



STATE OF NEW JERSEY

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

In the Matter of David Muller,
Police Captain (PM1328U),
Ewing

CSC Docket No. 2017-3631

Examination Appeal

ISSUED: September 11, 2017 (RE)

David Muller appeals his score on the oral portion of the promotional examination for Police Captain (PM1328U), Ewing. It is noted that the appellant received a final average of 80.040 and ranks second on the resultant eligible list.

This was a two-part examination consisting of a multiple-choice portion and an oral portion, and seniority was scored as well. The test was worth 70 percent of the final average and seniority was worth the remaining 30 percent. Of the test weights, 51.7% of the score was the written multiple-choice portion, 32.4% was the technical component and 15.9% was the oral communication component. The examination content was based on a comprehensive job analysis. Senior command personnel from police departments, called Subject Matter Experts (SMEs), helped determine acceptable responses based upon the stimulus material presented to the candidates, and they scored the performances. In the oral portion of the examination, candidates were presented with a scenario. They were given thirty minutes to read the scenario and questions, and to decide how to answer. In the examination room, candidates were given instructions and read the questions, and then they were given fifteen minutes to give their response to all the questions.

Performances were audio and digitally recorded and scored by SMEs. Each performance was rated on a five-point scale, with 5 as the optimal response, in two components: (1) Oral Communication and (2) Technical Supervision/Problem Solving/Decision-Making. The appellant scored a 3 for the technical component, and a 3 for the oral communication component.

CONCLUSION

The scenario involved an accident with an officer in unmarked vehicle. The officer saw a green sedan driving erratically. It sideswiped a parked car, nearly struck two pedestrians, and drove away. The officer activated his vehicle's emergency lights and audible device, and attempted a motor vehicle stop. However, the driver would not stop, but increased his speed. Dispatch notified the officer that the car was stolen. He initiated pursuit with his supervisor's approval. One minute later, the officer lost control of his vehicle and traveled onto the sidewalk where he struck a man standing at a bus stop. The candidate reports to the scene and sees the man, who has sustained severe injuries, being placed into an ambulance. Question 1 asked for specific actions to take, or ensure are being taken, in response to the incident from the time the candidate arrives on-scene through the investigative process.

After reviewing his test materials, the appellant disagreed with his score for both components. For the technical component, the appellant received a score of 3, and the assessors indicated that the appellant missed the opportunity to notify the Mayor/governing body (question 1) and to secure/review/listen to pertinent radio transmissions (question 1). On appeal, the appellant states that he would notify the Chief who was on a leave of absence, ensured a thorough investigation of the entire incident, had Internal Affairs investigate, and reviewed mobile video camera coverage. He states that his score was unfairly low, as a score of 3 would equate to 60%.

In reply, regarding scoring, candidates were given a final score calculation sheet at review which explained the scoring of the examination. This sheet did not indicate that a score of 3 was 60%. First, only those oral responses that depicted relevant behaviors that were observable and could be quantified were assessed in the scoring process. Each performance was evaluated by two SMEs who currently are a first level supervisor or higher. If the SME scores differed by 1 point, the score was averaged. If they differed by more than 1 point, the SMEs were required to confer with each other until they agreed on a score. The typical basis of 1 point out of 5 being equal to 20% is meaningless when written and oral examination have different scoring scales, and the scores need to be converted to a 100 point scale and then normalized.

Next, all candidates were scored using the same scoring criteria. The assessor notes are examples of missed actions, but are not all-inclusive of every missed action. As such, it was possible for a candidate to miss an action, but not have it appear in the assessor notes. This does not mean that a missed action was not considered in determining the final score. In scoring the technical component of each scene, candidates are expected to give acceptable responses (a score of 3) which are then raised for enhanced responses or lowered for a lack of responses. The

appellant did not lose two points for failing to give two responses; rather his presentation did not include enough responses to warrant a score higher than a 3. Performances are viewed in their entirety, and the appellant's overall response contained sufficient information to deem his performance acceptable, but not more than acceptable.

As to the specifics of his appeal, it is noted that credit is not given for actions that are implied or assumed. Prior to reading the questions, the monitor told the appellant, "In responding to questions, be as specific as possible. Do not assume or take for granted that general actions will contribute to your score." A review of the scoring criteria indicates that the appellant received credit for notifying the Chief, which was a separate response from notifying the Mayor or governing body. The possible courses of action were developed by SMEs who determined that the candidate should notify various individuals and offices, including the chief and the Mayor or governing body, as well as others. The appellant cannot receive credit for notifying the Mayor or governing body when he did not provide this information in his performance. Additionally, during the course of his performance, the appellant did not mention that he would *not* have to notify the Mayor or governing body since he already notified the Chief who would do so. In other words, candidates were required to identify who needs to be notified in order to receive credit for those actions.

Similarly, securing/reviewing/listening to pertinent radio transmissions is a separate action from ensuring a thorough investigation, having Internal Affairs investigate, and reviewing mobile video camera coverage. This was a formal examination setting, and candidates were required to state what they meant. Without stating that he would secure and listen to pertinent radio transmissions, the appellant cannot receive credit for having done so. Credit cannot be given for the implication that the appellant secured and reviewed pertinent radio transmissions by taking other actions. His score of 3 for this component is correct.

For the oral communication component, the assessors indicated a major weakness in word usage/grammar and a minor weakness in nonverbal communication. For grammar, the assessors noted an excessive use of "ah" and "um" throughout the presentation, along with the use of "you know" and "again." For nonverbal communication, the assessors indicated that the appellant had poor eye contact as he was excessively looking down, and at times, his talking with his hands was distracting. On appeal, the appellant argues that he was speaking conversationally in order to get his point across. He states he used emotion and spoke in an unrehearsed, un-mechanical fashion. He states that he was encouraged to use hand movements in public speaking courses, and that his references to his notes was not excessive. Again, he equates a score of 3 to 60% and believes it is not a fair reflection as overall performance.

In reply, oral communication is the ability to communicate clearly and concisely. For this component, a candidate's score is reduced by one point for each observable weakness; thus, a score of 3 indicates at least two observable weaknesses. A factor in oral communication is nonverbal communication, which includes using gestures effectively without causing confusion or distractions, and making eye contact when speaking. Another factor is grammar/word usage, which is defined as using appropriate words and using sentences that are grammatically correct.

Candidates were permitted to use their notes, and test conditions were standardized in their application to all candidates, *i.e.*, nonverbal communication (including eye contact) was assessed for all candidates. Prior to commencing the examination, the room monitor reads the same information to every candidate. At the start of the presentation, the assessor stated, "The exam will be both video and audio recorded. You are to respond facing the camera as if you were talking to your target audience. I will not be involved in the scoring of your exam." Thus, candidates were permitted to use their notes. However, this was a formal examination setting and the assessors would have been observing the appellant's eye contact with the camera. The candidate who speaks to his audience and makes eye contact with them does not have a weakness in this area.

A review of the appellant's presentation indicates that the appellant was aware of the camera, but took many actions without looking up from his papers. For example, the appellant stated, "You know we got to know, we got to know **about our officer's condition as well**. Ah, what was his condition that day? Is it an incident where we might have to **look into some blood** testing? Ah, we wanna know the condition of **the vehicle**. **Or we're gonna probably take, we're gonna take the vehicle um, out of service**, isolate it **for a mechanic's report**. **Make sure** when you have a problem with a police car, so all these bases are covered. Um. Touched on about the pursuit. Well, initially appears this is good. **There's a couple factors that are** ah, things that should be considered when entering into a pursuit that aren't mentioned here, the weather conditions, the traffic, the amount of traffic, um, it is daytime so there's daylight. Um, but there, there ah, there's other factors that do seem to be met. **Ah we, we run by the Attorney General's guidelines who can** mandate the guidelines that we should follow in in, when a **decision is made to undertake** the pursuit. Ah, you always have to outweigh **the likelihood of apprehending the suspect and the danger it poses** to the officer or, or **the general public**. So it's, it's always a tough decision. Ah, as I said I've you know had to deal with it a lot of times. Um. But on things it looks like that we did I covered here ah, we had a **driver who was erratic, almost struck two people**. Okay, so **poses a threat** to the public, ah, you know, **the officer I'm sure felt that if he didn't pursue** this vehicle ah **this driver is putting other people** at risk of serious injury or death." In this passage, the words in bold are those spoken while the appellant was looking at the camera. The

remainder are words he spoke while looking down at his notes. This behavior was characteristic throughout, and it is clear that the appellant looked excessively at his notes while giving his presentation. While his hand gestures are not overly distracting, the lack of eye contact was a minor weakness in the presentation.

As to word usage, the appellant hesitated over his words and used many distracting verbal mannerisms such as “ah” and “um.” This was an examination setting where candidates were given scenarios, and questions for each scenario, and were required to provide direct answers to those questions and, in this setting, candidates are required to maintain the flow of information. There is a well-known phenomenon of hesitational disfluency that can afflict a speaker trying to cope with the pressures of immediate processing, and some level of disfluency is acceptable when it does not affect the continuity of a presentation. At some point, however, the use of distracting verbal mannerisms is not acceptable. The appellant frequently used distracting verbal mannerisms, which detracted from the presentation. For example, he used “um” and “ah” over 125 times, said “you know” 15 times, and said “again” six times. The appellant’s frequency of the use of distracting verbal mannerisms was a major weakness in the presentation. He also used incorrect grammar at times. The appellant’s presentation contained the weaknesses noted by the assessors, and his score of 3 for this component will not be changed.

A thorough review of appellant’s submissions and the test materials indicates that the appellant’s test score is amply supported by the record, and 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 6th DAY OF SEPTEMBER, 2017



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