

COMMONWEALTH OF MASSACHUSETTS

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

KRISTEN D. MURPHY,
Appellant

v.

B2-21-013

HUMAN RESOURCES DIVISION,
Respondent

Appearance for Appellant:

Pro Se
Kristen D. Murphy

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 January 4, 2021, the Appellant, Kristen D. Murphy (Appellant), a Milton Police Sergeant, filed an appeal with the Civil Service Commission (Commission), contesting her education and experience (E&E) score on a police lieutenant examination administered by the state's Human Resources Division (HRD).
2. On February 16, 2021, I held a remote pre-hearing conference via Webex videoconference 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 the police lieutenant examination.

- B. On November 10, 2020, the Appellant received her score from HRD: Written Score of 85; E/E Score of 94.3 and a Total Score of 87.
 - C. The Appellant filed a timely appeal with HRD contesting her E/E score.
 - D. An eligible list for Milton Police Lieutenant was established on 12/15/20.
 - E. The Appellant is ranked second on the eligible list.
4. As part of the pre-hearing conference and a written submission by the Appellant, the Appellant stated that, despite having two additional years of experience since this promotional examination was administered in 2018, her E/E score decreased from 94.80 to 94.30. She also questioned, specifically, whether she received full credit on Question 9 of the E/E portion of the examination.
 5. At the pre-hearing conference, counsel for HRD offered to have HRD conduct a further review of the Appellant's E/E submission and provide a detailed explanation of their findings.
 6. I informed the parties that, upon receipt of HRD's findings, further orders would issue regarding the procedural next steps of this appeal.
 7. On February 26, 2021, counsel for HRD reported that:

“In asking the Civil Service unit to review Ms. Murphy's E&E score, I have found out more information. At the pre-hearing, Ms. Murphy disclosed that she had received a 94.3 for her E&E score and that she had received a 94.8 for her E&E score in 2018. In taking a closer look, Ms. Murphy was credited with the points that she claimed for her E&E score, which double counted her time, as opposed to the amended score. The questions, including question 9, state that experience cannot be used, which has been given credit in a previous category. The points she claimed for her E&E score was transposed rather than her corrected score. Her correct E&E score in 2018 was 89.4, and in 2020 was 90.4. This does not impact her placement on the Milton list. The Civil Service unit also reviewed the scores of the other two individuals on the Milton list and their scores are correct. As this doesn't change her placement on the list at this time, we are not asking to adjust Ms. Murphy's score.”
 8. In response, the Appellant indicated that she would not be withdrawing her appeal and that she wanted a more detailed explanation from HRD.

9. On April 5, 2021, HRD filed a Motion for Summary Decision. As part of that motion, HRD offered the following additional information:

“The claim instructions specifically stated:

POLICE DEPARTMENTAL PROMOTIONAL EXPERIENCE CLAIM

INSTRUCTIONS: CREDITING WORK EXPERIENCE: In this section you rate your work experience as of the date of the examination based on type, amount, and recency. After you have read the instructions, read the description of work in each category. Begin completing the claim with the category corresponding to the highest rank of your work experience and continue working down through the claim. Do not rate any category in which you have less than one month of experience and do not indicate the same work experience in more than one category. In regards to incomplete full-time months, 16 or more work days will equal a full month. . . . **NO “DOUBLE COUNTING”:** Do not rate any category in which you have less than one month (16 or more work days) of experience and do not indicate the same work experience in more than one category. . . . **SELECT “YES” TO INDICATE YOU HAVE READ AND UNDERSTOOD THESE INSTRUCTIONS.**

Upon review of her appeal, in 2018 and 2020, the Appellant was credited with the score she claimed, which double counted her time served, rather than her amended score that properly accounted for her experience.

For example, in her 2020 E & E claim, the Appellant claimed and was credited that she had 48 to 59 months of experience as a Police Sergeant in the specified department within 5 years of the examination date. In a subsequent question, she also claimed that she had 48 to 59 months of experience as a Police Officer in the specified department within 5 years of the examination date, despite the question specifically directing “Do not include experience for which you have given yourself credit in a previous category.”

The Appellant’s claimed points for the E & E score were copied into her score field rather than her accurate, amended score.

The Appellant’s correct, amended score in 2018 was 89.4, and in 2020 was 90.4.

The Civil Service unit also reviewed the scores of the other two individuals on certification no. 07111, and confirmed that their scores are accurate.”

10. 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 ...”.

Analysis

The Appellant has no reasonable expectation of prevailing on her appeal. HRD has provided a detailed explanation showing that, upon further review, the Appellant's score should not be adjusted *up*, but, rather, adjusted *down*. The Appellant, despite being given the opportunity to do so, has not refuted HRD's reasonable and logical explanation for this outcome.

Conclusion

HRD's Motion for Summary Decision is allowed and the Appellant's appeal 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:

Kristen D. Murphy (Appellant)
Emily Sabo, Esq. (for Respondent)