

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

100 Cambridge Street – Suite 200
Boston, MA 02114
617-979-1900

STEPHAN OLIVEIRA,
Appellant

B2-23-132

v.

HUMAN RESOURCES DIVISION,
Respondent

Appearance for Appellant:

Stephan Oliveira, *Pro Se*

Appearance for Respondent:

Sheila B. Gallagher, Esq.
Labor Counsel
Human Resources Division
100 Cambridge Street, Suite 600
Boston, MA 02114

Commissioner:

Paul M. Stein

Summary of Decision

The Commission dismissed the Appellant’s education, certifications, training/licenses and **experience** (ECT&E) appeal when the facts established that the Appellant received all ECT&E credits he claimed and there was no further relief that the Commission could grant him.

DECISION ON RESPONDENT’S MOTION TO DISMISS

On August 4, 2023, the Appellant, Stephan Oliveira, appealed to the Civil Service Commission (Commission)¹, contesting the score he received on the ECT&E component of a make-up examination for the Boston Fire Captain Promotional Exam administered by the Human Resources Division (HRD) on May 13, 2023. I held a remote pre-hearing conference on this appeal on August 22, 2023, at which time it appeared that the gravamen of the Appellant’s unresolved claims were

¹ The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.01 (formal rules), apply to adjudications before the Commission with G.L. c. 31, or any Commission rules, taking precedence.

ambiguities about whether his final ECT&E score correctly reflected his experience as a Firefighter and as a Lieutenant, as well as whether he had received two-points credit for his 25 years of total service. At my request, on September 13, 2023, HRD provided a report containing further explanation of the calculation of the Appellant's final ECT&E score; this report appears, after my review, to clarify the ambiguities and shows that the Appellant had, in fact, received proper credit for his experience. By Procedural Order dated October 2, 2023, I deemed HRD's report to be a Motion to Dismiss (as moot) and provided the Appellant until October 10, 2023 to respond to the motion or withdraw his appeal. To date, I have received no response to the motion or withdrawal from the Appellant. Accordingly, for the reasons stated below, the Appellant's appeal is dismissed.

UNDISPUTED FACTS

Based on the submission of the parties, the following facts are not disputed:

1. The Appellant, Stephan Oliveira, is a Fire Lieutenant with the Boston Fire Department (BFD).

2. Lt. Oliveira took and passed a make-up examination for the Boston Fire Captain. Promotional Exam.

3. On June 15, 2023, HRD issued a score notice to Lt. Oliveira that included the following information about his ECT&E component claim:

Your ECT&E was amended in the following way: Q(2): Work experience recalculated Claimed (26 years) Amended (23 years); Q(4): Work experience recalculated Claimed (4 years) Amended (3 years); Q(13): 25 year Preference Claimed (Yes) Amended (No) Work experience recalculated.

4. Lt. Oliveira requested a review of his ECT&E score and, on July 17, 2023, HRD issued a revised score notice, which stated:

NOTE: Your original ECT&E claim was amended in the following way(s): Q(2): Work experience recalculated Claimed (26 years) Amended (23 years); Q(5): Work experience recalculated

Claimed (1 month up to 2 months) Amended (No experience); Q(8): Certifications earned recalculated Claimed (2 Certifications earned) Amended (3 Certifications earned)

5. On July 22, 2023, HRD established the eligible list for Boston Fire Captain. Lt. Oliveira was ranked in 49th place (tied with six others) out of 94 candidates who took and passed the examination. (*Claim of Appeal*)

6. On September 13, 2023, HRD provided further clarification of Lt. Oliviera's ECT&E score and his place on the July 22, 2023 eligible list. In particular, HRD confirmed:

(a) Lt. Oliveira's rank in 49th place was based on his overall rounded final score of 81, calculated after the ECT&E score had been amended as of July 17, 2023.

(b) The revised ECT&E score included all three (3) certifications claimed on his ECT&E claim form.

(c) The credit for Lt. Oliveira's experience as a BFD Firefighter and Fire Lieutenant was based on his BFD Employment Verification Form (EVF), which showed an employment date of 7/31/1996 and a promotion to permanent Lieutenant on 2/20/2019. This service was calculated as 23 years as a Firefighter (22 years, 8 months, rounded to 23 years) and 4 years as a permanent Fire Lieutenant (2/20/2019 – 11/19/2022, or 3 years 9 months, rounded to 4 years).²

(d) The revised overall score included a two-point credit for 25 years' service.

APPLICABLE LEGAL STANDARD

The Commission may, on motion or upon its own initiative, dismiss an appeal at any time for lack of jurisdiction or for failure to state a claim upon which relief can be granted. 801 CMR

² HRD had previously confirmed that it had denied Lt. Oliveira's claim to "acting" Captain time because the EVF showed he had served a total of 82 hours as an acting Captain—which, according to the convention of 172 hours per month equivalent full-time service, computed to 0.47 months, or less than the minimum one month needed to receive any acting time credit.

1.01(7)(g)(3). A motion to resolve an appeal before the Commission, in whole or in part, via summary decision may be filed pursuant to 801 C.M.R. 1.01(7)(h). An appeal may be disposed of, however, on summary disposition only 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).

ANALYSIS

The undisputed facts, viewed in a light most favorable to the Appellant, establish that this appeal must be dismissed. Given the way in which HRD’s score notices were written, both in the original June 15, 2023 score notice and in the revised July 17, 2023 score notice, it is certainly understandable that Appellant was legitimately concerned that he had not been properly credited with all of the ECT&E points to which he was entitled. However, as a result of HRD’s subsequent clarifications, I am satisfied that the Appellant’s final overall all exam score and his 49th place on the current eligible Boston Fire Captain’s eligible list, in fact, is based on full credit for all of the ECT&E claims to which he is entitled. Thus, there is no further relief that the Commission could provide to him. See, e.g., Geoghan v. HRD, 35 111 (2022); LaRochelle v. HRD, 35 HRD 119 (2022).

CONCLUSION

For the reasons stated above, the Appellant’s appeal under Case No. B2-23-132 is *dismissed*.

Civil Service Commission

/s/Paul M. Stein

Paul M. Stein, Commissioner

By vote of the Civil Service Commission (Bowman, Chair; Dooley, Stein, and Tivnan, Commissioners [McConney – Absent]) on November 2, 2023.

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)(1), 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:

Stephan Oliveira (Appellant)

Sheila B. Gallagher, Esq. (for Respondent)

Robert Boyle, Esq. (for BFD)