



This examination was given using the chain oral testing process, and candidates were given ten minutes to respond to each question. Candidate responses to each question were rated on a five-point scale (1 to 5) from nil 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. The appellant received the following scores for the technical component for each question, in order: 5, 5, 5, and 5. He received the scores of 4, 4, 5, and 5 for the oral communication components.

The appellant challenges his scores for the oral communication components for the Incident Command – Non-fire Incident, and Supervision scenarios. As a result, the appellant's test material, audiotape, and a listing of PCAs for the scenario were reviewed.

For oral communication component of the Incident Command – Non-Fire Incident scenario, the assessor noted that the appellant spoke quickly and quietly, and speed was a minor defect in his response. It was also noted that he repeated some points, such as "IDing hazmat." For the oral communication component of the Supervision scenario, the assessor noted that the appellant's rapid speech and occasional slurring detracted from the overall presentation. These comments reflect weaknesses in inflection/moderation/rate/volume (IMVR) and organization. IMVR is defined as speaking at an appropriate rate, maintaining appropriate pitch and volume, and properly using pitch to convey meaning or emphasis. Organization is defined as presenting ideas in a logical fashion, stating a topic, and providing supporting arguments as well as a conclusion or summary. Both components will be discussed together, as IMVR is a common element.

On appeal, the appellant argues that he suffers from a medical condition which causes him to speak rapidly. He argues that he should not be penalized for a medical impairment according to the Americans with Disabilities Act (ADA). He also states that he spoke at the same rate of speech throughout all four scenarios, but was only penalized on two of them. He contends that this is evidence that the scoring is subjective and should be reviewed. He also argues that he did not detect any slurring in his speech, but if he had done so, there was a medical reason. He also states that he was prescribed medication which lists slurring as a side effect. As to organization, the appellant argues that he emphasized areas that deserved special attention by repeating key points. He also states that he repeated points to reorient the assessor to the proper sequence when he backtracked to state a point.

As to a medical condition, if the appellant felt that his medical condition hindered his physical ability to give a presentation, he should have brought this to

the attention of the monitor at the test center or to the Division of Test Development and Analytics prior to the administration of the examination. At the very least, if he felt that this condition affected his performance, he should have mentioned it when he was finished with this presentation, and he would have been provided an appeal form for the administration of the examination. A test administration appeal at this juncture is untimely. See *N.J.A.C. 4A:4-6.4(c)*.

Instead, the appellant chose not to mention his medical condition, appealing his oral communication score after reviewing the examination and his results. The appellant did not check the box on his application that he needed ADA assistance, and he did not provide any medical documentation, on appeal or prior to his appeal, to support his assertion that he has a disability. He also did not provide any evidence of taking a medication which may have slurred his speech. Rather, after receiving his examination results, the appellant claims he has a medical disability, and was on medication, which affected his performance. The Commission cannot discern the medical condition of each candidate for every examination, and procedures must be followed in order to receive accommodations. Additionally, all candidates who participate in the examination process are scored equally. That is, candidate performances of those with special circumstances, such as an illness, are not considered differently than any other candidate for scoring purposes. See *In the Matter of S [REDACTED] S [REDACTED], Battalion Fire Chief (PM3570C), Newark (MSB, decided January 15, 2003)*. The appellant was scored using the same criteria used for all other candidates.

The orientation guide that was available to each candidate indicated that oral communication, the ability to communicate clearly and concisely, was a component of this portion of the exam. There are various factors associated with oral communication which are used in scoring. While the orientation guide did not delineate these factors, IMVR is a valid factor used to evaluate a person's oral communication skills. For oral communication, candidate performances without weaknesses warrant a score of 5. A score of 4 indicates at least one weakness.

A review of the appellant's performance indicates that, for both the Incident Command – Non-fire Incident and Supervision scenarios, as the appellant gave his responses, he spoke quickly, with few gaps between the delivery of separate ideas. Throughout the presentations, he stumbled over words as he gave information in a hasty manner. The manner of communication was difficult to follow as, at times, the appellant did not pause between sentences or phrases. The appellant appeared to be rushing his responses and his presentations accelerated at times. Also, for the Incident Command – Non-fire Incident, the appellant's presentation had organization issues. For example, he repeated information already given, and at the end of the presentation, he had not provided a conclusion but had stopped in mid-sentence. This was not a teaching presentation, and there was not time, nor need, to repeat ideas for emphasis or orientation. For the Supervision scenario, the



appellant spoke rapidly and tripped over his words. For example, he stated, "I would also ah, investigate as to whether he's this incident he's working it seems ah, he's having trouble with the members he's working in. When he was promoted, were they were these members he was working with prior to being promoted but now he's having difficulty 'cause he's good friends with them. Are they possibly relatives of his? You know, I don't know if that's the case, I'd have to determine that." The appellant spoke with a choppy delivery of his words so that some words were repeated, or were used incorrectly. For example, the appellant stated, "Ah, I would get his side of the, the story, and and I would like him to know why this is unacceptable behavior, ah, I guess, why as an officer in this department, this is unacceptable. Ah, it causes poor morale, this type of leadership, disciplinary problems, there's more ah, labor relationships problems, more incidents of lawsuits against the department, it's a liability issue ah, when we are not enforcing discipline fairly to all members." The appellant's rate of speech was a weakness in oral communication for both scenarios, and his score of 4 for these components are correct.

Lastly, since the appellant argued that oral communication scoring was subjective, and he used the same tone on all four scenarios but was penalized only for two, the oral communication scores for the other two scenarios were reviewed for accuracy. This review indicated that the appellant's performance for the Administration scenario did not have any weaknesses in communication. He provided more lists in his response and did not speak as rapidly as he had for the first two. However, for the Incident Command – Fire Incident the appellant again spoke rapidly in his delivery as he progressed from the beginning. As he was providing information, he failed to pause between sentences with different ideas. As he sped up, he began stuttering over his words. For example, he stated, "I'd monitor the radio channel, I'd then establish command, comm... naming the location of the command post, approximately, if I was able to, 100 feet from the side of the fire building. I would name it, four story command." As another example, he stated, "I would have the first due units, I would have the police department shut the highway ensure that primary and secondary water source is secured. Ah, if necessary, I'd have the water accountability officer establish, it it appears we're going to have to establish a relay, a relay operation. My water supply officer will maintain that. I'd have them it, it I'm on cle... I was if we're able to make access to there with the apparatus, if we will, and position properly outside of the collapse zone, I would immediately have the safety officer and myself if he's not establish a safety officer one and a half times the height of the structure and maintain it throughout the incident until this fire is under control and total ventilation has been conducted." This passage was delivered rapidly which, combined with the lack of clarity, made the ideas particularly difficult to follow.

At another point, the appellant stated, "I would ensure that we, it, based on the ah, construction of the building, if it was possible to vent, defend the, the D

exposures to the catch exposures, we would, from an, if it was possible to c..., ah, protect it from an interior position, if it was fire, fire walls put in place. If not, we would this would be a strictly exterior firefighting operation.” The appellant spoke cogently through most of his responses, but there were several times when his presentation was difficult to follow, particularly as he spoke so quickly. The appellant’s oral communication score for the Incident Command – Fire Incident scenario contained a weakness in IMVR, and his score for this component should be changed from 5 to 4.

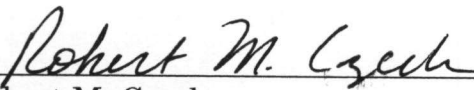
A thorough review of appellant’s submissions and the test materials indicates that, except for the oral communication component of the Incident Command –Fire Incident scenario, the decision below is amply supported by the record, and the appellant has failed to meet his burden of proof in this matter.

### ORDER

Therefore, it is ordered that the score for the oral communication component of the Incident Command –Fire Incident scenario be changed from 5 to 4, and the remainder of the 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 16<sup>th</sup> DAY OF DECEMBER, 2015

  
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