



STATE OF NEW JERSEY

In the Matter of Timothy Gay,
Deputy Fire Chief (PM5178C),
Newark

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

CSC Docket No. 2023-1895

Examination Appeal

ISSUED: December 6, 2023 **(ABR)**

Timothy Gay appeals his score on the promotional examination for Deputy Fire Chief (PM5178C), Newark. It is noted that the appellant failed the subject examination.

The subject promotional examination was held on April 23, 2022, and five candidates passed. This was an oral examination designed to generate behaviors similar to those required for success in a job. The examination consisted of four scenario-based oral exercises. Each exercise was developed to simulate tasks and assess the knowledge, skills and abilities (KSAs) important to job performance. These exercises covered four topic areas: 1) Incident Command: Non-Fire Incident, 2) Supervision, 3) Administration, and 4) Incident Command: Fire Incident. The test was worth 70 percent of the final score and seniority was worth the remaining 30 percent. The various portions of the test were weighted as follows: technical score for the Incident Command: Non-Fire scenario, 24.42%; oral communication score for the Incident Command: Non-Fire scenario, 3.155%; technical score for the Supervision scenario, 14.17%; oral communication score for the Supervision scenario, 3.155%; technical score for the Administration scenario, 11.81%; oral communication score for the Administration scenario, 3.155%; technical score for the Incident Command: Fire Incident scenario, 36.98%; and oral communication score for the Incident Command: Fire Incident scenario, 3.155%.

The candidates' responses were scored on technical knowledge and oral communication ability. Prior to the administration of the exam, a panel of Subject Matter Experts (SMEs) determined the scoring criteria, using generally approved fire command practices, fire fighting practices, and reference materials. Scoring decisions were based on SME-approved possible courses of action (PCAs) including those actions that must be taken to resolve the situation as presented. For a performance to be acceptable in the technical component for some scenarios, a candidate needed to present the mandatory courses of action for that scenario. Only those oral responses that depicted relevant behaviors that were observable and could be quantified were assessed in the scoring process.

This examination was given using the chain oral testing process, and candidates were given 10 minutes to respond to each question. Candidate responses to each question were rated on a five-point scale (1 to 5) from no response through optimum according to determinations made by the SMEs. Oral communication for each question was also rated on the five-point scale. This five-point scale includes 5 as the optimal response, 4 as a more than acceptable passing response, 3 as a minimally acceptable passing response, 2 as a less than acceptable response, and 1 as a much less than acceptable response. It is noted that candidates were told the following prior to beginning their presentations for each scenario: "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."

For the Incident Command: Non-Fire Incident scenario, the appellant scored a 1 on the technical component and a 4 on the oral communication component. For the Supervision scenario, the appellant scored a 2 on the technical component and a 3 on the oral component. On the Administration scenario, the appellant scored a 4 on the technical component and a 4 on the oral component. Finally, on the Incident Command: Fire Incident scenario, the appellant scored a 1 on the technical component and a 4 on the oral component.

The appellant challenges his scores for the technical components of the Incident Command: Non-Fire Incident, Supervision and Incident Command: Fire Incident scenarios. As a result, the appellant's test material, video recording and a list of possible courses of action for the scenarios were reviewed.

The Incident Command: Non-Fire Incident involves the response to a car submerged in a pool at a residence. The prompt asks what actions the candidate would take in response to the incident.

For the technical component of the Incident Command: Non-Fire Incident, the assessor found that the appellant failed to perform a number of mandatory actions, including, in part, a 360-degree size-up and determining the number of victims. On appeal, the appellant argues that he should have been credited with these PCAs. In

this regard, he maintains that he made clear that this was a small scene in a backyard and that an incident commander could easily see the entire scene and operation from setting up the command post close to the pool, as he did. He adds that the diagram depicted the pool to be clear, making it possible to see any other victims outside of the car. With regard to the PCA of determining the number of victims, the appellant maintains that he covered this action by stating that he would account for other residents, assigning manpower to the scene and referencing the urgency of searching for all civilians and accounting for all residents. He also points to stating that they would operate safely, including a RIC team automatically dispatched on the initial alarm.

In response to the appellant's review, the Division of Test Development, Analytics and Administration (TDAA) has indicated that because the appellant accounted for the residents of the subject household, he should be awarded credit for the mandatory response of determining the number of victims and the Civil Service Commission (Commission) agrees with this assessment. However, the Commission does not find that he should have been credited for the mandatory action of conducting a 360-degree size-up. The Commission observes that the appellant stated during his presentation that he would "give a size-up to headquarters and other incoming units and the units on scene." Since a "size-up" without further elaboration could refer to part of the scene (*e.g.*, just the car on scene), as opposed to the entirety of it, his statement was too general to award him credit for the mandatory response of performing a 360-degree size-up.¹ Accordingly, based upon the foregoing, the appellant's score for the technical component of the Incident Command: Non-Fire Incident should be increased from 1 to 2.

The Supervision scenario involves the issue of a subordinate, Battalion Fire Chief (BFC) Smith, turning in his reports to the candidate late, while two other BFCs have not had the same issue. Question 1 asks what initial and specific steps the candidate should take to address this issue. Question 2 presents that third parties have informed the candidate that this same subordinate has been delayed or slow in responding to emergency incidents and that this may be contributing to his delays in providing reports to the candidate. It adds that some also suspect something outside of the fire department is happening with this subordinate. Question 2 then asks, based on this new information, what actions the candidate should take.

For the technical component of the Supervision scenario, the assessor found, in part, that the appellant missed the opportunity to implement progressive discipline. It is noted that the appellant was credited with the separate PCA of advising BFC Smith of the consequences of not meeting deadlines/progressive discipline in response to Question 1. On appeal, the appellant maintains that he should have been credited with the PCA of implementing progressive discipline in

¹ However, the Commission notes that TDAA did properly find the appellant's statement merited credit for the additional response of radioing an initial report to dispatch.

response to Question 2 because he stated during his presentation that infractions would lead to discipline, explained to his subordinate that rules and regulations needed to be followed, and also stated that oral, written or suspension violations would hinder his future ability to get promoted.

In reply, a review of the appellant's presentation for the Supervision scenario demonstrates that the assessor properly found that the appellant failed to perform the PCA of implementing progressive discipline in response to Question 2 of the Supervision scenario. As noted above, the appellant was awarded credit for the PCA of advising BFC Smith of the consequences of not meeting deadlines/progressive discipline. However, a review of the appellant's presentation demonstrates that he did not indicate that he would implement progressive discipline in response to the additional information presented in Question 2. Rather, the appellant explicitly stated the following during his response to Question 2: "I'm not here to discipline him or put anything on his record." Accordingly, the record supports his score of 2 for the technical portion of the Supervision scenario.

The Incident Command: Fire Incident involves a fire at a one-story recreation center that consists, in part, of attached classrooms on Side C utilizing steel bar joists. The Fire Department Connection (FDC) is on Side C. Question 1 asks what actions the candidate should take to fully address the incident. Question 2 provides that during the incident someone busts out of a window from one of the Side C classrooms and a recreation center counselor yells that there are still kids in there. It also states that crews are reporting that water is not flowing from the sprinkler heads. Question 2 then asks what actions should be taken based on this new information.

For the technical component of the Incident Command: Fire Incident, the assessor found that the appellant failed to state the mandatory responses of performing a multi-sided view walk-around/360-degree size-up in addressing Question 1, and the mandatory PCAs of ordering a new crew to the window for removal of victims and checking the pressure being fed to the FDC in response to Question 2. In addition, the assessor found that the appellant missed several additional PCAs. On appeal, the appellant argues that he covered the multi-sided view walk-around/360-degree size-up PCA by having multiple Safety Officers and Battalion Chiefs on all sides of the structure give progress reports. As to the Question 2 PCA of sending a new crew to the window on Side C, the appellant proffers that he clearly called for all units to respond to the rear of the building to rescue those victims and called for the third alarm assignment to work in a coordinated manner with the interior crews on search and fire control. Finally, the appellant argues that he properly addressed the sprinkler system issue and that if the sprinkler system is not functioning in an occupied, heated building, it is a malfunction, not an improper feeding issue. As such, he contends that asking for a building manager and maintenance representative to confirm whether the sprinkler had been compromised was the right call. He also proffers that the sprinklers might not have been working

because the fire might have been above the sprinkler heads. Lastly, he contends that filling out his command staff with a water officer, as he stated during his presentation, would also serve to address the sprinkler issue.

In reply, a review of the appellant's presentation for the Incident Command: Fire Incident scenario supports the appellant's score of 1 for the technical portion. Initially, the record fails to support the appellant's contention that because he stated that he would have Safety Officers and Battalion Chiefs give progress reports, he should have been credited with the mandatory response of performing multi-sided view walk-around/360-degree size-up for Question 1. It is noted that the appellant was credited with the separate PCA of appointing a safety officer based upon this statement. Additionally, as noted above, candidates were told the following prior to beginning their presentations for each scenario: "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." The statement cited by the appellant is clearly too general to convey that he would perform a multi-sided view walk-around or a 360-degree size-up. Similarly, the appellant's claim that he should have been credited with the mandatory response of ordering a new crew to the window for removal of victims in Question 2, based upon the statements he cites, fails as too general of a statement to convey that specific action. Finally, regarding the appellant's dispute about the sprinkler system in Question 2, the Commission observes that recognized experts in the field have noted the importance of trying to get a nonfunctioning sprinkler system to work:

If we find a fire in a building where the sprinklers are not operating, we will have to stretch handlines and conduct a manual attack, but we should also make every effort to get the sprinklers into action as well. Immediately begin supplying the FDC and monitor the effect that this effort achieves, if any.

John Norman, *Fire Officer's Handbook of Tactics* 133 (5th ed. 2019). Indeed, Norman emphasizes that "[t]he advantage of getting sprinkler discharge where it is needed, though—right over the seat of the fire—usually far outweighs any small delay this causes." *Ibid.* Norman further notes:

If the OS&Y [outside stem and yoke] valve is closed, pumping water into the FDC will not feed any water into that system or zone. Pump operators supplying the FDC should note whether discharge pressures fluctuate when the gate valve feeding this line is closed. If there's no fluctuation in pressures as the valve is closed, a closed sprinkler valve may be the culprit.

As soon as possible, send a reconnaissance team equipped with forcible-entry tools including bolt cutters, and a portable radio to the sprinkler

control valve location. If the sprinklers are not operating, chances are that the valve is closed. The recon team may be able to open the valve and restore protection.

Ibid. Thus, it is evident that promptly checking the FDC pressure is a critical step. Conversely, the appellant's proposed course of action would seem to accept a statement from a building manager or maintenance representative at face value and gives no indication that he would attempt to get the sprinkler system working or, at the very least, delay attempts to restore the system. As such, the Commission finds that the record fails to demonstrate that the appellant's action to be comparable to or a sufficient replacement for the mandatory PCA of checking the FDC pressure. As a review of the appellant's presentation does not demonstrate that the appellant otherwise covered the foregoing mandatory PCAs, the Commission finds the appellant was properly awarded a score of 1 for the Incident Command: Fire Incident scenario.

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 that, except for the technical component of the Incident Command: Non-Fire Incident scenario, the appellant has failed to meet his burden of proof in this matter.

ORDER

Therefore, it is ordered that the appellant's score for the technical component of the Incident Command: Non-Fire Incident scenario be raised from 1 to 2 and that the remainder of his appeal be denied. In so doing, the Commission notes that even with the foregoing scoring change, the appellant did not achieve a passing score on the subject examination.

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 6TH DAY OF DECEMBER, 2023



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