

B-51



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of
Lewis Wilson Jr., Fire Captain
(PM0054R), Camden

Examination Appeal

CSC Docket Nos. 2014-2803
2014-2929

ISSUED: SEP 18 2014

(RE)

Lewis Wilson Jr. appeals his seniority and score for the oral portion of the promotional examination for Fire Captain (PM0054R), Camden. It is noted that the appellant passed the subject examination with a final score of 85.320 and his name appears as the 36th ranked eligible on the subject list.

It is noted for the record that this two-part examination consisted of a written multiple-choice portion and an oral portion. Candidates were required to pass the written portion of the examination, and then were ranked on their performance on both portions of the examination. The test was worth 80 percent of the final score and seniority was worth the remaining 20 percent. Of the test weights, 31.35% of the score was the written multiple-choice portion, 22.49% was the technical score for the evolving exercise, 7.53% was the supervision score for the evolving exercise, 4.28% was the oral communication score for the evolving exercise, 19.23% was the technical score for the arriving exercise, 7.53% was the supervision score for the arriving exercise, and 7.59% was the oral communication score for the arriving exercise.

The oral portion of the Fire Captain examination consisted of two scenarios: a fire scene simulation with questions designed to measure the knowledge of safe rescue tactics and procedures to safeguard citizens, supervision of fire fighters and the ability to assess fire conditions and hazards in an evolving incident on the fireground (evolving); and a fire scene simulation designed to measure the knowledge of safe rescue tactics and procedures to safeguard citizens, supervision of fire fighters and the ability to plan strategies and tactics based upon a building's

structure and condition (arriving). Knowledge of supervision was measured by questions in both scenarios, and was scored for each. For the evolving scenario, candidates were provided with a 15-minute preparation period, and candidates had 10 minutes to respond. For the arriving scenario, a five minute preparation period was given and candidates had 10 minutes to respond.

The candidates' responses were scored on technical knowledge and oral communication ability. Prior to the administration of the exam, a panel of Subject Matter Experts (SMEs) determined the scoring criteria, using generally approved fire command practices, fire fighting practices, and reference materials. Scoring decisions were based on SME-approved possible courses of action (PCAs) including those actions that must be taken to resolve the situation as presented. For a performance to be acceptable, a candidate needed to present the mandatory courses of action for that scenario. Only those oral responses that depicted relevant behaviors that were observable and could be quantified were assessed in the scoring process. Each performance was evaluated by two SMEs who currently are a first level supervisor or higher. If the SME scores differed by 1 point, the score was averaged. If they differed by more than 1 point, the SMEs were required to confer with each other until they agreed on a score. Scores were then converted to standardized scores.

Candidates were rated on a five-point scale, with 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. For each of the scenes, and for oral communication, the requirements for each score were defined. For the evolving scenario, the appellant scored a 3 for the technical component, a 4 for the supervision component, and a 5 for the oral communication component. For the arriving scenario, the appellant scored a 3 for the technical component, a 4 for the supervision component, and a 5 for the oral communication component.

The appellant challenges his score for the technical component of the arriving scenario. He also appeals his seniority score of 93.389. As a result, the appellant's test material, audiotape, and a listing of PCAs for the scenarios were reviewed. The appellant also contests his seniority score on the prior examination (PM3563J).

As to seniority, official records have December 13, 1999 as the hire date for the appellant. On appeal, he explains that his seniority should be retroactive to February 3, 1997 based on a settlement agreement which he states he was a party to. The settlement agreement submitted by the appellant concerned the removal of candidates from the Firefighter eligible list on the basis of residency and the appellants' claim of discriminatory hiring practices by the appointing authority. In

In the Matter of Gabriel Angemi, et al., (MSB, decided January 29, 2003), the Merit System Board (currently the Civil Service Commission) acknowledged a settlement between the City of Camden and eight appellants; Gabriel Angemi, Howard Bennett, Frank Bottalico, Jr., Chris Broccoli, Michael Burke, Kevin Folkman, William Frett, and William Richards. These individuals claimed the City of Camden's hiring practice was discriminatory. The Administrative Law Judge initial decision (OAL Docket No. CSV 518-98) in this matter indicated that Lewis Wilson was a *pro se* appellant who withdrew his appeal in this matter, after which it was agreed that the parties would reduce the settlement to writing. Mr. Wilson claims that he did not withdraw his appeal, but that the issues of his removal from the eligible list for residency and the City of Camden's hiring practice were vacated because of this settlement agreement. Nevertheless, the official record contradicts the appellant's claim that his appeal was "vacated" rather than withdrawn, and the appellant was not a party to the settlement agreement acknowledged by the Commission. A request to reopen this matter over 11 years later is time-barred. The settlement did not include Mr. Wilson as a party and his seniority was appropriately not retroactively changed to February 3, 1997. The appellant has not provided any evidence of another settlement agreement regarding his seniority. As to the eligible list for the prior examination for Fire Captain (PM3563J), it is noted that this list expired on October 20, 2013, and any appeal regarding a seniority score for that examination is moot, as well as untimely, since that list is no longer in use. The appellant has not established that he is entitled to retroactive seniority based on the settlement agreement that he cited.

The arriving scenario involves a report of fire coming from an ordinary construction, two-story row home built in the early 1900s. It is 7:30 AM on a Monday in May, 68°F, with cloudy skies and a wind blowing from the west to the east at 5 mph. The candidate is the officer of the first arriving engine company and the first officer on scene. Upon arrival, the candidate notices smoke coming from the first floor door, as well as the first and second floor windows on side A. Dispatch reports that the caller is an occupant in a second floor bedroom and the caller said the fire started on the gas stove which he left unattended while getting ready for work. He and his wife are unable to get out of the house due to smoke and fire blocking their access to the front door. The technical question asked for initial actions and specific orders at this incident upon arrival. Instructions indicate that, in responding to the questions, the candidate should be as specific as possible in describing actions, and should not assume would take for granted that general actions will contribute to a score.

In regard to the technical component of the arriving scenario, the assessors noted that the appellant failed to rescue the victims in the second floor bedroom, which was a mandatory response, and he missed the opportunity to check the cockloft.

They used the flex rule to assign a score of 3. On appeal, the appellant states that on scene he used a 1¾ inch handline, laddered all sides of the building, and ordered the ladder company to search throughout. He argues that he stated that these actions were taken to effectuate rescue.

Regarding the flex rule, mandatory responses are responses that are requirements for a performance to be acceptable (a score of 3). Sometimes, a candidate states many additional responses but does not give a mandatory response. The flex rule was designed to allow the SMEs to assign a score of 3 to candidates who fail to give a mandatory response but who provide many additional responses. However, the SMEs cannot provide a score higher than a 3 in those cases. All mandatory responses must be given in order for a performance to be acceptable, whether there is one mandatory response or five of them. It is not assumed that candidates receive a score of 5 which is then lowered for lack of responses. Performances that include mandatory responses get a score of 3, and those without mandatory responses get a score of 1 or 2. Additional responses only increase a score from 3 to 4 or from 3 to 5.

A review of the appellant's audiotape and related examination materials indicates that he received credit for stretching a hose line between victims and fire through side A, laddering the second floor of the fire building, performing a primary search, and performing a secondary search. Nevertheless, credit cannot be given for information that is implied or assumed, and this was indicated in the instructions to candidates. The appellant did not say that he would rescue the victims in the second floor bedroom, and performing a search "throughout" the building, or performing actions for "rescue," cannot be assumed to mean that victims were rescued. Candidates are required to state what they mean and cannot receive credit for assumptive actions. The appellant missed the mandatory action, as well as the additional action, noted by the assessor and his score for this component will not be changed.

CONCLUSION

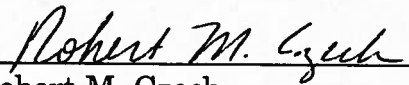
A thorough review of the appellant's submissions and the test materials indicates that the decision below is amply supported by the record, and the appellant has failed to meet his burden of proof in this matter.

ORDER

Therefore, it is ordered that 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
THE 17th DAY OF SEPTEMBER, 2014


Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P. O. Box 312
Trenton, New Jersey 08625-0312

c: Lewis Wilson Jr.
Dan Hill
Joseph Gambino