

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, ss.

CIVIL SERVICE COMMISSION  
One Ashburton Place, Room 503  
Boston, MA 02108  
(617) 979-1900

ANDREW G. PIERCE,  
Appellant

v.

B2-18-098

HUMAN RESOURCES DIVISION,  
Respondent

Appearance for Appellant:<sup>1</sup>

David C. Farrell, Esq.  
The Cohen Law Group  
500 Commercial Street, Suite 4R  
Boston, MA 02109

Appearance for Respondent:<sup>2</sup>

Michael Downey, Esq.  
Melinda Willis, Esq.  
Human Resources Division  
One Ashburton Place  
Boston, MA 02108

Commissioner:

Cynthia A. Ittleman

**DECISION**

The Appellant, Andrew Pierce, appealed to the Civil Service Commission (Commission) pursuant to G.L. c. 31, §§2(b) and 22, seeking review of the decision by the Human Resources Division (HRD) to deny him credit for experience as a Boatswain Mate for the United States Coast Guard (Coast Guard) on the 2018 Massachusetts Environmental Police promotional

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<sup>1</sup> The Appellant represented himself at the prehearing conference and was represented at hearing by Attorney Farrell, who withdrew his representation after submission of the post-hearing brief.

<sup>2</sup> As of the time of this decision, Attorney Downey no longer works with Human Resources Division (HRD) and Melinda Willis, Deputy General Counsel, represents HRD in this matter.

examination.<sup>3</sup> On July 5, 2018, a pre-hearing conference was held at the offices of the Commission in Boston. A full hearing was held at the same location on December 11, 2018.<sup>4</sup> The hearing was digitally recorded and a CD was made of the hearing.<sup>5</sup> Both parties filed post-hearing briefs.

**FINDINGS OF FACT:**

I entered nine (9) exhibits from the Respondent and seven (7) exhibits from the Appellant.

Based on the documents submitted into evidence and the testimony of:

*Called by the Appellant:*

- Andrew Pierce (The Appellant)

*Called by the Respondent:*

- Gilbert LaFort, Examination Administration Supervisor, HRD

and after taking administrative notice of all matters filed in the case, pertinent statutes, regulations, policies, and reasonable inferences from the credible evidence, I make the following findings of fact:

1. The Appellant has been employed as an Environmental Police Officer at the Massachusetts Environmental Police (MEP) since May 5, 2015. (Appellant Testimony; Resp. Ex. 3). Prior to being employed at MEP, the Appellant was in the Coast Guard for 21 years. (Appellant Testimony).

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<sup>3</sup> In his appeal to the Commission, the Appellant requested review of questions 5, 6, and 7. At the prehearing conference, the Appellant agreed that he should not give credit for questions 6 and 7.

<sup>4</sup> 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.

<sup>5</sup> If there is a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to supply the court with a transcript of this hearing to the extent that he/she wishes to challenge the decision as unsupported by substantial evidence, arbitrary or capricious, or an abuse of discretion. In such cases, this CD should be used by the plaintiff in the judicial appeal to transcribe the recording into a written transcript.

2. The Appellant took the promotional exam to become an MEP Officer C (Sergeant) or D (Lieutenant) on February 16, 2018. (Resp. Ex. 1).
3. The promotional exam consisted of a written examination, worth 60 percent of the overall examination, and credit given for education and experience (E&E), which accounted for 40 percent of the examination. (LaFort Testimony at 44; Resp. Ex. 1).
4. The Education and Experience Form (E&E form) is designed to be completed by the Applicant online and be submitted with documentation that supports the applicant's experience. (LaFort Testimony; Resp. Ex. 1).
4. Question 5 on the E&E form asks the number of months experience in the MEP. The Appellant answered "24-35 months" and received 4.0 points for that experience. (LaFort Testimony; Resp. Ex. 2).<sup>6</sup>
5. The instructions for the E&E Question 8 begin with the heading "Police Experience Outside the Department". This question asked the Appellant to specify the number of months "in a recognized federal, state, or municipal *police department* which involved full police powers." (Resp. Ex. 2). (italics added).
6. Work experience claimed on the E&E form must be supported by an employment verification form and or by letter on official letterhead with the signature of the appointing authority or designee. (Resp. Ex. 1). Supporting documentation must be submitted with the E&E form at the time of submission or emailed prior to the deadline of submission. (LaFort Testimony; Resp. Ex. 1).

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<sup>6</sup> The Appellant received 4 points for Question 5, his experience in the MEP. (Appellant Testimony; LaFort Testimony). At hearing, there was no dispute that the correct points were awarded for question 5.

7. The Applicant timely submitted his E&E form and three pieces of supporting documentation: DD214 specifying discharge from active duty (Resp. Ex. 4), a Department of Veterans Affairs form verifying a service-related disability (Resp. Ex. 5), and his Employment Verification Form verifying his work at MEP. (Resp. Ex. 3).
9. When reviewing the Appellant's application, HRD cross-referenced the questions in which the Appellant indicated law enforcement experience with the supporting documentation. Mr. LeFort, HRD Examination Administration Supervisor, first looked to the "Primary Specialty" of former employment listed in the application to make that determination but found no indication of a job title or primary specialty listed.<sup>7</sup> (Lefort Testimony; Resp. Ex. 4). He granted no points for questions 8. (Lefort Testimony); Resp. Ex. 2, 4).
10. While in the Coast Guard, the Appellant was a certified Maritime Law Enforcement Boarding Officer from December 1995-May 2014. Boarding Officers are customs agents that enforce maritime law and have police powers such as making an arrest. (Appellant Testimony; App. Ex. 1). Additionally, the Appellant served as a Third Class Boatswain with the rank of Chief Petty Officer. In these two roles, the Appellant's duties were often "fluid", with the majority of duties on larger vessels consisting of navigation, maintenance, weapons maintenance and personnel, and the majority of duties on smaller vessels involving boarding under maritime law enforcement. (Appellant Testimony).
11. The Appellant maintained the authority to carry a weapon, issue written warnings and violations and terminate the voyage of unsafe vessels. This authority stemmed from the Appellant's Coast Guard training. (Appellant Testimony, App. Ex. 6).

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<sup>7</sup> The Appellant's "Primary Specialty" is listed as "NA." (Resp. Ex. 4).

12. The Appellant's evidence at the full hearing at the Commission included detailed criteria that he successfully performed in order to be a Boarding Officer. These skills included weapons certification, conducting a search incident to an arrest, and handcuffing a subject. (App. Ex. 6). This material was not submitted as part of the Appellant's application or appeal to HRD. (Resp. Exs. 2, 7).
13. While in the Coast Guard, the Appellant performed no arrests. His law enforcement duties included searching vessels and maintaining security zones in the waters, as well as initiating civil charges of boating while intoxicated. (Appellant Testimony).
14. When determining the number of months of experience as a law enforcement officer while in the Coast Guard for Question 8 on the E&E form, the Appellant was not able to distinguish between the two primary duties as a Boatswain Mate and Boarding Officer. He provided this timeframe because he had "dual roles" in his positions in the Coast Guard and, though he always had law enforcement authority, only utilized that authority sometimes, because he had other job duties. For those reasons, he calculated that he had 36-47 months of police experience involving full police powers, a number lower than the overall number of hours spent in those positions. (Appellant Testimony; Resp. Ex. 2).
15. LeFort reviewed the Appellant's application and supporting documentation for the specific job experience which listed primary duties. In this section, HRD is looking for "time served," not qualifications. The documents provided did not demonstrate information about the Appellant's direct job experience and the Appellant received no score on question 8. (LaFort Testimony).
16. On April 13, 2018, the Appellant exercised his right under G.L. c.31, § 22 for HRD to review scoring of the E&E component of his examination. The Appellant requested that he be given

credit under Question 8 for his experience as “a qualified [United States Coast Guard] Boarding Officer from 1996 through 2011.” (Resp. Ex. 7)

17. For his appeal at HRD, the Appellant supplied additional documentation and information applying to his Question 8 E&E claim. (Resp. Ex. 7) The supporting information was the following:

- 14 U.S.C. § 89 (titled Law Enforcement) describing the duties of Boarding Officers
- Certificates of successful completion of training, such as in marine resources
- Memoranda from 2006 and 2009 regarding being “certified as Boarding Officer” on two Coast Guard vessels, and having authority to carry and utilize weapons. (Resp. Ex. 1-3).

18. For the appeal at HRD, Lefort reviewed the supplemental documentation and determined that it did not show that the Appellant was *employed* as a Boarding Officer. Lefort concluded that the forms entitled “Boarding Officer Certification,” and Memoranda showed that the Appellant was certified as a Boarding Officer but not employed as a Boarding Officer. Lefort denied the Appellant’s appeal based on lack of verification. (Lefort Testimony).

19. The Appellant asked HRD for further consideration of his claim. On May 14, 2018, HRD notified the Appellant that it had denied his request. (Lefort Testimony).

20. The Appellant filed the instant appeal at the Commission. (Administrative Notice).

### *Legal Standard*

The Commission is authorized to hear and decide appeals by a person who has been “aggrieved by a decision, action, or failure to act on the part of the administrator in violation of [G.L. c. 31] such that the person's rights were abridged, denied, or prejudiced in such a manner as to cause actual harm to the person's employment status.” G.L. c. 31, § 2(b).

The law grants HRD with the responsibility to determine the passing requirements for examinations. G.L. c. 31, §22. HRD shall give credit for an applicant’s “employment or experience in the position for which the examination is held.” *Id.* “Each application for

examination or registration pursuant to the civil service law... shall contain requests for such information as the administrator deems necessary.” G.L. c. 31, §20.

An applicant may file an appeal with the Commission from a decision of HRD made “relative to (a) the marking of the applicant's answers to essay questions; (b) a finding that the applicant did not meet the entrance requirements for appointment to the position; or (c) a finding that the examination taken by such applicant was a fair test of the applicant's fitness to actually perform the primary or dominant duties of the position for which the examination was held.” G.L. c. 31, §24. However, “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.” *Id.*

The Commission cannot reverse the decision of HRD unless the Commission finds that HRD’s decision was not based on a preponderance of evidence. G.L. c. 31, §2(b) “In general, the methodology by which HRD scores examinations is left to the sound discretion of the Personnel Administrator.” *Araica v. Human Resources Div.*, 22 MCSR 183, 186 (2009). Massachusetts General Law, Chapter 31, grants HRD “considerable discretion to make determinations regarding an applicant’s claim for training and experience credit.” *Peters v. HRD*, 23 MCSR 647, 650 (2010). Accordingly,

“it follows that [HRD] also has a high degree of discretion to award or deny applicants credit for prior training and experience during promotional testing, as long as the decision does not violate basic merit principles.” *Id.*

### *Analysis*

The Commission, which gives deference to HRD, looks to the information in the Appellant’s E&E claim filed at the time designated by the administrator. The Appellant needed to provide information about time spent “in a police department” in which he had “full police powers.”

HRD has established by a preponderance of the evidence that the documents provided by the Appellant in support of his E&E claim do not show that he had “full police powers” in a police department, as was required by Question 8, and for which he needed verification.

Even if the Appellant had provided HRD with the additional information he submitted at his hearing before the Commission, the outcome here would not change. For the relevant time period prior to his application, the Appellant was employed by the Coast Guard as a Boatswain Mate and Boarding Officer. In that role, the Appellant was in charge of all operations on his assigned boat including navigation, maintenance, weapons maintenance and personnel. The position of Boatswain Mate did not require the performance of law enforcement duties, though the Appellant had the skills to conduct law enforcement duties. The position of Boarding Officer had police powers of arrest. Any actions involving police powers as a Boatswain Mate, however, were only part of the Appellant’s job functions. He had not made an arrest while employed by the Coast Guard and, again, while certified to conduct law enforcement duties, he performed those duties rarely and in conjunction with other job duties. The Appellant’s supporting documentation only demonstrated that he was *certified* as a Boarding Officer, not that he performed those functions.

To receive credit for Question 8, candidates must successfully demonstrate that they were employed in a police department and had full police powers. HRD’s determination that the Appellant’s certifications of completed training in law enforcement activities do not equate to being employed as, and performing the functions of a police officer are reasonable given the evidence presented. Further, I find no showing of any violation by HRD of basic merit principles, such as an arbitrary or capricious determination. HRD has distinguished between having police powers as a part of one’s job duties and being employed as a police officer with

full police powers, with the latter as the qualification for promotion to ranks C and D. These decisions lay well within the scope of HRD's discretionary role to determine which categories of past experience indicate the Appellant's qualifications for a promotion.

For all of the above reasons, the Appellant's appeal under Docket No. C-18-100 is hereby *denied*.

Civil Service Commission

/s/ Cynthia Ittleman

Cynthia A. Ittleman  
Commissioner

By a 3-2 vote of the Civil Service Commission (Bowman, Chairman - Yes; Ittleman, Commissioner – Yes; Camuso, Commissioner – Yes; Stein, Commissioner – No; Tivnan, Commissioner – No.) on March 25, 2021.

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 to:  
Andrew Pierce (Appellant)  
Melinda Willis, Esq. (for Respondent)