

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, ss.

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

MICHELLE WETHERBEE,  
Appellant

v.

B2-20-154

HUMAN RESOURCES DIVISION,  
Respondent

Appearance for Appellant:

*Pro Se*  
Michelle Wetherbee

Appearance for Respondent:

Melissa Thomson, Esq.  
Human Resources Division  
One Ashburton Place: Room 211  
Boston, MA 02108

Commissioner:

Christopher C. Bowman

**DECISION**

On October 14, 2020, the Appellant, Michelle Wetherbee (Ms. Wetherbee or Appellant), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the state's Human Resources Division (HRD) to give her no Education and Experience (E&E) credit for the Institutional Parole Officer C (IPO C) promotional examination, resulting in her receipt of a failing score on the 2020 Institutional Parole Officer exam and exclusion from the eligible list.

On November 17, 2020, I held a remote pre-hearing conference via WebEx. A full hearing was held remotely via WebEx on February 22, 2021.<sup>1</sup> A recording was made of the hearing via

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<sup>1</sup> 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.

Webex. Both parties were provided with a link to access the recording, which the Commission has retained a copy of.<sup>2</sup> HRD and Ms. Wetherbee submitted post-hearing proposed decisions.

**FINDINGS OF FACT:**

HRD submitted eighteen (18) documents (Resp. 1-18). Ms. Wetherbee submitted 1 document (App. Ex. 1). Based upon the documents entered into evidence, the testimony of:

*Called by HRD:*

- Gilbert Lafort, Director of Test Development for HRD;

*Called by Ms. Wetherbee:*

- Michelle Wetherbee;
- Colette Santa, Parole Board Member

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 Appellant has worked for approximately fourteen (14) years at the Parole Board. She has held positions as a Transitional Police Officer and Deputy Chief Transitional Officer. She now works as the Chief Transition Parole Officer. In these positions, she prepares case files for the Board of Probation, interviews inmates, and conducts risk assessments. (Appellant Testimony).

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<sup>2</sup> 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.

2. The Appellant is known as a dedicated employee and the Parole Board members value her work. She has made sure that the Parole Board has what they need in order to do their work. (Santa Testimony).
3. The Appellant's current civil service ranking is Transitional Parole Officer A/B (TPO A/B).<sup>3</sup>
4. The 2020 TPO C exam consisted of two (2) components: a written exam component, and the Education and Experience (E&E) component. The weight afforded to the written exam component is 60% and the E&E exam component is 40%. (Lafort Testimony).
5. The scheduled date of the 2020 Parole Officer C examination was originally May 16, 2020, but was rescheduled because of the COVID-19 pandemic. (Resp. Ex 2).
6. The posting for the Departmental Promotional Examination for Institutional Parole Officer C (TRO-C) (Poster) states the following:

EDUCATION & EXPERIENCE (E&E): All candidates must complete the 2020 Institutional Parole Officer C E&E Claim application online. Instructions regarding this E&E Claim application will be emailed to candidates prior to the examination date and made available online. A confirmation email will be sent upon successful submission of an E&E Claim application.

All claims and supporting documentation must be received within 7 calendar days following the examination. Please read the instructions for submitting claims and supporting documentation carefully. (Resp. Ex. 2).

7. The Poster further stated, "Supporting documentation for your claim must be either attached to your E&E Claim application or emailed to [civilservice@mass.gov](mailto:civilservice@mass.gov)... E&E is an examination component, and therefore must be completed by the examinee. Failure to complete this component as instructed will result in a candidate not receiving any credit for

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<sup>3</sup> When she became Chief of Transitional Services, the Appellant took a leave of absence from her TRO-A position to become the Chief of Transitional Services, a management position. The Appellant wished to take the exam in the event the management position was no longer open to her. (Appellant Testimony).

E&E. Credit for E&E is applicable only to individuals who achieve a passing score on all other examination components, and will not be calculated for a candidate with a failing written examination score. Please be sure to read the instructions carefully.” (Resp. Ex. 2).

8. The Appellant took the exam on August 6, 2020. (Stip. Facts; Resp. Ex. 1).
9. The deadline for completing the Education and Experience (E&E) portion of the exam, via NEOGOV, was August 13, 2020. (Stip. Facts).
10. Once HRD receives candidates’ E&E submission from NEOGOV, HRD manually matches the supporting documentation with those scores. (Lafort Testimony).
11. HRD is notified when there are technical issues with the NEOGOV program. HRD staff will also often know if there is a technical problem with NEOGOV because they will receive a great deal of communication from many people trying to utilize the system. (Lafort Testimony).
12. During the summer of 2020, the Appellant’s work was affected by the pandemic. Employment changes, technical difficulties, and closures of some offices were some of the immediate results of the public emergency. That summer, she was also studying for the Civil Service exam and taking classes for her Master’s degree. (Appellant Testimony).

On July 16, 2020, HRD provided instructions to all applicants, including the Appellant, for submitting the E&E claim. The notice stated, in relevant part:

RE: 2020 Education & Experience (E&E) Claim for 2020 Institutional  
Parole Officer C-E&E Claim Instructions Examination

Dear Michelle Wetherbee:

Please pay close attention to the following regarding the submission of your Education & Experience (E&E) Claim.

The E&E claim application is separate from the Written Exam application you submitted to take the exam. THIS IS AN EXAMINATION

COMPONENT: Complete your Online E&E Claim on your own and to the best of your ability. Accurate completion of the education and experience claim is a scored, weighted, examination component. In order to ensure that no one receives any type of unfair advantage in the claim process, be advised that we are unable to provide individualized assistance to any applicant.

As stated in the exam poster, all E&E claims must be submitted ONLINE.

**The Online E&E Claim is now available. To access this exam component:**

1. Click [here](#) to access the application
2. Carefully read all information in the posting;
3. Click "Apply";
4. Log in to your account;
5. Complete the online E&E claim as instructed.
6. If you have successfully completed and submitted the E&E claim application you will receive a confirmation email.

**(AN APPLICATION IS NOT COMPLETE UNTIL YOU RECEIVE THIS CONFIRMATION EMAIL)**

The claim application must be submitted online and no later than 11:59 pm on **Thursday, August 13, 2020**. Late applications will not be accepted. If you do not receive an automated confirmation email after you submit your claim, your E&E claim application is considered incomplete and will not be accepted.

**Information on how to provide supporting documentation:**

1) Scan and attach documents to your online E&E claim application at time of submission.

or

2) Email scanned documents to [civilservice@mass.gov](mailto:civilservice@mass.gov)

**Please note that E&E is an exam component, and therefore, you must complete the online E&E claim. Supporting documentation will NO LONGER be collected at the exam site. Information must be attached to your online application or emailed to [civilservice@mass.gov](mailto:civilservice@mass.gov).**

Inquiries regarding completion of the claim will not be accepted or responded to. It is the responsibility of each candidate to carefully review and follow the instructions.

(Resp. Ex. 4, emphasis in original).

13. HRD sent the Appellant two (2) emails with a reminder to fill out E&E Claim on August 6, 2020 and August 12, 2020 (Resp. Ex. 6,7). These emails contained the same instructions about how to access and complete the E&E form. Further, the August 6 and August 12, 2020 emails stated,

“Please note that E&E is an exam component, and therefore, you must complete the online E&E claim. Supporting documentation will NO LONGER be collected at the exam site. Information must be attached to your online application or emailed to [civilservice@mass.gov](mailto:civilservice@mass.gov) . Inquiries regarding completion of the claim will not be accepted or responded to. It is the responsibility of each candidate to carefully review and follow the instructions.”

14. As directed in the E&E Claim Description, the candidate may exit the claim at any time and the work will be saved, allowing the candidate to return and resume work where it was left off prior to the submission deadline. (Resp. Ex. 9).

15. The Appellant understood that the E&E component of the exam was to complete the module online and submit supporting documentation. (Appellant Testimony).

16. The E&E form stated,

IT IS IMPORTANT THAT YOU READ ALL THE INSTRUCTIONS BEFORE COMPLETING THE ONLINE E&E CLAIM. FAILURE TO DO SO MAY RESULT IN A LOWER SCORE. YOU HAVE THE ABILITY TO SAVE THIS CLAIM AND RETURN TO IT TO MAKE AS MANY CHANGES AS NEEDED PRIOR TO **AUGUST 13, 2020 AT 11:59PM**. IF YOU CLICK THE SAVE AND SUBMIT BUTTON, YOU WILL NOT BE ABLE TO MAKE ANY REVISIONS TO YOUR CLAIM. IF YOU WOULD LIKE TO MAKE REVISIONS BEFORE THE AUGUST 13, 2020 DEADLINE, SEND AN EMAIL TO [CIVILSERVICE@MASS.GOV](mailto:CIVILSERVICE@MASS.GOV) WITH YOUR CHANGES. YOU HAVE THE ABILITY TO ACCESS YOUR SUBMITTED CLAIM AT ANYTIME BY SIMPLY LOGGING INTO YOUR ONLINE CIVIL SERVICE ACCOUNT. IF

**YOUR CLAIM AND SUPPORTING DOCUMENTATION IS NOT RECEIVED BY 11:59PM ON AUGUST 13, 2020, IT WILL NOT BE CONSIDERED.**

**THIS IS AN EXAMINATION COMPONENT:** Complete your Online E&E Claim on your own and to the best of your ability. Accurate completion of the education and experience claim is a scored, weighted, examination component. In order to ensure that no one receives any type of unfair advantage in the claim process, be advised that we are unable to provide individualized assistance to any applicant.

17. The E&E form also stated, “PLEASE, NO PHONE CALLS NOR EMAIL INQUIRIES. YOU WILL NOT RECEIVE A RESPONSE.”(Resp. Exhibit 9).
18. On August 10, 2020, the Appellant dropped off materials for a Parole Board member, Colleen Santa, who needed the materials for an upcoming Parole Board Hearing, at her home.<sup>4</sup> (Santa Testimony; Appellant Testimony). While there, she asked Ms. Santa to confirm some dates for her application.<sup>5</sup> (Appellant Testimony).
19. While at Ms. Santa’ home, the Appellant attempted to complete her E&E claim. She logged into the program by using her username and password. (Appellant Testimony).
20. The Appellant completed the E&E claims questions online. When she had completed the questions, she pressed “submit.” After hitting the “submit” button, the browser “froze” and she saw only a spinning circle. (Appellant Testimony; Santa Testimony).
21. The Appellant tried, with the help of Ms. Santa, to remedy the problem. They checked the Internet connection and refreshed the browser. (Santa Testimony, Appellant Testimony). The Appellant turned her machine off and on again, and when she re-accessed the E&E claim, there was nothing on it. She completed the form again, pressed “submit,” and the browser

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<sup>4</sup> Although the Appellant was still working within institutions preparing materials for hearings, Ms. Santa was working from home. (Santa Testimony; App. Testimony).

<sup>5</sup> The former Chief of Transitional Services, Ms. Santa had moved into the Parole Board position around the same time as the Appellant moved into the position of Chief of Transitional Services.

“froze” again, with the spinning circle again on her screen. (Appellant Testimony; Santa Testimony).

22. The Appellant left Ms. Santa’s home and continued her work day without resolving the technical difficulty. (Appellant Testimony).
23. Either on the afternoon of August 10, 2020 or the next day, August, 11, 2020, the Appellant called HRD. She called twice and on the third attempt, spoke to someone who told her to submit supporting documentation through email.<sup>6</sup>
24. The Appellant submitted her supporting documentation to the email address provided. The Appellant believed that her application had been submitted successfully because she believed that she followed the instructions given to her during the phone call. (Appellant Testimony).
25. The Appellant did not receive an email stating that her E&E application was complete and did not attempt to access the E&E application after August 10, 2020. (Appellant Testimony).
26. On August 10, 2020, HRD did not receive an influx of communication about NEOGOV not being accessible. On the last day of the application period, August 13, 2020, HR received 32 online E&E applications. (Lafort Testimony).
27. On September 15, 2020, the Appellant received her exam results, notifying her that she did not pass the examination. Her E&E claim was not scored because of “failure to complete online education and experience claim.” (Stip. Facts; Ex. 10).
28. The Appellant contacted HRD to inquire about receipt of her transcripts and the documentation in September 2020 and in the beginning of October, 2020. (Ex. 11, 14). HRD responded to her inquiries by explaining that she had not submitted her E&E claim. (Ex. 15).

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<sup>6</sup> During the COVID-19 pandemic, when HR staff were working from home pursuant to Executive Orders, the four telephone lines were transferred into one line. (Lafort Testimony).



29. The Appellant filed an appeal with HRD on September 17, 2020. (Stip. Facts). In her communication, she explained that she was instructed to email another copy of the E& E paperwork with her original email to HRD. (Ex. 16).
30. HRD denied the Appellant’s appeal on October 9, 2020 and the Appellant’s name did not appear on the October 15, 2020 eligible list for the position. (Stip. Facts).

*Legal Standard*

Generals Laws 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.”

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

Section 22 of G.L. c. 31 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.”

Section 24 of G.L. c. 31 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.’ G.L. c. 31, § 22(1).”

*Analysis*

It is undisputed that Ms. Wetherbee, and all applicants who took this most recent IPO-C examination, had until August 13, 2020 to file an E&E Claim with HRD. With the exception of supporting documentation, all applicants were to have completed the E&E portion of the examination *online*.

Ms. Wetherbee did not finish completing the E&E exam. While I do not doubt that she called HRD and received information about submitting supporting documentation via email, the instructions for completing the online module were clear. The instructions included notifying candidates about the final step of receiving an email to confirm submission. While all of her E&E information was entered into the online system, it was not “submitted” to HRD. Although Ms. Wetherbee subsequently provided HRD with all of the written documentation to support her E&E claim via email, her failure to complete the E&E process online resulted in her failing the promotional examination.

Ms. Wetherbee asks that the Commission view her omission to submit the E&E portion of the examination as attributable to the COVID-19 pandemic, including the changes in staffing, responsibilities, and work locations that were a result of the public emergency. In her position as Chief Transitional Parole Officer, the Appellant experienced frustrations and delays during this time.

I am not unsympathetic to Ms. Wetherbee’s argument here. However, in order to find that Ms. Wetherbee is an aggrieved person, I must find that she was harmed through no fault of her

own, which is not the case here. The Commission has reviewed similar examination circumstances in the past, and has determined in situations such as these that the appellants are not aggrieved persons. See, *e.g. Pavone v. HRD*, 28 MCSR 611 (2015). To find otherwise would run contrary to the Commission's recognition of HRD's authority to determine the requirements for competitive civil service examinations.

The total time for submission of E&E claim ran from July 16, 2020 to August 13, 2020, a total of twenty-eight days. Even after Ms. Wetherbee attempted submission of her E&E claim, she had three days to continue to try to submit the claim. Further, instructions on the e-mail notifications of August 6, 2020 and August 12, 2020 stated, "If you do not receive an automated confirmation email after you submit your claim, your E&E claim application is considered incomplete and will not be accepted." These instructions adequately notified Ms. Wetherbee that the E&E component would not be complete until she received an email stating that it was received.

Ms. Wetherbee's testimony at hearing, as well as the testimony from Parole Board Member Santa, demonstrate that Ms. Wetherbee is a conscientious, diligent worker who did her utmost to keep the Parole Board operating as it should, even during a public emergency. Nothing in the record, however, shows that Ms. Wetherbee was prevented from submitting her claim prior to August 10, 2020 or was prevented from attempting to submit her E&E claim after that date. While the public emergency has affected employment conditions, daily activities, and stress levels for everyone, the circumstances of the exam, including the E&E portion, were fair and within the purview of HRD's authority to establish exam components and weights pursuant to G.L. c. 31 § 24.

Ultimately, HRD is vested with broad authority pursuant to M.G.L. c. 31 § 22 to determine the passing requirements of exams. Here, HRD determined that submission of the online E&E Claim is a requirement to passing the IPO C/D promotional examination. I am not persuaded that the Commission should afford Ms. Wetherbee relief based upon her testimony that she did not know her E&E Claim was not submitted and received incorrect information from HRD. In light of the sufficient notice of the importance of the confirmation email, it is reasonable to expect that Ms. Wetherbee would have continued to pursue a part of the examination that she had trouble submitting.

*Conclusion*

Ms. Wetherbee's appeal under CSC Docket No. B2-20-152 is hereby *denied*.

Civil Service Commission

/s/ Christopher Bowman  
Christopher C. Bowman  
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Camuso, Stein and Tivnan, Commissioners) on May 6, 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 to:  
Michelle Wetherbee (Appellant)  
Melissa Thomson, Esq. (for Respondent)