



STATE OF NEW JERSEY

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

In the Matter of Paul Allegretta, *et al.*, County Correction Captain
(various jurisdictions)

Examination Appeals

CSC Docket Nos. 2019-3523, *et al.*

CORRECTED DECISION

ISSUED: SEPTEMBER 16, 2019 (ABR)

Paul Allegretta, Michael Cumiskey and Ralph Turre (PC2903W), Bergen County; and Daniel Hansson and Scott Hayes (PC2910W), Monmouth County appeal the promotional examination for County Correction Captain (various jurisdictions). These appeals have been consolidated due to common issues presented by the appellants.

The subject examination was administered on May 2, 2019 and consisted of 70 multiple choice questions. It is noted that during the test administration, candidates were provided with two booklets, Booklet A (County Correction Captain Supplemental Examination Material) and Booklet B (2019 County Correction Captain Examination). Booklet A contained stimulus material and Booklet B contained the exam questions.

An independent review of the issues presented on appeal has resulted in the following findings:

Question 32 provides that while conducting a routine tour, the examinee observes an officer give a pat down to an inmate in the intake area. However, the examinee does not believe the pat down was thorough enough. The question asks for the best way to handle the situation. The keyed response is option d, to “[p]ull the officer aside privately to discuss proper pat down procedures and instruct him to pat down that inmate again.” Allegretta argues that the best response is option a, to “order the officer to do the pat down again and provide guidance as necessary.” In this regard, he argues that it would be unsafe to pull the officer aside, because if

the inmate is carrying some form of contraband, the separation between the officers and the inmate would create an opportunity for the inmate to use or conceal it, particularly as the inmate may recognize that he or she is about to be searched again. Allegretta asserts that instructing the officer to search again while providing guidance would be as effective, if not more so, because it would ensure that the inmate is continually monitored and it would provide prompt hands-on education to the officer. The Division of Test Development and Analytics contacted Subject Matter Experts (SMEs) who have knowledge regarding the performance standards and requirements of the job. The SMEs indicate that “pull[ing] the officer aside” does not mean that the inmate would no longer be monitored. Rather, it is possible to correct the officer out of earshot of the inmate, while still keeping the inmate within sight of the supervisor and the officer. The Commission agrees with the rationale of the SMEs. Accordingly, it finds that Question 32 is correct as keyed.

For Question 40, Cumiskey selected the keyed response. Accordingly, his appeal of this item is moot.

Question 43 involves CO Wyatt complaining to Lieutenant Wallace that other “officers with less seniority have more desirable post assignments,” which he thinks is unfair. The question asks for the best way for Lieutenant Wallace to handle this situation. The keyed response is to explain to the correction officer that “seniority is not the only factor considered and that the assignment of people is based on who will keep the area running smoothly.” Turre argues that option a, to have the officer “put his complaint in writing so that it can properly be addressed,” is the best response. In this regard, he argues that because CO Wyatt is alleging unfair treatment, the Exeter County Correctional Facility could be held legally liable if the complaint is not documented and addressed properly. Turre further contends that the statement that the “assignment of people is based on who will keep the area running smoothly” is a biased statement which may add to CO Wyatt’s resentment of the assignment system in place, particularly as the question does not state that he is a poor officer or unable to run a post smoothly. Turre submits that the various leadership, managerial and supervisory training courses he has attended emphasize that formal complaints by staff need to be documented and addressed immediately. The Commission finds that the best way to respond to CO Wyatt’s complaint is to attempt to talk with him and explain that multiple factors are used to determine post assignments. Initially, because the question does not provide any information which suggests that CO Wyatt’s complaint is based upon membership in a protected class, telling him to file a written complaint because of concerns that he may file a discrimination complaint in the future is clearly outside of the scope of this question. Further, option a would not be the best response to this question because it does not provide the most immediate response to the scenario. Telling CO Wyatt to file a written complaint without attempting to explain the basis for assignments could come off as impersonal and dismissive. As a result, it may compound his present frustration with post assignments, rather than solve the issue. Conversely,

speaking with him and explaining the basis for assignments provides him with immediate personal attention which could resolve the issue promptly and without the need for a more formal review of a written complaint. If CO Wyatt is not satisfied with the examinee's statement, he can then be directed to proceed with a written complaint. Further, the assertion that CO Wyatt would resent the statement that assignments are based on who will keep the area running smoothly is a flawed one. Specifically, it is entirely possible that CO Wyatt may be given a "less desirable" post because it is one which requires a higher level of skill or a greater level of attention to detail and CO Wyatt's performance is superior to that of another officer. Therefore, the Commission finds that Question 43 is correct as keyed.

Question 47 asks what Sergeant Walters should do first after hearing smoke detectors go off in the Medical Wing and seeing clouds of smoke, but no visible flames. The keyed response is option b, to call a Code Red. Hansson and Hayes argue that the best response is option a, to determine the source of the smoke, given that Booklet A defines a Code Red as a "fire in progress" but no flames are visible here. Hayes and Hansson also maintain that there could be a variety of sources for smoke without a fire, including a person smoking in an unauthorized area, a medical procedure such as cauterizing, medical equipment overheating or shorting, old electrical fixtures, overheated food or a chemical reaction. Hansson avers that a Code Red may have been the best response if this was occurring in the kitchen, as a fire would be more likely to occur in that location. Hansson asserts that it is imperative to determine whether there is an actual fire before calling a Code Red, because fires in correctional facilities are "very rare these days," due to State laws banning smoking and the possession of lighters and matches in facilities; and because calling a Code Red would trigger a facility-wide lockdown, require the immediate evacuation of the area of the fire and result in a call to the local fire department. Hansson also argues that because there are no visible flames, there is no fire in progress. Hayes further asserts that the reference to "clouds of smoke" in the question does not necessarily signal that a fire is in progress, as it is a subjective phrase which could suggest insignificant, small or light clouds. Hayes maintains that a reference to "large quantities" of smoke, or "dark or black smoke," would have provided examinees with enough information to conclude that a fire was ongoing. Hayes adds that a cause other than a fire could have triggered the smoke detector, as modern smoke detectors are very sensitive. The Commission finds that because Question 47 indicates that smoke detectors are going off and there is visible smoke, it is most reasonable to assume that "where there's smoke, there's fire" and call a Code Red. Doing so immediately is critical, as the purpose of calling a code is to notify appropriate staff to initiate proper protocols and any delay would make the response more difficult if there is indeed a fire. Any other response would delay the initiation of these protocols. Accordingly, Question 47 is correct as keyed.

For Question 48, Turre selected the keyed response. Accordingly, his appeal of this item is moot.

Question 50 states that the facility received a call from a woman who sounded distressed and stated that she saw a man dressed in dark clothing throw a black backpack into a dumpster located outside of the main entrance to the courthouse, which is next to the facility. The question asks the examinee to consider what action(s) among the following should **NOT** be taken after being notified about the call:

- I. Notify the appropriate personnel at the courthouse (e.g., court security).
- II. Evacuate staff and inmates immediately.
- III. Send a team to check out the area where the backpack was thrown.

The keyed response is c, "II and III only." Hansson argues that the correct response should be changed to option b, "I and II only" or that the question should be removed for lack of information. Specifically, Hansson asserts the prompt does not confirm that security personnel are present at the courthouse and, if so, whether they are trained to handle such a situation. In this regard, Hansson notes that because the question does not state the time of day, it is possible that courthouse may be closed and courthouse security personnel may not be present. Hansson also argues that even if security guards are present, the question does not make clear whether court security staff are sworn law enforcement officers or merely private security guards. Hansson contends that with suspicious packages, it is imperative to send sworn law enforcement officers to investigate, as they are regularly trained on how to handle such situations, while private security guards are not. Hansson further asserts that the question lacks other key information that would help to evaluate the proper response(s), including where the tipster was calling from, when she observed this incident, and her proximity to the dumpster and the individual. Therefore, based upon the foregoing, Hansson argues that it is best to send County Correction Officers, as sworn law enforcement officers with appropriate training and he states that the least appropriate actions among those listed would be to notify courthouse personnel and evacuate staff and inmates. The SMEs state that county courthouses are typically staffed by sheriff's officers, who are sworn law enforcement officers, with civilian security guards providing assistance in some locations. They indicate that courthouse security should be available at all times and that in this situation they would respond. The SMEs state that correctional staff would not be sent unless requested by courthouse security. The SMEs further note that it would be premature to evacuate the facility until courthouse security responds to assess the threat. The Commission believes there is sufficient information in the scenario to establish these facts. Accordingly, based upon the foregoing, the Commission finds that Question 50 is correct as keyed.

Question 52 states that Sergeant Unger often makes comments regarding Lieutenant Rodriguez's lack of ability to supervise and states that he should have been promoted before Lieutenant Rodriguez. It also indicates that Sergeant Unger made these comments in front of officers, who have brought them to the examinee's attention. The question states that the examinee believes that Lieutenant Rodriguez is unaware of Sergeant Unger's complaints and it asks for the best way to handle the situation at this point. The keyed response is option d, to "[m]eet with Sergeant Unger in private to discuss his complaints and tell Sergeant Unger it is inappropriate for him to continually insult Lieutenant Rodriguez in front of other officers." Hayes argues that the best response is option c, to "[i]nform Lieutenant Rodriguez of Sergeant Unger's complaints and meet with both the lieutenant and sergeant to mediate the issue" because he does not believe that meeting with Sergeant Unger privately would solve the problem. Hayes asserts that Lieutenant Rodriguez will eventually find out about the comments. He maintains that it would be better to tell him about the situation and involve him in the discussion, rather than leaving it for Lieutenant Rodriguez to learn about it from other officers because it is likely that Lieutenant Rodriguez would then approach Sergeant Unger separately about the matter. Hayes suggests that Sergeant Unger could become more aggravated if he has to speak to Lieutenant Rodriguez about the matter after already speaking to the examinee about it. The SMEs indicate that it would be best to meet with Sergeant Unger privately, as it would give him an opportunity to confirm or deny that he made those comments and to voice his complaints, if any. The SMEs submit that the examinee would then assess whether to hold a subsequent meeting with both Sergeant Unger and Lieutenant Rodriguez or to immediately brief Lieutenant Rodriguez based on the course of this conversation. The Commission agrees that it would be best to speak with Sergeant Unger first, as his purported complaints do need to be addressed and it is important to listen to what he has to say. Furthermore, speaking with Sergeant Unger without Lieutenant Rodriguez present could offer a less confrontational environment which might allow the examinee to get more complete information about Unger's concerns. Accordingly, Question 52 is correct as keyed.

Question 55 indicates that three weeks ago the examinee directed Lieutenant Wallace to assign every officer to time slots for a one-hour mandatory ethics training course, which is being presented during different time slots next month. The question indicates that the examinee instructed Lieutenant Wallace to assign every officer to a time slot as soon as possible. Lieutenant Wallace reports to the examinee that he is still working on it. The training is starting in a few days and officers still do not know when they have to attend the training. The question asks what would have been the most effective way to ensure Lieutenant Wallace completed the task in a timely manner. The keyed response is option b, giving Lieutenant Wallace a concrete deadline for when the task should be completed. Hayes maintains that there is not enough information in the question, as it does not explain the reason for the delay or indicate whether the examinee, as a County

Correction Captain, has time to assist Lieutenant Wallace. Hayes argues that the best response is option c, to provide “Lieutenant Wallace with suggestions regarding which Officers should be assigned to certain time slots.” In this regard, he argues that setting a concrete deadline fails to consider the possibility that legitimate issues could be behind the delay, such as Lieutenant Wallace being out on sick leave, being new to the position, not understanding the assignment or being unsure about how to complete it. Given these considerations, Hayes contends that providing suggestions and offering assistance is a better answer than the keyed response. The Commission observes that the issue in this scenario is that Lieutenant Wallace has not completed an assignment that needs to be completed in a timely fashion. The prompt indicates that Lieutenant Wallace was told to complete the assignment “as soon as possible,” but that he was not given a concrete deadline. As a result, it is clear that a reason why the assignment was not completed as of this time is that the examinee failed to communicate a specific deadline to Lieutenant Wallace. Setting a concrete deadline for the assignment would have conveyed to Lieutenant Wallace that if he had any issues completing the task, he would need to communicate with the examinee, as his supervisor, before that specific date, rather than letting the assignment languish for an indefinite period of time. Providing Lieutenant Wallace with suggestions is not the best action because it could be viewed as micromanaging. Accordingly, Question 55 is correct as keyed.

Question 59 indicates that a “visitor arrived thirty minutes late for his visitation appointment that he scheduled online and is informed his visit was cancelled because visiting hours are over. The visitor is upset and asks to speak with a supervisor. Sergeant Walters is going to talk to the visitor.” The question asks what the best way is for Sergeant Walters to handle the situation at this point. The keyed response is option c, “[a]cknowledge the visitor’s frustrations, explain why everyone must adhere to the set visiting hours, and tell the visitor the next time he will be able to visit.” Allegretta and Cumiskey argue that the best response is option b, to “[a]llow the visitor to explain the reason why he was late, and make a determination based on what the visitor tells you.” Allegretta argues that asking for an explanation about the cause of their lateness may provide more direct compliance with the standards for visitation set forth in Title 10A, Chapter 31 of the New Jersey Administrative Code. In this regard, Allegretta notes that *N.J.A.C. 10A:31-20.8* permits special visits on an individual basis for good cause, such as long distance travel and that *N.J.A.C. 10A:31-15.4* provides that “visits of attorneys and representative of attorneys shall be permitted without notice, or upon reasonable notice, during at least six hours each day” and that only necessary security requirements can interfere with such visits. Allegretta acknowledges that the visit may be ultimately be denied, but he maintains that allowing for an explanation would also illustrate empathy and professionalism while providing Sergeant Walters to make a more informed decision. Cumiskey asserts that because the question does not state that there is an overcrowding issue or indicate

how late the visitor was, the supervisor should be able to consider the reason for the visitor's lateness and exercise appropriate judgment. Cumiskey maintains that if the delay were for a reason outside of the visitor's control, such as traffic or extreme weather, it would be unfair to automatically deny the visit, particularly as *N.J.A.C. 10A:31-20.5* provides, in pertinent part, that a limitation on the length or frequency of visits should be imposed only to avoid overcrowding in the visiting area. Here, the SMEs state that because the scenario states that visiting hours are over and none of the conditions listed under *N.J.A.C. 10A:31-20.8* are presented with it, there is no basis for a special visit. The Commission agrees that based upon the facts presented, Question 59 is correct as keyed.

Question 60 indicates that CO Sheppard, who is part of the recent class of rookie officers that has a reputation for being overly sensitive and quick to complain about minor issues, went to Sergeant Hoover with a problem she has been having on the job. Sergeant Hoover listened to CO Sheppard's complaint, but ultimately disregarded it under the assumption that CO Sheppard was being overly sensitive. As a result, CO Sheppard's problem was not addressed and she went to Lieutenant Gonzales for help. The question asks what, based upon the foregoing, Sergeant Hoover failed to do when listening to CO Sheppard's problem. The keyed response is option b, "[e]liminate preconceived biases about CO Sheppard while listening to his problem." Hansson argues that the best answer is option d, "listen for the main ideas in what CO Sheppard was saying to understand the problem." Hansson indicates that he chose option d because the prompt indicates that CO Sheppard is a female, while the keyed response refers to "*his* problem." Hansson asserts that option b would have been the correct answer if it had referred to "*her* problem." Here, regardless of the gender of CO Sheppard, the focus of the question is what *Sergeant Hoover* failed to do in this situation. Accordingly, the Commission finds that Question 60 is correct as keyed.

CONCLUSION

A thorough review of the appellants' submissions and the test materials reveals that the appellants' examination scores are amply supported by the record and the appellants have failed to meet their burdens of proof in this matter.

ORDER

Therefore, it is ordered that these appeals 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 10TH DAY OF SEPTEMBER, 2019

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