**COMMONWEALTH OF MASSACHUSETTS**

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

ANDREW M. TRAINOR,
*Appellant*

v. E-20-127

HUMAN RESOURCE DIVISION,
*Respondent*

Appearance for Appellant: *Pro Se*
Andrew M. Trainor

Appearance for Respondent: Patrick Butler, Esq.[1]
Human Resource Division
100 Cambridge Street, Suite 600
Boston, MA 02114

**FINAL DECISION**

On June 3, 2021, the Civil Service Commission (Commission), issued an "Interim Decision and Orders" (Interim Decision), giving both parties sixty (60) days to obtain additional information regarding whether persons who participate in the United States Navy's New Accession Training (NAT) program are engaged in training for the entire duration of their contract *or* if persons can be engaged in regular, non-training active duty. Both parties were granted a brief extension and subsequently submitted responses to the Commission.

The question of whether the Appellant, who was enrolled in the NAT program at all times relevant to this appeal, performed non-training duties that can be considered active duty is

[1] Attorney Butler is now employed by a different state agency. The decision is being forwarded to HRD General Counsel Michele Heffernan, Esq.

central to the dispute here – whether the Appellant is entitled to the veteran preference under the civil service law, which requires at least ninety (90) days of active service which cannot include active duty *training*. As outlined in detail in the Interim Decision, the Appellant argues that he did indeed engage in (non-training) active duty while part of the NAT program, but he has offered wildly different accounts regarding how many days should be counted as non-training active duty.

This appeal presents a novel question of statutory interpretation of the definition of military "training" within the meaning of Section 1. After carefully considering evidence that was offered in support of the Appellant's position and the evidence that detracts from his position, I have concluded that the preponderance of this conflicting evidence fails to establish that the Appellant has met the statutory requirement to establish that at least 90 days of his active duty service (all of which is characterized by Navy regulations as "Initial Active Duty for Training" or "IADT" ), in fact, was not "training" within the meaning of G.L.c.31, Section 1, as presently written.

First, the Appellant submitted a DD214 to HRD indicating that, between January 18, 2018 and February 21, 2019, he was engaged in training at all times, except for ten (10) days, far short of the ninety (90) day statutory requirement to obtain the veteran preference in hiring appearing in G.L. c. 31, § 26.[2]

[2] Section 7 of G.L. c. 4, which defines certain terms used throughout the General Laws, states, in relevant part: "In construing statutes the following words shall have the meanings herein given, unless a contrary intention clearly appears: . . . [clause] Forty-third, "Veteran" shall mean (1) any person . . . who (b) served in the . . . navy . . . of the United States, or on full time national guard duty under Titles 10 or 32 of the United States Code . . . for not less than 90 days active service, at least 1 day of which was for wartime service[.]" "Wartime service" is then defined to include the time period relevant to this case. Id. Clause 43 also states that "[a]ctive service in the armed forces", as used in this clause shall not include active duty for training in the army national guard or air national guard or active duty for training as a reservist in the armed forces of the United States." The phrase "[a]ctive service in the armed forces," however, only appears in conjunction with the definition of a "Vietnam veteran." Id. Similarly, though, section 1

Second, the Appellant then submitted a DD215 to HRD indicating that, during the same time period referenced above, he actually engaged in non-training active duty for two hundred one (201) days.

Third, the Appellant submitted a letter from a Navy Personnel Officer suggesting that the Appellant was engaged in non-training active duty for the entire four hundred (400) days between January 18, 2018 and February 21, 2019.

Fourth, that same Navy Personnel Officer testified before the Commission that the Appellant actually engaged in non-training active duty at all times between August 1, 2018 (when he arrived at the VR-56 military base in Virginia) and February 21, 2019, which totals two hundred four (204) days.

Fifth, the Appellant's second witness at the Commission hearing, a Naval Aircrewman, testified that the Appellant's non-training, active duty did not commence until he was deemed "qualified" after additional schooling ("C School") at the military base, which occurred on November 11, 2018. Thus, according to this witness, the Appellant's non-training active duty totals one hundred two (102) days. The Appellant submitted a post-hearing exhibit, dated November 25, 2018, from the Commanding Officer of the Fleet Logistics Squadron 56 stating in relevant part: "[Y]ou are hereby designated as a Naval Aircrewman and as a Naval Aircrew Warfare Specialist (NAWS) effective 11 November 2018."

Sixth, after the issuance of the Commission's Initial Decision, the Appellant filed a written submission arguing that his non-training active duty actually commenced on August 1,

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of the civil service statutes (G.L. c. 31) defines "Veteran" (in relevant part) to be "any person who: (1) comes within the definition of a veteran appearing in the forty-third clause of section seven of chapter four" with the parallel (unqualified) caveat that "[a] veteran shall not include active duty for training in the army national guard or air national guard or active duty for training as a reservist in the armed forces of the United States."

2018 (when he arrived at the military base in Virginia), was interrupted for only two (2) weeks of "C School" training between September 9, 2018 and September 21, 2018, and then immediately resumed on September 22, 2018 (through February 21, 2019), which would total <u>one hundred ninety-two (192) active duty days</u>.

Seventh, attached to the Appellant's written submission was a new memorandum from a different Commanding Officer of the Fleet Logistics Squadron 56 stating in relevant part: " … Member served in <u>active duty status</u> from 18 January 2018 through 21 February 2019, under Title 10 U.S.C. with no break in service …" (emphasis added), which would total <u>three hundred ninety-nine (399) days</u>. In a subsequent written submission, the Appellant specifically referenced this memorandum and the cited time period.

HRD, in its submissions to the Commission after issuance of the Initial Decision, argues that the Navy's regulations and information material, as well as an affidavit from the Assistant Adjutant and Legislative Director of the Massachusetts Disabled Veterans (DAV), all show that <u>none</u> of the time that the Appellant served in the NAT program from January 18, 2018 to February 21, 2019 counts toward the ninety (90) days of "active service" required by G.L. c. 4, § 7, but, rather, is active duty *training* specifically excluded in the definition of veteran in G.L. c. 31, § 1.

Specifically, HRD cites MILPERSMAN 1133-090 (Regulations) regarding the NAT Program which states in relevant part that: "The NAT Program is a Reserve accession program for non-prior service enlistees who are placed in an active duty (ACDU) status in approved ratings <u>to attend full recruit training</u>, 'A' School, and in some cases, follow-on 'C' School before serving in the Reserve Component (RC). **<u>After</u> completion of appropriate training levels**, Sailors will be transferred to the Navy Reserve Activity (NRA) <u>closest to their home of record</u>

for release from ACDU and assignment into a reserve unit." (emphasis added) Further, Section 5 of those same Navy regulations states:

> "Service Obligation. NAT Program enlistees incur an 8-year military service obligation (MSO). This MSO will consist of the following:
> a. Initial Active Duty for Training (IADT) (Recruit Training, ***Apprenticeship Training***, "A" School and "C" School if applicable), ***followed by***:
> b. Six years in the Selected Reserve (SELRES) (which begins when the Sailor reports for IADT), followed by:
> c. Remainder of MSO in either the SELRES, the Individual Ready Reserve (IRR), or if approved, recall to ACDU." (emphasis added)[3]

I interpret this regulatory provision to mean that a NAT Program enlistee's entire service in the program is either in "active duty for training" status or reserve status unless the enlistee is "recall[ed] to ACDU [active duty]"—but Section 12 of the Regulations specifies that such voluntary "recall" to non-training active duty (the "Navy Active Component") can only occur "*after* affiliation with a drilling unit," which in Trainor's case did not occur until he returned to Quincy in mid-February of 2019. (emphasis added) Additionally, I note that Section 9 of the Regulations states in relevant part: "NAT Participants are not eligible for the Active Component [Montgomery GI Bill] and will be automatically disenrolled from the program when accessed into IADT [Initial Active Duty Training]." (emphasis added)

The affidavit submitted by the Assistant Adjutant and Legislative Director of the Massachusetts Disabled Veterans (DAV) states his belief that, consistent with the Regulations referenced above, the Appellant was released to the Navy Reserve Activity (NRA) in Quincy, which is closest to his home, *after completing training*, and at no time was the Appellant activated for the type of active (non-training) service that is required in order to receive the veteran preference for civil service purposes.

[3] I have not overlooked that a promotional brochure regarding the NAT Program does not reference the completion of *Apprenticeship* Training prior to be released from ACDU. I give more weight to the military regulations which state otherwise.

*Analysis / Conclusion*

The preponderance of evidence supports HRD's determination here that the Appellant's service from January 18, 2018 to February 21, 2019 was active duty training that appears to have consisted of boot camp, "A" and "C" School training – and apprentice training. I give significant weight to that portion of the Navy's regulations that states that only *after* completing the required training does a NAT program participant get transferred to an NRA nearest his home, which is precisely what happened on February 21, 2019. After completing the required training, he was transferred to the NRA in Quincy. Further, although various documents state that the Appellant was on "active duty", the NAT program regulations explain that NAT program participants are indeed put in this status, but solely for the purpose of completing training, which includes apprentice training.

Appellant has made a commendable long-term commitment to serve our Nation in the U.S. armed forces. Our General Laws are less than crystal clear as to how the non-qualifying status of "active duty for training as a reservist" should be construed in a case such as this and the matter might be ripe for legislative consideration given the Legislature's recent formation of a Special Legislative Commission to Study and Examine the Civil Service Laws. See https://malegislature.gov/Commissions/Detail/544. Nothing in this decision prohibits the Appellant from obtaining veteran status for G.L. c. 31, § 26 purposes in the future should he be able to show that he has been engaged in a sufficient period of (non-training) active duty after February 21, 2019.

For all of the above reasons, the Appellant's appeal under Docket No. E-20-127 is ***denied***.

Civil Service Commission

*/s/ Christopher Bowman*
Christopher C. Bowman
Chair

By a 4-1 vote of the Civil Service Commission (Bowman, Chair; Camuso, Ittleman and Stein, Commissioners – YES; Tivnan, Commissioner - NO) on November 4, 2021.

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:
Andrew Trainor (Appellant)
Michele Heffernan, Esq. (for HRD)