

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

MICHAEL E. PACHECO,
Appellant
v.

B2-14-56

HUMAN RESOURCES DIVISION,
Respondent

Appearance for Appellant:

Pro Se
Michael E. Pacheco

Appearance for Respondent:

Ernest Law, Esq.
Human Resources Division
One Ashburton Place
Boston, MA 02108

Commissioner:

Paul M. Stein¹

DECISION

The Appellant, Michael Pacheco, appealed to the Civil Service Commission (Commission) pursuant to G.L.c.31, §2(b) and §24, from the decision of the State's Human Resources Division (HRD) to give him a failing score for the promotional examination for Sergeant. The Commission held an evidentiary hearing on June 26, 2014, which was digitally recorded. HRD called one witness and Mr. Pacheco testified on his own behalf. The Commission received eight (8) exhibits in evidence.

FINDINGS OF FACT

Giving appropriate weight to the documents in evidence (Exhibits 1 through 8), the testimony of the witnesses (Mr. Pacheco and Shane Miller), and inferences reasonably drawn from the evidence I find credible, I make the findings of fact stated below.

¹ The Commission acknowledges the assistance of Law Clerk Julie Muller in the drafting of this decision.

1. Mr. Pacheco is currently employed as a police officer in the Woburn Police Department and has been since August 31, 2008. (Testimony of Mr. Pacheco; Exhibit 8)
2. Shane Miller is employed at HRD in the Civil Service Unit as the Test Administrator. (Testimony of Mr. Miller)
3. The 2013 police sergeant's examination was composed of two parts. First, a candidate was to complete a written examination that counts for eighty percent (80%) of the candidate's score. The second part consists of an online Education and Experience Claim (E&E Claim) that counts for twenty percent (20%) of the candidate's total score. (Testimony of Mr. Miller)
4. Applicants were notified of the online E&E claim at the test site, by e-mail, and by a test announcement poster. The applicable online filing period opened on October 11, 2013 and closed on October 22, 2013. Applicants must also submit supporting documentation to substantiate their E&E claim. Applicants can send their supporting documentation through e-mail, first class mail, or at the test site. (Testimony of Mr. Miller)
5. Because the online test registration process is somewhat new, first implemented in Fall 2012, HRD contacted candidates who submitted supporting documentation but did not fill out an online E&E claim and notified them of the online E&E claim. These applicants received an additional seven (7) days to complete the online E&E claim. (Testimony of Mr. Miller)
6. Mr. Pacheco took and passed the written examination on October 19, 2013. (Testimony of Mr. Pacheco)

7. Mr. Pacheco, however, received a failing score for the total examination because he never filled out an online E&E claim. (Testimony of Mr. Miller)
8. Mr. Pacheco *sent in* his supporting documentation after the test and sent it through first class mail. Mr. Pacheco provided the Commission with a copy of his supporting documentation that was signed and dated October 17, 2013. (Testimony of Mr. Pacheco; Exhibit 8)
9. Mr. Pacheco was never notified that he had to fill out an online E&E claim as the other candidates who sent in supporting documentation but no online E&E claim did because Mr. Miller at HRD *never received* Mr. Pacheco's supporting documentation. (Testimony of Mr. Miller and Mr. Pacheco)

CONCLUSION

Applicable Standard of Review

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." Massachusetts Assn. of Minority Law Enforcement Officers v. Abban, 434 Mass. at 259, citing Cambridge v. Civil Serv. Comm'n., 43 Mass.App.Ct. at 304. "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, § 1. Personnel decisions that are marked by political influences or objectives unrelated to merit standards or neutrally applied public policy represent appropriate occasions for the Civil Service Commission to act. Cambridge at 304.

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.”

G.L. c. 31, § 2(b).

G.L.c.31, § 16 provides that, “A person who has taken a civil service examination pursuant to this paragraph shall not have recourse to the review procedures set forth in section twenty-two”. Furthermore, G.L.c.31, § 22 states that:

“In any competitive examination, an applicant shall be given credit for employment or experience in the position for which the examination is held. In any examination, the applicant shall be allowed seven days after the date of such examination to file with the administrator a training and experience sheet and to receive credit for such training and experience as of the time designated by the administrator.”

Cataldo v. Human Resources Division, Commission, 23 MCSR 617 (2010), states 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).”

G.L. c. 31, § 24 provides that a person may appeal certain HRD actions regarding tests. Specifically:

“ ... Such appeal shall be filed no later than seventeen days after the date of mailing of the decision to the administrator The commission shall refuse to accept any petition for appeal unless the request for appeal, which was the basis for such petition, was filed in the required time frame and form and unless a decision on such request for review had been rendered by the administrator. In deciding an appeal pursuant to this section, the 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 O'Neill v. Civil Service Commission, 10-P-384 (February 15, 2011; per Rule 1:28), the Appeals Court ruling established that “ ... a fair reading of the entire statute ‘indicated that an intent by the Legislature that training and experience scores may be appealed under §24, and applied the seventeen day time limit to [the Appellant’s] training and experience appeal.’”

Analysis

It is undisputed that Mr. Pacheco never filled out an online E&E claim. However, HRD had a system in place, because the online E&E Claim system was still relatively new, that if they received an applicant’s supporting documentation but not an online E&E claim, they would notify the applicant of the steps to fill out an online E&E Claim. An E&E Claim must be filed in order to achieve a passing score on the examination. Mr. Pacheco, however, mailed his supporting documentation to HRD. The Commission finds Mr. Pacheco credible and found that he did mail his supporting documentation to HRD. For some reason though, Mr. Pacheco’s letter and supporting documentation went astray and was never received by Mr. Miller, the HRD Test Administrator. Had he received the material, Mr. Pacheco would have been notified and given an opportunity to file his online information late as HRD had done with other applicants. Mr. Pacheco was never given the notification that he had not filled out the online E&E Claim and did not get the additional seven (7) days to do so. Because of this, he ultimately failed the police officer sergeant’s examination.

The Commission finds that Mr. Pacheco should not be penalized because his supporting documentation package, through no fault of his own, got lost and never made it to its intended destination at HRD. Mr. Pacheco should be afforded the same seven (7) day window to fill out an online E&E claim in order to receive his passing score on the police officer sergeant’s examination, similar to other who were granted accommodation for the same unintended technical mishap.

Accordingly, for the reasons stated above, the decision to fail Mr. Pacheco for the absence of an online E&E Claim is overturned and Mr. Pacheco's appeal under Docket No. B2-14-56 is hereby *allowed*.

Pursuant to the Commission's authority under Chapter 310 of the Acts of 1993, the Commission hereby ORDERS:HRD shall,

- Within ten (10) days of receiving this decision, HRD shall notify Mr. Pacheco of the steps he must take to re-submit his E&E information for the Police Officer Sergeant examination.
- Mr. Pacheco shall have seven (7) days upon receipt of that notice thereafter to comply with said requirements.
- Upon receipt of the E&E-related information from Mr. Pacheco, HRD shall use said information to grade Mr. Pacheco's promotional examination consistent with its normal practice.

Paul M. Stein

Commissioner

By a vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell, and Stein, Commissioners) on October 16, 2014

A true record. Attest:

Commissioner

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.

Notice:

Michael Pacheco (Appellant)

Ernest Law, Esq. (For Respondent)

John Marra, Esq. (HRD)