

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

100 Cambridge Street – Suite 200

Boston, MA 02114

617-979-1900

DENISE LAZZARA,

Appellant

v.

HUMAN RESOURCES DIVISION

Respondent

Docket number:

B2-24-192

Appearance for Appellant:

Denise Lazzara, Pro Se

Appearance for HRD :

Erik Hammarlund, Esq.

Labor Counsel

Human Resources Division

100 Cambridge Street, Suite 600

Boston, MA 02114

Commissioner:

Paul M. Stein

SUMMARY OF DECISION

The Commission denied a “fair test” appeal brought by a candidate who took the December 2024 Correction Officer Captain promotional examination because (1) the Appellant did not establish that allowance of credits to other candidates for “specialty assignments” on the Education & Experience (E&E) component were a violation of basic merit principles; (2) the Appellant did not identify with the required specificity which questions on the Situational Judgment (SJ) component she disputed as undermining a “fair test”; (3) the Appellant did not rebut the evidence that the disruptions at the test center did not unreasonably interfere with her ability to complete the examination.

DECISION ON HRD’S MOTION FOR SUMMARY DECISION

On December 15, 2024, the Appellant, Denise Lazzara, a Correction Officer III (CO III) with the Department of Correction (DOC), appealed to the Civil Service Commission, pursuant to G.L. c. 31, § 24, claiming that the DOC Captain Examination administered by the state’s Human Resources Division (HRD) was not a “fair test” as defined by G.L. c. 31, §22, ¶4, for a variety of

reasons. I held a remote pre-hearing conference on this appeal on January 14, 2025. By Procedural Order that followed, with the agreement of the parties, I deemed HRD's Pre-Hearing Memorandum to be a decision of HRD after review (under G.L. c. 31, § 22) and to be a Motion for Summary Decision, to which the Appellant filed an Opposition on February 11, 2025 and supplemented her opposition on March 12, 2025. For the reasons stated below, HRD's Motion for Summary Decision is granted 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, Denise Lazzara, is a CO III (Lieutenant) with DOC.
2. The Appellant took the Correction Officer Captain promotional examination administered by HRD on December 7, 2024.
3. The Correction Officer Captain promotional exam contained a Technical Knowledge (TK) component (written multiple choice questions), a Situational Judgement Test (SJT) component (multiple choice responses to operational scenarios) and an Education and Experience (E&E) component (an on-line self-administered test).
4. On December 14, 2024, the Appellant filed this appeal with the Commission, which alleged that:
 - The E&E component was not a "fair test" because HRD allowed E&E credit for "specialty" experience in positions that were (a) "7x3, Monday through Friday shift" positions and "some officers were not able to apply for these specialty positions due to personal reasons, such as childcare agreements, pursuing continuing education, second/part time jobs, or other personal reasons"; (b) these positions are filled by an interview process, thus creating "nepotism and favoritism"; and (c) "the list of the

specialty positions was provided to Civil Service by the Division of Staff Development.

This undermines the fairness of the E&E portion of the exam . . . as there are several Lieutenants in the DSD department who took the captain's promotional exam."

- The SJ component was overly subjective and "does not take account that there is not a standard approach. Having worked at MCI-Framingham, MCI-Shirley and Souza Baranowski, I've learned different styles and approaches to various situations. Additionally, I've learned that the way situations are handled varies across prisons, as well as with different inmates. What may work for one Lieutenant or institution may not work for another."
- The conditions in the test room were unduly distracting due to commotion coming from the adjacent classroom in which a CPR exercise was being conducted, causing her "a difficult time concentrating", a problem that was unique to her classroom and which the exam proctors could not rectify.

5. On February 15, 2025, HRD established the current eligible list for DOC Captain. A total of 70 candidates took and passed the December 7, 2024 DOC Captain examination. The Appellant's name appears ranked in 15th place tied with 11 others. Ten candidates' names appear on the current eligible list ranked above the Appellant; 45 names appear on the current eligible list ranked below the Appellant.

APPLICABLE LEGAL STANDARD

A motion to dispose of an appeal, in whole or in part, via summary decision may be allowed by the Commission pursuant to 801 C.M.R. 1.01(7)(h) 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 . . . 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]”.

The Commission generally has deferred to HRD’s expertise and discretion to establish reasonable requirements, consistent with basic merit principles, for crafting, administering, and scoring examinations. In deciding prior appeals, the Commission has concluded that, as a general

rule, HRD's insistence on compliance with its established methodology and examination requirements for claiming and scoring training and experience credits was neither arbitrary nor unreasonable. See, e.g., Battaglia v. HRD, CSC No.B2-24-171 (2025); Dunnigan v. HRD, 36 MCSR 439 (2023); Adjemian v. HRD, 36 MCSR 308 (2023); Shea v. HRD, 36 MCSR 397 (2023); Flannery v. HRD, 36 MCSR 285 (2023); Cooley v. HRD, 35 MCSR 81 (2022); Murphy v. HRD, 34 MCSR 242 (2021); Pierce v. HRD, 34 MCSR 79 (2021); Toothaker v. HRD, 33 MCSR 374 (2020); Paiva v. DOC, 33 MCSR 328 (2020), *aff'd in relevant part sub non Paiva v. Civil Service Comm'n*, CA 1982-CV-01309 (Norfolk Sup. Ct. 2023); Mailea v. HRD, 33 MCSR 289 (2020); Kenneally v. HRD, 31 MCSR 108 (2018). See also Helms v. HRD, B2-24-178 (5/15/2025), Bell v. HRD, B2-24-180 (2/20/2025); Donovan v. HRD, B2-24-117 (1/9/2025); Weaver v. HRD, 37 MCSR 313 (2024); DiGiando v. HRD, 37 MCSR 252 (2024); Medeiros v. HRD, 37 MCSR 56 (2024); Dunn v. HRD, 37 MCSR (2024); Kiley v. HRD, 36 MCSR 442 (2024); 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).

The facts alleged by the Appellant do not raise above a "speculative level" the notion that HRD's allowance of E&E credit for certain "specialty experience" unfairly skewed the examination results. I do not discount the Appellant's assertion that "specialty assignments" to non-civil service DOC positions, if they can affect a civil service examination result, ought to be made in compliance with basic merit principles of civil service law. However, the Appellant's

original claim of appeal provided no specifics about which positions or which candidates she believed were given an unfair advantage because they were able to claim “specialty experience”. The January 14, 2025 Procedural Order provided the Appellant specific guidance and the opportunity to “fill in the blanks” in her Opposition,¹ but the Opposition was limited to describing a few examples without identifying the time frames, the individuals, their qualifications for the assignments they received or where any other candidates who received such specialty credits are ranked on the current eligible list. Far more factual details than are presented on this record are required before to the Commission is warranted to commence a plenary hearing that could require a complete recalculation of the scores of many, if not all, of the candidate on the eligible list in order to determine whether the alleged violations make any difference to the Appellant’s standing on the current eligible list. Finally, inability to apply for a specialty assignment for personal reasons or because one’s shift assignment was not compatible with the assignment is not a matter for the Commission to address under basic merit principles.

The Appellant’s claim that the SJ component was unduly subjective also falls short of establishing a factual dispute that requires further hearing. The Appellant’s claim of appeal did not specify any of the specific parts of the SJT component she believed were too subjective, which, as HRD’s motion accurately asserts, is a requirement to trigger a “fair test” review of a “multiple choice” exercise such as the SJ. See G.L. c. 31, § 22, ¶5. Moreover, as HRD also accurately asserts,

¹ The January 14, 2025 Procedural Order stated: “At a minimum, as to the issue of E&E credit for specialty positions, the Appellant's Opposition shall address with specificity, (a) which specialty position(s) the Appellant knows or had reason to believe have been filled in violation of civil service law; (b) when they were filled; (c) who was appointed; (d) who made the appointments; (e) if the Appellant contends the person(s) appointed to fill those positions did not possess the qualifications to serve in those positions, the basis for that contention; and (f) any other facts to show cause why the Commission should further investigate the Appellant's claim of nepotism and favoritism in the appointment of persons.”

the examination preparation guide makes clear that the SJ component is designed as a test of specific documentation in the reading materials; to the extent that the Appellant's personal experience may have varied from the reading materials, HRD is reasonably entitled to deem the latter, not the former, as controlling.²

I now turn to the Appellant's claim that she was distracted by a commotion in the room behind the wall where she was assigned a desk to take the test, which distraction other candidates who took the test in other locations did not experience. The Appellant raised this issue with the test proctor who did not find the conditions unacceptable. As HRD points out, the proctors have discretion to assess whether test conditions meet minimum standards. Furthermore, as the Appellant's score on the DOC Captain's examination placed her in the top quarter of all the candidates who took and passed the test, that, alone, confirms that it was likely that the proctor was within his or her discretion to deem the distractions, if any, *de minimis*, and implies it is unlikely it was a material factor in the Appellant's ability to successfully complete the examination.

In sum, the present appeal presents no basis to deviate from the Commission's well-established line of decisions that, absent evidence that HRD has acted arbitrarily or unreasonably, deference to HRD's expertise in technical matters of E&E claim design, test administration and scoring should prevail.

² The Appellant's opposition to HRD's motion did not mention the SJT component at all. The January 14, 2025 Procedural Order stated: "As to the 'situational awareness' issue, the Appellant shall identify which of the answers to specific situations that she claims could not be fairly determined from the required reading material." (*emphasis added*)

CONCLUSION

For the reasons stated above, HRD's Motion to For Summary Decision is *granted* and the Appellant's appeal under Docket Number B2-24-192 is *dismissed*.

Civil Service Commission

/s/Paul M. Stein

Paul M. Stein

Commissioner

By vote of the Civil Service Commission (Bowman, Chair; Dooley, Markey, McConney and Stein, Commissioners) on June 12, 2025.

Either party may file a motion for reconsideration within ten days of 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 to:

Denise Lazzara (Appellant)

Erik Hammarlund, Esq. (for Respondent)