

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

GREGORY NAYLOR,
Appellant

v.

B1-17-163

HUMAN RESOURCES DIVISION,
Respondent

Appearance for Appellant:

Pro Se
Gregory Naylor

Appearance for Respondent:

Melissa Thomson, Esq.
Human Resources Division
One Ashburton Place: Room 211
Boston, MA 02108

Commissioner:

Christopher C. Bowman

DECISION ON RESPONDENT’S MOTION FOR SUMMARY DECISION

On August 14, 2017, the Appellant, Gregory Naylor (Mr. Naylor), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the state’s Human Resources Division (HRD) to deny him employment / experience (E/E) credit for time served as a Connecticut State Trooper (approximately 20 years) as part of the entry-level civil service examination for police officer., administered by HRD on March 25, 2017.

On September 26, 2017, I held a pre-hearing conference which was attended by Mr. Naylor and counsel for HRD. At the pre-hearing, HRD argued that its decision not to grant E/E credit for time spent as a State Trooper was uniformly applied to all candidates and is consistent with [G.L. c. 31, s. 22](#) which states in part: “In any competitive examination, an applicant shall be given credit for employment or experience in the position for which the examination is held.”

Mr. Naylor argued that the outcome here is illogical, giving E/E credit for time served as a police officer in a city or town, but not as a State Trooper, particularly given that, according to him, as a Connecticut State Trooper, he served as a “Resident” State Trooper and actually served as the law enforcement officer for two (2) cities and towns in that state.

On September 27, 2017, I issued a Procedural Order, allowing HRD to file a Motion for Summary Decision and for Mr. Naylor to file a reply, both of which have now been received by the Commission.

Based on the statements and submissions of the parties, the following does not appear to be dispute, unless otherwise noted:

1. Until August 1, 2017, Mr. Naylor served as a Connecticut State Trooper for twenty (20) years.
2. According to Mr. Naylor, he served a majority of his time as a “Resident Trooper” assigned to the towns of Norfolk and North Canaan, CT.
3. The CT Resident Trooper program allows State Troopers to serve as police officers in many small communities in CT that do not have their own police force. CT towns with a resident state trooper are charged 85% of the state trooper's salary and fringe benefit costs for regular time and regular overtime (overtime resulting from the normal duties of the trooper). The town is charged 100% of salary and fringe benefits for overtime which is at the request of the town (e. g. high school prom, town parade, town requested DUI check-point). (Administrative Notice: [CT General Assembly Office of Fiscal Analysis, 2014](#) and [published reports](#))
4. On March 25, 2017, Mr. Naylor sat for the 2017 police officer examination.

5. As part of the examination process, Mr. Naylor sought E/E credit for his approximately twenty (20) years of service as a CT State Trooper.
6. HRD did not award Mr. Naylor any E/E credit for his time as a CT State Trooper and denied his appeal seeking E/E credit for this experience.
7. Mr. Naylor's appeal to the Commission followed.

Applicable Civil Service Law

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)."

Analysis

HRD argues that the language of Section 22 is plain and unambiguous and "the position *for which the examination is held*" is unequivocally that of *Municipal Police Officer* and that to

award E/E credit for time served in a position other than Municipal Police Officer (i.e. – *State Trooper*) would yield an inconsistent and illogical result. Mr. Naylor argues that to *not* award him credit, as part of the police officer examination process, for approximately twenty (20) years of service as a State Trooper, most of which was spent as a de facto municipal police officer through the Resident Trooper program, is an illogical result.

HRD did not provide any applicant who took the *entry-level* police officer examination with E/E credit for time served as a State Trooper. Rather, it limited E/E credit for “experience in the position” to time served as a police officer, reserve police officer, intermittent police officer, etc.

As referenced in their motion, HRD does, however, award credit for time served as State Trooper for applicants taking *promotional* examinations for superior officer positions (i.e. – police sergeant, lieutenant, etc.) HRD distinguishes this credit as “education and experience” (*E&E*) credit that is a “component” of the promotional examination and thus, presumably, separate from the “*E/E*” credit mandated by the Legislature in Section 22. Even accepting this painfully difficult distinction, HRD appears to tacitly acknowledge that Section 22 does not *prohibit* HRD from awarding credit for time served as a State Trooper (whether as a “component” of the examination or via some other mechanism), but, rather, sets a minimum requirement that credit be given for time served in the position for which the examination is held (i.e. – police officer). Put simply, HRD has made a discretionary decision not to award credit for time served in another position (i.e. – State Trooper) for entry-level police office examinations, while awarding credit to applicants taking superior officer civil service examinations.

That leads to the question of whether HRD’s discretionary decision not to provide credit for service as a State Trooper is arbitrary and capricious, or “lacking any rational explanation that reasonable persons might support.” Cambridge v. Civ. Serv. Comm’n, 43 Mass.App.Ct. 300, 303

(1997) (citations omitted). Thus far, HRD has not provided the Commission with a rational explanation for not awarding credit to entry-level police officer candidates with prior experience as a State Trooper. While the Commission has consistently acknowledged and affirmed HRD's "broad authority" in this area, the end result here (no credit for twenty (20) years of service as State Trooper) appears so illogical and so contrary to commonsense (and public policy), that additional information and clarification is needed from HRD before the Commission can conclude whether HRD's decision here is arbitrary and capricious.

Conclusion

For all of the above reasons, ***HRD's Motion for Summary Decision is denied at this time.*** A full hearing will be held, which will include an opportunity for HRD to present additional evidence to support its determination here.

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 March 15, 2018.

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:

Gregory S. Naylor (Appellant)

Melissa Thomson, Esq. (for Respondent)