



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of  
David Rogers, Fire Captain  
(PM1131S), Newark

Examination Appeal

CSC Docket No. 2016-2794

ISSUED: **DEC 13 2016** (RE)

David Rogers, represented by Patrick Toscano, Jr., Esq., appeals the test administration for the oral portion of the promotional examination for Fire Captain (PM1131S), Newark. It is noted that the appellant passed the subject examination with a final score of 81.950 and his name appears as the 74<sup>th</sup> ranked eligible on the subject list.

This two-part examination consisted of a written multiple-choice portion and an oral portion. Candidates were required to pass the written portion of the examination, and then were ranked on their performance on both portions of the examination. The test was worth 80 percent of the final score and seniority was worth the remaining 20 percent. Of the test weights, 31.35% of the score was the written multiple-choice portion, 22.49% was the technical score for the evolving exercise, 7.53% was the supervision score for the evolving exercise, 4.28% was the oral communication score for the evolving exercise, 19.23% was the technical score for the arriving exercise, 7.53% was the supervision score for the arriving exercise, and 7.59% was the oral communication score for the arriving exercise.

The oral portion of the Fire Captain examination consisted of two scenarios: a fire scene simulation with questions designed to measure the knowledge of safe rescue tactics and procedures to safeguard citizens, supervision of fire fighters and the ability to assess fire conditions and hazards in an evolving incident on the fireground (evolving); and a fire scene simulation designed to measure the knowledge of safe rescue tactics and procedures to safeguard citizens, supervision of firefighters and the ability to plan strategies and tactics based upon a building's

structure and condition (arriving). Knowledge of supervision was measured by questions in both scenarios, and was scored for each. For the evolving scenario, candidates were provided with a 15-minute preparation period, and candidates had 10 minutes to respond. For the arriving scenario, a five minute preparation period was given and candidates had 10 minutes to respond. For the evolving scenario, the appellant scored a 4 for the technical component, a 3.5 for the supervision component, and a 3.5 for the oral communication component. For the arriving scenario, the appellant scored a 4 for the technical component, a 4 for the supervision component, and a 3 for the oral communication component.

On appeal, the appellant states that an incident during his presentation caused him to be distracted and stressed, and unable to concentrate while trying to answer question 2. The monitor of the presentation asked him if he was finished when he only completed question 1. After realizing the error, the monitor left the room to speak to a supervisor, who then entered the room and advised him that there was time to finish the examination, but not stating how much time. The appellant argues that his score was lower than if this distraction had not occurred.

*N.J.A.C. 4A:4-6.4*, (Review of examination items, scoring and administration) states that appeals pertaining to administration of the examination must be filed in writing at the examination site on the day of the examination.

## CONCLUSION

At the outset, Mr. Rogers' appeal of test administration was postmarked on February 11, 2016, over eleven months after the examination was given and after receiving his examination results. As such, this appeal is clearly untimely. Appeals of test administration must be filed in writing at the examination site on the test date. See *N.J.A.C. 4A:4-6.4(c)*. Monitors are required to make an announcement before the start of each examination that, should a candidate wish to appeal the test administration, he or she *must* do so at the test center. Additionally, all candidates for examinations are provided with an informational flyer that specifically informs them of the need to appeal administration issues, including how the examination is conducted, at the examination center. Specifically, the back of the Rights and Responsibilities of Test Takers form states, "Candidates should complete a Test Administration Comment/Appeal form provided at the test center to file their objection, and have 5 business days to submit their \$20 appeal fee where applicable." The instructions for the Test Administration Comment/Appeal form state, "All appeals concerning administrative procedures (the way the test was administered) must be **submitted in writing before you leave the building**. Subsequent appeals regarding test administration will not be accepted." The Appellate Division of Superior Court has noted that "the obvious intent of this 'same-day' appeal process is to immediately identify, address and remedy any

deficiencies in the manner in which the competitive examination is being administered." See *In the Matter of Kimberlee L. Abate, et al.*, Docket No. A-4760-01T3 (App. Div. August 18, 2003).

Nevertheless, a review of the merits of this appeal shows that the appellant is not entitled to any relief. For the supervision component of the arriving scenario, the appellant received a score of 4. The assessors indicated that he missed the additional response of apologizing to the neighbor.

A review of the test materials reveals that the examination started, and the appellant responded to question 1. The appellant paused for long periods of time in his response to this question. After calling for resources, the appellant paused for 1 minute, 8 seconds. Then he stated, "After the fire is out, we'll perform post-control overhaul. Setup a demobilization officer. Terminate command. Hand over the company to the proper authorities. Do a post-incident critique. See if any firefighters need critical post-incident stress debriefing and rescue. And document the incident." Then he paused for 21 seconds and stated, "A RIT team will also be needed at this fire."

After another 15 second pause, the monitor stated, "Is there anything else you would like to add to your response?" The appellant responded, "No, there is not," although he furrowed his brow, looked at the monitor, and scratched his head. The monitor then concluded the scenario and began to collect materials when the appellant said that he did not finish the second question and spent too much time on the first question. At the time the monitor concluded that presentation, 6 minutes and 20 seconds had elapsed. The appellant asked, "Was that the full 10 minutes?" The monitor responded, "Don't move." The monitor then walked to the door, changed his mind, and walked back to the desk. He said, "Just continue. I don't know if it will count or not. Continue." The appellant said, "Okay." The monitor said, "You have... I can't tell you how much time you have." The appellant said, "Okay, okay, no problem." The entire incident lasted 34 seconds.

The appellant rearranged his papers and immediately read question 2 and began answering. His demeanor was confident and he gave enough information to receive a score of 4. He responded for 1 minute, 40 seconds, and then paused for 40 seconds. He then gave additional information for 45 seconds and paused again for 20 seconds. The monitor asked the appellant if there was anything else he wanted to add to his response. The appellant responded, "No sir, I do not. Not for the second question." The monitor waited a few seconds and asked again, "Do you have anything else at all you want to add to your response?" The appellant again replied, "No sir, I do not." The monitor said "Okay," and he concluded the presentation 6 seconds short of the ten minutes.

The appellant did not address the civilian at the scene in his presentation. He immediately placed the firefighter in the apparatus at the scene, and the remainder of the response took place back at the firehouse. The appellant took no action to ameliorate the subordinate's issue with the civilian, and he had plenty of time to state this action at the end of his response. The appellant's argument that he did not do so because he was unable to concentrate is unpersuasive. It is noted that the appellant did not write any information regarding the civilian in his notes, which he prepared in the 5 minute preparation period. The monitor gave the appellant ample opportunity to respond to question 2, asking him twice if there was anything he would like to add. In addition to being untimely, the situation does not warrant any further action.

### CONCLUSION

A thorough review of the appellant's submissions and the test materials indicates that the decision below is amply supported by the record, and the appellant has failed to meet his burden of proof in this matter.

### ORDER

Therefore, it is ordered that this appeal be denied.

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  
THE 7<sup>th</sup> DAY OF DECEMBER, 2016

  
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