

COMMONWEALTH OF MASSACHUSETTS

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

JAMES S. WHITE,
Appellant

v.

B2-20-146

HUMAN RESOURCES DIVISION,
Respondent

Appearance for Appellant:

Pro Se
James S. White

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 October 5, 2020, the Appellant, James S. White (Appellant), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the state's Human Resources Division (HRD) to credit him with 4.0 education and experience points for a bachelor's degree in exercise science, as opposed to 6.0 points as, according to the Appellant, he had been credited in two prior promotional examinations.
2. On October 27, 2020, I held a remote pre-hearing conference via Webex videoconference which was attended by the Appellant and counsel for HRD.
3. As part of the pre-hearing conference, the parties stipulated that the Appellant received a score of 86.8 on the District Fire Chief examination which, rounded up, resulted in a score of 87 for the purposes of the eligible list. According to HRD, even if the Appellant was given 2.0 additional E&E points, his total score would only increase to 87.2, which, for the purposes of establishing the eligible list, would still be considered an 87, not changing his ranking.

4. According to the Appellant, the Boston Fire Department receives scores down to the hundredth decimal point in order to break ties. The Appellant is tied with two other applicants on the relevant eligible list.
5. Based on a further review by HRD, both of the candidates tied with the Appellant received a score higher than 87.2, thus, even for the purposes of the tie-breaking method used by the Boston Fire Department, prevailing in this appeal would not result in a more favorable position.
6. Finally, the Appellant stated that, regardless of the above, he does not understand why, according to him, HRD gave him 6.0 points for this degree on two prior examinations, but only 4.0 points on this current examination. The Appellant argues that clarification on this issue (either from the Commission or HRD) would be beneficial to him on a going forward basis should he take promotional examinations in the future.
7. Based on the discussion at the pre-hearing conference, HRD agreed to research the matter further to determine whether HRD, as part of this examination process, changed how many points are given for this particular degree and, if so, the reasons for the change.
8. HRD subsequently notified the Commission that HRD, after consulting with its subject matter experts, determined over the years that “Kinesiology” should no longer be considered a “Category 1” major, as it had in the past.

Applicable Civil Service Law

G.L. c. 31, s. 2(b) authorizes the Commission to:

"Hear and decide appeals by a person aggrieved by any decision, action, or failure to act by HRD, except as limited by the provisions of section twenty four (24) relating to the grading of Examinations; provided that no decision or action of the administrator shall be reversed or Modified nor shall any action be ordered in the case of a failure of the administrator to act, Except by an affirmative vote of at least three members of the Commission, and in each such Case the Commission shall state in the minutes of its proceedings the specific reasons for its decisions.

No person shall be deemed to be aggrieved under the provisions of this section unless such person has made specific allegations in writing that a decision, action, or failure to act on the part of the administrator was in violation of this chapter, the rules or basic merit principles promulgated thereunder and said allegations shall show that such person's rights were abridged, denied, or prejudiced in such a manner as to cause *actual harm* to the person's employment status." (emphasis added)

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

Based on the undisputed facts here, the Appellant is not an aggrieved person. Specifically, HRD’s decision to grant him only 4 points, instead of 6, for his bachelor’s degree, did not cause actual harm to his employment status; the Appellant’s rank on the eligible list was not impacted by HRD’s determination, even if the Commission considers the internal tie-breaking method used by the Boston Fire Department.

Had HRD’s determination impacted the Appellant’s rank on the eligible list, a full evidentiary hearing may be warranted regarding how HRD determined that the Appellant’s particular major should only be credited with 4, as opposed to 6 points, as HRD had previously determined.

For the sake of clarity and transparency, it may be beneficial for HRD to consider keeping a public log of changes made to the experience and education schedule, accompanied by an explanation of why the subject matter experts recommended such a change.

Since the Appellant cannot show that he is an aggrieved person, his appeal under Docket No. B2-20-146 is hereby *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 February 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)(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:

James S. White (Appellant)
Melissa Thomson, Esq. (for Respondent)
Connie Wong, Esq. (Boston Fire Department)