

COMMONWEALTH OF MASSACHUSETTS

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

NICHOLAS RUSSO,
Appellant

v.

B2-21-057

HUMAN RESOURCES DIVISION,
Respondent

Appearance for Appellant:

Pro Se
Nicholas Russo

Appearance for Respondent:

Patrick Butler, Esq.
Human Resources Division
100 Cambridge Street, Suite 600
Boston, MA 02114

Commissioner:

Christopher C. Bowman

ORDER OF DISMISSAL

1. On March 8, 2021, the Appellant, Nicholas Russo (Appellant), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the state's Human Resources Division (HRD) to not award him any education and experience (E&E) credit for the Fire Lt. examination.
2. On April 27, 2021, I held a pre-hearing conference via 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 11/21/20, the Appellant took the Fire Lt. Examination.
 - b. The deadline for completing the E&E component of the examination was 11/28/20.
 - c. Although the Appellant initially recalled completing the online E&E component and

claiming 2 points for 25 years of service, he did not receive a confirmation email confirming that he completed the E&E online component of the examination. He also candidly acknowledged that it is possible that he did not complete this requirement.

- d. The Appellant did submit supporting documentation to HRD to verify his 25 years of service.
- e. HRD sent the Appellant an email confirming receipt of the documents.
- f. On 1/19/21, the Appellant received his score.
- g. He received a written score of 70.77 and an E&E score of 0.
- h. His total score was a failing score due to the E&E score of 0.
- i. The Appellant filed an appeal with HRD.
- j. HRD denied the Appellant's appeal on 2/20/21.
- k. The Appellant filed a timely appeal with the Commission on 3/8/21.
- l. The eligible list for Everett Fire Lt. has been established.
- m. The Appellant is not on the eligible list.
- n. Seven candidates are on the eligible list.

Standard for Summary Decision

A summary decision may be issued under the well-recognized standards for summary disposition as a matter of law, i.e., “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

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.”

Pursuant to G.L. c. 31, § 5(e), HRD is charged with: “conduct[ing] examinations for purposes of establishing eligible lists.” G.L. c. 31, § 22 states in relevant part: “In any competitive examination, an applicant shall be given credit for employment or experience in the position for which the examination is held.”

G.L. c. 31 § 24 allows for review by the Commission of exam appeals. Pursuant to § 24, “[t]he commission shall not allow credit for training or experience unless such training or experience was fully stated in the training and experience sheet filed by the applicant at the time designated by the administrator.”

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’”.

Analysis

The facts presented as part of this appeal are not new to the Commission. In summary, promotional examinations, such as the one in question here, consist of two (2) components: the traditional written examination and the E&E component. HRD provides detailed instructions via

email regarding how and when to complete the online E&E component of the examination.

Most importantly, applicants are told that, upon completion of the E&E component, the applicant will receive a confirmation email – and that the component is not complete unless and until the applicant receives this confirmation email.

Here, it is undisputed that the Appellant sat for the written component of the Fire Lieutenant examination on November 21, 2020. He had until November 28, 2020 to complete the online E&E component of the examination. The Appellant acknowledges that he never received a confirmation email from HRD stating that the E&E examination component was completed and he candidly acknowledges that he may have skipped this portion of the E/E module. HRD has no record of the Appellant completing the E&E component, but, rather, only receiving supporting documentation.

While I am not unsympathetic to the Appellant's plight here, it is undisputed that: 1) HRD has no record showing that the Appellant completed the E&E component of the examination; 2) the Appellant did not receive a confirmation email verifying that he completed the E&E component; and, thus, 3) he is unable to show that he followed the instructions and actually completed the E&E component of this examination. Thus, this is not a case in which there is a genuine factual dispute that would require an evidentiary hearing.

Consistent with a series of appeals regarding this same issue, in which applicants have been unable to show that they followed instructions and submitted the online E&E claim, intervention by the Commission is not warranted as the Appellant cannot show that he was harmed through no fault of his own.

For this reason, the Appellant's appeal under Docket No. B2-21-057 is *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 May 6, 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:

Nicholas Russo (Appellant)
Patrick Butler, Esq. (for Respondent)