

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

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

KEVIN SHEA,
Appellant

B2-23-097

v.

HUMAN RESOURCES DIVISION,
Respondent

Appearance for Appellant:

Kevin Shea, *Pro Se*

Appearance for Respondent:

Michele M. Heffernan, Esq.
General Counsel
Human Resources Division
100 Cambridge Street, Suite 600
Boston, MA 02114

Commissioner:

Paul M. Stein

Summary of Decision

The Commission upheld the state’s Human Resources Division (HRD)’s decision that a candidate who took the March 2023 Statewide Fire Captain’s Examination was not eligible to claim education, certifications, training/licenses and experience (ECT&E) credit for his prior experience as a Correction Officer I at the Department of Correction.

DECISION ON MOTION TO DISMISS

On July 18, 2023, the Appellant, Kevin Shea, appealed to the Civil Service Commission (Commission)¹, for review of the determination by the state’s Human Resources Division (HRD) that his prior service as a Correction Officer I (CO I) at the Department of Correction (DOC) did not qualify as “supervisory experience” for purposes of the education, certifications,

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.

training/licenses and experience (ECT&E) component of the Statewide Fire Captain Promotional Exam administered by HRD on March 25, 2023. I held a remote pre-hearing conference on July 26, 2023, and a follow-up remote status conference on August 17, 2023. On September 22, 2023, HRD filed a Motion to Dismiss the appeal, to which the Appellant filed an Opposition on September 27, 2023. For the reasons stated below, HRD’s Motion is allowed and the Appellant’s appeal is dismissed.

UNDISPUTED FACTS

Based on the submissions of the parties, the following facts are undisputed:

1. The Appellant, Kevin Shea, is a Fire Lieutenant with the Medford Fire Department (MFD).
2. Prior to his appointment to the MFD, the Appellant worked for one year as a supervisor for a private security company and nine years with the Massachusetts Department of Correction (DOC) in the civil service title of CO I.
3. The Appellant took and passed the March 25, 2023 Statewide Fire Captain Examination administered by HRD. His final rounded score of 78 ranked him 6th (tied with another candidate) on MFD’s Fire Captain eligible list, established by HRD on July 31, 2023.
4. The ECT&E component of the Statewide Fire Captain Examination accounted for 20% of the total examination score. ECT&E points were allowed based on a set of criteria established by HRD which included credit for, among other things:

[F]ull year(s) supervisory experience . . . not within a fire department” as of the date of November 19, 2022. This includes military, maritime service, or a private company.² For private companies, tax id must be provided with supporting

² It is not clear whether the listed employment was exemplary and meant to limit “non-fire” supervisory experience to “military, maritime service, or a private company” (but not include other public sector “non-fire” supervisory experience, e.g., police sergeant, etc.) which could be a more problematic distinction, but not one not presented in this appeal. In the future, HRD may wish to clarify that point so that candidates have a clear understanding that both private and public sector “non-fire” supervisory experience is eligible for ECT&E credit (assuming that is HRD’s intention).

documentation.³

5. The points available ranged from 0.4 points for one year of such “non-fire” supervisory experience to a maximum of 2.8 points for 30 years of such experience.⁴

6. On his ECT&E claim form, the Appellant requested credit for 10 years of “supervisory experience not with a fire department”. He claimed one year with Apollo Security (worth 0.4 points) and his nine years of experience as a CO I (worth 1.8 points). HRD denied his claim to these credits on the grounds that he had not provided sufficient verification of this experience.⁵

7. On appeal to the Commission, HRD elaborated that, as to the Apollo Security experience, HRD did not dispute that such work might qualify for credit, but the documentation HRD had received did not include the details required to approve the claim. As to the DOC experience, HRD asserted that the job of a CO I did not fit within the scope of “supervisory experience” as defined by HRD.

8. At my request, HRD provided a calculation of what the Appellant’s exam score would have been had he been allowed credit for the one year of experience as a supervisor at Apollo. That calculation showed that allowance of the claim would have increased the Appellant’s overall final score to 78.29 which would not change either his tie group or his rank within that tie group.

³ Supporting documentation was defined elsewhere to mean “a dated, signed letter on original letterhead from the appointing authority or employer identifying the position title, type of job responsibilities, dates (MM/DD/YYYY) of experience, whether the experience was full or part-time and other pertinent information concerning your experience. If the experience was less than full-time, the verification must include the actual time worked, e.g., number of hours per week or the specific number of HOURS worked within a defined time period.”

⁴ ECT&E credits are also awarded for experience WITHIN a fire department, ranging up to 35 points for 40 years in the candidates’ current department, a maximum of 10.6 points for service in another fire department, and up to 7 points for supervisory experience in another fire department.

⁵ Apollo Security is no longer in business and the Appellant submitted a letter containing as much information about his work as a supervisor as he was able to obtain at the time he filed his ECT&E claim.

9. As to the claim to “supervisory” experience as a CO I, HRD points to the Classification Specification for the civil service title of Correction Officer I, also promulgated by HRD pursuant to its statutory authority under Chapter 31.

10. The Classification Specification for CO I identifies it as the “entry-level protective service classification in the Correction Officer Series. The primary duties of the position involve custodial care and control of inmates and related duties such as screening visitors and serving food to inmates.”

11. Both the Classification Specification for CO I in effect at the time the Appellant was appointed as a CO I and as reissued in 2016 state “NONE” under the category of “Supervision Exercised”.

APPLICABLE STANDARD ON MOTION TO DISMISS

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 on summary disposition 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); Ralph v. Civil Service Comm’n, 100 Mass. App. Ct. 199, 202-204 (2021); 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

Among other responsibilities delegated to HRD under civil service law, HRD is vested with broad authority to design and administer civil service examinations. G.L. c. 31, §§ 3 through 5; § 16 and § 22; Personnel Administration Rules, PAR.06. HRD is also responsible for promulgating the Classification Specifications that establish civil service job series and job titles and define the qualifications and job duties for all civil service positions. G.L. c. 31, §§ 3 through § 5. See HRD Motion to Dismiss, Attachments A&B.

Generally, absent a finding that HRD has acted unreasonably, arbitrarily, or otherwise in violation of basic merit principles, the Commission has consistently deferred to HRD’s technical expertise in matters involving the design, administration, and interpretation of civil service examinations. See, e.g., Ralph v. HRD, 32 MCSR 73 (2019), *aff’d sub nom. Ralph v. Civil Service Comm’n*, 100 Mass. App. Ct. 199 (2021); Carroll v. HRD, 27 MCSR 157 (2018); Peters v. HRD, 23 MCSR 647 (2010). See also Ash v. Police Comm’r of Boston, 11 Mass. App. Ct. 650, 652 (1981) (“the Personnel Administrator [HRD] is the skilled professional authorized by G. L. c. 31 to decide technical matters such as the scoring and interpretation of examinations.”)

First, the Appellant contends that he duly submitted sufficient documentation to HRD that confirmed his prior one-year supervisory experience at Apollo Security. He points out that the company is now out of business and, although the documentation may not have contained every detail HRD requested, he did provide all of the information available to him when he filed his

ECT&E claim. I am inclined to believe that the Appellant's contention has merit and might have warranted further consideration, except that HRD has established that, even if the Appellant were credited with 0.4 points for his one year of Apollo supervisory experience, it is undisputed that the additional credit (weighted at 20% of the total score), would not change his overall rounded score or rank on the eligible list and would not improve his overall score to the second decimal place enough to move him ahead of the other candidate within his tie group. As noted below, I sustain HRD's denial of Appellant's claim to an additional nine years of non-fire supervisory credit as a CO I, so the issue becomes moot as to whether or not the Appellant's documentation of his Apollo Security experience was sufficient.

Second, the Appellant's claim that his nine years of service as a CO I constitute "supervisory experience . . . not within a fire department" is mistaken. Here, HRD's decision that the job title of CO I is not a "supervisory" position is reasonably supported by the Classification Specification for CO I written by HRD, which expressly defines the job as an "entry-level" position with no supervisory responsibility. I find that the Classification Specifications promulgated by HRD, which define the regular duties of a CO I to expressly exclude supervision, is controlling, especially given that the promulgation of Classification Specifications comes within the purview of HRD's statutory responsibility and technical expertise.

I am not unsympathetic to the Appellant's point that the job of CO I is a demanding, sometimes hazardous, position that requires extensive formal training and that the "care and custody" of DOC inmates includes directing and managing them in a variety of janitorial and maintenance work for which inmates are paid \$2 per day—including cooking, cleaning, laundry, painting, landscaping, snow removal, library work, warehouse work and light manufacturing. However, the Commission has construed "supervisory experience" to require more than direction over another person, and

the person supervised also must be a public employee in a direct reporting relationship with the supervisor. Oversight of non-employees does not generally qualify as the required level of supervisory duties. See, e.g., Lee v. MassDOT, 34 MCSR 329 (2021) (contract workers); Shine v. Department of Correction, 34 MCSR 60 (2021) (interns & volunteers); Haque v. Department of Environmental Protection, 27 MCSR 585 (2014) (student interns); Simmons v. Department of Conservation & Recreation, 24 MCSR 584 (2011) (seasonal workers); Farinha v. UMass at Dartmouth, 23 MCSR 21 (2010) (student employees); Dziczek v. Department of Conservation & Recreation, 20 MCSR 200 (2007) (intern).

In sum, HRD’s conclusion that a CO I’s oversight of inmates does not comprise “supervisory” experience for purposes of ECT&E credit is consistent with civil service law and with HRD’s overall ECT&E job experience criteria. HRD’s decision to deny the Appellant’s claim for “non-fire” supervisory experience as a CO I is neither unreasonable, arbitrary nor capricious.

CONCLUSION

Accordingly, HRD’s Motion to Dismiss is *allowed* and the Appellant’s appeal under Docket B2-23-097 is hereby *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 November 16, 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:

Kevin Shea (Appellant)

Michele M. Heffernan, Esq. (for Respondent)