

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

100 Cambridge Street – Suite 200
Boston, MA 02114
617-979-1900

TIMOTHY MEDEIROS,
Appellant

B2-23-254

v.

HUMAN RESOURCES DIVISION,
Respondent

Appearance for Appellant:

Timothy Medeiros, *Pro Se*

Appearance for Respondent:

Tracy Conlon, Esq.
Labor Counsel
Human Resources Division
100 Cambridge Street, Suite 600
Boston, MA 02114

Commissioner:

Paul M. Stein

SUMMARY OF DECISION

The Commission upheld HRD’s scoring of the Appellant’s Experience, Certification, Training and Education (ECT&E) component of the Statewide Deputy Fire Chief’s Examination as “incomplete” because the Appellant failed to comply with the instructions for timely submission of the ECT&E on-line claim form.

DECISION ON RESPONDENT’S MOTION FOR SUMMARY DECISION

On December 21, 2023, the Appellant, Timothy Medeiros, a Stoughton Firefighter, appealed to the Civil Service Commission (Commission)¹, after HRD denied his request for review of his score on the Experience, Certification, Training and Education (ECT&E) component of the November 18, 2023 Statewide Deputy Fire Chief Examination. I held a remote pre-hearing conference on January 30, 2024. On February 28, 2024, pursuant to a Procedural Order dated

¹ The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.01 (formal rules), apply to adjudications before the Commission with G.L. c. 31, or any Commission rules, taking precedence.

January 31, 2024, HRD filed a Motion for Summary Decision on the grounds that the Appellant had failed to follow the instructions and never filed the required on-line E&E form necessary to receive any credit for that component of the exam. The Appellant opposed the motion on the grounds that he had encountered technical problems with his computer and was unable to contact HRD until after the filing deadline had expired. For the reasons stated below, HRD's motion is allowed, 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, Timothy Medeiros, is a tenured firefighter with the City of Stoughton's Fire Department (SFD).
2. The Appellant took the statewide Deputy Fire Chief's Promotional Exam administered on November 18, 2023 by the Massachusetts Human Resources Division (HRD).
3. The statewide Deputy Fire Chief's promotional exam contained three components: (1) a Technical Knowledge (TK) component worth a maximum of 44 points (44%) toward a maximum final exam score of 100; (2) a Situational Judgement Test (SJT) component worth a maximum of 36 points (36%) toward the final exam score; and (3) an ECT&E component worth a maximum of 20 points (20%) toward the final exam score.
4. A final exam score of 70 was required to pass the exam.
5. The ECT&E component required the submission of an online claim form, together with certain supporting documentation to claim points for ECT&E credit in three categories: Job Experience, within and outside the candidate's current department; Certifications and Training; and Education. A maximum of 100 ECT&E points could be claimed, which would be converted

by a formula toward the maximum of 20 points that potentially would be added to the candidate's TK and SJT scores to produce the candidate's final exam score.

6. The deadline to submit the on-line ECT&E claim form expired on November 25, 2023.

7. HRD provided all candidates, including the Appellant, with written reminders of the obligation to submit an on-line ECT&E claim form and provided specific instructions on how to access, complete and confirm submission of the ECT&E claim form.

8. Candidates received an email on October 27, 2023, containing the following ECT&E instructions, in relevant part:

The ECT&E Claim application is a scored, weighted, examination component and is separate from the Written Exam application you submitted to take the exam.

As stated in the exam poster, all ECT&E claims must be submitted electronically through the ONLINE application using the application link below.

To assist you in filling out the ECT&E online application, an ECT&E Prep Guide is available on the Civil Service website as well as under the Resource Section below. Please be advised that, in order to ensure that no one receives any type of unfair advantage in the claim process, we are unable to provide individualized assistance to any applicant. **THIS IS AN EXAMINATION COMPONENT** and it is the responsibility of each candidate to carefully review and follow the instructions.

The Online ECT&E Claim is now available. To access this exam component:

1. Click this application link to access the ECT&E Claim;
2. Carefully read all information in the posting;
3. Click "Apply";
4. Log in to your account; **IF YOU ARE UNABLE TO LOG INTO YOUR ACCOUNT, CONTACT THE APPLICANT SUPPORT TEAM FOR ASSISTANCE AT (855) 524-5627. (EMPHASIS ADDED)**
5. Complete the online ECT&E claim as instructed electronically.
6. You have successfully electronically completed and electronically submitted the ECT&E Claim application when you receive a confirmation email acknowledging receipt of the ECT&E Claim.

(AN APPLICATION IS NOT COMPLETE UNTIL YOU HAVE ELECTRONICALLY COMPLETED AND SUBMITTED THE ONLINE E&E CLAIM THROUGH THE APPLICATION LINK PROVIDED ABOVE, AND RECEIVED A CONFIRMATION EMAIL)

The claim application must be electronically submitted online THROUGH THE APPLICATION LINK ABOVE and no later than 11:59 pm on **Saturday November 25,**

2023. Late applications will not be accepted. If you do not receive an automated confirmation email after you submit your claim, your E&E claim application has not been received by Civil Service and will not be scored. If you have not received a confirmation mail, you must resubmit your online application THROUGH THE APPLICATION LINK ABOVE, prior to the submission deadline, until you have received a confirmation email. In the event an unforeseen technological problem prevents you from successfully submitting the online claim, you must notify Civil Service at civilservice@mass.gov prior to the deadline above, requesting consideration of the claim, describing the technical issue, and attaching your completed ECT&E claim application and supporting documentation.

Information on Promotional Preference Points

The information displayed below for each category confirms that you are eligible for the following preference(s):

Veteran Status:

25 Years of Service:

If these are correct, you do not need to re-submit supporting documentation to claim your two statutory preference points. If you qualify for these preference(s) and do not see them listed above, you will need to submit the relevant documentation. A maximum of two points will be awarded on top of the overall passing score

Information on how to provide supporting documentation:

- 1) Scan and attach documents to your online E&E claim application at time of submission.
- or
- 2) Email scanned documents to civilservice@mass.gov and please include E&E in the subject line, provide your name, personal identification number, and exam you have applied for.

(HRD Motion, Attch. 1, emphasis in original)

5. On November 14, 2023, candidates were provided with another copy of the ECT&E

instructions, again, stating:

YOU ARE RECEIVING THIS EMAIL AS A REMINDER TO SUBMIT YOUR ONLINE EDUCATION AND EXPERIENCE CLAIM IF YOU HAVE NOT ALREADY DONE SO.

The ECT&E claim application is separate from the Written Exam application you submitted to take the exam. THIS IS AN EXAMINATION COMPONENT: Complete your Online ECT&E Claim on your own and to the best of your ability. Accurate completion of the education and experience claim is a scored, weighted, examination component. In order to ensure that no one receives any type of unfair advantage in the claim process, be advised that we are unable to provide individualized assistance to any applicant.

As stated in the exam poster, all ECT&E claims must be submitted ONLINE.

The Online ECT&E Claim is now available. To access this exam component:

1. Click here to access the application
2. Carefully read all information in the posting
3. Click "Apply";
7. Log in to your account; **IF YOU ARE UNABLE TO LOG INTO YOUR ACCOUNT, CONTACT THE APPLICANT SUPPORT TEAM FOR ASSISTANCE AT (855) 524-5627. (EMPHASIS ADDED)**
4. Complete the online ECT&E claim as instructed.
5. If you have successfully completed and submitted the ECT&E claim application you will receive a confirmation email.

(AN APPLICATION IS NOT COMPLETE UNTIL YOU RECEIVE THIS CONFIRMATION EMAIL)

The claim application must be submitted online and no later than 11:59 pm on Saturday November 25, 2023. Late applications will not be accepted. If you do not receive an automated confirmation email after you submit your claim, your ECT&E claim application is considered incomplete and will not be accepted.

Information on how to provide supporting documentation:

1. Scan and attach documents to your online E&E claim application at time of submission
2. Email scanned documents to civilservice@mass.gov

Please note that ECT&E is an exam component, and therefore, you must complete the online ECT&E claim. Supporting documentation will NO LONGER be collected at the exam site. Information must be attached to your online application or emailed to civilservice@mass.gov.

Inquiries regarding completion of the claim will not be accepted or responded to. It is the responsibility of each candidate to carefully review and follow the instructions.

(HRD Motion, Attch. 3)

9. On Monday, November 27, 2023, at 2:54 pm, the Appellant sent an email to HRD (at civilservice@mass.gov), in which he stated (sic): “While trying to submit my E&E my computer went down along with me losing internet. So I wasn’t able to submit it in time for the deadline only being able to get my computer back up im asking if I can’t still submit it please let me know thank you again candidate Timothy mederios stoughton fire department.”

10. Having received no response from HRD, on Monday, December 4, 2023, at 11:46 am, the Appellant sent a second email to civilservice@mass.gov, in which he stated: “Good morning when

I was doing my E&E for the deputy exam before the deadline my computer went down. And it had all of my files for certain ans (sic) employer verification forms in it and was only able to get it back this week and it's since been past the dead line. So I'm no longer able to finish it all. I had called and sent and (sic) email last week and haven't heard back on it yet. This is my back up email address but the login email is Timothy.medeiros@yahoo.com for hrd not sure if that matters. Thank you for reading this email.”

11. On December 6, 2023, HRD, treating his request as an ECT&E appeal, which it denied, stated in an email to the Appellant:

“Good morning.

The ECT&E application along with all other Civil Service applications have a closing date that will close the application automatically at set date. We are not able to reopen it without formal approval. I have included below the appeal right that you can exercise after receiving your scores.

Chapter 31, Section 22 of the Massachusetts General Laws (M.G.L.) provides that you may submit in writing a request for a review of the scoring of your Education and Experience (E&E) Claim by sending an email to civilservice@mass.gov. Your email request and supporting documentation must be received by HRD no later than 17 calendar days after the emailing of this notice. No new claim(s) for additional E&E points may be submitted at this time. Candidates may only provide additional clarifying information specific to an initial claim made prior to the original statutory deadline. Your request for review must include specific information/documentation about all Experience, Certification, Training and Education claims you seek to have credited. Please indicate the title of the examination, your Person ID, and include supporting documentation as directed in the original E&E instructions.”

12. The Appellant sent HRD another email on December 13, 2023 in which he stated:

“Good afternoon I'm writing you this email to state a formal appeal on my E&E now i (sic) know the email you sent you stated 17 days after receiving this email but I wasn't sure if it was this one or when I receive my scores which I have not yet. But what I am trying to say is I wasn't able to complete my E&E by the due date due to my computer breaking down and it having all my forms and certs attached on it, and i (sic) was only able to get my computer back after the dead line i (sic) will attach all my forms and certs to this email as well. If I am to do this after my exam results I will again as well. Thank you.”

13. On December 21, 2023, the Appellant filed this appeal using the form prescribed for a “Performance Evaluation Appeal”. The Appellant attached copies of four certifications (Firefighter I & II, Hazmat and Fire Instructor I), a copy of his paramedic license, and an Employment Verification Form showing permanent appointment as a SFD firefighter on 12/28/2008 and prior employment in the Dartmouth Fire Department as a Firefighter and Fire Lieutenant.

14. On January 19, 2024, HRD issued its score notice to the Appellant, informing him that he had received a TK score of 28.17 (out of 44 possible maximum points), received an SJT score of 24.23 (out of 36 possible maximum points), and scored INCOMPLETE on the E&E component due to failure to complete the on-line E&E claim form, resulting in a zero E&E component score. Thus, the Appellant’s combined TK and SJT score was 52.40, rounded to a final exam score of 52. This final exam score is 18 points short of the passing final score of 70. The Appellant was informed that he had failed the exam.²

15. HRD has no record, and the Appellant has provided no proof that, prior to November 25, 2023, he submitted an ECT&E on-line claim form in accordance with the instructions he received; nor that he received an email confirming the submission of his ECT&E claim; nor that he contacted HRD’s technical support line provided in the ECT&E instructions at any time to explain the problem he had with the ECT&E claim submission process.

16. Based on the HRD Scoring Guide used to score the ECT&E component of the statewide Deputy Fire Chief’s exam, and the information provided by the Appellant to the Commission after he filed this appeal, my estimate of the Appellant’s potential ECT&E score falls below the 18+

² As a veteran with 25 years of service, the Appellant would be entitled to an additional two points added to his final exam score, but only if his overall score on the three exam components had equaled a passing grade.

ECT&E score he would have needed to pass the Deputy Fire Chief's exam.³ Moreover, even if he achieved that minimum passing score, it would place him near the bottom of the current eligible list for SFD Deputy Fire Chief established by HRD on March 8, 2024, below six to eight other candidates who achieved higher scores on the November 18, 2023 examination. Thus, I conclude that, even with full ECT&E credit, the Appellant was unlikely to achieve a passing score and, even if he did, his chances for promotion to the position of Deputy Fire Chief during the life of the current eligible list are remote at best.⁴

17. On January 12, 2024, the Appellant filed this timely appeal with the Commission.

APPLICABLE LEGAL STANDARD

The Commission may, on motion or upon its own initiative, dismiss an appeal at any time for lack of jurisdiction or for failure to state a claim upon which relief can be granted. 801 CMR 1.01(7)(g)(3). 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.

³ The Appellant's four certifications and paramedic license would entitle him to 12 "Certification" Points. His Employment Verification Form is confusing, as it appears to claim 14 years of employment as a SFD Firefighter since 2008, worth 14.2882 "Experience" points, as well as permanent employment as a Firefighter with the Dartmouth Fire Department beginning in 2004, including promotion to Fire Lieutenant in September 2021. Although it would be unlikely that the Appellant actually served as a full-time firefighter in both departments, viewing the record most favorably to him, additional service outside his current department would be worth an extra 14.1473 "Experience" Points. When these raw points are converted to the maximum ECT&E test component scale of 20, that produces a rough estimate for the Appellant's total ECT&E test score in the range of 5.69 (i.e. 28.4355 x 0.2) well below the target needed for the Appellant to earn a passing overall exam score.

⁴ According to the Appellant, the SFD currently has one Deputy Fire Chief.

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 . . . that 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]”.

Here, the Appellant did not follow HRD’s instructions for submitting an ECT&E claim. He has not provided sufficient evidence to establish that he took all the steps that HRD had outlined for him when he encountered a technical problem with submitting the on-line claim. I understand the Appellant’s concern that he misunderstood the mechanics of completing an ECT&E claim, but

HRD argues that following instructions is a reasonably required part of the examination process. I agree, especially when the position is a senior command staff job in which following protocol and problem-solving are especially critical to effective performance. I also note that the Appellant's lack of attention to detail carried over to the Commission, in which he used the wrong form to file this appeal and submitted a confusing Employment Verification Form.

The Commission defers to HRD's expertise and discretion to establish reasonable requirements, consistent with basic merit principles, for crafting, administering, and scoring examinations. In particular, in deciding prior appeals, the Commission has concluded that, as a general rule, HRD's insistence on compliance with its established examination requirements for claiming and scoring training and experience credits was neither arbitrary nor unreasonable. See, e.g., Kiley v. HRD, 36 MCSR 442 (2023); 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).⁵

⁵ I have not overlooked the anomaly that HRD's decision to award zero points to a candidate who did not comply with the ECT&E on-line claim submission process ignores the fact that G.L. c. 31, § 59 requires, in order for HRD to have allowed the Appellant to sit for the SFD Deputy Fire Chief's examination, he must have been "actually" employed with the SFD for a minimum period prescribed by the statute – here, one year. The Commission has questioned whether, denying a candidate the minimum credit for the job experience he needed to be allowed to take the exam could be considered arbitrary and unreasonable. I don't need to address this anomaly, here, as a credit for the minimum one year of service would produce an ECT&E score of only one point or so, well below any threshold required to raise the Appellant to a passing score. The Commission may reserve consideration of this point, however, in any future case where it would make a difference.

In sum, consistency and equal treatment are important hallmarks of basic merit principles under civil service law. The present appeal presents no basis for the Commission to deviate from its well-established line of decisions directly on point; instead, it will defer to HRD's exercise of reasonable expertise in the matter of ECT&E claim design and scoring.

CONCLUSION

For the reasons stated above, HRD's Motion to For Summary Decision is *allowed*, and the Appellant's appeal under Case No. B2-23-254 is *dismissed*.

Civil Service Commission

/s/Paul M. Stein

Paul M. Stein

Commissioner

By vote of the Civil Service Commission (Bowman, Chair; Dooley, McConney, Stein, and Tivnan, Commissioners) on April 18, 2024.

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:

Timothy Medeiros (Appellant)

Tracy Conlon, Esq. (for Respondent)