

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

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

**VICTOR PAIVA,
BRIAN FEGREUS,
SCOTT FINKLE,**
Appellants.

**B2-18-038 (Paiva)
B2=18-039 (Finkle)
B2-18-040 (Fegreus)**

v.

**MASSACHUSETTS HUMAN
RESOURCES DIVISION**
Respondent

BRENDAN HARTE,
Appellant

B2-18-044 (Harte)

v.

**MASSACHUSETTS HUMAN
RESOURCES DIVISION and
DEPARTMENT OF CORRECTION,**
Respondents

Appearances for Appellants:

Victor Paiva, Scott Finkle, Brian
Fegreus & Brendan Harte, Pro Se

Appearances for HRD:

Michael Downey, Esq.
Melissa A. Thomson, Esq.
Labor Counsel
Human Resources Division
100 Cambridge Street – Suite 600
Boston, MA 02114

Appearance for DOC:

Joseph Santoro, Labor Relations Advisor
Norman Chalupka, Jr., Esq.
Department of Correction
PO Box 946 – Industries Drive
Norfolk, MA 02056

Commissioner:

Paul M. Stein

CORRECTED DECISION

The Appellants, Victor Paiva, Scott Finkle, Brian Fegreus and Brendan Harte (collectively, the Appellants) are Lieutenants employed with the Massachusetts Department of Correction

(DOC) who appeal from decisions by the Massachusetts Human Resources Division (HRD) denying their respective requests for review of the results of the 2017 promotional examination for DOC Captain.¹ The Commission held a pre-hearing conference on March 27, 2018 (Paiva, Finkle & Fegreus Appeals) and on April 17, 2018 (Harte Appeal), after which DOC was added as a party respondent to the Harte Appeal. Pursuant to Notice of Hearing, the Commission held a consolidated hearing before me on February 12, 2019 to consider the following motions from HRD and responses from the Appellants in each respective appeal.²

Paiva, Finkle & Fegreus Appeal

- “Respondent’s Motion for Summary Decision” dated 4/30/2018 (*HRD Paiva/Finkle Motion re: Timeliness*)
- “Respondent, Human Resource [sic] Division’s Motion for Summary Decision” dated May 8, 2018 (*HRD Paiva/Finkle/Fegreus Motion*)
- “Appellants Motion for Summary Decision” dated April 30, 2018” (*Paiva/Finkle Summary Decision Response I*)
- “Appellants Motion for Summary Decision” dated June 14, 2018 (*Paiva/Finkle Summary Decision Response II*)

Harte Appeal

- “Respondent, Human Resource [sic] Division’s Motion for Summary Decision” dated May 11, 2018 (*HRD Harte Motion*)
- “Appellants Motion for Both Summary Decision and Evidence Request” dated May 23, 2018 (*Harte Summary Decision Response I*)
- “Appellant Brendan Harte, Summary Decision” dated May 31, 2018 (*Harte Summary Decision Response II*)

In addition to the above materials, at the February 12, 2019 motion hearing, I marked four documents previously received by the Commission at the March 27, 2018 Pre-Hearing Conference related to the Paiva, Finkle & Fegreus Appeals. (*PreHEXh.1 through PreHEXh.4*). I

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

² The Commission also received certain additional submissions from the Appellants that raised procedural matters which the Commission deferred and, in view of the Decision now being issued, need not address those other matters at this time. (See *Appellants Motions*, dated 12/3/18; *Appellants Procedural Motions*, dated 12/10/16; *Appellants Procedural Motions*, dated 12/16/2018; *Appellants Formal Objections*, dated 1/21/2019)

also received various additional post-hearing submissions from the Appellants and DOC. (*“Appellants Response”*, dated February 27, 2019; *“Email Trails”* 2/21/19 – 6/19/19)

In August 2019, I held two status conferences with the parties in all four appeals to provide the parties with a preliminary analysis of my assessment of HRD’s motions and to discuss the options for further proceedings, including possible settlement. At the Commission’s request, I received a report from the DOC indicating that, as of that date, DOC had already promoted twenty-nine (29) of the original forty (40) names on the current Captain’s eligible list. (*SCExh.1*) DOC also provided copies of the final score sheets for these nine remaining candidates which shows each candidate’s “Raw” and “rescaled” standardized Technical Knowledge Score, as well as his Assessment Center score and Career Experience scores. (*SCExh. 2*)

FINDINGS OF FACT

Findings Applicable to all Appeals

1. On December 10, 2015, following an investigation by this Commission, and after many years without HRD or DOC having administered a promotional examination for the position of Correction Officer IV (DOC Captain), this Commission ordered, among other things, that: “[f]orthwith, HRD and DOC shall take all necessary steps to: a) create a promotional examination for the position of Captain at DOC; and b) create an eligible list of candidates for the position of Captain that will be used to make promotional appointments to the position of Captain at DOC.” (*See In Re: Mograss et als, CSC Tracking No. I-14-304, 28 MCSR 601 (2015)*)

2. Pursuant to the Commission’s orders, HRD delegated the administration of a DOC Captain’s promotional examination to DOC, which hired an outside vendor to develop and administer the examination, with HRD’s verbal approval but without the execution of any formal written delegation agreement. (*HRD Paiva/Finkle/Fegreus Motion; Paiva/Finkle Summary*)

Decision Response I & II; Appellant's Response [w/attached HRD email dated 5/8/2018]; HRD Harte Motion; Harte Summary Decision Response I & II)

3. The DOC Captain's Examination consisted of three components: (A) a Technical Knowledge (TK) component consisting of a written multiple-choice test administered on July 22, 2017; (B) an Assessment Center (AC) component consisting of a Written Work Sample (WWS), administered on October 11, 2017 and two (2) Oral Boards (OBs), administered in November, 2017; and (C) a Career Experience Board (CEB) component also administered in November, 2017. *(PreHExh1 through PreHExh.4; SCExh.2; HRD Paiva/Finkle/Fegreus Motion; Paiva/Finkle Summary Decision Response I & II; Appellant's Response [w/attached HRD email dated 5/8/2018]; HRD Harte Motion; Harte Summary Decision Response I & II)*

4. The DOC Human Resources Bulletin announcing the 2017 Captain's Exam stated, in part:

WEIGHTS: Applicants must get a passing mark on each of the weighted components in order to receive an overall (general average) examination score . . . the examination weights are: 35% Technical Knowledge Examination; 50% Assessment Center; 15% Career Experience Board.”

All eligible candidates who sign up to take the DOC Captain promotion exam and remain in good standing will be permitted to attend and complete the Written Technical Knowledge Test. A cut score will be established and candidates who fail to meet that score will not be eligible to proceed to the final two (2) phases of the examination.”

(HRD Paiva/Finkle/Fegreus Motion; HRD Harte Motion; Harte Summary Decision II)

5. All candidates received a Candidate ID number for use during all testing components. DOC maintained a master list of candidates' names and Candidate ID numbers but no other form of personal identification was recorded on testing materials or provided to the test vendor until after all test components were administered and scored. In particular, the TK and WWS scores were computed entirely “blindly” by the vendor's assessors. *(HRD Paiva/Finkle/Fegreus Motion; Paiva/Finkle Summary Decision Response II)*

6. The TK Test was a closed-book exam consisting of one hundred (100) multiple choice questions designed to assess the candidates' "understanding of job-related technical knowledge of the job [of a DOC Captain]". The 2017 Captain's Examination TK exam preparation guide stated: "Your score on the Closed Book Written Technical Knowledge Test will be based upon the number of test questions/items you answer correctly. Thus, the more items you answer correctly, the higher your Technical Knowledge Test score." No mention of rescaling the numerical scores was mentioned in the pre-test materials. (*HRD Paiva/Finkle/Fegreus Motion; Paiva/Finkle Summary Decision Response II; HRD Harte Motion*)

7. By form letter from DOC dated August 14, 2017, candidates received notice of their scores on the TK test component (which ranged from the maximum score of 100 (for 100 correct answers to 46 (out of 100) correct answers. The letter to each candidate stated, in part: "[Y]ou received a [numerical score] on the Technical Knowledge portion of the promotional exam. The result of this exam will serve as 35% of your overall score." All candidates, regardless of score, were allowed to proceed to the next two stages of the examination. No mention of rescaling the numerical scores was mentioned. (*PreHEXh.2 through PreHEXh.4; HRD Paiva/Finkle/Fegreus Motion; Paiva/Finkle Summary Decision Response II; HRD Harte Motion; Harte Summary Decision Response II*)

8. The Appellants were informed that their TK test scores were as follows:

- Brendan Harte – 65 (out of 100)
- Victor Paiva – 59 (out of 100)
- Brian Fegreus – 59 (out of 100)
- Scott Finkle – 56 (out of 100)

(*PreHEXh.2 through PreHEXh.4; HRD Paiva/Finkle/Fegreus Motion; HRD Harte MotionI*)

9. DOC's August 14, 2017 letter advised candidates that they had seven (7) days to file a "fair test" appeal regarding the TK test. None of the Appellants then filed such an appeal.

((*PreHEXh.2 through PreHEXh.4; HRD Paiva/Finkle/Fegreus Motion re: Timeliness; Paiva/Finkle Summary Decision Response II; HRD Harte Motion*))

10. The Writing Sample (WWS) component asked candidates to assume the role of a DOC Captain and prepare a written essay about a hypothetical situation they were given, “typical of those a Captain might encounter” on the job. Four assessors, divided into two-person panels, who were internal DOC employees of Captain’s level or above and/or senior level managers selected and trained by the test vendor, scored the essays. The essays were graded for: Written Communication (ability to express ideas), Interpersonal Interactions (establishing constructive working relationships), Analyzing and Deciding (processing information and choosing a plan of action) and Managing Activities (planning and executing activities). (*HRD Paiva/Finkle/Fegreus Motion; Paiva/Finkle Summary Decision Response II; HRD Harte Motion*)

11. The Oral Board (OB) component presented candidates with two hypotheticals: an “Incident Supervision” scenario and a “Subordinate Performance” scenario. Candidates reviewed the scenario materials and then gave a verbal response to a panel of three assessors³ who graded the performance on Oral Communication, Interpersonal Interactions, Analyzing and Deciding and Managing Activities. (*HRD Paiva/Finkle/Fegreus Motion; Paiva/Finkle Summary Decision Response II; HRD Harte Motion*)

12. The WWS/OB pre-test preparation guide also contained the following notice regarding standardization of scores:

“A total score will be derived for the WWS Test by computing average ability scores across the two assessors for the abilities rated as part of this test and adding those average ability scores together. A total score will be derived for the OB Test by computing average ability scores across the two OB exercises and adding those average ability scores together. To derive candidate’s overall promotion examination

³ The number of total OB assessors and the credentials of the OB panel members are not specifically described in the record. For purposes of these motions, I infer that the OB panelists had the same or similar credentials as the WWS assessors described above and/or the CEB panel members described below.

scores, the Total Written Work Sample Test score and Total Oral Board Test score (along with the Total Technical Knowledge and Total Career Experience Board score) will be standardized, weighted and added together.”

“As just noted, to ensure the weights for each examination component are applied in a fair manner, the total scores on each component will be standardized prior to being weighted. Standardization is used when tests are of different lengths (have different numbers of questions), have different average scores, and/or have differences in standard deviations (the spread or range of scores). By standardizing the total scores, the test components are placed onto the same measurement scale so that they can be added together. This is accomplished by looking at how far a particular score deviates from the average score for that test (either above or below) and dividing by the standard deviation for that test. Although this may seem complicated, it is a procedure that is used quite frequently and is well accepted in the testing field. Tests such as the SAT use a type of standardized score.”

“Finally, prior to computing overall component scores for each candidate, [the test vendor’s] staff will compare the ratings given out by each of the assessor boards. If there is a significant difference between these ratings (meaning one or more boards gave out significantly higher (easier) ratings or lower (harder) ratings on average compared to other boards), [the test vendor’s] analysis staff will standardize the ratings by panel to remove any advantage/disadvantage as a result of the panel of which the candidate was assigned.”

(HRD Paiva/Finkle/Fegreus Motion; HRD Harte Motion)

13. The Career Experience Board (CEB) component was comprised of three stages: (1) preparing a Fact Sheet containing an “abbreviated resume” of the candidate’s experience and training; (2) preparing written responses containing three “Key Points” for each of three scenarios provided in advance, to be defended at the third stage oral presentation; and (3) appearance before the CEB for oral presentation of Key Points and responding to a fourth scenario provided to the candidate by the CEB on the spot. *(HRD Paiva/Finkle/Fegreus Motion; Paiva/Finkle Summary Decision Response II; Appellants Response; HRD Harte Motion)*

14. The CEB pre-test preparation guide stated that the CEB assessed “attributes found to be critical to effective job performance by Captains”, specifically: Oral Communication; Adaptability (maintaining professional demeanor in routine and stressful situations); Accountability (adhering to policies appropriately by personal example and as applied to

problem performance of others); and Professional Development (commitment to improvement and constructive criticism). (*HRD Paiva/Finkle/Fegreus Motion; HRD Harte Motion*)

15. The CEB pre-test preparation guide contained detailed instructions about the information to be included in the Fact Sheet, including work experience within and outside the DOC, Military Service, Education (highest degree) and any Special Training. The guide also stated:

“Please do not provide any additional details beyond the items listed above. **Remember, your Fact Sheet (abbreviated resume) will NOT be scored;** it is simply being provided so that assessors understand the context in which your Career Experience Board answers are being made. Thus, this is not a point system where you will receive a certain number of points for each experience from your past. **You will be scored solely on your oral responses to the CEB questions** and your ability to indicate that you have learned from your past experiences and are prepared to succeed as a [DOC] Captain.”

(*HRD Paiva/Finkle/Fegreus Motion; HRD Harte Motion*)(**emphasis in original**)

16. The test vendor selected and trained twelve (12) CEB assessors, divided into panels of three (3) assessors each. All CEB assessors were selected from outside the DOC. (*HRD Paiva/Finkle/Fegreus Motion; HRD Harte Motion*)⁴

17. The CEB pre-test preparation guide also contained the following statement regarding standardization of test results:

“A total score will be derived for the CEB by computing the average ability scores across the three assessors for the capabilities rated as part of this test and adding those average ability scores together. To derive candidates’ overall promotion examination scores, the Career Experience Board Score (along with the TK score, Total WWS score and Total OB score) will be standardized, weighted and added together.”

“As just noted, to ensure the weights for each examination component are applied in a fair manner, the total scores on each component will be standardized prior to being weighted. Standardization is used when tests are of different lengths (have different

⁴ The Appellants note that an early notice of the Captain’s exam contained the standard boilerplate language that called for candidates to submit the familiar “bubble sheet” listing their experience and education to be entitled to claim additional E&E “points” to be added to their written and/or assessment center scores. This language, however, is patently inconsistent with all other communications with candidates -- including the 7/18/17 DOC Bulletin and the August 2017 WWS/OB/CEB pre-test preparation guide – that clearly explained that the Captain’s Board would not be using the traditional E&E point system but would be measuring experience in a new way through the CEB. (*E-Mail Trails; HRD Paiva/Finkle/Fegreus Motion; Paiva/Finkle Summary Decision Response II; Appellants Response; HRD Harte Motion*)

numbers of questions), have different average scores, and/or have differences in standard deviations (the spread or range of scores). By standardizing the total scores, the test components are placed onto the same measurement scale so that they can be added together. This is accomplished by looking at how far a particular score deviates from the average score for that test (either above or below) and dividing by the standard deviation for that test. Although this may seem complicated, it is a procedure that is used quite frequently and is well accepted in the testing field. Tests such as the SAT use a type of standardized score.”

“Finally, prior to computing overall component scores for each candidate, [the test vendor’s] staff will compare the ratings given out by each of the assessor boards. If there is a significant difference between these ratings (meaning one or more boards gave out significantly higher (easier) ratings or lower (harder) ratings on average compared to other boards), [the test vendor’s] analysis staff will standardize the ratings by panel to remove any advantage/disadvantage as a result of the panel to which the candidate was assigned.”

(HRD Paiva/Finkle/Fegreus Motion; HRD Harte Motion)

18. On or about January 3, 2018, all candidates who took the Captain’s Examination received a DOC e-mail with a “CANDIDATE SCORE REPORT”, dated December 28, 2017.⁵ This document stated, in part:

“As described in the candidate preparation guide, your score for this examination is comprised of three components with the following weights:

Technical Knowledge (TK) Score:	35%
Assessment Center (AC) Score:	50%
Career Experience Board (CEB) Score:	15%

“You previously received your raw score on the Technical Knowledge Test which corresponded to the number of items correct out of 100. To ensure that each test component carried the proper weight in determining your final position on the promotion list, your component scores (TK, AC and CEB) were rescaled to be out of 35, 50 and 15 points, respectively. The 50 points for the AC was computed as 20 points for the Written Work Sample and 30 points for the Oral Boards. You can confirm your rescaled TK score using the chart on the right side of this page. Simply look up your raw TK score in the first column and find the corresponding scaled TK score in the second column.”

“To pass this test you needed to score 70 or higher on your Overall Test Score.”

Candidates had no previous notice that the TK scores would be “rescaled” or that that WWS and OB portions of the AC component would be weighted 30% and 20% respectively. This report was also the first notice that an Overall Test Score of 70 would be required to pass. *(PreHEXs.2*

⁵ Hard copy of the CANDIDATE SCORE REPORT was also transmitted by first class mail postmarked 1/3/18. *(Paiva/Finkle Summary Decision Response II)*

through 4; SCEXh.2; Paiva/Finkle Summary Decision Response II; Appellants Response; HRD Harte Motion)

19. The RAW TK column ran from 100 down to 46; the corresponding RESCALED TK column ran from 35.00 (for a RAW TK of 100) down to 14.19 (for a RAW TK of 46). Thus, a candidate who got all 100 multiple choice questions received 35% of his/her RAW TK included in the Overall Test Score; a candidate with 86 correct answers received 34.4% of his/her RAW TK score; a candidate with 59 correct answers received 32.5% of his/her RAW TK score; a candidate with 46 correct answers received 30.8% of his/her RAW TK score. (PreHEXh.2 through 4; SCEXh.2; Paiva/Finkle Summary Decision Response II; HRD Harte Motion)

20. The CANDIDATE SCORE REPORTS for the Appellants stated their respective scores as follows:

Brian Fegreus

COMPONENT	YOUR SCORE
Technical Knowledge	19.20* out of 35
Assessment Center	41.30 out of 50
Career Experience	12.26 out of 15
Veteran's Points	0 out of 2
Overall Test Score	72.75

* = RAW TK score 59

Victor Paiva

COMPONENT	YOUR SCORE
Technical Knowledge	19.20* out of 35
Assessment Center	37.95 out of 50
Career Experience	11.98 out of 15
Veteran's Points ⁶	0 out of 2
Overall Test Score	69.12

* = RAW TK score 59

⁶ Lt. Paiva, a veteran, did not receive the 2 point veteran's preference because he did not achieve a passing grade on the examination. (PreHEXh.4; Colloquy at Status Conference). See also PAR.14(2) ("In competitive examinations for promotion to any position in the classified civil service, [HRD] shall add two points to the general average mark obtained by any veteran . . . provided such veteran has first obtained a passing mark in said examination").

Scott Finkle

COMPONENT	YOUR SCORE
Technical Knowledge	18.04* out of 35
Assessment Center	39.90 out of 50
Career Experience	10.85 out of 15
Veteran's Points	0 out of 2
Overall Test Score	68.80

* = RAW TK score 56

Brendan Harte

COMPONENT	YOUR SCORE
Technical Knowledge	21.51* out of 35
Assessment Center	36.35 out of 50
Career Experience	10.01 out of 15
Veteran's Points	0 out of 2
Overall Test Score	67.87

* = RAW TK score 65

(PreHEXhs.2 through 4; SCEXh.2; Paiva/Finkle Summary Decision Response II; HRD Harte Motion)

21. Included with the CANDIDATE SCORE REPORT was a one-page notice describing “your Civil Service rights” and the process to make a “Request for Review” of the results of the 2017 Captain’s Exam specified in G.L.c.31,§22,¶2.. The notice identified three types of review that a candidate was allowed to request from the “administrator” and the “Civil Service Unit”, i.e., HRD. The three types of review specified were:

- A. Answer Sheet Reviews: a review of the “marking of your answers to multiple choice questions” but the “statute does not provide for review of the test questions”;
- B. Education and Experience (CEB) review of the “scoring of your Education & Experience Career Experience Board”; and
- C. Essay reviews/Written Work Sample: a review of your “answers to essay questions”, i.e., the WSS.

No reference was made to the provision of G.L.c.31,§22,¶4 which permits a request to review of whether the examination as a whole or any component was a “fair test”. The notice stated that the deadline for seeking a review on each of the three specified grounds was “**no later than 17**

calendar days after emailing of this notice". The notice also stated in bold print: **"NO TELEPHONE INQUIRIES WILL BE ACCEPTED."** (*PreHExs.2 through 4; SCEXh.2; Paiva/Finkle Summary Decision Response II; HRD Harte Motion*)

22. On or about February 22, 2018, the eligible list for DOC Captain was issued, containing forty (40) names. Lt. Brian Fegreus appeared in 32nd place, tied with one other candidate. Lts. Paiva, Finkle and Harte did not appear on the eligible list as their Overall Test Scores were below the required passing Overall Test Score of 70. (*PreHExs.2 through 4; SCEXh.2*)

23. Since the eligible list has been in effect, DOC has promoted twenty-nine (29) candidates to the position of Captain, one candidate declined the promotion and one candidate was promoted to a senior management (non-civil service) position. This leaves the following nine Lieutenants on the eligible list:

- One Lieutenant remaining in 27th place (Rounded Score: 74)
- Two Lieutenants (one being Lt. Fegreus in 32nd place (Rounded Score: 73)
- One Lieutenant in 34th place (Rounded Score: 72)
- Three Lieutenants in 36th place (Rounded Score: 71)
- Two Lieutenants in 39th place (Rounded Score: 70)

(*SCEXh.1 & 2; Representation of DOC at Status Conference*)

Findings Applicable to Appeal of Lt. Fegreus

24. By two separate emails dated January 18, 2018, Lt. Fegreus sought HRD review of the WWS component and the "education and experience" portion of the Captain's examination. He questioned the lack of information about "how or who was scoring" the WWS portion and questioned how the CEB score was achieved "without completing an education and experience form" or providing the assessors "information . . . for them to know how much experience or education [he had] in order for them to properly and accurately score this portion." (*HRD Paiva/Finkle/Fegreus Motion*)

25. Upon review, HRD's Director of Test Development performed a review of the test vendor's procedures for selecting and training the assessors for the WWS and CEB components, the scoring of those components and the information in the examination bulletins and pre-test preparation guide provided to the candidates. In particular, she found that the information provided to candidates included appropriate disclosure of the test procedures, assessment and scoring process. She concluded that assessors were thoroughly trained and that the use of DOC personnel as assessors was reasonably justified and did not compromised the integrity of the examination, as no DOC personnel were involved in the design of the test and all candidates' responses were assigned a Candidate ID code and scored blindly. Accordingly, she found no merit to the issues raised by Lt. Fegreus request for review. *(HRD Paiva/Finkle/Fegreus Motion)*

26. On March 2, 2018, Lt. Fegreus duly appealed to the Commission. *(Claim of Appeal; Appellants Response [Commission Procedural Order dated March 30, 2018])*

Findings Applicable to Appeals of Lt. Paiva & Lt. Finkle

27. A few hours after Lt. Paiva received the email from DOC containing his "CANDIDATE SCORE REPORT", he wrote to Ms. Patricia Snow in the DOC's HR department, stating:

"Patti. [sic] I receive a score of 59 on the TK part. If you multiply 35% by 59 you get 20.65. Not 19.20. I think this was a mistake. Let me know what you think? Thanks Victor Paiva."

(Paiva/Finkle Summary Decision Response II)

28. On January 10, 2018, Ms. Snow replied:

Good Morning Victor – Any issues or concerns need to be submitted to Civil Service per the information listed below [referencing the Request for Review form included in with the CANDIDATE SCORE REPORT] and noting: "No telephone inquiries will be accepted by Civil Service or the Department of Correction."

(Paiva/Finkle Summary Decision Response II)

29. Lt. Finkle also wrote several e-mails to Ms. Snow on January 3, 2018, in which he sought clarification of both the calculation of his TK score and the credits he thought he should be receiving for his college degree. In particular, he queried:

- “Hi Patty, Thank you [for sending the score report]. I just want to know where are the college education points and if it was added.”
- “After some review of my score, I did see a calculation error. On the technical knowledge test I got a score of 56. $56 \times .35(35\%)$ is 19.6”
- “I would appreciate a clarification score on the written examination. There is a miscalculation. I passed the exam, as a result of the miscalculation. The breakdown in in the below email [herein, the message quoted immediately above].”

(Paiva/Finkle Summary Decision Response II)

30. After initially receiving an automatic “out-of-office” reply, Lt. Finkle received email replies from Ms. Snow on or about January 9, 2018, which stated:

- “Hi Scott- please see below response from the test administrators. Any further questions please contact Civil Service directly. Thank you Patty”

“The Career Experience Board was a different model than the previous point system for Education and Experience. The candidates were asked several questions and they were to base their responses on all of the experience and learning opportunities that they had over their career. It was the candidate’s choice as to what they presented to the panel of assessors to demonstrate that they:

1. Have handled a specific difficult situation as a Lieutenant
2. Could describe how they would handle a specific hypothetical situation that a Captain could encounter
3. Have effectively prepared to take on the responsibilities of a Captain.”

“As part of their response, they could choose to talk about college experience if that was part of their meaningful preparation or part of their planned response to either situation, but that was not a requirement. In addition, the number of years of college or type of degree did NOT yield specific points.”

“The candidate preparation guide gave detailed information to candidates about the Career Experience Board and what was required.”

- Good morning Scott – any further questions or issues you need to submit an appeal to Civil Service directly per the contact information I included on the original results email or visit their website page at www.mass.gov/civilservice.”

(Paiva/Finkle Summary Decision Response II)

31. On or about January 18, 2018, Lt. Paiva and Lt. Finkle submitted substantially identical “appeals” to HRD, seeking reviews of the “Answer Sheet, Education and Experience (Career Experience Board) and the [WWS] Essay.” Their narrative included alleged various errors in the “creation, administering, managing, hosting and grading in the examination process”, alleged error in “conversion of the RAW TK to the RESCALED TK, and alleged error and violation of civil service law in the failure to award specific “Education and Experience examination points, as well as additional college credits” in a manner consistent with prior examinations. The relief requested was limited to adjustments in the TK and CEB components. The narrative did not identify any specific issues regarding the WWS component and the relief requested did not seek adjustment of their WWS score. *(HRD Paiva/Finkle/Fegreus Motion; Paiva/Finkle Summary Decision Response II)*

32. Upon receipt of the requests from Lt. Paiva and Lt. Finkle, HRD performed a review of the two Lieutenant’s TK Answer Sheets and confirmed that the answers were accurately scored, and so informed Lt. Paiva and Lt. Finkle. *(HRD Paiva/Finkle/Fegreus Motion; Paiva/Finkle Summary Decision Response II)*

33. As to the use of a Rescaled TK score, rather than the actual Raw TK score (i.e., number of correct answers), HRD determined:

“This is done so that it is easier to compare individual scores; critical when using an examination to determine how qualified individuals are, compared to one another for promotion. The . . . argument that the math is incorrect is without merit, because it does not take into consideration the standardization of the scores.”

(HRD Paiva/Finkle/Fegreus Motion)

34. As to the other issues raised by Lt. Paiva and Lt. Finkle, as noted above in connection with Lt. Fegreus’s appeal, HRD’s Director of Test Development reviewed the candidate preparation guides, investigated the testing procedures, assessor selection and training process,

and scoring methodology used for the WWS and CEB components. She concluded that the candidate preparation guides were sufficiently thorough to provide candidates with the information needed to prepare for the examination and that these test components were appropriately designed, administered and scored. (*HRD Paiva/Finkle/Fegreus Motion*)

35. For example, HRD noted that, as to the CEB component, the test vendor had analyzed the level of agreement between the assessors on a panel and the level of similarity or difference between the ratings given by the four (4) CEB panels, finding that the three (3) assessors on each panel gave consistently similar ratings to each candidate they evaluated and, using a statistical significance test, it was determined that there was no significant difference in the scoring between panels as well. HRD noted that the CEB component did depart from the type of E&E component used in other examinations, but concluded that the new process was fully explained to candidates and all candidates had an equal opportunity to prepare themselves for that new approach. HRD also noted that scoring had been performed “blind”, using confidential identifiers for each candidate and that the CEB assessors did not include internal DOC personnel. (*HRD Paiva/Finkle/Fegreus Motion*)

36. On March 2, 2018, both Lt. Paiva and Lt. Finkle filed essentially identical appeals with the Commission. Each appeal alleged the following: “1) Calculation errors in candidate score report; 2) denial of publication, education and career experience points; 3) violation of Civil Service Law, M.G.L., PAR, MCOFU CBA, contractual agreements and E&E Sheet; 4) EBJ study guide violations; 5) Exam weight, CEB format, and Fact Sheet (abbrev/resume); Request Commission Investigation of the departmental and procedural violations, correct all exam “Fair Test” inequities prior to certification, and make me whole.” (*Claims of Appeal; Paiva/Finkle Summary Decision Response II*)

Findings Applicable to Lt. Harte's Appeal

37. On or about January 9, 2018 Lt. Harte emailed a review request of “my answer sheet” and “the Education and Experience (Career Experience Board).” In his request, he noted: “In the past, the exam would have a bubble sheet asking about your time and grade. Then on either the same sheet or on a separate sheet it would ask about your education. I would like to know why it [sic] the exam process was not laid out before signing up for the exam.” (*HRD Harte Motion*)

38. HRD treated Lt. Harte's requests as seeking a review of the WWS essay score and his CEB score. After review, by letter dated February 15, 2018, HRD declined to make any adjustments to either score. (*HRD Harte Motion*)

39. On March 1, 2018, Lt. Harte appealed to the Commission, stating: “The 3rd part of the exam is what I am requesting to appeal, called ‘Captain Exam Review Response’ or called ‘Education & Experience (CEB)’. There was no form provide[d] for such education or experience. A sheet was filled out for information purpose[s] only. Not be used for evaluations. The individuals who conducted ‘Captain’s Responses’ who were they”. He also questioned a lack of information in advance and, as to the “written part of the exam”, claimed he was not told how and by whom the “examination assessment” would be scored and weighted. (*HRD Harte Motion*)

40. On appeal to the Commission, Lt. Harte also contends that DOC did not comply with the conditions stated in the initial July 22, 2017 DOC Bulletin announcing the 2017 Captain's Examination, specifically, that there would be a “cut score” on the TK test and only candidates who achieved that minimum score would be allowed to continue in the testing procedure and failed to execute a written delegation agreement with HRD as required to be permitted to conduct the examination. (*Harte Summary Decision Response II*)

STANDARD OF REVIEW

An appeal before the Commission may be disposed of summarily, in whole or in part, pursuant to 801 C.M.R. 1.01(7)(g) and 801 C.M.R.1.01(7) (h) when, as a matter of law, the undisputed material facts affirmatively demonstrate that there is “no reasonable expectation” that a party can prevail on at least one “essential element of the case”. See, e.g., Milliken & Co., v. Duro Textiles LLC, 451 Mass. 547, 550n.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,§3 directs HRD to “make and amend rules which shall . . . include provisions for . . . (c) Open competitive and other examinations to test the practical fitness of applicants . . .” Pursuant to this authority, Personnel Administration Rule PAR.06 provides, in relevant part:

PAR.06. EXAMINATIONS

(1) Procedure

- (a) The administrator shall establish procedures for competitive and other examinations to test the practical fitness of applicants.
- (b) The grading of the subject of employment or experience as part of a promotional examination shall be based on a schedule approved by [HRD] which shall include credits for elements of training an experience related to the position for which the examination is held.

(2) Content of Examinations

- (a) All selection procedures shall be practical in character and shall relate directly to those matters which fairly determine the relative ranking of the persons examined based on the knowledge, abilities and skills required to perform the primary duties (critical and frequent tasks) of the position title or occupational group as determined by reliable and representative job information available to [HRD]. Examinations may be assembled or unassembled and may include written, oral, practical or performance tests, training and experience rating . . . other generally accepted selection procedures, or combinations of these, which, in the discretion and judgment of [HRD], are appropriate for the position title or occupational group being tested.

(3) Examination Results

The passing mark for each examination shall be established by [HRD] in accordance with generally accepted selection procedures.

Also, G.L.c.31,§22 provides, in relevant part, that HRD “shall determine the passing requirements of examinations” and, in particular, “an applicant shall be given credit for employment and experience in the position for which the examination is held” and “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.” (*emphasis added*)

Section 22 also grants applicants the right to seek HRD review of their written examination marks and E&E credits and, in some cases, to claim that the exam was not a “fair test”. Section 24 provides for further appeal of HRD’s actions for further limited review by the Commission. G.L.c.31,§22 through §24. See generally., Clarke v. HRD, 29 MCSR 1 (2016), on further appeal, 30 MCSR 410 (2017); Wilbanks v. HRD, 29 MSCR 22 (2016), aff’d sub nom Wilbanks v. Massachusetts Civil Service Comm’n, Suffolk C.A. 2016-0356 (Sup. Ct. 2017)

The Commission has construed the applicable Massachusetts civil service laws and rules to vest HRD with broad, although not unfettered, discretion to determine the technical requirements for competitive civil service examinations, including the type and weight given as credit for training and experience, subject to scrutiny solely when HRD’s decisions, actions or failure to act are devoid of any rational explanation, are not firmly grounded in common sense, have not been uniformly applied, are arbitrary, capricious or otherwise run afoul of basic merit principles of civil service law. See, e.g., Borjeson v. Human Resources Div., 31 MCSR 267 (2018) (Interim Decision), 31 MCSR 297 (Final Decision) (allowing appeal and requiring rescoring of E&E when HRD had arbitrarily changed its long-standing traditional methodology for reasons that

were neither “persuasive nor logical”); Clarke v HRD, 29 MCSR 1 (2016) (allowing appeal, in part, to grant education credit when documentation submitted indistinguishable from information previously found sufficient to grant such credit); Merced v. Human Resources Div., 28 MCSR 396 (2015) (affirming HRD’s requirement that university teaching credit required faculty status of adjunct professor or higher); Carroll v. Human Resources Div., 27 MCSR 157 (2014)(deferring to HRD’s technical expertise in defining criteria for educational credit); Cataldo v. Human Resources Div., 23 MCSR 617 (2010) (allowing E&E appeal, in part, for education credit that HRD denied for reasons that could not be reconciled with a reasonable construction of HRD’s examination instructions). See generally, G.L.c.31,§1 (basis merit principles means “recruiting, selecting and advancing of employees on the basis of their relative ability, knowledge and skills”, “assuring fair treatment of all applicants” and protecting employees from “arbitrary and capricious actions”); City of Cambridge v. Civil Service Comm’n, 43 Mass.App.Ct. 300, 303, rev.den., 426 Mass. 1102 (1997) (decision “is arbitrary and capricious when it lacks any rational explanation.”)

ANALYSIS

After careful review of HRD’s Motions and the Appellants’ responses, I conclude that HRD has established that there is no material issue on which Appellant Fegreus and Appellant Harte are reasonably likely to prevail and, therefore, HRD’s Motions for Summary Decision as to those appeals must be allowed and the appeals must be denied.

Similarly, save for one issue on which a genuine factual dispute exists, HRD has also established that Appellant Paiva and Appellant Finkle are not likely to prevail on most of the issues raised in their appeals. Thus, partial Summary Decision is appropriate on those issues.

I do find, however, that Appellant Paiva and Appellant Finkle have made a timely “fair test” appeal that raises a genuine issue of fact and requires a full evidentiary hearing on the issue of whether the use of a rescaled TK score prejudiced those Appellants’ civil service rights by unfairly determining that they had failed to achieve a passing Overall Test Score (and in the case of Lt. Paiva, depriving him of additional points for veteran’s credit) which precluded their names from being placed on the current DOC Captain’s eligible list.

Fair Test Appeal

G.L.c.31, §22, ¶4 entitles a civil service test candidate to request that HRD “conduct a review of whether an examination . . . was a fair test of the applicant’s fitness actually to perform the primary or dominant duties of the position for which the examination was held, provided that such request shall be filed with [HRD] no later than seven days after the date of such examination.” HRD’s decision on a fair test review may be appealed to the Commission. G.L.c.31, §24.

The seven day filing deadline for a fair test appeal has been judicially and administratively construed to be equitably tolled, in appropriate circumstances, especially, when the facts show that a candidate could not reasonably be expected to know the basis for asserting a fair test claim within the seven day timeframe and where the test administrator provided inaccurate disclosure of the candidate’s rights. See, e.g., O’Neill v. Civil Service Comm’n, MICV09-0391 (2009), aff’d, 78 Mass.App.Ct. 1127 (2011) (Rule 1:28) (time to assert a G.L.c.31, §22, ¶4 “fair test” appeal commences after the examination results are published; Merced v. Boston Police Dep’t, 29 MCSR 84 (2016), aff’d, Suffolk C.A. 2016CV00748 (2018). See Swan v. Human Resources Div., CSC No. B2-15-182 (2015)

The fair test issue raised by Lt. Paiva and Lt. Finkle concerning the validity of using a “Rescaled TK score” to determine their final TK grade and, therefore, whether they passed or failed the examination, fit the circumstances under which the Commission is warranted to apply the doctrine of equitable tolling in determining whether the Appellants’ fair test appeal may be deemed timely. Here, the problem with using a Rescaled TK score could not have been known before the receipt of the CANDIDATE SCORE REPORT on January 3, 2018. All prior communications with the Appellants gave no indication that HRD or DOC contemplated such an adjustment to the TK score that they received. The August 2017 notice simply informed them that they had scored 59 and 56, respectively, on the TK portion of the exam and that this score “will serve as 35% of your overall score.” Although the August 2017 TK score notice provided the Appellants with information about how and when (within seven days of that notice) they must file a fair test appeal, that notice has no significance as the Appellants would not know of the basis for any such appeal until January 2018.

When Lt. Paiva and Lt. Finkle received their CANDIDATE SCORE REPORT, they both immediately (the same day) initiated contact with DOC claiming that the TK score was erroneously calculated using a “Rescaled TK score” rather than the “Raw TK score” reported to them in August 2017. They eventually (on January 9 or 10, 2018) were referred to the summary sheet provided with the CANDIDATE SCORE REPORT which specified a 17-day appeal window for the types of review that then could be sought (and no mention of a “fair test” review or its seven day window,(which, if applicable, would expire on January 10, 2018), directed all further communications to HRD, and told themHRD would not accept any telephone inquiries.

Lt. Paiva’s and Lt. Finkle’s January 18, 2018 requests for review by HRD were filed within the 17-day window to which the Appellants were referred. In view of the clear steps that Lt.

Paiva and Lt. Finkle initiated on the day they received their final scores, combined with the incomplete and confusing appeal instructions provided to them, warrants a finding that they have duly and timely sought review of the Rescaled TK score issue. Lt. Finkle also took immediate steps to question the validity of the CEB and only received feedback on that issue on or about January 10, 2018. To the extent he included a fair test issue about the CEB in his January 18, 2018 submission, I find it is equitable to deem that request timely as well.⁷

Insofar as any other Appellant now claims to make a fair test appeal, I reach a different conclusion. Lt. Fegreus first sought review on January 18, 2018, within the 17-day window for requesting review of the marking of his TK, WWS or CEB scores, but more than seven days after he learned of those scores. Also, at least insofar as the CEB component is concerned, he knew or should have known that the CEB did not use an education and experience form and his CEB score would be based on his oral presentation and not on awarding specific points for specific college experience. Moreover, as noted below, even if Lt. Fegreus were deemed to have made a timely “fair test” appeal on those issues, they all fail on the merits.

Similarly, although Lt. Harte’s review requests to HRD appear to have been filed on or about January 9, 2018,⁸ he then sought review of his “answer sheet” and the “written part of the exam”. He did also question the failure to use a “bubble sheet” to award points for education and experience, which, arguably, might raise a fair test issue. He later raised other issues, including DOC’s failure to execute a delegation agreement with HRD, the failure to use a “cut score” as promised, and other errors, but they were not part of what he had asked HRD to review and

⁷ As noted below, however, to the extent that Lt. Finkle is asserting a fair test appeal regarding the CEB, that appeal fails on the merits.

⁸ The record is not clear whether Lt. Harte’s request to HRD was completed by January 9, 2018 or January 23, 2018. For purposes of this motion, I used the earlier date as the one most favorable to Lt. Harte.

cannot form the basis for a fair test appeal to the Commission. Also, as noted below, none of these belatedly-asserted potential fair test claims have merit.

The TK Scoring Issue

As HRD correctly points out, HRD's decision on review of the marking of a candidate's answer sheet for a multiple choice exam, such as the TK Test, is final. The Commission lacks jurisdiction to hear an appeal of that decision. See, e.g., Hickey v. Civil Service Comm'n, 60 Mass.App.Ct. 1104 (2003) (unpublished); Ryan v. Human Resources Div., 31 MCSR 118 (2018); Salois v. Human Resources Div., 15 MCSR 428 (2015).

The TK scoring issue raised by Lt. Paiva and Lt. Finkle, however, raises a different issue that falls within the fair test category of appeal, namely, whether it was a fair test of the Appellant's fitness to have substituted a Rescaled TK Score for the Raw TK score when calculating the points to be awarded to the Appellants toward their Overall Test Score.

First, unlike the "standardization" of panel scores in the WWS and CEB components, candidates had no advance notice that they would be graded on a "scale" of any kind. In fact, the notice that candidates received of their TK scores provided them with "raw" TK scores only, i.e. the number of multiple choice questions out of 100 that they answered correctly, and the "result" of the TK examination would "serve as 35% of your overall score". A fair reading of this information certainly could lead a candidate to conclude that the intention was – at least at that time – to credit 35% of the number of correct answers to the 100 multiple choice TK questions.

Second, for reasons that are not explained, the test administrator, DOC and/or HRD decided, at some point, to change the original test protocol, which required candidates to achieve a minimum passing grade (or "cut score") on the TK Test in order to continue on in the promotional examination process. Instead, all candidates were allowed to proceed through the

WWS and CEB components, regardless of their TK score. Thus, candidates who scored as low as 46 out of 100 correct answers were allowed to compete with others whose scores were considerably higher.⁹

Third, I note that “rescaling” resulted in the lowering of all TK scores. Higher scoring candidates receiving the smallest reduction (no reduction for candidates who scored 100) and lower scoring candidates receiving increasingly larger reductions (with candidates scoring 46 having their score TK reduced by nearly 2 points [$46 \times .35 = 16.1$; rescaled score: 14.19]). Put another way, candidates’ “weighted” raw TK scores below 100 became, after “rescaling”, an increasingly lower percentage of the raw TK score that was originally provided to them. If this use of “rescaling” is, in fact, an acceptable methodology for scoring the written multiple choice TK component of this three-part promotional examination, it does not appear in this record.

Fourth, Lt. Paiva and Lt. Finkle both may claim to be aggrieved by the Rescaled TK scoring. Had the original “Raw TK scores” been used to compute their “weighted” TK score, they would have been awarded 20.65 TK points ($59 \times .35$) and 19.60 TK points ($56 \times .35$), respectively. These scores, when combined with their WWS and CEB scores, would have given them

each an passing Overall Test Score that would have placed them on the 2017 Captain’s eligible list (and, in the case of Lt. Paiva, entitled him to receive an additional 2 points as a veteran’s credit).¹⁰

In sum, the change in the TK test scoring procedures, at least, raises legitimate factual issues that should not be decided on motion, but requires a full evidentiary hearing to enable the

⁹ For example, a candidate who scored a 48 on the TK Test, ultimately earned an overall passing score of 71.40, which, after veteran’s points, placed him in 32nd place on the eligible list, while Lt. Harte, who scored 65 on the TK test and Lt. Paiva and Lt. Finkle (59 & 56, respectively) all received failing Overall Test scores. (*SCEXhs.1 & 2*)

¹⁰ Although I conclude that Lt. Harte did not make a timely fair test appeal of the rescaling of his TK score, even if his TK score had not been rescaled, the increment in his TK weighted score ($65 \times .35 = 22.75$) would still not have given him a passing Overall Test Score.

Commission to understand how HRD justifies this change in procedure. Absent such a satisfactory explanation, Lt. Paiva and Lt. Finkle appear to raise legitimate questions as to whether the TK test component, and/or the Captain's promotional examination as a whole, was a fair test consistent with basic merit principles of civil service law.

WWS and CEB Components and Other Issues

I have carefully reviewed the examination bulletins and candidate preparation materials for the WWS and CEB components, as well as HRD's explanation of the review of the design, administration and scoring of those components. I agree with HRD's conclusion that there is substantial factual basis to believe that those components were properly administered and, as administered, constituted a fair test of a candidate's ability. Writing samples and oral exercises are a well-established part of civil service promotional examinations. The Appellants have not raised any legitimate and genuine disputed issues of fact that present a reasonable basis to conclude that they would prevail at a full evidentiary hearing concerning their complaints about the WWS and CEB components. I note, in particular, that HRD confirmed that the WWS and CEB assessors were well-qualified and suitably trained, that the candidate preparation materials thoroughly explained the process, including extensive advice on how to prepare for those tests, and that, after review, HRD was satisfied that the procedures in place to assure "blind" scoring were not compromised. Given the broad statutory discretion afforded to HRD with respect to the technical aspects of civil service examinations and the deference that the Commission provides in appeals from HRD's review of examinations, on this record, HRD established that it is entitled to summary decision in its favor as to the Appellants' complaints about those two components.

That said, the CEB component does present a legal question that has not been previously considered by the Commission. By allowing the traditional "E&E" point system, based on a

paper record, to be replaced by a “oral board” system used, so far as the Commission knows, for the first time in any Massachusetts civil service examination, HRD has created a tension between the statutory provisions for providing objectively determined “E&E” credit with the statutory limitation on the right of review of subjective “oral” exam exercises See G.L.c.31, §22,¶1(submission of an E&E “sheet”); PAR.06(1)(b) (submission of an E&E “schedule”); Wilbanks v. HRD, 29 MSCR 22 (2016), *aff’d sub nom* Wilbanks v. Massachusetts Civil Service Comm’n, Suffolk C.A. 2016-0356 (Sup. Ct. 2017) (no right of appeal from oral boards)¹¹

This statutory tension presents an issue of law that could warrant further scrutiny, and it would behoove HRD to thoroughly study the issue before the same type of CEB is used in the future. For the time being, however, the Commission defers to HRD’s conclusion that the use of a delegated “CEB” type component can be reconciled with the statutory provisions of civil service law that seem to assume some form of “paper” submission to, and computation of E&E credits by HRD, which (unlike “oral” components) is then specifically entitled to further objective administrative review and appeal to the Commission. It would not be appropriate for the Commission to begin to undertake that complex analysis here (given the late stage of the process and the limited life of the current DOC Captain’s eligible list), but, should the issue arise in the future, and were it presented in a timely manner to enable an appropriate review (i.e. in advance, as soon after learning that a “CEB-type” examination was contemplated as feasible), the Commission may be open to revisit this question.

The Appellants do have a fair complaint that HRD delegated the design, administration and scoring of the Captain’s exam to DOC without the parties ever executing a written delegation agreement. Sound administrative practice and procedure should not have allowed this misstep to

¹¹ Thus, appeal rights are not expressly available, as a matter of law, from the OB component results.

occur. (Apparently the agreement was drafted but never signed). Delegation, however, is allowed, as a matter of law. G.L.c.31,§5(l). See generally Malloch v. Town of Hanover, 472 Mass. 783 (2015). Failure to execute a written delegation agreement, while poor form, does not invalidate the substantive act of delegation and does not rise to the level of a violation of the Appellants' civil service rights in this case.

Finally, to the extent I have not addressed any of the other issues raised by the parties, they “have not been overlooked. . . . [N]othing in them . . . requires discussion.” McCormack v. Department of State Police, 92 Mass.App.Ct. 1103, 2017 WL 3469601 (Rule 1:28), *citing* Commonwealth v. Domanski, 332 Mass. 66, 78 (1954).

CONCLUSION

Accordingly, the Commission takes the following action in these appeals:

Paiva/Finkle Appeals.(CSC Nos. B2-18-038 & B2-18-039

A. HRD's Motion for Summary Decision, dated April 30, 2018, is allowed, in part, at this time (as to an appeal of the marking of Appellant Paiva's and Appellant Finkle's multiple choice Answer Sheet) and denied, in part, as to the timeliness of those Appellants' Fair Test appeals.

B. HRD's Motion for Summary Decision, dated May 8, 2018, is denied, in part, at this time (as to the “fair test” issue of rescaling the Technical Knowledge Test scores), and, otherwise, is allowed, as to all other issues raised by Appellants Paiva and Finkle.

C. A full evidentiary hearing will be scheduled on the issue of whether or not the 2017 DOC Captain's examination and/or the Technical Knowledge component thereof, constituted a fair test of the fitness to become a DOC Captain consistent with basic merit principles of civil service law, notwithstanding the use of a rescaled Technical Knowledge score in determining that the Lt. Paiva and Lt. Finkle failed to achieve a passing Overall Test Score.

D. Pursuant to 801 CMR 1.00(9)(e), the Department of Correction is granted participant status for purposes of further proceedings in these two appeals.

Fegreus Appeal.(CSC Nos. B2-18-040

E. HRD's Motion for Summary Decision, dated May 8, 2018, is allowed. The appeal of Brian Fegreus, under CSC No. B2-18-40 is hereby *denied*,

Harte Appeal.(CSC Nos. B2-18-044

F. HRD's Motion for Summary Decision, dated May 11, 2018, is allowed. The appeal of **Brendan Harte**, under CSC No. B2-18-44 is hereby *denied*.

Civil Service Commission

/s/ Paul M. Stein

Paul M. Stein
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman, Camuso, Ittleman, Stein & Tivnan, Commissioners) on September 12, 2019.

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 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:

Victor Paiva (Appellant)
Scott Finkle (Appellant)
Brian Fegreus (Appellant)
Brendan Harte (Appellant)
Melissa A. Thomson, Esq. (for HRD)
Joseph Santoro (for DOC)
Norman Chalupka, Jr., Esq. (for DOC)