

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION
One Ashburton Place: Room 503
Boston, MA 02108
(617) 979-1900

RODNEY MARSHALL,
Appellant

v. B2-20-153

HUMAN RESOURCES DIVISION,
Respondent

Appearance for Appellant: *Pro Se*
Rodney Marshall

Appearance for Respondent: Alexis Demirjian, Esq.
Human Resources Division
100 Cambridge Street, Suite 600
Boston, MA 02114

Commissioner: Christopher C. Bowman

ORDER OF DISMISSAL

1. On October 9, 2020, the Appellant, Rodney Marshall (Appellant), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the state's Human Resources Division (HRD) to award him only 4 points, as opposed to 6 points, on the education and experience (E&E) portion of the promotional examination for Deputy Fire Chief.
2. On November 17, 2020, I held a remote pre-hearing via Webex videoconference that was attended by the Appellant and counsel for HRD.
3. As part of the pre-hearing, the parties stipulated to the following:
 - A. On July 24, 2020, the Appellant took the promotional examination for Deputy Fire Chief.
 - B. The deadline for completing the E&E portion of the examination was 7/31/20.
 - C. On September 1, 2020, the scores were released.
 - D. The Appellant received a written score of 70.0 and an E&E score of 91.5, resulting in a total score of 76.

- E. The Appellant filed an E&E appeal with HRD contesting HRD's decision to grant him only 4 points for his bachelor's degree, as opposed to 6 points. (The date of that appeal, and whether it not it was timely filed, was not known at the time of the pre-hearing conference.)
 - F. On 9/23/20, HRD denied the Appellant's appeal.
 - G. Also on 9/23/20, HRD established an eligible list for Boston Fire Department Deputy Fire Chief. The Appellant is ranked 5th.
 - H. On 10/9/20, within seventeen days of 9/23/20, the Appellant filed the instant appeal with the Commission.
4. As part of his written appeal, the Appellant stated that he had a bachelor's degree in accounting, which he had received 6 E&E points for in prior examinations.
 5. Based on the information reviewed at the pre-hearing conference, it appears that the Appellant has a Bachelor of Science degree with a Concentration in Accounting from Boston College.
 6. According to HRD, in order to receive 6 points here, the Appellant would need to have received a bachelor's degree in business administration.
 7. At the time of the pre-hearing conference, it was unknown whether the addition of 2 points to the Appellant's E&E score would impact his total score and/or his standing on the eligible list (e.g. – would it move him into the fourth position on the eligible list, as opposed to fifth).
 8. For all of the above reasons, the parties agreed to submit the following additional information after which the Commission would determine the procedural next steps of this appeal:
 - a. HRD was to provide information regarding when the Appellant filed his appeal with HRD and whether or not it was a timely appeal.
 - b. HRD was to provide information regarding whether the Appellant's score and/or rank on the eligible list would be impacted if the instant appeal were to be allowed.
 - c. HRD was to provide information regarding whether the Appellant previously received 6.0 points for his bachelor's degree and, if so, why he was only awarded 4.0 points for the same degree in this examination cycle.
 - d. The Appellant was to provide any relevant information regarding whether the School of Management at Boston College awards a bachelor's degree in business administration and/or whether Boston College distinguishes between a bachelor of science degree and a bachelor's degree in business administration.
 9. On December 8th and 13th, 2020, the Appellant provided information which was not directly responsive to Paragraph 8d above.
 10. On December 14, 2020, HRD provided information responsive to the Procedural Order stating:
 - i. The Appellant was awarded 6.0 points for his bachelor's degree in 2014 in error.

- ii. The Appellant was awarded 4.0 points for his bachelor's degree in 2016 and he did not file an appeal.
 - iii. In 2018, the Appellant was awarded 4.0 points for his bachelor's degree. He filed an appeal which HRD denied.
 - iv. In 2020, the Appellant was awarded 4.0 points for his bachelor's degree and he filed a timely appeal with HRD, which was denied.
11. Also as part of the December 14th response, HRD provided information indicating that the Appellant's score would not change if he were to be awarded 6.0 points.
12. In response, I asked HRD to verify whether, if the Appellant's score was broken down to the one-hundredth decimal point, which is the score used by the Boston Fire Department to break ties, awarding 6.0 points would place him above any other candidates (as opposed to receiving 4.0 points.)
13. Both HRD and the Boston Fire Department, after reviewing their records, confirmed that the Appellant's adjusted score would *not* place him above any candidates with a higher score, when broken down to the one-hundredth decimal point.

Applicable Civil Service Law

G.L. c. 31, s. 2(b) authorizes the Commission to:

"Hear and decide appeals by a person aggrieved by any decision, action, or failure to act by HRD, except as limited by the provisions of section twenty four (24) relating to the grading of examinations; provided that no decision or action of the administrator shall be reversed or modified nor shall any action be ordered in the case of a failure of the administrator to act, except by an affirmative vote of at least three members of the Commission, and in each such case the Commission shall state in the minutes of its proceedings the specific reasons for its decisions.

No person shall be deemed to be aggrieved under the provisions of this section unless such person has made specific allegations in writing that a decision, action, or failure to act on the part of the administrator was in violation of this chapter, the rules or basic merit principles promulgated thereunder and said allegations shall show that such person's rights were abridged, denied, or prejudiced in such a manner as to cause *actual harm* to the person's employment status." (emphasis added)

In Cataldo v. Human Resources Division, 23 MCSR 617 (2010), the Commission stated 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'".

Analysis

Based on the undisputed facts here, the Appellant is not an aggrieved person. Specifically, HRD's decision to grant him only 4 points, instead of 6, for his bachelor's degree, did not cause actual harm to his employment status; the Appellant's rank on the eligible list was not impacted

by HRD's determination, even if the Commission considers the internal tie-breaking method used by the Boston Fire Department.

Had HRD's determination impacted the Appellant's rank on the eligible list, a full evidentiary hearing may have been warranted regarding how HRD determined that a bachelor of science degree with a Concentration in Accounting from Boston College is not equivalent to a bachelor's degree in business administration. It would appear, based on a cursory review of the material submitted by the Appellant and the information available online at Boston College's website, that a further review may be warranted by HRD independent of this appeal.

However, since the Appellant cannot show that he is an aggrieved person, his appeal under Docket No. B2-20-153 is hereby *dismissed*.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on February 25, 2021.

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:

Rodney Marshall (Appellant)
Alexis Demirjian, Esq. (for Respondent)
Connie Wong, Esq. (Boston Fire Department)