

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

DAVID J. SINOPOLI,
Appellant

v.

B2-19-044

HUMAN RESOURCES DIVISION,
Respondent

Appearance for Appellant:

Pro Se
David Sinopoli

Appearance for Respondent:

Mark Detwiler, Esq.
Human Resources Division
100 Cambridge Street, Suite 600
Boston, MA 02114

Commissioner:

Christopher C. Bowman

ORDER OF DISMISSAL

On February 23, 2019, the Appellant, David Sinopoli (Mr. Sinopoli), a firefighter with the City of Pittsfield (City)'s Fire Department, 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 November 17, 2018 Fire Lieutenant promotional examination.

On March 27, 2019, I held a pre-hearing conference at the Springfield State Building in Springfield, MA which was attended by Mr. Sinopoli and counsel for HRD (via phone).

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 and the E&E component. 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. Sinopoli sat for the written component of the Fire Lieutenant examination on November 17, 2018. He had until November 24, 2018 to complete the online E&E component of the examination. According to Mr. Sinopoli, on November 20, 2018, he logged into his online account via his desktop computer at home; completed the E&E module and submitted it electronically. Mr. Sinopoli acknowledges, however, that he never received a confirmation email from HRD stating that the E&E examination component was completed. HRD has no record of Mr. Sinopoli completing the E&E component and/or submitting the supporting documentation, which can be done while completing the E&E component online or by sending an email to HRD.

While I am not unsympathetic to Mr. Sinopoli's plight here, it is undisputed that: 1) HRD has no record showing that Mr. Sinopoli completed the E&E component of the examination; 2) Mr. Sinopoli never received a confirmation email verifying that he completed the E&E component; and, thus, 3) he is unable to show that he followed the instructions and actually completed the E&E component of this examination.

Consistent with a series of appeals regarding this same issue, in which applicants have been unable to show that they followed instructions and submitted 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 this reason, Mr. Sinopoli's appeal under Docket No. B2-19-044 is *dismissed*.

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 April 11, 2019.

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:

David J. Sinopoli (Appellant)

Mark Detwiler, Esq. (for Respondent)