

B-130



STATE OF NEW JERSEY

In the Matter of James Sarkos, *et al.*,
Police Captain,
various jurisdictions

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2015-1532

Examination Appeal

ISSUED: FEB 09 2015 (JH)

James Sarkos (PM0838S), Atlantic City; Peter Lagis (PM0863S), Jersey City; Isabellino Pellot (PM0887S), Passaic; Joseph Botti (PM0905S), Union City; and Daniel LoBue, a make-up candidate for (PM1532R), Hoboken; appeal the written portion of the examination for Police Captain (various jurisdictions). These appeals have been consolidated due to common issues presented by the appellants.

The subject exam consists of two parts: a multiple-choice portion and an oral portion. The written portion was administered on October 23, 2014 and consisted of 70 multiple choice questions.

Mr. LoBue argues that he was only provided with 30 minutes for review and he was not permitted to review his test booklet, answer sheet and the correct answer key. In addition, he contends that his ability to take notes on exam items was severely curtailed. As such, he requests that any appealed item in which he selected the correct response be disregarded and that if he misidentified an item number in his appeal, his arguments be addressed.

Regarding review, it is noted that the time allotted for candidates to review is a percentage of the time allotted to take the examination. The review procedure is not designed to allow candidates to retake the examination, but rather to allow candidates to recognize flawed questions. First, it is presumed that most of the questions are not flawed and would not require more than a cursory reading. Second, the review procedure is not designed to facilitate perfection of a candidate's test score, but rather to facilitate perfection of the scoring key. To that end,

knowledge of what choice a particular appellant made is not required to properly evaluate the correctness of the official scoring key. Appeals of questions for which the appellant selected the correct answer are not improvident if the question or keyed answer is flawed.

With respect to misidentified items, to the extent that it is possible to identify the items in question, they are reviewed. It is noted that it is the responsibility of the appellant to accurately describe appealed items.

An independent review of the issues presented under appeal has resulted in the following findings:

Question 5 indicates that you are the Internal Affairs commander of your department. The question asks, based on the Attorney General's Internal Affairs Policy and Procedures, for the complaint that you should not personally investigate. The keyed response is option c, "An allegation by a local businessman that your Chief solicited a bribe in exchange for a lack of traffic enforcement for trucks making deliveries to the businessman's establishment." Mr. Botti argues that option b, "A complaint made by a 14-year-old female juvenile, alleging that she was molested by Officer Jones during a field interview," is correct. He maintains that Internal Affairs does not investigate sex crimes. Rather, he notes that the county prosecutor's office investigates sexual assault matters. The Internal Affairs Policy and Procedures (Revised July 2014) provides that "Complaints against a law enforcement executive . . . shall be documented and referred to the county prosecutor for investigation." It also provides, "Where preliminary investigation indicates that possibility of a criminal act on the part of the subject officer . . . the county prosecutor must be notified immediately . . . [N]o further action should be taken, including the filing of charges against the officer, until directed by the county prosecutor." It is noted that the Division of Selection Services contacted a Subject Matter Expert (SME) on this matter who indicated that the investigation of a complaint concerning a law enforcement executive is conducted by the prosecutor's office only. However, with respect to a potential criminal action of a police officer, the SME indicated that the complaint would immediately be referred to Internal Affairs and a preliminary investigation would be conducted by Internal Affairs to determine the veracity of the complaint. Once the Internal Affairs investigator establishes what was alleged to have occurred, he or she would immediately notify the prosecutor's office and await direction on how to proceed. The SME added that the investigation of the potential criminal actions of an officer is generally conducted by the Internal Affairs officers of the department under the direction of the county prosecutor's office. The SME further added that the Internal Affairs Policy and Procedures does not state that Internal Affairs would not investigate an allegation of molestation. Thus, option c is the best response.

Question 11 indicates that two of your new recruits at the County Police Academy failed the drug screening. The question presents candidates with three statements and asks for the action that the Attorney General's Law Enforcement Drug Testing Policy does not require law enforcement agencies to do. The keyed response, option c, does not include statement III, "Recognize that law enforcement agencies have an independent obligation to undertake the drug testing of individual officers when there is reasonable suspicion to believe that the officer is illegally using drugs." Mr. Sarkos maintains that statement III is correct. In this regard, he argues that "independent obligation" does not appear in the policy. He adds that the law enforcement agency does not have an independent obligation since "the policy clearly states that either the County Prosecutor or the chief executive officer of the law enforcement agency must review the report documenting the reasonable suspicion; either may order the test therefore there is not an independent obligation but rather a dual responsibility." He refers to a "published 2006 Superior Court Appellate Division case. The case is entitled: Passaic County PBA Local 197, Passaic County PBA Local 286 and Wayne PBA Local 136, Plaintiffs-Appellants, v. Office of the Passaic County Prosecutor and James F. Avigliano, Prosecutor."¹ The Attorney General's Law Enforcement Drug Testing Policy (Revised May 2012) provides:

This policy does not require law enforcement agencies to drug test applicants, nor does it require law enforcement agencies to implement a random drug testing program for sworn officers. However, law enforcement agencies have an *independent obligation* to undertake the drug testing of individual officers when there is reasonable suspicion to believe that the officer is illegally using drugs (emphasis added).

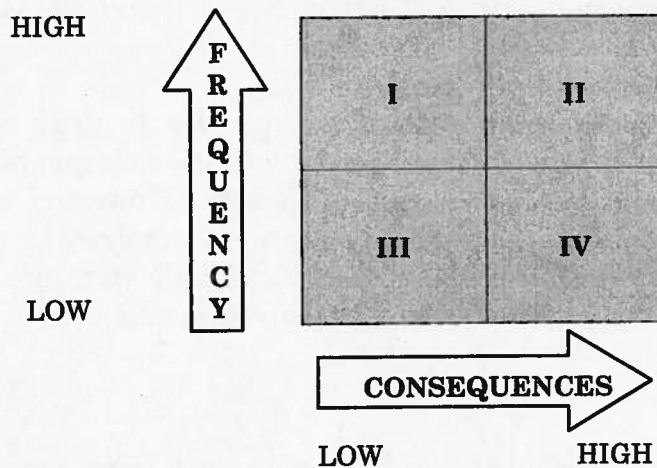
Thus, the question is correct as keyed.

Question 22 indicates that during the investigation of a theft complaint, an officer observes a body vest (Ballistic Vest) in plain view in the suspect's apartment. The investigation also reveals that there is an arrest warrant for the suspect for committing a series of criminal offenses throughout your jurisdiction. While continuing the investigation to determine if the suspect used the vest in any of the criminal offenses committed, the officer discovers that according to Title 2C, a person is guilty of a crime if he or she wears a body vest while engaged in the commission of certain crimes. The question asks for the crime that is not specifically cited in *N.J.S.A. 2C:39-13*. The keyed response is option d, "aggravated arson." Mr. Botti argues that "criminal escape is not listed as an offense anywhere else in 2C. In 2C:29-5 the title is 'escape.' In [the] past, DOP tests that I have

¹ Although Mr. Sarkos does not provide a citation, he appears to be referring to *PBA Local 197 v. Passaic Prosecutor*, 385 *N.J. Super.* 11 (App. Div. 2006).

taken the answer had to be the exact way it was listed in the statute . . . I do not think that those of us who ch[o]se aggravated assault² should be punished due to a legislative error.” *N.J.S.A. 2C:39-13* (Unlawful use of body vests) provides: “A person is guilty of a crime if he uses or wears a body vest while engaged in the commission of, or an attempt to commit, or flight after committing or attempting to commit murder, manslaughter, robbery, sexual assault, burglary, kidnaping, *criminal escape* or assault under *N.J.S. 2C:12-1b*” (emphasis added). The question specifically refers to *N.J.S.A. 2C:39-13*. Thus, the question is correct as keyed.

Question 43 refers to Kären M. Hess and Christine Hess Orthmann, *Management and Supervision in Law Enforcement* (6th ed. 2012). The question indicates that you are helping to prepare a training program for your department’s officers. When choosing the training areas on which to focus, you decide to do this from the standpoint of reducing risk. The question notes that Hess and Orthmann present a training criticality matrix to illustrate where training investments should be focused on first. In this regard, the question presents candidates with the following diagram in the test booklet:



The four numbered quadrants (I, II, III, and IV) represent the four possible combinations of frequency and consequences.³ The question asks, based on the text and the diagram, for the quadrant on which training investments should be focused on first. The keyed response is option d, “IV.” Mr. Lagis argues that quadrant B is

² It is noted that “aggravated assault” was not one of the answer choices presented to candidates. It is also noted that Mr. Botti selected option c, “criminal escape.”

³ As such, Quadrant I indicates high frequency, low consequences; Quadrant II indicates high frequency, high consequences; Quadrant III indicates low frequency, low consequences; and Quadrant IV indicates low frequency, high consequences.

equally correct.⁴ In this regard, he contends that the text makes “recommendations on both quadrant A and B, and not clearly stating which is a definitive investment to make ‘first.’” The text states, “The risk manager will recommend training investments to be focused first on the procedures or activities that intersect on quadrant A. Annual training to address topics relevant to quadrant B would be considered second.” As such, the question is correct as keyed.

Question 56 refers to the Oak Township Police Department Outside Employment Policy presented to candidates in the test booklet. The question indicates that Officer Thomas injured his back last week when he fell while on patrol. His physician has prohibited him from driving, lifting anything over 15 pounds, and standing for more than three hours at a time. For this reason, he has been placed on restricted duty status at work. He currently works a part-time job at Sam’s Electronics Store. His duties include walking around the music department throughout his four-hour shift to provide sales assistance to customers, preparing invoices from his desk in the back office of the store, and occasionally lifting 12-pound boxes of electronic parts. Candidates were required to completed the following sentence, “Due to his restricted duty status, when working at Sam’s Electronics Store, Officer Thomas is . . .” The keyed response is option b, “prohibited from walking around the music department for his entire four-hour shift.”⁵ Mr. Pellot argues that option d, “allowed to perform any of his assigned job activities,” is the best response. He asserts that “standing indicates no action or movement and walking clearly involves action and movement which did not conflict with the doctor’s instruction.” He contends that “if the doctor wanted him not to walk for the sake of effective and clear instructions he would have stated for him to stay off of his feet.” Although Mr. Pellot bases his argument on the element of “action and movement,” it is noted that both walking and standing involves being upright on one’s feet, and one must be standing in order to walk. As such, the question is correct as keyed.

Question 69 refers to the Oak Township Police Department 2013 Annual Report provided to candidates in the test booklet.⁶ The question refers to lines 18 and 19 of the 2013 Click It or Ticket Narrative which provides, “Seat belt

⁴ It is noted that the text labels the quadrants as (corresponding quadrant in test booklet diagram): A (IV); B₁ (III); B₂ (II); and C (I). Although Mr. Lagis does not indicate which of the B quadrants to which he refers, it is noted that he selected option b, “II.”

⁵ The Oak Township Police Department Outside Employment Policy, under the section entitled, “Restrictions on Outside Employment,” states that “Department members in a limited or restricted duty status are prohibited from engaging in outside employment job activities which are not permitted by the limited duty status.”

⁶ It is noted that the Annual Report includes, “2013 Click It or Ticket Results” and “2013 Click It or Ticket Narrative.”

checkpoints were set up in two locations, which were West Marlin Road and Grand Street,” and asks how the information contained in the sentence should be corrected. The keyed response is option c, “Seat belt checkpoints were set up in three locations, which were West Marlin Road, Grand Street and Laurel Avenue.” Mr. LoBue argues that option b is equally correct. In this regard, he maintains that the question provided candidates with the following answer choices:

- (a) [repeated the sentence].
- (b) There were 3 checkpoints set up, which were located at Laurel Avenue, Brick Street and Commerce Street.
- (c) There were 3 checkpoints set up, which were located at Laurel Avenue, Brick Street and Commerce Street.
- (d) There were 2 checkpoints set up, which were Laurel Avenue and Brick Street.

It is noted that neither “Brick Street” nor “Commerce Street” were provided in the answer choices, “2013 Click It or Ticket Results” or in the “2013 Click It or Ticket Narrative.” The “2013 Click It or Ticket Results” indicates that there were three seatbelt checkpoints: West Marlin Road, Grand Street and Laurel Avenue. Option b provides, “Seat belt checkpoints were set up in three locations, which were West Marlin Road, Grant Street and Laurel Avenue.” Option b is incorrect since it indicates Grant Street rather than Grand Street. Thus, the question is correct as keyed.

CONCLUSION

A thorough review of appellants’ submissions and the test materials reveals that, other than the scoring change noted above, the appellants’ examination scores are amply supported by the record, and the appellants have failed to meet their burden 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 4TH DAY OF FEBRUARY, 2015



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: James Sarkos
Peter Lagis
Isabellino Pellet
Joseph Botti
Daniel LoBue
Dan Hill
Joseph DeNardo
Joseph Gambino

