

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, SS.

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

GREGORY NAYLOR,
Appellant

v.

B1-17-163

HUMAN RESOURCES DIVISION,
Respondent

Appearance for Appellant:

Gregory Naylor
Pro se

Appearance for Respondent:

Melissa A. Thomson, Esq.
Human Resources Division
100 Cambridge Street, Suite 600
Boston, MA 02114

Commissioner:

Cynthia A. Ittleman

DECISION

The Appellant, Gregory Naylor (Appellant or Mr. Naylor), filed a timely appeal with the Civil Service Commission (Commission) on August 14, 2017 under G.L. c. 31, s. 22, appealing the decision of the state's Human Resources Division (Respondent or HRD) to deny him employment/experience (E/E) credit for time served as a Connecticut State Trooper (approximately 20 years) as part of the entry-level civil service examination for police officer administered by HRD on March 25, 2017. A prehearing conference was held on September 26, 2017 at the Commission's office in Boston. A Commission Procedural order dated September 27, 2017 permitted HRD to file a motion for summary decision (Motion) and for the Appellant to

file an opposition (Opposition) thereto. HRD filed the Motion and the Appellant filed an Opposition. After careful consideration, the Motion was denied at that time. A full hearing was held on May 7, 2018 in the Commission's office in Boston.¹ The hearing was digitally recorded and copies of the recording were sent to the parties.² The parties submitted post-hearing briefs. For the reasons stated herein, the appeal is allowed.

FINDINGS OF FACT:

A total of thirty-two (32) exhibits³ regarding the 2017 appeal were entered into the record at the full hearing. Based on these exhibits and the testimony of the following witnesses:

Called by the Respondent:

- Regina Caggiano, Deputy Director of Civil Service for HRD

Called by the Appellant:

- Gregory Naylor, Appellant

and taking administrative notice of all matters filed in the case; stipulations; pertinent statutes, case law, regulations, rules, and policies; and reasonable inferences from the credible evidence; a preponderance of the evidence establishes the following facts:

1. HRD administers and scores civil service examinations for the official service position of Police Officer. (G.L. c. 31, s. 5(e); PAR.06)
2. HRD administered an entry-level Police Officer examination on March 25, 2017. (R. Exs. 1, 8, 9)

¹The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR ss. 1.00, *et seq.*, apply to adjudications before the Commission with G.L. c. 31 or any Commission rules taking precedence.

²If there is a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to supply the court with a transcript of this hearing to the extent that he/she wishes to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion. In such cases, this CD should be used by the plaintiff in the judicial appeal to transcribe the recording into a written transcript.

³ At the hearing, both parties relied on the exhibits attached to the Motion and Opposition. The Respondent submitted twenty-five (25) exhibits with its Motion and the Appellant submitted seven (7) exhibits with his Opposition to the Motion. The Appellant's exhibits are marked "A.Ex. #" and the Respondent's exhibits are marked "R.Ex. #".

3. The entry-level Police Officer examination administered by HRD is for the titles of Municipal Police Officer and Transit (MBTA) Police Officer, which are both civil service titles and therefore under the purview of HRD. (Testimony of Caggiano)
4. At the request of the State Police, the 2017 Police Officer examination was also open to candidates seeking to be Troopers. (Testimony of Caggiano)
5. State Trooper is not a civil service title. (Testimony of Caggiano)
6. HRD scored the examination and compiled the eligible list for candidates seeking to be State Troopers and had no further involvement in the hiring of candidates. (Testimony of Caggiano)
7. Candidates taking an entry-level civil service examination (an open, competitive exam) receive credit for “employment or experience in the position for which the examination is held”. G.L. c. 31, s. 22. “Employment or experience” is referred to as “E/E” (Testimony of Caggiano)
8. HRD also refers to E/E credit as “in-title” credit. (Testimony of Caggiano)
9. Candidates were notified of the upcoming 2017 Police Officer examination by the exam poster. (R.Ex. 1)
10. The exam poster for the Police Officer examination begins “Job Bulletin [;] Commonwealth of Massachusetts invites applications for: 2017 Police Officer and Trooper”. (R.Ex. 1) Below this caption are the opening and closing dates to apply to take the exam and “Description: Municipal Police Officer, MBTA Transit Police Officer, and State Trooper”. (Id.) The poster provides the following information regarding E/E credit:

MUNICIPAL AND TRANSIT POLICE; CREDIT FOR EMPLOYMENT/EXPERIENCE: Pursuant to the provisions of

MGL Ch. 31, § 22, individuals may apply to receive credit for employment or experience in the position of the title of municipal Police Officer. If you believe you are eligible for this credit, you must claim this credit by completing the application section of the application. All claims must be verified by supporting documentation, which must provide specific details of any employment or experience you have in the examination title as the result of service as a municipal police officer, including dates of service and number of hours worked per week. The supporting documentation must be on original letterhead with an original signature from the appointing authority where the employment or experience occurred. Please note, credit for employment or experience is applicable only to individuals who achieve a passing score on the written examination, and cannot be added to a failing written examination score. Claims must be submitted during the application period; supporting documentation must be scanned and attached to your application or sent to civilservice@state.ma.us. Documentation must be submitted within 7 calendar days of the written examination. (R.Ex. 1)

11. Candidates indicate their interest in taking the Police Officer examination

by submitting an exam application. (Testimony of Caggiano, R.Ex. 2)

12. On the 2017 Police Officer examination application, Supplemental Question 3 stated:

Q: Police Officer Claim for In-Title Experience Credit: Credit will be given only for experience in the position title for which the examination is conducted. In other words, since you are taking the examination for municipal Police Officer, you can claim any experience you have had performing work ONLY as a Full Time, Reserve, or Intermittent Police Officer in a municipal police department before the date of the exam. While HRD may hold military make-up exam session(s) after March 25, 2017, HRD will not grant credit for experience accumulated after March 25, 2017. Calculating In-Title Experience Credit: You will receive 0.2 points for each month of creditable In Title experience as a Police Officer. One month equals 172 work hours or 16 or more work days. Part-time work In Title Experience will be prorated on the basis of a 40-hour workweek. Your In Title Experience Credit is weighted at 10%. If you do not qualify for In Title Experience Credit, your overall score will be based on your examination score alone. Verifying In-Title Experience Claims: Supporting documentation must be provided in the form of a dated letter, signed by the appointing authority or your employer (past or present), identifying the position title, type of job responsibilities, dates of experience, whether the experience was full or part-time

and other pertinent information concerning your experience. If the experience was less than full-time, the verification must include the actual time worked, e.g. number of hours per week. Letters of verification must be on original, official letterhead or stationary, with an original signature. Supporting documentation must be submitted by mail or email (civilservice@state.ma.us) which must be postmarked within 7 calendar days of the written examination. (R.Ex. 2)

13. Candidates with in-title experience have the opportunity to add to their written examination in accordance with the scoring method outline in the exam application. (R.Ex. 2; Testimony of Caggiano)
14. The 2017 Police Officer exam application asked candidates to select the eligible lists for which their names would be placed, if they received a passing score. The options were:
1) Municipal and Transit Police (MBTA) only; 2) State Trooper; or 3) Municipal, Transit Police, and State Trooper. (R.Ex. 2)
15. The Appellant submitted the application for the 2017 Police Officer Examination on or about January 13, 2017. (R.Ex. 2)
16. On his exam application, in response to Supplemental Question 3, the Appellant selected “Yes, I am eligible for In Title Experience credit, and will provide supporting documentation as instructed above.” (R.Ex. 2)
17. Also on his exam application, the Appellant elected to be placed on the eligible list for “Municipal Police and Transit Police (MBTA) Only” . (R.Ex. 2)
18. On February 21, 2017, the Appellant submitted to the HRD Civil Service Unit email address documentation supporting his request for “In Title Experience credit” including, in part, a letter from the Connecticut State Police, signed by Officer Lt. Baldwin, “Trooper ‘B’ North Canaan”, which states, in part,

Per the requirements of the State of Massachusetts, Civil Service Examination guidelines in regards to verification of police experience; this letter is to advise

you that Gregory S. Naylor (date of birth and employee number redacted) is currently a sworn member of the Department of Emergency Services and Public Protection, Division of State Police and has been so since February 14, 1997. Mr. Naylor presently holds the rank of Trooper First Class and is assigned as the **North Canaan Resident Trooper**, under my command, out of Troop B in North Canaan. Amongst other things, TFC Naylor has held the rank of Detective, within the Bureau of Criminal Investigation, and has extensive training and experience within the Bureau of Field Operations. TFC has been a full-time employee since February 14, 1997 and works an average of 200 hours monthly and over 16 days per month. TFC Naylor's training records are maintained and available upon official request ...with appropriate references also being available upon request. TFC Naylor is eligible to retire from the service of the Connecticut State Police as of February 14, 2017 (R.Ex. 5)(emphasis added)

In addition to the letter from Lt. Baldwin, the Appellant included with his February 21, 2017 email to HRD a "Job Specifications Detail ASP page", printed from the Connecticut Department of Administrative Services website on February 15, 2017. This Job specification states that the duties of a Connecticut State Trooper include, in part,

EXAMPLES OF DUTIES:

ASSIGNED TROOP AREA: Patrols highways and/or local streets; detects and determines degree of violation and issues summons (sic), written or verbal warnings; engage in high speed pursuit or responds to initial aid calls including emergencies; aids disabled motorists; supervises activities at accident scenes, directs activities such as protection of scene, aiding victims ...

RESIDENT TROOPER: In addition to the above duties may perform the following: establish and administer town police budget; schedule, supervise and review work of constables sand other staff; work closely with town officials on police related matters; develop and administer various police and community relations programs; provide for private requests for security; conduct inservice (sic) training sessions; maintain town police records.

TROOPER ASSIGNED TO A SPECIALIZED UNIT: In addition to any of the above duties may perform others relating to special program being administered.

MINIMUM QUALIFICATIONS REQUIRED

KNOWLEDGE, SKILL AND ABILITY:

Knowledge of relevant agency policies and procedures; knowledge of relevant state and federal laws, statues (sic), regulations and court decisions; knowledge of police practices and investigate procedures; some knowledge of area resources; interpersonal skills; oral and written communication skills; ability to independently analyze emergency situations and develop effective courses of action; ability to follow instructions.

EXPERIENCE AND TRAINING:

STATE POLICE TROOPER: Successful completion of a prescribed one (1) year training program as a State Police Trooper Trainee. ...
(R.Ex. 5)(**EMPHASIS IN ORIGINAL**; EMPHASIS IN ORIGINAL; emphasis added)

19. On February 22, 2017, the Appellant submitted to the HRD email address a letter dated February 21, 2017 from Deputy Chief Buckley of the New Milford, Connecticut Police Department. This letter states, in part,

Greg was a certified New Milford, CT Police Officer during 1995-1997. Greg left the New Milford Police Department in good standing and went on to have a successful career with the CT State Police. During Greg's time in New Milford; he worked full-time (5 days on/2 off; 40+ hours/week during said timeframe). Please see attached department mission statement and job description, both of which were the standards Greg was held to ...
(R.Ex. 6)(emphasis added)

20. The Appellant took the Massachusetts Police Officer examination on March 25, 2017 and received a passing score on the written examination. (R.Ex. 9)

21. The August 9, 2017 score notice listed the Appellant's Employment/Experience Score as "Not Scored." (R.Ex. 9)

22. The notice further stated:

Your claim for Employment/Experience, has been denied credit for the following reason:

IVH – Your Employment/Experience Claim in the examination title may be creditable but your documentation is incomplete because: you did not verify the specific length of employment (using months, days, and years – use date of exam, if still employed); you did not verify whether the employment was full or part-time (using hours); for part-time employees: you did not document the total number of hours worked. (R.Ex. 9)

23. On August 9, 2017, the Appellant emailed HRD asking why he did not receive credit "for [his] twenty year plus experience in full-time law enforcement." (R.Ex. 10)

24. On August 9, 2017, HRD responded to the Appellant, stating:

Credit is only given for Municipal police experience (In Title). State Police is not a civil service title and therefore is not creditable for additional points for this exam. (R.Ex. 10)

25. On August 9, 2017, the Appellant submitted to HRD an appeal of his E/E score. (R.Ex. 11)
26. On August 10, 2017, the Appellant resubmitted the correspondence from the New Milford Police Department that was previously submitted on February 21, 2017. (R.Ex. 12)
27. On August 16, 2017, the Appellant resubmitted the February 21, 2017 letter from Deputy Chief Buckley of the New Milford Police Department noted above. (R.Ex. 14)
28. On August 18, 2017, the Appellant submitted regulations pertaining to Connecticut State Troopers, including job duties. (R.Ex. 15) These regulations state, in part,

Section 15.3.2. Resident State Trooper Program

- a. **Review, assignment, and responsibility** ... Before entering into an agreement with a town to provide resident state trooper services, the Department of Emergency Services and Public Protection (department) shall:
 - (1) **Review and respond to the Town's request for resident state trooper services, ...**
 - (2) **Assign resident state troopers ...**
 - (3) **Jurisdictional issues** – Primary responsibility for delivery of police services in a resident state trooper town shall reside with the department's Division of State Police.
- b. **Chain of command** - ...
 - (1) Resident state troopers shall utilize the following command structure:
 - (a) District Commander;
 - (b) Trooper Commander;
 - (c) Resident state trooper supervisor;
 - (d) Resident state trooper; and
 - (e) Town police officer.
 - (2) Resident state troopers shall supervise all town police officers. ...
- c. **Communications** ...
 - (1) ... The trooper commander and the town CEO shall meet quarterly within each fiscal year to discuss problems and to ensure the effective operation of the resident state trooper program. ...
As part of the evaluation of resident state troopers, the troop commander shall meet with the Town CEO for input ...

There shall be regular and on-going communication between the resident state trooper/sergeant and the town CEO ... Communication may include, but is not limited to, statistical and summary report of law enforcement activities in the town for the previous monthly ...

Hiring town police officers

Resident state troopers/sergeants involved in the hiring of town police officers ... shall be guided by POST Regulation sections Applicable state statutes, and applicable public acts. ... (R.Ex. 15)(**emphasis in original**)

29. On August 30, 2017, the Appellant submitted new correspondence from the Connecticut

State Police dated August 23, 2017 (R.Ex. 16). The August 23 letter is from Lieut.

Baldwin, the Appellant's "Commanding Officer, Troop 'B' North Canaan, Connecticut

State Police"; as well as correspondence from the First Selectman of North Canaan, CT

(R.Ex. 17). This two (2)-page letter states, in part, that the Appellant retired from the

Connecticut State Police August 1, 2017, that he had been a fulltime employee with a

minimum of a 45 or 46.25 hour work week beginning on February 14, 1997, that his

assignments included, in part, from February 2, 2007 to July 1, 2015 Norfolk Resident

Trooper, that most of the Appellant's career "was spent at Troop B in North Canaan

which patrols and covers thirteen towns in northwest Connecticut", and that "eleven out

of the thirteen towns or municipalities have no organized police department and depend

entirely upon Trooper B for police services." (Id.) Lieut. Baldwin also provided a

detailed description of the lengthy history of the resident trooper division of the

Connecticut State Police and the manner in which it functions, reported that the Appellant

resided in the town where he was a resident Trooper, attached copies of the pertinent

operations manual, and stated that the Connecticut State Police "is not simply a highway

patrol". (Id.)

30. On August 30, 2017, the Appellant submitted to HRD an August 30, 2017 letter from the Town of North Canaan's First Selectman, Mr. Humes. Mr. Humes wrote, in part, that the Appellant was a Resident Trooper in North Canaan from 11/1/15 to 8/1/17, adding that, "[l]ike many other towns in northwest Connecticut, North Canaan does not have an organized police department" and that it entered into a contract with the State Police" and it "hires, selects and finances the vast majority of costs associated with the trooper By state statute and policy, Mr. Naylor answered directly to me and the commanding officer of Troop B North Canaan ... ", the Appellant also "honorably served" the town of Norfolk from 2/1/07 to 7/1/15, and Mr. Humes gave the Appellant the key to the town for his dedication and service. (R.Ex. 17)
31. On August 30, 2017, the Appellant also resubmitted the regulations pertaining to Connecticut Resident Troopers that he previously provided on August 18th. (R.Ex. 18)
32. On August 31, 2017, HRD emailed the Appellant a final score notice, following the E/E appeal, which indicated that the Appellant's appeal for E/E credit "was partially accepted." (R.Ex. 19)
33. Following appeal, the Appellant was granted E/E credit for his time employed as a Municipal Police Officer in New Milford, Connecticut. The Appellant's post-appeal E/E score was .4. (R.Ex. 19 – score notice dated August 31, 2017) The E/E score notice states that the .4 E/E score did not change the Appellant's "final rounded score" for the 2017 Police Officer Examination. (Id.)
34. HRD's August 31, 2017 score notice to the Appellant also states, "Your original Employment/Experience claim was amended and/or denied in the following ways(s): Municipal Time Credited: additional Request (State Police CT) Denied". (R.Ex. 19)

The score notice did not acknowledge the Appellant's experience as a Resident Trooper.

35. The Appellant appealed to the Commission on August 14, 2017, after receipt of the first score notice but prior to the completion of the appeal process at HRD. (R.Ex. 20)

36. The Appellant's appeal to the Commission states:

I prepared and submitted proof of twenty two years of full time police experience, including municipal and State Police service, which was not accepted and/or denied for credit. Municipal police service and resident State Trooper assignments satisfy the definition of municipal police with documents. (R.Ex. 21)

37. The Appellant does not contest the credit that HRD provided for his employment in New Milford, Connecticut as a municipal Police Officer. (Administrative Notice)

38. Of the approximately 12,000 candidates who took the exam, approximately 1,500 claimed E/E experience. (Testimony of Caggiano)

39. In promotional exams, HRD includes Employment and Experience (E&E) as an exam component, calculated as percentage of a candidate's overall score. (Testimony of Caggiano)

40. In a promotional exam, as opposed to the exam here, which is for original appointment, candidates receive 70 points for completing an E&E claim form (or application), and can add to that base score by answering questions about relevant education and experience and providing supporting documentation. (Testimony of Caggiano).

41. A typical category of experience for promotional examinations allows for "outside" experience, in a place other than the Department within which the candidate is employed. For example, on the 2017 Police Departmental Promotional E&E exam component, experience as a State Trooper is responsive to category 7A (within 5 years) and 7B (5 to 12 years prior) experience. Category 7A experience states:

Police Departmental Promotional Exam Experience Category 7A: Supervisory and Police Officer Experience OUTSIDE Department – Recent Timeframe. Experience outside the specified department and within 5 years of the examination date in a recognized federal, state, or municipal police department in a police officer or supervisory capacity (e.g., as a Police Chief, Deputy Police chief, Captain, Lieutenant, Sergeant, Police Officer, Sheriff, Court Officer, Federal Marshall, Campus Police Officer, Military Police Officer, or as a special agent employed by a branch of the United States government such as the Federal Bureau of Investigation, U.S. Customs Service, U.S. Secret Service, Internal Revenue Service, Drug Enforcement Agency, or the Bureau of Alcohol, Tobacco, and Firearms). Do not include experience for which you have given yourself credit in a previous category.
(R.Ex. 4)

Category 7B experience is for the same experience as detailed in 7A above, but for the older timeframe of 5 to 12 years prior to the exam date. (Id.)

Applicable Law

Pursuant to G.L. c. 31, s. 2(b), the Commission has the authority to “hear and decide appeals by a person 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. . . .” Furthermore, G.L. c. 31, s. 2(b) states, in pertinent part: “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.

It is 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.” Mass. Assn. of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 259 (2001), *citing* City of Cambridge v. Civil Serv. Comm’n, 43 Mass.App.Ct. 300, 304 (1997). “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, s. 1. “A decision is arbitrary and capricious when it lacks any rational explanation that reasonable persons might support.” Cambridge, 43 Mass.App. at 303 (internal citations omitted).

HRD is vested with broad authority to determine the requirements for competitive civil service exams. Under G.L. c. 31, s. 22, “[t]he administrator shall determine the passing requirements of examinations.” The statute also states that “[i]n any competitive examination, an applicant shall be given credit for employment or experience in the position for which the examination is held.” Id. The Personnel Administration Rules (“PAR”) promulgated by HRD provide the following, in pertinent part: “[t]he grading of the subject of employment or experience as a part of an entry-level examination shall be based on a schedule approved by the administrator which shall include credits for elements of employment or experience related to the title for which the examination is held.” PAR .06(c)(emphasis added).

Analysis

HRD has failed to establish by a preponderance of the evidence that its decision to deny the Appellant E/E credit for his approximately twenty (20) years of employment experience in the Connecticut State Police in connection with the 2017 entry-level exam for police officers was appropriate. Rather, I find that HRD’s decision violated basic merit principles and the Appellant was aggrieved by HRD’s decision since he was denied credit for his many years of related experience.

Although the Commission typically defers to HRD’s significant authority regarding the examination process and assessment of credit toward E/E, a different result must issue in this

case. Here, HRD chose to ignore the fact that the Appellant had approximately twenty (20) years of experience in law enforcement, arguing that the exam that the Appellant took was for an entry level police officer position and that, therefore, his experience as a Connecticut State Trooper was not in the position for which the exam was held. As noted above, G.L. c. 31, s. 22 states, in part, that “[i]n any competitive examination, an applicant shall be given credit for employment or experience in the position for which the examination is held.” Id. In addition, as noted above, HRD’s regulation, PAR.06(c) states, in part, that: “[t]he grading of the subject of employment or experience as a part of an entry-level examination shall be based on a schedule approved by the administrator which shall include credits for elements of employment or experience related to the title for which the examination is held.” PAR .06(c)(emphasis added). The Legislature could not have anticipated that HRD would create an exam job title for police officer that would function to preclude E/E credit for someone who has so many years of experience as a law enforcement officer and it would be illogical to do so. In fact, HRD previously titled the exam a “Police Officer” exam under which candidates with experience as campus police officers were allowed E/E credit. *See, e.g., Verderico v HRD*, 28 MCSR 229 (2015). HRD has since changed the exam title and denied requests for E/E credit for campus police, for example, questioning whether campus police on each college campus are legally authorized to perform the same functions as municipal police officers, whether each of the campus police officers on a campus actually perform the functions of a municipal police officer, and stating that making such determinations were beyond the resources of HRD. In the instant case, there are no such concerns. The Appellant submitted multiple documents making it clear that, in addition to his two (2) years of experience as a police officer at the New Milford, Connecticut Police Department, the Appellant had been a Connecticut State Trooper for twenty (20) years and that

such experience even included serving municipalities as a Resident Trooper. Appropriate authorities with first-hand knowledge provided additional information about the Appellant's career. When a candidate has twenty plus years of law enforcement experience, denying such candidate credit for such experience on the entry-level exam goes against the provisions of G.L. c. 31, s. 22 requiring that candidates be given credit for such experience. Further, there is no doubt that lengthy experience is desirable in a candidate and that HRD had abundant, clear evidence of the Appellant's experience. Under the circumstances, it defies common sense to deny the Appellant credit for such experience in connection with a police officer exam for original appointment, especially when HRD provides such credit in connection with promotional exams.

There is no dispute that, in addition to working as a municipal police officer in the New Milford, Connecticut Police Department, for which HRD gave the Appellant credit, the Appellant served in the Connecticut State Police for two (2) decades and retired therefrom. The Appellant provided ample evidence to HRD indicating the nature of his assignments, the time periods for his assignments, and the applicable rules and requirements for his assignments. Specifically, in connection with his exam application in February 2017, the Appellant submitted a letter from the Connecticut State Police Command which states, for example, that the Appellant had been a full time Connecticut State Trooper since February 4, 1997, working an average of 200 hours monthly and over 16 days per month, that the Appellant was assigned as the North Canaan Resident Trooper, and that he has held the rank of Detective in the Bureau of Criminal Investigation. The letter added that training records and references were available upon request and that the Appellant was eligible to retire from the Connecticut State Police as of February 14, 2017. With this letter, the Appellant included a Job Specific Detail printout from

the pertinent Connecticut state webpage. The printout describes in detail the duties of State Troopers in Connecticut, that Connecticut State Troopers are required to complete one (1) year of training as trainees, and that State Troopers may be assigned as “Resident Troopers”, who, in addition to their other duties may “establish and administer town police budgets; schedule, supervise and review work of constables and other staff; work closely with town officials on police related matters; develop and administer various police and community relations programs; provide for private requests for security; conduct inservice (sic) training session; maintain town police records.” R.Ex. 5. In addition, in February 2017 the Appellant submitted to HRD a letter from Deputy Chief Buckley of the New Milford, Connecticut Police Department stating, in part, that the Appellant had worked there successfully from 1995 to 1997, working full time (5 days on/2 off; 40+ hours/week), and attaching the Appellant’s job description and the Police Department’s mission statement.

After HRD sent the Appellant his score notice on August 9, 2017 indicating that his request for E/E credit was denied because credit is only available for municipal police experience and not for State Police experience, the Appellant asked HRD to review his E/E credit denial and he submitted still further information. In addition to resubmitting the letter from the New Milford Police Department, the Appellant submitted to HRD regulations pertaining to the Connecticut State Police, including Resident State Trooper Program, which states, in part, that Resident Troopers like the Appellant supervise all town police officers, town officials evaluate Resident Troopers, there is regular and on-going communication between the Resident Trooper and the town CEO, and Resident Troopers are involved in the hiring of town police officers. Shortly thereafter, the Appellant submitted a new two (2)-page letter from the Connecticut State Police indicating, in part, that the Appellant had retired August 1, 2017, that he had been a

fulltime employee with a minimum of a 45 or 46.25 hour work week since he was hired in 1997, that his assignments included, in part, being the Norfolk Resident Trooper from 2/2/07 to 7/1/15, that most of his career was in North Canaan, which patrols and covers thirteen (13) towns in Connecticut, most of which have no organized police department and depend entirely on Resident Troopers for police services, and the letter included copies of pertinent parts of the pertinent operations manual. In addition, the Appellant submitted a letter from the town of North Canaan's First Selectman who wrote, in part, that many towns in Connecticut do not have organized police departments and that they contract with the State Police for police services, that the First Selectman worked directly with the Appellant when the Appellant was a Resident Trooper in the town from 11/1/15 to 8/1/17, and that the town highly valued the Appellant's service. At about this time, the Appellant further resubmitted to HRD the Connecticut Resident Troopers regulations. Notwithstanding the abundant evidence of the Appellant's decades of police experience, including his work with a municipality as a Resident Trooper, HRD informed the Appellant that he was credited .4 for his two (2) years of experience at the New Milford, Connecticut Police Department, that the .4 credit did not change his score (scores are rounded down following the determination of E/E credit by HRD), and he received no credit for his twenty (20)-year career as a State Trooper.

By denying the Appellant credit for his two (2) decades of law enforcement experience, the Appellant was treated unfairly, in violation of basic merit principles. As noted above, a decision is arbitrary and capricious "when it lacks any rational explanation that reasonable persons might support." Cambridge, 43 Mass.App.Ct. at 303. In the face of the abundant and clear evidence of the Appellant's lengthy law enforcement experience, in addition to the common knowledge that a candidate for employment with considerable experience is desirable,

HRD's decision to deny the Appellant credit for his lengthy law enforcement experience was arbitrary and capricious.

Conclusion

For the foregoing reasons, the Appellant's appeal under Docket Number B1-17-163 is hereby **allowed** and HRD is hereby ordered to award the Appellant E/E credit for his twenty (20) years of experience as a Connecticut State Trooper in connection with any entry-level police officer exam that the Appellant takes and passes.

Civil Service Commission

/s/Cynthia A. Ittleman

Cynthia A. Ittleman, Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on September 26, 2019.

Either party may file a motion for reconsideration within ten days of the receipt of the Commission's 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 the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the Commission's 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:

Gregory Naylor (Appellant)

Melissa A. Thomson, Esq. (for Respondent)

Michele Heffernan, Esq. (HRD)