

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION
100 Cambridge Street, Suite 200
Boston, MA 02114
(617) 979-1900

PATRICK LYNCH,
Appellant

v.

B2-23-005

HUMAN RESOURCES DIVISION,
Respondent

Appearance for Appellant:

Pro Se
Patrick Lynch

Appearance for Respondent:

Carolyn McMenemy, Esq.
Human Resources Division
100 Cambridge Street: Suite 600
Boston, MA 02104

Commissioner:

Christopher C. Bowman

SUMMARY OF ORDER

The Commission dismissed the Appellant's appeal regarding the Boston District Fire Chief promotional examination as he was unable to show that he is an aggrieved person.

ORDER OF DISMISSAL

On January 17, 2023, the Appellant, a Boston Fire Captain, filed an appeal under G.L. c. 31, § 2(b) with the Civil Service Commission (Commission), asking the Commission to order the state's Human Resources Division (HRD) to allow him to sit for a Boston District Fire Chief promotional examination held on March 25, 2023.

On February 7, 2023, I held a remote pre-hearing conference which was attended by the Appellant and counsel for HRD. The following facts do not appear to be disputed:

1. The Appellant is a BFD Fire Captain.
2. On May 21, 2022, HRD administered an examination for Boston District Fire Chief.
3. The posting for this examination stated in relevant part that: “ ... with the exception of current military personnel ... no candidate has a right to a makeup examination due to personal or professional conflicts on the testing date.” However, if a candidate was “unable to appear on the examination date due to an emergency or unanticipated hardship, you may request a makeup examination by filing a written request with verifiable documentation to HRD no later than seven calendar days from the original written examination date.”
4. The Appellant did not sit for the May 21, 2022 promotional examination nor did he request to take a makeup examination.
5. The May 21, 2022 promotional examination was voided after HRD determined that more than 20% of the examination questions did not correspond to the reading material.
6. The promotional examination was re-scheduled to November 18, 2022 and was limited only to those individuals who sat for the May 21st examination or had been approved to sit for a makeup examination.
7. After the issuance of the Superior Court’s decision in [Tatum et al v. Human Resources Division](#) on October 27, 2022, HRD did not administer the Boston District Fire Chief exam scheduled for November 19, 2022.
8. A Boston District Fire Chief examination was held on March 25, 2023.¹ HRD only registered those candidates who sat for the May 2022 examination or had been approved

¹ With the exception of a situational judgment component that is being administered on a separate date.

to sit for a makeup examination.

9. On January 17, 2023, the Appellant filed the instant appeal stating: “Due to circumstances beyond my control, I could not be present for the exam. My daughter graduated from college [] that day. I was unaware that I could have taken a makeup exam. I thought that that makeup exams were exclusively for Veterans. I was eligible for this exam, and did have a valid notice to appear.”
10. HRD has no record of the Appellant filing a request for a make-up examination.

Analysis

Chapter 310 of the Acts of 1993 states in relevant part that:

If the rights of any person acquired under the provisions of chapter thirty-one of the General Laws or under any rule made thereunder have been prejudiced *through no fault of his own*, the civil service commission may take such action as will restore or protect such rights, notwithstanding the failure of any person to comply with any requirement of said chapter thirty-one or any such rule as a condition precedent to the restoration or protection of such rights.

The Appellant’s rights have not been prejudiced *through no fault of his own*. The relevant exam posting explicitly stated that requests to sit for a makeup examination were not limited to military personnel. Rather, *all* exam applicants could file a request to sit for a makeup examination for other emergencies or unanticipated hardships. The Appellant failed to file such a request. While the Appellant unfortunately misread or overlooked those instructions, this oversight was an error on the part of the Appellant, not HRD.

In regard to the broader issue of whether HRD acted arbitrarily or capriciously by deciding to limit registration for the March 2023 examination to those who sat for the May 2022 examination or who were approved to sit for a makeup examination at the time, the Commission

has recently concluded that HRD has offered a sufficiently rational explanation regarding why it made this decision. See Ranahan v. HRD, 36 MCSR 88 (2023).

Conclusion

For all of the above reasons, the Appellant's appeal under Docket No. B2-23-005 is *dismissed*.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chair

By a vote of the Civil Service Commission (Bowman, Chair; Dooley, McConney, Stein and Tivnan, Commissioners) on May 4, 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)(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:
Patrick Lynch (Appellant)
Carolyn McMenemy, Esq. (for Respondent)