In the Matter of Robert Marcus, Assistant District Parole Supervisor, Juvenile Justice (PS0857P), Juvenile Justice Commission
DOP Docket No. 2002-1755
(Merit System Board, decided August 11, 2004)

Robert Marcus appeals the administration of the examination for Assistant District Parole Supervisor, Juvenile Justice (PS0857P), Juvenile Justice Commission. It is noted that Mr. Marcus passed the examination with a score of 73.150 and was ranked 9th on the resultant eligible list.

The subject promotional examination was administered on November 1, 2001. It is noted that the examination for the subject title and two other titles were contained in the same test booklet. Candidates for the subject title were required to answer questions 1 through 40, 51 through 60, 71 through 80 and 91 through 100. It is noted that Mr. Marcus did not respond to questions 71 through 80. It is also noted that three certifications have been issued which resulted in the appointment of the first, second, sixth and eighth ranked eligibles on the subject list.

On appeal, Mr. Marcus states that the cover of the test booklet indicated that candidates were to answer questions 1 through 40, 51 through 60 and 91 through 100. He contends that "the answer sheet stub handed to me after the test had the #'s 71-80 added as well." He argues that the room monitor "made strong point to observe the specific test questions listed ON THE FRONT OF THE TEST-BOOK and answer as such." He also argues that "some questions on the #'s 91-100 had questions not pertaining to juvenile parole/juvenile parolees."

CONCLUSION

A review of the record indicates that Mr. Marcus took the subject examination on November 1, 2001. On November 5, 2001, he filed his appeal. Under these circumstances, his appeal of examination administration is untimely. See *N.J.A.C.* 4A:4-6.4(c).

Nevertheless, a review of the record finds that the cover of the test booklet indicated that candidates for the subject title were to complete items 1 through 40, 51 through 60 and 91 through 100 while the stub portion of the answer sheet indicated that candidates were also to complete items 71 through 80. It is noted that it is not common Department of Personnel procedure to indicate the item numbers on the test booklet cover but rather, candidates are directed to answer the questions indicated on the stub portion of the answer sheet, which states, under the candidate's applicant/social security number, "Answer These Questions," followed

by the questions the candidates is to answer. In this regard, room monitors receive a Monitors Manual prior to the administration of an examination which specifically states: "tell the candidates that we have indicated the number of questions they must answer for the examination(s) on the stub portion of their answer sheets in the space below their applicant/social security numbers . . . They must answer ONLY the questions noted on the stub portion."

In the present matter, a review of the Center Supervisor report does not find that the issue of this discrepancy was raised at the test center or that the room monitor and/or Center Supervisor were aware of the discrepancy and instructed candidates to refer to the answer stub. It is noted that no other candidate for the subject title tested at appellant's location. Given the discrepancy between the test booklet cover and the stub portion and appellant's claim that the room monitor instructed candidates to answer the questions listed on the test booklet cover, a remedy is warranted in this matter. The Board notes that two potential remedies are available: permit appellant to answer questions 71 through 80 or prorate his score based on his performance on the subject exam.

With respect to retaking questions 71 through 80, it is noted that appellant has been exposed to the exam items when he took the test and he had the opportunity for review in which the questions and correct answers were available to candidates. In view of this, permitting appellant to answer these 10 questions would not be an appropriate remedy. Thus, adjusting appellant's score based on his performance on the 60 questions to which he provided responses is the best remedy that can be fashioned given these circumstances. It is noted that appellant answered 40 out of 60 questions, or 66.666 percent, correctly. Accordingly, appellant should be granted an additional seven correct responses out of the 10 questions to which he did not provide responses.

Regarding questions 91 through 100, it is noted that questions 95 and 97 specifically refer to adult parole. Subject matter experts were contacted regarding this matter and indicated that there is no difference between juvenile and adult parole and as such, candidates should have been able to answer these questions.

ORDER

Therefore, it is ordered that this appeal be granted in part and appellant's score be adjusted to reflect an additional seven correct responses, for prospective certifications only. It is further ordered that the remainder of this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.