1 appears to be the Appellant’s current “rating”; his associated USCG “grade” would be Petty Officer First Class, E6. It typically takes three or more years of service to achieve the rating/grade of ET1/E6. <https://www.military.com/coast-guard/enlisted-ranks.html>; <https://www.dcms.uscg.mil/Portals/10/CG-1/PPC/ADV/EligibilityCriteriaOCT17SWE.pdf?ver=2017-05-25-165157-307>

⁵ I note that HRD awarded 4 points for the four full years of outside fire experience claimed by the Appellant under Q(3), whereas even six years of outside supervisory experience would have only garnered him 3.75 points according to HRD’s Scoring Guide.

unreasonable to have determined, within its authority to design and administer examinations, that such unpaid activities did not fit the criteria established for such “non-fire” supervisory experience. Even if such work could be considered “supervisory” experience, I agree with HRD that the documentation submitted by the Appellant falls far short of the detailed, signed letters from the employing organizations needed to accurately calculate the amount of full-time equivalent years of service and allocate the proper ECT&E points.

Fourth, I am satisfied that the Appellant has not been deprived of any ECT&E points to which he is entitled for his education under Q11. The Appellant argues that the HRD Scoring Guide seems to contain an anomaly because, in many cases, it allows a candidate to receive more ECT&E points for obtaining one college degree in a field “related” to fire service work and another degree in “unrelated” field than a candidate who obtains two different fire science “related” college degrees. While the Appellant has a point, the record here fails to establish that the Appellant, in fact, earned two truly different degrees. The college transcripts show that the Appellant transferred all of his credits earned at MMC to AMC. Thus, in this case, HRD was not unreasonable to grant credit to only the highest level of degree conferred, as the Bachelor of Science degree conferred by AMC is, in fact, reasonably construed to be a continuation of the studies that the Appellant had pursued at MCC, and not totally distinct from them.

CONCLUSION

For the reasons stated above, HRD’s Motion to For Summary Decision is allowed, and the Appellant’s appeal under Case No. B2-23-115 is *dismissed*.

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 November 16, 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)(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. 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:

Daniel Kenneally (Appellant)

Melissa Thomson, Esq. (for Respondent)

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