

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

MARK REARDON,
Appellant

v.

B2-17-040

HUMAN RESOURCES DIVISION,
Respondent

Appearance for Appellant:

Pro Se
Mark Reardon

Appearance for Respondent:

Mark Detwiler, Esq.
Human Resources Division
One Ashburton Place: Room 211
Boston, MA 02108

Commissioner:

Christopher C. Bowman

**DECISION ON MOTION TO DISMISS AND
CROSS MOTION FOR SUMMARY DECISION**

On February 27, 2017, the Appellant, Mark Reardon (Mr. Reardon), filed an appeal with the Civil Service Commission (Commission), contesting the amount of education and experience (E&E) credit awarded to him by the state's Human Resources Division (HRD) regarding a promotional examination for Brockton Police Sergeant, administered on October 15, 2016.

On March 21, 2017, I held a pre-hearing conference which was attended by Mr. Reardon and counsel for HRD. By agreement of the parties, HRD subsequently submitted a Motion to Dismiss and Mr. Reardon submitted a reply which I have deemed an opposition to HRD's Motion and a Cross Motion for Summary Decision.

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 one of those appeals, Jason Sullivan v. Human Resources Division, CSC Case No. B2-17-052, referenced below.

In the instant appeal, it is undisputed that Mr. Reardon, a Brockton Police Officer, was awarded a bachelor's degree in law enforcement on August 15, 2012. HRD declines to award Mr. Reardon E&E credit for his bachelor's degree for the 2016 Promotional Examination for Police Sergeant since the transcripts he initially submitted to HRD as supporting documentation did not, according to HRD, indicate the date the degree was conferred and what the degree was in .

In Sullivan, it is undisputed that Mr. Sullivan, a Dedham Police Officer, was awarded a masters degree in education in 2011 and a masters degree in criminal justice on May 11, 2015. HRD declines to award Mr. Sullivan E&E credit for the masters degree in education since the transcripts he initially submitted to HRD as supporting documentation were unofficial (as opposed to official) transcripts.

In regard to the instant appeal involving Mr. Reardon, the following appears to be undisputed, unless otherwise noted:

1. Mr. Reardon is a police officer with the Brockton Police Department.
2. Mr. Reardon was awarded a bachelors degree in Law Enforcement from Western New England University on August 15, 2012.
3. Mr Reardon 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. Reardon 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. Mr. Reardon answered Question 21 by indicating that he had a bachelors degree.

12. Prior to the October 22nd deadline, Mr. Reardon submitted supporting documentation regarding his bachelors degree.

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 his degree, Mr. Reardon submitted a copy of an official transcript from Western New England University.

16. The official transcript provided by Mr. Reardon states in part: “Total Completed Undergraduate Credits – 120”; “Admitted to – B.S. in Law Enforcement”; “Print Date: August 10, 2012.”

17. Mr. Reardon received his score notice from HRD on January 23, 2017 indicating that he received no E&E credit for his bachelors degree because of “no verification of conferred degree (transcript).”

18. G.L. c. 31, s. 22 provides an applicant with seventeen (17) days from receipt of the test score to file an appeal with HRD to contest his score, including the E&E component.

19. Upon receipt of this notice from HRD, Mr. Reardon penned a reply email to HRD the same day stating “ ... I am writing regarding the E&E points that were not applied to my score. I had previously attached my transcripts for my Criminal Justice Bachelor’s Degree and received a confirmation email. I am again attaching my transcripts for your review and score adjustment. Please do not hesitate to contact me by phone ... or by email ...” He attached the same transcript that he had previously submitted. Mr. Reardon also hand-delivered a copy of these transcripts to HRD on January 30th.

20. On February 21, 2017, HRD notified Mr. Reardon that his appeal was denied because there was “no conferred date or degree listed on the transcript.”
21. On February 22nd, Mr. Reardon sent an email to HRD stating in relevant part: “I am writing regarding the DENIAL of E&E points that were not applied to my score. I had previously attached my transcripts for my Criminal Justice Bachelor’s Degree and then upon appeal, hand delivered original copies to HRD. My appeal denial from HRD on 02/21/2017 states ‘Q(21): No conferred date or degree listed on transcript.’ Page (1) of the transcripts states that my major for degree is a B.S. in Law Enforcement. Page (3) states that the end semester was Spring 2011-2012, with Total Completed Undergraduate Credits – 120, for a Bachelor or (sic) Arts in Law Enforcement. I am attaching my printed Degree for your review and score adjustment.”
22. The diploma attached by Mr. Reardon states in relevant part: “BY THE AUTHORITY OF THE COMMONWEALTH OF MASSACHUSETTS ... In recognition of the completion of the prescribed course of study the Board of Trustees of Western New England University has admitted Mark Richard Reardon to the degree of Bachelor of Science in Law Enforcement with all the rights, privileges and obligations pertaining to this degree. In witness whereof we have cause this Diplomat to be attested by the signatures of the President and Secretary of the University and the Dean of the College and have affixed our corporate seal. Given at Springfield this fifteenth day of August, two thousand and twelve.”
23. On February 23, 2017, Mr. Reardon received an email from HRD stating that “transcripts must indicate that the degree was in fact conferred, the major in which the degree was

conferred and the confer date” as well that the exam poster states “that copies of diplomas will not be accepted.”¹

24. That same date, on February 23rd, Mr. Reardon wrote an email to HRD stating: “ ... I am writing regarding my ongoing appeal for Education E&E points. I have contacted Western New England University and my transcripts have been updated with the proper wording, conferring my Law Enforcement degree and conferred date. The new secure link is attached, and I also had another copy emailed directly to civil service on this date.”
25. HRD acknowledges that, on February 24, 2017, they received a transcript which contained the language: “Degree conferred – Bachelor of Science in Law Enforcement” and “Degree Conferred Date – August 15, 2012.”
26. HRD has declined to provide Mr. Reardon with the 6 E&E credits for his bachelor’s degree because “HRD never received it until well beyond the E&E submission period and the appeal period.”
27. Mr. Reardon filed an appeal with the Commission on February 27, 2017.

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. at 259, citing Cambridge v. Civil Serv. Comm’n, 43 Mass.App.Ct. at 304. “Basic merit principles” means, among other

¹ In Sullivan v. HRD, HRD awarded the applicant 9 points for a masters degree in criminal justice. Upon reviewing the record in that appeal, I noticed that HRD had accepted an unofficial transcript as verification that he had obtained the degree. Upon my inquiry in the Sullivan appeal, HRD stated in part: “HRD did award the Appellant 9 points under Question 21 for his Masters Degree At the time of the initial E&E review, the appellant provided his Diploma, issued in May 2015 ... for the Masters of Arts in Criminal Justice. The Appellant’s unofficial transcript stated he had received a Masters in Criminal Justice on May 11, 2015. The unofficial transcript, coupled with the Diploma, were enough for HRD to award the points.” (emphasis added)

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.

HRD argues that they provided all applicants with clear instructions regarding the need to verify education claims by submitting a transcript that indicates the degree conferred and the conferral date; that Mr. Reardon failed to do so within the time period proscribed; that HRD uniformly applied this criteria; and, for these reasons, was justified in declining to award Mr. Reardon 6 E&E points for his bachelor's degree.

Mr. Reardon argues that HRD's instructions are vague and that the instructions only require evidence that the degree was conferred as opposed to including the words: "date conferred" and "conferred date". Mr. Reardon argues that, based on those instructions, he provided what he believed was evidence of a conferred degree: the official transcript from Western New England University. Further, he asks the Commission to consider that HRD explicitly prohibits applicants from contacting them to seek clarification regarding what he believes are vague instructions.

The Commission has long recognized that, along with HRD's statutory authority to administer civil service examinations, comes wide discretion - and deference from the Commission, which includes developing criteria to qualify for E&E credits.

Here, however, somewhat ambiguous instructions from HRD have, for the purposes of a promotional examination, effectively invalidated the bachelor's degree earned by a sworn police officer and caused his standing on the eligible (promotional) list to be lowered. That warrants intervention from the Commission in the form of equitable relief for Mr. Reardon.

To me, it was reasonable for Mr. Reardon to conclude that an official transcript from Western New England University stating that he was "Admitted to - B.S. in Law Enforcement" was sufficient evidence to show that a degree was conferred upon him.

Upon filing a timely appeal with HRD, Mr. Reardon received a response that was even less clear, stating that there was “no verification of conferred degree (transcript).” Again, to me, it was reasonable for Mr. Reardon to conclude that HRD had simply not received the official transcript that he had electronically submitted to HRD weeks earlier. He promptly took the reasonable step of re-submitting the same official transcript.

Immediately upon learning from HRD that the official transcript had been received by HRD, and that the issue related to the language related to a “conferred” degree, Mr. Reardon promptly obtained an updated official transcript from Western New England University that included the “conferred” language that HRD was looking for. Those actions by Mr. Reardon appear 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.”

Further, during the appeal process with HRD, Mr. Reardon provided HRD with a diploma which verified that he had received a bachelors degree in criminal justice and the date that the degree was awarded. Here, HRD argues that, in addition to failing to initially submit the diploma, the diploma was not accepted because: “... 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.” Yet, in the Sullivan appeal, as noted in the footnote on Page 6, HRD *did indeed* accept a diploma, coupled with an unofficial transcript, to award the applicant with 9 E&E points for a masters degree. Had Mr. Reardon known that HRD, despite its explicit instructions to the contrary, would accept a diploma, coupled with his transcript, as sufficient

verification, he may very well have submitted that information and, like Mr. Sullivan, been awarded the E&E points for the degree that he received.

Conclusion

For all of the above reasons, Mr. Reardon's appeal under Docket No. B2-17-040 is hereby **allowed**. HRD shall credit Mr. Reardon with the applicable E&E credit for the bachelor's degree and he received from Western New England University; and adjust his 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 May 25, 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:

Mark R. Reardon (Appellant)

Mark Detwiler, Esq. (for Respondent)