



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Eric Grace,
Fire Captain (PM0457U),
Margate

CSC Docket No. 2018-259

Request for Reconsideration

ISSUED: April 2, 2018 (RE)

Eric Grace, represented by Oded Weinstock, Esq., petitions the Civil Service Commission (Commission) for reconsideration of the attached decision rendered on June 21, 2017, regarding the scoring of the oral portion of the examination for Fire Captain (PM0457U), Margate.

This was a two-part examination consisting of a written multiple-choice portion and an oral portion. The petitioner challenged his scores for the technical and oral communication components of the Evolving scenario, and the oral communication components of the Administration and Arriving scenario. In the prior decision, the Commission found that the petitioner was correctly scored for the technical and oral communication components of the Evolving scenario, and reduced his score for the oral communication component of the Administration scenario from 4 to 3, and his score for the oral communication component of the Arrival scenario from 3 to 2. It stated that in order to pass the oral assessment exercise, the average raw score on both technical knowledge and oral communicative ability must be 2.5 or higher. With this change in scoring, the petitioner's average raw score on the oral communicative ability is 2, and therefore, he failed the examination.

Thereafter, the petitioner appealed the Commission's decision to the Appellate Division, Superior Court of New Jersey. By consent of the parties, the Court remanded the matter to the Commission for reconsideration of its initial decision.

In the present matter, the petitioner contends that the Commission's conclusion was a subjective determination unsupported by any evidence in the record,

with no factual basis for the lowering of his scores. He states that the Commission found weaknesses that the assessor did not note, and that, for the oral communication component of the Arrival scenario, it merely reiterated or described differently, the assessors findings. He contends that due process was violated as he could not cross-examine "a witness" as to the basis for lowering his score. He states that the score changes were unprecedented and a clear material error. He requests and that the matter be referred to the Office of Administrative Law for hearing, so that the judge may determine the criteria that led to the initial score and identity of the assessor, the criteria used for the new score and the identity of the reviewers, whether or not the initial assessor was interviewed or consulted, the presence of a report from the individual who reviewed the examination, and the credibility of the assessor and those who reviewed the examination.

CONCLUSION

N.J.A.C. 4A:2-1.6(b) provides that a petition for reconsideration must show the following:

1. New evidence or additional information not presented at the original proceeding which would change the outcome and the reasons that such evidence was not presented at the original proceeding; or
2. That a clear material error has occurred.

Applying this standard to the instant matter, the petitioner has not demonstrated that reconsideration should be granted. The petitioner's concerns were addressed in the decision below and he has not demonstrated that a clear material error has occurred or presented new information which would change the outcome.

For each of the components, the Commission reviewed the scoring of the presentations in their entirety and provided an extensive explanation for both score changes. Thus, the petitioner's argument that the determination was subjective, unsupported by any evidence in the record, and with no factual basis for the lowering of his scores, is simply incorrect. However, in its review the Commission found weaknesses that the assessor did not note and that was the basis for the scoring change.

For the oral communication component of the Arrival scenario, the Commission merely reiterated or described differently, the assessors findings. For this scenario, the assessor indicated weaknesses in inflection/rate/volume and specificity. For inflection/rate/volume, the assessor stated that numerous pauses detracted from the flow of his response. For specificity, the assessor provided examples, stating the petitioner would have the third alarm stage "somewhere nearby," he would call "DEP, EPA and what not," and he would have "a rehab station

of some sort.” In his appeal, the petitioner was arguing that he could not be specific since he did not have applicable knowledge. He did not argue the weakness in inflection/rate/volume. The Commission addressed his arguments, quoting complete passages which reflect a lack of specificity, and providing further analysis. This cannot be described as merely reiterating or describing the weakness differently. The petitioner provides no further direct argument in support of his original score except to challenge the Commission’s competence in rescoring his examination.

As to subjectivity, candidates are scored based on how and what they say during their performance. Each score was assigned based on a holistic view of the entire exercise. For oral communication, the weaknesses are defined, and the application of these definitions to the presentation determines whether or not they are present. Every score assigned to oral communication is not “subjective,” nor is it “subjective” to assign weaknesses. The initial assessors score the candidates in the room. After an appeal, the reviewers have the benefit of the video, and are able to listen and watch portions that are difficult to follow multiple times if the need arises. They are not required to score a component after listening to it just once. As to precedence, candidates are informed that scores may go up or down as a result of an appeal. An error in scoring is an administrative error, and no vested or other rights are accorded by an administrative 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 v. New Jersey Department of Banking and Insurance*, 309 N.J. Super. 538 (App. Div. 1998). The Commission can change any score at any time, either to increase it or decrease it as warranted, and it has done so in the past. See, for example, *In the Matter of Richard Charniga, Fire Lieutenant (PM2502E)*, Irvington (MSB, decided November 4, 2004); *In the Matter of Sean Sullivan, Fire Captain (PM3511F)*, Elizabeth (MSB, decided November 1, 2006); *In the Matter of John Trainello, Fire Captain (PM5234N)*, Newark (CSC, decided August 15, 2013); *In the Matter of Gerald Behnke, Fire Captain (PM1136S)*, Paterson (CSC, decided October 19, 2016).

With respect to the petitioner’s request for hearing, examination matters are decided by the Commission on a review the written record. Hearings are granted only in those limited instances where the Commission determines that a material and controlling dispute of fact exists which can only be resolved through a hearing. See N.J.A.C. 4A:2-1.1(d). No material issue of disputed fact has been presented which would require a hearing. See *Bellville v. Department of Civil Service*, 155 N.J. Super. 517 (App. Div. 1978).

The petitioner has failed to present a basis for reconsideration of this matter since he failed to establish that a clear material error occurred in the original determination or that new evidence presented would change the outcome of the appeal.

ORDER

Therefore, it is ordered that this request 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 27TH DAY OF MARCH, 2018



Deirdre L. Webster Cobb
Acting Chairperson
Civil Service Commission

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and
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Attachment

c: Eric Grace
Oded Weinstock, Esq.
Michael Johnson
Records Center

11-1-2017
per

ORDER ON MOTION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-005187-16T2
MOTION NO. M-002583-17
BEFORE PART B
JUDGE(S): MARIE P. SIMONELLI
GRETA GOODEN BROWN

IN THE MATTER OF ERIC GRACE,
FIRE CAPTAIN (PM0457U), MARGATE

MOTION FILED: 12/12/2017 BY: ERIC GRACE
ANSWER(S) 12/22/2017 BY: CIVIL SERVICE COMMISSION
FILED:

SUBMITTED TO COURT: December 28, 2017

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS, ON THIS
29th day of December, 2017, HEREBY ORDERED AS FOLLOWS:

MOTION BY APPELLANT

MOTION TO STAY APPELLATE
PROCEEDINGS

GRANTED AND OTHER

SUPPLEMENTAL:

By consent of the parties, this matter is remanded to the Civil Service
Commission for reconsideration of the June 26, 2017 final agency decision
from which appellant appeals. The remand hearing shall be concluded and a
final agency decision shall be issued no later than forty-five days from
the date of this order. Jurisdiction is retained.

FOR THE COURT:



MARIE P SIMONELLI, P.J.A.D.



STATE OF NEW JERSEY

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

In the Matter of Eric Grace,
Fire Captain (PM0457U),
Margate

Examination Appeal

CSC Docket No. 2017-2823

ISSUED: JUN 26 2017 (RE)

Eric Grace appeals his score for the oral portion of the examination for the second-level Fire Captain (PM0457U), Margate. It is noted that the appellant passed the examination with a final average of 89.070 and ranks second on the eligible list.

It is noted for the record that this two-part examination consisted of a written multiple-choice test and an oral examination. The test was worth 70 percent of the final score and seniority was worth the remaining 30 percent. The various portions of the test were weighted as follows: written multiple choice portion, 34.91%; technical score for the Evolving Scenario, 27.11%; oral communication score for the Evolving Scenario, 1.75%; technical score for the Administration of Procedures Scenario, 10.75%; oral communication score for the Administration of Procedures Scenario, 2.5%; technical score for the Arrival Scenario, 21.23%; and oral communication score for the Arrival Scenario, 1.75%.

The oral portion of the second level Fire Captain examination consisted of three scenarios: a fire scenario simulation with questions designed to measure the ability to assess risk factors and strategies involved in fireground command (Evolving); a simulation designed to measure the ability to implement a program and the factors/problems associated with program administration (Administration); and a fire scenario simulation designed to measure the risk factors and strategies associated with an incident that could potentially involve a hazardous material (Arrival). For the Evolving and Administration scenarios, candidates were provided with a 25-minute preparation period for both, and candidates had 10 minutes to

respond to each. For the Arrival 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 in the technical component for some scenarios, 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.

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 scenarios, and for oral communication, the requirements for each score were defined. For the Evolving scenario, the appellant scored a 4 for the technical component and a 1 for the oral communication component. For the Administration scenario, the appellant scored a 5 for the technical component and a 4 for the oral communication component. For the Arrival scenario, the appellant scored a 5 for the technical component and a 3 for the oral communication component.

The appellant challenges his scores for the technical and oral communication components of the Evolving scenario, and the oral communication components of the Administration and Arriving scenario. As a result, the appellant's test material, audiotape, and a listing of possible courses of action for the scenarios were reviewed.

The Evolving scenario involved a report of smoke coming from a brick and wood joist ranch home built in the 1960s. The candidate is the interior division supervisor. An occupant indicates that the fire started in the bathroom over the garage, which was under renovation. The question asked for initial actions both in route and upon arrival as the interior division supervisor. In the evolution of the scene, a member of the candidate's crew falls through a section of the floor under renovation, possibly through to the garage. This question asked for actions that should be taken and requests to the Incident Commander (IC) to address the situation.

For the technical component of the Evolving scenario, the assessor noted that the appellant missed the opportunity to notify all personnel of the unstable bathroom

floor, which was an additional response to question 2. On appeal, the appellant argues that he exercised a Mayday.

In reply, in this scenario, the candidate is not the IC, but is the interior division supervisor. As such, the candidate is responsible for notifying all personnel of the unstable bathroom floor. Calling for a Mayday is a separate and mandatory response for which the appellant received credit. Instructions to candidates stated, "in responding to these questions, do not assume or take for granted that general actions will contribute to your score." The appellant did not notify all personnel of the unstable bathroom floor, as noted by the assessor, and his score of 4 for this component is correct.

For the oral communication component, the assessor noted that the appellant had weaknesses in word usage/grammar, nonverbal communication, inflection/rate/volume, and confidence. He indicated that, for word usage/grammar, the appellant's presentation contained up to 60 "ums" and "ahs." For nonverbal communication, the assessor indicated that the appellant looked directly from his notes throughout the presentation. For inflection/rate/volume, the assessor indicated multiple "stumbles" throughout the presentation, and for confidence, the assessor stated that the appellant used "maybe" throughout the presentation. He provided examples. On appeal, regarding confidence, the appellant stated that there were "unknowns" with the information given the scenario, and he provided options. Additionally, he questions how he received a 1 on this component while receiving a 4 on the technical component.

In reply, in regard to the difference in scoring of both components for these 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. 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 appellant takes umbrage with a weakness in his confidence. A weakness in confidence is defined as failing to demonstrate certainty about his position, and using words such as "might" or "could" instead of such words as "will" and "must." Demonstrating confidence and certainty is observable by the use of pauses to reorganize, through demeanor, by word usage, and by actions. The

appellant argues that he used “maybe” and “may” due to a lack of information in the scenario. However, a review of the appellant’s presentation indicates that he took actions and used words which demonstrated a lack of confidence. For example, he stated, “Um, I would make sure that the ah crew is aware of our assignment and um, on the way in, if possible, maybe we could ah, get a 360 on the way in driving in.” The appellant was given diagrams of the scene which shows that sides B and C of the structure are not roads. Also, the scenario indicates that side B faces a two-story residential structure, while side C faces a backyard with a pool and a garage for neighboring homes. This was enough information to determine if a 360° view the structure by driving by was possible. The appellant also stated, “I want engine 2 to, I’m, I’m not actually the, the ah, guy that’s interior command. That’s right, that’s interior operations. I want to make sure that engine 2 when their arrival they secure a secondary water supply.” Aside from grammatical errors, in this passage, the appellant is aware that he is not the Incident Commander (IC), but still he “makes sure” that engine 2 secures a secondary water supply.

Next, the appellant states, “Um, engine 5, my crew, we would ah prepare to go through the front door and ah with an inch and three quarter line and ah put water between us and any possible victims and any search, search crews that are operating. Um, and um, I want ‘em ah (pause), yeah, put water between the fire and us and, and any possible victims and ah, the search crews or, or anybody else that’s in, in the building. Try and eventually locate, confine and extinguish that fire if we can keep it to that side of the house and that corner.” This passage does not reflect the definitive action of putting water between the fire and the victims. The appellant states that he will “try” to locate, confine and extinguish the fire “if” he can keep it to that side of the house. He states, “Ladder 5, I would want them to ah, assist in forcing entry if need be. Um, they could possibly split and ah perform ah ah some vent enter search if needed.” The presentation is replete with examples of a lack of confidence and the appellant exhibited the other weaknesses noted by the assessor as well. His score of 1 for this component is correct.

For the oral communication component of the Administration scenario, the assessor indicated that the appellant exhibited a weakness in inflection/rate/volume as evidenced by his low volume and seemingly disinterested tone. It was noted that the appellant had a couple of pauses with the sigh at the end. The appellant argues that this was a subjective evaluation from a person that knows nothing of his history. He states that he was amused and confident in his response to the problem.

In reply, inflection/rate/volume is defined as speaking at an appropriate rate, maintaining appropriate pitch and volume, and properly using pitch to convey meaning or emphasis. A review on the appellant’s video indicates that he seemed disinterested in the subject as his voice trailed lower as he finished a train a

thought. However, many of the pauses were preceded by “um” and “ah,” and the appellant used distracting verbal mannerisms and incorrect grammar throughout the presentation. For example, he stated, “I would ah, make it known that ah hazing ah, you know, is not tolerated,” and “Um, I would um, possibly EAP for, for ah, Firefighter Harper and maybe he’s scarred by the incident. Um, um, um, Lieutenant Trout, he may there may be some, some sort of personal situation that why he’s acting this way.” Additionally, the appellant’s presentation contained a weakness in nonverbal communication, which includes using gestures effectively without causing confusion or distractions, and making eye contact when speaking. The appellant held his notes in front of him and only occasionally looked up at the assessors. Thus, in addition to the weakness indicated by the assessor, the appellant’s presentation contained weaknesses in nonverbal communication and word usage/grammar. Thus, his score for this component should be reduced from 4 to 3.

For the oral communication component of the Arrival scenario, the assessor indicated a weakness in inflection/rate/volume, as numerous pauses detracted from the flow of his response, and in specificity. It was noted that the appellant would have the third alarm stage “somewhere nearby,” he would call “DEP, EPA and what not,” and he would have “a rehab station of some sort.” On appeal, the appellant states that he did not have intimate knowledge of the building or the location represented in the scenario in order to properly locate staging for the third alarm. He states that the complete statement referenced staging in the parking lot across the street.

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. The appellant’s lack of specificity was not based solely on one example. A review of the appellant’s presentation indicates that the appellant stated the examples listed by the assessor for specificity. The appellant stated, “I would call for a second alarm. Third alarm for tactical reserve. I would want um, them to stage somewhere nearby. It looks like there’s a nice big parking lot over there.” The appellant never actually states that he would stage the third alarm in that parking lot. The appellant indicated he wanted a rehab station of some sort, and that he would call DEP, EPA and what not. He stated, “I could have ah, I could ah, possibly bring in another line and um, increase that and do ah, do ah, some ventilation on this building.” This is a large concrete structure with small windows, and the appellant does not indicate how he intends to ventilate. He states, “I’m gonna say, (mumbles, what are the pictures here? what is the layout?) I want primary search and ah, done by the first ladder company (indecipherable) because of the size of this building. This ladder company is not, as far as interior ah, as far the work on the, on the location, I want to make sure that all, all my personnel have proper PPE um, ah, SCBA, PASS devices activated.” In this

passage, the appellant starts to explain the search but does not provide any specifics before returning to explaining how the members would be prepared. The presentation contains the weaknesses noted by the assessor and he had very little eye contact as well. He rarely looked up, and spoke to the papers in front of him, even when the assessor asked him questions at the end of the presentation. As such, the appellant's score for this component should be changed from 3 to 2.

The Candidate Feedback Report given to each candidate at review, states that in order to pass the oral assessment exercise, the average raw score on both technical knowledge and oral communicative ability must be 2.5 or higher. With this change in scoring, the appellant's average raw score on the oral communicative ability is 2. Thus, the appellant has failed the examination

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, and the score for the oral communication component of the Administration scenario be reduced from 4 to 3, and the score for the oral communication component of the Arrival scenario be reduced from 3 to 2.

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 21st DAY OF JUNE, 2017



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