

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

JOHN RYAN,
Appellant

v.

B1-18-008

HUMAN RESOURCES DIVISION,
Respondent

Appearance for Appellant:

Peter D. Pasciucco, Esq.
Anderson, Goldman, Tobin &
Pasciucco, L.L.P.
50 Redfield Street
Boston, MA 02122

Appearance for Respondent:

Mark Detwiler, Esq.
Human Resources Division
One Ashburton Place: Room 211
Boston, MA 02108

Commissioner:

Christopher C. Bowman

ORDER OF DISMISSAL

On January 16, 2018, the Appellant, John Ryan (Mr. Ryan), filed an appeal with the Civil Service Commission (Commission), contesting the marking of his multiple choice examination for police officer, administered by the state’s Human Resources Division (HRD) on March 25, 2017. Specifically, Mr. Ryan stated: “On my answer sheet ... to the 2017 exam, the section for ‘BOOKLET NO’, ‘SPECIAL CODES’, ‘GENDER’, ‘ETHNICITY’ and ‘HIGHEST LEVEL OF EDUCATION’ are not filled in. I believe this triggered an incorrect scoring of my exam ...”

On February 13, 2018, I held a pre-hearing conference at the offices of the Commission which was attended by Mr. Ryan, his counsel and counsel for HRD. Notwithstanding potential

issues regarding whether the Commission had jurisdiction to hear such an appeal, HRD provided an overview of the review process that was done by HRD to determine that there was no error in the scoring of Mr. Ryan's examination. Additionally, based on some unique factors raised at the pre-hearing, HRD voluntarily agreed to have EB Jacobs (the testing company that developed and scored the examination) conduct an additional, manual review, re-scoring five (5) random questions. It was determined that each question was scored correctly in that the initial scoring of those five (5) questions was not flawed.

The Commission does not have jurisdiction over appeals related to the scoring of multiple choice questions on a civil service examination. See G.L. c. 31, ss.22-24 and Hickey v. Civ. Serv. Comm'n & Human Resources Div., 60 Mass.App.Ct. 1104, 799 (2003) (Unpublished Decision), upholding a Superior Court Decision in which the Superior Court affirmed a Commission decision dismissing a multiple choice-related appeal based on a lack of jurisdiction.) Even if such jurisdiction existed, HRD has shown that it exercised its due diligence here and sufficiently shown that Mr. Ryan's examination was scored properly.

For these reasons, the Appellant's appeals under Docket No. B1-18-008 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 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)(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:

Peter Pasciucco, Esq. (for Appellant)

Mark Detwiler, Esq. (for Respondent)