

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

DARLENE PEARSON,
Appellant

v.

B2-17-050

HUMAN RESOURCES DIVISION,
Respondent

Appearance for Appellant:

Pro Se
Darlene Pearson

Appearance for Respondent:

Patrick Butler, Esq.
Human Resources Division
One Ashburton Place: Room 211
Boston, MA 02108

Commissioner:

Christopher C. Bowman

DECISION ON MOTION FOR SUMMARY DECISION

On March 8, 2017, the Appellant, Darlene Pearson (Ms. Pearson), filed an appeal with the Civil Service Commission (Commission), contesting the amount of education and experience (E&E) credit awarded to her by the state's Human Resources Division (HRD) regarding a promotional examination for Cambridge Police Sergeant, administered on October 15, 2016.

On March 28, 2017, I held a pre-hearing conference which was attended by Ms. Pearson and counsel for HRD. By agreement of the parties, HRD subsequently submitted a Motion for Summary Decision. Ms. Pearson did not submit a reply to the motion, but stated her argument in regard to why the appeal should be allowed at the pre-hearing conference.

This is one (1) of three (3) E&E appeals filed with the Commission within a four (4)-week period dealing with a strikingly similar issue. I take administrative notice of the other two (2)

appeals: Reardon v. Human Resources Division, CSC Case No. B2-17-040 (May 25, 2017) & Sullivan v. Human Resources Division, CSC Case No. B2-17-052 (June 8, 2017).

In the instant appeal, the following appears to be undisputed, unless otherwise noted:

1. Ms. Pearson is a police officer with the Cambridge Police Department.
2. Ms. Pearson was awarded a masters degree in criminal justice from Anna Marie College in 1999.
3. Ms. Pearson sat for a promotional exam for the title of Sergeant on October 15, 2016.
4. A component of the examination is the online E&E exercise in which applicants, by answering twenty-eight (28) questions, rate their own education, training and work experience against a standard schedule.
5. The online E&E component has two (2) parts. First, the applicant must answer the above-referenced twenty-eight (28) questions. Second, the applicant must submit supporting documentation.
6. For this particular examination, the deadline for completing both parts of the E&E component was October 22, 2016 at 11:59 P.M.
7. The E&E examination instructions, which appear to be in a 8-point font, state in part:

“THIS IS AN EXAMINATION COMPONENT: Complete your Online E&E Claim on your own and to the best of your ability. Accurate completion of the education and experience claim is a scored, weighted, examination component. In order to ensure that no one receives any type of unfair advantage in the claim process, be advised that we are unable to provide individualized assistance to any applicant. Positions in the Police Captain, Police Lieutenant and Police Sergeant classification require the ability to read and understand instructions and take necessary steps to remember and implement them. Failure to follow any instructions in regards to this examination component is cause for disqualification.
PLEASE, NO PHONE CALLS and NO EMAIL INQUIRIES. YOU WILL NOT RECEIVE A RESPONSE.”
8. Prior to the October 22nd deadline, Mr. Sullivan completed the twenty-eight (28) online E&E questions.
9. Question 20 of the online E&E component states in relevant part:

“VERIFYING EDUCATION CLAIMS: APPLICANTS MUST SUBMIT TRANSCRIPTS FROM ALL INSTITUTIONS IN WHICH THEY ARE REQUESTING CREDIT. TRANSCRIPTS MUST INDICATE THAT THE DEGREE IN FACT CONFERRED. THE MAJOR IN WHICH THE DEGREE WAS CONFERRED, AND THE CONFER DATE. DURING THE HRD REVIEW PROCESS OR DURING THE LIFE OF THE RESULTING ELIGIBLE LIST(S) APPLICANTS MUST MAKE ORIGINAL SUPPORTING DOCUMENTATION AVAILABLE SHOULD THE ISSUE OF AUTHENTICITY ARISE WITH THE SUBMITTED COPIES.”

10. Question 21 of the online E&E components states:

*21. Police Department Promotional Exam Education Claim, Category 1: If as of the date of the examination you have a conferred degree from a regionally accredited college or university as defined above in any of the majors listed here, please check the highest degree you have attained.

Category 1 Majors: business administration, management, public administration, political science, law, criminal justice, criminology, sociology, human services, psychology, education or computer science.

- No claim in this category
- Associate Degree (3.0 points)
- Bachelor Degree (6.0 points)
- Master Degree (9.0 points)
- Doctorate / Juris Doctor (12.0 points)

11. Ms. Pearson answered Question 21 by indicating that she had a masters degree (in which she was referring to her masters degree in criminal justice from Anna Maria College in 1999.)

12. Prior to the October 22nd deadline, Ms. Pearson submitted documentation regarding her masters degrees to support her answer to Questions 21.

13. The instructions on the “detailed job posting” associated with this examination state in relevant part:

“**EDUCATION CLAIM SUPPORTING DOCUMENTS:** All education claims must be supported by transcripts from regionally accredited colleges or universities displaying conferred degree. Copies of diplomas WILL NOT be accepted as proof of an earned degree. Grade reports are not transcripts, and will not be accepted as supporting documentation for education claims. Any education claim that is not accompanied by supporting documentation will be removed from your E&E Claim score.”

14. The instructions further state:

“**ATTACH DOCUMENTS TO THIS ONLINE E&E CLAIM:** HRD requests applicants to submit all supporting documents as electronic copies attached to the Online E&E Claim. Electronic documents submitted in this way can be permanently attached to your Master Profile in the online system. This office will also accept electronic documents via email to civilservice@state.ma.us. Should the issue of authenticity arise with the electronic documents at any time during the review process or during the life of a resulting eligible list, applicants must submit original supporting documentation to HRD.”

15. As proof of her masters degree in criminal justice from Anna Maria College, Ms. Pearson submitted an unofficial transcript from Anna Maria College which stated: “Major 1: Criminal Justice-Masters Series” and “Printed: 10/18/2016”.

16. Ms. Pearson received her score from HRD on January 23, 2017 indicating that she received no points under Question 21 for her masters degree in criminal justice from Anna Maria College due to: “no verification of conferred degree (transcript).”

17. According to Ms. Pearson, she believed, based on this communication from HRD, that HRD had not received her transcript that she had emailed to HRD.
18. The next day, on January 24th, Ms. Pearson re-sent the same transcript to HRD.
19. On February 21, 2017, HRD notified Ms. Pearson that her appeal was denied because there was “no verification of conferred degree or date.”
20. On March 3, 2017, Ms. Pearson sent an email to HRD with an official transcript from Anna Maria College with the conferred date and degree.
21. On March 8, 2017, Ms. Pearson filed this appeal with the Commission.

Legal Standard

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. 256 at 259 (2001), citing Cambridge v. Civil Serv. Comm’n., 43 Mass.App.Ct. 300 at 304 (1997). “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.”

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.”

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

As referenced above, HRD, as the Personnel Administrator, is vested with broad authority regarding the type and weight of credit given for training and experience as part of examinations. The Commission, however, must ensure that HRD’s decisions are uniform, and not arbitrary or capricious.

Here, HRD argues that the instructions make clear that the transcript must indicate the date the degree was conferred and what the degree was in and that Ms. Pearson failed to follow these instructions.

Ms. Pearson, at the pre-hearing conference, stated that Anna Maria College, at the time she received the transcript in preparation for this examination, was going through a transition regarding its computers, resulting in receiving a transcript that did not list the conferred degree and/or date that it was conferred. Ms. Pearson argues that, once she was clearly told by HRD

what the issue was, she provided an official transcript to HRD that contained the information requested.

As noted in the Sullivan decision, also being issued today, there appears to be a question regarding whether HRD's review here, in regard to the issue of supporting documentation, was done in a uniform manner. In Sullivan, HRD accepted an unofficial transcript for this exact question, since, according to HRD, it was accompanied by a diploma. Yet, HRD's instructions explicitly exclude diplomas as a form of verification. In fact, in the Reardon appeal, HRD argued that: "... if HRD were to apply these rules in any other manner, for example by accepting a diploma despite clearly indicate (sic) that a diploma is unacceptable, those actions could be considered to be arbitrary and capricious and so not in line with basic merit principles." This head-scratching inconsistency is evidence of a grading system, at least as it pertains to this question, which is arbitrary and capricious. Had Ms. Pearson known that, contrary to the instructions, she could have submitted a diploma along with the unofficial transcript and received the 9 points for her masters degree, she likely would have done so.

Further, HRD acknowledges that, as part of the appeal process, Ms. Pearson did subsequently substitute the unofficial transcript with an official transcript listing the required information. That appears to be consistent with HRD's guidance that: "during the HRD review process or during the life of the resulting eligible list(s) applicant must make original supporting documentation available should the issue of authenticity arise with the submitted copies."

Conclusion

For all of the above reasons, Ms. Pearson's appeal B2-17-050 is hereby **allowed**. HRD shall credit Ms. Pearson with the applicable E&E credit for the masters degree that she received from Anna Maria College and adjust her score and standing on the eligible list accordingly.

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 June 8, 2017.

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:

Darlene Pearson (Appellant)

Mark Detwiler, Esq. (for Respondent)