

would consider when determining whether the use of force in the context of an arrest is properly applied. Part B asked candidates to identify and describe the standard used by the U.S. Supreme Court to analyze claims of excessive force. The appellant received a score of 4 and the assessor noted that, for part A, the appellant failed to indicate the fact of whether the suspect poses an immediate threat to the safety of the officer or others. On appeal, the appellant maintains that he provided this information in the statement, "Look at was it necessary, was it immediately necessary based on the factors facing the officer at the time." He states that the same factors and considerations were used to form the basis for his response to both questions.

At the outset, it is noted that the scores for the technical component are not reduced by missed opportunities to provide more information. Rather, each performance was rated on a five-point scale (1 to 5) from much less than acceptable through much more than acceptable according to determinations made by the SMEs. The assessor notes are examples of missed opportunities to provide appropriate responses, and thus, the examples given may not be the only missed opportunities.

This was a formal examination setting, and candidates were required to provide clear and straightforward responses. A review of the appellant's audio tape indicates that the appellant gave a series of responses in response to Part A. Part of his response was, "It's going to look to see that the type of force that the officer used was reasonable and comparable to the force or excessive force or resistance that he was, ah, being faced with. The Court's also going to look at to see ah the circumstances of the arrest, the type of arrest, was it reasonably necessary to use force in the arrest or for, ah towards the resistance that was facing the officer." The appellant described "reasonableness" at length in both responses, and he responded separately to Part B. In response to that question, he stated, "Again, a lot of these ah circumstances to ah, this question are going to be ah, a lot of what I stated in Part A. They're going to look at the reasonableness of the force. Was it reasonably necessary for the officer to use force in an encounter. And in that, was the force necessary and was it not excessive. They're going to look to see if it was appropriate and again in seeing that it was appropriate, was it necessary, immediately necessary or reasonably necessary. The Court's going to look at this objectively ah, from a comparable standpoint for a law enforcement officer that's faced with the circumstances in a real time situation with similar training and experience."

While both questions pertained to the same issue, they were separate questions with separate required answers. Credit cannot be given for information that is implied or assumed. In his response to both questions, the appellant described a standard of reasonableness used to analyze claims of excessive force. However, it cannot be assumed that the appellant knows that whether the suspect poses an immediate threat to the safety of the officer or others is a fact or

circumstance the Court considers in determining the use of excessive force, by his description of the standard used by the Court to analyze such claims. There are three facts used as the basis in determining the proper application of the use of force, and the appellant did not mention whether the suspect poses an immediate threat to the safety of the officer or others, or the severity of the crime. The appellant provided responses to Part B in his response to Part A, and for the most part, repeated them in responding to Part B. Candidates were instructed to be specific and that general responses would not contribute to their score. At the end of the presentation, the assessor asked the appellant if there were any more facts and circumstances he would like to add to Part A that he had not already mentioned. He did this as the appellant had not yet identified the facts of whether the suspect poses an immediate threat to the safety of the officer or others, or the severity of the crime. The appellant responded by repeating information already given, and did not give these responses. The appellant was credited appropriately for the responses given in his presentation. A holistic view of his presentation indicated that his performance was more than acceptable, but not much more than acceptable. As such, his score of 4 for this component is correct and will not be changed.

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 3rd DAY OF JUNE, 2015



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