

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

100 Cambridge Street, Suite 200
Boston, MA 02114
617-979-1900

JAMES RILEY,
Appellant

B2-23-130

v.

HUMAN RESOURCES DIVISION,
Respondent

Appearance for Appellant:

James Riley, *Pro Se*

Appearance for Respondent:

Sheila B. Gallagher, Esq.
Labor Counsel
Human Resources Division
100 Cambridge Street, Suite 600
Boston, MA 02114

Commissioner:

Paul M. Stein

Summary of Decision

The Commission dismissed the appeal from the scoring of the Appellant's education, certifications, training / licenses and education (ECT&E) component of the Boston Fire Lieutenant's Promotional Examination after the Human Resources Division corrected his scores and he received all proper credit to which he was entitled.

DECISION ON RESPONDENT'S MOTION TO DISMISS

On August 1, 2023, the Appellant, James Riley, appealed to the Civil Service Commission (Commission)¹, pursuant to G.L. c. 31, §§ 22-24, from the review by the Human Resources Division (HRD) of his Education, Certifications, Training / Licenses & Education (ECT&E) component score on the Boston Fire Lieutenant Promotional Examination administered by HRD

¹ 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.

on March 25, 2023. I held a remote pre-hearing conference on this appeal on August 22, 2023. By Procedural Order dated August 26, 2023, as a result of the discussion at the pre-hearing conference, I directed HRD to provide specific confirmation that would clarify which of several inconsistent versions of the ECT&E score sheets provided to the Appellant reflected the ECT&E scores actually used to compute the Appellant's overall exam score and his rank in the 48th tie group on the current eligible list. On September 13, 2023, HRD submitted a report that provided information in response to the Procedural Order. On September 14, 2023, I informed the Appellant that the information in HRD's report appeared to contain the necessary details to confirm that his rank on the current eligible list was calculated using a properly calculated ECT&E score. I deemed HRD's report to be a motion to dismiss to which the Appellant responded on September 27, 2023. After considering the information provided by HRD and the Appellant's response, I have determined that, for the reasons stated below, the Appellant's appeal should be dismissed.

UNDISPUTED FACTS

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

1. The Appellant, James Riley (FF Riley) is a Firefighter with the Boston Fire Department (BFD).
2. FF Riley took the Boston Fire Lieutenant Promotional Exam, which consisted of three components – a Technical Knowledge (TK) written examination and Situational Judgment (SJ) written exercises, administered by HRD on March 25, 2023, and the ECT&E component, which required completion of the prescribed claim form and submission of supporting documentation on or before April 1, 2023.

3. On June 15, 2023, FF Riley received his score notice from HRD. His original ECT&E score was reported to be 18.265 (out of maximum 20.00) and his overall score was reported to be 85.293414, rounded to 85.

4. HRD's score notice stated:

Your "ECT&E was amended in the following way: Q(2): Work experience recalculated Claimed (15 years) Amended (12 years)-Work experience recalculated; Q(4): Work experience recalculated Claimed (3.5 years) Amended (4 years); Q(7): Certifications earned recalculated Claimed (5 certifications) Amended (2 certifications)-No supporting documents provided; Q(9): Trade License earned recalculated Claimed (2 Licenses) Amended (No Trade License)-No supporting documents provided. (emphasis added)

5. On June 22, 2023, FF Riley requested a review by HRD of his ECT&E score. He specifically questioned whether he had received proper credit for his "certifications" (Q7) and Trade Licenses (Q9).

6. On July 18, 2023, after review, HRD informed FF Riley that his ECT&E appeal was "partially accepted" and noted:

Your original ECT&E claim was amended in the following way(s): Q(2): Work experience recalculated Claimed (15 years) Amended (12 years)-Work experience recalculated; Q(4): Work experience recalculated Claimed (3.5 years) Amended (4 years); Q(7): Certifications earned recalculated Claimed (5 certifications) Amended (6 certifications) (emphasis added)

7. On July 20, 2023, FF Riley asked HRD why he had not received any reply about his request for review of Q9, trade licenses.

8. On July 22, 2023, HRD responded:

Amendments reflect what has been changed or denied from your application answers. If there is no amendment in reference to Q9. That means that your answer submitted has been accepted and there is no need to include that amendment in your score notice.

9. Also on July 22, 2023, HRD issued the new Boston Fire Lieutenant eligible list, on which FF Riley appeared ranked 48th (tied with seven others) out of 200-plus candidates who took and passed that examination.

10. On July 26, 2023, HRD provided FF Riley with his “post-appeal” recalculated scores, including a new ECT&E score of 21.01500, a new Final Score of 86.188564, and a Rounded Final Score of 86.

11. On August 1, 2023, FF Riley sought further clarification from HRD as he did not understand what HRD’s July 22, 2023 message meant and did not know which version of the scores he had received had been used to determine his rank on the new eligible list. He also filed this appeal with the Commission on that date.

12. On August 8, 2023, HRD provided FF Riley with a third version of his exam scores, which showed the same Final Score of 86.1886, rounded to 86, but changed his ECT&E score to 19.0623.

13. On September 13, 2023, in two responses to the Procedural Order of August 26, 2023, HRD counsel reported:

Mr. Riley has received credit for the following items below and it has been confirmed with the adjustments made he is correctly in the 48th tie group. The vendor has verified that the Mr. Riley received credit for all items that he requested and that the updates were included to calculate his ECT and E. . . .

1. 12 years of experience in department
2. 4 years of acting Lt. experience
3. 7 full years of supervisor experience outside of the fire service
4. 6 certifications
 - a. Firefighter I/II – 2 certifications
 - b. Fire Instructor I
 - c. Fire Officer I
 - d. Hazardous Materials Operations level
 - e. Driver Operator /Aerial
5. 2 trade licenses
 - a. Hoisting Engineer License
 - b. Commercial Driving License
6. Active EMT/ Basic Advanced
7. Education = None claimed

(emphasis added)

8. HRD also has explained that its score sheets are to be read to mean that only changes to a candidate’s claim will be reflected in the description of what has been denied or amended.

If a candidate's ECT&E claim as to any category (Question) was allowed in full, no mention is made in the ECT&E score sheet as to that category. Thus, by "amending" FF Riley's June 15, 2023 score sheet with the July 18, 2023 score sheet, which no longer mentioned Q9 (trade licenses), HRD intended to convey that it had reversed its decision and now had allowed FF Riley's Q9 (trade license) claim in full.

9. After review of the information provided by HRD on September 13, 2023, I informed FF Riley that, despite the prior miscalculations and ambiguities, it appeared that HRD had finally provided sufficient details to confirm the two unanswered questions that he had raised in his appeal: 1) his ECT&E score included credit for his full claim under Q7 - 6 certifications (9 points) and his full claim under Q9 - 2 trade licenses (5 points); and 2) these points, together with his other ECT&E credits, were combined with his TK and SJ scores to produce an amended Final Score of 86.1866, and a rounded score of 86, which placed him in the 48th tie group in which his name currently appears on the current eligible list.

10. I deemed HRD's September 13, 2023 responses to be a Motion to Dismiss the appeal as moot. FF Riley was afforded until September 27, 2023 to respond.

11. On September 27, 2023, FF Riley responded with a statement that he "attempted to secure some form of clarification regarding the difference in my personal scores, as well as the overall grading and scoring process. . . . I have yet to receive a sufficient explanation . . . I have yet to be provided with a clear and concise scoring rubric or matrix and I respectfully request that this matter be investigated and clarified to an acceptable measure of explanation."

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 to resolve an appeal 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 disposed of, however, 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).

ANALYSIS

The undisputed facts, viewed in a light most favorable to the Appellant, establish that this appeal must be dismissed. The gravamen of the Appellant’s appeal seeks to determine whether he received the ECT&E points that he claimed for his “certifications” (Q7) and “trade licenses (Q9). The September 13, 2023 HRD report confirms that he did and that, based on the recalculated ECT&E and Final Score he received on August 8, 2023, which incorporated both those credits in full, his place on the current eligible list is correct. There is no further relief that the Commission could grant that would change his rank or overall score. See, e.g., Geoghan v. HRD, 35 HRD 111 (2022); LaRochelle v. HRD, 35 HRD 119 (2022).

The Appellant argues that he has yet to receive clarification regarding “the difference in my personal scores, as well as the overall grading and scoring process. . . . I have yet to receive a sufficient explanation . . . I have yet to be provided with a clear and concise scoring rubric or matrix” I do not agree. The Appellant has, as of September 14, 2023, received sufficient confirmation that the two parts of his ECT&E claim (Q7 & Q9) that he questioned were both fully credited to him. In this case, I do not find resolution of the Appellant’s appeal requires any further

drilling down into the complexities of the “scoring rubric or matrix” to conclude that the Appellant was treated equally with all other candidates in how his ECT&E score was calculated.

Nothing in the foregoing should be construed to discount the legitimate concerns proffered by FF Riley about how HRD handled his scoring, or the ambiguous manner in which HRD has chosen to report the results of ECT&E scores. I understand that, in the March 25, 2023 examination, HRD faced unique challenges and tighter time constraints than in other typical examination cycles. HRD counsel has represented that the agency takes note of this concern and agrees that it will endeavor to assure that problems presented in this appeal will not be repeated in future examination cycles.

CONCLUSION

For the reasons stated above, HRD’s Motion to Dismiss is *allowed*, and the Appellant’s appeal under Case No. B2-23-130 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 October 19, 2023.

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:

James Riley (Appellant)

Sheila B. Gallagher, Esq. (for Respondent)

Robert J. Boyle, Jr., Esq. (for BFD)