



**STATE OF NEW JERSEY**

In the Matter of Gilberto Gonzalez,  
Fire Captain (PM2337C), Newark

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

Examination Appeal

CSC Docket No. 2023-2346

**ISSUED: August 14, 2024 (ABR)**

Gilberto Gonzalez appeals his score on the oral portion of the promotional examination for Fire Captain (PM2337C), Newark. It is noted that the appellant failed the examination.

This two-part examination consisted of a written multiple-choice portion and an oral portion. Candidates were required to pass the written portion of the examination, and then were ranked on their performance on both portions of the examination. The test was worth 80 percent of the final score and seniority was worth the remaining 20 percent. Of the test weights, 35.90% of the score was the written multiple-choice portion, 22.04% was the technical score for the evolving exercise, 7.45% was the supervision score for the evolving exercise, 5.71% was the oral communication score for the evolving exercise, 23.20% was the technical score for the arriving exercise, 5.71% was the oral communication score for the arriving exercise.

The oral portion of the Fire Captain examination consisted of two scenarios: a fire scene simulation with questions designed to measure the knowledge of safe rescue tactics and procedures to safeguard citizens, supervision of fire fighters and the ability to assess fire conditions and hazards in an evolving incident on the fireground (Evolving Scenario); and a fire scene simulation designed to measure the knowledge of safe rescue tactics and procedures to safeguard citizens, supervision of firefighters and the ability to plan strategies and tactics based upon a building's structure and condition (Arriving Scenario). Knowledge of supervision was measured

by a question in the Evolving Scenario, and was scored for that scenario. For the Evolving Scenario, candidates were provided with a 15-minute preparation period, and candidates had 10 minutes to respond. For the Arriving Scenario, a five-minute preparation period was given, and candidates had 10 minutes to respond.

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, firefighting 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. Only those oral responses that depicted relevant behaviors that were observable and could be quantified were assessed in the scoring process. 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."

Candidates were rated on a five-point scale, with 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. For each of the scenes, and for oral communication, the requirements for each score were defined.

On the Evolving Scenario, the appellant scored a 2 on the technical component, a 4 on the supervision component, and a 4 on the oral communication component. On the Arriving Scenario, the appellant scored a 1 on the technical component and a 3 on the oral communication component.

The appellant challenges his score for the technical and supervision components of the Evolving Scenario. The appellant also challenges his oral communication scores generally. As a result, the appellant's test material, video, and a listing of PCAs for the scenarios were reviewed.

The Evolving Scenario involves a fire at a parking garage where the candidate is the First-Level Supervisor of the first arriving unit who will establish command and will be the incident commander until Battalion 5 arrives in 15 minutes. The Evolving Scenario involves a response to a report of a car fire in a six-story parking garage. The candidate reports to the third floor and finds a sedan with smoke and flames billowing from the vehicle's engine. Question 1 then asks what specific actions and orders the candidate would take to fully address the incident. The prompt for Question 2 presents that Battalion 5 is on-site and has assumed command. It further indicates that after the fire is out and the incident is under control the candidate and their crew are ordered to begin overhaul operations. It then asks what actions and orders the candidate should take to fully address this assignment.

On the oral communication component of the Evolving Scenario, the assessor found that that the appellant displayed a minor weakness in nonverbal communication by frequently looking down while talking and making poor eye contact with the camera. Based upon the foregoing, the assessor awarded the appellant an oral communication component score of 4 for the Evolving Scenario. On the oral communication component of the Arriving Scenario, the assessor found that the appellant displayed a major weakness in nonverbal communication by displaying distracting gestures/mannerisms and failing to make sufficient eye contact. As a result, the assessor gave the appellant a rating of 3 for the oral communication component of the Arriving Scenario. On appeal, the appellant avers that it was necessary to review the diagrams in the test booklet when explaining his thought process and decisions. He maintains that it was therefore necessary to look down frequently at the diagrams while talking, causing him to be marked down for insufficient eye contact. He argues that in doing so, he showed that he was prepared, focused and paying close attention to the details of the scenario. He asserts that simply looking down while talking should not be interpreted as a sign of weakness or lack of confidence. As a result, he proffers that looking down frequently while talking should be considered a necessary part of the oral examination process. He also states that his personal preference is not to make direct eye contact with the camera or with others for “personal reasons, which is a work in process.”

In reply, the Civil Service Commission (Commission) emphasizes that oral communication performance can clearly distinguish candidates, including those delivering presentations with comparable technical details. To wit, it would be disingenuous to argue that the presentation of one candidate who spoke at a low rate of volume, had their speech punctuated by the frequent use of filler words like “ah” and “um,” rarely made eye contact with their audience and routinely made distracting hand gestures would be as understandable, effective and well-received as the presentation of another candidate who gave a speech with a comparable level of detail, but without these same oral communication issues. Given these considerations, the Commission finds the appellant’s arguments, to the extent they challenge the validity of the scoring of nonverbal communication, are without merit and must be denied. As to eye contact in particular, the Commission finds that the record substantiates the assessors’ findings for both the Evolving Scenario’s and Arriving Scenario’s oral communication scores. Specifically, the appellant spent significant portions of his presentation looking down at his test booklet or up and away from the camera, which clearly detracted from the effectiveness of his presentation. It is further noted that the appellant does not challenge the determination that he displayed distracting gestures/mannerisms during the Arriving Scenario. As such, the assessors’ finding that he displayed a minor weakness in nonverbal communication during the Evolving Scenario and a major weakness in nonverbal communication during the Arriving Scenario are sustained. Based upon the foregoing, the appellant’s oral communication scores of 4 and 3 on the oral

communication components of the Evolving and Arriving Scenarios, respectively, are affirmed.

On the technical component of the Evolving Scenario, the SME awarded the appellant a score of 2, based on findings that the appellant failed to perform a size-up/give an initial report to dispatch, missed the opportunity to ensure the vehicle was stabilized and missed the opportunity to ensure that any salvageable contents of the vehicle were treated with respect. On appeal, the appellant asserts that he conducted a size-up and gave an initial report to dispatch at specified points during his presentation. Regarding the PCA of ensuring that salvageable contents of the vehicle were treated with respect, the appellant maintains that by mounting a quick attack to extinguish the vehicle fire, he maximized the opportunity to safely salvage the contents of the vehicle. He adds that “[b]y no means was [he] ignoring any personal items during the scenario and not treating any possible salvage material with respect.”

In reply, a review of the appellant’s Evolving Scenario presentation demonstrates that the statements cited by the appellant were too general to award him credit for the PCAs at issue. 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.” Here, although the appellant stated that “[o]nce on scene, [he] w[ould] get a 360 multi-sided view of the structure,” because he failed to indicate that he would communicate this information to dispatch, he was properly denied credit for this action. Similarly, for the PCA of ensuring that any salvageable contents of the vehicle were treated with respect, the appellant’s contention amounts to an argument that his general actions, namely conducting extinguishment operations in a timely manner, were sufficient to cover the specific PCA at issue. Clearly, this argument must fail based upon the above-noted scoring standard. Accordingly, the appellant’s score of 2 for the technical component of the Evolving Scenario is affirmed.

The supervision component of the Evolving Scenario provides that during overhaul procedures, the candidate notices a firefighter joking around with another firefighter, behaving recklessly, removing his self-contained breathing apparatus (SCBA) prematurely and performing actions sloppily with his attention not fully on the matter at hand. The question asks what actions the candidate should take to handle this both on-scene and back at the firehouse.

The assessor awarded the appellant a score of 4 for the supervision component of the Evolving Scenario, finding that the appellant missed several PCAs, including the opportunity to ensure that the rest of the crew was wearing proper personal protective equipment (PPE). On appeal, the appellant maintains that he did so at a specified point during his presentation.

In reply, the statement cited by the appellant came during his response to Question 1 and was one for which the appellant received credit as part of his technical component score. Critically, the supervision component PCA of ensuring that the rest of the crew was wearing proper PPE was a distinct action that candidates were expected to separately identify after seeing a member of their crew remove their SCBA during overhaul procedures. A review of the appellant's presentation fails to demonstrate that he ensured that the rest of the crew was wearing proper PPE in response to the events detailed in the supervision component prompt for the Evolving Scenario. Accordingly, the appellant has failed to sustain his burden of proof and his Evolving Scenario supervision score of 4 is sustained.

The Arriving Scenario involves an incident where the candidate is a first-level supervisor who will be the highest-ranking officer and incident commander at a gas station fire. Upon arrival, a gas station employee reports that a portable kerosene heater in the gas station's convenience store tipped over and the fire spread quickly. Additionally, another employee is trapped inside. Question 1 directed candidates to perform their initial report to the camera as they would upon arrival at the incident. Question 2 directed candidates to give their initial actions and then describe in detail the specific procedures required to safely remove the victims.

The SME awarded the appellant a score of 1 on the technical component of the Arriving Scenario, based upon a finding that the appellant, in part, failed to ensure the victim was rescued/removed. On appeal, the appellant maintains that he addressed ensuring that the victim was rescued by activating a rapid intervention team (RIT) and assigning a victim tracking unit at specified points during his presentation.

In reply, the action cited by the appellant were insufficient to cover the PCA of ensuring the victim was rescued. Initially, it is noted that establishing a rapid intervention crew (RIC) or RIT was a distinct PCA for which the appellant received credit. Further, establishing a RIT or RIC would not address the rescue of the employee trapped inside of the gas station in the presented scenario, as the purpose of RITs and RICs is to rescue trapped firefighters, not trapped civilians. Indeed, "[s]ince the main task of the RIT is firefighter safety, the [Incident Commander] must avoid treating the team as just another unit that has been staged to handle fire extension." John Norman, *Fire Officer's Handbook of Tactics* 304 (5th ed. 2019). The appellant's call for a victim tracking unit is most reasonably understood as the equivalent of calling for a victim tracking officer, which would not address the rescue. "Victim-tracking officers [ ] record information about all persons transported from the scene: name, unit, description, what medical facility were they transported to, by what ambulance, or other unit were the transported?" *Id.* at 317. In other words, this would cover the tracking of victims after their rescue, not the actual rescue. Finally, it is noted that the appellant erroneously received credit for the mandatory response

of mentioning the victim reported inside during his initial report, but that the removal of credit for this mandatory PCA does not change his score of 1 on the technical component of the Arriving Scenario. Accordingly, the appellant has failed to sustain his burden of proof with respect to the scoring of the technical component of the Arriving Scenario and his score of 1 is affirmed.

### 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. Additionally, it is ordered that appropriate agency records be revised to reflect the above-noted credit change for the technical component of the Arriving Scenario, but that the appellant's overall score for this component remain unchanged at 1.

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 14<sup>TH</sup> DAY OF AUGUST, 2024

*Allison Chris Myers*

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