

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

KEVIN SHACKELFORD,
Appellant

v.

B2-18-003

HUMAN RESOURCES DIVISION,
Respondent

Appearance for Appellant:

James Simpson, Esq.
100 Concord Street, Suite 3b
Framingham, MA 01702

Appearance for Respondent:

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

Commissioner:

Christopher C. Bowman

DECISION ON HRD’S MOTION FOR SUMMARY DECISION

On December 30, 2017, the Appellant, Kevin Shackelford (Mr. Shackelford), a police sergeant with the Somerville Police Department, filed an appeal with the Civil Service Commission (Commission), contesting the decision of the state’s Human Resources Division (HRD) to deny him any points for the Education and Experience (E&E) exam component on the 2017 Police Sergeant examination.

On January 30, 2018, I held a pre-hearing conference at the offices of the Commission which was attended by Mr. Shackelford, his counsel and counsel for HRD. At the conclusion of the pre-hearing conference, I set a briefing schedule for HRD to file a Motion for Summary Decision and for Mr. Shackelford to file a reply.

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.”

G.L. c. 31 § 24 allows for review by the Commission of exam appeals. Pursuant to § 24, “[t]he commission shall not allow credit for training or experience unless such training or experience was fully stated in the training and experience sheet filed by the applicant at the time designated by the administrator.”

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’.”

The facts presented as part of this appeal are not new to the Commission. In summary, promotional examinations, such as the one in question here, consist of two (2) components: the traditional written examination, which accounted for 80% of the examination score here; and the E&E component, which accounted for 20% of the examination score here. HRD provides detailed instructions via email regarding how and when to complete the online E&E component

of the examination. Most importantly, applicants are told that, upon completion of the E&E component, the applicant will receive a confirmation email – and that the component is not complete unless and until the applicant receives this confirmation email.

Here, it is undisputed that Mr. Shackelford sat for the written component of the Police Lieutenant examination on September 16, 2017. Although he submitted supporting documentation for his E&E online claim on September 18, 2017, Mr. Shackelford has no documentation, such as a confirmation email, to show that he ever submitted his online E&E claim for the 2017 examination. During a break in the pre-hearing regarding this matter, HRD, at my request, had Mr. Shackelford log into his account and confirm that there is no record of the E&E online claim being submitted.

Mr. Shackelford no longer argues that he did submit an online E&E claim. Rather, he now argues that HRD should rely on an online E&E claim submission from a prior year or provide him with an extension for submitting the online E&E claim, something that he argues HRD has afforded to other applicants.

Mr. Shackelford has not presented any evidence, nor has he indicated that such evidence could be produced, to show that HRD has allowed other applicants to rely on submissions from prior years. In regard to an extension, HRD acknowledges that at least one other candidate was given an extension. That candidate reached out to HRD after business hours within 10 minutes of the deadline closing and indicated that he had spent the previous hour trying to access his account. HRD deemed it to be an extremely unique circumstance and therefore made an exception for that applicant. That appears to be distinguishable from the matter here, where there is no indication that Mr. Shackelford made a claim to HRD that he was experiencing

technical difficulties and any outreach to HRD did not occur until approximately one month after the deadline for submitting an online E&E claim.

Consistent with a series of appeals regarding this same issue, in which an applicant failed to follow instructions and submit the online E&E claim, intervention by the Commission is not warranted as the Appellant cannot show that he was harmed through no fault of his own.

For these reasons, and all of the reasons stated in HRD's motion, the Motion for Summary Decision is allowed and Mr. Shackelford's appeal under Docket No. B2-18-003 is *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)(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:

James Simpson, Esq. (for Appellant)

Michael Downey, Esq. (for Respondent)