

B-57



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Christine Bless,
et al., Forensic Scientist 2, Law and
Public Safety (PS2112P), Department
of Law and Public Safety

Examination Appeals

CSC Docket Nos. 2015-558, 2015-
559, 2015-564, 2015-596, 2015-601,
2015-602, 2015-603, 2015-611, 2015-
722, 2015-743, and 2015-744

ISSUED: **OCT 27 2014** (SLK)

Christine Bless, Gerard Caprio, Jayne DeMichele-Phillips, Kimberly Gorel, Brett Hutchinson, Daniel Neyer, Theresa Nezezon, Jennifer Ollock, Brandon Pittam, Christine Schlenker, and Maria Zanakis appeal the scoring of the promotional examination for Forensic Scientist 2, Law and Public Safety (PS2112P), Department of Law and Public Safety. These appeals have been consolidated due to common issues presented by the appellants.

By way of background, 50 employees applied for and 44 were deemed eligible for the subject examination. The subject multiple-choice examination was initially administered on August 14, 2014, and consisted of 90 questions. The initial examination was scheduled to consist of 100 questions; however, the Test Booklet was missing questions 87 through 96. Thereafter, a supplemental examination was administered on September 10, 2014 which contained the 10 missing questions. On appeal, the appellants contest the correct responses to 10 individual questions (13, 29, 42, 49, 54, 61, 66, 75 and 84 from the first examination and 8 from the supplemental examination). As a result of a review of this appeal, the Division of Selection Services (Selection Services) determined it was appropriate to double-key question 42 to options b and c and question 49 was omitted from the scoring. Also, the correct response to question 8 from the supplemental examination was changed from option b to d. The final scores for the subject examination have not yet been issued.

An independent review of issues regarding test questions has resulted in the following findings:

Question 13 asked which best describes active listening. The keyed response was option b, understanding what the person has to say, as well as the underlying feelings. Ms. Gorel references a third-party resource that states that the techniques of mirroring, reflection, and summarization are elements of active listening. Ms. Gorel argues that there could be more than one correct answer. She presents that option d, repeating back what has been said by the person, is just as effective in communicating active listening as understanding the feelings behind what is said. She states that understanding the feelings behind the words is not something that can be demonstrated, which is one of the key points of active listening. In reply, active listening is the act of mindfully hearing and attempting to comprehend the meaning of words spoken by another in a conversation or speech. *See the BusinessDictionary.com.* While repeating exactly what a person has stated may be a technique in letting a speaker know that you are engaging in active listening, the act of active listening itself is gaining a full understanding of the words spoken. Consequently, understanding both the words spoken and the feelings behind the words is important to gaining a full understanding of the words spoken. Therefore, the keyed response is the best answer and will not be changed.

Questions 29 belongs to a subset of questions which test the ability to analyze and apply rules and regulations. The candidates were given a set of facts regarding parks and recreation rules and procedures and were required to answer ten questions based on these facts. They were told that no previous knowledge of the specific subject matter was required. Each question was an action, and candidates were required to determine the best relationship of this action to the policy that was given in the stimulus material.

Question 29 indicated that Tim picked up an apple from the ground that had fallen off the apple tree. The keyed response was option a, that this action is allowed by the policy. Ms. Bless notes that the rules state that an apple may not be picked from a tree, but the rules do not mention whether it is allowable to eat an apple off the ground. She argues that this information is not covered by the rules and therefore the correct answer should be option c, that more information is needed. In reply, a review of the parks and recreation rules and procedures indicate that Rule 4 states that no person shall pick flowers, foliage, berries or fruit or cut, break, dig up or in any way mutilate or injure any tree, shrub, plant, fern, grass, turf, railing, seat, picnic bench, fence, structure or any other object within a county park or recreation area. In other words, as the rules do not prohibit the picking and eating of fruit that has fallen on the ground, the action is allowed. The keyed response is correct.

Questions 42 and 49 pertain to laboratory safety and candidates were required to choose the best answers. Question 42 asked what is the first thing that should be done when a spill of a toxic or corrosive material occurs within a laboratory. The keyed response was option b, leave the lab and notify safety

personnel. Ms. Bless, Mr. Caprio, Ms. DeMichele-Phillips, Mr. Hutchinson, Ms. Ollock, and Mr. Pittam argue that the State Police Office of Forensic Sciences Health and Safety Manual (Safety Manual) indicates that small spills, where they would not be overexposed to the chemical, should be cleaned up immediately. However, if it's a large spill, they should leave the lab and notify the safety officer. The appellants state that the question does not mention the scale of the spill. In reply, as the question did not indicate the quantity of the spill, both leave the lab and notify safety personnel and contain that which already has been spilled, are correct. As a result, Selection Services will double-key this item to options b and c.

Question 49 asked which are not controls to reduce employee exposure. The keyed response is option c, HVAC controls. Ms. Bless, Mr. Hutchinson, and Ms. Zanakis argue that HVAC controls do play a role in reducing employee exposure and therefore none of the answers are correct. In response, HVAC includes ventilation which can be used to reduce employee exposure and therefore none of the answers are correct. Thus, Selection Services will eliminate this item from the exam.

Question 54 asks which best describes a level I error. The keyed response was option d, not following a protocol. Ms. Gorel states that the State Police Office of Forensic Sciences Quality Assurance Manual (QA Manual) defines "Level I Non-Conformity" as "non-conforming work which has a fundamental impact on the quality of the work and integrity of the evidence." She asserts that the wording of the test question, in stating a level I "error," makes the test taker assume that "non-conformity" is being referenced and therefore this question should be considered invalid. However, Ms. Gorel argues that if you do assume that "error" means "non-conformity," the QA Manual also provides that "clerical errors" that have "a direct impact on the quality of the work" are a "Level I Non-Conformity," as well as "failure to follow established procedure and/or criteria," and therefore depending on the severity and its impact on the work product, any of the answers could be correct. Ms. Ollock maintains that there are two correct answers, "clerical error" and "not following protocol". She presents that the QA Manual provides that a Level I Non-Conformity is one which has a fundamental impact on the quality of the work product and integrity of the evidence and that a clerical error may very well have a fundamental impact on the work product. Further, the QA Manual describes clerical errors that have a direct impact on the quality of the work and therefore a Level I Error/Non-Conformity. In response, all of the instances of not following protocol are level I errors; however, not all instances of clerical errors are level I's. Therefore, the keyed response will not be changed.

Question 61 asked, in a forensic laboratory, who is responsible for any error found in a final report that has been released. The keyed response is option d, the analyst and the peer reviewer. Ms. Bless and Mr. Caprio argue that there should be two correct answers, option a, analyst only, and option d, analyst and the peer

reviewer. They assert that the analyst is always responsible for the error where there are only limited circumstances where the peer reviewer may also be held responsible. Ms. DeMichele-Phillips and Ms. Ollock¹ both argue that since the analyst is always held responsible and the peer reviewer is only occasionally, if ever, held responsible, that option a, analyst only, is the best answer. In reply, both the peer reviewer and the analyst have equal responsibility to ensure results are issued correctly. The QA Manual indicates that the reviewer may also be removed from casework signifying that they each have equal responsibility. The keyed response is the best answer and will not be changed.

Question 66 asked what is not within the scope of a peer review. The keyed response was option d, instrument maintenance records. Ms. Ollock states that the correct answer should be "maintenance records". She provides that in many disciplines that utilize instrumentation, the reviewer is required to review all data in the case file, including this data. Maintenance records are any records/data that show the instrument is being maintained properly and/or is in proper order and therefore they are required to be reviewed by the reviewer. Mr. Pittam maintains that everyone, including the peer reviewer, needs to be aware if an instrument is functioning properly, and if not, it must be noted that it is not and it must not be used. He suggests that the correct answer should be "the scientist name" on the report as the peer reviewer is not to be biased and therefore he asserts that there are two correct answers. Ms. Zanakis states that the instrument maintenance records are always accessible to reviewers to address any doubt that may arise as to whether the data is accurate and therefore precise and that they are stored in the same room as the instrument and are open to all to view. In response, by definition, the peer review is a review of the case examination records and not external documents such as instrument maintenance records. Further, the identity of the person is required. The keyed response is the only correct answer and will not be changed.

Question 75 asked which is the correct decimal power that corresponds to the prefix μ . The keyed response is option d, 10^{-6} . Ms. Zanakis represents that the singular use of the symbol μ can take on the value of 10^{-2} , 10^{-3} , and even 10^{-7} among others. However, without the usage of the word "prefix" before the Greek letter " μ ", the question addressed a broad spectrum of what μ represents. She maintains that only when prefaced with the word "prefix" does it become the term to exponentially describe a measurement parameter justifying the answer of 10^{-6} . In response, although the Greek letter μ has multiple meanings, the only correct answer is 10^{-6} as all the other answers are clearly incorrect. Therefore, the keyed response will not change.

¹ Ms. Ollock's submission indicates that she is appealing question 66; however, the content of her appeal references question 61.

Question 84 asked generally, depending on the subject area in question, based on what is an expert witness accepted by the courts. The keyed response is option b, knowledge acquired through education, experience and training. Ms. Zanakis presents that the Federal Rules of Evidence indicate that "A witness is qualified as an expert by knowledge, skill, experience, training, or education may testify." Therefore, she argues that since the rule has an "or" in it, the question is ambiguous and subject to conjecture. In response, the question is clear and ambiguous and the best answer choice is option b. The other responses are not the *best* since the question asked what criteria is generally accepted by the court. The answer choices in options a, c, and d have no bearing on what is generally accepted by the court to qualify an expert witness. The keyed response will not be changed.

Question 8 on the supplemental exam asked where are stress marks on the edge of a radical crack near the point of impact. The keyed response is option b, perpendicular to the side on which the force was applied. Mr. Caprio, Ms. DeMichele-Phillips, Ms. Gorel, Mr. Hutchinson, Mr. Neyer, Ms. Nezezson, Ms. Ollock, Mr. Pittam, and Ms. Schlenker argue that they keyed response is incorrect and that the correct response is option d, perpendicular to the opposite side on which the force was applied. Mr. Caprio and Mr. Hutchinson also assert that option a, parallel to the side on which the force was applied, is also correct. In response, the keyed response is incorrect. The key will be changed to indicate that the correct response is option d.

ORDER

As noted above, Selection Services shall rescore the examination so that question 42 is double-keyed, that question 49's omitted from the scoring, and that the key for question 8 from the supplemental exam changed from option b to option d. Except for these changes, it is ordered that the remainder of 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 22nd DAY OF OCTOBER, 2014



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