

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

JARED ROURK,
Appellant

v.

B2-18-176

HUMAN RESOURCES DIVISION,
Respondent

Appearance for Appellant:

Pro Se
Jared Rourk

Appearance for Respondent:

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

Commissioner:

Christopher C. Bowman

ORDER OF DISMISSAL

On September 7, 2018, the Appellant, Jared Rourk (Mr. Rourk), a Correction Officer I (CO I) with the Department of Correction (DOC), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the state’s Human Resources Division (HRD) to deny him any points for the Education and Experience (E&E) exam component on the 2018 Correction Officer II (CO II) promotional examination.

On October 16, 2018, I held a pre-hearing conference at the offices of the Commission which was attended by Mr. Rourk, counsel for HRD and DOC representatives.

Applicable Law

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.”

G.L. c. 31 § 24 allows for review by the Commission of exam appeals. Pursuant to § 24, “[t]he 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.”

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’.”

Analysis

The facts presented as part of this appeal are not new to the Commission. In summary, promotional examinations, such as the one in question here, consist of two (2) components: the traditional written examination, which accounted for 60% of the examination score here; and the E&E component, which accounted for 40% of the examination score here. HRD provides detailed instructions via email regarding how and when to complete the online E&E component of the examination. Most importantly, applicants are told that, upon completion of the E&E

component, the applicant will receive a confirmation email – and that the component is not complete unless and until the applicant receives this confirmation email.

Here, it is undisputed that Mr. Rourk sat for the written component of the CO II examination on June 23, 2018. He had until June 30, 2018 to complete the online E&E component of the examination. According to Mr. Rourk, sometime prior to June 23, 2018, he logged into his online account and began completing the E&E module, answering most or all of the E&E questions. Mr. Rourk acknowledges, however, that he never hit the “submit” or equivalent selection on the module as he had a question related to his veteran status and whether his supporting documentation was on file with HRD. Without hitting “submit”, he logged off the system. On June 27th and June 28th, 2018, Mr. Rourk engaged in email communication with an HRD representative regarding his veteran status. The last communication, on June 28th states:

Mr. Rourk: “ok, so I will not need to submit a DD2014 for the COII exam I took. I will get the credit for it?”

HRD: “Your [sic] all set. You don’t need to do anything further. Thanks.”

Based on the above-referenced communication, Mr. Rourk never completed and “submitted” his answers to the E&E module, as, according to him, he believed he was “all set”.

While I am not unsympathetic to Mr. Rourk’s plight here, a review of the email communication between him and HRD, including the above-referenced excerpt, pertained exclusively to his veteran status. HRD never stated or suggested that the E&E component of his examination was “all set”.

Consistent with a series of appeals regarding this same issue, in which an applicant failed to follow instructions and submit the online E&E claim, intervention by the Commission is not warranted as the Appellant cannot show that he was harmed through no fault of his own.

For these reasons, Mr. Rourk's appeal under Docket No. B2-18-176 is *dismissed*.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Camuso, Stein and Tivnan, Commissioners [Ittleman – Absent]) on October 25, 2018.

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:

Jared Rourk (Appellant)
Patrick Butler, Esq. (for HRD)
Joseph Santoro (DOC)