

**COMMONWEALTH OF MASSACHUSETTS**

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

STEPHEN McCARTHY,  
*Appellant*

v.

B2-21-003

HUMAN RESOURCES DIVISION,  
*Respondent*

Appearance for Appellant:

*Pro Se*  
Stephen McCarthy

Appearance for Respondent:

Emily Sabo, Esq.  
Human Resources Division  
100 Cambridge Street, Suite 600  
Boston, MA 02114

Commissioner:

Christopher C. Bowman

**DECISION ON MOTION FOR SUMMARY DECISION**

1. On December 28, 2020, the Appellant, Stephen McCarthy (Appellant), a police sergeant in the Waltham Police Department, filed an appeal with the Civil Service Commission (Commission), contesting the decision of the state's Human Resources Division (HRD) to not award him 2 additional points on a police lieutenant examination for 25 years of service, pursuant to G.L. c. 31, s. 59. At issue is whether time spent as a campus police officer at Bunker Hill Community College should count toward this 25 years of service.
2. On February 9, 2021, I held a remote pre-hearing conference via Webex which was attended by the Appellant and counsel for HRD.
3. As part of the pre-hearing conference, the parties stipulated to the following:

- A. On September 19, 2020, the Appellant took a promotional examination for Police Lieutenant.
  - B. On November 10, 2020, the Appellant received his score of 87.
  - C. The Appellant did not receive 2 additional points under Section 59 for 25 years of service as HRD did not count the Appellant's time in which he served as a Bunker Hill Community College campus police officer.
  - D. On December 11<sup>th</sup>, 17<sup>th</sup> and 18<sup>th</sup>, 2020, the Appellant filed an appeal, contesting HRD's decision not to award him 2 additional points for 25 years of service provided for under Section 59.
  - E. On December 18, 2020, HRD denied the appeal.
  - F. On December 28, 2020, the Appellant filed a timely appeal with the Commission.
  - G. On December 15, 2020, an eligible list for Waltham Police Lieutenant was established. The Appellant is tied for 7<sup>th</sup> on the eligible list.
4. HRD argues that this is a settled matter based on prior Commission decisions, including [Ralph v. Human Resources Division, 32 MCSR 73 \(2019\)](#), affirmed by the Superior Court (see [Ralph v. Civil Service Comm'n, Superior Court Civil Action No. 1985CV00397 \(February 25, 2020\)](#)), under appeal in [the Appeals Court](#).
  5. At the pre-hearing conference, the Appellant was not able to point to any factors that would distinguish his appeal from prior Commission decisions regarding this issue.
  6. As referenced and agreed to at the pre-hearing, HRD had 30 days to file a Motion for Summary Decision and the Appellant had 30 days thereafter to file a reply.
  7. HRD filed its motion on March 10, 2021. The Appellant did not file a reply .

### *Legal Standard for Summary Disposition*

An appeal may be disposed of on summary disposition 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).

### *Applicable Civil Service Law*

Section 2(b) of G.L. c. 31 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.” Id.

Pursuant to G.L. c. 31, § 5(e), HRD is charged with: “conduct[ing] examinations for purposes of establishing eligible lists.” 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 ...”.

Section 59 of G.L. c. 31 provides in relevant part that:

“Notwithstanding the provisions of any law or rule to the contrary, a member of a regular police force or fire force who has served as such for twenty-five years and who passes an examination for promotional appointment in such force shall have preference in promotion equal to that provided to veterans under the civil service rules.”

## *Analysis*

Based on the undisputed facts, and for the reasons cited by HRD in their motion for summary decision, the Appellant's appeal is dismissed.

In Ralph, the Commission considered whether an officer's former service as a UMASS Lowell campus police officer in 1992-1993 should be credited toward the 25-year promotional preference. The Commission concluded that "[t]hese limited grants of police power are essentially no different from the limited, rather than general, police powers that are granted to many other persons who are not, thereby, deemed 'regular' police officers." Id. (citing G.L.c.22C, §56 et seq; Commonwealth v. Mullen, 40 Mass.App.Ct. 404, rev.den. 423 Mass. 1105 (1996) (cataloguing statutes providing limited grants of police powers)). The Commission found that his employment on the UMASS campus police was not on "a regular police force" and "HRD was justified to conclude that his employment at UMass Lowell did not qualify for creditable time toward the 25-Year Promotional Preference." Id.

HRD was justified in not crediting the Appellant's time as a Bunker Hill Community College campus police officer from 1994-1996 toward the 25-Year Promotional Preference as this was not service as "a member of a regular police force" as required by Chapter 31, § 59. As a campus police officer, and particularly during the time frame in which he served,<sup>1</sup> the Appellant was not performing the same work as a member of a regular police force.

Furthermore, the Appellant's experience occurred on a community college campus, which the Commission has suggested would be less likely to rise to the level of a regular police force.

Arakelian v. Human Resources Division, 30 MCSR 253 n.5 (2017) ("The level of inquiry regarding the experiences of campus police at state community colleges may or may not be

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<sup>1</sup> See Ralph, 32 MCSR 73 (discussion of 2014 legislative changes and how they could not be read to apply to service at UMASS Lowell campus in 1993).

different from the experiences of state University campus police officers.”).

*Conclusion*

For all of the above reasons, HRD’s Motion for Summary Decision is allowed and the Appellant’s appeal under Docket No. B2-21-003 is *dismissed*.

Civil Service Commission

/s/ Christopher Bowman  
Christopher C. Bowman  
Chair

By a vote of the Civil Service Commission (Bowman, Chair; Camuso, Ittleman, Stein and Tivnan, Commissioners) on June 3, 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:

Stephen McCarthy (Appellant)  
Emily Sabo, Esq. (for Respondent)