

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

100 Cambridge Street – Suite 200

Boston, MA 02114

617-979-1900

SCOTT D. RUBESKI,

Appellant

v.

HUMAN RESOURCES DIVISION,

Respondent

Docket Number:

B2-24-130

Appearance for Appellant:

Scott D. Rubeski, *Pro Se*

Appearance for Respondent:

Shelia 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 of a Brockton Fire Lieutenant who challenged his score on the Situational Judgement Test (SJT) component and the Experience/Certification/Training & Education (ECT&E) component of the Statewide Fire Captain Promotional Exam. The SJT component appeal was dismissed for lack of jurisdiction. The Appellant raised bona fide questions about the methodology used to award ECT&E points for fire service “Experience”. HRD does agree that future examinations will use a more rational methodology to award Experience points to rectify the anomaly raised by the Appellant but an in-camera review by the Commission of recalculated scores that an equitable methodology hypothetically would have awarded did not change the Appellant’s place on the current eligible list and, thus, his present ECT&E appeal is moot.

DECISION ON RESPONDENT’S MOTION FOR SUMMARY DECISION

On July 27, 2024, the Appellant, Scott D. Rubeski, a Fire Lieutenant with the Brockton Fire Department, appealed to the Civil Service Commission (Commission)¹, after the state’s Human Resources Division (HRD) denied his request for review of his score on the Situational Judgement Test (SJT) component and the Experience, Certification, Training & Education (ECT&E) component of the April 27, 2024 Statewide Fire Lieutenant Examination. The Appellant and HRD filed pre-hearing memoranda and I held a remote Pre-Hearing Conference on August 12, 2024. Pursuant to requests made by Procedural Order dated August 15, 2024, the Appellant submitted additional information on September 5, 2024, and HRD submitted additional information on September 11, 2024. On October 11, 2024, HRD provided further information for an *in-camera* review by the Commission. After careful review of the submissions of the parties, I have determined that the Appellant’s SJT component appeal must be dismissed for lack of jurisdiction and the Appellant’s ECT&E appeal will be dismissed as moot.

UNDISPUTED FACTS

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

1. The Appellant, Scott D. Rubeski, is a Fire Lieutenant with the City of Brockton Fire Department (BFD).
2. The Appellant took the April 24, 2024 statewide Fire Captain’s promotional examination administered by the state’s Human Resources Division (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.

3. The statewide Fire Captain's promotional exam contained three components: (1) a Technical Knowledge (TK) component; (2) a Situational Judgement Test (SJT) component; and (3) an ECT&E component.

4. The SJT component consisted of a series of exercises in which the candidates were presented with hypothetical scenarios that a fire captain might encounter and required the candidate to select the appropriate answers from a list of possible choices provided for each scenario.

5. The ECT&E component required the submission of an online claim form, together with certain supporting documentation to claim points for ECT&E credit in three categories: Job Experience, within and outside the candidate's current department; Certifications/Training/Licenses and Education.

6. On June 25, 2024, HRD issued its score notice to the Appellant, informing him that he had received a TK score of 44.70 (out of 52 possible maximum points), received an SJT score of 20.71 (out of 28 possible maximum points), and received an ECT&E score of 15.32 (out of 20 possible maximum points).

7. The Appellant's three component scores produced a final exam score of 80.73, rounded to 81, which placed him tied with one other candidate in fourth place on the eligible list established from that examination on August 1, 2024.

8. The score notice sent to the Appellant on June 25, 2024 included the ECT&E Scoring Guide which contained a matrix that broke down the possible "raw" ECT&E available for credit in each category—i.e., up to a maximum of 54 raw points for Job Experience; 26 maximum raw points for Certifications, Training and Licenses; and 20 maximum raw points for Education; for a maximum of 100 raw points. A maximum of 100 "raw" ECT&E points could be claimed, which

would be converted by a formula toward the maximum of 20 points that would be added to the candidate's TK and SJT scores to produce the candidate's final exam score.

9. The Scoring Guide noted that “the points allocated to each potential response . . . are not distributed equally across the years of experience. This is because . . . the new ECT&E gives greater weight to more recent experience. Experience . . . that is more relevant or important to the position is given a higher point value”

10. Of relevance here are the point matrices for job experience in the candidates' current fire department as a Firefighter and Fire Lieutenant.

Q4: Current Department Experience: Indicate how many year(s) of permanent Firefighter experience you have in your current department as of the date of the written exam. Do not include time served after your first rank promotion.

No Experience 0.00

1 year 2.14	11 years 18.25	21 Years 26.52	31 Years 29.56
2 years 4.18	12 years 19.38	22 years 27.01	32 years 29.68
3 years 6.12	13 years 20.44	23 years 27.46	33 Years 29.78
4 Years 7.95	14 years 21.43	24 Years 27.86	34 Years 29.85
5 Years 9.69	15 years 22.35	25 years 28.22	35 Years 29.91
6 years 11.34	16 Years 23.20	26 years 28.53	36 Years 29.95
7 years 12.89	17 Years 23.98	27 Years 28.81	37 Years 29.97
8 years 14.36	18 Years 24.70	28 years 29.04	38 Years 29.99
9 years 15.74	19 Years 25.37	29 Years 29.25	39 Years 30.00
10 years 17.03	20 Years 25.97	30 years 29.42	40 Years 30.00

Q5: Current Department Experience: Indicate how many year(s) of permanent Fire Lieutenant experience you have in your current department as of the date of the written exam.

No Experience 0.00

1 year 3.40	6 years 15.89	11 Years 22.30	16 Years 24.66
2 years 6.48	7 years 17.59	12 Years 23.03	17 Years 24.83
3 years 9.26	8 years 19.07	13 Years 23.62	18 Years 24.93
4 years 11.74	9 years 20.34	14 Years 24.07	19 Years 24.98
5 years 13.94	10 years 21.41	15 Years 24.42	20 or more Years 25.00

Q6: Current Department Experience: Indicate the amount of experience you have as an acting, provisional and/or temporary after certification Fire Captain in your current department.

No acting/provisional 0.00

1 – 2 months 1.39	13-18 months 10.32	43-48 months 16.38
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3 – 4 months 2.77	19-24 months 11.70	49-54 months 17.36
5 – 6 months 5.85	25 -30 months 12.95	55 -to 60 months 18.3
7—8 months 6.88	31 – 36 months 14.19	60 months or more 19.19
11-12 months 8.93	37-42 months 15.29	

11. On July 7, 2024, the Appellant filed a request for review of the “job experience scoring on the ECT&E portion on the Captain’s exam.” In particular, the Appellant pointed out that he had received fewer Experience points than those awarded to peers who had served less time in a supervisory position and less overall time as a firefighter than he did.

12. In particular, the Appellant pointed out that he had compared the Education points awarded to him and to peers. One peer (who placed lower on the eligible list overall) was appointed to the BFD the same day as the Appellant but had been promoted to Fire Lieutenant twelve years after the Appellant and yet received 3.4 more “raw” Experience points than did the Appellant. Another peer, with whom the Appellant is tied in fourth place on the eligible list, had five years’ less service in the BFD and six fewer years as a Fire Lieutenant, but there was less than a one-point difference in their “raw” Education points.²

13. Also later on July 7, 2024, by separate request, the Appellant also questioned the “subjective nature of the Situational Judgment test”. The Appellant did not identify any specific questions or answers that he believed were problematic.

14. HRD responded to the Appellant’s requests by emails on July 17, 2024, July 19, 2024, and on July 26, 2024, denying the Appellant’s requests and advising him of his right of appeal to the Commission.

15. On July 27, 2024, the Appellant filed this timely appeal with the Commission.

² This peer tied with the Appellant had an overall lower final exam score than the Appellant but he received two points for veteran’s preference added to that exam score, which moved his rounded score up to a tie with the Appellant.

16. At my request, HRD provided, for *in-camera* review by the Commission, a set of recalculated exam scores for the first four candidates on the current BFD Fire Captain eligible list, using a hypothetical matrix that granted the Appellant more than seven additional raw points for his Experience.

17. After the four recalculated scores were converted and standardized into final ECT&E scores, including two additional points for the three other candidates, all of whom were veterans, the additional Experience points awarded to them that did not change the order of the four candidates, with the Appellant and the same peer candidate still tied in fourth place and the other candidate's non-rounded score (to two decimal places) still a fraction higher than the Appellant's non-rounded score.

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 dispose of an appeal, in whole or in part, via summary decision may be allowed by the Commission pursuant to 801 C.M.R. 1.01(7)(h) 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). See also Mangino v. HRD, 27 MCSR 34 (2014) and cases cited (“The notion underlying the summary decision process in administrative proceedings parallels the civil practice under Mass. R. Civ. P. 56, namely, when no genuine issues of material fact exist, the agency is not required to conduct a meaningless hearing.”); Morehouse

v. Weymouth Fire Dept, 26 MCSR 176 (2013) (“a party may move for summary decision when . . . that there is no genuine issue of fact relating to his or her claim or defense and the party is entitled to prevail as a matter of law.”)

ANALYSIS

The undisputed facts, viewed in a light most favorable to the Appellant, establish that this appeal must be dismissed.

Situational Judgement Test Appeal. The Commission must dismiss the Appellant’s appeal insofar as he purports to challenge the SJT component as unfair or subjective because it did not reflect “real world situations”.

First, as a general rule, a request to review whether an examination was a “fair test of [an] applicant’s fitness actually to perform the primary or dominant duties of the position for which the examination was held” must be filed no later than seven days after date of the examination or, in some cases, no later than seven days after the scores are released. See G.L. c. 31, § 22, ¶ 4; O’Neill v. Civil Service Comm’n, 78 Mass. App. Ct. 1127 (2011) (unpublished). In either case, whether measured from the April 2024 exam date, or the June 25, 2024 score date, the Appellant’s SJT appeal was filed after the applicable deadline.

Second, insofar as the SJT component is comprised of scenarios with multiple-choice responses, a candidate is entitled to seek HRD review of the marking of the candidate’s answers to specific questions, but such a review is not subject to further appeal to the Commission. G.L. c. 31, § 22 through § 24.

Third, HRD has consistently employed self-directed due diligence for all multiple-choice examinations that it administered. If a significant number of candidates fail to answer a question or series of questions correctly, HRD will disregard those answers or take other steps to ensure

that such possibly problematic questions do not impact the validity of the examination. There is no indication that such problems were flagged in the case of the April 2024 Fire Captain SJT examination component.

In sum, the Appellant's appeal of the SJT component must be dismissed as untimely and outside the subject matter jurisdiction of the Commission.

The ECT&E Appeal. The disposition of the Appellant's ECT&E appeal is a much closer call. The Appellant has raised a bona fide question that the methodology used to assess the relative value of a candidate's job experience in the fire service does, in some cases, tend to reward someone who has served less time as a supervisor than as a firefighter. This does suggest that the ECT&E component does not meet HRD's own definition of the ECT&E scoring matrix as a tool designed to give "greater weight to more recent experience" and ensure that "[e]xperience . . . that is more relevant or important to the position is given a higher point value."

The matrix clearly must be more thoroughly vetted and revised to rectify the anomalies embedded in the current point matrix. In addition to the examples that the Appellant has described, a candidate with longer and more recent experience as a supervisor (Fire Lieutenant) should not be awarded fewer experience points than a candidate with less overall experience and/or less supervisory experience. Without further review, what precise changes are needed appear complex and will require expert input from HRD's test vendor and the subject matter experts who advise HRD on the design and scoring of examinations. It is likely that the problem, at least in part, is due to the fact that experience categories are capped at different experience limits – currently, a Firefighter can earn up to 30.00 experience points while a Fire Lieutenant with service as a supervisor is capped at 25.00 points. Similarly, a Firefighter with 10 years' experience earns an additional 1.27 Experience points (17.03-15.74) for the most recent year of service, and an

additional 5.02 points (22.05-17.03) for five more years of service as a Firefighter; a Fire Lieutenant with 10 years of experience earns (fewer) 1.07 points (21.41-21.04) for a recent year of service as a supervisor and an additional 3.01 points (24.42-21.41) for an additional five years of supervisory experience. While there may be rational explanations for these disparities, they are not apparent. Unless it has already done so, HRD needs to take immediate steps to address the issue.

In addition, the HRD Scoring Guide matrix needs to be provided to candidates BEFORE they submit their ECT&E claim forms, so that, in the future, candidates have an opportunity to timely identify any continuing anomalies up-front and HRD can rectify them BEFORE examinations are scored and released and an eligible list is established.

In the case of the present appeal, save for the prospective remedial steps that HRD must take as described above, it is not necessary to grant relief to this Appellant or order what would amount to a complex and time-consuming retrospective recalculation of the April 2024 Fire Captain's ECT&E Experience scoring. The Appellant has not been aggrieved by a miscalculation of his Experience score. Specifically, given his place on the current eligible list, it is not established that his opportunity for promotion during the life of the current BFD Fire Captain's eligible list has been or will be materially impacted as a result of the miscalculation such that further proceedings to establish what, if any, retrospective relief would be necessary and appropriate. Thus, the Appellant's ECT&E appeal shall be dismissed as moot.

Nothing in this decision is intended to detract from the Appellant's thoughtful action that brought the disparity in Experience scoring to the attention of HRD and the Commission. Nothing in this decision is intended to detract or limit the rights of the Appellant or any other public safety examination candidate to seek appropriate relief through a timely future appeal should they claim

to be aggrieved by any future failure of HRD to rectify the discrepancies that have been exposed here.

CONCLUSION

For the reasons stated above, the Appellant's appeal under Case No. B2-24-130 is *dismissed*.

Civil Service Commission

/s/Paul M. Stein

Paul M. Stein
Commissioner

By vote of the Civil Service Commission (Bowman, Chair; Dooley, McConney, Markey & Stein, Commissioners) on October 31, 2024.

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:

Scott D. Rubeski (Appellant)

Shelia B. Gallagher, Esq. (for Respondent)