



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of David Dailey,
Police Captain (PM0655V),
Monroe Township

CSC Docket No. 2019-714

Request for Reconsideration

ISSUED: October 22, 2018 (RE)

The Civil Service Commission (Commission), on its own motion, reconsiders *In the Matter of David Dailey, Police Captain (PM0655V), Monroe Township* (CSC, decided September 5, 2018).

This was a two-part examination consisting of a written multiple-choice portion and an oral portion. The appellant received a score of 3 for the technical component, and a score of 3 for the oral communication component, and he challenged his scores for both components. In the prior decision, the Commission found that the appellant was correctly scored for both, and it stated that the appellant's oral communication had weaknesses in brevity and non-verbal communication and upheld his score of 3. However, after issuance of the written decision, the Commission discovered that it misidentified the test weights and included other information regarding the examination that was not necessary to adjudicate the appellant's appeal. Therefore, a corrected prior decision is provided for the Commission's review that reflects the proper test weights and includes only the relevant test information that was necessary to adjudicate the appellant's appeal. In light of this administrative error, the Commission, on its own motion, reconsidered its prior decision.

CONCLUSION

The Commission can change any score at any time, either to increase it or decrease it as warranted, and it has done so in the past. See, for example, *In the Matter of Richard Charniga, Fire Lieutenant (PM2502E), Irvington* (MSB, decided

November 4, 2004); *In the Matter of Sean Sullivan, Fire Captain (PM3511F), Elizabeth* (MSB, decided November 1, 2006); *In the Matter of John Trainello, Fire Captain (PM5234N), Newark* (CSC, decided August 15, 2013); *In the Matter of Gerald Behnke, Fire Captain (PM1136S), Paterson* (CSC, decided October 19, 2016).

In the prior decision, for each of the components, the Commission reviewed the scoring of the presentations in their entirety and provided an extensive explanation for both scores. It determined that the oral communication score had weaknesses in brevity and non-verbal communication, specifically, a lack of continuous eye contact. However, upon rereview of the prior matter, the Commission finds that, for the oral communication component, the presentation did not contain a weakness in brevity, although a weakness in continuous eye contact was evident. Candidates are scored based on how and what they say during their performance, and each score was assigned based on a holistic view of the entire exercise. For oral communication, the weaknesses are defined, and the application of these definitions to the presentation determines whether or not they are present. In the instant matter, another review of the presentation does not establish that there was a weakness in brevity. While the presentation was short, as he used five minutes and 15 seconds of the allotted 15 minutes, the appellant spent an equal amount of time on both questions. His responses were not cut short, rather, he simply provided what he knew and stopped. As such, the oral communication score for this component should be a 4, which reflects one weakness, that of non-verbal communication. Accordingly, with the exception of the oral communication score, which should be raised from 3 to 4, the Commission affirms its September 4, 2018 decision.

As the Commission has raised the appellant's oral communication score, he has passed the subject examination. Therefore, the appellant's name should be retroactively added to the eligible list, and the certification (PL180423) reissued to the appointing authority so that the appellant can be considered for retroactive appointment consideration.

ORDER

Therefore, it is ordered that this request be granted in part, and the appellant's score for oral communication be raised from 3 to 4.

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 17th DAY OF OCTOBER, 2018

Deirdre' L. Webster Cobb

Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

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Attachment

c: David Dailey
Michael Johnson
Records Center



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of David Dailey,
Police Captain (PM0655V),
Monroe Township

Examination Appeal

CSC Docket No. 2018-3179

CORRECTED

ISSUED: September 17, 2018 (RE)

David Dailey appeals his score on the oral portion of the promotional examination for Police Captain (PM0655V), Monroe Township. It is noted that the appellant failed the examination.

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. The announcement resulted in three eligible applicants and the examination was administered on October 5, 2017 and on December 9, 2017. One certification was issued (March 21, 2018 - PL180423) and one appointment was made.

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. After reviewing his test materials, the appellant disagrees with his score for both components of the oral portion of the exam.

On appeal, the appellant asserts that, although he did not specifically mention during the examination that he would collect evidence, he maintains that he stated that he would have instructed detectives to process the vehicle, which includes gathering evidence, taking photographs and locating weapons. In addition, the appellant acknowledges that he did not specifically mention that an Internal Affairs Investigation would take place, as such an investigation would automatically occur. However, he stated that he would have provided training for the officer to learn how to appropriately handle similar situations in the future. The appellant asserts that, with respect to the length of his responses, it was challenging for him to look at the camera and describe how he would respond to the situation presented. Moreover, the appellant explains that his various qualifications have assisted him with speaking to the public and other officers on a regular basis.

CONCLUSION

The scenario presented in the examination involved an alleged suspect who committed an armed robbery of a convenience store, subsequently removed a driver from her vehicle, and then sped away with the driver's child still in the back seat of the vehicle. In addition, the scenario provided that the test taker, the appellant, immediately responded as he was only two miles away from the scene of the incident and was the highest ranking officer on duty at the time. Question 1 asked candidates to describe what actions he would personally take and/or are being taken to handle the incident once he arrived at the scene of the convenience store. Question 2 added that a Police Officer in the given jurisdiction observed the driver's car at the side of a road, that the suspect was apprehended without incident, and the driver's son appeared to be unharmed. This question asked candidates to describe specific actions he would personally take, or ensure are being taken, to successfully conclude the incident from that point forward.

After reviewing his test materials, the appellant disagreed with his score for both components. For the technical component, the assessors indicated that the appellant missed the opportunity to get evidence from the vehicle's scene (question 2), and to have an Internal Affairs (IA) investigation opened regarding officer Ellis' behavior. On appeal, the appellant states that he said he would have detectives process the vehicle. He also states that he provided training for the officer and his shift, and an IA investigation would be automatic.

In reply, instructions to candidates included, "In responding to the questions, be as specific as possible. Do not assume or take for granted that general actions will contribute to your score." This was read aloud to the appellant prior to the start of his examination. In response to question 2, the appellant stated, "The detectives are going to process the vehicle as a crime scene. I'm also going to ensure that a proper investi..., a proper and thorough investigation is done. Ah, the background of the suspect, where he's coming from, what he's about." The appellant received credit for processing vehicle as a crime scene, which was a separate response from ensuring that all evidence is gathered from the vehicle's scene. If the appellant knew he would get evidence from the vehicle's scene, he needed to have articulated that action. This was a formal examination setting, and credit is not given for information that is implied or assumed. He also did not have an IA investigation opened regarding officer Ellis' behavior. While he believes he did not have to state this response as it was automatic, the SMEs disagreed, and the appellant's argument is not persuasive. The appellant indicated that he would provide training, and this contributed to his score of 3. However, this is a different action from having an IA open an investigation. The appellant missed the actions noted by the assessor, and a review of the appellant's presentation in its entirety indicates that his score of 3 for this component is correct.

For oral communication, the appellant received a score of 3, and the assessors indicated weaknesses in brevity and nonverbal communication. Specifically, they stated that his response was too brief to address the scenario, and he lacked eye contact and was reading. On appeal, the appellant indicated that it was a challenge for him to look at the camera and describe how he would respond, that he is used to teaching classes, is comfortable speaking to audiences, and has successfully provided training to many employees.

In reply, a weakness in brevity is defined as giving vague or general statements that are lacking in detail, or responding too briefly to effectively address the scenario. A weakness in nonverbal communication is defined as making confusing or distracting gestures, or failing to make sufficient eye contact when speaking.

A review of the appellant's presentation indicates that he missed many opportunities to provide additional information. Candidates were given 15 minutes to respond to the questions, and the appellant completed his response in five minutes, 15 seconds. The appellant missed providing many specific details that would enhance his score, even though he had plenty of time to do so. Additionally, the appellant read from his notes, only occasionally glancing up of the camera while speaking a word or two. For example, the appellant stated, "Once the crime scene is safe and processed, and according to **question 2** of this scenario, once the suspect is in custody, I want to en... uh, ensure the **safety** of the child is paramount, and **reunite** the family with the child. I want to also provide **victim assistance** to them

through the police department and at the county level, and I would suggest to them that they have their son checked out at a local hospital or their uh, pediatrician.” In this passage, the appellant glanced at the camera while speaking the words that are bolded. For the remaining time, he was reading from his notes. The appellant’s response had the weaknesses noted by the assessor, and his score 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 ON
THE 5th DAY OF SEPTEMBER, 2018



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