

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.
Labor Counsel
Human Resource Division
One Ashburton Place, Room 301
Boston, MA 02108

INTERIM DECISION AND ORDERS

Pursuant to G.L. c. 31, § 2 (b), the Appellant, Andrew M. Trainor (Mr. Trainor), filed a non-bypass equity appeal with the Civil Service Commission (Commission), contesting the decision of the state's Human Resources Division (HRD) that Mr. Trainor is not entitled to the veteran preference granted to veterans applying for civil service positions in Massachusetts. According to G.L. c. 4, § 7, clause 43:

"Veteran" shall mean (1) any person, (a) whose last discharge or release from his wartime service as defined herein, was under honorable conditions and who (b) served in the army, navy, marine corps, coast guard, or air force of the United States, or on full time national guard duty under Titles 10 or 32 of the United States Code or under sections 38, 40 and 41 of chapter 33 for not less than 90 days active service, at least 1 day of which was for wartime service;

Furthermore, G.L. c. 31, § 1 further defines “Veteran” and maintains that (3) “veteran shall not include *active duty for training* in the national guard or air national guard or *active duty training as a reservist in the armed forces of the United States.*” (emphasis added).

On August 17, 2020, I held a remote pre-hearing conference and on December 11, 2020, I held a remote full hearing via Webex videoconference.¹ A recording was made of the hearing via Webex. Both parties were provided with a link to access the recording, which the Commission has retained a copy.²

FINDINGS OF FACT:

HRD submitted seven (7) exhibits (Respondent 1-7). Mr. Trainor submitted a series of documents requested by the Commission as a Post-Hearing Exhibit; (Appellant Post-Hearing Exhibit PH0001-0008). Based upon the documents entered into evidence, the testimony of:

Called by HRD:

- Keith Costello, HRD;

Called by Mr. Trainor:

- Andrew M. Trainor;
- Shana Michaud, U.S. Navy
- Sabrina Wadkins, U.S. Navy

and taking administrative notice of all matters filed in the case and pertinent statutes, regulations, policies, and reasonable inferences from the credible evidence, I make the following findings of fact:

¹ The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§ 1.00, *et seq.*, apply to adjudications before the Commission with G.L. c. 31, or any Commission rules, taking precedence.

² If there is a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to supply the court with a transcript of this hearing to the extent that he/she wishes to challenge the decision as unsupported by substantial evidence, arbitrary or capricious, or an abuse of discretion. In such cases, the recording should be used by the plaintiff in the judicial appeal to transcribe the recording into a written transcript.

FINDINGS OF FACT

1. Mr. Trainor is twenty-eight (28) years old and resides in Taunton. He has an associate's degree in business administration and a bachelor's degree in business management. As of the date of the hearing, he had been employed for one month as an HVAC technician. Prior to that he was a truck driver for an event planning company. (Testimony of Appellant)
2. Andrew M. Trainor signed a contract with the United States Navy on April 25, 2017. As part of the contract, he acknowledged that he was enlisting into the U.S. Navy Reserve for a period of eight (8) years, six (6) of which would be in an active drilling status and the remaining two (2) years in the non-drilling individual Ready Reserve. He enlisted with the following guarantees and understanding that he was enlisted under the provisions with the options (1) New Accession Training Advanced Technical Field Aircrewman (NAT/AIRC) Program; and (2) NAVOPSPTCEN Quincy UIC 68986. (Appellant Post-Hearing Exhibit, PH008).
3. As part of the April 25, 2017 contract with the Navy, Mr. Trainor also acknowledged that the Navy Reserve will order him to Recruit Training, Class A and Class C Schools (if necessary) ... under the Initial Active Duty for Training (IADT) orders. (Appellant Post-Hearing Exhibit, PH008).
4. Mr. Trainor attended Bootcamp from January 18, 2018 to March 2018 in Chicago, Illinois. Thereafter, he attended the Naval Aircrewman School and "A" School from June 2018 to July 31, 2018 in Pensacola, Florida. Thereafter, he reported to the VR-56 military base in Virginia Beach from August 1, 2018 to February 21, 2019. In February 2019, the

Appellant reported to the Naval Operation Support Center in Quincy, MA where he was “detached from active duty.” (Testimony of Appellant).

Appellant’s Request for Veteran’s Preference with HRD

5. On or about May 7, 2019, Mr. Trainor applied to HRD to take the civil service examination for police officer. Within his application to HRD, he indicated that he was looking to receive a veteran’s preference for his military service. (Testimony of Costello; Respondent Exhibit 1).
6. Keith Costello (Mr. Costello) testified on behalf of HRD. He is a Program Coordinator III within the Civil Service Unit of HRD and has held this position for approximately one (1) month. Mr. Costello has been employed by HRD for four and a half years (4.5). (Testimony of Costello).
7. In his current position, Mr. Costello’s primary duties are the administration of public safety exams for civil service positions. He is tasked with coordinating the entire scope of the exam, from setting dates to taking the applications and payments, setting exam locations, working exams, getting exam materials, scoring the exams, placing candidates on eligible lists, and notifying the candidates. (Testimony of Costello).
8. Additionally, Mr. Costello also verifies the record of service of candidates who were in the military and who indicate that they would like to receive a veteran’s preference. HRD checks the dates the candidate provides affiliated to their active-duty period, such as date entered, separation date, and then dates such as foreign service, sea service and in-training time. Mr. Costello noted that *active duty for training* does not qualify under the Veteran’s Preference as *active duty*, as defined by the statute.³ (Testimony of Costello).

³ Mr. Costello testified that anyone “who is part of a regular component, regular Army, regular Navy, regular Air Force” who performs 90 days of active duty, since the United States is currently at war, is considered a veteran and

9. HRD undertook its typical review into whether or not Mr. Trainor was eligible for the veteran's preference. Mr. Trainor had provided HRD with his DD214 Form, which is a Certificate of Release or Discharge from Active Duty.⁴ HRD approved Mr. Trainor's request and his veteran status was approved in June 2019.⁵ (Testimony of Costello; Respondent Exhibit 3).
10. On or about November 25, 2019, the City of Taunton's Police Chief wrote a letter to HRD advising HRD that it was the City's belief that Mr. Trainor, whose name appeared with a veteran's preference on the City of Taunton's certification for police officer, had been mistakenly classified as a veteran for the purposes of the Veteran's Preference. (Respondent Exhibits 2 and 4).
11. The City's letter notes that Mr. Trainor entered Active Duty for initial entry training under the Navy's New Accession Training (NAT) Program. He served one year, one month and four days on Active Duty for training purposes. Upon completion of the training, he was released to the Navy Reserves. The City of Taunton formed the belief that this form of duty, under the NAT Program, does not meet the threshold requirements of 90-days active wartime military service for the purposes of veteran's preferences since it was for training. The City of Taunton requested that HRD adjust Mr. Trainor's position on the eligible list, thereby removing the veteran's preference. (Respondent Exhibit 4).

will get veteran's status. For reservists, it is a little different – HRD must verify the activation. (Testimony of Costello).

⁴ The Certificate of Release or Discharge from Active Duty Form, commonly referred to as the DD214 Form, indicates the name of the service member, the department, component or branch of the military, and a complete record of service, which includes the date entered (this period), separation date (this period), net active service (this period), total prior active service, total prior inactive service, foreign service, sea service, and initial entry training, among other data. (Respondent Ex. 3).

⁵ Mr. Costello testified that he looked at the DD214 and made note of which branch of the military Mr. Trainor was in – the Navy. He also verified that Mr. Trainor was honorably discharged, according to the DD214.

12. Once he received this letter from the City of Taunton, Mr. Costello checked Mr. Trainor's DD214 form again and concluded that he had made a mistake in classifying Mr. Trainor as a veteran. In section 12 of the DD214, it indicates that Mr. Trainor entered the Navy for this period on January 18, 2018 and separated from the Navy, this period, on February 21, 2019. His net active service for this period was calculated as 1 year, 1 month, 4 days. His initial entry training for this period of time was 1 year, 0 months, 25 days. The DD214 indicated that, for this period from January 18, 2018 to February 2019, Mr. Trainor was training for all but 10 days. (Testimony of Costello; Respondent Exhibit 3).
13. HRD rescinded Mr. Trainor's veteran's status and lowered his rank on the eligible list. The reason he was determined not eligible for veteran's status is because the DD214 Form did not indicate that Mr. Trainor had 90 days of active-duty service during that time period. (Respondent Exhibit 2).

Additional Information Provided to HRD - DD215 Form

14. Thereafter, HRD received information from Mr. Trainor regarding the issue of veteran preference. Mr. Trainor submitted a DD215 Form, which is a military form that corrects a prior DD214 Form. This form was dated February 24, 2020. (Respondent Exhibit 5).
15. This DD215 Form made a correction to Mr. Trainor's DD214 in section 12H, Initial Entry Training. The correction indicates that section 12H should read, "0 years, 06 months, 13 days" rather than the initial DD214, 12H section for Initial Entry Training, which read, "01 year, 00 months, 25 days." This modification to the DD214 changed the calculation of training time Mr. Trainor received from 390 days of training out of 400 days of net service to 199 days of training out of 400 days of net service. (Respondent Exhibit 5).

16. Mr. Costello reviewed the DD215 and concluded that the form did not change HRD's determination that Mr. Trainor was not eligible for the veteran's status under Massachusetts law because nothing in the document showed that his service was anything other than *training* time since he was part of the New Accession *Training* Program during this time, according to his orders. (Testimony of Costello; Respondent Exhibit 3).
17. Mr. Costello did not see anything in the DD214 or DD215 Form to indicate full-time activation for anything other than training. (Testimony of Costello; Respondent Exhibits 3 and 4).
18. When asked specifically if he had completed the NAT Program prior to his final day, February 21, 2019, the Appellant himself stated during his testimony, "I'm not sure if I technically completed, because I was still on my initial orders that I began with." (Testimony of Appellant).

*Additional Information Provided to HRD – Letter Dated March 10, 2020;
Testimony of Navy Personnel Officer Shana Michaud*

19. In addition to the submission of the DD215 Form, HRD also received a letter written by S.L. Michaud, Personnel Officer Fleet Logistics Support Squadron 56, to the Chiefs of the Taunton Fire Department and Police Department. Within the letter, dated March 10, 2020, Personnel Officer Michaud indicates that she wanted "to clarify active duty status of AWF3 Andrew Trainor from the period of January 18, 2018 to February 21, 2019 under reference (a), AWF3 Andrew Trainor was gained to full active duty during this time and was NOT Selected Reserve Sailor completing ADT orders or inactive drills." (Respondent Exhibit 6).

20. This letter by Personnel Officer Michaud seemingly contradicts the DD214, which indicates that Mr. Trainor was training for 390 out of 400 days of net service from January 18, 2018 to February 21, 2019. (Respondent Exhibits 3 and 6).
21. This letter by Personnel Officer Michaud seemingly also contradicts the DD215, which indicates that Mr. Trainor was training for 199 out of the 400 days of net service from January 18, 2018 to February 21, 2019. (Respondent Exhibits 4 and 6).
22. Even though the March 10, 2020 letter apparently indicates that Mr. Trainor was active duty, in paragraph 2 of the Letter, Personnel Officer Michaud goes on to state that the “[N]ew Accession for Training program for Air Crew personnel includes many TDY stops to provide particular platform training that is required to be assigned to a C40 squadron. AWF3 Trainor *was part of this program* in which he maintained Active Duty status until he was transferred to the Naval Reserves on February 21, 2019.” (Respondent Exhibit 6).
23. Navy Personnel Officer Shana Michaud testified at the hearing regarding this matter. She has been a member of the Navy for sixteen (16) years and her entire career has been spent as a Personnel Specialist. She is currently a Chief Petty Officer. In her role as a Personnel Specialist, she does everything from travel claims to preparing the DD214s. She writes orders for reservists to travel and she makes sure active duty personnel are paid. She spends 8-10 hours per day dealing with travel, with a travel budget of \$15 million. (Testimony of Michaud).
24. Personnel Officer Michaud concluded that the initial separation document Mr. Trainor received (the DD214) was incorrect, so she was the one, in February of 2020, who asked for a correction from the personnel support detachment. The DD215 altered the training time in the DD214, which changed his period of training from 390 days out of 400 days

net service to 199 days of training out of 400 days net service for that period. (Testimony of Michaud; Respondent Exhibits 3 and 4).

25. During her testimony at this hearing, Personnel Officer Michaud stated that Mr. Trainor was active duty from the moment he reported to VR-56 in Virginia, as she indicated in the March 10, 2020 Letter. She testified that he was not classified as training at that point and “that’s the problem with this program” – the NAT Program. (Testimony of Michaud; Respondent Exhibits 6).

Testimony of Naval Aircrewman Sabrina Wadkins

26. Naval Aircrewman (AWF) Sabrina Wadkins also testified on behalf of Mr. Trainor at the hearing. She has been in the Navy for seventeen years (17) and currently works in the NATOPS Department, which is the administrative department of the Naval Aircrewman. She is chief of the administrative department that trains all the New Accession Training (NAT) sailors and her job is to ensure, administratively, that people get their training qualifications prior to going off on their active duty orders. (Testimony of Wadkins).
27. AWF Wadkins testified that once a trainee comes to the squadron in Virginia, like Mr. Trainor did under the NAT Program, they have already completed Bootcamp and “A” School, and, upon arrival, they start in the *training pipeline*. They are issued a PQR, Personal Qualification Standards, and they fly as a trainee and learn their expertise. They go through a “check ride,” which is their qualification flight with an instructor to attain their qualifications. This takes about three (3) months. *Once they get qualified*, according to Wadkins, they are no longer considered a trainee, but their original orders do not stop – those orders continue. (Testimony of Wadkins).

28. AWF Wadkins indicated that Mr. Trainor got “qualified” on November 11, 2018 and he did not leave the squadron in Virginia until February 21, 2019. She testified that he was no longer a trainee for purposes of the G.L. c. 4, § 7, clause 43 (and G.L. c. 31, § 1) statutory 90-day veteran qualification period (i.e., between November 11, 2018 and February 21, 2019). She indicated that there is documentation to prove that November 11, 2018 was the date Mr. Trainor became qualified and, thus, no longer “in training”. This document was provided by the Appellant, post-hearing.⁶ (Testimony of Wadkins; Appellant’s Post Hearing Exhibit, PH0001-0002).
29. AWF Wadkins reiterated, “We don’t give them a new set of orders saying they’re active duty status because they fall under an entire set of orders they receive.” (Testimony of Wadkins).
30. When questioned by me about the November 11, 2018 date and what being “qualified” meant relative to active duty, Mr. Trainor’s first witness, Personnel Officer Michaud stated, “The November 11th date is not a solid date which would alter any sort or part of his comp or his orders.” (Testimony of Michaud).
31. Under cross examination, AWF Wadkins was asked if Mr. Trainor would have the same status in the NAT Program as someone who did not do the program, who is not in the Reserves – say someone who just walked off the street and joined the Navy – are they in the same position? Wadkins stated, “On paper, no. The training pipeline is still the same,

⁶In a Memorandum provided by the Appellant as a post-hearing exhibit, dated November 25, 2018, Commanding Officer J.E. Strange of the Fleet Logistics Support Squadron 56, memorialized in writing that AWFAN Andrew Trainor met the requirements ... and was designated as a Naval Aircrewman and as a Naval Warfare Specialist (NAWS) effective 11 November 2018. (Appellant’s Post-Hearing Exhibit PH0001). In a second memo provided by the Appellant as a post-hearing exhibit, dated November 25, 2018, Commanding Officer J.E. Strange of the Fleet Logistics Support Squadron 56, memorialized in writing that AWFAN Andrew Trainor completed all pertinent training requirements ... and was designated as Second Loadmaster... effective 11 November 2018. (Appellant’s Post-Hearing Exhibit PH0002).

but per our squadron, he is qualified. So on his orders it still shows him as a New Accession trainee, but technically, he is qualified.” (Testimony of Wadkins).

32. On cross examination, AWF Wadkins was asked about the discrepancy between the DD215, which indicates that Mr. Trainor was six (6) months active duty, and what was testified to at the hearing - that it was actually just 103 days – which is roughly 3 months – beginning on November 11, 2018 to February 21, 2019. AWF Wadkins stated, “We say 6 months of active duty because that is when he physically checked into the command. Once he checks in, he is considered active duty in the command. The schooling was over – now- it’s just in-house training.” When asked to clarify if Mr. Trainor was *training* since she seemed to acknowledge that, AWF Wadkins stated: “Yes, it’s training.” (Testimony of Wadkins).

Applicable Law

Generals Law c. 31, § 2(b) authorizes appeals to the Commission from 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, in relevant part, as follows:

“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.”

Analysis

HRD initially authorized Mr. Trainor’s request for a veteran’s preference. Following receipt of a letter from an Appointing Authority – the City of Taunton Police Chief - HRD more carefully reviewed Mr. Trainor’s DD214 and concluded that they had mistakenly granted Mr. Trainor the veteran’s preference since he had not achieved 90 days of active duty status. HRD

maintained that Mr. Trainor, during the relevant period of time, was activated for duty for training purposes only, as evidenced by his orders from the Navy and his participation in the NAT program – which HRD maintains is a strictly a training program from beginning to end.

I heard testimony from four witnesses, one for the Respondent and three for the Appellant. The testimony from each witness was helpful at times and further confused the issue at other times. Each witness was diligent in their testimony and credible, yet no one witness was able to make clear whether or not Mr. Trainor was ever considered *active duty* by the Navy, *active duty for training purposes*, or simply, *reserve training* during all relevant times. For instance, the DD214 indicates Mr. Trainor was training for 390 out of 400 net service days (January 18, 2018 to February 21, 2019.) The DD215 amended the DD214 calculations to training for 199 of the 400 days of net service; however, there was testimony by the Appellant's own witnesses that he was *training* during many of those 199 days listed in the DD215. I do not credit the DD215 as accurate based on the Appellant's witnesses' testimony.

Also entered into evidence was a letter written by Navy Personnel Officer Michaud, sent on March 10, 2020, after Mr. Trainor's veteran status was rescinded by HRD. Personnel Officer Michaud wanted to set the record straight, even in light of what the DD214 originally claimed and what the DD215 amended, that Mr. Trainor was to be considered active duty for the entire time he was at the squadron in Virginia – from January 18, 2018 to February 21, 2019. This letter seemingly indicates that Mr. Trainor was actually never training during that period of time - for over a year - which would seemingly easily qualify him for veteran status pursuant to Massachusetts law. However, this letter does not correspond with Ms. Michaud's own live testimony at the hearing - because she testified that he was training for many months during that time period, January 18, 2018 to February 21, 2019.

To make matters more complicated, another witness for the Appellant, AWF Wadkins (an administrator with the New Accession Training Program) testified that Mr. Trainor was actually activated for duty on a completely different date than what the DD214, the DD215, or what Personnel Officer Michaud's March 10, 2020 letter indicated. AWF Wadkins maintains that Mr. Trainor became active duty when he "qualified" for his position and cited to two memos written by Mr. Trainor's commanding officer. She testified that he became qualified on November 11, 2018 and remained at the squadron in Virginia until February 21, 2019 – which would mean he was active duty for approximately 103 days, which may qualify him under the statute as having been active duty for a period longer than 90 days, during wartime.

What remains unclear is whether someone enrolled in the NAT Program can ever be credited with non-training active duty time or will their time in the program always be considered *active duty for training purposes* only. I have insufficient information to make this determination given the fact that the DD214, the DD215, the March 10, 2020 letter, the Appellant's post-hearing exhibit, and the Appellant's witnesses' testimony all give different dates and different hypotheses as to when Mr. Trainor should have been considered active duty. Given the potentially precedent-setting nature of this decision, and because the proper due diligence regarding this matter should be conducted by the Personnel Administrator, I am remanding this case back to HRD with the following orders:

1. Within sixty days, HRD shall investigate whether persons who participate in the United States Navy's New Accession Training program are engaged in training for the entire duration of their contract or if persons can be engaged in non-training active duty.

2. If it is determined that persons can be engaged in non-training active duty while enrolled in the NAT program, HRD shall seek clarification regarding how such non-training active duty time is tracked and verified.
3. The Appellant shall also have sixty days to obtain additional relevant information regarding the New Accession Training program (i.e. – from the U.S. Dept. of Veterans Affairs) related to questions referenced above and provide this information to HRD and the Commission.
4. HRD shall report its findings to the Commission, along with a detailed statement regarding whether this additional information impacts HRD’s determination regarding the Appellant’s application for veteran status.

SO ORDERED.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chair

By a vote of the Civil Service Commission (Bowman, Chair; Camuso, Ittleman, Stein and Tivnan, Commissioners) on June 3, 2021.

Notice:
Andrew Trainor (Appellant)
Patrick Butler, Esq. (for Respondent)