

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

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

MICHAEL KILEY,
Appellant

B2-23-140

v.

HUMAN RESOURCES DIVISION,
Respondent

Appearance for Appellant:

Michael Kiley, *Pro Se*

Appearance for Respondent:

Melinda Willis, Deputy General Counsel
Human Resources Division
100 Cambridge Street, Suite 600
Boston, MA 02114

Commissioner:

Paul M. Stein

Summary of Decision

The Commission upheld HRD’s scoring of the Appellant’s Experience, Certification Training and Education (ECT&E) component of the Statewide Fire Lieutenant’s Examination because the Appellant failed to complete the necessary ECT&E claim form, erroneously believing that updating his civil service profile on file elsewhere with HRD would be sufficient compliance with the exam instructions.

DECISION ON RESPONDENT’S MOTION FOR SUMMARY DECISION

On August 3, 2023, the Appellant, Michael Kiley, appealed to the Civil Service Commission (Commission)¹, contesting his score on the experience, certification, training and education (ECT&E) component of the Statewide Fire Lieutenant Promotional Exam administered on March 25, 2023 by the state’s Human Resources Division (HRD). I held a remote pre-hearing conference on this appeal on September 11, 2023. Pursuant to a Procedural Order dated September 15, 2023,

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.

HRD filed a Motion for Summary Decision and the Appellant filed his opposition on October 16, 2023. For the reasons stated below, HRD's motion 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, Michael Kiley, is a firefighter with the Waltham Fire Department (WFD).
2. The Appellant took and passed the March 25, 2023 Statewide Fire Lieutenant Promotional Exam and received an overall rounded score of 72, which included an 8.8 weighted overall ECT&E score (out of a maximum of 20). He ranked him 22nd (last) out of all candidates who took and passed that examination. (*Stipulated Facts; HRD Motion, Attachment 1*)
3. On March 4, 2023, the Appellant received and opened a notice from HRD containing instructions on how to submit a claim for the ECT&E component of the examination. This notice stated, in relevant part:

The ECT&E Claim application is a scored, weighted, examination component and is separate from the Written Exam application you submitted to take the exam. **THIS IS AN EXAMINATION COMPONENT:** Complete your Online ECT&E Claim on your own and to the best of your ability. In order to ensure that no one receives any type of unfair advantage in the claim process, be advised that we are unable to provide individualized assistance to any applicant.

As stated in the exam poster, all ECT&E claims must be submitted electronically through the ONLINE application using the link below.

The Online ECT&E Claim is now available. To access this exam component: 1. Click this application link to access the ECT&E Claim; Statewide Fire Lieutenant-Experience/Certifications/Training & Education (ECT&E) 2. Carefully read all information in the posting; 3. Click "Apply"; 4. Log in to your account; 5. Complete the online ECT&E claim as instructed electronically. 6. You have successfully electronically completed and electronically submitted the ECT&E Claim application when you receive a confirmation email acknowledging receipt of the ECT&E Claim.

(AN APPLICATION IS NOT COMPLETE UNTIL YOU HAVE ELECTRONICALLY COMPLETED AND SUBMITTED THE ONLINE ECT&E CLAIM THROUGH THE APPLICATION LINK PROVIDED ABOVE, AND RECEIVED A CONFIRMATION EMAIL)

The claim application must be electronically submitted online THROUGH THE APPLICATION LINK ABOVE and no later than 11:59 pm on April 1, 2023. Late applications will not be accepted. If you do not receive an automated confirmation email after you submit your claim, your ECT&E claim application has not been received by Civil Service and will not be scored. If you have not received a confirmation email, you must resubmit your online application THROUGH THE APPLICATION LINK ABOVE, prior to the submission deadline, until you have received a confirmation email. In the event an unforeseen technological problem prevents you from successfully submitting the online claim, you must notify Civil Service at civilservice@mass.gov prior to the deadline above, requesting consideration of the claim, describing the technical issue, and attaching your completed ECT&E claim application and supporting documentation.

Information on how to provide supporting documentation: 1) Scan and attach documents to your online ECT&E claim application at time of submission. 3 or 2) Email scanned documents to civilservice@mass.gov *A blank employment verification form (EVF) can also be found on the Civil Service website.

Please note that ECT&E is an exam component, and therefore, you must complete the online ECT&E claim using the application link above. Supporting documentation must be attached to your online application or emailed to civilservice@mass.gov.

Inquiries regarding completion of the claim will not be accepted or responded to. It is the responsibility of each candidate to carefully review and follow the instructions.

(HRD Motion, Attachment 1) (all emphasis in original)

4. On March 27, 2023, the Appellant received and opened a reminder notice from HRD repeating the instructions regarding how to complete the ECT&E component of the examination.

(HRD Motion, Attachment 1)

5. On March 30, 2023, the Appellant updated the “Applicant Master File” in his on-line NEOGOV civil service account on file with HRD and uploaded certain education and experience documentation to that account. *(HRD Motion, Attachments 2 & 3)*

6. On June 14, 2023, HRD issued the score notice to the Appellant. *(Stipulated Facts; HRD Motion, Attachment 1)*

7. On June 15, 2023, the Appellant sent an email to HRD stating:

I never received my ect&e breakdown. My ect&e score seems to be low and not correct. If this isn't the right email to correct this, could you advise me where to go.

(HRD Motion, Attachment 5)

8. HRD has no record, and the Appellant has provided no proof that, prior to June 14, 2023, he submitted an ECT&E claim form in accordance with the instructions he received on March 3, 2023 and March 27, 2023; nor that he received an email confirming the submission of his ECT&E claim, or that he contacted HRD through the email link civilservice@mass.gov to explain any technical problem he had with the ECT&E claim submission process. *(HRD Motion, Attachments 2 through 9; Appellant's Opposition)*.

9. On June 26, 2023, the Appellant filed a request for HRD to review his ECT&E score. *(HRD Motion, Attachment 9)*

10. On June 28, 2023, the Appellant provided HRD with a document labeled "attachment proof" which contained the information he had uploaded to his civil service account. *(HRD Motion, Attachments 2 & 10)*

11. On July 24, 2023, the Appellant received his final score notice from HRD, which did not change his ECT&E score or his overall final score. *(HRD Motion, Attachment 1)*

12. HRD has no record of any "technical glitch" that prevented the Appellant from submitting an initial ECT&E claim in the manner prescribed by the instructions he received on March 3, 2023 and March 27, 2023. *(HRD Motion)*

13. According to the WFD Fire Chief, the WFD had made two promotions to permanent fire lieutenant in 2021, four such promotions in 2022 and one such promotion to date in 2023. There have also been three temporary lieutenants appointed from the civil service list in 2021, no temporary lieutenants appointed in 2022 and one temporary lieutenant appointed in 2023 to date. *(Response from WFD Fire Chief dated 11/19/2023)*

14. According to HRD, assuming, hypothetically, that the Appellant received ECT&E credit for three years of service as a WFD Firefighter, the minimum service required to qualify to take the March 25, 2023 Statewide Fire Lieutenant Promotional Examination, his ECT&E score would be 9.78 [13.05] which would place him no higher than 12 on the current eligible list. (*HRD Response to Request for Information*)

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.

Section 22 of Chapter 31 of the General Laws prescribes that “[t]he administrator [HRD] shall determine the passing requirements of examinations.” According to the Personnel Administration Rules (PAR), 6(1)(b), “[t]he grading of the subject of training and experience as a part of a promotional examination shall be based on a schedule approved by the administrator [HRD] which shall include credits for elements of training and experience related to the position for which the examination is held.” Pursuant to Section 24 of Chapter 31, “. . .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 [HRD]”.

Here, the Appellant did not follow HRD’s instructions for submitting an ECT&E claim. The Appellant argues that he should not be denied credit he otherwise deserves due to HRD’s “failure to inform and direct” applicants about “glitches” and “grey areas” on the mechanics of completing an ECT&E claim. While HRD is sympathetic to the Appellant’s “misunderstanding of the mechanics of completing an ECT&E claim”, the agency argues that following instructions is a reasonably required part of the examination process.

The Commission has plowed this ground many times. The Commission defers to HRD’s expertise and discretion to establish reasonable requirements, consistent with basic merit principles, for crafting, administering and scoring examinations. In particular, in deciding prior appeals, the Commission has concluded that, as a general rule, HRD’s insistence on compliance with its established examination requirements for claiming and scoring training and experience credits was neither arbitrary nor unreasonable. See, e.g., Evans v. HRD, 35 MCSR 108 (2022);

Turner v. HRD, 34 MCSR 249 (2022); Amato v. HRD, 34 MCSR 177 (2021); Wetherbee v. HRD, 34 MCSR 173 (2021); Russo v. HRD, 34 MCSR 156 (2021); Villavizar v. HRD, 34 MCSR 64 (2021); Holska v. HRD, 33 MCSR 282 (2020); Flynn v. HRD, 33 MCSR 237 (2020); Whoriskey v. HRD, 33 MCSR 158 (2020); Bucella v. HRD, 32 MCSR 226 (2019); Dupont v. HRD, 31 MCSR 184 (2018); Pavone v. HRD, 28 MCSR 611 (2015); and Carroll v. HRD, 27 MCSR 157 (2014).

HRD points out that, despite the Appellant's failure to follow the instructions to complete an ECT&E claim, he was still awarded a minimum ECT&E overall score of 8.80 and received an overall passing grade on the exam. Until recently, under the prior education and experience (E&E) claim process, a candidate would receive an overall failing grade on the exam unless they had properly completed an E&E claim form for the education and experience component, a practice that the Commission had let stand but suggested it was unduly harsh, as every candidate who took a promotional exam must have served, at a minimum, in their position for the statutory period (here three years as a WFD firefighter) in order to qualify to take the examination.

Here, it appears that, consistent with addressing the Commission's prior concerns, HRD gave some minimum ECT&E credit to the Appellant, and that his overall score was sufficient to enable him to pass the exam and earn a place on the eligible list. I do note that, according to HRD, the methodology used by HRD's vendor to calculate the Appellant's 8.80 ECT&E score appears to have resulted in a different ECT&E score (13.05) than would be derived by an alternative calculation using three years of service as WFD firefighter (the minimum service the Appellant needed to take the exam), the same as allowed to a candidate who had properly completed his ECT&E claim form. However, were his exam score adjusted to account for such service, he would

still not be ranked high enough above his current rank to raise above a speculative level that he would actually be reached for promotion to fire lieutenant from this current eligible list.²

In sum, consistency and equal treatment are important hallmarks of basic merit principles under civil service law. The present appeal presents no basis for the Commission to deviate from its well-established line of decisions directly on point; instead, it will defer to HRD's exercise of reasonable expertise in the matter of ECT&E claim design and scoring.

CONCLUSION

For the reasons stated above, HRD's Motion to For Summary Decision is *allowed*, and the Appellant's appeal under Case No. B2-23-140 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 December 14, 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).

² Accordingly, the Commission need not adjudicate Appellant's claim that HRD's specific methodology was arbitrary or unreasonable. HRD might consider, however, whether or not the minimum ECT&E credit should be equal to the points allowed for the service required to sit for the examination, as a more appropriate rule of thumb in future examinations, even in cases such as this one.

Notice to:
Michael Kiley (Appellant)
Melissa Thomson, Esq. (for Respondent)