



STATE OF NEW JERSEY

In the Matter of Nicholas Balestrieri,
Fire Fighter (M1892W), Hamilton

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

CSC Docket No. 2023-2915

Examination Appeal

ISSUED: September 20, 2023 (ABR)

Nicholas Balestrieri appeals the administration of the physical performance portion (PPT) of the examination for Fire Fighter (M1892W), Hamilton.¹

The record establishes that the appellant took the subject portion of the examination on June 22, 2023. The PPT portion of the exam consisted of three parts, the obstacle course, the ladder climb, and the darkened maze, and each portion had a passing point. The passing time for the darkened maze crawl was 40 seconds, and the appellant completed it in 1 minute and 28.41 seconds, and therefore, failed the examination.

On appeal, the appellant argues that he was not given clear instructions about how to navigate the darkened maze crawl portion of the PPT and he complains about the timing of the administration of the PPT. Concerning the PPT itself, the appellant states that he believed the maze would simulate a “mayday” situation where a Fire Fighter would follow the hose line out, but he maintains that he did not feel a bend in the wood boarding believed to simulate the hose line and instead found it continued to the dead end of the maze. As to his issues with the timing of the PPT administration, the appellant states that his name was certified to the appointing

¹ It is noted that with the subsequent disposition of the September 28, 2022, certification (OL221119) on July 21, 2023, the appellant’s name was removed from the subject eligible list on the basis that he failed the PPT.

authority on September 28, 2022 (certification no. OL221119)² and that he was interviewed by the authority on or about December 27, 2022. Her further indicates that he completed a background check and a physical examination, was appointed and sworn in as a Fire Fighter with Hamilton on January 13, 2023, and then began training at the Mercer County Fire Academy. He presents that he was scheduled to graduate on June 27, 2023, as the class valedictorian, but that the appointing authority removed him from his position on June 26, 2023, because he had failed the PPT. The appellant presents that this agency's Firefighter Physical Performance Test Physical Fitness Manual (Fitness Manual) states that the PPT is to be held at the time of list certification and that candidates must complete and pass the PPT to progress through the remainder of the appointing authority's hiring process. He avers that he left gainful employment prior to beginning his service with the appointing authority and that if he had taken and failed the PPT prior to that time, he never would have left his prior gainful employment. He further contends that he has already demonstrated his ability to perform tasks ordinarily performed by a Fire Fighter, as the PPT is intended to assess, through his six months of service with the appointing authority.

The appointing authority asserts that the appellant knew or should have known about the requirement that he pass the PPT in order to be permanently appointed as a Fire Fighter. In this regard, it submits a copy of this agency's New Jersey Fire Fighter Examination Post-Written Test Timeline and Candidate Responsibilities bulletin for those who took the subject examination in 2018, like the appellant, and it notes that it clearly stated that "[c]andidates certified from any 2019 eligible list will be required to take and pass the Physical Performance Test (PPT) at the time of certification in order to be appointed," and that it also advised candidates to go to the Civil Service Commission's (Commission) website to watch a video and begin preparing for the PPT. The appointing authority advises that it was unaware that the appellant had not taken the PPT until it attempted to dispose of the September 28, 2022, certification. It proffers that it worked with the appellant to try to help him pass the PPT and that it held up returning the subject certification in an effort to provide him with an opportunity to pass the PPT before its disposition. The appointing authority avers that while it understands the appellant's disappointment with the current situation, it was ultimately the appellant's responsibility to recognize that passing the PPT was a prerequisite to be permanently appointed to the title of Fire Fighter.

CONCLUSION

N.J.A.C. 4A:4-2.15(b)2 states that, "examinations consisting of more than one part may be rated independently, and candidates who do not receive a passing score on one part of an examination shall be deemed to have failed the entire examination."

² Fifteen names, including the appellant, were certified to the appointing authority on the subject certification.

Thus, it was necessary to pass all three portions of the PPT in order to pass the exam. If a candidate did not complete any one of the three physical performance exercises in under the allotted times, that candidate failed the examination.

The Commission makes every effort to ensure that test administration is as uniform as possible for all candidates. Instructions are given verbally, but they were also given in a video shown to all candidates prior to the administration of the exam, and in the Fitness Manual. The instructions available for the darkened maze crawl in the Fitness Manual, on page 8 state:

The candidate is shown the layout of the maze before entering. The darkened maze is 40 feet long with several turns. There are curtains along the interior of the course, and minor obstacles on the floor. The candidate enters one end of the maze to the 'Start' position (at the first curtain), stops, and waits for the Examiner to give the command, "Ready – Go." The candidate then proceeds to the far side exit."

Each Center Supervisor makes notes of non-routine occurrences in the testing center. In this case, the Center Supervisor notes indicate that the appellant failed the darkened maze crawl with a time of 1 minute, 28.41 seconds. He added that the candidate appeared disoriented inside the maze and filed an appeal. Candidates are given instructions multiple times to ensure that they comply with the testing requirements. They are asked repeatedly in the check-in room if they understand the instructions, and are told to ask the monitor to repeat the instructions if they do not understand them. A review of these circumstances indicates that, rather than not receiving the proper instructions, the appellant did not follow instructions. The examination was administered to the appellant in the same manner as it was administered to all other candidates, and the situation does not warrant a retest.

As to the timing of the administration of the PPT relative to the certification, the Commission observes that the PPT was administered after the subject certification was issued and prior to its disposition. As such, the record does not evidence any issue with the timing of this agency's administration of the subject PPT. It is further observed that candidates for the subject examination were given notice of the PPT requirement when the subject examination was announced in July 2018. Specifically, item 11 under the section labeled "Requirements" for the subject examination announcement was "The 2018 Fire Fighter Study Guide and Physical Conditioning Manual are available on the Civil Service Commission website <https://www.state.nj.us/csc>." The 2018 Fire Fighter Study Guide and Physical Conditioning Manual stated in pertinent part:

The Fire Fighter Physical Performance Test (PPT) will be held at time of list certification. Therefore, whenever eligibility lists are certified those candidates who respond to the certification as "interested" will be

scheduled to take the PPT, unless they have already taken and passed the PPT during the life of that list.

This Physical Fitness Manual is designed to help candidates prepare for the PPT. All New Jersey Merit System Jurisdiction Fire Fighter candidates who are certified by an Appointing Authority (AA) on their Fire Fighter list must take and pass the PPT to progress through the remainder of the AA's hiring process.

See State of New Jersey Civil Service Commission, *Physical Performance Test: NJ Fire Fighter Physical Fitness Manual* at i (Jun. 29, 2018), [https://www.nj.gov/csc/about/news/safety/2018%20Fire%20Fighter%20Physical%20Fitness%20Manual 6.29.18.pdf](https://www.nj.gov/csc/about/news/safety/2018%20Fire%20Fighter%20Physical%20Fitness%20Manual%206.29.18.pdf).

Accordingly, as the appellant has not otherwise substantiated that his PPT was somehow mistimed or was conducted in an improper manner, a thorough review of the record indicates that the determination of the Division of Test Development, Analytics and Administration was proper and consistent with Commission regulations, and that the appellant has not met his burden of proof in this matter.

The Commission observes that the appointing authority has not addressed the appellant's claims, in relevant part, that he completed a physical examination, was appointed and sworn in as a Fire Fighter with the appointing authority on January 13, 2023, and that he then began training at the Mercer County Fire Academy. It is important that the Commission address these contentions because of issues that such actions would implicate under these circumstances.

First, appointing the appellant and sending him to the Mercer County Fire Academy prior to passing the PPT would not comport with the Civil Service law and rules. In this regard, *N.J.S.A.* 11A:4-13a provides, in pertinent part, that regular appointments shall be to a title in the competitive division of the career service upon examination and certification, while *N.J.S.A.* 11A:4-13a states, in relevant part, that provisional appointments shall be made only in the competitive division of the career service and only in the absence of a complete certification. *See also N.J.A.C.* 4A:4-1.1 *et. seq.* Given that the appellant had not taken and passed the PPT as of January 2023, he had not completed the examination process and thus could not have been permanently appointed to the title of Fire Fighter. Additionally, since the September 28, 2022, certification was a complete certification with 15 names that was still outstanding in January 2023, the appointing authority could not have provisionally appointed the appellant to the title of Fire Fighter. Similarly, it cannot be said that the appointing authority could have utilized any other appointment type pursuant to *N.J.S.A.* 11A:4-13 and *N.J.A.C.* 4A:4-1.1 *et seq.* Furthermore, since the appointing authority has not indicated that the appellant attended the Mercer County Fire

Academy in the absence of an appointment, it would thus appear that the foregoing actions by the appointing authority were not consistent with the Civil Service law and rules.

Second, the appellant's claim that he was subjected to a physical examination merits further discussion. Pursuant to the Americans with Disabilities Act (ADA), 42 U.S.C. § 12112(d)(3), no medical or psychological examination may be conducted prior to rendering a conditional offer of employment. *See also* Equal Employment Opportunity Commission, *ADA Enforcement Guidelines: Preemployment Disability Related Questions and Medical Examination* (Oct. 10, 1995). Those guidelines state, in pertinent part, that in order for a conditional offer of employment to be "real," the employer is presumed to have evaluated all information that is known or should have reasonably been known prior to rendering the conditional offer of employment. This requirement is intended to ensure that the candidate's possible hidden disability or prior history of disability is not considered before the employer examines all of the relevant nonmedical information. If, as the appellant states, the appointing authority subjected the appellant to a physical examination, then it did not strictly conform to the precise requirements of the ADA. Specifically, by proceeding in this fashion, the appointing authority did not consider whether the appellant met the non-medical requirements for appointment before conducting a medical examination. Consequently, the appointing authority did not comply with the technical requirement of rendering a conditional offer of employment prior to administering a medical examination. While the appointing authority would be well served to revise its candidate evaluation procedures to avoid having this issue raised in future cases, based upon the totality of the circumstances presented in this matter, while unfortunate, no remedy is available or appropriate to the appellant as his failure to pass the PPT constitutes sufficient cause to remove his name from the eligible list. *See In the Matter of Scott Gordon* (MSB, decided December 18, 2002); *In the Matter of Curtis L. Dorch* (MSB, decided September 25, 2002). *See also, In the Matter of Jemar Bennett* (CSC, decided June 30, 2021). In this regard, absent passing all portions of the examination, he is not currently qualified to be a Fire Fighter.

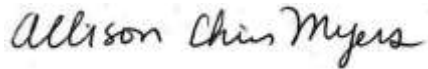
The Commission emphasizes that it in no way condones the appointing authority's actions in this case. In this regard, the Commission directs the appointing authority to strictly comply with the requirements of Civil Service law and rules, and the ADA in all future cases or it may be subject to fines or other action pursuant to *N.J.A.C. 4A:10-1.1* and *N.J.A.C. 4A:10-2.1*.

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 20TH DAY OF SEPTEMBER, 2023



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