

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

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

WAYNE G. CLARKE,
Appellant

Docket No: B2-16-44

v.

**HUMAN RESOURCES DIVISION and
BOSTON POLICE DEPARTMENT,**
Respondents

Appearance for Appellant:

Wayne G. Clarke, Pro Se

Appearance for Human Resources Division:

Michael Downey, Esq.
Human Resources Division – Room 211
One Ashburton Place
Boston, MA 02108

Appearance for Boston Police Department:

Jaelyn Zawada, Esq.
Boston Police Department
One Schroeder Plaza
Boston, MA 02120

Commissioner:

Paul M. Stein

SUPPLEMENTAL DECISION

The Appellant, Wayne G. Clarke, currently a Sergeant with the Boston Police Department (BPD), appealed to the Civil Service Commission (Commission), pursuant to G.L.c.31,§24, to appeal a review by the Massachusetts Human Resources Division (HRD) of the markings of his answers to essay questions in the In-Basket portion of the September 2014 Assessment Center Examination for Police Lieutenant with the BPD, which review HRD conducted pursuant to G.L.c.31,§22 and the Commission's prior Decision in Clarke v. Human Resources Division, 29 MCSR 1 (2016) (*Clarke I*). After hearing of the instant appeal, the Commission issued another Decision, dated, July 20, 2017, which allowed Sgt. Clarke's appeal, in part (*Clarke II*).

In *Clarke II*, the Commission found that, save for one exception, HRD had established that the calculation of Sgt. Clarke's In-Basket scores were consistent with civil service law. The

Commission ordered HRD to provide more information to the Commission about the one issue on which evidence was not sufficient, namely, the issue of EB Jacobs' use of a "standardization" process, as to which HRD had failed to make any review, and which was relevant to the form of relief, if any, that Sgt. Clarke should receive. In the alternative, HRD was to provide an option, in lieu of providing the additional information, to make an adjustment to Sgt. Clarke's In-Basket Examination Score that would bring his rounded Final Overall Examination Score to 83, and to adjust his place on the current BPD Lieutenant's eligible list accordingly.

On September 8, 2017, HRD elected to provide the supplemental information regarding the "standardization" of the Lieutenant's Examination In-Basket Test Scores.¹ On September 22, 2017, September 25, 2017 and October 10, 2017, HRD provided additional supplemental information in response to further questions from the Commission and Sgt. Clarke. I have now reviewed the supplemental explanatory information provided by HRD and BPD and, after careful consideration, conclude that: (1) HRD has presented a rational explanation that justifies EB Jacobs' use of a standardization algorithm to adjust the Lieutenant's In-Basket Test scores to account for a statistically significant discrepancy in the scoring among the five panels used to grade the In-Basket exercise, namely, the unusually high scores given to candidates by Panel 506, the panel to which Sgt. Clarke's exercise responses were assigned, as compared with the four other panels; and (2) further adjustment of Sgt. Clarke's In-Basket score is not warranted and his final rounded score of 81, which keeps him tied in 70th place, shall remain unchanged.

Analysis

In its supplemental submission, HRD explained that the standardization of the Lieutenant's In-Basket scores was a judgment made by EB Jacobs, based on its observation of the differences

¹ Sgt. Clarke objected to HRD's submission as beyond the 45-day limit set for HRD's response in *Clarke II*. Although HRD's response was, technically, three days late, the delay has caused no prejudice to the Appellant and, if necessary, an extension nunc pro tunc, is plainly in order.

in the mean (average) scores by panel, with the highest scoring panel (Panel 506, which is the panel that scored Sgt. Clarke's exercise), giving candidates an average assessors' score of 26.55, while the other panels' average assessors' scores were 19.80, 21.72, 22.76 and 22.81.

Using a routine statistical test (i.e., a one-way "analysis of variance" or ANOVA), EB Jacobs compared the average scores for the candidates for each panel relative to the overall standard deviation of the panels. Since EB Jacobs randomly assigned candidates to panels, it would be expected that scores for candidates, on average, would be equal between panels. The ANOVA analysis, however, generated an F value of 3.759, with an associated "significance value" of .007 (7 out of 1,000), which means, in effect, that there was 99.3% confidence that the panels were NOT scoring the candidates similarly.

The statistically significant tendency for Panel 506 to award higher scores is also apparent, anecdotally. For example, I note that the lowest raw score awarded by Panel 506 was 17.50000, compared to 11.0000, 12.0000, 13,000, 10.0000 and 10.0000 for the other four panels. Similarly, a comparison of the set of scores awarded by Panel 506, shows nine total scores above 30.0000, and four total scores below 20.000, as compared with all other four panels, which awarded precisely the opposite range of scores, on average, i.e., fewer than two scores above 30.0000 and, at least seven scores below 20.0000.

Since the mean panel scores showed these statistically significant differences, the appropriate step was to remove those panel differences by standardization. Although the precise algorithm used to standardize the scores has not been provided, EB Jacobs did perform a test to determine the correlation of the scores before and after standardization. That test demonstrated a correlation of 0.99, which I infer to mean that, overall, the relative scores for all candidates under the two methods changed slightly, if at all. For example, all the candidates (including Sgt.

Clarke) with a final non-standardized rounded score of 82, each moved down one point to a standardized score of 81, staying within the same tie group either way. I find, therefore, that the standardization process was reasonable.

The one difference, as it affected Sgt. Clarke, in the standardized vs. non-standardized scoring was the slight shifting of several other candidates with non-standardized scores of 80, 81 and 83. Five candidates with non-standardized scores of 80 were increased to a standardized score of 81, moving them from a non-standardized tie group just below Sgt. Clarke up to the same standardized tie group of 81 with Sgt. Clarke. Similarly, four candidates with non-standardized scores of 81, increased to a standardized score of 82, which moved them from the non-standardized tie group just below Sgt. Clarke to a standardized tie group just above him. Finally, three candidates with non-standardized scores of 83 were reduced one point to 82, keeping them one tie group above Sgt. Clarke under either scenario.

Before Standardization

83 - 7 tied in 57th place
82 – 3 tied in 66th place
81- 5 tied in 69th place
80 – 10 tied in 74th place

After Standardization

83 – 2 tied in 61st place
82 – 7 tied in 63rd place
81 – 9 tied in 70th place
80 – 7 tied in 78th place

Similar slight adjustments to the tie groups also occurred for candidates scoring 84 and above, as well as 79 and below.

I also note that, in the two years since the current BPD Lieutenant’s eligible list has been in effect, the BPD has promoted less than a dozen new lieutenants from that list. Absent any change in circumstances, of which the Commission has not been apprised, at that rate, it would require four years or more before Sgt. Clarke (or any other candidate placed 63rd or below) would rise to the level on the list that would fall within the 2n+1 range that would entitle him to consideration, whether or not he remained with a score of 81 or was awarded an increased score

of 82. Moreover, as the typical life of an eligible list is two or three years, the current list will probably expire before any of these tie groups will be reached. Thus, there is little difference, if any, in the likelihood that the BPD would reach Sgt. Clarke, whether he remains in his current place on the list (70th tie group) or was moved up (at the most) one tie-group.

In sum, the standardization of the Lieutenant's In-Basket exercise scores, having been justified and rationally determined, precludes the Commission from ordering that Sgt. Clarke's final rounded score be adjusted (at the most by one point) from the score of 81 he was awarded.

CONCLUSION

For the reasons stated above, the Commission's prior Decision dated July 20, 2017 is modified and, consistent with this Supplemental Decision, the appeal of the Appellant, Wayne G. Clarke, is *dismissed*.

Civil Service Commission

/s/ Paul M. Stein

Paul M. Stein

Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein & Tivnan, Commissioners) on November 9, 2017.

Notice to:

Wayne G. Clarke (Appellant)

Michael Downey, Esq. (for HRD)

Jaclyn Zawada, Esq. (for BPD)

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).