

B-32



STATE OF NEW JERSEY

In the Matter of Edward Conklin, *et al.*, Entry Level Law Enforcement Examination (S9999R), Statewide

FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION

CSC Docket No. 2014-1525

Examination Appeal

ISSUED: OCT 06 2014 (JH)

Edward Conklin, Ronald Fernandez and Matthew Lopes appeal the administration of the Entry Level Law Enforcement Examination (S9999R), Statewide. These appeals have been consolidated due to common issues presented by the appellants.

By way of background, 27,839 applications were received for this examination and 26,744 candidates were scheduled to be tested. Test sessions were held in November and December 2013. Messrs. Conklin and Lopes were scheduled to be tested on November 21, 2013 and on November 19, 2013, respectively, at Lincoln High School in Jersey City; and Mr. Fernandez on November 16, 2013 at Hackensack High School in Hackensack. The appellants were disqualified from the examination since they possessed cell phones at their respective test centers.

On appeal, Mr. Conklin maintains that when he arrived at the test center, he approached testing staff and indicated that he had a cell phone.¹ He argues that he was told to "figure it out" and that it was not the testing staff member's problem. He contends that on his way to his assigned test room, he took the battery out of his phone and placed his phone and battery in the side pocket of his jacket. After completing the test, he walked to the main entrance "when I put the battery back in

¹ As noted previously, Mr. Conklin took the subject examination on November 21, 2013. On December 4, 2013, he filed his appeal. Under these circumstances, his appeal of examination administration is clearly untimely. See N.J.A.C. 4A:4-6.4(c). Nevertheless, for informational purposes, the issues raised by Mr. Conklin will be addressed herein.

my phone to call my parents to see if they were there to pick me up." He alleges that a staff member physically grabbed him and told him he was disqualified. In support of his appeal, he submits a copy of his cell phone bill for the date in question.

Mr. Lopes indicates that his cell phone fell out of his pocket as he was checking in and "3 to 4 females" who were in the area "told me to shut it off (which it was) and put it in your pocket so the administrator can't see it during the test." He contends that he asked if he could "leave it somewhere so I can retrieve it after the test because I don't want it falling out of my pocket again." He asserts that these individuals "said, 'yes.' So I left it hidden in an empty classroom that I was not taking the test in." He avers that when he went to retrieve his phone after completing the test he was disqualified. He argues that since he was directed to put his phone in the empty classroom, it is "completely unfair" that he was disqualified. In a subsequent submission, Mr. Lopes presents that he arrived at the test site "in the nick of time" and had forgotten about the "no cell phone" rule. He explains that after he checked in in the auditorium, his phone fell out of his left pocket and "one of the administrators there told me to put it away . . . [and] if I shut it off and made sure the instructor didn't see it that I would be fine. So I shut my phone off . . ." He argues that he did not have time to go back to his car so he asked "one of the admins standing in the hallway" to hold his phone for him but she declined. He maintains that "she then responded with the option that I can hide it in the classroom we were standing in front of which was empty . . ." He adds that after completing the test, he walked to the room where he had hidden his phone only to discover that the room was being used for testing. He then approached a "female admin in the hallway" and asked her to retrieve his phone which she did. The testing staff member took him to the Center Supervisor who informed Mr. Lopes that he would be disqualified. He tried to explain that the phone was in a different classroom than the one he tested in and the Center Supervisor said that "it wasn't such a big deal and that I could've left with no problems." However, the Center Supervisor went on to say that because he was brought to her, she had no choice but to disqualify him. He emphasizes that he is "enraged about being misled."

Mr. Fernandez indicates that upon his arrival at the test center, he informed testing staff that he was in possession of a cell phone and asked staff to "hold it for me while I took my exam." The staff member declined and informed him that he was disqualified. He asserts that he "found it urgent to carry my phone due to personal emergency reasons." He explains that his father was ill and it was "vital for me to keep in touch with my father due to his personal health reasons . . . I was not sure if my father was going to end up going to the hospital that day." He argues that he was being honest and brought the cell phone to the monitor's attention. He contends that he did not ask to speak to the Center Supervisor because he was "in shock of being disqualified and I was in denial." He emphasizes that the test

booklets had not been handed out when he approached the room monitor regarding his cell phone.

CONCLUSION

It is noted that the Civil Service Commission has a duty to ensure the security of the examination process and to provide sanctions for a breach of security. See *N.J.S.A.* 11A:4-1(c). In order to carry out this statutory mandate, *N.J.A.C.* 4A:4-2.10 identifies a number of prohibited actions in the conduct or administration of an examination and provides for the disqualification of candidates participating in such actions. As such, the Notification to Appear for the Examination specifically advises the candidate that *possession* of cell phones, pagers, calculators, or recording devices during the test administration is prohibited and that candidates bringing these devices into the test center may be disqualified. More importantly, Selection Services advises that signs were posted by staff at examination center entrances, hallways and on the door to every test room clearly stating that "cell phone possession in the examination center is prohibited." In addition, examination center staff advised all applicants prior to the beginning of the examination that cell phones were prohibited in the test center. Furthermore, upon entering the testing rooms, all candidates were provided with a form containing 14 points regarding taking the subject test. It is noted that one of these items pertained to cell phones which stated, "Cell phones are NOT permitted in the test facility. Possession of a cell phone is grounds for disqualification. It does not matter if the cell phone is turned off or hidden from sight. If you are seen with a cell phone in the test facility during or after the exam, you will be disqualified."

Moreover, the 2013 Entry Level Law Enforcement Examination Administration Guide (Administration Guide) that was available to all candidates specifically indicated:

With the threat of high-tech cheating on the rise, possession of personal communication devices such as cell phones, BlackBerrys, pagers/beepers, photographic equipment, MP3 players, or other similar electronic communication devices is prohibited at test centers. Candidates who are seen with these devices in the test center, **even in a power-off mode**, will be disqualified and dismissed immediately.

In the instant matter, it was appropriate to disqualify the appellants from the examination. It is uncontested that the appellants brought their cell phones into the test center. Further, it is clear that all candidates for this examination were advised, on the notice to appear, in the Administration Guide, by signs in the examination center, and by the staff that possession of a cell phone in the test center was prohibited. It is immaterial that Mr. Fernandez declared his possession of a cell phone prior to test booklets being handed out or that Messrs. Conklin and

Lopes had finished the test and were exiting the building, at which point they were observed in possession of their cell phones. Possession of a cellular phone at the test center is a potential breach of examination security. Given the highly advanced features on today's cell phones, which include the ability to take photographs and instant text messaging, possession of these types of devices could seriously undermine examination security. The importance of the "no cell phone rule" in ensuring fair and equitable testing for all potential candidates cannot be overemphasized. Testing staff are charged with prohibiting the use of unauthorized aids, information or assistance by candidates and preventing examination security material from leaving the exam center. Anyone found participating in a prohibited action could be disqualified from the exam, rejected for future exams and subject to punishment as provided by law. When considering the overriding interests of examination security, it is imperative to disqualify candidates who could potentially breach examination security. *See In the Matter of Michele Gordon* (MSB, decided August 9, 2006). As such, the appellants were properly disqualified.

With respect to Mr. Lopes, the Commission is concerned with the number of inconsistencies between the claims made in Mr. Lopes' initial appeal and his subsequent submission. In this regard, in his initial appeal, he avers that his cell phone was turned off and he asked "3 or 4 females" if he could leave his cell phone in a classroom. In his subsequent submission, he claimed that "one of the administrators" told him to shut his phone off and put it away. He then asked "one of the admins standing in the hallway" to hold his phone who declined and then told him to put his phone in a classroom. Furthermore, it is noted that the Center Supervisor was contacted regarding the matter and indicated that all testing monitors are aware of the strict no cell phone policy and thus, it would be highly unlikely that testing staff would tell a candidate to hide a cell phone in a testing room. The Center Supervisor emphasized that there "were signs everywhere about no cell phones" and multiple announcements with respect to cell phones were made to candidates.

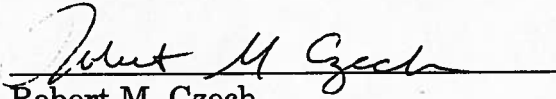
A thorough review of the record indicates that the appellants have failed to support their burdens of proof in this matter.

ORDER

Therefore, it is ordered that these appeals 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 ON
THE 1ST DAY OF OCTOBER, 2014



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

c: Edward Conklin
Ronald Fernandez
Matthew Lopes
Dan Hill

