

B-35



STATE OF NEW JERSEY

In the Matter of Marc Ferrara,
Correction Sergeant (PS6436I),
Department of Corrections

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2014-104

Reconsideration Request

ISSUED: JUL 21 2014 (JH)

Marc Ferrara requests reconsideration of the final administrative determination in *In the Matter of Marc Ferrara, Correction Sergeant (PS6436I), Department of Corrections* (CSC, decided May 15, 2013). A copy of that decision is attached hereto and incorporated herein.

As provided in detail in the original decision, the appellant claimed that he was unable to see the clock in his assigned test room due to flags that obstructed his view. He argued that the room monitor informed Mr. Ferrara that he could not help him and that it was the test taker's responsibility to keep track of the time. He maintained that the room monitor did not offer to move his seat. He averred that the test started at 11:25 a.m. and when time was called, the room clock indicated that it was 1:08 p.m., *i.e.*, two minutes short of the allotted time. In a subsequent submission, Mr. Ferrara asserted that his watch contained a recording device "which was instructed that it would not be allowed in. I also did not have the funds to buy another watch." The Commission noted that the Division of Selection Services does not provide warnings prior to the time expiration in an examination but rather, all candidates are responsible to budget their time appropriately in order to complete the test within the allowed time limit. *See In the Matter of William O'Neal, Jr.* (MSB, decided February 9, 2005). In addition, a review of the room monitor report found that the room monitor noted the start and finish time for the subject test as 11:25 a.m. and 1:10 p.m., respectively. The Commission further indicated that the appellant had the opportunity to address the issue of his inability to see the room clock with the Center Supervisor but there was no record of the appellant doing so prior to or during the test administration. In this regard, the

Center Supervisor was contacted regarding this matter and indicated that after the test had concluded, Mr. Ferrara stated that he was not given a warning before time was called. He also indicated that flags blocked his view of the clock but he had not asked the room monitor to move his seat. The Center Supervisor approached the room monitor and the room monitor indicated that Mr. Ferrara had not requested that his seat be changed. Finally, the Commission noted that although it was not clear from the record why Mr. Ferrara, a Senior Correction Officer, was unable to bring a watch or other permissible time-keeping device, it is not the responsibility of the Division of Selection Services to provide candidates with time-keeping devices.

In his request, Mr. Ferrara argues that "at no moment was I asking for a finish time [or for] a warning. All I was looking for was the actual current time to be given to me because the proctor refused to move my seat, call a supervisor to temporarily move the flags that were blocking the only classroom wall clock in the room." He contends that when he asked the room monitor what other options he had, the room monitor referred him to the 2012 State Correction Sergeant Examination Review/Appeal Policy (Review/Appeal Policy) which was provided to candidates. Specifically, he "strictly followed the policy provided in the Appeals section . . . [, i.e.,] 'Any objection to the matter in which the examination was administered must be made in writing immediately following the completion of the examination . . .'" He adds that candidates were also provided with another sheet, "The Rights and Responsibilities of Test Takers" (Test Taker Rights), which "worked against me for following it because now, I'm being discriminated against because I followed what it instructed me to do." He argues that he "still do[es] not know why the [room monitor] couldn't accommodate me or call someone like the center supervisor to temporarily move the flags so the clock could be visible to everyone in the room." He maintains that when he spoke with the Center Supervisor, she stated that all room monitors were instructed to use the wall clock to keep time as they "were calibrated with the exact time to permit equal test taking time to all the examiners." He avers that he did not tell the Center Supervisor that he was not given a warning before time was called. He emphasizes that he still does not possess the funds to purchase a "simple watch."

In a subsequent submission, Mr. Ferrara "duly note[s] that I never requested or appealed this test based on a warning time from this room monitor." Rather, his appeal is based on his "inability to observe the official clock in the classroom" due to a flag which obstructed his view. He indicates that he did not leave the test room to speak to the Center Supervisor prior to or during the test because he was instructed by the room monitor that the only reason he could leave the room was to use the restroom. He asserts that it is not clear why his ability to bring a watch or permissible time keeping device to the test is at issue. In this regard, he argues that "this was not mandatory as per [the Orientation Guide] . . . Moreover, the wall clock was supposed to be the official time keeper allowing for the entire test center to act as a non-bias[ed] environment for all examiners."

CONCLUSION

N.J.A.C. 4A:2-1.6(b) sets forth the standards by which the Commission may reconsider a prior decision. This rule provides that a party must show that a clear material error occurred or present new evidence or additional information which would change the outcome of the case and the reasons that such evidence was not presented during the original proceeding.

In the present matter, the appellant has failed to meet the standard for reconsideration. The appellant does not present new evidence or additional information which was not presented at the original proceeding which would change the outcome of the original decision, nor has the appellant proven that a clear material error has occurred in the original decision. Accordingly, based on the record presented, the appellant has failed to support his burden of proof in this matter.

At the outset, the Commission notes that the Division of Selection Services uses examination centers throughout the State. These centers are rented and as such, the Division of Selection Services cannot guarantee that a particular test room will have a functioning wall clock available. In addition, even if a working clock is available, it may not be visible to all candidates and there may not be sufficient additional seating to change seats. Furthermore, as noted in the original decision, it is not the responsibility of the Division of Selection Services to provide candidates with time-keeping devices and candidates are instructed that they are responsible for keeping track of their own time. While bringing a time-keeping device to the test center is "not mandatory as per [the Orientation Guide]," it may be to the candidate's benefit to avail himself or herself of a watch or other permissible time-keeping device.¹ In this regard, Mr. Ferrara has not presented any evidence to demonstrate that he was unable to afford a permissible time-keeping device at the time of the test or explain why he was unable to borrow such a device. On its face, the Commission finds the appellant's claim that he could not afford a "simple watch" wholly unpersuasive. Moreover, the appellant indicates that he was able to view the wall clock when he stood up at the end of the test. Mr. Ferrara does not indicate that he attempted to stand up to observe the clock prior to the end of the test or had requested to do so and the request was denied.

With respect to Mr. Ferrara's claim that the Review/Appeal Policy and the Test Taker Rights did not indicate that he could speak with the Center Supervisor,

¹ It is noted that Mr. Ferrara sat for the previous Correction Sergeant examination (PS1818I) and for at least seven other multiple choice examinations administered by the Division of Selection Services.

it is noted that a review of these documents finds that neither prohibit candidates from requesting to speak with the Center Supervisor prior to or during the test if there is an issue that cannot be resolved with the room monitor. Furthermore, Mr. Ferrara does not claim that he requested to speak with the Center Supervisor prior to or during the test and that request was denied.

With respect to the appellant's claim that the test ended two minutes short of the allotted time, as noted in the original decision, the room monitor report indicates that candidates were provided with the full 1 hour and 45 minutes to complete the exam. Moreover, it is noted that no other appeals regarding this issue were filed by candidates assigned to his room at his test center.

ORDER

Therefore, it is ordered that this request 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 16TH DAY OF JULY, 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

Attachment

c: Marc Ferrara
Dan Hill
Joseph Gambino



STATE OF NEW JERSEY

In the Matter of Marc Ferrara,
Correction Sergeant (PS6436I),
Department of Corrections

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2012-3481

Examination Appeal

ISSUED: **MAY 15 2013** (JH)

Marc Ferrara appeals the administration of the promotional examination for Correction Sergeant (PS6436I), Department of Corrections. It is noted that Mr. Ferrara passed the subject test with a final average of 81.290 and rank of 510.

By way of background, 1,659 candidates were scheduled to be tested for the subject promotional examination on May 19, 2012. The subject examination consisted of 70 multiple choice questions. It is noted that candidates were scheduled to be tested in one of two sessions, in the morning session (11:00 a.m.) or in the afternoon session (3:00 p.m.). The appellant was scheduled to be tested at 11:00 a.m. at the Bloomfield Middle School.

In a timely appeal submitted at the test center, Mr. Ferrara indicates that he was unable to see the clock in his assigned test room. He argues that when he explained this to the room monitor, the room monitor informed Mr. Ferrara that he could not help him and that it was the test taker's responsibility to keep track of the time. He maintains that the room monitor did not offer to move his seat. He avers that the test started at 11:25 a.m. and when time was called, the room clock indicated that it was 1:08 p.m., *i.e.*, two minutes short of the allotted time.

In a subsequent submission, Mr. Ferrara asserts that his watch contains a recording device "which was instructed that it would not be allowed in. I also did not have the funds to buy another watch." He further explains:

I made it aware to the proctor before the test that the clock could not be seen from where I was seated due to the full size flags that blocked it and when I asked for my seat to be relocated, he said he would not move my seat . . . The only reason I was able to know when to begin my exam, was because the proctor wrote the words[,] [']start time 11:25 a.m.,'] on the classroom black board not because he said[,] [']everyone begin.['] At no moment did he write 'End time' on the board. As I am taking my test and hear the words[,] 'TIME[']S UP[,] it puzzled me because I was never given an exact written time as to when the test would finish nor did he want to give me the time when I called him over and asked him during the exam.

He inquires, "how could I possibly budget my time if the proctor would not let me see his watch nor verbally tell me the current time nor the time the test was ending?" He argues that he did not ask the room monitor for a warning but rather, for the current time and the time the test was to end. He asserts that with this information, he could have budgeted his time. He adds that after the test had ended, he approached the Center Supervisor who informed him that "she personally had checked all the room clocks and made certain that each clock was equal in time. She also expressed that she had instructed all proctors to go by the wall clock in the classrooms because they were the ones that were calibrated with the exact time to permit equal test taking time to all the examiners. Apparently, the proctor did not follow the instructions given to him." He requests that all of his unanswered questions be omitted from scoring.

CONCLUSION

It is noted that the Division of Selection Services and Recruitment does not provide warnings prior to the time expiration in an examination but rather, all candidates are responsible to budget their time appropriately in order to complete the test within the allowed time limit. *See In the Matter of William O'Neal, Jr.* (MSB, decided February 9, 2005). In addition, while the Notification to Appear for Examination indicated that candidates were not permitted to bring electronic communication devices into the test center, simple watches were not included in the list of prohibited devices.

In the instant matter, it is noted that room monitors received a Monitors Manual prior to the administration of the subject examination which specifically provides that monitors were to instruct candidates: "it is your responsibility to keep track of your own time. You will not be given a warning as your time is running out." In addition, room monitors were to inform candidates that they had "1 hour and 45 minutes to complete this exam." It is noted that the amount of time candidates had to complete the exam was also indicated on the stub portion of the answer sheet. Room monitors were to instruct candidates to begin the exam and

record the start time. In this regard, a review of the room monitor report finds that the room monitor noted the start and finish time for the subject test, 11:25 a.m. and 1:10 p.m., respectively.

Test centers are under the supervision of Center Supervisors. Appellant had the opportunity to address the issue of his inability to see the room clock with the Center Supervisor on the test date if Mr. Ferrara and the room monitor could not come to an agreement. There is no record of the appellant complaining of this issue with the Center Supervisor prior to or during the test administration. In this regard, it is noted that the Center Supervisor was contacted regarding this matter. The Center Supervisor indicated that after the test had concluded, Mr. Ferrara came to Room A and stated that he was not given a warning before time was called. The Center Supervisor explained that warnings were not given. In addition, Mr. Ferrara claimed that the flags in the room obstructed his view of the clock. The Center Supervisor asked if he had asked the room monitor to move his seat. Mr. Ferrara indicated that he had not. The Center Supervisor subsequently went to the room in which Mr. Ferrara had taken the test and observed the start time written on the blackboard. The Center Supervisor approached the room monitor and inquired as to whether Mr. Ferrara had requested that his seat be changed. The room monitor indicated that he had not made such a request.

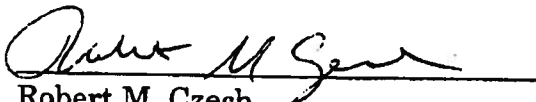
Moreover, although it is not clear from the record why Mr. Ferrara, a Senior Correction Officer, was unable to bring a watch or other permissible time-keeping device, it is noted that it is not the responsibility of the Division of Selection Services and Recruitment to provide candidates with time-keeping devices.

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 ON
THE 15TH DAY OF MAY, 2013



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: Marc Ferrara
Dan Hill
Joseph Gambino**