

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

KEVIN SWAN,
Appellant

v.

B2-15-100

HUMAN RESOURCES DIVISION,
Respondent

Appearance for Appellant:

Pro Se
Kevin Swan

Appearance for Respondent:

Mark Detwiler, Esq.
Human Resources Division
One Ashburton Place: Room 211
Boston, MA 02108

Commissioner:

Christopher C. Bowman

DECISION ON MOTION FOR SUMMARY DECISION

On May 26, 2015, the Appellant, Kevin Swan (Mr. Swan), acting pursuant to G.L. c. 31, § 2(b), timely appealed to the Civil Service Commission (Commission) contesting the decision of the Respondent, the Massachusetts Human Resources Division (HRD), to not provide him with additional training and experience credit for the June 2014 Boston Police Department (BPD) Police Sergeant Examination.

On June 23, 2015, I held a pre-hearing conference at the offices of the Commission, which was attended by Mr. Swan, counsel for HRD and counsel for the BPD. HRD subsequently filed a Motion for Summary Decision and Mr. Swan filed a reply.

Mr. Swan is a police officer with the BPD and was appointed to that position in March 2001. Prior to that, Mr. Swan served as a police officer in Lexington from 1986 to 1992, when he transferred to the Milton Police Department, where he worked until 2001.

Mr. Swan sat for the BPD promotional examination for Sergeant on June 2, 2014. As part of this examination, he applied for experience and education (E&E) credit. He applied for credit for time served as a police officer with the BPD, and for a master's degree.

On April 5, 2015, Mr. Swan filed an appeal with HRD, arguing that he did not receive full credit for his education. HRD received and denied the appeal, sending Mr. Swan a letter dated May 11, 2015 indicating that no change was made because he was awarded all points claimed including points for his master's degree.

At the pre-hearing conference, Mr. Swan argued that he should be given nine (9) points for his masters and an additional six (6) points for his bachelors. Also, for the first time, Mr. Swan argued that he was not getting credit for his first fifteen (15) years of service with the Lexington and Milton police departments.

HRD gives applicants who apply for credit for a master's degree nine (9) points, and not six (6) points for the bachelor's degree and nine (9) points for the master's degree individually. This rule is applied uniformly to every applicant.

HRD awards points for the highest degree earned because to do otherwise would cause an individual to double up on points. In order to receive a master's degree, an individual must first receive a bachelor's degree. This, according to HRD, is why applicants receive nine (9) points for a master's degree; it is a combination of six for the bachelor's and an additional three (3) points for the master's degree.

In summary, Mr. Swan received the exact same number of points for his master's degree as all other applicants who applied for master's degree credit.

Although it was not part of his appeal to HRD, I have also reviewed the parties' arguments regarding whether Mr. Swan received all of the E&E credit due to him for his time as a police officer with Milton and Lexington. In short, he did. Mr. Swan was confused by the fact that he received less E&E credit for this time during this promotional examination than he did on prior examinations. This occurs because of the formula used by HRD that gives more credit for recent experience and less credit for more "stale experience." That formula is applied uniformly to every applicant.

Summary Decision Standard

Section 1.01(7)(h) of the applicable standard adjudication Rules of Practice and Procedure at 801 CMR provides that, "When a Party is of the opinion there is no genuine issue of fact relating to all or part of a claim or defense and he is entitled to prevail as a matter of law, the Party may move, with or without supporting affidavits, for summary decision on the claim or defense. If the motion is granted as to part of a claim or defense that is not dispositive of the case, further proceedings shall be held on the remaining issues". 801 CMR 1.01(7)(h). 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. See Catlin v. Board of Registration of Architects, 414 Mass. 1, 7 (1992); Massachusetts Outdoor Advertising Counsel v. Outdoor Advertising Board, 9 Mass.App.Ct. 775, 782-83 (1980).

Applicable Civil Service Law

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. at 259, citing Cambridge v. Civil Serv. Comm'n., 43 Mass.App.Ct. 300, 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."

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

Mr. Swan believed that he should receive six (6) E&E credits for a bachelor's degree and an *additional* nine (9) points for a master's degree. He was mistaken. HRD awards applicants with a bachelor's degree and a master's degree a total of nine (9) points. That formula is applied uniformly to all applicants and was correctly applied in regard to Mr. Swan. HRD also has a formula that is uniformly applied to all candidates regarding relevant work experience which was correctly applied here. Mr. Swan has not presented any evidence or argument that would show otherwise.

Conclusion

HRD's Motion for Summary Decision is allowed and Mr. Swan's appeal under Docket No. B2-15-100 is *dismissed*.

Civil Service Commission

Christopher C. Bowman

Christopher C. Bowman

Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell and Stein, Commissioners) on September 3, 2015.

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:

Benjamin Swan (Appellant)

Mark Detwiler, Esq. (for Respondent)

Nicole Taub, Esq. (Boston Police Department)