B-16

STATE OF NEW JERSEY

In the Matter of Steve McConlogue, Battalion Fire Chief (PM1494T), Elizabeth	:	**FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION**
CSC Docket No. 2017-1470	:	Examination Appeal

ISSUED: FEB 24 2017 (RE)

Steve McConlogue appeals his score on the examination for Battalion Fire Chief (PM1494T), Elizabeth. It is noted that the appellant passed the examination with a final average of 89.810 and ranks third 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, 2, 5 and 3, 5, 5, respectively.

The appellant challenges his scores for the oral communication component of the Supervision scenario and the technical component of the Administration scenario. As a result, the appellant's test material and a listing of possible courses of action (PCAs) for each scenario was reviewed.

For the oral communication component of the supervision scenario, the SME noted weaknesses in word usage/grammar, and nonverbal communication. Specifically, for word usage/grammar it was noted that the candidate's presentation contained the inappropriate words "um & ah" too frequently during his presentation. As to nonverbal communication, it was noted that the candidate failed to maintain eye contact by continually writing in or checking off items during his presentation. On appeal, the appeal wrote that the SME indicated that he cleared his throat too frequently, and he explains why this may have been so. He maintains that he did not use inappropriate words to distraction, and that his message was relayed effectively to the audience. He believes that it was acceptable and expected for him to show nervous characteristics in the beginning of his presentation, and then deliver the content of his presentation in an organized, sequential, and instructional format. He

states that he delivered a significant amount of information in a restricted time and unconventional setting, while seated at a small chair and not allowed to stand up. He argues that he could not utilize movement, props, interaction and body language effectively while sitting down. He argues that it is an opinion that his checking off items on his paper was distracting, and he was not giving a speech, but was using an outline on a single sheet of paper for a ten-minute presentation. He states that he kept his place on the paper with his pen and checked off items as he progressed so as not to lose valuable time and so that he could locate his place each time he returned to the outline. He believes that this shows organization and time management and was not distracting. He argues that since the candidates have no control over the presentation setting, equipment, room temperature, or furniture, using the pen on the paper is a key responsibility for anyone giving a presentation and affects their ability to deliver a presentation effectively. He argues that every room was different, with a different setting and furniture arrangement, yet all candidates were graded on the presentation as if it was identical. This affected him, as he is tall and had to sit in a short desk, and he believed that this affected his ability to deliver the presentation effectively. He also maintains that the orientation guide does not mention the knowledge, skills, and abilities necessary for the oral communication portion of the examination. He states that he received scores of five for oral communication on his other presentations which demonstrate that he has the proper skills.

In reply, the orientation guide that was available to each candidate indicated that oral communication, the ability to communicate clearly and concisely, was a component of this portion of the exam. One factor in oral communication is grammar/word usage, which is defined as using appropriate words and using sentences that are grammatically correct. Another factor is nonverbal communication. A weakness in this factor is defined as failing to use gestures effectively, thereby causing confusion or distractions, and failing to maintain eye contact with the camera when speaking. Another factor is grammar/word usage, which is defined as using appropriate words and using sentences that are grammatically correct.

In regard to the difference in scoring of components over the three scenarios, the components measured in the oral examination are viewed as independent and are scored accordingly. Behaviors can be attributed to each component which are sufficiently distinguishable to warrant a unique score. Thus, candidates can completely answer the questions for the technical component, while exhibiting negative behaviors or weaknesses in the oral communication component. Or, candidates can fail to properly answer the questions for the technical component, while exhibiting no weaknesses in the oral communication component. Further, they can exhibit weaknesses in one presentation that they do not exhibit in another. As such, an independent score can be assigned for the technical and oral communication components within a performance. Thus, a candidate's behavior on one component

cannot be used to score his behavior on another component, and is not reflective of a score for another component.

Next, the SME did not make the notation that the appellant cleared his throat too frequently. His note was in regard to many distracting verbal mannerisms. The appellant is not arguing that he did not make these distracting verbal mannerisms, but that they are acceptable. 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. A review of the appellant's presentation indicates that he used distracting verbal mannerisms.

As to nonverbal communication, candidates were permitted to use their notes, and test conditions were standardized in their application to all candidates, *i.e.*, nonverbal communication (including eye contact) was assessed for all candidates. Prior to commencing the examination, the room monitor read the same information to every candidate. At the start of the presentation, the monitor stated, "I will return your notes before the exercise begins, and you may refer to the notes during the exercise. Remember to direct your response to the video camera. Do not direct your response to me. I will not be involved in the scoring of your exam. Make your presentation to the camera as if the camera were your audience." Thus, candidates were permitted to use their notes. It was at this point that the appellant should have brought up the issue of the positioning of his seat or the size of the chair if it was a problem for him. He did not mention these issues at all.

In this regard, any argument regarding the seating arrangement is a test administration appeal. Appeals of test administration must be filed in writing at the examination site. See *N.J.A.C.* 4A:4-6.4(c). 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). The appellant was seated at a chair pulled up to a folding table. If the appellant had a problem with the seating arrangement, he needed to have brought this to the attention of the room monitor prior to commencement of his presentation. Nevertheless, the assessor

referred to the amount of time the appellant spent looking down at his notes and using his pen to mark his notes. This was a formal examination setting and the SMEs observe an appellant's eye contact with the camera. The candidate who speaks to his audience and makes eye contact with them does not have a weakness in this area.

A review of the video and related examination materials reveals that the appellant had his notes open in front of him, and had his pen in his right hand which he continually held pointed at the paper. Occasionally, he would pause and make a mark in the notes. He read from his notes, glancing up occasionally at the camera. Thus, he was aware of his audience, but he did not continually address them. His lack of eye contact was a distraction, as well as the short pauses he made to make marks in his notes. However, on the whole, his score for this component should be raised from 3 to 4.

The Administration scenario indicated that there was a long delay of apprehension of the individuals involved in a rash of arson incidents in a neighboring town due to mismanagement of evidence by the firefighters in that jurisdiction. The Fire Chief wants to take proactive action against this possibility, particularly considering that the Standard Operating Procedures/Guidelines (SOPs/SOGs) have not been updated in over eight years. The Fire Chief asks the newly appointed Battalion Fire Chief to update and revise the SOPs/SOGs to reflect current standards. The question asked candidates to base their responses on the text *The Fire Chief's Handbook*, and their experience. Question 1 asked for initial steps to take to update scene security SOPs/SOGs. Question 2 asked what should be included in a SOP/SOG dealing with scene security.

For this question, the SME noted that the appellant missed the opportunities to seek input from the law department (question 1); to look out for any suspicious activity/person (question 2); and to indicate that, if something must be moved, they should memorize or mark the original location (question 2). On appeal, the appellant stated that his answers reflect the difference between a policy and procedure. He stated that the chapter regarding investigating fires in *The Fire Chief's Handbook*, 7th Ed., does not support seeking input from the law department for SOPs/SOGs regarding collection and preservation of evidence in noncriminal cases, but refers only to policies. He argues that he presented a significant amount of information, which he lists on appeal.

In reply, the PCAs are part of the scoring standard. There is no basis to conclude that they should not be considered in scoring, when they include applicable responses developed by the SMEs in direct response to the given scenarios. *The Fire Chief's Handbook* indicates that the Fire Chief should work with legal counsel to develop policies in regard to the collection and preservation of evidence in noncriminal fire investigation cases. The appellant is correct in stating that the Battalion Fire Chief candidate was not asked to develop policy in this scenario. Since the appellant is

stating the policies on which the procedures will be based require consultation with the legal department, following this logic, one must assume that the appellant stated in his presentation that he consulted the policies already developed by the Fire Chief after such consultation. A review of the appellant's presentation indicates that he stated that he would use the current SOPs/SOGs as a base to work from, and he mentioned other places he would look for information. However, he did not seek input from the law department, and more importantly to the appellant's argument, he did not refer to any policy already developed by the Fire Chief regarding collection and preservation of evidence in noncriminal cases. Thus, his response did not address seeking input regarding any legal issues. He included police officers in a committee, but this action is different from seeking input from the law department. Candidates were required to state what they meant, and they did not receive credit for inferences. If the appellant wanted legal input to update scene security SOPs/SOGs, he needed to vocalize that response in his presentation. It cannot be inferred that he did so because he included police officers in a committee, or because it is inferred that the current SOPs/SOGs are not deficient or illegal. The Fire Chief has asked the candidate to update and revise the SOPs/SOGs to reflect current standards, and the appellant missed the action of collecting legal information regarding those standards.

Question 2 sought the information that should have been included in the SOPs/SOGs dealing with scene security. The appellant was not specific with this information and did not include much information regarding dealing with scene security to be included in an SOP/SOG. Instead, he identified the groups and individuals he would "include," the types of incidents he would include, set the scope, determined his audience and determined their knowledge, skills and abilities, and referred to Personal Protective Equipment. He then stated, "The SOG itself, we want to have specific details on preserving evidence and what firefighters should look for as signs of arson, signs of tampering. We want to teach them, ah, what to do when confronted with this situation." He continued with what instructions he would give to firefighters, such as situational awareness. The appellant received credit for indicating scene preservation, but this is the only applicable response he gave for question 2. The remaining information was a restatement of the question, not an answer to it, or was not applicable. He was asked to include in the SOPs/SOGs information dealing with scene security, but instead he stated he would teach firefighters what to do when confronted with this situation and have specifics on such topics as minimizing water use and proper salvage operations. This is not a direct response to the question. The appellant missed the actions noted by the SME, and a proper response to question 2 was not included in the presentation. His score of 2 for this component will not be changed.

CONCLUSION

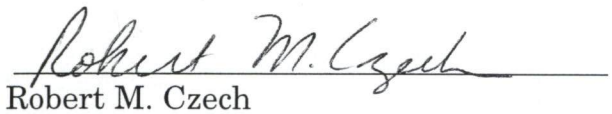
A thorough review of appellant's submissions and the test materials indicates that the decision below is amply supported by the record, and the appellant has failed to meet his burden of proof in this matter.

ORDER

Therefore, it is ordered that this appeal be granted in part, and the oral communication component of the Supervision scenario be changed from 3 to 4.

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



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