

**COMMONWEALTH OF MASSACHUSETTS**

**CIVIL SERVICE COMMISSION**  
100 Cambridge Street – Suite 200  
Boston, MA 02114  
617-979-1900

THOMAS PASQUARELLO,  
*Appellant*

B2-24-002

v.

HUMAN RESOURCES DIVISION,  
*Respondent*

Appearance for Appellant:

Thomas Pasquarello, *Pro Se*

Appearance for Respondent:

Tracy Conlon, Labor Counsel  
Human Resources Division  
100 Cambridge Street, Suite 600  
Boston, MA 02114

Commissioner:

Paul M. Stein

**Summary of Decision**

The Commission upheld HRD’s decision that the Appellant was ineligible to take the September 2023 readministered Statewide Police Sergeant Promotional Exam because he had not been employed as a Cambridge police officer at least three years prior to November 2022, which was a statutory prerequisite to eligibility to take the first-level promotional exam originally administered in September 2022—and only officers eligible to take the originally scheduled exam were eligible to take the readministered exam.

**DECISION ON RESPONDENT’S MOTION FOR SUMMARY DECISION**

On January 3, 2024, the Appellant, Thomas Pasquarello, a Cambridge police officer, appealed to the Civil Service Commission (Commission)<sup>1</sup>, after he was informed that his eligibility to participate in the Statewide Police Sergeant Promotional Exam, originally administered in

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<sup>1</sup> 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.

September 2022 and re-administered on September 23, 2023 by the state's Human Resources Division (HRD), had been revoked. I held a remote pre-hearing conference on this appeal on January 30, 2024. After further investigation, HRD filed a Motion for Summary Decision, in which it confirmed that the Appellant had not been employed as a sworn Cambridge Police Officer for the statutorily-required three-year period prior to the date of the originally scheduled exam, that the Appellant was mistakenly allowed to sit for the September 2022 exam, and that he was not eligible to take the re-administered examination. The Appellant did not oppose the motion. For the reasons stated below, HRD's motion is allowed, and the Appellant's appeal is dismissed.

### **UNDISPUTED FACTS**

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

1. The Appellant, Thomas Pasquarello, is a sworn police officer with the Cambridge Police Department (CPD).
2. The Appellant's date of original appointment as a CPD officer is May 6, 2019, but he did begin performing actual duties as a CPD Police Officer until he completed police academy training, which he does not dispute was after September 2019.
3. Cambridge is a city with a population of more than 50,000.
4. A Statewide Police Sergeant Promotional Exam was initially held by HRD on September 17, 2022.
5. The CPD had provided HRD with the name of the Appellant as one of the police officers eligible to take the September 17, 2022 exam and he was registered and sat for that examination.
6. In November 2022, due to the decision of the Massachusetts Superior Court in the so-called "*Tatum* litigation", HRD issued a notice to those who had taken the September 2022 promotional exam, including the Appellant, that the examination would not be scored, and a readministered

exam would be given at a future date, for which all those who took the original exam would be automatically registered.

7. The Appellant sat for the readministered Statewide Police Sergeant Exam in September 2023.

8. On December 19, 2023, HRD informed the Appellant that he had passed the readministered examination.

9. At some point after receiving notice from HRD that he had passed the administered exam, CPD informed HRD that it had been mistaken in providing information to HRD that the Appellant had served the requisite three years as a police officer to be eligible to take the first-level (Police Sergeant) examination, having initially calculated the Appellant's service from his May 2019 appointment date, rather than the date on which he began actually performing police duties after completing the police academy.

10. The Appellant does not dispute that, as of September 17, 2022, he had served less than three years actually performing the duties of a CPD Police Officer.

11. HRD confirmed that the Appellant did not meet the criteria for eligibility to take the 2022 Police Sergeant Promotional Exam, that he had been erroneously registered to sit for that examination, and that he would not be placed on the Cambridge Police Sergeant's eligible list to be established from the results of the September 2023 readministered Statewide Police Sergeant Exam.

12. The Appellant's passing score on the 2023 readministered examination would have ranked him 17<sup>th</sup> on the CPD Sergeant's Eligible List established by HRD on February 15, 2024, tied with six other candidates.

13. Based on the number of promotions to CPD Police Sergeant that Cambridge reported were made in 2020 (namely, 3), 2021 (9), 2022 (5) and 2023 (0), had the Appellant been placed on the February 2024 CPD Police Sergeant's eligible list, his chances for promotion during the two-year life of that eligible list would be theoretically possible but remote.

### **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 1.01(7)(g)(3). A motion 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 decided 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). See also Mangino v. HRD, 27 MCSR 34 (2014) and cases cited ("The notion underlying the summary decision process in administrative proceedings parallels the civil practice under Mass. R. Civ. P. 56, namely, when no genuine issues of material fact exist, the agency is not required to conduct a meaningless hearing."); Morehouse v. Weymouth Fire Dept, 26 MCSR 176 (2013) ("a party may move for summary decision when . . . there is no genuine issue of fact relating to his or her claim or defense and the party is entitled to prevail as a matter of law.")

### **ANALYSIS**

The facts and the law, viewed in a light most favorable to the Appellant, establish that this appeal must be dismissed.

Eligibility to sit for a promotional examination is regulated by civil service law. Section 59 of G.L. c. 31 prescribes that “. . . no such [promotional] examination shall be open to any person who has not been employed in such force for at least one year after certification in the lower title or titles to which the examination is open; and provided, further, that *no such examination for the first title above the lowest title in the police or fire force of a city or town with a population in excess of fifty thousand shall be open to any person who has not been employed in such force in such lowest title for at least three years after certification.*” (*emphasis added*)

Cambridge has a population of more than 50,000. Thus, pursuant to civil service law, in order to be eligible to take a first-level (i.e., CPD Police Sergeant) promotional exam, the Appellant must have been “employed” as a CPD Police Officer for at least three years. It is well established that “time spent in the Police Academy as a student police officer does not constitute having been employed in the force.” Sunny v. Human Resources Division, 33 MCSR 95 (2020), *aff’d sub nom. Sunny v. Civil Service Commission et al.*, 2079CV00190 (Suffolk Sup.Ct. 2021). See also Lydon v. Town of Stoughton, 32 MCSR 194 (2019) (one-year probationary period does not include time in the police academy).

Further, civil service law vests HRD with broad authority to design and administer civil service examinations. G.L. c. 31, §§ 3 through 5; § 16 and § 22; Personnel Administration Rules, PAR.06. Generally, absent a finding that HRD has acted unreasonably, arbitrarily, or otherwise in violation of basic merit principles, the Commission has consistently deferred to HRD’s technical expertise in matters involving the design, administration, and interpretation of civil service examinations. See, e.g., Ralph v. HRD, 32 MCSR 73 (2019), *aff’d sub nom. Ralph v. Civil Service Comm’n*, 100 Mass. App. Ct. 199 (2021); Carroll v. HRD, 27 MCSR 157 (2018); Peters v. HRD, 23 MCSR 647 (2010). See also Ash v. Police Comm’r of Boston, 11 Mass. App. Ct. 650, 652 (1981) (“the

Personnel Administrator [HRD] is the skilled professional authorized by G. L. c. 31 to decide technical matters such as the scoring and interpretation of examinations.”)

Thus, the Commission previously has determined that HRD’s decision to use the date of an original examination as the eligibility date for a readministered examination is reasonable. See, e.g., Ranahan v. Human Resources Division, 36 MCSR 88 (2023) (“candidates should be able to take the promotional examination and have an eligible list established with the original complement of test takers as had been expected from the original administration.”).

Here, HRD initially relied upon erroneous information provided by the CPD in allowing the Appellant to register for and take the original September 2022 examination. It is now not disputed that the Appellant had not graduated the Police Academy and had not actually performed the duties of a sworn CPD Police Officer for at least three years prior to September 17, 2022. Thus, he was not statutorily eligible to have taken the September 2022 promotional examination.

I do not discount the considerable time and effort that the Appellant diligently invested in studying for and taking a civil service promotional examination—not once, but twice—in reliance on an error that was not of his doing.<sup>2</sup> As a general rule, however, the Commission accords HRD discretion to establish reasonable requirements, consistent with basic merit principles, in administering and scoring examinations. In Bailey v. Human Resources Division, 36 MCSR 461

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<sup>2</sup> I do not doubt that the Appellant, and most likely, the CPD honestly believed that the Appellant was entitled to take the Police Sergeant’s Exam because more than three years had passed from the date he was appointed as a CPD Police Officer from a “certification” and they did not know that Section 59 had been construed to mean that time in the police academy did not count for purposes of meeting that three-year requirement described in the statute. This situation illustrates that appointing authorities cannot be presumed to follow all of the nuanced interpretations, frequent changes, and clarifications to civil service law and rules and it would behoove HRD to ensure that appointing authorities regularly receive updates about such matters, especially when they can have significant career consequences for the men and women who have given years of service in vital – and dangerous – public safety positions, such as involved in this appeal.

(2023), and Correale v. Human Resources Division, 36 MCSR 468 (2023), a few weeks before the date of the September 23, 2023 readministered police promotional examination, HRD revoked the eligibility of two municipal police lieutenants to sit for the test, determining that they had registered for, but did not take, the original September 17, 2022 Captain Promotional Exam, and, therefore, did not qualify to take the readministered Police Captain’s examination. The Commission noted that revoking a prior determination of eligibility, after the appellants had invested considerable time and effort to study for the exam in reliance on HRD’s “ambiguous” and “misleading” representations, presented a close case. However, after considering all of the facts involved, the Commission concluded that HRD had not acted arbitrarily or unreasonably in revoking a prior eligibility determination and denied those appeals.

Consistency and equal treatment are important hallmarks of basic merit principles under civil service law. Here, HRD’s error was one of omission, not commission, as in Bailey and Correale; it did not involve affirmatively misleading the Appellant, but in failing to catch the CPD’s erroneous representation that the Appellant was eligible to take the 2022 test until after HRD administered and scored the September 2023 test. Also, as in Bailey and Correale, the Appellant’s prospects for promotion are uncertain, at best. In sum, although HRD might have been more vigilant, under the facts and law, the Commission defers to HRD’s expertise in decisions involving the administration of civil service examinations.

## **CONCLUSION**

For the reasons stated above, HRD’s Motion to For Summary Decision is ***allowed***, and the Appellant’s appeal under Case No. B2-24-002 is ***dismissed***.

Civil Service Commission

/s/Paul M. Stein

Paul M. Stein, Commissioner

By vote of the Civil Service Commission (Bowman, Chair; Dooley, McConney, Stein, and Tivnan, Commissioners) on April 4, 2024.

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 to:

Thomas Pasquarello (Appellant)

Tracy Conlon, Esq. (for Respondent)