



B-14

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Agripino Figueroa,
Battalion Fire Chief (PM1515T),
Camden

Examination Appeal

CSC Docket No. 2017-1311

ISSUED: FEB 24 2017

(RE)

Agripino Figueroa appeals his score and his seniority on the examination for Battalion Fire Chief (PM1515T), Camden. It is noted that the appellant passed the examination with a final average of 83.750 and ranked eighth on the eligible list.

This two-part examination consisted of an integrated system of simulations designed to generate behavior similar to that required for success on the job. The first part consisted of 70 multiple-choice items that measured specific work components identified and weighted by the job analysis. The second part consisted of three oral scenarios; a Supervision, Administration and Incident Command scenario. All candidates received the same multiple-choice exam, but differing versions of the oral exercises were given based on the day the oral exam was administered. The examination was based on a comprehensive job analysis conducted by the Civil Service Commission, which identified the critical areas of the job. The weighting of the test components was derived from the job analysis data.

For the oral portion, candidates had 60 minutes to prepare for all three scenarios and had 10 minutes per scenario to present their response. For all three oral exercises, the candidate was to assume the role of a Battalion Fire Chief. Candidates were scored based on the content of their response (technical) and the how well they presented their response (oral communication). Both of these dimensions were scored on a scale of 1 to 5 with 1 being the lowest rating and 5 being the highest rating.

Each candidate in a given jurisdiction was scored by a team of three different Subject Matter Experts (SMEs), who were trained in current technical and oral

communication scoring procedures. Each SME is a current or retired fire officer who held the title of Battalion Fire Chief (or Fire Officer 2) or higher. As part of the scoring process, an SME observed and noted the responses of a candidate relative to the knowledge, skills and abilities (KSAs) that each exercise was designed to measure. An SME also noted any weaknesses that detracted from the candidates overall oral communication ability. The SME then rated the candidate's performance according to the rating standards and assigned the candidate a technical or oral communication score on that exercise.

In order to preserve the relative weighting of each of the components of the examination, the ratings for each portion were adjusted by a well-recognized statistical process known as "standardization." Under this process, the ratings are standardized by converting the raw scores to z-scores, an expression of the deviation of the score from the mean score of the group in relation to the standard deviation of scores for the group. Each portion of the examination had a relative weight in its relation to the whole examination. Thus, the z-score for the multiple-choice portion was multiplied by a test weight of 36.53%, the oral technical scores were multiplied by a test weight of 53.91% and the oral communication scores were multiplied by a test weight of 9.56%. The weighted z-scores were summed and this became the overall final test score. This was weighted and added to the weighted seniority score. The result was standardized, then normalized, and rounded up to the third decimal place to arrive at a final average.

For the technical and oral communication components of the Supervision, Administration and Incident Command scenarios, the appellant received scores of 5, 5, 1 and 4, 3, 4, respectively.

The appellant challenges his scores for the technical and oral communication components of the Incident Command scenario, and his seniority. As a result, the appellant's test material and a listing of possible courses of action (PCAs) for the scenario were reviewed.

As to seniority, the appellant indicates that he was not properly credited for all of his time. Specifically, the appellant maintains that he was promoted prior to other named candidates. In reply, seniority is based on the time from the regular appointment date (to the eligible title) to the closing date of the announcement, minus the time spent on layoffs and leaves of absence without pay, plus the record of service less any suspensions. Seniority credit is only given for the titles listed on the examination announcement, in this case, the title of Fire Captain. The appellant was first promoted to Fire Captain on December 26, 2006. Thereafter, he was demoted in a layoff on January 18, 2011 to Fire Fighter, then promoted back to Fire Captain on November 7, 2011 from a special reemployment list. His seniority score properly reflects the amount of time in his regular appointment minus the time spent laid off. Specifically, he received credit from May 28, 2007 to the September 30, 2015 closing

date, less the days from his layoff on January 18, 2011 to his reappointment from the special reemployment list on November 7, 2011. The appellant cannot receive seniority credit to September 1, 2006, as he argues on appeal, since at that time he received a temporary appointment for two months and a week, and then a provisional appointment until May 28, 2007, when he was regularly appointed.

As to the other candidates' seniority scores, the appellant states that he has more seniority than four other candidates. A review of the record reveals that his seniority score was higher than three of those candidates. For the fourth, the appellant was tied, and official records indicate that that individual also received a regular appointment on May 28, 2007. As such, no error in the calculations of seniority scores is evident.

The Incident Command scenario involved a report of a fire at a local paint store. It is 2:00 PM on a sunny afternoon in April, 55 degrees Fahrenheit, and the wind is blowing from west to east at five miles per hour. The fire building is a one-story, lightweight wood-frame constructed taxpayer with a truss roof measuring 150 feet by 75 feet. The paint store measures 20 feet by 75 feet. The side B exposure is a glass and mirror store, while the side D exposure is a liquor store. Upon arrival, the candidate sees fire and smoke emanating from side A of the paint store. An employee states that the fire spread quickly throughout the store and he believes some customers and employees may not have escaped. The scenario asked candidates to answer the questions based on the text *Fire Officer's Handbook of Tactics* and their experience. Question 1 asked for specific actions to be taken upon arriving at the scene. Question 2 indicated that, during overhaul, the roof collapses over the paint store trapping several fire fighters. Question 2 asked for specific actions that should now be taken based on this new information.

For this scenario, the SME noted that the appellant failed to attempt to contact the trapped firefighters, and conduct a Personnel Accountability Report (PAR). These were mandatory responses to question 2. The SME also indicated that the appellant missed the opportunity to ensure monitoring of air, and to establish a collapse zone/consider potential for early collapse. These were additional responses to question 1. On appeal, the appellant argues that he did a "LUNAR"¹ and would have contacted the downed firefighters that way and started air monitoring with that, and mentioned a collapse zone in his size-up.

A review of the appellant's video and related examination materials indicates that in response to question 1, the appellant began his presentation with "Upon arrival, I would ah set up my command post on the AB side so I can get a three sided view of

¹ A LUNAR is an acronym used to help firefighters remember the important information that should be included in any Mayday call: L-Location; U-Unit; N-Name; A-Assignment and Air Supply; and R-Resources Needed.

the building. I'll be Warhol [Avenue] command after I've completed my 360 size-up I will be out of the collapse zone being upwind, uphill." Instructions to candidates that are printed after the questions in the examination booklets and read to each candidate by the room monitor state, "In responding to the questions, be as specific as possible. Do not assume or take for granted that general actions will contribute to your score." In this case, the appellant established a command post out of a collapse zone, but he did not establish a collapse zone. If he meant to do so, he needed to have articulated that action in his presentation as establishing a command post outside of a collapse zone is not the same. In the remainder of his response to question 1, he did not ensure monitoring of air, or establish a collapse zone/consider potential for early collapse. It is noted that the monitoring of air was expected in response to question 1 due to the paint in the store, and was not a reference to the amount of air left for the trapped firefighters in question 2.

In response to question 2, the appellant stated, "Ah, I will also announce ah LUNAR, location, unit, name, and ah, air available for the fire fighters, and resources needed. I will direct more lines to the fire." While the appellant provided information in an announcement, he did not say that he got it by contacting the trapped firefighters. The appellant's argument on appeal only assumes that he had done so by contacting the trapped firefighters. He never said so in his presentation. If the appellant meant to attempt contact with the trapped firefighters, he needed to have articulated this action. He also did not conduct a PAR. He also missed the additional actions noted by the SME. As the appellant missed two mandatory responses, his score of 1 for this component is appropriate.

For oral communication, the appellant did not specify which scores he was appealing. His score for the oral communication component of the Incident Command scenario will be reviewed, as his arguments pertain most to the SME comments for this scenario. For this scenario, the SME noted a weakness in word usage/grammar. Specifically, he stated that the candidate mispronounced words, used grammatically incorrect sentences, repeats words using inappropriate words, and used "and/ah/um" throughout his presentation. The appellant argues that he was "allowed to use bullet points" as he would not speak in correct or complete sentences at a fire scene. He states that his speech is a result of Spanish as a native language, and the SME misunderstood his accent and is not culturally sensitive. Lastly, he maintains that he was not given enough information in the orientation guide to speak appropriately.

In reply, this was a formal examination setting, and candidates were required to state what they meant at an appropriate rate, and with no distractions. A factor in oral communication is grammar/word usage, which is defined as using appropriate words and using sentences that are grammatically correct. It is not acceptable to present many distracting verbal mannerisms, such as "um." This was an examination setting where candidates were given scenarios, and a question or

questions for each scenario, and were required to provide direct answers to those questions maintaining a consistent flow of information. There is a well-known phenomenon of hesitational disfluency that can afflict a speaker trying to cope with the pressures of immediate processing, and some level of disfluency is acceptable when it does not affect the continuity of a presentation. At some point, however, the use of distracting verbal mannerisms is not acceptable. The appellant is responsible for his own speech, and the orientation guide that was available to all candidates gave each the same information. This was not a fire scene, and oral communication is an ability that the job analysis identified as pertinent in scoring. Candidates were expected to speak to their audience in grammatically correct sentences, and speaking in "bullet points" is not correct English.

A review of the video and related examination materials reveals that the appellant had no apparent accent. A foreign accent occurs when a person speaks one language using some of the rules or sounds of another one. For example, if a person has trouble pronouncing some of the sounds of a second language, they may substitute similar sounds that occur in their first language. This sounds wrong, or "foreign," to native speakers of the language. In this case, the appellant's speech was not accented, but fast-paced and slurred at times. He repeated information, skipped appropriate words in sentences, spoke in phases, and excessively used distracting verbal mannerisms. For example, the appellant stated, "Police department for traffic and crowd control. EMS for treatment triage and transport and a tracking officer for ah victims. EMS for ah triage ah transport, like I repeated um, a rapid intervention crew for safety of firefighters. A safety officer for overall scene safety. A water supply officer for ah water concerns. We have a fire hydrant out of service. Ah, water officer and ah, coordinate water supply through tenders. Ah, we'll have ah, accountability officer tag members into a two tag system and be accounted for at all times. Ah, Red Cross for victims um displacement and um, shelter. We'll also have um rehab for members to be, hydrated." At another time, the appellant stated, "Engine, engine three would ah position a tactical advantage and secure a separate water supply. They will ensure that ah a truss roofs are um checked and the exposures D delta we'll start with D delta due to the ah smoke and fire being traveling to that area ah, due to the wind speed and direction of the smoke. We'll evacuate ah, all the stores will be evacuated and searched. They will check for extension in transfer. They'll, I'll report conditions to command. Engine, engine, engine 3 will be division D supervisor." There is a decided lack of proper grammar in this response, and the appellant's presentation contained the weakness listed by the SME. His score for this component will not be changed.

CONCLUSION

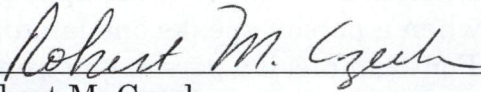
A thorough review of appellant's submissions and the test materials indicates that the decision below is amply supported by the record, and the appellant has failed to meet his burden of proof in this matter.

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 22nd DAY OF FEBRUARY, 2017



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

c: Agripino Figueroa
Michael Johnson
Records Center