

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

BRANDON O'NEILL,
Appellant

v.

B2-16-12

HUMAN RESOURCES DIVISION,
Respondent

Appearance for Appellant:

Pro Se
Brandon O'Neill

Appearance for Respondent:

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

Commissioner:

Christopher C. Bowman

ORDER OF DISMISSAL

On January 22, 2016, the Appellant, Brandon O'Neill (Mr. O'Neill), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the state's Human Resources Division (HRD) to deny him credit for his Education and Experience (E&E) exam component, resulting in his receipt of a failing score on the 2015 Police Sergeant examination and exclusion from the eligible list.

On February 16, 2016, I held a pre-hearing conference at the offices of the Commission which was attended by Mr. O'Neill and counsel for HRD.

The following is either undisputed or, where noted, based on statements made by Mr. O'Neill which, solely for the purposes of this dismissal, I have accepted as true:

1. Mr. O'Neill is presently employed as a police officer in the Town of Watertown.

2. The police sergeant examination consisted of two (2) components: a written exam component, administered on October 17, 2015, and the Education and Experience (E&E) component. The passing score for the exam is a 70. The weight afforded to the written exam component is 80% and the E&E exam component is 20%.
3. When Mr. O'Neill applied to take the examination, he was informed that he would receive an email with instructions on how to file the E&E Claim.
4. Mr. O'Neill sat for the written exam component on October 17th.
5. On October 19, 2015, HRD notified Mr. O'Neill of instructions for submitting the E&E claim online and that the deadline for submitting the E&E claim online was Saturday, October 24, 2015, seven (7) days after the written examination was administered.
6. The October 19th correspondence states, “[p]lease note that the *E&E is an examination component*, and therefore, you must complete the Online E&E Claim yourself... Please read the instructions carefully.”
7. On Saturday, October 24th, the deadline for submitting the E&E claim online, Mr. O'Neill “went into a depression” related to the death of his young daughter in December 2014.
8. Although he did not seek any medical attention that day, he was unable to get out of bed and/or perform normal functions.
9. When Mr. O'Neill attempted to go online the next day and submit his E&E claim, he was unable to access his account as the October 24th deadline had passed.
10. On January 15, 2016, HRD notified Mr. O'Neill that he failed the promotional examination based on his failure to submit an online E&E claim.
11. On January 22, 2016, Mr. O'Neill filed an appeal directly with the Commission, as opposed to HRD.

12. On January 26, 2016, as part of the Commission’s normal practice, the Commission forwarded a copy of Mr. O’Neill’s appeal to HRD.

Legal Standard

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.’ G.L. c. 31, § 22(1).”

Analysis

It is undisputed that Mr. O'Neill, and all applicants who took this most recent police sergeant examination, had until October 24, 2015 to file an E&E Claim with HRD. With the exception of supporting documentation, all applicants, as of this examination cycle, must complete the E&E application online. Mr. O'Neill acknowledges that he did not submit the E&E claim on or before October 24th.

HRD argues that Mr. O'Neill's appeal must be dismissed based on the undisputed fact that he failed to submit the E&E claim by the deadline and because he never submitted his appeal directly to HRD.

Mr. O'Neill acknowledges that he missed the deadline, but is effectively asking HRD to waive the administrative deadline for good cause. In regard to submitting the appeal directly to the Commission, Mr. O'Neill stated that he was simply confused as to where the appeal should be sent.

This appeal raises multiple issues that are not new to the Commission.

First, in regard to the HRD appeals process, I concur with Mr. O'Neill that, at best, it is confusing. For example, the appeal language states in part:

“A copy of your original answer sheet will be sent to you, so you can verify scoring of your answer sheet.

PLEASE NOTE that this statute does not provide for review of the test questions nor can multiple choice questions or the marking of multiple choice exams be appealed to the Civil Service Commission.

All further appeals concerning this notice should be appealed to Civil Service by sending an email to civilservice@state.ma.us with a detailed explanation and supporting documentation.”

Even with the benefit of a master’s degree and ten (10) years of experience on the Commission, I still have a difficult time deciphering this language. It fails to even mention that individuals have a right to request a fair test appeal; it gives the impression that the exam taker can’t appeal multiple choice questions; and, bizarrely, it references the *Civil Service Commission*, the entity to which the exam taker is NOT supposed to file an appeal until AFTER the appeal is filed with HRD. Then, when an exam taker, after reading this confusing language, files an appeal directly with the Civil Service Commission, HRD seeks to have the appeal dismissed based on their failure to first file an appeal with HRD. This is not due process and HRD should review the entire appeals process forthwith to eliminate this confusion.

Second, as previously noted by the Commission, it is somewhat perplexing that HRD takes the draconian step of issuing a failing score on the entire examination when an individual does not submit the E&E claim online and/or on time. While it is logical that the exam taker would receive no *E&E credit* when this occurs, it is NOT logical to effectively invalidate the *entire* examination, including the written portion.

Third, and finally, is the issue of adhering to the administrative deadline established by HRD to submit the online E&E information. HRD is vested with broad authority to administer civil service examinations. Ensuring a fair process requires consistent adherence to various deadlines, including the administrative deadline set by HRD here. It is understandable that HRD is reluctant to allow exceptions, thus opening the door to subjective and potentially arbitrary rulings regarding what warrants good cause. That notwithstanding, it would appear, to me, that the

process would be strengthened, not weakened, by considering limited good cause exceptions when equity and good conscience seems, as in this case, warrant it.

Unless and until such provisions are included in the process, however, the Commission, absent a showing that HRD's actions here were arbitrary and capricious, is inclined to defer to HRD and the consistent guidelines they have established.

Conclusion

For the above reasons, Mr. O'Neill's appeal under CSC Docket No. B2-16-12 is hereby ***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 March 17, 2016.

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:

Brandon O'Neill (Appellant)
Mark Detwiler, Esq. (for Respondent)