

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, ss.

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

DANIEL WHORISKEY,  
Appellant

B2-20-028

v.

HUMAN RESOURCES DIVISION,  
Respondent

Appearance for Appellant:

*Pro Se*  
Daniel Whoriskey

Appearance for Respondent:

Emily Sabo, Esq.  
Human Resources Division  
100 Cambridge Street: Ste. 600  
Boston, MA 02204

Commissioner:

Christopher C. Bowman

**ORDER OF DISMISSAL**

On February 19, 2020, the Appellant, Daniel Whoriskey (Appellant), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the state's Human Resources Division (HRD) to deny him credit for his Education and Experience (E&E) exam component, resulting in his receipt of a failing score on the 2019 Fire Lieutenant examination and exclusion from the eligible list.

On March 10, 2020, I held a pre-hearing conference at the offices of the Commission which was attended by the Appellant and counsel for HRD.

The following is either undisputed or, where noted, based on statements made by the Appellant which, solely for the purposes of this dismissal, I have accepted as true:

1. The Appellant is presently employed as a firefighter in the Town of Dedham.

2. The fire lieutenant examination consisted of two (2) components: a written exam component, administered on November 16, 2019, and the Education and Experience (E&E) component. The passing score for the exam is a 70.
3. When the Appellant applied to take the examination, he was informed that he would receive an email with instructions on how to file the E&E Claim.
4. The Appellant sat for the written exam component on November 16, 2019. He received a score of 75.
5. The deadline for submitting the E&E claim was November 23, 2019.
6. HRD notified the Appellant of instructions for submitting the E&E claim online and that the deadline for submitting the E&E claim online was November 23<sup>rd</sup>.
7. The correspondence from HRD states, “[p]lease note that the *E&E is an examination component*, and therefore, you must complete the Online E&E Claim yourself... Please read the instructions carefully.” The correspondence from HRD also tells the Appellant that, once completed, he will receive a confirmation email confirming that the E&E component was completed.
8. HRD has no record that the Appellant went online and completed the E&E component.
9. The Appellant has no record of receiving a confirmation email.
10. On February 3, 2020, HRD notified the Appellant that, based on receiving a “0” for his E&E component, his final score was a 60. The passing score was 70.
11. The Appellant filed a timely appeal with HRD which was denied.
12. This timely appeal with the Commission followed.
13. On March 4, 2020, HRD established an eligible list for Dedham Fire Lieutenant. There are eight (8) candidates on that eligible list.

### *Legal Standard*

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.’ G.L. c. 31, § 22(1).”

### *Analysis*

It is undisputed that the Appellant, and all applicants who took this most recent fire lieutenant examination, had until November 23, 2019 to file an E&E Claim with HRD. With the exception of supporting documentation, all applicants must complete the E&E application online. There is

no evidence to show that the Appellant submitted the E&E claim on or before November 23<sup>rd</sup>.

Since the Appellant cannot show that he followed HRD's instructions regarding E&E component, he cannot show that he has been harmed through no fault of his own. Thus, he is not an aggrieved person. For this reason, his appeal under Docket No. B2-20-082 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 April 9, 2020.

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:

Daniel Whoriskey (Appellant)  
Emily Sabo, Esq. (for Respondent)