

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

JASON SULLIVAN,
Appellant

v.

B2-17-052

HUMAN RESOURCES DIVISION,
Respondent

Appearance for Appellant:

Paul P. Sullivan, Esq.
93 Cedar Street
Dedham, MA 02026

Appearance for Respondent:

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

Commissioner:

Christopher C. Bowman

**DECISION ON MOTION TO DISMISS AND
CROSS-MOTION FOR SUMMARY DECISION**

On March 2, 2017, the Appellant, Jason Sullivan (Mr. Sullivan), filed an appeal with the Civil Service Commission (Commission), contesting the amount of education and experience (E&E) credit awarded to him by the state's Human Resources Division (HRD) regarding a promotional examination for Dedham Police Sergeant, administered on October 15, 2016.

On March 28, 2017, I held a pre-hearing conference which was attended by Mr. Sullivan, his counsel and counsel for HRD. By agreement of the parties, HRD subsequently submitted a Motion to Dismiss and Mr. Sullivan submitted an opposition and Motion for Summary Decision.

On May 16, 2017, I asked HRD to provide additional, clarifying information, which was provided to the Commission by HRD the next day.

This is one (1) of three (3) E&E appeals filed with the Commission within a four (4)-week period dealing with a strikingly similar issue. I take administrative notice of one (1) of those appeals, referenced below.

In the instant appeal, it is undisputed that Mr. Sullivan, a Dedham Police Officer, was awarded a masters degree in education in 2011 and a masters degree in criminal justice in 2015. HRD declines to award Mr. Sullivan E&E credit for the masters degree in education for the 2016 Promotional Examination for Police Sergeant since the transcript he initially submitted to HRD as supporting documentation was an unofficial (as opposed to official) transcript.

In Reardon v. Human Resources Division, CSC Case No. B2-17-040, a decision issued on May 25, 2017, it is undisputed that Mr. Reardon, a Brockton Police Officer, was awarded a bachelor's degree in law enforcement on August 15, 2012. HRD declined to award Mr. Reardon E&E credit for his bachelor's degree for the 2016 Promotional Examination for Police Sergeant since the transcripts he initially submitted to HRD as supporting documentation did not explicitly state when the degree was conferred. Rather, the transcripts that Mr. Reardon initially submitted to HRD stated: "*Admitted to B.S. in Law Enforcement*" and "Print Date: August 10, 2012."

In regard to the instant appeal involving Mr. Sullivan, the following appears to be undisputed, unless otherwise noted:

1. Mr. Sullivan is a police officer with the Dedham Police Department.
2. Mr. Sullivan was awarded a masters degree in education from Fitchburg State University on January 21, 2011.
3. Mr. Sullivan was awarded a masters degree in criminal justice from Curry College on May 11, 2015.
4. Mr. Sullivan sat for a promotional exam for the title of Sergeant on October 15, 2016.

5. A component of the examination is the online E&E exercise in which applicants, by answering twenty-eight (28) questions, rate their own education, training and work experience against a standard schedule.
6. The online E&E component has two (2) parts. First, the applicant must answer the above-referenced twenty-eight (28) questions. Second, the applicant must submit supporting documentation.
7. For this particular examination, the deadline for completing both parts of the E&E component was October 22, 2016 at 11:59 P.M.
8. The E&E examination instructions, which appear to be in a 8-point font, state in part:

“THIS IS AN EXAMINATION COMPONENT: Complete your Online E&E Claim on your own and to the best of your ability. Accurate completion of the education and experience claim is a scored, weighted, examination component. In order to ensure that no one receives any type of unfair advantage in the claim process, be advised that we are unable to provide individualized assistance to any applicant. Positions in the Police Captain, Police Lieutenant and Police Sergeant classification require the ability to read and understand instructions and take necessary steps to remember and implement them. Failure to follow any instructions in regards to this examination component is cause for disqualification.
PLEASE, NO PHONE CALLS and NO EMAIL INQUIRIES. YOU WILL NOT RECEIVE A RESPONSE.”

9. Prior to the October 22nd deadline, Mr. Sullivan completed the twenty-eight (28) online E&E questions.
10. Question 20 of the online E&E component states in relevant part:

“VERIFYING EDUCATION CLAIMS: APPLICANTS MUST SUBMIT TRANSCRIPTS FROM ALL INSTITUTIONS IN WHICH THEY ARE REQUESTING CREDIT. TRANSCRIPTS MUST INDICATE THAT THE DEGREE IN FACT CONFERRED. THE MAJOR IN WHICH THE DEGREE WAS CONFERRED, AND THE CONFER DATE. DURING THE HRD REVIEW PROCESS OR DURING THE LIFE OF THE RESULTING ELIGIBLE LIST(S) APPLICANTS MUST MAKE ORIGINAL SUPPORTING DOCUMENTATION AVAILABLE SHOULD THE ISSUE OF AUTHENTICITY ARISE WITH THE SUBMITTED COPIES.”

11. Question 21 of the online E&E components states:

*21. Police Department Promotional Exam Education Claim, Category 1: If as of the date of the examination you have a conferred degree from a regionally accredited college or university as defined above in any of the majors listed here, please check the highest degree you have attained.

Category 1 Majors: business administration, management, public administration, political science, law, criminal justice, criminology, sociology, human services, psychology, education or computer science.

- No claim in this category
- Associate Degree (3.0 points)
- Bachelor Degree (6.0 points)
- Master Degree (9.0 points)
- Doctorate / Juris Doctor (12.0 points)

12. Mr. Sullivan answered Question 21 by indicating that he had a masters degree (in which he was referring to his masters degree in criminal justice from Curry College in 2015.)

13. Question 23 of the online E&E component states:

Police Department Promotional Exam Education Credit Claim, Category 1A: Additional Semester Hour Credits in Category 1 Majors – from Multiple Conferred Degrees ONLY – No Certification Program Semester Hours or Semester Hours taken toward unfinished degrees can be credited.

Category 1 Majors: business administration, management, public administration, political science, law, criminal justice, criminology, sociology, human services, psychology, education or computer science.

- No claim in this category
- 1-14 Semester Hours (.05 points)
- 15-29 Semester Hours (.75 points)
- 30-59 Semester Hours (1.5 points)
- 60-89 Semester Hours (3.0 points)
- 90-119 Semester Hours (4.5 points)
- 120 or more Semester Hours (6.0 points)

14. Mr. Sullivan answered Question 23 by indicating that he had 120 or more semester hours, seeking 6.0 points (in which he was referring to his masters degree in education from Fitchburg State University in 2011.)

15. The parties now agree that the maximum points that Mr. Sullivan could be awarded for this category, assuming he submitted the proper supporting documentation, was 1.5 points for 30-59 semester hours.

16. Prior to the October 22nd deadline, Mr. Sullivan submitted supporting documentation regarding his masters degrees to support his answers to Questions 21 and 23.

17. The instructions on the “detailed job posting” associated with this examination state in relevant part:

“EDUCATION CLAIM SUPPORTING DOCUMENTS: All education claims must be supported by transcripts from regionally accredited colleges or universities displaying conferred degree. Copies of diplomas WILL NOT be accepted as proof of an earned degree. Grade reports are not transcripts, and will not be accepted as supporting documentation for education claims. Any education claim that is not accompanied by supporting documentation will be removed from your E&E Claim score.”

18. The instructions further state:

“ATTACH DOCUMENTS TO THIS ONLINE E&E CLAIM: HRD requests applicants to submit all supporting documents as electronic copies attached to the Online E&E Claim. Electronic documents submitted in this way can be permanently attached to your Master Profile in the online system. This office will also accept electronic documents via email to civilservice@state.ma.us. Should the issue of authenticity arise with the electronic documents at any time during the review process or during the life of a resulting eligible list, applicants must submit original supporting documentation to HRD.”

19. As proof of his masters degree in criminal justice from Curry College (Question 21), Mr. Sullivan submitted: 1) an unofficial transcript from Curry College which stated: “Degree Awarded: Master of Education 21-JAN-2011”; and 2) a copy of a diploma from Curry College.
20. As proof of his masters degree in education from Fitchburg State University (Question 23), Mr. Sullivan submitted an unofficial transcript which stated: “Degrees Awarded: Master of Criminal Justice 11-MAY-2015.”
21. Mr. Sullivan received his score from HRD on January 23, 2017 indicating the he received 9 points under Question 21 for his masters degree in criminal justice from Curry College, but received no points under Question 23 for his masters degree in education from Fitchburg State University.
22. In regard to Question 23, the score sheet that Mr. Sullivan received from HRD stated:
“Q(23): Additional Credits not awarded – no verification of institution.”
23. G.L. c. 31, s. 22 provides an applicant with seventeen (17) days from receipt of the test score to file an appeal with HRD to contest his score, including the E&E component.
24. On January 24, 2017, Mr. Sullivan sent an email to HRD stating:
“Dear Civil Service:

I am requesting a review of my Education and Experience Score for the 2016 Police Sergeant (1YP) exam. My contact information is below.
.....
My Education and Experience claim was adjusted by the following: Q(23) Additional Credits not awarded – no verification of institution. I obtained a Masters of Education Degree from Fitchburg State University and an Master (sic) Degree of Criminal Justice from Curry College. I attached transcripts from both institutions for your review as supporting documents.”

25. Mr. Sullivan attached the same unofficial transcripts that he had previously supplied to HRD when he completed the E&E portion of the examination.
26. That same day, on January 24th, Mr. Sullivan received an automated email reply from HRD acknowledging receipt of his email.
27. According to Mr. Sullivan, between January 24th and February 21st, 2017, he contacted HRD twice to ask why he was not receiving credit for both masters degrees and what “no verification of institution” means. According to Mr. Sullivan, he was told both times that HRD was not accepting calls regarding the E&E section of the exam.
28. On February 21, 2017, Mr. Sullivan received a response to his E&E appeal which stated in part: “Q(23): Additional credits not awarded – no verification of institution (No additional supporting documentation provided to prove institution of 2nd Masters.)”
29. According to HRD, Mr. Sullivan, on February 23, 2017, submitted official transcripts from both Curry College and Fitchburg State University to HRD.
30. On March 2, 2017, Mr. Sullivan filed a timely appeal with the Commission.

Legal Standard

The fundamental purpose of the civil service system is to guard against political considerations, favoritism, and bias in governmental hiring and promotion. The commission is charged with ensuring that the system operates on “[b]asic merit principles.” Massachusetts Assn. of Minority Law Enforcement Officers v. Abban, 434 Mass. 256 at 259 (2001), citing Cambridge v. Civil Serv. Comm’n., 43 Mass.App.Ct. 300 at 304 (1997). “Basic merit principles” means, among other things, “assuring fair treatment of all applicants and employees in all aspects of personnel administration” and protecting employees from “arbitrary and capricious actions.” G.L. c. 31, § 1. Personnel decisions that are marked by political influences

or objectives unrelated to merit standards or neutrally applied public policy represent appropriate occasions for the Civil Service Commission to act. Cambridge at 304.

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.”

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.’ G.L. c. 31, § 22(1).”

Analysis

As referenced above, HRD, as the Personnel Administrator, is vested with broad authority regarding the type and weight of credit given for training and experience as part of examinations. The Commission, however, must ensure that HRD’s decisions are uniform, and not arbitrary or capricious.

Here, HRD argues that “the instructions as written explicitly state that applicants must submit ‘official transcripts from regionally accredited colleges or universities’. As such, HRD requires

any documentation submitted for this claim clearly stated that it is an ‘official transcript’. An unofficial transcript is not able to be verified and therefore, is not accepted. Therefore, anything short of an official transcript, and the candidate will receive no points.”

There are two problems with this argument. First, none of the instructions provided by HRD as part of this appeal reference the need to submit “official” transcripts. Second, in regard to Question 21, HRD did indeed provide Mr. Sullivan with full credit for his other masters degree based in part on an “unofficial” transcript. When I inquired about this inconsistency, HRD stated that the unofficial transcript for Question 21 was accompanied by a diploma, thus justifying the awarding of the E&E points for that question. Yet, HRD’s instructions explicitly exclude diplomas as a form of verification. In fact, in the Reardon appeal, HRD argued that: “... if HRD were to apply these rules in any other manner, for example by accepting a diploma despite clearly indicate (sic) that a diploma is unacceptable, those actions could be considered to be arbitrary and capricious and so not in line with basic merit principles.” This head-scratching inconsistency is evidence of a grading system, at least as it pertains to this question, which is arbitrary and capricious.

Further, HRD acknowledges that, as part of the appeal process, Mr. Sullivan did subsequently substitute the unofficial transcript with an official transcript. That appears to be consistent with HRD’s guidance that: “during the HRD review process or during the life of the resulting eligible list(s) applicant must make original supporting documentation available should the issue of authenticity arise with the submitted copies.”

Conclusion

For all of the above reasons, Mr. Sullivan’s appeal under Docket No. B2-17-052 is hereby ***allowed***. HRD shall credit Mr. Sullivan with the applicable E&E credit for the masters degree

that he received from Fitchburg State University and adjust his score and standing on the eligible list accordingly.

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 June 8, 2017.

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:

Paul Sullivan, Esq. (for Appellant)

Patrick Butler, Esq. (for Respondent)