

COMMONWEALTH OF MASSACHUSETTS

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

ANA VILLAVIZAR,
Appellant

v.

B2-21-009

HUMAN RESOURCES DIVISION,
Respondent

Appearance for Appellant:

Pro Se
Ana Villavizar

Appearance for Respondent:

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

Commissioner:

Christopher C. Bowman

ORDER OF DISMISSAL

1. On December 29, 2020, the Appellant, Ana Villavizar (Appellant), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the state's Human Resources Division (HRD) to not award her any education and experience (E&E) credit for the Police Sergeant examination.
2. On February 26, 2021, I held a 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 stipulated to the following:
 - a. On 9/19/20, the Appellant took the Police Sergeant examination.
 - b. The deadline for completing the E&E component of the examination was 9/26/20.
 - c. Upon reflection, the Appellant now acknowledges that she did not complete the E&E

portion of the examination. Rather, she provided information in response to certain requests for information, including submission of her DD-214, when she applied to take the examination.

- d. The Appellant did not submit any “supporting documentation” to HRD as part of the E&E component of the examination.
- e. As the Appellant did not complete the E&E portion of the examination and/or provide any supporting documentation, HRD has no record of such and the Appellant received a score of “0” on the E&E portion of the examination.
- f. The E&E score of “0”, combined with the written score received by the Appellant, resulted in a failing score.
- g. Since the Appellant did not pass the promotional examination, her name did not appear on the eligible list for police sergeant.
- h. As part of the pre-hearing conference, the Appellant indicated that she would be withdrawing her appeal with the Commission. No withdrawal was received by the Appellant, despite being sent a reminder email.

Applicable Civil Service Law

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.”

Pursuant to G.L. c. 31, § 5(e), HRD is charged with: “conduct[ing] examinations for purposes

of establishing eligible lists.” G.L. c. 31, § 22 states in relevant part: “In any competitive examination, an applicant shall be given credit for employment or experience in the position for which the examination is held.”

G.L. c. 31 § 24 allows for review by the Commission of exam appeals. Pursuant to § 24, “[t]he commission shall not allow credit for training or experience unless such training or experience was fully stated in the training and experience sheet filed by the applicant at the time designated by the administrator.”

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’”.

Analysis

It is undisputed that the Appellant sat for the written component of the Police Sergeant examination, but failed to complete the E&E component of the examination. Consistent with a series of appeals regarding this same issue, in which applicants have been unable to show that they followed instructions and submitted the online E&E claim, intervention by the Commission is not warranted as the Appellant cannot show that she was harmed through no fault of her own.

For this reason, the Appellant’s appeal under Docket No. B2-21-009 is *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 March 11, 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)(1), 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:

Ana Villavizar (Appellant)

Melissa Thomson, Esq. (for Respondent)