

assistant did not witness the unnecessary attitude that she displayed to him and only him. After returning to the room, there were more candidates in line waiting for their answer sheets and another candidate went out of the room after he returned. The monitor read instructions including the restriction of no electronics in the test center, at which point he realized that he had his mobile device in the powered-off mode. He states that he started to raise his hand and then thought about the fact that the monitor did not like him. He states that this was his first time taking the Captain's test and he did not know there were no electronics allowed in the room. He told the assistant monitor that he forgot to leave his phone in the car and showed it to him. The assistant monitor said there was no problem and that it would be returned, but after discussing it with the room monitor, the assistant left the room and returned with another assistant who escorted him from the room. This all occurred before the test was administered. He states that he went to another room where he tried to explain the situation to another assistant, who was in fact the Center Supervisor, and she was not interested, so he filed an appeal and left. He states he was a victim of racism and that a person of opposite color would not have been disqualified. He requests to take a make-up examination.

CONCLUSION

The record establishes that appellant was scheduled to take the subject examination on November 15, 2014, but was disqualified for possession of a cell phone. There is no dispute over whether the candidate had a cell phone, and the the Center Supervisor noted the incident in her report. The appellant implies that he was not cheating during the examination as he notified staff about possession of a cell phone prior to the examination being administered. Nonetheless, 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.

The appellant claims that since this was his first Fire Captain's test, he did not know of the cell phone policy. Nevertheless, the same policy was in existence for the Fire Fighter examination which the appellant must have taken and passed. In addition, candidates were informed not to take a cell phone into the examination center on page 4 of the Orientation Guide of the current administration, which stated, "With the threat of high-tech cheating on the rise, possession of personal communication devices such as cell phones, blackberries, pagers/beepers, photographic equipment, MP3 players, or other similar electronic communication devices is strictly prohibited at test centers. **Candidates who are seen or heard with these devices in the test center, even in a power-off mode, will be**

disqualified. The device may also be confiscated to ensure that an attempt was not made to compromise the testing process. In addition, briefcases and other personal items should be left outside of the test center. The Commission is not responsible for any personal items. Upon completion of the written testing process, candidates must leave the testing premises so that other candidates (still involved in the testing) will not be disturbed / distracted by outside conversations." Also, the general orientation gave the same information regarding a restriction on possession of cell phones on page 45. Next, this information was printed on the Notification to Appear for Examination sent to all candidates with notification of the test time and place. Further, there were signs prominently posted on the front door that no cell phones were allowed, and there were signs in the cafeteria in which the appellant was sitting that there were no cell phones allowed. Lastly, the policy was broadly announced to all candidates in the waiting rooms prior to their admittance to the examination rooms. As such, candidates were informed of the cell phone policy in writing so they could leave their electronic devices at home or in the car. The verbal notices were reminders to those who did not follow those written instructions.

In the matter at hand, the appellant was in possession of a cell phone inside the examination building. Possession of a cell phone at the test center is a potential breach of examination security, as phones have digital voice recording features on them which make it possible to record information, to take photographs and instant text messaging. Although the "no cell phone rule" may appear draconian, its importance in ensuring fair and equitable testing for all potential candidates cannot be overemphasized. Test Center personnel are charged with prohibiting the use of unauthorized aids, information or assistance by candidates and preventing examination security material from leaving the exam center. In any event, due to the multiple capabilities of phones, the standard to which candidates are held is possession of a cell phone, not the use of one.

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, and mere possession of a cell phone in the test center is a prohibited action. When considering the overriding interests of examination security, it is imperative to disqualify candidates who could potentially breach examination security. This case is very similar to incidents where other candidates were disqualified for possession of cell phones in the center when they were not aware or had inadvertently brought their phones in. See *In the Matter of Joseph Battista, et al., Fire Fighter (M9999H)* (MSB, decided March 28, 2007), and *In the Matter of Michael McKenzie, Fire Captain (PM5066M), New Brunswick* (MSB, decided September 21, 2011). Carrying a cell phone into an examination center is not appropriate for a participant in a formal examination setting for a public safety title, and the appellant was properly disqualified for possession of a cell phone.

In a supplement to his appeal, the appellant claims the room monitor was racist. In support, he states that he was singled out to be moved after sitting at the same table between two other candidates, he was the only African American in the room, the monitor did not allow him to go to his car, she reluctantly allowed him to go to the water fountain, she allowed other candidates to be escorted from the room, and she sent the assistant to find someone to escort him to the Center Supervisor after the appellant presented his cell phone.

An appeal that a Commission staff person is a racist is a serious accusation. In this matter, however, there is no evidence to support the claim that the appellant was treated differently because of his race. Initially, it must be emphasized that monitors are tasked with ensuring that no cheating occurs in the examination room. The appellant was one of three candidates sitting next to each other, and there was an empty table behind them. Thus, it was prudent on the part of the monitor to remove the candidate in the middle, who was the appellant, to more evenly space the candidates out to prevent cheating. She may also have done so with other candidates.

The appellant states that he was the only African American in the room. In this case, candidates from two rooms, rooms C and M, were combined together and tested in the cafeteria. Candidates from other jurisdictions were in the room with many East Orange candidates. Based on the information provided on their applications, a minimum of 11 other African American candidates from East Orange were also in the same room with the appellant.

No one who enters the examination room may leave to go to their car. Examination booklets are in the room, and incidents have occurred in the past where a booklet went missing. In *In The Matter of Frank Estrella, et al., Fire Captain, Fire Lieutenant and Fire Officer, Various Jurisdictions* (MSB, decided July 14, 2004), a test booklet disappeared when candidates left to move illegally parked cars. While the appellant maintained he wanted to go to the car to get water, the appellant could also have been trying to put the cell phone back in the car when he realized he had it. The monitor reasonably allowed the appellant and others to go to the water fountain and the restroom. However, she followed policy by not allowing the appellant to leave the building. The fact that she allowed other candidates to leave the room, after she told the appellant he was the last one, could have been due to her realization that he was not the last candidate to be checked in, and that there was still time to accommodate their requests.

Next, the assistant room monitor does not have the authority to decide whether a candidate should be disqualified, and he should not "hold" personal items for candidates. The Commission would be responsible for the item if it went missing, or was stolen and used by someone else to copy examination material, including the assistant monitor. The policy in effect is to uphold the security of the

examination in anticipation of possible fraudulent circumstances. The assistant monitor may not have known this, but clearly the monitor did. The monitor could have attempted to disqualify the appellant herself but did not. Instead, she appropriately had the appellant escorted to the Center Supervisor when she was made aware of the discovery of the cell phone, since the Center Supervisor enforces security issues. Thus, the appellant's allegation of racism on her part lacks any support in this matter.

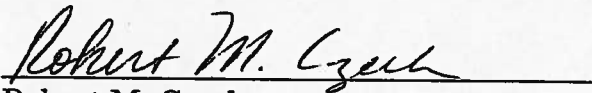
A thorough review of the record indicates that the appellant has failed to support his burden of proof in this matter.

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 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: William Wallace
Reginald Lewis
Terri Keiper
Joseph Gambino