

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

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

SIXTO MERCED,
Appellant

Docket No. B2-14-280

v.

**BOSTON POLICE DEPARTMENT and
HUMAN RESOURCES DIVISION**
Respondents

Appearance for Appellant:

Sixto Merced, *Pro Se*

Appearance for Respondent, HRD:

Wendy Chu, Esq.
Human Resource Division
One Ashburton Place
Boston, MA 02108

Appearance for Respondent, BPD:

Nicole I. Taub, Esq.
Boston Police Department
1 Schroeder Plaza
Boston, MA 02120-2014

Commissioner:

Paul M. Stein

DECISION ON BPD'S MOTION TO RECONSIDER

The Appellant, Sixto Merced, a Police Officer with the Boston Police Department (BPD), acting pursuant to G.L.c.31, §2(b) and §24, appealed to the Civil Service Commission seeking to nullify the results of the Written Technical Knowledge Test and the two components of the Ability Based Assessment Examination of the 2014 Boston Police Sergeant Promotional Examination administered by the BPD under a Delegation Agreement with the Massachusetts Human Resources Division (HRD). BPD filed a Motion to Dismiss the appeal as untimely which Officer Merced opposed. By Decision dated February 4, 2016, the Commission denied the motion and ordered HRD to conduct a substantive fair test review of the BPD 2014

Sergeant's Promotional Examination as required by G.L.c.31, §22,¶4 and §23. On February 16, 2016, BPD filed a Motion for Reconsideration, reasserting that the Appellant's appeal should be dismissed as untimely.

After careful consideration of BPD's motion, I find no significant or material fact or issue that the Decision overlooked. In reaching its Decision, the Commission was fully aware that it had concluded that the Appellant had not acted appropriately to preserve his right to a review of the "marking" of his multiple choice or essay questions under G.L.c.31,§22,¶2. That conclusion, however, is not inconsistent with the conclusion that significant procedural missteps were made by BPD and HRD with respect to the Appellant's independent right to seek a "fair test" review under G.L.c.31,§22,¶4 and that, especially after having been put on notice of the Commission's concerns in this matter, those missteps warranted granting the procedural relief ordered by the Commission's Decision. As far as the contention that the statutory appeal period should be strictly applied, the Motion to Reconsider raises no new issues that the Commission did not previously address. In fact, the Commission notes that even BPD waived the comparable seventeen day statutory appeal deadline for filing an appeal of the "marking" of the examination, after realizing that its initial process (requiring candidates to complete the appeal form at the examination site within 30 minutes of finishing the test) was procedurally flawed. Finally, BPD's fear that the Decision will open the floodgates for others to attempt to claim "fair test" appeals in the future is not justified. A year has elapsed since the 2014 BPD Promotional Examination results were announced and it is difficult to imagine how any new appeals could now be asserted. As to future examinations, so long as BPD and HRD take care that candidates are not misinformed by error or omission of their appeal rights, the issue will not arise in the future.

Finally, the Commission's Decision provides a remedy that is solely intended to cure the procedural flaws in the process. As the Decision made clear, nothing therein addresses the merits as to whether or not the Appellant's claims regarding the 2014 BPD Sergeant's Promotional Examination, or any portion thereof, upon HRD review, meet statutory requirements for establishing that the examination was not a "fair test".

Accordingly, for the reasons stated, BPD's Motion to Reconsider is **denied**.

Civil Service Commission

/s/ Paul M. Stein

Paul M. Stein

Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein & Tivnan, Commissioners) on March 18, 2016.

Notice to:

Sixto Merced (Appellant)

Wendy Chu, Esq. (for HRD)

Nicole Taub, Esq. (for BPD)