

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION
One Ashburton Place – Room 503
Boston, MA 02108
(617) 727-2293

ROBERT ARAKELIAN,
Appellant

v.

Case No. B1-15-220

HUMAN RESOURCES DIVISION,
Respondent

Appearance for Appellant:

Pro se¹

Appearance for Respondent:

Mark Detwiler, Esq.
Labor Counsel
Human Resources Division
One Ashburton Place, Room 207
Boston, MA 02108

Commissioner:

Cynthia A. Ittleman

DECISION ON RESPONDENT'S MOTION FOR SUMMARY DECISION

Pursuant to the provisions of G.L. c. 31, s. 2(b) and G.L. c. 31, ss. 22-24, the Appellant, Robert Arakelian (Mr. Arakelian or Appellant) filed a timely appeal with the Civil Service Commission (“Commission”) against the state’s Human Resource Division (“HRD” or “Respondent”), contesting HRD’s decision not to grant Education and Experience (“E&E”) credit to the Appellant for his experience as a University of Massachusetts at Worcester (UMASS Worcester) campus police officer for the 2015 entry-level “Police Officer – Municipal and MBTA Transit Police” exam (Exam).

¹ The Appellant represented himself at the hearing in this case but his father, an attorney, drafted the Appellant’s Opposition to the Motion for Summary Decision and Supplemental Submission.

A pre-hearing conference was held on December 1, 2015 at the offices of the Commission. HRD filed a Motion for Summary Decision (Motion) on December 31, 2015. The Appellant filed an Opposition to the Motion (Opposition) on January 13, 2016. A hearing on the Motion and Opposition was held on February 4, 2016. The hearing was digitally recorded; the parties were provided with copies of the recording and the Commission retained a copy of the recording.² At the hearing, I asked the Appellant to submit additional information (Supplemental Submission), which he filed on February 11, 2016. HRD filed a response to the Appellant's Supplemental Submission (Response) on February 18, 2016. For the reasons stated herein, the Motion is allowed and the appeal is dismissed.

FINDINGS OF FACT

Based on the Motion, Opposition, the parties' arguments at the hearing, Post-hearing submissions of the parties, and attachments to the submissions, and viewing the evidence in a light most favorable to the non-moving party, I find the following material facts are not in dispute:

1. The Appellant is a non-veteran resident of the Town of Shrewsbury. He has been a full-time member of the campus police department at UMASS Worcester since January 2012. He has been issued a “universal police ID” with security features from a program begun in 2011 by the Mass. Chiefs of Police and the Mass. Major City Chiefs. (Testimony of Appellant; Administrative Notice: www.masspoliceid.com³)

² 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.

³ The website www.masspoliceid.com provides the following information about the “universal ID”, in part, as follows: “Thanks to the efforts of the Massachusetts Chiefs of Police Association and the Massachusetts Major City Chiefs, police officers now carry identification cards that are secure and standardized. This new program, believed to be the first of its kind in the nation, assures the public and public safety/law enforcement officers that the bearer of one of these police ID cards is a legitimate police officer in the Commonwealth of Massachusetts.” Further, the website describes the security features of the ID card as follows: “The new ID cards use many of the same security

2. UMASS Worcester is a member of the Central Massachusetts Law Enforcement Council (CEMLEC). (Opposition) CEMLEC "... is a non-profit corporation consisting of over 60 municipal law enforcement agencies and one county Sheriff that assist each other through a mutual aid agreement. CEMLEC covers a land area of over 1,600 square miles and serves a population in excess of 750,000 citizens across four counties. Member agencies are fully insured and authorized to operate throughout all areas that CEMLEC covers. CEMLEC augments local departments by providing specialized services, equipment and personnel, while ensuring that the requesting police chief maintains overall control of law enforcement activities." (Opposition; Administrative Notice: <http://www.cemlec.com/>)
3. The Appellant completed full-time training in the Town of Boylston under the auspices of the state Municipal Police Training Committee (MPTC) prior to beginning his employment as a campus police officer at UMASS Worcester. The training began July 25, 2011 and ended December 16, 2011.
4. The Appellant registered for the April 27, 2015 Exam. The Exam posting states, "... individuals may apply to receive credit for employment or experience in the position title of municipal Police Officer." (Motion) Individuals registering for the Exam, must complete a supplemental questionnaire, which states that E+E "will be given only for experience in the position for which the examination is conducted. In other words ... you can claim experience you have had performing work ONLY as a Police Officer in a

features the Registry of Motor Vehicles deploys on your own drivers' license (sic), which will make phony cards easy to spot. ... [It] ... will assure you, the public, and other public safety/law enforcement officers that the bearer is a legitimate sworn officer in the Commonwealth of Massachusetts...." The website further indicates that the ID card is highly secure because it contains the signature of the head of the officer's department and the phone number and seal of the officer's department, the Massachusetts seal (using the same technology that is used on new driver Mass. licenses), a "ghost portrait" photo of the officer that is more difficult to copy, and it layers the data on the ID card. Id.

municipal police department". (Motion)(emphasis in original) The applicants are also required to select "yes" to indicate that they wish to claim this credit.

5. The Exam posting also states that applicants will receive ".2 points for each month of creditable employment/experience as a Police Officer ... Your employment/experience Credit is weighted at 10%. " (Motion; Response to Opposition)
6. On or about April 25, 2015, the Appellant took the Exam and requested credit for Education and Experience (E+E) for 39 months of employment as a campus police officer at UMASS Worcester. (Opposition)
7. On or about October 2, 2015, the Appellant received an email message from HRD notifying him that he had passed the exam with a score of 86.71 (rounded up to 87) but that his E+E request for his work as a campus police officer at UMASS Worcester was denied because the experience for which he requested E+E credit was as a campus police officer, not as a municipal or MBTA Transit Police position.
8. If the Appellant's employment as a UMASS Worcester campus police officer was creditable for E+E credit on the Exam, he would have received 40 months of creditable service towards E+E, his E+E score would be $(40 \times .2) \times .1 = .8$ points and his total score would have been 87.51 (rounded up to 88), which would not change his rank on the eligible list for the Town of Shrewsbury because the Appellant's score would still be lower than the person ranked immediately above him on the list. (Appellant's Supplemental Submission; Respondent's Response to Supplemental Submission)
9. On or about October 5, 2015, the Appellant appealed to HRD to reverse its previous denial of his E+E request in this regard. (Opposition)
10. On or about October 30, 2015, HRD denied the Appellant's appeal. (Opposition)

11. The Appellant filed the instant appeal at the Commission on November 12, 2015.

(Administrative Notice)

Standard of Review

An appeal before the Commission may be disposed of summarily, in whole or in part, pursuant to 801 CMR 1.01(7)(g) and 801 CMR 1.01(7)(h) when, as a matter of law, the undisputed material facts affirmatively demonstrate that there is “no reasonable expectation” that a party can prevail on at least one “essential element of the case”. *See, e.g., Milliken & Co., v. Duro Textiles LLC*, 451 Mass. 547, 550, fn.6, (2008); *Maimonides School v. Coles*, 71 Mass.App.Ct. 240, 249 (2008); *Lydon v. Massachusetts Parole Board*, 18 MCSR 216 (2005).

Applicable Civil Service Law

G.L. c. 31, s. 2(b) authorizes appeals to the Commission by persons aggrieved by certain actions or inactions by the Massachusetts Human Resources Division (HRD) or, in certain cases by appointing authorities to whom HRD has delegated its authority, and which actions have abridged their rights under civil service laws. It states, in part,

No person shall be deemed to be aggrieved ... 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.”

Id.

The commission is charged with ensuring that the system operates on "[b]asic merit principles." *Mass. Assn. of Minority Law Enforcement Officers v. Abban*, 434 Mass. 256, 259 (2001), *citing City of Cambridge v. Civil Serv. Comm’n*, 43 Mass.App.Ct. 300, 304 (1997). “Basic merit principles” means, among other things, “assuring fair treatment of all applicants and employees in all aspects of personnel administration. . . .” and protecting employees from

“arbitrary and capricious actions.” G.L. c. 31, § 1. “A decision is arbitrary and capricious when it lacks any rational explanation that reasonable persons might support.” Cambridge, 43 Mass.App. at 303 (internal citations omitted).

HRD is vested with broad authority to determine the requirements for competitive civil service exams. Under G.L. c. 31, § 22, “[t]he administrator shall determine the passing requirements of examinations.” The statute also states that “[i]n any competitive examination, an applicant shall be given credit for **employment or experience in the position for which the examination is held.**” Id. (emphasis added). The Personnel Administration Rules (“PAR”) promulgated by HRD provide, in pertinent part: “[t]he grading of the subject of employment or experience as a part of an entry-level examination shall be based on a schedule approved by the administrator which shall include **credits for elements of employment or experience related to the title for which the examination is held.**” PAR .06(c)(emphasis added). G.L. c. 31, s. 23 provides in part,

... Within six weeks after receipt of a request pursuant to section twenty-two, the administrator shall, subject to the provisions of this section, conduct such review, render a decision, and send a copy of such decision to the applicant. If the administrator finds that an error was made in the marking of the applicant’s ... training and experience ... , the administrator shall make any necessary adjustment to correct such error.

(Id.)

Under G.L. c. 31, § 24, an applicant may then appeal to the Commission from a decision of the administrator. While the first paragraph of G.L. c. 31, § 24 does not expressly list “training and experience” appeals, such appeals are referenced in the second paragraph of the statute as follows,

... the 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.”

Id.

In O'Neill v. Civil Serv. Comm'n, 10-P-384 (February 15, 2011)(Rule 1:28), the Appeals Court ruling established that “a fair reading of the entire statute ‘indicated an intent by the Legislature that training and experience scores may be appealed under § 24. . . .’” Therefore, the Commission has jurisdiction to review HRD determinations regarding E&E credit on an exam.

Analysis

The undisputed material facts established in this case affirmatively indicate that there is “no reasonable expectation” that the Appellant can prevail on at least one “essential element of the case”. Rather, the established facts indicate that the Appellant is not aggrieved as required under G.L. c. 31, s. 2(b). Specifically, the Exam posting contained detailed instructions to candidates about what was required in order to successfully request E+E credits for the 2015 Exam. It stated, “... individuals may apply to receive credit for employment or experience in the position title of municipal Police Officer.” Further, candidates were required to complete a supplemental questionnaire for the Exam, which stated that E+E “will be given only for experience in the position for which the examination is conducted. ... you can claim experience you have had performing work ONLY as a Police Officer in a municipal police department”. In addition, the Exam posting stated that applicants will receive “.2 points for each month of creditable employment/experience as a Police Officer ... Your employment/experience Credit is weighted at 10%. If the Appellant’s employment as a UMASS Worcester campus police officer was creditable for E+E credit on the Exam, he would have received 40 months of creditable service towards E+E, his E+E score would be $(40 \times .2) \times .1 = .8$ points, his total score would have been 87.51 (rounded up to 88), which would not change his rank on the eligible list for the Town of Shrewsbury because the Appellant’s score would still be lower than the person ranked

immediately above him on the list. Thus, even if HRD credited the Appellant's employment experience at the UMASS Worcester campus police department in its determination of his E+E score and added it to his written exam score, the Appellant's rank on the eligible list would not have changed. Under these circumstances, the Appellant is not aggrieved and his appeal is moot.

The parties make lengthy, detailed legal arguments concerning the validity of HRD's exclusion of University of Massachusetts campus police employment from E+E accreditation which are moot in view of the decision that the Appellant is not aggrieved. Therefore, I do not decide whether experience as a campus police officer at UMASS Worcester merits the same accreditation provided to experience as a municipal police officer. Nonetheless, it is worthwhile summarizing the parties' arguments in this regard as they involve E+E for campus police at a state University campus, whereas other recent Commission cases involved E+E for campus police on private college campuses.⁴

The Appellant argues that a number of statutes and regional police practices indicate that his experience as a UMASS Worcester campus police officer is the same as the experience of municipal police officers and different from the experiences of campus police on private campuses. Further, he asserts, it was arbitrary and/or capricious for HRD to deny his E+E claim without consideration of statutes he cites, for example, that authorize University campus police and municipal police to provide mutual aid, training requirements, and his involvement in regional police activities. HRD argues that the Exam posting clearly states that E+E will be credited only for experience in the title for which the exam is given; since the Appellant requested E+E for his campus police experience, the HRD avers its decision was correct. In addition, HRD states that it does not have the resources to conduct the type of analysis that the Appellant requests for each candidate requesting E+E for their experience as campus police

⁴ See, e.g., Persampieri, Sprague, Schroeder v. HRD, B1-13-236, 237 and 239 and Verderico v. HRD, B1-13-254.

officers because the applicable law and the practices of each of the many diverse campuses in Massachusetts are so different that the level of inquiry required in each of such cases is prohibitive.⁵ Further, HRD argues that it would be arbitrary and capricious for it to award E+E credit to campus police officers on some campuses while denying it to campus police on other campuses. All that said, the level of violence we are experiencing indicates that the world has changed and HRD should re-evaluate whether granting E+E credit for campus police officer experience should be awarded.

Conclusion

For all of the above stated reasons, the Motion is ***allowed*** and the appeal, Docketed B1-15-220, is hereby ***dismissed***.

Civil Service Commission

/s/ Cynthia A. Ittleman
Cynthia A. Ittleman
Commissioner

By a 4-1 vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman and Stein – Yes; Tivnan - NO) on June 8, 2017.

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:
Robert Arakelian (Appellant)
Mark Detwiler, Esq. (for HRD)
John Marra, Esq. (HRD)

⁵ The level of inquiry regarding the experiences of campus police at state community colleges may or may not be different from the experiences of state University campus police officers.