

B-47



STATE OF NEW JERSEY

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

In the Matter of Tisha Leonardo,
Probation Officer, Bilingual in
Spanish and English, Judiciary

CSC Docket No. 2015-514

Examination Appeal

ISSUED: NOV 07 2014

(RE)

Tisha Leonardo appeals her score, the test administration, and the validity of the multiple-choice Bilingual Communication Abilities Test (BICAT) for English/Spanish for the title of Probation Officer, Bilingual in Spanish and English, Judiciary.

By way of background, the appellant was hired into the noncompetitive division as a Probation Officer, Bilingual in Spanish and English, on June 30, 2014 in the Judiciary. She then took the BICAT, multiple choice format, on August 12, 2014 and correctly answered 24 of 40 questions which is 60%, indicating a Level 1 proficiency. However, the title requires a Level 2 proficiency, and the passing point for Level 2 was 28. Therefore, the appellant failed the BICAT for the title Probation Officer, Bilingual in Spanish and English. The appellant was separated from service on September 5, 2014, before completion of her four-month working test period.

On appeal, the appellant appeals the administration, validity and, scoring of the examination. As to the administration of the examination, the appellant argues that there was no visible clock in the testing room and the room monitor did not inform her when there were 20 minutes, 10 minutes or even 5 minutes left, but did so when there were only 3 minutes remaining to the exam. She states that the room monitor did not verbally advise her of the examination review policy on the day of the examination, or tell her that appeals of test administration must be submitted on the test date on a form.

As to the examination, the appellant contends that a time allotment of 45 minutes was not enough time to read each question, especially questions with long passages. In addition, the appellant states that her notice indicated that she would have 45 minutes to complete 40 questions, but the examination was misrepresented on the Commission's web site as an oral examination. She states that this examination did not test job-related knowledge, skills, and abilities (KSAs) that an oral exam would.

Further, the appellant points out that the orientation guide for multiple choice examinations indicates that the test was designed based on a job analysis which provided a description of the duties performed by incumbents and identified the KSAs that are required to effectively perform each of these duties. She indicates that it describes a job analysis and indicates that examination questions will relate to KSAs determined to be most critical. She argues that the exam did not reflect the scope of the title, and there is no relevancy between the job title and the exam material. As a provisional in the subject title, the appellant states that she interviews clients, verifies information, and serves as a bridge between the courts and the probationer. She states that reasonable expectation would be the review and comprehension of the day-to-day forms and resources provided to Probationers and involved agencies. She contends that the BICAT must have an oral component since the job entails oral communicative interactions with clients. She argues that the test contents cannot properly measure her success or compliance within the bilingual job title by identifying KSAs that are required to effectively perform each of her expected duties. Specifically, she states that a 40 question multiple choice exam cannot fully assess the degree of her fluency especially when that exam does not reflect the extent of daily bilingual interaction necessary to complete her daily functions. She indicates that her position requires her to speak to clients in her native tongue, and an oral exam would reflect the degree of fluency and ability to hold a conversation relating to daily functions. She argues that she could not have obtained a satisfactory review from her supervisor if she could not properly communicate with her clients independently.

Lastly, the appellant argues that the Spanish language has numerous dialects, and English words and meanings can vary tremendously from one dialect to another. For example, the standard use of "Castellano" is influenced by such dialect. The first part of the exam requested the candidate to pick the best professional phrase when translating a sentence of a business letter from English to Spanish: however, there are multiple ways one can professionally write a letter based on their dialect, and thus this examination is biased. She states that she is fluent in Spanish and is able to speak, translate, and transcribe Spanish. She indicates that she has worked with the Spanish speaking community in New Jersey and New York her whole working career from customer service to legal services, and has 12 college credits for taking the college level examination known as "CLEP"

for Spanish. She requests to take an oral examination. She provides her resume, college transcripts, and writing samples in Spanish, for consideration.

CONCLUSION

Regarding test administration, Ms. Leonardo's appeal of test administration of this examination was dated August 21, 2014, over a week after the examination was given August 12, 2014, and after she received her results. *N.J.A.C. 4A:4-6.4(c)*, (Review of examination items, scoring and administration) states that appeals pertaining to administration of the examination must be filed in writing at the examination site on the day of the examination. As such, this appeal is clearly untimely. Appeals of test administration must be filed in writing at the examination site on the test date.

Nonetheless, the monitors are required to make an announcement before the start of each examination that, should a candidate wish to appeal the test administration, he or she *must* do so at the test center. Additionally, all candidates for examinations are provided with an informational flyer that specifically informs them of the need to appeal administration issues, including how the examination is conducted, at the examination center. The Appellate Division of Superior Court has noted that "the obvious intent of this 'same-day' appeal process is to immediately identify, address and remedy any deficiencies in the manner in which the competitive examination is being administered." See *In the Matter of Kimberlee L. Abate, et al.*, Docket No. A-4760-01T3 (App. Div. August 18, 2003). After taking the entire examination, the appellant did not file an appeal of test administration, and did not ask the room monitor about the appeal process or form. Appeal forms were available in the podium area that day, but the room monitor was unaware that the appellant needed one.

The appellant filed an appeal that she could not keep track of time. Nonetheless, candidates are required to budget their time and the Commission is not responsible for doing so for candidates. The room monitor is required to track the time given for the examination, and uses the same clock to track the beginning and the ending of the examination, and the appellant has submitted no evidence that she did not appropriately time the examination. The room monitor for this examination is experienced in administering examinations, and when asked about testing conditions, she indicated that there was no clock in the room that day, so she provided 10 and 5 minute warnings as a courtesy. She states that she did not provide a 3 minute warning as that was too close to the end of the examination. She also states that she posted the time on a flip chart, and at the conclusion of the 45 minutes, more than half of the room had finished their examinations, and two people remained. She stated that she advised candidates prior to the start of the examination that this was a 10-page examination with reading comprehension at the back, and all questions were worth the same amount, so it was advisable not to

dwelt on any question. A review of the appellant's answer sheet indicates that she answered every question on the test, and performed well on the reading comprehension questions (8 of 10 correct). There is no evidence supporting the claim that the appellant ran out of time.

In addition, all candidates signed a Candidate Information Sheet that stated that they understood that there would be four subtests on the examination, and that they would have 45 minutes to answer 40 questions. The candidates received this document two weeks in advance of the examination and were required to return it to the test monitor at the examination center. The appellant's Candidate Information Sheet is signed and dated by her. As such, the appellant was aware of what would be in the test and how much time she would have to complete it. That the appellant did not track the time herself was her own choice.

The appellant claims that she was not told that there was no examination review. In reply, on the front of the examination booklet, which the appellant signed, it states, "There will be no review for this exam," and the room monitor read this to the candidates aloud prior to the examination.

The BICAT examination is used to test titles with a Bilingual in Spanish and English variant. The three levels of proficiency include Limited Working Proficiency, for positions which need to satisfy routine or limited work requirements and casual conversations on non-technical subjects; Working Proficiency, for positions requiring accuracy and vocabulary in formal and informal situations and the ability to discuss with ease particular interests or fields in general terms with few errors in grammar; and Advanced Working Proficiency for positions requiring a high degree of fluency and accuracy in speaking and understanding conversation on all professional levels, and the ability to read difficult or specialized materials in the job area. The subject area includes titles requiring a Working Proficiency in the languages, which is Level 2. With a working proficiency, candidates are expected to be able to speak Spanish to anybody, not just to residents of their neighborhoods or people who have specific dialects. Candidates at this Level should speak the language with sufficient structure, accuracy and vocabulary to participate effectively in most conversations at a practical, social, professional level without requiring specialized vocabulary. They should be able to have discussions regarding particular interests or special fields of competence in general terms with reasonable ease, comprehend a normal rate of speech, have good command of grammar and syntax, and not let errors interfere with understanding. They also need the ability to read and understand standard newspaper, correspondence, and official documents. This was a formal examination setting, and inherent in that setting is the expectation that proper and correct Spanish and English will be tested. All candidates were given the same examination and had to demonstrate a Level 2 proficiency. Positions in clerical work can converse at a Level 1, but the technicalities of the Probation Officer position require a greater proficiency.

Probation Officers must be able to communicate technical information and advice in a complete and accurate manner, regardless of which language is spoken.

Next, all candidates took the same BICAT using the same test content and all were given the same amount of time to provide their responses. The information on the examination could be translated correctly without prior knowledge of the subject matter as it was designed to measure the ability to communicate in Spanish and in English, and was not intended to measure the knowledge of specific terms. Fluency requires knowledge of the words of a language, regardless of the content. That is, candidates should be able to speak about any activities and not narrowly restrict their vocabulary to Probation Officer-related content. The sentences used were standard ones typical of letters of official business. Also, an individual could be an excellent Probation Officer for English-speaking clients, as failing the BICAT is just an issue of proficiency in Spanish.

As to examination validity, it is noted that a job analysis was performed for this title in accordance with accepted psychometric principles. The appellant quotes from the multiple choice orientation guide and the Commission's website, which refer to base tests, which test the KSAs needed to perform the duties of a particular title. In this case, Probation Officer is in the non-competitive division, and therefore candidates are not given a base test for the KSAs associated with the basic job functions of the title. Rather, candidates were required solely to pass the BICAT when placed in the bilingual variant for the title. Spanish-speaking skills are found across all occupational fields, but the BICAT primarily tests 3 industries: social work (family and welfare workers), law enforcement, and clerical work, and a BICAT score is valid across all occupations. This means that if the candidate achieves a passing score on the BICAT Probation Officer, he or she can transfer the BICAT score to another field. The underlying art of speaking Spanish is skill, no matter what the particular job is. The test represents situations for each of the main industries serviced by the BICAT, so certainly there were "investigative/courtroom settings" on this test, the same way that there were "family services settings" or "office settings." The test provides a fair variety, including generic issues found in everyday life (*i.e.*, a financial transaction, an environmental announcement, a public health concern, etc.). One does not have to be employed in a particular industry to score very well on the exam. Thus, a traditional job analysis does not apply because there are hundreds of different job titles that all have to use the same Spanish speaking skill. In a traditional job analysis, only one job title is looked at. In this case, a cross-section of all titles serviced by the BICAT exam was examined and the Judiciary was very well represented on the job analysis. Many Probation Officers provided explanations of their jobs, and the four main areas of the BICAT test are used when Probation Officers speak Spanish on the job. The passing score (Level 2) for the Probation Officer title is a fair benchmark. A level 2 is achieved with a score of 70% to 89%,

whereas a Level 1 is achieved at a score of 52% to 69%. The appellant achieved a 60%, which is a mid-range Level 1 score.

As to dialect, the entire test is simply business Spanish, and there is nothing related to dialect. Every single incorrect choice has a justification, and often multiple justifications, for why it is wrong. Many individuals use the term "dialect" to refer to Spanglish. For example, in the writing sample which the appellant provided on appeal, she used the word "la significancia," which looks like the English word "significance." Unless using that term as statistical jargon, like "statistical significance," the correct word in context should be "la importancia," because "the *meaning* of hard work" is not translated literally in Spanish. It is said as "the *importance* of hard work," unless the actual "dictionary meaning" of hard work is needed, in which case, "el significado" would be used. Again, this is an example of Spanglish from the appellant's own writing. That is not a dialect issue as Spanglish is just not Spanish. It is the use of something that is not the right word. According to Spanish Interpreters and Translators, there are 20 countries where Spanish is the main language, and several others where it is a major language. This has resulted in regional differences, but they are all mutually intelligible in the vast majority of situations. They state that the written form is even more mutually intelligible, as an educated Spanish-speaker will understand 98% of what another educated person from anywhere in the world writes. The 2% of Spanish that is not understood as easily is typically not part of business Spanish, but is slang or an issue with the added pronouns *vos* and *vosotros*. English may have *more* dialect differences than Spanish, for example, "My flat has two loos," versus "My apartment has two bathrooms." Lastly, Spanish-speaking Subject Matter Experts review these tests before they are administered to ensure accuracy.

The appellant indicated that she passed the college level examination known as "CLEP" for Spanish for which she received 12 college credits. The CLEP exam does not have an oral portion and its "passive" [comprehension] skills are over-represented on the exam at a weight of 64%, which could potentially artificially boost scores. It also puts candidates in non-business settings (*i.e.*, arriving at a hotel on vacation). The BICAT assesses a higher proportion of "active skills" in the business setting, such as knowing how to translate a sentence for the client, as employees need to be able to communicate with the client, not just understand the client's problem. For this reason, passing the CLEP examination signifies that the person has studied basic (level 1) Spanish. New Jersey City University, where the appellant received six college credits for completion of the CLEP, allows students to waive basic level 100 courses, but not intermediate Spanish at the level 200, or advanced Spanish at levels 300 and 400.

It has been psychometrically established that an oral examination is not significantly different from a written examination for measuring bilingual skills. If candidates used poor grammar or Spanglish in writing, they spoke it aloud as well.

The appellant has provided no proof that the multiple choice BICAT is invalid, or somehow less of a measurement of Spanish-speaking ability than an oral format. According to *N.J.A.C. 4A:4-2.2*, the Civil Service Commission has the authority to determine the most appropriate selection instrument to use in assessing candidates in a given title. For the subject announcement, a decision was made to assess Spanish-speaking ability using a multiple-choice format, and the appellant's dissatisfaction with the results is not a reason to re-administer the examination with a different test mode.

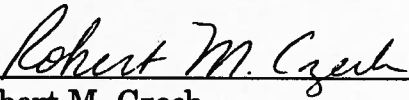
A thorough review of the record indicates that the determination of the Division of Selection Services was proper and consistent with Civil Service Commission regulations, and that appellant has not met her burden of proof in this matter.

ORDER

Therefore, it is ordered that this 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 ON
THE 6th DAY OF NOVEMBER, 2014


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