

structure and condition (arriving). 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.

The candidates' responses were scored on technical knowledge and oral communication ability. Prior to the administration of the exam, a panel of Subject Matter Experts (SMEs) determined the scoring criteria, using generally approved fire command practices, fire fighting practices, and reference materials. Scoring decisions were based on SME-approved possible courses of action (PCAs) including those actions that must be taken to resolve the situation as presented. For a performance to be acceptable, a candidate needed to present the mandatory courses of action for that scenario. Only those oral responses that depicted relevant behaviors that were observable and could be quantified were assessed in the scoring process. Each performance was evaluated by two SMEs who currently are a first level supervisor or higher. If the SME scores differed by 1 point, the score was averaged. If they differed by more than 1 point, the SMEs were required to confer with each other until they agreed on a score. Scores were then converted to standardized scores.

Candidates were rated on a five-point scale, with 5 as the optimal response, 4 as a more than acceptable passing response, 3 as a minimally acceptable passing response, 2 as a less than acceptable response, and 1 as a much less than acceptable response. For each of the scenes, and for oral communication, the requirements for each score were defined. For the evolving scenario, the appellant scored a 3 for the technical component, a 4 for the supervision component, and a 5 for the oral communication component. For the arriving scenario, the appellant scored a 5 for the technical component, a 5 for the supervision component, and a 5 for the oral communication component.

The appellant challenges his scores for the technical and supervision components of the evolving scenario. The appellant's arguments concerning the supervision component are in regard to test administration. As a result, the appellant's test material, audiotape, and a listing of PCAs for the scenarios were reviewed.

The evolving scenario involves a fire in a two-story, wood-frame taxpayer built in the early 1950s. The first floor is a convenience store and the second floor is an occupied apartment. It is a 5:30 PM on a Friday in July and the temperature is 76° Fahrenheit with overcast skies and a wind blowing from west to east at 10 miles per hour. Upon arrival, it is noticed that smoke is coming from the convenience store on side A. The owner of the convenience store says that a fire started in the rear of the store and quickly spread, filling the store with smoke. He also says that a stock boy

was in the rear of the store and is unaccounted for, and he is unsure if anyone is in the upstairs apartment. The candidate is the commanding officer of the first arriving ladder company and he establishes command. There were two technical questions. Question 1 asked for initial actions and specific orders at the incident upon arrival. Question 2 indicates that one of the candidate's firefighters is entangled when drop-ceiling tiles and their supports fail. He calls for a mayday and activates his PASS device. The question asked what actions should now be taken, based on this new information. The supervision question indicates that, when arriving on the scene with the engine company, the engine driver positions his apparatus in front of the building. The candidate's ladder driver then gets into an argument with the engine driver, saying the ladder apparatus should always be allowed to position in front of the involved building. This question asks what should be done at the scene and after returning to the firehouse to address the situation. Instructions indicate that, in responding to the questions, the candidate should be as specific as possible in describing actions, and should not assume or take for granted that general actions will contribute to a score.

In regard to the technical component, the assessors noted that the appellant failed to locate and remove the trapped firefighter, which was a mandatory response, and he missed the opportunity to protect the trapped firefighter with a hose line. They used the flex rule to assign a score of 3. On appeal, the appellant states that he confirmed the location of the downed firefighter multiple times.

Regarding the flex rule, mandatory responses are responses that are requirements for a performance to be acceptable (a score of 3). Sometimes, a candidate states many additional responses but does not give a mandatory response. The flex rule was designed to allow the SMEs to assign a score of 3 to candidates who fail to give a mandatory response but who provide many additional responses. However, the SMEs cannot provide a score higher than a 3 in those cases. All mandatory responses must be given in order for a performance to be acceptable, whether there is one mandatory response or five of them. It is not assumed that candidates receive a score of 5 which is then lowered for lack of responses. Performances that include mandatory responses get a score of 3, and those without mandatory responses get a score of 1 or 2. Additional responses only increase a score from 3 to 4 or from 3 to 5.

A review of the appellant's audiotape and related examination materials indicates that he received credit for having the trapped firefighter radio his location in the building. The assessors indicated that the appellant failed to locate and remove the trapped firefighter. The appellant clearly located the trapped firefighter, but he did not indicate that he would remove the trapped firefighter, which is a separate response. While removing the trapped firefighter may be

implied after locating him, the appellant did not say that he would remove the trapped firefighter. Credit cannot be given for information that is implied or assumed, and this was indicated in the instructions to candidates. As such, the appellant cannot receive credit for this mandatory action and his score for this component will not be changed.

As to the supervision component, the assessors noted that the appellant missed the opportunity to inform the shift commander/Chief of the incident. On appeal, the appellant states that he did not receive a two minute warning. He states that without this warning he was not able to take the action noted by the assessors, and that if he had been given the warning, he would have given this response. He explains that an acronym in his notes included the replies of "confidentiality and Chief to be informed."

As to the testing conditions, Mr. Broccoli's appeal of test administration was postmarked on June 9, 2014, over seven 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. Candidates are provided with the amount of time to present their response to the scenario, and the monitor indicates that he or she will give a two minute warning prior to the expiration of time. This two-minute warning is given to every candidate for every current fire oral examination for the benefit of

the candidate. It allows candidates the opportunity to summarize their presentation or provide additional information prior to the abrupt ending of their presentation time allotment. Nevertheless, candidates are aware that they have ten minutes to respond to the questions for each scenario and they are responsible for organizing their time.

In this case, Mr. Broccoli took 7 minutes and 40 seconds to provide his responses to questions 1 and 2. He then began answering question 3, and he was not given a two minute warning 20 seconds into his response to question 3. He continued answering question 3 for the next two minutes, and stated, "I will let him know I have an open door policy, that he can come in and talk to me about anything he needs or anything he feels is going on. I'll also ensure him that we have an EAP, Employee Assistance Program, to help him if he has any problems inside the firehouse or outside the firehouse. I'll ensure that he understands there's going to be a follow-up, and during the follow-up I will monitor and we will talk about his progress that he has made with his mentor and the other firefighters, about how to react to certain situations and I'll take better effort of doing it. And that completes my answer to question three, I'd like to review my notes." At this point, the appellant was stopped by the monitor. In this case, the appellant completed his responses to all three questions in the ten-minute time frame. There does not appear to have been an issue with the warning in this case. This is supported by the fact that the appellant did not appeal at the test center, but brought the issue up only after receiving his examination scores. If the appellant was concerned about the lack of a warning, he could have appealed it at the test center. The appeal of this issue is untimely, and even if it were timely, the circumstances are not so egregious as to warrant a retest.

CONCLUSION

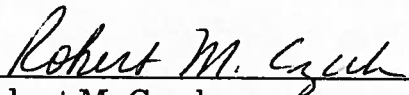
A thorough review of the appellant's submissions and the test materials indicates that the decision below is amply supported by the record, and the appellant has failed to meet his burden of proof in this matter.

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 17th DAY OF SEPTEMBER, 2014



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