



In the Matter of Heather Schwartz,  
 Program Specialist 4 (PS8364K),  
 Department of Human Services

**STATE OF NEW JERSEY**

**FINAL ADMINISTRATIVE ACTION  
 OF THE  
 CIVIL SERVICE COMMISSION**

CSC Docket No. 2015-1899

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**Examination Appeal**

**ISSUED: MAY 21 2015 (CSM)**

Heather Schwartz appeals the administration of the promotional examination for Program Specialist 4 (PS8364K), Department of Human Services (DHS).

The examination at issue was announced with specific requirements that had to be met as of the March 21, 2014 closing date. A total of 21 employees applied for the subject examination that resulted in a list of 10 eligibles with an expiration date of October 15, 2016. The subject examination was administered utilizing the Supervisory Test Battery (STB). In order to pass the STB with a minimum percentage score of 70%, candidates were required to achieve a minimum raw score of 51.2. The appellant's raw score was 51.2, which converts to a percentage score of 70.00. Thus, her final average score, including seniority and performance evaluation credit, was 76.00 and she ranked 10<sup>th</sup> on the eligible list. It is noted that certification (PS150437) was issued on April 2, 2015 and has a disposition due date of July 2, 2015. It is also noted that the appellant, who was a provisional appointee to the subject title, was returned to her permanent title of Administrative Analyst 2 on May 2, 2015.

On appeal, the appellant states that the DHS unfairly administered the promotional examination for the subject title because other test takers had the unfair advantage of having had prior knowledge of the questions appearing on the examination. Therefore, the appellant requests that the Civil Service Commission (Commission) address with the DHS the fact that it allowed selected individuals to take the same promotional examination on multiple occasions, thereby enabling them to gain an unfair advantage over other, first-time test takers. The appellant also requests that she be properly appointed to a provisional title which is

consistent with her background, experience and demonstrated work performance, as evidenced over the past four years working provisionally in the title of Administrative Analyst 1, and to require the DHS to schedule and administer a promotional examination for Administrative Analyst 1 and to promote her from the resulting eligible list.

In a supplemental submission, the appellant re-iterates that the several unnamed test takers had already taken the examination for the subject promotional announcement on multiple earlier occasions and that this provided them with an unfair advantage. The appellant requests documentation that none of these test takers had taken the subject examination within a prior one year period. Further, the appellant argues that the fact that this agency repeatedly administers the same examination for multiple promotional announcements, when it is aware certain test takers sit for as many examinations as they can, promotes discrimination and is in violation of the doctrine of fundamental fairness. Additionally, she asserts that this agency's practice violates the Constitutional principle of equal protection and any inaction to rectify this wrong is actionable in court.

## CONCLUSION

Initially, it is noted that the STB utilizes multiple-choice test questions that are presented to candidates on a computer concerning issues, tasks and situations associated with their role as a supervisor in a fictitious organization. It is designed to measure common supervisory skills and abilities such as Analysis and Judgment, Employee Evaluation and Development, Interpersonal Skills, Written Communication Skills, Leadership and Decision Making. The STB is the *sole* selection instrument administered unless it is determined that candidates for the examination have not been tested or evaluated sufficiently in prior positions for other important worker characteristics not measured by this examination. Candidates are allotted approximately two and one-half hours to take the examination on the computer. The questions and weighted answers to this examination were developed by Subject Matter Experts (SMEs), individuals proficient in the fields of supervision and management. Specifically, three teams of SMEs reviewed the questions and the weighted answers. The first team developed the weightings and the second and third teams reviewed the weightings previously assigned in order to ensure that the weightings were not the result of either faulty reasoning or were biased as a result of too small of an expert pool. A total of 30 SMEs participated in this process.

The STB is designed to be used for primary and higher level supervisory titles, such as Program Specialist 4 and Administrative Analyst 1. Additionally, any eligible list that is generated as a result of the STB has a duration of two years. With respect to the appellant's concerns regarding unfair advantages in the examination process, after a candidate competes in the test, the score is banked for

two years for possible future use. Specifically, candidates who apply and are determined eligible for an announcement involving another supervisory title some time within two years of the date of their initial examination will have their STB score applied for that announcement. However, candidates may retake the STB after one year in response to future announcements for which they may be eligible. If a candidate elects to take the STB after one year, the new score will be used even if it is lower than the one it replaces. The tolling period for banking test scores begins on the day the initial STB examination is administered. The score will be applied as of the examination administration date of any future examination to which a candidate is deemed eligible. Therefore, any candidate who has participated in the STB must wait at least one year before he/she would be able to take the test again and may only do so in response to another promotional announcement. This reuse of a candidate's score for this "battery" type of examination has been the policy of this agency for more than 15 years.

The crux of the appellant's concern is that permitting a candidate to retake the STB in response to a future announcement provides those individuals with an unfair advantage over first-time STB takers because they had been previously exposed to the stimulus material. The Commission disagrees. The retest policy is premised on the basis that it is unlikely that a test taker would be able to recall the specific scenarios, questions, and potential courses of action presented in a computer based test such as the STB even as early as one year after being initially exposed to the material. Moreover, to further limit exposure to the stimulus materials to a minimum of a one year time frame, due to the reuse of this examination, no review of examination questions or keyed answers is permitted. *See In the Matter of Supervisory Test Battery Lists*, (MSB, decided December 19, 2000). Further, while it is possible that a candidate could participate in, for example, three administrations of the STB over a three year period, it must be emphasized that from time to time, this agency will transition to a new version of the STB. During a transition, candidates who were scheduled to participate in an earlier version of the STB just prior to the implementation of a new version are advised that the score they achieve on that test would only apply to the particular announcement that triggered the test and would not apply to future announcements. Thus, participation in a prior STB does not necessarily establish that a candidate was exposed to the same test materials utilized in a subsequent STB.

With respect to the appellant's allegation that the reuse policy of the STB is contrary to the principles of fundamental fairness and violate the equal protection provisions of the State and federal constitutions, the appellant has not provided any evidence that this policy has adversely impacted a protected class of individuals and since all candidates who apply for promotional examinations that utilize the STB are notified of the reuse policy, all potential examinees are similarly situated and the policy is equally applied. In *In the Matter of Richard Delaney* (MSB, decided

January 12, 2005) *aff'd on reconsideration* (MSB, decided May 10, 2006), the former Merit System Board emphasized that the:

[U]se of "battery" types of examinations that evaluate relevant skill sets clearly maximizes testing and candidate resources given that these examinations evaluate common skills applicable to multiple titles. Further, the limited duration of a candidate's score on the STB, as well as the opportunity to re-take the examination after one year, provides a reasonable balance both to candidates who may wish to improve their score and appointing authorities who need thousands of candidates tested for supervisory positions in a timely manner.

Moreover, the appellant has not provided the names or specific arguments of how any of the other test takers for this announcement had an unfair advantage over her in the administration of this test or any evidence regarding her allegation that an individual was exposed to the test material earlier than one year from a prior administration.

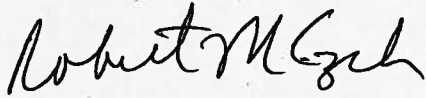
In response to her request that she be appointed provisionally and ultimately to the title of Administrative Analyst 1, there is no basis on which to entertain this request as the appellant has not demonstrated that the reuse policy for the STB is improper. Rather, the appellant essentially argues that her position is misclassified. If the appellant feels that her position is misclassified, she should file a classification appeal with the Division of Agency Services in accordance with *N.J.A.C.* 4A:3-3.9. However, it should be noted that how well or efficiently an employee does his or her job, length of service, volume of work and qualifications have no effect on the classification of a position currently occupied, as *positions*, not employees are classified. Finally, the Commission notes that no employee has a vested right to a provisional appointment.

#### 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 20<sup>TH</sup> DAY OF MAY, 2015**



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