



STATE OF NEW JERSEY

In the Matter of Michael Rooney,
 Police Lieutenant (PM1933W),
 Bloomfield

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

CSC Docket No. 2019-1195

Examination Appeal

ISSUED: September 11, 2019 (JH)

Michael Rooney appeals the administration of the promotional examination for Police Lieutenant (PM1933W), Bloomfield. It is noted that the appellant received a final average of 82.740 and ranked 7th on the subject eligible list.

By way of background, the subject examination was administered on October 11, 2018. On his application, the appellant checked the box that he needed an accommodation in accordance with the Americans with Disabilities Act (ADA). The Division of Administrative Services approved his request and on the test date, the appellant was to be provided with additional time to complete the exam.

In an appeal filed on October 16, 2018, the appellant explains that he was instructed to appear at the test site at 5:30 p.m. “due to my testing accommodations. Even though I arrived 25 minutes prior to 5:30 show up time, I still had to wait until around 5:40 p.m. before then going into a classroom.” He indicates that after the room monitor gave the testing instructions, the room began testing at 6:00 p.m. He presents that while he should have had a finish time of 10:15 p.m., “at about 9:35, [testing staff] came into my testing room and spoke with my [room monitor], informing her that all exams had to be turned in before 10:00 p.m. because the building had to be vacated and closed by 10:00 p.m. As you can imagine, this caused me to have to rush through the end of the exam, filling in answers without having the allotted time to fully process the question and answer choices, for fear of being penalized for leaving questions unanswered . . . The loss of a little bit more than 15 minutes violated the ADA testing guidelines . . . I feel that my test score will be affected by the loss of that additional testing time.” He further explains that

he “expressed my objections to my [room monitor] about having my allotted time cut short by more than 15 minutes. Her reply was that she could not do anything about it because she was informed that the building needed to be completely empty by 10:00 p.m. . . . I reluctantly turned in my test early . . . When I exited the room, the building was already emptied out and there was no one else around for me to speak with.” He notes that he contacted the Civil Service Commission the following morning and was advised to submit an appeal.

CONCLUSION

N.J.A.C. 4A:4-2.14(a) provides that otherwise qualified applicants with disabilities may request an accommodation in taking an examination by indicating their request on the examination application and, upon receipt, the Civil Service Commission shall make reasonable accommodation where appropriate and notify the candidate of the arrangements.

A review of the record finds that the Center Supervisor indicated that when testing staff arrived at the test site, the assigned ADA testing room was “an electrical closet . . . Therefore, I had to call the Building Services person . . . to find us another room to test the ADA candidates . . . It took several minutes . . . [to] find us an empty classroom that we could use . . . I escorted the candidates to the room and closed the door. This was about 5:40-5:45 p.m.” The Center Supervisor explained that ADA candidates “were to have time and one half for the test (which would have taken them past 10:00 p.m.) but time was called by the Room Monitor at 10:00 p.m. because she was adhering to the schedule that [was] used at the regular high schools and middle schools with calling time at 10:00 p.m. because that was the latest we were allowed to stay.” As such, there is no evidence of error on the part of the appellant.

Although the appellant did not technically file a timely administration appeal of this issue,¹ equitable relief is warranted in this case.² As such, the appellant

¹ *N.J.A.C.* 4A:4-6.4 states that appeals pertaining to administration of the examination must be filed in writing at the examination site on the day of the exam. As noted previously, Rooney took the subject examination on October 11, 2018 and on October 16, 2018, he filed his appeal. However, it is noted that it is not clear from the record whether testing staff advised the appellant to file appeal when he “expressed [his] objections” regarding the administration of the subject test. Thus, the Commission cannot find that his appeal is untimely. See *In the Matter of George Piscopo* (MSB, decided October 22, 2003).

² *N.J.A.C.* 4A:2-1.1 provides, in pertinent part, that all appeals to the Civil Service Commission shall include the reason for the appeal and the specific relief requested. It is noted that Rooney did not indicate any proposed remedies in his appeal letter. Although provided with the opportunity during the appeal process, the appellant did not provide any additional information regarding the specific relief sought.

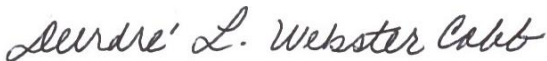
should be offered the opportunity for a make-up examination.³ The Commission emphasizes that the appellant is not required to take a make-up but rather, this is the remedy that is being provided to the appellant should he choose to accept it. Should the appellant determine to take a make-up, his original score, as noted above, will remain active until his make-up score is issued, which will replace his original score at that time.

ORDER

Therefore, it is ordered that this appeal be granted and the appellant be provided with a make-up 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 10TH DAY OF SEPTEMBER, 2019



Deirdré L. Webster Cobb
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³ It is noted that in *In the Matter of Police Sergeant (PM3776V), City of Paterson*, 176 N.J. 49 (2003), the New Jersey Supreme Court ordered the Civil Service Commission, for future exams, to “administer make-up exams that contain substantially different or entirely different questions from those used in the original examination.” *Id.* at 66. As a result, public safety candidates are given a make-up exam when the next regularly scheduled exam for their particular title is administered. In this regard, the make-up test is typically the same as that to be taken by candidates who apply for the next cycle of announcements and make-up candidates are directed to refer to the Orientation Guide associated with the next cycle of tests.