

the monitor never indicated that there were actually 65 questions. He states that, according to her instructions, she noted the two booklets were used for a total of 60 questions. He states that the Center Supervisor also spoke with the room monitor and verified in front of him that it was in fact relayed to the candidates inaccurately, and that the instructions only indicated that there were 60 questions to answer. He argues that the instructions were misleading but the room monitor's script was broken down into two categories, question 1 through 30 and questions 31 through 60. He maintains that he is being penalized for following instructions.

It is noted that candidates are required to sign a pledge which states, "I affirm that under penalty of law (2C:28-3 Unsworn Falsification to Authorities), **I have neither seen nor discussed** the contents of the examination I will take today with any previously processed candidate and, in order to safeguard security for purposes of maintaining an equitable environment, I affirm that I will not communicate the content of today's test with anyone. Additionally, I affirm not to discuss exam content with any potential make-up candidate prior to his/her examination. I am aware that if this statement is willfully false, I am subject to punishment."

CONCLUSION

The record establishes that appellant took the subject written examination on May 12, 2016. He correctly answered 49 of the first 60 questions and passed the examination. After leaving the test center, the appellant spoke to others in the parking lot and learned that he did not answer the last five questions. Upon taking the matter to the Center Supervisor, the Center Supervisor spoke to the monitor and then allowed the appellant to take the last five questions. Subsequently, DTDA told the appellant that those questions would not be scored. It indicated that allowing him to take the questions was a mistake, and that he cannot benefit from this error. The appellant appealed that this determination did not take into account that he had been instructed by the monitor to answer only questions 1-60.

It is long-standing policy that once a candidate receives his answer sheet stub, the examination is over for that person. The appellant received his stub, exited the building, and held a conversation with person(s) unknown in the parking lot. The Division of Test Development and Analytic's concern in this instance is that the appellant could have had access to a cell phone, or had other potential opportunities to study or look up responses, and then went back and changed his answers or had been given or looked up the answers to questions 60 through 65. The Center Supervisor was contacted in this regard. She states that she did not know that the appellant had left the building and returned, and did not see his answer sheet stub. She stated that the appellant told her that the monitor told him to report to room A. The room monitor confirms that she gave the appellant his stub and dismissed him from the examination. She states that he returned 7 to 10

minutes later with the Center Supervisor, and was instructed to return his test materials and let him complete his examination. The return of the bubbled answer sheet and examination should not have occurred as the appellant had already left the building. Although this was a procedural error, an appellant cannot benefit from such an error. See *Cipriano v. Department of Civil Service*, 151 N.J. Super. 86 (App. Div. 1977); *O'Malley v. Department of Energy*, 109 N.J. 309 (1987); *HIP of New Jersey, Inc. v. New Jersey Department of Banking and Insurance*, 309 N.J. Super. 538 (App. Div. 1998). In addition, the record does not establish that the error was due to bad faith or some invidious reason.

Regarding the monitor instructions, each room monitor is provided with a script and is required to follow it. The start time for a written examination is noted on the room blackboard by the room monitor, and candidates are expected to track their time. The room monitor states that the number of questions that must be answered, and the total time given to answer them, are indicated on the stub portion of the answer sheet in the space below their applicant number. They are told that they must keep track of their time and they will not be given a warning. Room monitors explain that the initials confirm that the information written on the answer sheet is correct, and they understand which items to answer and their time limit. The appellant's stub clearly stated, "ANSWER THESE QUESTIONS: 01-65." It is noted that no other candidate appealed the issue that they were instructed to answer only questions 1 through 60.

As to the test booklets, test booklet B contained all of the questions 1 through 65. This booklet contained just the exam questions, and there was no information in booklet B that would help answer any questions. Test Booklet A contained stimulus material that was meant to be used to answer questions 31-60. This booklet was made available to candidates prior to the exam, and was provided during the exam for reference. There was no booklet to be used to assist in answering questions 1 through 30, or 61 through 65. The monitor's script has been reviewed, and it was not broken down into two categories, question 1 through 30 and questions 31 through 60, as the appellant contends. The monitor distributed the booklets, first the stimulus material then the examination questions, had candidates sign the pledge form, reminded them to keep track of their time, and instructed them on how to leave the room.

A review of the information available does not confirm that the room monitor instructed the candidates to answer only questions 1 through 60. The Center Supervisor was not aware that the appellant had left the building and returned, and therefore erred in allowing the appellant to take questions 61 to 65. As the appellant discussed the test with others in the parking lot, and had access to a cell phone, there is the potential that he looked up answers before returning. Nevertheless, there are no facts to support that individuals discussed test content or that the appellant obtained test information prior to reentering the building.

Balancing the concerns, removal of the five questions from scoring was found to be the most appropriate remedy. Disqualifying Mr. Richard from the examination is too harsh, as it was not entirely his fault, and the error does not warrant the cancellation and re-administration of the examination to all candidates. There are 17 candidates who followed the instructions and passed the examination. In fairness to them, the situation does not warrant scoring the additional questions given to the appellant.

The appellant has not met 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 ON
THE 7th DAY OF DECEMBER, 2016



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