

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

SIXTO MERCED,
Appellant

v.

B2-15-106

HUMAN RESOURCES DIVISION,
Respondent

Appearance for Appellant:

Pro Se
Sixto Merced

Appearance for Respondent:

Mark Detwiler, Esq.
Human Resources Division
One Ashburton Place: Room 211
Boston, MA 02108

Commissioner:

Christopher C. Bowman

DECISION ON MOTION FOR SUMMARY DECISION

On May 29, 2015, the Appellant, Sixto Merced (Mr. Merced), acting pursuant to G.L. c. 31, § 2(b), timely appealed to the Civil Service Commission (Commission) contesting the decision of the Respondent, the Massachusetts Human Resources Division (HRD), to provide him with additional training and experience credit for the June 2014 Boston Police Department (BPD) Police Sergeant Examination.

On June 23, 2015, I held a pre-hearing conference at the offices of the Commission, which was attended by Mr. Merced, counsel for HRD and counsel for the BPD. HRD subsequently filed a Motion for Summary Decision and Mr. Merced filed a reply.

Mr. Merced is employed by the Boston Police Department (BPD) as a Detective Police Officer. He sat for a promotional exam for the title of Sergeant on June 2, 2014. As part of this examination, Mr. Merced applied for experience and education (E&E) credit. E&E is a component of the examination that provides applicants with extra points for work experience, education, and various other categories including for courses taught in a recognized college, university, police academy, or non-degree granting school above the high school level as of the date of the examination. Mr. Merced's application for E&E included a request for credit for time served as a teaching assistant (TA) for two semesters in 1996 while he was an undergraduate student.

The most recent promotional exam for BPD was delegated to BPD from HRD. As part of this process, BPD contracted with HRD to grade the E&E component of the examination. HRD graded Mr. Merced's E&E submission and notified him of his score. Mr. Merced was awarded every E&E point that he requested, with the exception for time served as a TA which was denied.

Mr. Merced appealed this score to BPD and HRD, arguing that he deserved teaching credit for his time served as a TA. HRD and BPD sent Mr. Merced a letter indicating "no pts awarded for Teaching Assistant position. MUST be a teacher at the level of an adjunct professor or higher."

HRD's Argument

HRD argues that Mr. Merced is not aggrieved, because he was treated the same as every other candidate who applied for E&E credit. HRD submitted an affidavit stating that HRD does not give E&E teaching credit for TAs and never has. According to HRD, this rule applies to every candidate, and was applied to every candidate on the relevant exam. HRD

argues that they appropriately determined that, to receive teaching credit at a college or university, an applicant must have taught at the level of adjunct professor or higher and that they have applied this rule uniformly.

Mr. Merced's Argument.

Mr. Merced argues that, based on a “common sense definition”, he did “teach” Spanish at a recognized university and that he should get the same E&E credit that he believes is awarded by HRD to applicants who are instructors at a Police Academy.

Also, for the first time, Mr. Merced, in his reply brief, asks the Commission to grant him credit for an in-service training course that he “taught” for the Boston Police Department.

Summary Decision Standard

Section 1.01(7)(h) of the applicable standard adjudication Rules of Practice and Procedure at 801 CMR provides that, “When a Party is of the opinion there is no genuine issue of fact relating to all or part of a claim or defense and he is entitled to prevail as a matter of law, the Party may move, with or without supporting affidavits, for summary decision on the claim or defense. If the motion is granted as to part of a claim or defense that is not dispositive of the case, further proceedings shall be held on the remaining issues”. 801 CMR 1.01(7)(h). 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. See Catlin v. Board of Registration of Architects, 414 Mass. 1, 7 (1992); Massachusetts Outdoor Advertising Counsel v. Outdoor Advertising Board, 9 Mass.App.Ct. 775, 782-83 (1980).

Applicable Civil Service Law

The fundamental purpose of the civil service system is to guard against political considerations, favoritism, and bias in governmental hiring and promotion. The commission is charged with ensuring that the system operates on "[b]asic merit principles." Massachusetts Assn. of Minority Law Enforcement Officers v. Abban, 434 Mass. at 259, citing Cambridge v. Civil Serv. Comm'n., 43 Mass.App.Ct. at 304. "Basic merit principles" means, among other things, "assuring fair treatment of all applicants and employees in all aspects of personnel administration" and protecting employees from "arbitrary and capricious actions." G.L. c. 31, § 1. Personnel decisions that are marked by political influences or objectives unrelated to merit standards or neutrally applied public policy represent appropriate occasions for the Civil Service Commission to act. Cambridge at 304.

G.L. c. 31, § 2(b) 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."

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.' G.L. c. 31, § 22(1)."

Analysis

There is no dispute regarding the facts relevant to this appeal. While Mr. Merced was an undergraduate student, he served as a “Teacher’s Assistant”. At the pre-hearing conference, he candidly acknowledged that his duties were limited to grading examinations and assisting students with their coursework. Regardless of the task performed in this capacity while he was an undergraduate, HRD has a uniform policy, applied here and in the past, to not consider the duties of a Teacher’s Assistant to be “teaching” that warrants additional E&E credits. Contrary to Mr. Merced’s argument, that determination, applied to all candidates, appears to be reasonable and firmly grounded in commonsense. Grading examinations and assisting students with their coursework does not equate to “teaching”.

Even if, as Mr. Merced argues, HRD has awarded E&E credits to police officers who have served as instructors at the Police Academy, that apples to oranges argument does not change my conclusion here. Finally, Mr. Merced did not include, as part of his appeal to HRD, a request to be given E&E credit for conducting an in-service training. Thus, that issue is not before the Commission,

Given the undisputed facts, the broad authority granted to HRD in administering examination, including the awarding of E&E points; the uniform manner in which HRD has denied credit for duties performed as a “Teacher’s Assistant” and the inherent reasonableness of that policy, HRD is entitled to summary judgment here.

Conclusion

HRD’s Motion for Summary Decision is allowed and Mr. Merced’s appeal under Docket No. B2-15-106 is *dismissed*.

Civil Service Commission

Christopher C. Bowman

Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell and Stein, Commissioners) on August 6, 2015.

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:
Sixto Merced (Appellant)
Mark Detwiler, Esq. (for Respondent)
Nicole Taub, Esq. (Boston Police Department)