

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

ROBERT McCARTHY,
Appellant

v.

B2-18-037

HUMAN RESOURCES DIVISION,
Respondent

Appearance for Appellant:

Pro Se
Robert McCarthy

Appearance for Respondent:

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

Commissioner:

Christopher C. Bowman

DECISION ON HRD’S MOTION FOR SUMMARY DECISION

1. On March 6, 2018, the Appellant, Robert McCarthy (Mr. McCarthy), a firefighter in the Cambridge Fire Department, filed an appeal with the Civil Service Commission (Commission), contesting the decision of the state’s Human Resources Division (HRD) not to award him six (6) education and experience (E&E) credits for a bachelor of science degree that was conferred upon him by Salem State College on May 22, 2010.
2. On March 20, 2018, I held a pre-hearing conference which was attended by Mr. McCarthy and counsel for HRD.
3. As part of the pre-hearing conference, the parties agreed that, as part of the E&E process, Mr. McCarthy submitted: A) a copy of his diploma from Salem State College; and B) an unofficial copy of a transcript from Salem State College which did not include all 120 credits required for graduation. Rather, the transcript provided to HRD did not include the final 3 credits awarded to Mr. McCarthy and stated that Mr. McCarthy was “Active in Program”.
4. HRD argued that the examination instructions explicitly state that an official (final) transcript is required to receive the six (6) points and that the instructions explicitly state that a diploma is not acceptable documentation.

5. As part of the pre-hearing, I referenced a recent decision, which I subsequently identified as [Jason Sullivan v. HRD, 30 MCSR 264 \(2017\)](#). In [Sullivan](#), HRD did accept an unofficial (but final) transcript since Mr. Sullivan provided HRD with a diploma.
6. I informed the parties that the instant appeal may, arguably, be somewhat distinguishable from [Sullivan](#), as the transcript provided to HRD here was not the final transcript, as it did not include all of the credits earned and required to obtain a degree.
7. As part of his appeal with the Commission, Mr. McCarthy provided a final, official transcript from Salem State College, which HRD argued was not acceptable as it was not submitted within the required time frame for completing the E&E component of the examination.
8. According to Mr. McCarthy, the 6 E&E Points in question would increase his overall score by one (1) point and move him from 12th on the eligible list for Fire Lieutenant to 11th (tied).
9. In order for the Commission to adjudicate this matter, HRD was provided with thirty (30) days to submit a Motion for Summary Decision to the Commission, with a copy to Mr. McCarthy. Upon receipt, Mr. McCarthy had thirty (30) days to file a reply.
10. HRD submitted a Motion for Summary Decision. The Appellant failed to file a reply.

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).”

Analysis

As referenced above, HRD, as the Personnel Administrator, is vested with broad authority regarding the type and weight of credit given for training and experience as part of examinations. The Commission, however, must ensure that HRD’s decisions are uniform, and not arbitrary or capricious.

Here, HRD argues that “the instructions as written explicitly state that applicants must submit ‘official transcripts from regionally accredited colleges or universities ... with a conferred degree date’. As such, HRD requires any documentation submitted for this claim clearly state that it is an ‘official transcript’. An unofficial transcript is not able to be verified and therefore,

is not accepted. Therefore, anything short of an official transcript, and the candidate will receive no points.” Further, HRD argues that a diploma is not acceptable as it is “not able to be verified and, therefore, is not accepted.” HRD failed to address the Commission’s decision in Sullivan in its brief.

In Sullivan, there were two problems with HRD’s argument. First, none of the instructions provided by HRD as part of that appeal referenced the need to submit “official” transcripts. Here, as part of this 2017 examination, the instructions now explicitly state that “official” transcripts must be submitted.

Second, in Sullivan, HRD did indeed provide Mr. Sullivan with full credit for one (1) masters degree based in part on an “unofficial” transcript. When I inquired about this inconsistency in Sullivan, HRD stated that the unofficial transcript was accompanied by a diploma, thus justifying the awarding of the E&E points for that question. Yet, as again pointed out by HRD here, HRD’s instructions explicitly exclude diplomas as a form of verification.

Although the instant appeal is a (very) close call, it is distinguishable from Sullivan, and, based on the undisputed facts, HRD’s Motion for Summary Decision must be allowed. First, as referenced above, HRD’s instructions now explicitly state that an “official” transcript must be submitted to verify that the degree in question was conferred upon the applicant. Here, Mr. McCarthy submitted an unofficial transcript. Second, the unofficial transcript that Mr. McCarthy submitted stated that Mr. McCarthy was “active in program” and that, as of the date of the transcript, had not completed all of the credits required to be awarded a bachelor’s degree. Although Mr. McCarthy did submit a diploma received on a later date, the submission of incomplete, conflicting information provided HRD with a sound and reasonable basis to conclude that Mr. McCarthy had failed to follow the instructions and that he should not be

awarded any E&E points related to this degree. Put another way, relief by the Commission here is not warranted as Mr. McCarthy is unable to show that he was harmed through no fault of his own.

For these reasons, HRD's Motion for Summary Decision is allowed and Mr. McCarthy's appeal under Docket No. B2-18-037 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 July 5, 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:

Robert McCarthy (Appellant)
Patrick Butler, Esq. (for Respondent)