

**COMMONWEALTH OF MASSACHUSETTS**

**CIVIL SERVICE COMMISSION**

100 Cambridge Street – Suite 200

Boston, MA 02114

617-979-1900

**RANDY VITTINI,**

*Appellant*

Case No. B1-23-070

v.

**HUMAN RESOURCES DIVISION,**

*Respondent*

Appearance for Appellant:

Randy Vittini, *Pro Se*

Appearance for Respondent:

Ashlee N. Logan, Esq.

Labor Counsel

Human Resources Division

100 Cambridge Street, Suite 600

Boston, MA 02114

Commissioner:

Paul M. Stein<sup>1</sup>

**DECISION ON RESPONDENT’S MOTION TO DISMISS**

On June 5, 2023, the Appellant, Randy Vittini, appealed to the Civil Service Commission (Commission), purporting to act pursuant to G.L. c. 31, § 22, claiming he believed his written exam was scored incorrectly, and the questions were misleading. He sat for the police officer exam on March 25, 2023, and received his score notice on June 5, 2023. The Appellant failed the examination. The same day, the Appellant emailed the Human Resources Division (HRD) a message which stated: “I would like to file an appeal on my written exam 2023 state police/municipal police exam.” HRD treated the request as an Answer Sheet Review appeal and responded on June 23, 2023 informing the Appellant that his written examination had been correctly scored.

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<sup>1</sup> The Commission acknowledges the assistance of Law Clerk Alana Khan with the preparation of this decision.

A remote pre-hearing conference was held on July 5, 2023. The Appellant did not appear for the pre-hearing conference. On July 24, 2023, the Human Resources Division (HRD) filed a Motion to Dismiss the appeal on the grounds that the Commission does not have jurisdiction over appeals contesting the scoring of multiple-choice questions and, insofar as the Appellant now purports to argue that certain, unspecified questions were misleading, the Appellant did not make a timely “fair test” appeal. The Appellant filed no response to the Motion to Dismiss.

### **APPLICABLE LEGAL STANDARD**

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 1.01(7)(g)(3). A motion for summary decision to resolve an appeal before the Commission, in whole or in part, may be filed pursuant to 801 C.M.R. 1.01(7)(h). An appeal may be disposed of, however, on summary disposition only when, “viewing the evidence in the light most favorable to the non-moving party”, the undisputed material facts affirmatively demonstrate that the non-moving party has “no reasonable expectation” of prevailing on at least one “essential element of the case”. See, e.g., Milliken & Co. v. Duro Textiles LLC, 451 Mass. 547, 550 n.6 (2008); Maimonides School v. Coles, 71 Mass. App. Ct. 240, 249 (2008); Lydon v. Massachusetts Parole Board, 18 MCSR 216 (2005). The non-moving party must offer specific facts which establish a reasonable hope of prevailing after an evidentiary hearing in order to survive a motion for summary decision. Id.

Section 22 of G.L. c. 31 states in part: “An applicant may request the administrator [HRD] to conduct a review of whether an examination taken by such applicant was a fair test of the applicant's fitness actually to perform the primary or dominant duties of the position for which the

examination was held, *provided that such request shall be filed with the administrator no later than seven days after the date of such examination.*” (emphasis added)

Under G.L. c. 31, § 24, an Appellant may appeal to the Commission from a decision of the administrator [HRD]<sup>2</sup> regarding: (1) the marking of the applicant’s answers to essay questions; (2) a finding that the applicant did not meet entrance requirements for appointment; or (3) a finding that the examination taken by such applicant was a fair test.

### **ANALYSIS**

The undisputed facts, viewed in a light most favorable to the Appellant, establish that the Appellant did not comply with the statutory prerequisites for filing an appeal with the Commission. As Section 24 clearly establishes, the Commission cannot review specific multiple-choice questions and answers, and so the Commission does not have jurisdiction hear an appeal from HRD’s Answer Sheet Review. Also, as stated in HRD’s Motion to the Dismiss, he did not seek a timely “fair test” review by HRD. Thus, the Appellant’s appeal must be dismissed for lack of jurisdiction.

### **CONCLUSION**

For the above-stated reasons, HRD’s Motion to Dismiss is hereby *granted* and the appeal of the Appellant, Randy Vittini, under Docket No. B1-23-070, is *dismissed*.

Civil Service Commission

/s/Paul M. Stein

Paul M. Stein, Commissioner

By vote of the Civil Service Commission (Bowman, Chair; McConney, Stein, and Tivnan, Commissioners; Dooley, absent) on August 10, 2023.

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

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<sup>2</sup> Section 24 of G.L. c. 31 also provides: “The commission shall refuse to accept any petition for appeal . . . unless a decision on [a] request for review has been rendered by the administrator [HRD].”

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:

Randy Vittini (Appellant)

Ashlee N. Logan, Esq. (for Respondent)