

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION
One Ashburton Place: Room 503
Boston, MA 02108
(617) 979-1900

JEFFREY TOOTHAKER,
Appellant

v.

B1-20-136

HUMAN RESOURCES DIVISION,
Respondent

Appearance for Appellant:

Pro Se
Jeffrey Toothaker

Appearance for Human Resources Division:

Patrick Butler, Esq.
Human Resources Division
100 Cambridge Street, Suite 600
Boston, MA 02114

Commissioner:

Christopher C. Bowman

DECISION ON RESPONDENT’S MOTION FOR SUMMARY DECISION

1. On September 4, 2020, the Appellant, Jeffrey Toothaker (Appellant), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the state’s Human Resources Division (HRD) to not award him “experience credit” on a recent Correction Officer I (CO I) examination for time worked in the title of Industrial Instructor II at the Department of Correction (DOC).
2. On September 29, 2020, I held a remote pre-hearing conference via videoconference which was attended by the Appellant and counsel for HRD.
3. As part of the pre-hearing conference, the parties agreed to the following:
 - A. The Appellant has been employed as a provisional Industrial Instructor II at DOC for approximately 7 ½ years.

- B. On July 8, 2020, the Appellant took a written examination for CO I, as he was seeking appointment to a CO I position within closer commuting distance to his home.
 - C. Candidates with “in-title” experience had the opportunity to receive additional points.
 - D. The Appellant completed the online experience portion of the examination indicating that he should be given credit for his experience, but did not submit supporting documentation.
 - E. The Appellant received a written score of 86.
 - F. The Appellant was not given additional in-title experience.
 - G. The Appellant received a final score of 86.
 - H. The Appellant filed an appeal with HRD, arguing that he should be given credit for his experience as an Industrial Instructor II.
 - I. HRD denied the Appellant’s appeal on August 28, 2020.
 - J. An eligible list for CO I was established on September 1, 2020.
 - K. The Appellant is ranked 605th of 1113 on the eligible list.
 - L. If given experience credit for his time worked as an Industrial Instructor II, he would receive a higher score and a higher rank on the eligible list.
 - M. The Appellant filed an appeal with the Commission on September 4, 2020.
4. HRD, citing to G.L. c. 31, s. 22, which states in part: “ ... an applicant shall be given credit for employment or experience in the position for which the position is held ...”, argued that HRD is not required to give applicants for CO I credit for experience in any title other than CO I, which they have done here.

5. The Appellant, citing to the Personnel Administration Rules, which state in part under PAR.06(1)(c): “The grading of the subject of employment or experience as a part of an entry-level examination shall be based on a schedule approved by the administrator which shall include credits for elements of employment or experience *related to the title for which the examination is held*”, argued that HRD is required to give him credit for his time worked an Industrial Instructor II, as, according to him, it is related to the title of CO I.
6. According to the 1987 Classification Specifications, still in effect today, Industrial Instructors: "instruct trainees in the use of hand tools and the operation of industrial shop machinery or equipment; determine methods of instruction to be used and assign tasks to trainees; inspect equipment and materials and perform preventative maintenance; monitor the activities of the assigned area; motivate trainees; and perform related work as required. The basic purpose of this work is to instruct trainees in an industrial arts subject to provide for the development of manual skills and familiarity with tools and machinery." Asnes et al v. Dep't of Correction, 32 MCSR 253 (2019).
7. According to the 2016 Classification Specifications for Correction Officers, “There are three levels of work in the Correction Officer series. Incumbents of classifications in this series maintain custodial care and control of inmates; patrol correctional facilities; observe conduct and behavior of inmates; investigate suspicious inmate activity; and perform related work as required The basic purpose of this work is to maintain order and security in a correctional institution.
8. Consistent with my verbal instructions at the pre-hearing conference, HRD submitted a Motion for Summary Decision and the Appellant submitted what I have deemed to be an opposition and Cross Motion for Summary Decision.

9. The parties' briefs largely tracked their oral argument at the pre-hearing conference, except that HRD, in its brief, also argued that the Appellant's failure to submit sufficient documentation as part of the E&E portion of the examination meant he was not an aggrieved person and the Appellant submitted additional documentation regarding why HRD should award him E/E credit for his time in the position of Industrial Instructor II.

Applicable Civil Service Law

G.L. c. 31, § 2(b) states in part that:

“No person shall be deemed to be aggrieved under the provisions of this section unless such person has made specific allegations in writing that a decision, action, or failure to act on the part of the administrator was in violation of this chapter, the rules or basic merit principles promulgated thereunder and said allegations shall show that such person's rights were abridged, denied, or prejudiced in such a manner as to cause actual harm to the person's employment status.”

G.L. c. 31, § 5(e) states in relevant part that:

“The administrator [HRD] shall have the following powers and duties:

...

To conduct examinations for purposes of establishing eligible lists.”

G.L. c. 31, § 22 states in relevant part that:

“The administrator shall determine the passing requirements of examinations. In any competitive examination, an applicant shall be given credit for employment or experience in the position for which the examination is held. In any examination, the applicant shall be allowed seven days after the date of such examination to file with the administrator a training and experience sheet and to receive credit for such training and experience as of the time designated by the administrator.”

PAR.06(1)(c) stated in relevant part that:

“The grading of the subject of employment or experience as a part of an entry-level examination shall be based on a schedule approved by the administrator which shall include credits for elements of employment or experience *related to the title for which the examination is held*”.
related to the title of CO I.”

Standard of Review: Motion for Summary Decision

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 7.00(7)(g)(3). A motion for summary disposition of an appeal before the Commission, in whole or in part, may be filed pursuant to 801 C.M.R. 1.00(7)(h). These motions are decided under the well recognized standards for summary disposition as a matter of law, i.e., "viewing the evidence in the light most favorable to the non moving party", the substantial and credible evidence established that the non moving party has "no reasonable expectation" of prevailing on at least one "essential element of the case", and has not rebutted this evidence by "plausibly suggesting" the existence of "specific facts" to raise "above the speculative level" the existence of a material factual dispute requiring evidentiary hearing. See e.g., Lydon v. Massachusetts Parole Board, 18 MCSR 216 (2005). cf. Milliken & Co., v. Duro Textiles LLC, 451 Mass. 547, 550n.6, (2008); Maimonides School v. Coles, 71 Mass.App.Ct. 240, 249, (2008). See also Iannacchino v. Ford Motor Company, 451 Mass. 623, 635 36, (2008) (discussing standard for deciding motions to dismiss); cf. R.J.A. v. K.A.V., 406 Mass. 698 (1990) (factual issues bearing on plaintiffs standing required denial of motion to dismiss).

Analysis

Under Massachusetts civil service law and rules, HRD is vested with broad authority to determine the requirements for competitive civil service examinations, including the weight that certain experience should be given in the scoring. See Cataldo v. Human Resources Division, 23 MCSR 617 (2010). G.L. c. 31, § 22 does, however, state that an applicant must, at a minimum, be given credit for "employment or experience *in the position for which the examination is held.*" It is undisputed that the Appellant has never served *in the position of CO I*. Rather, the

Appellant has served for several years as an Industrial Instructor II. Thus, nothing in Section 22 requires HRD to give the Appellant credit for this experience.

The Appellant, however, effectively argues that HRD's decision not to grant him the credit he seeks was arbitrary and capricious because: 1) Section 22 does not *prohibit* HRD from granting him credit for experience in a position other than CO I (e.g. – Industrial Instructor II); and 2) PAR.01 (6)(c) obliges HRD to exercise its discretion and grant him credit for his Industrial Instructor experience because, according to the Appellant, the position of Industrial Instructor II is *related to* the position of CO I.

The Appellant has no reasonable expectation of prevailing here for the following reasons. As referenced above, the Legislature designated HRD with the authority to administer civil service examinations and their intent was not for the Commission to second-guess every discretionary decision made by HRD in that regard.

While the Commission could, theoretically, when viewing all the evidence most favorably to the Appellant, reach a different conclusion than HRD regarding whether the Appellant should be granted credit for his time worked as an Industrial Instructor II, he has no reasonable expectation that HRD's decision here could be deemed arbitrary or capricious. The plain language of the job specifications state that the basic purpose of an Industrial Instructor is to “instruct trainees in an industrial arts subject to provide for the development of manual skills and familiarity with tools and machinery”, while the basic purpose of a CO I is to “maintain order and security in a correctional institution.” Even at the pre-hearing conference, the Appellant conceded that he is never required to carry a firearm, do patrols and/or take part in such CO I related duties as being part of an extraction team. This is not meant to diminish the important (and dangerous) work that the Appellant, and all Industrial Instructors at DOC perform. Rather, it simply reinforces that

there is a distinct difference between these two positions.

Conclusion

For all of the above reasons, HRD's Motion for Summary Decision is allowed and the Appellant's appeal under Docket No. B1-20-136 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 December 3, 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:

Jeffrey Toothaker (Appellant)
Patrick Butler, Esq. (for Respondent)