



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Scott Malinoski,  
Senior Engineer Transportation  
(PS2086T), Department of  
Transportation

Examination Appeal

CSC Docket No. 2017-84

ISSUED: NOV 15 2016

(ABR)

Scott Malinoski appeals the determination of the Office of Information and Logistics (Information and Logistics) denying his request for a make-up examination for Senior Engineer Transportation (PS2086T), Department of Transportation.

By way of background, the subject examination was administered on June 25, 2016. The appellant filed a request for a make-up examination on June 3, 2016. In support of his request, he submitted a letter explaining that in the fall of 2015 he had scheduled a vacation from June 19, 2016, to June 26, 2016. The appellant also submitted correspondence confirming payment for a reservation for those dates and a copy of his approved work leave request from the appointing authority for the period of June 20, 2016, through June 27, 2016. Information and Logistics sent two letters to the appellant dated June 23, 2016, that denied his request for a make-up examination. The first, which Information and Logistics notes was sent in error, denies the request, but references “[p]rior vacation or travel plans outside of New Jersey or any contiguous state, which cannot be reasonably changed, as evidenced by a sworn statement and relevant documentation” as an acceptable ground for a make-up examination. The second letter does not list prior vacation or travel plans as a valid basis for a make-up exam.<sup>1</sup>

<sup>1</sup> Pursuant to *N.J.A.C.* 4A:4-2.9(a), such preexisting vacation or travel is an acceptable ground for a make-up examination for most titles. However, it is not an authorized basis for the make-up of a professional level engineering examination. See *N.J.A.C.* 4A:4-2.9(b).

On appeal to the Civil Service Commission (Commission), the appellant argues that he reasonably relied upon assurances from Information and Logistics that his request would be granted. Specifically, the appellant states that in response to his submission, Information and Logistics left him a voicemail message on June 10, 2016, which stated the request “would be acceptable” if he could furnish additional documentation from the rental unit owner that explicitly showed the appellant as a guest on the reservation. The appellant submits a copy of that recorded voicemail message<sup>2</sup>, along with a copy of the documentation he sent via fax in return. The appellant also contends that in the week prior to the examination, Information and Logistics staff advised him via phone that he had cited adequate justification for a make-up examination, but would not receive a response until after the date of the examination. The appellant also emphasizes that when he received Information and Logistics’ denial letter on June 27, 2016, it nevertheless indicated that “prior vacation or travel plans outside of New Jersey or any contiguous state, which cannot be reasonably changed, as evidenced by a sworn statement and relevant documentation,” was an acceptable basis for a make-up examination. The appellant also submits a copy of that letter. The appellant stresses that he acted in clear accordance with Information and Logistics’ instructions through multiple telephone conversations and relied upon its assurances that a make-up examination would be granted in continuing with his scheduled vacation plans.

### CONCLUSION

*N.J.A.C.* 4A:4-2.9(b) provides that for professional level engineering promotional examinations, make-up examinations may be authorized only in cases of:

1. Debilitating injury or illness requiring an extended convalescent period, provided the candidate submits a doctor's certification containing a diagnosis and a statement clearly showing that the candidate's physical condition precluded his or her participation in the examination;
2. Death in the candidate's immediate family as evidenced by a copy of the death certificate;
3. A candidate's wedding which cannot be reasonably changed as evidenced by relevant documentation;
4. When required for certain persons returning from military service (*see N.J.A.C.* 4A:4-4.6A); or
5. Error by the Civil Service Commission or appointing authority.

*N.J.A.C.* 4A:1-1.2(c) provides that a rule may be relaxed for good cause, in a particular circumstance, in order to effectuate the purposes of Title 11A of the New Jersey Statutes Annotated.

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<sup>2</sup> The foregoing voicemail recording was reviewed.

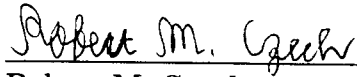
In the instant matter, it is noted that a previously scheduled vacation does not technically meet the criteria for a make-up examination pursuant to *N.J.A.C.* 4A:4-2.9(b). Nevertheless, the appellant made a diligent effort when seeking approval for a make-up examination from Information and Logistics. He submitted documentation which confirmed payment for a reservation running from June 19, 2016 through June 26, 2016. The appellant complied with Information and Logistics' follow-up request for proof that he was listed on the reservation after receiving a voicemail message that indicated such proof "would be acceptable." After being told that he had cited an adequate basis for a make-up examination, but would not receive notification until after the examination, the appellant proceeded with his vacation. Therefore, the foregoing demonstrates a reasonable basis for the appellant's confusion and resulting failure to sit for the subject examination. The Commission has previously found that an appellant's reasonable reliance on communications by this agency or by an appointing authority may provide an equitable basis for granting a make-up examination. For example, the Commission granted a make-up examination where an appellant failed to apply for an examination and the Commission found that the appellant had reasonably relied upon an appointing authority's incorrect representation that he had been permanently appointed to the subject title, rather than provisionally. *See In the Matter of Leon Daniels* (CSC, decided December 4, 2008). The Commission also permitted a make-up examination where it concluded that it would have been reasonable for an appellant to ignore an examination announcement because a Common Title Memorandum issued by this agency erroneously listed the subject title as non-competitive. *See In the Matter of Carlye Lamarca* (CSC, decided September 4, 2014). Under these circumstances and pursuant to the authority of the Commission under *N.J.A.C.* 4A:1-1.2(c), the Commission finds good cause to provide the appellant with a make-up examination as soon as possible, to be considered for prospective employment opportunities only. However, this remedy is limited to the facts of this matter.

### ORDER

Therefore, it is ordered that this appeal be granted. The appellant shall be scheduled for a make-up examination, for prospective employment opportunities only.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 10<sup>TH</sup> DAY OF NOVEMBER, 2016



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