

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

KERWIN MERCADO,
Appellant

v.

B2-18-095

HUMAN RESOURCES DIVISION,
Respondent

Appearance for Appellant:

Pro Se
Kerwin Mercado

Appearance for Respondent:

Melinda Willis, Esq.
Human Resources Division
One Ashburton Place: Room 211
Boston, MA 02108

Commissioner:

Christopher C. Bowman

DECISION ON RESPONDENT’S MOTION FOR SUMMARY DECISION

1. On May 25, 2018, the Appellant, Kerwin Mercado (Mr. Mercado), a Correctional Program Officer A/B (CPO A/B) at the Department of Correction (DOC), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the state’s Human Resources Division (HRD) to not award him 6 points on the Education and Experience (E&E) portion of a February 17, 2018 examination for CPO C for a bachelors degree he obtained from Universidad Nacional Pedro Henriquez Urena (the University) in the Dominican Republic.
2. On June 26, 2018, I held a pre-hearing conference at the offices of the Commission that was attended by Mr. Mercado, counsel for HRD and counsel for DOC.
3. As part of the pre-hearing, HRD indicated that, in order to receive credit for a bachelors degree, the college or university must be recognized by one of the regional accrediting boards in the United States, which the University in the Dominican Republic is not.

4. Mr. Mercado argued that, since DOC recognizes his bachelors degree from this University for issues related to provisions in the collective bargaining agreement, HRD should recognize it as well for purposes of E&E.
5. HRD argued that they must have some type of objective, uniform standard to determine which degrees are deemed acceptable for E&E purposes and that the current practice provides that objectivity and uniformity.
6. HRD subsequently filed a Motion for Summary Decision and the Appellant filed a reply which I have deemed a Cross-Motion for Summary Decision.

Analysis

This is not a new issue for the Commission. In Carroll v. Human Resources Division, 27 MCSR 157 (2014), the Appellant sought E&E credit for a Fire Science degree conferred by Columbia Southern University (CSU). HRD denied credit for that degree, because CSU had accreditation from the Distance Education and Training Council (DETC), a national, but not regional, accreditation body. The Commission determined that:

“In view of HRD’s statutory considerable discretion in granting E&E credit, its expertise, and the manner in which HRD has exercised its discretion, the Commission cannot state that HRD’s actions were clearly arbitrary or otherwise unsupported by ‘logic and reason’ ... Further, the Appellant’s disagreement with HRD’s E&E determination does not render it arbitrary, unfair, or an abuse of discretion. HRD established a policy, approximately seven years prior to the Appellant’s exam, that it would grant E&E credit only for degrees or credits from regionally accredited institutions of higher education. The U.S. DOE website references two forms of accreditation: regional and national. HRD’s policy indicates that it chose to accept credits from one of two available sources of accreditations. I find nothing arbitrary, unfair or unreasonable in HRD’s policy.”

I carefully reviewed the arguments offered by Mr. Mercado. His appeal is not distinguishable from Carroll. HRD has continued to adhere to the same uniform policy regarding E&E credits here and there is no reason for the Commission to effectively reverse its decision in Carroll.

Finally, the Commission has no jurisdiction to hear that part of Mr. Mercado’s appeal regarding “counseling experience” as he failed to first file an appeal with HRD regarding that issue. (G.L. c. 31, s. 24).

For all of the reasons stated in HRD's Motion for Summary Decision, including those referenced above, the motion is allowed and Mr. Mercado's appeal under Docket No.B2-18-095 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 November 8, 2018.

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:

Kerwin Mercado (Appellant)
Melinda Willis, Esq. (for Respondent)
Earl Wilson, Esq. (DOC)