

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

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

ERIC SUNNY,
Appellant

v.

B2-19-186

HUMAN RESOURCES
DIVISION,
Respondent

Appearance for Appellant:

Bradford R. Martin, Jr., Esq.
Fitzgerald Attorneys at Law, P.C.
46 Center Square
East Longmeadow, MA 01028

Appearance for Respondent:

Melissa A. Thomson, Esq.
Human Resources Division
100 Cambridge Street: Suite 600
Boston, MA 02114

Commissioner:

Christopher C. Bowman

DECISION ON HRD'S MOTION FOR SUMMARY DECISION

On August 29, 2019, the Appellant, Eric Sunny (Mr. Sunny), pursuant to G.L. c. 31, § 2(b), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the state's Human Resources Division (HRD) that he was not eligible to sit for the September 15, 2018 promotional examination for Chicopee Police Sergeant. A pre-hearing conference was held on September 25, 2019 at the Springfield State Building in Springfield, MA. I heard oral

argument from counsel for the Appellant and HRD and the parties subsequently submitted written briefs upon which the Commission would render a decision.

The following facts are not in dispute:

1. An eligible list is “a list established by the administrator, pursuant to the civil service law and rules, of persons who have passed an examination...from which certifications are made to appointing authorities to fill positions in the official service.” G.L. c. 31, § 1.
2. A certification is “the designation to an appointing authority by the administrator of sufficient names from an eligible list or register for consideration of the applicants' qualifications for appointment pursuant to the personnel administration rules.” Id.
3. Chicopee has a population of over 50,000.
4. In 2013, Mr. Sunny sat for and passed the civil service examination for police officer.
5. In October 2013, Mr. Sunny’s name appeared on a statewide eligible list for police officer.
6. On March 31, 2014, Mr. Sunny’s name appeared on Certification No. 01645 for the position of Chicopee Police Officer. He was not appointed from that Certification.
7. On December 12, 2014, Mr. Sunny’s name appeared on Certification No. 02332 for the position of Chicopee Police Officer. He was appointed on May 4, 2015 and thereafter entered the Police Academy.
8. On October 9, 2015, Mr. Sunny graduated from the Police Academy and was sworn in as a Chicopee Police Officer.
9. On September 15, 2018, the written portion of an examination for Chicopee Police Sergeant was held. The Assessment Center portion of the examination was held on June 25 and 26, 2019. Mr. Sunny participated in both portions of the promotional examination.

10. On July 5, 2019, nine Chicopee Police Officers, all of whom were appointed prior to Mr.

Sunny, filed an appeal with the Commission, contesting whether Mr. Sunny was eligible to sit for the promotional examination. Those officers had also raised objections directly to HRD.

11. HRD subsequently determined that Mr. Sunny, pursuant to G.L. c. 31, s. 59, was not eligible to sit for the promotional examination; notified him of such; and did not score his examination.

12. This appeal by Mr. Sunny followed.

Applicable Law

G.L. c. 31, s. 59 states in relevant part:

“An examination for a promotional appointment to any title in a police or fire force shall be open only to permanent employees in the next lower title in such force, except that if the number of such employees, or the number of applicants eligible for the examination is less than four, the examination shall be opened to permanent employees in the next lower titles in succession in such force until either four such eligible employees have applied for examination or until the examination is open to all permanent employees in lower titles in such force; provided, however, that no such examination shall be open to any person who has not been employed *in such force* for at least one year after certification in the lower title or titles to which the examination is open; and provided, further, that no such examination for the first title above the lowest title in the police or fire force of a city or town with a population in excess of fifty thousand shall be open to any person who has not been employed in such force in such lowest title for at least three years after certification.

Persons referred to in this section as being permanent employees in the lowest or lower title shall include only full-time members of the regular force and shall not include members of the reserve or intermittent police or fire force or members of the call fire force unless the appointing authority certifies to the administrator that the number of permanent full-time members of the regular force is insufficient to allow adequate competition in an examination and the administrator determines that the circumstances warrant opening the examination to permanent members of the reserve, intermittent or call force, as the case may be. Upon the request of the appointing authority, the administrator may include service actually performed while a permanent member of a reserve, intermittent, or call force in computing length of service required for admission to an examination for promotional appointment to the first title above the

lowest title. The appointing authority shall submit with such request payroll records proving that such service was actually performed. For purposes of this section, two hundred and fifty days, or *the equivalent thereof*, of such service shall be equivalent to one year of service on a full-time basis in such regular force.”

Parties' Arguments

First, the Appellant argues that he was employed *in the force* as of May 4, 2015, the day that he entered the Police Academy. Thus, as of September 15, 2018, the date of the written examination for police sergeant, the Appellant argues that he had served in the force for approximately 3 years, 4 months.

In the alternative, the Appellant, relying on the language in Section 59 which states that “... two hundred and fifty days, or the equivalent thereof, of such service shall be the equivalent to one year of service on a full-time basis”, argues that, based on additional overtime and other hours works, he meets the three-year requirement.

HRD argues that the time spent in the Police Academy as a student police officer does not constitute having been employed in the force. Rather, HRD argues that the Appellant began being employed *in the force* upon graduating the Police Academy and being sworn in as a Chicopee Police Officer.

In regard to the Appellant’s alternative argument, HRD argues that the reference to the two hundred and fifty days, or the equivalent thereof, pertains only to exam applicants whose served as reserve, intermittent or call police officers and thus, is not applicable here.

Analysis

At issue here is whether HRD is correctly applying G.L. c. 31, § 59 consistent with the Court's decision in Weinburgh v. Civil Service Commission & City of Haverhill, 72 Mass. App. Ct. 535, 538 (2008). The Commission, consistent with the Weinburgh decision, has consistently ruled that there is a two-prong test to determine if a candidate is eligible to sit for a promotional examination for public safety. See O'Donoghue v. HRD, 27 MCSR 485 (2014), Nicholas v. HRD, 29 MCSR 358 (2016). Applied here, the candidate must be serving in the next lower title on the date of the promotional examination. Second, the candidate must have been "employed in the force" for at least three years after the candidate's name was first certified for appointment as a police officer.

Both parties agree that the Appellant meets the first prong of the eligibility test in that he is a police officer and was serving in that title as of the date of the written examination. As referenced above, the parties disagree on whether the Appellant met the second prong, reaching different conclusions on whether the Appellant was "employed in the force" for three years as of the date of the written examination. Central to this dispute is whether the time spent by the Appellant in the Police Academy, from May 4, 2015 to October 9, 2015, should be counted as time "employed in the force".

HRD's interpretation is more logical and is supported by the Court's decision in Weinburgh, the law regarding student officers and prior Commission decisions.

In Weinburgh, the Court effectively overturned a then-longstanding HRD interpretation that required applicants to have been employed for [one year or three years] *in the next lower title* in order to sit for the promotional examination. The Court concluded that the applicant need only have been employed *in the force* for [one year or three years] since being certified for the lower title. In reaching that conclusion, however, the Court explicitly stated that Section 59 requires that an employee “... actually serve in the force for one year after certification, but not necessarily in that lower position.” (emphasis added)

In order to *actually serve* in a police force, it is reasonable to conclude that a police officer must first complete and graduate from a police academy and then be sworn in as a police officer, at which time he/she is issued a badge and firearm. G.L. c. 41, s. 96B specifically exempts “student officers” enrolled in the Police Academy from the civil service law and any collective bargaining agreement and prohibits such student officers from exercising any police powers. Further, accepting the Appellant’s argument would cause an illogical result of requiring HRD to count *any* time served in *any* position (i.e. – dispatcher, administrative assistant, custodian) in a police force toward the Section 59 promotional examination requirement. For example, a candidate could take and pass an examination for police officer, have his/her name placed on an eligible list; appear on a Certification; and then not be selected for appointment. That candidate could take a future examination and not be appointed for months or years later. If that candidate, during the intervening time, served as a custodian in the police force, the Appellant’s reading of Section 59 would require HRD to have that time counted as having been “employed in the force.” That illogical result could not have been the intent of the Legislature.

In regard to the Appellant's alternative argument, the reference to one year of service being equal to two hundred and fifty days, or the equivalent thereof in Section 59 is clearly, when read in the proper context, meant to apply to candidates who had actually performed the duties and responsibilities of a police officer while holding the title of permanent or reserve officer, which is not the case here.

HRD's decision to deem Mr. Sunny ineligible for the promotional examination for sergeant is supported by their logical interpretation of Section 59 and was not arbitrary or capricious. For these reasons, the Appellant's appeal under Docket No. B2-19-186 is hereby *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 February 27, 2020.

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:

Bradford R. Martin, Jr., Esq. (for Appellant)
Melissa Thomson, Esq. (for Respondent)

