



STATE OF NEW JERSEY

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

In the Matter of Kevin Lowry,
Fire Captain (PM1046V), Newark

CSC Docket No. 2018-3210

Examination Appeal

ISSUED: July 23, 2018 (RE)

Kevin Lowry appeals the denial of his request for a make-up examination for Fire Captain (PM1046V), Newark.

The appellant was originally scheduled to take the oral portion of the subject examination on April 7, 2018. He submitted a make-up request on April 12, 2018 due a medical condition and surgery. The appellant submitted documentation describing his medications in an "After Visit Summary," and provided a definition of his condition. The Division of Administrative Services (Administrative Services) denied this request as it did not meet that criteria listed in *N.J.A.C. 4A:4-2.9(a)*. In particular, Administrative Services informed the appellant that his makeup request was denied since the documentation was insufficient. It is noted that 199 candidates were admitted, the examination has been held, but the results are not yet available.

On appeal, Mr. Lowry provides additional medical documentation which indicates a doctor's visit on April 6, 2018, and surgery on April 7, 2018.

N.J.A.C. 4A:4-2.9(c) provides, in pertinent part, that for police, fire, correction officer, sheriff's officer, juvenile detention officer and other public safety open competitive and promotional examinations, make-ups may be authorized only in cases of:

1. Death in the candidate's immediate family;
2. Error by the Civil Service Commission or appointing authority; or

3. A catastrophic health condition or injury, which is defined as either:
- i. A life-threatening condition or combination of conditions; or
 - ii. A period of disability required by the candidate's mental or physical health or the health of the candidate's fetus which requires the care of a physician who provides a medical verification of the need for the candidate's absence from work for 60 or more work days.

N.J.A.C. 4A:1-1.2(c) sets forth that a rule may be relaxed for good cause in a particular situation.

CONCLUSION

The record establishes that the appellant was scheduled to take the oral portion of the examination on April 7, 2018 and did not do so. The original documentation supplied by the appellant did not include a reason why the appellant could not take the test. The appellant has since provided valid medical documentation why his medical condition precluded his participation in the examination. Although the circumstance of this matter does not fit precisely within the parameters of the rule, it is clearly evident that appellant had a compelling medical reason to miss the examination. Given these unique circumstances, the criteria of *N.J.A.C.* 4A:4-2.9(c) should be relaxed and the appellant be given a make-up examination for prospective appointment only.

ORDER

Therefore, it is ordered that this appeal be granted, and the appellant be scheduled for a make-up examination. In so doing, the remedy provided herein is for prospective appointment only, is limited to the facts of this case, and may not be used as precedent in any other proceeding.

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 18th DAY OF JULY, 2018



Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

c: Kevin Lowry
Kecia Daniels
Michelle Karngbaye
Records Center