

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

SEAN BARRETT,
Appellant

v.

B2-17-102

HUMAN RESOURCES DIVISION,
Respondent

Appearance for Appellant:

Pro Se
Sean Barrett

Appearance for Respondent:

Patrick Butler, Esq.
Human Resources Division
One Ashburton Place: Room 211
Boston, MA 02108

Commissioner:

Christopher C. Bowman

DECISION ON MOTION FOR SUMMARY DECISION

On May 17, 2017, the Appellant, Sean Barrett (Lt. Barrett), a lieutenant with the Boston Fire Department (BFD), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the state's Human Resources Division (HRD) to deny him .35 education and experience (E&E) points for Question #19 on the November 19, 2016 promotional examination for Boston Fire Captain.

On May 30, 2017, I held a pre-hearing conference which was attended by Lt. Barrett and counsel for HRD. Subsequent to the pre-hearing, HRD filed a Motion for Summary Decision and Lt. Barrett filed a reply. Subsequent to HRD filing the Motion for Summary Decision, I asked HRD to provide the Commission with the actual supporting documents that were submitted by Lt. Barrett.

Based on the submissions, including the documentations that I reviewed, the following appears to be undisputed:

1. E&E Question #19 States:

“Related Experience OUTSIDE Department – Older Timeframe (11/19/2004 – 11/14/2001). Experience outside the specified department and from 5 to 12 years prior to the examination date in a recognized fire department as a fire cadet, auxiliary, call, intermittent, or reserve Firefighter. Count only time actually spent performing firefighting and related duties, not the entire time you were on call. Do not record experience in the maritime services or in a private industrial company. Military firefighting service is creditable only if you can document service in a military occupational specialty, such as Fire Protection Specialist, in which firefighting was the main purpose of the duty. Do not include experience for which you have given yourself credit in a previous category.”

2. Lt. Barrett claimed 36 to 47 months, or .035 points, in answering this question.
3. Lt. Barrett submitted copies of the following: his National Fire Board certificates issued by the Department of Defense, his employment verification form; his EMT license; and letters stating that he had worked as an Acting Captain and Lieutenant within the Boston Fire Department.
4. Lt. Barrett did not submit documentation to show that he had actually performed 36 to 47 months of military firefighting service (i.e. – a DD 214 military document).
5. On March 31, 2017, Lt. Barrett was sent his score and informed that he was not going to receive the requested .035 points for question 19 as there was no verification provided.
6. That same day, Lt. Barrett sent a reply email to HRD stating that his DD 214 was “on file with HRD” presumably referencing a DD 214 that Lt. Barrett submitted as part of a prior examination.

Legal Standard

The fundamental purpose of the civil service system is to guard against political considerations, favoritism, and bias in governmental hiring and promotion. The commission is charged with ensuring that the system operates on "[b]asic merit principles." Massachusetts Assn. of Minority Law Enforcement Officers v. Abban, 434 Mass. 256 at 259 (2001), citing Cambridge v. Civil Serv. Comm'n., 43 Mass.App.Ct. 300 at 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. Personnel decisions that are marked by political influences or objectives unrelated to merit standards or neutrally applied public policy represent appropriate occasions for the Civil Service Commission to act. Cambridge at 304.

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."

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).”

HRD’s Argument

HRD argues that Lt. Barrett failed to submit the proper documentation to receive the requested E&E credit and, therefore, that HRD was correct in not crediting Lt. Barrett with the requested .035 points for Question 19. Further, HRD argues that Lt. Barrett’s subsequent reference to a DD 2014 “on file” is absurd and that HRD is not required to maintain and keep prior records on behalf of exam applicants to be used for future examinations. They ask the Commission not to grant the .035 points requested, which they argue would be unfair to all other exam applicants who followed the instructions and submitted the proper documentation.

Appellant’s Argument

Lt. Barrett argues that the instructions did not specifically state that he was required to submit a DD 214 to verify the time served as a firefighter in the military and, that, if required, his DD 214 was indeed on file with HRD.

Analysis / Conclusion

As part of this examination process, Lt. Barrett never submitted documentation to verify that he actually performed 36 to 47 months as a firefighter in the military. While the instructions do not specifically ask applicants to submit a DD 214, the instructions clearly ask for some type of documentation. While the certificates submitted by Lt. Barrett show that he was “certified” in various titles by the Department of Defense, they do not show any dates of service, which was required in order for HRD to provide him with any credit. HRD was not required to search for documents submitted by Lt. Barrett as part of prior examinations.

For these reasons, HRD's Motion for Summary Decision is allowed and Lt. Barrett's appeal under Docket No. B2-17-102 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 November 9, 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:

Sean Barrett (Appellant)

Patrick Butler, Esq. (for Respondent)