

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

MICHELLE MANGINO,
Appellant

v.

B2-12-91

HUMAN RESOURCES DIVISION,
Respondent

Appellant’s Attorney:

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Respondent’s Attorney:

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One Ashburton Place
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Commissioner:

Cynthia A. Ittleman¹

DECISION ON CROSS-MOTIONS FOR SUMMARY DECISION

The Appellant, Michelle Mangino, acting pursuant to G.L. c. 31, § 2(b), timely appealed to the Civil Service Commission (“Commission”) asserting that the Respondent, the Massachusetts Human Resources Division (“HRD”) had incorrectly calculated her training and experience, commonly referred to as education and experience (“E&E”), score and work experience credits for the October 2011 Revere Police Captain Examination. HRD filed a Motion for Summary Decision (“HRD Motion”) on May 10, 2012 arguing that the Appellant is not a “person aggrieved” pursuant to G.L. c. 31, §2(b) because she failed to demonstrate that

¹ The Commission acknowledges the assistance of Law Clerk Amanda Belanger in the drafting of this decision.

any action by HRD constituted a violation of Chapter 31 and basic merit principles. On June 11, 2012, the Appellant filed a Cross-Motion for Summary Decision (“Appellant’s Cross-Motion” or, regarding both parties’ motions, “Cross-Motions”) arguing that HRD abused its discretion when it modified her E&E credits on the 2011 Police Captain Examination for recent Sergeant experience from 48-59 months to 36-47 months. A motion hearing was held on July 30, 2012.

On October 10, 2012, a procedural order was issued pursuant to the hearing on the Cross-Motions, ordering HRD to provide an example of an instance in which HRD has adjusted downward the recent education and experience credit of a police officer so that the maximum recent experience did not exceed 59 months and to provide an affidavit regarding such adjustment. On November 13, 2012, an affidavit of Stephen P. White, who had been an HRD Information Officer II at previous pertinent times², was submitted along with the example. On November 26, 2012, the Appellant submitted a Response to the Respondent’s Submissions of November 13, 2012.

For the reasons stated herein, the HRD Motion is granted and the Appellant’s Cross-Motion and appeal are denied. Based on the Cross-Motions and Exhibits thereto, oral arguments, the parties post-hearing submissions on November 13 and 26, 2012, and taking administrative notice of all matters filed in this case, as well as pertinent statutes, regulations, case law, policies, and rules, a preponderance of the evidence, including reasonable inferences therefrom, establishes:

1. The Appellant was originally appointed to the position of police officer in the Revere Police Department on June 26, 1994. She was promoted to Sergeant on February 8, 2004 and promoted to Lieutenant in the Revere Police Department on October 21, 2010. On

² By the time of this affidavit from Mr. White, he was employed at another agency, not HRD. HRD submitted an earlier affidavit from Mr. White, which was appended to the HRD Motion, at which time Mr. White was still employed at HRD.

October 15, 2011, the Appellant took the civil service examination for Police Captain.
(HRD Motion; Appellant's Cross-Motion)

2. The Appellant filled out the E&E Rating sheet as part of her application to take the Captain examination. There are eight (8) categories for work experience on the E&E Rating sheet. Category 2 covers work experience in the position of Lieutenant and Category 3 covers work experience in the position of Sergeant. Each category has two (2) columns corresponding to recent and older work experience. Column 1 covers recent experience within the past five years (also referred to as "recent" experience) of the examination. Column 2 covers experience over five (5) years ago. *(HRD Motion, see, e.g., Exhibits E, F and G; Appellant's Cross-Motion)*
3. In Category 2, Column 1, the Appellant indicated 12-23 months of recent experience as a Lieutenant to reflect 12 months of experience. She had been a Lieutenant from October 21, 2010 to October 15, 2011, the date of the examination. However, in Category 3, Column 1, the Appellant also recorded 48-59 months of recent experience as a Sergeant to reflect 48 months of experience. She was a Sergeant from February 8, 2004 until October 21, 2010. That is, the Appellant claimed a combined total of 60 months of recent experience. *(HRD Motion; Appellant's Cross-Motion)*
4. On or around January 11, 2012, HRD mailed the Appellant her examination score. The Appellant received a score of 84.16 on her written examination and received an E&E score of 95.15 based on the information provided by the Appellant on her E&E Rating Worksheet and reviewed by Mr. White at HRD. The Appellant's two scores were weighted, averaged, and rounded for a total score of 86. Specifically, the written examination is worth 80% of the exam grade and education and experience is worth 20%

of the exam grade. The exam grade is multiplied by 4 (reflecting the 80% value of the exam grade), which total is added to the education and experience score; the sum of the multiplied exam grade and education and experience score is divided by 5 and rounded off.³ (*HRD Motion (see Ex. G)*)

5. On January 30, 2012, the Appellant timely filed an appeal to the Administrator pursuant to G.L. c. 31, § 22 and requested a review of her E&E credits. The Appellant specifically questioned HRD's accounting of her Category 3 Sergeant experience. (*HRD Motion*)
6. Pursuant to its considerable authority under G.L. c. 31, § 16, HRD has developed a sophisticated method for weighing relevant E&E experience. Recent experience in a particular position is weighted more heavily than other experience in the same position. (*HRD Motion*)
7. Upon review of the Appellant's E&E Rating Sheet, Mr. White correctly adjusted downward the Appellant's score on her E&E Rating sheet for recent Sergeant experience in Category 3, Column 1, from 48-59 months to 36-47 months and credited the Appellant with 12 months of recent Lieutenant experience in Category 2, column 1, for a combined total of 59 months, in order to remain under the 59-month HRD cap for recent experience.⁴ (*HRD Motion (see Ex. G thereto); Appellant's Cross-Motion*)
8. After Mr. White's detailed review of the Appellant's E&E Rating Sheet, on or about February 22, 2012, he wrote to the Appellant stating,

“The E&E Rating Sheet Instructions state that applicants may ‘not indicate the same work experience in more than **one** category’ and also that ‘the maximum score for any single category (or combined categories in column 1) is 48-59

³ Thus, the formula applied in this case is as follows: $84.16 \times 4 + 95.16 \times 1 = 431.79/5$ to yield a final score of 86. (*HRD Motion, Ex. G*)

⁴ As a result of these changes, the HRD computer program automatically adjusted the Appellant's Category 3, Column 2 experience to 24-35 months. (*HRD Motion (see Ex. G thereto)*)

months for recent experience.’ You were credited with 12 months of Lieutenant Experience in Category 2 – Column 1 (recent timeframe), leaving 47 months available for credit as a Sergeant in Category 3 – Column 1 (59-12=47). Again, ***the maximum credit available in the recent timeframe is 59 months total for all categories combined.***”

(HRD Motion, Ex. G, p. 3)(emphasis in original regarding “one”; emphasis elsewhere added); see HRD Motion Exs. E and F)

9. On or about March 2, 2012, the Appellant timely filed the present appeal to the Civil Service Commission. *(HRD Motion)*
10. The E&E Rating sheet instructions provided to all applicants, and available online on the HRD website, state that applications are credited for recent experience within 5 years. The maximum credit any applicant can receive for recent experience is 59 months. On the E&E Rating sheet, the maximum number of credits under Column 1 in any category is 48-59 months. *(HRD Motion, see, e.g. Exhibits E, F and G)*
11. HRD has consistently applied the 59-month maximum credit for any recent experience for all applicants. *(HRD Motion)*

DISCUSSION

Summary Decision Standard

Section 1.01(7)(h) of the applicable standard adjudication Rules of Practice and Procedure at 801 CMR provides that, “When a Party is of the opinion there is no genuine issue of fact relating to all or part of a claim or defense and he is entitled to prevail as a matter of law, the Party may move, with or without supporting affidavits, for summary decision on the claim or defense. If the motion is granted as to part of a claim or defense that is not dispositive of the case, further proceedings shall be held on the remaining issues”. 801 CMR 1.01(7)(h). 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. See Catlin v. Board of Registration of Architects, 414 Mass. 1, 7 (1992); Massachusetts Outdoor Advertising Counsel v. Outdoor Advertising Board, 9 Mass.App.Ct. 775, 782-83 (1980).

Applicable Civil Service Law

The fundamental purpose of the civil service system is to guard against political considerations, favoritism, and bias in governmental hiring and promotion. The commission is charged with ensuring that the system operates on "[b]asic merit principles." Massachusetts Assn. of Minority Law Enforcement Officers v. Abban, 434 Mass. at 259, citing Cambridge v. Civil Serv. Comm'n., 43 Mass.App.Ct. at 304. "Basic merit principles" means, among other things, "assuring fair treatment of all applicants and employees in all aspects of personnel administration" and protecting employees from "arbitrary and capricious actions." G.L. c. 31, § 1. Personnel decisions that are marked by political influences or objectives unrelated to merit standards or neutrally applied public policy represent appropriate occasions for the Civil Service Commission to act. Cambridge at 304.

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."

G.L. c. 31, § 2(b).

G.L. c. 31 § 16 provides that, "A person who has taken a civil service examination pursuant to this paragraph shall not have recourse to the review procedures set forth in section twenty-two". Furthermore, G.L. c. 31, § 22 states that:

“In any competitive examination, an applicant shall be given credit for employment or experience in the position for which the examination is held. In any examination, the applicant shall be allowed seven days after the date of such examination to file with the administrator a training and experience sheet and to receive credit for such training and experience as of the time designated by the administrator.”

Cataldo v. Human Resources Division, Commission, 23 MCSR 617 (2010), states that “ ... under Massachusetts civil service laws and rules, HRD is vested with broad authority to determine the requirements for competitive civil service examinations, including the type and weight given as ‘credit for such training and experience as of the time designated by HRD.’ G.L. c. 31, § 22(1).”

G.L. c. 31, § 24 provides that:

“ ... Such appeal shall be filed no later than seventeen days after the date of mailing of the decision to the administrator The commission shall refuse to accept any petition for appeal unless the request for appeal, which was the basis for such petition, was filed in the required time frame and form and unless a decision on such request for review had been rendered by the administrator. In deciding an appeal pursuant to this section, 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.”

In O’Neill v. Civil Service Commission, 10-P-384 (February 15, 2011; per Rule 1:28), the Appeals Court ruling established that “ ... a fair reading of the entire statute ‘indicated that an intent by the Legislature that training and experience scores may be appealed under §24, and applied the seventeen day time limit to [the Appellant’s] training and experience appeal.’”

The Parties’ Arguments

HRD argues that it has broad discretion in regard to scoring of E&E as part of an examination and that they use a uniform set of criteria in establishing how experience is credited. Furthermore, it contends that the Appellant is not a “person aggrieved” under section 2(b) of the law because the Appellant was subjected to the same standard as all other candidates when HRD

adjusted her recent Sergeant experience downward in order to abide by the 59 month recent experience limitation. Furthermore, HRD avers that the Appellant incorrectly credited herself by recording 60 months of recent experience (12 months as Lieutenant and 48 months as Sergeant), exceeding the 59-month maximum for recent experience.

The Appellant argues that HRD did not have discretion to change the Appellant's E&E credit toward her exam from 48-59 months to 36-47 months, ultimately reducing her overall score. Furthermore, the Appellant contends that she accurately recorded her recent Sergeant experience on the E&E Rating sheet. She argues that the accurate amount of time for her recent Sergeant experience is 48 months (within the most recent five years of the examination), and that HRD only provided her with 36 to 47 months of credit for her Sergeant experience. The Appellant further argues that because she served as Sergeant from February 8, 2004 to October 21, 2010, she served *each day* between these dates as a Sergeant, equating to 48 months of experience as a Sergeant. Given this reasoning, Appellant argues that HRD should have credited her recent Sergeant experience as 48-59 months and her recent Lieutenant experience as 6 – 11 months (rather than 12-23 months) and that this would have kept her recent experience under the 59-month limitation, increasing her education and experience score from 8.6 to 9.2.

Analysis

Although the Appellant contends that HRD inaccurately credited her score, I find that HRD calculated her recent experience, both upon its initial determination and in response to the Appellant's appeal to the Personnel Administrator for review of its initial determination, correctly and according to its stated practice and policy. There is no dispute about the reason HRD recalculated the Appellant's E&E credits; a candidate's E&E credit cannot be more than 59 months of recent experience and the computer program is designed to recalculate an applicant's

score if it exceeds 59 months. In the present case, the Appellant recorded her recent experience on her E&E Rating sheet as a total of 60 months and it was subsequently changed such that the 48-59 months of recent Sergeant experience was reduced to 36-47 months to combine with her 12-23 months of recent Lieutenant experience in order to equate to less than 59 months. This effectively credited the Appellant with 47 months of recent experience as a Sergeant and 12 months of recent experience as a Lieutenant. I find that HRD has the statutory discretion to decide the way in which it scored the Appellant's examination and that the manner in which it did so was consistent with HRD's practice and policy.

HRD's change in the Appellant's score was not an inaccurate representation of her recent experience. The detailed instructions on the Appellant's October 2011 E&E Rating sheet, for example, under the "Recent vs. Older Experience", state that Column 1 corresponds only to the "amount of experience you have had within 5 years of the examination". (E&E Rating Sheet Instructions, October 15, 2011) The Appellant recorded her recent experience as a Lieutenant and Sergeant over 59 months. HRD's established policy is to restrict an applicant's experience in the recent timeframe to 59 months.

In response to the Commission's procedural order following the motion hearing in this case, HRD submitted a second affidavit by Mr. White, who addressed the Appellant's E&E credits while employed at HRD, along with a Commission decision in a similar case, Nee v. Human Resources Department, Commission Docket No. B2-11-194 (August 11, 2011). In Nee, the Appellant argued that HRD did not give him proper credit for E&E on his exam. However, in Nee, the Commission stated that HRD has wide discretion in constructing the system used in scoring the E&E credits. Similarly, in Cataldo, infra, the Commission held that HRD has "broad

authority” in deciding the weight to be given to an applicant’s training and experience in connection with an examination.

Furthermore, in the second affidavit signed by Mr. White, he states that in each situation during his HRD tenure beginning in or about 2005, when an applicant recorded more than 59 months of total recent experience, the total number of months of experience was adjusted downward to 59 months. Mr. White’s affidavit also states that he had no reason to believe that the adjustment process was not functioning properly at the time of the Appellant’s E&E was reviewed and calculated. I find that HRD’s system and practice to have been applied in a consistent manner. That the Appellant disagrees with HRD’s practice does not mean that HRD acted improperly. The Appellant contends that if her E&E score is changed to 48-59 months for recent Sergeant experience and 6-11 months for recent Lieutenant experience, her exam score would be raised from 8.6 to 9.2. Other candidates could similarly argue that their E&E credit would be enhanced if only their recent experience was addressed differently. Ultimately, HRD must adhere to its standard and consistently apply it in order to be fair to all candidates. Further, there is no indication that HRD’s practice violates basic merit principles under G.L. c. 31.

CONCLUSION

Based on the foregoing, there is no genuine issue of material fact and summary decision is warranted in favor of HRD as a matter of law. Therefore, the HRD Motion is *granted* and the Appellant’s Cross-Motion and appeal are *denied*.

Civil Service Commission

Cynthia A. Ittleman
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman and McDowell, Marquis, Commissioners, on January 9, 2014.

A true Copy. Attest:

Commissioner
Civil Service Commission

Either party may file a motion for reconsideration within ten days of the receipt of this 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 the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the Commission's order or decision.

Notice to:
Joseph L. Sulman, Esq. (for Appellant)
John Marra, Esq. (HRD)