



STATE OF NEW JERSEY

In the Matter of Gregory Johnson,
Sheriff's Officer Lieutenant
(PC2094U), Essex County

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

CSC Docket No. 2018-1917

Examination Appeal

ISSUED: March 6, 2019 (JH)

Gregory Johnson appeals his score on the promotional examination for Sheriff's Officer Lieutenant (PC2094U), Essex County. It is noted that the appellant passed the subject examination with a final average of 77.770 and appears at rank 7 on the resultant eligible list.

The subject examination, which was administered on May 4, 2017, consisted of five questions in short answer format (questions 1 and 2) and essay format (questions 3, 4 and 5). Candidates were provided with a total of three hours to respond to all five questions. It is noted that at review, candidates were informed that question 4 had been omitted from scoring.

As noted in the 2017 Sheriff's Officer Lieutenant Orientation Guide (Orientation Guide), which was available on the Civil Service Commission's (Commission) website, the examination content was based on a job analysis that identified a number of work components. The test was worth 80 percent of the final average and seniority was worth the remaining 20 percent.¹ Of the test weights, 25% of the score was problem solving/critical thinking, 10% was the New Jersey Title 2C short answer, 10% was the Attorney General Guidelines essay raw score,

¹ While the Orientation Guide noted that "a candidate's final score (and rank) on the promotional list consists of two weighted parts: the test score and the seniority score . . .," the Commission notes that their respective weights were not provided to candidates.

25% was the supervision/interpersonal relations essay raw score and 15% was written communication.²

During the development of the exam, law enforcement Subject Matter Experts (SMEs) determined the scoring criteria. Scoring decisions were based on SME-identified actions or statements which candidates should indicate in order to successfully address the situation described in the questions. The statements a candidate provided in his or her response were compared to these actions or responses, identified by the SMEs, to arrive at his or her score. Scoring independently, two assessors reviewed candidates' responses. Some actions or statements were determined, by SMEs, to be more critical than others. Thus, some actions or statements were worth more than others. If the statement was a response that matched one of the SME approved responses, the statement was recorded and assessors awarded credit for that statement. Each assessor used a 0-5 point scale to determine a candidate's score. A candidate's score was based on how well his or her response addressed the aspects of the scenario or question, that SMEs determined were needed to properly answer the question. A candidate's score for each question is an average of the scores from each assessor. On the 2017 Sheriff's Officer Lieutenant Essay Examination Combined Scoring Sheet (Combined Scoring Sheet), candidates were provided with "missed opportunities," *i.e.*, examples of additional actions or statements, that they could have provided to fully address the question. These were actions or statements that could have increased a candidate's score.

On appeal, regarding question 1, Johnson requests "further clarification regarding me being penalized for not using the verbiage 'undercover' . . . [w]hen in fact, I did list request specialized units such as 'Detectives' . . . An undercover [*sic*] is the very nature of being a detective. Being undercover is a job function and[*/*]or duty of a detective, which is why I did reference undercover in my response." For question 3, the appellant argues that "the SME[s] stated that I did not protect and preserve the scene properly. In fact, I specifically wrote that setting a perimeter is important as well as me informing the officers [of] the importance of collecting evidence. Setting the perimeter is the very essence of protecting a crime scene. By me specifying that I would set a perimeter means to protect, keep safe, secure, boundary, preserv[e] or not even allow unauthorized people for that matter . . . Additionally, I communicated the importance of collecting the evidence, which is another indicator of preserving the crime scene." He adds that "I wrote that I would notify several agencies . . . yet I was harshly penalized for not writing via telephone . . . Whether or not [notification] is via telephone, fax, or email, the point that I was

² At review, candidates were provided with a form entitled, "2017 Sheriff's Officer Lieutenant Exam Score Calculation Sheet" (Calculation Sheet), which provided a description of how the candidates test scores were calculated. It is noted that this weighting accounts for the omission of question 4, search and seizure/arrest, from scoring.

making is that I would notify my supervisors.” Regarding his written communication score, he presents that “I received a score [of] 3.5 out of 5 on the written communication portion . . . based on my responses for questions 3 through 5 . . . It is beyond my understanding how I could be penalized on a question that has been eliminated from the exam . . . It seems unfair that a question would be removed from the exam, yet points would be deducted for the vernacular [*sic*].”

CONCLUSION

An independent review of the appellant’s test booklet, a listing of the SME identified actions, and other examination material, reveals no basis to award additional credit to the appellant.

Question 1 indicates that in a few months, there will be a high-profile case at the courthouse which you anticipate will receive a lot of media attention. Candidates were instructed to list the considerations they should make with respect to ensuring the safety and security of staff and citizens during this court proceeding. A review of the appellant’s Combined Scoring Sheet finds that the assessors noted the following missed opportunities: establish road blocks/provide traffic control; assign security to the judge; and utilize undercover officers. Although the appellant claims that “being undercover is a job function and[/]or duty of a detective,” it is noted that while a detective may wear plainclothes, instead of a uniform, this is different from working undercover. Working undercover is a specialized function that not all detectives necessarily perform. Furthermore, candidates were required to provide direct answers to questions and in this regard, credit cannot be given for information that is implied or assumed.

Question 3 referred to the Attorney General Guidelines on Bias Incident Investigation Standards (revised January 2000) and contained three parts, Part A, Part B and Part C: Part A asked for the definition of a bias incident according to the Attorney General Guidelines on Bias Incident Investigation Standards; Part B asked when and how the Office of Bias Crimes and Community Relations in the Division of Criminal Justice should be contacted when a suspected bias incident has occurred; and Part C asked for the responsibilities of a law enforcement supervisor when he or she arrives at the scene of a suspected bias incident. A review of the appellant’s Combined Scoring Sheet finds that the assessors noted the following missed opportunities: offense based on sexual orientation (Part A); notification shall be made by telephone (Part B); take steps to ensure that the incident does not escalate (Part C); and ensure that the crime scene is properly protected and preserved (Part C).³ With regard to Part B, the appellant indicated:

³ The Combined Scoring Sheet advises candidates, “Examples of missed opportunities in the candidate’s response can be found below. (*Note: This is not an exhaustive list of missed opportunities.*)”

The arresting agency should notify the County prosecutor's office as soon as possible but within 24 hours. The County prosecutor should notify the Division of Criminal Justice about all bias crime incidents. The investigating agency will notify Community Relations to help police relation[s] with the public. Also, notify[ing] Community Relations can help police with apprehension of suspects that are not arrested.

The Amendment to Bias Incident Investigation Standards Promulgated September 1991 (issued September 22, 1994), which is incorporated in the above noted Guidelines,⁴ provides in pertinent part:

1. The Office of Bias Crime and Community Relations in the Division of Criminal Justice shall be the office for the statewide investigation and monitoring of bias incidents, and all law enforcement agencies shall give them full cooperation. Whenever assistance is needed by local and county law enforcement authorities regarding bias incidents, the Office of Bias Crime and Community Relations shall be contacted. That office will then coordinate appropriate additional resources with the requesting agency.
2. To facilitate inter-agency cooperation, the Office of Bias Crime and Community Relations in the Division of Criminal Justice shall be notified of all suspected or confirmed bias incidents as soon as possible, but in no event later than 24 hours after a law enforcement agency gains knowledge of such incidents. This requirement shall be in addition to notification of the county prosecutor's office within the same time period as set forth in the 'Bias Incident Investigation Standards -- Policy and Procedures for New Jersey Law Enforcement' promulgated in 1991.
3. Notwithstanding the above, the Office of Bias Crime and Community Relations in the Division of Criminal Justice shall be notified immediately of all suspected or confirmed bias incidents (1) that involve homicide, rape, aggravated assault or arson, (2) that involve a law enforcement officer as the alleged perpetrator, (3) that involve an organized hate group as the suspected perpetrator, and (4) that involve the potential to generate large scale unrest. This requirement shall be in addition to notification of the county prosecutor's office and the Central Security Bureau of the New Jersey State Police as set forth in the 'Bias Incident Investigation

⁴ See page 3. *Id.*

Standards -- Policy and Procedures for New Jersey Law Enforcement' promulgated in 1991.

4. Notification required by these amendments shall be by telephone or facsimile machine [weekdays 9 a.m. to 5 p.m.: (609) 219-6595 (facsimile); all other times . . . 24 Hour On Duty Cell Phone # 609 273-9243.

A review of the record finds that the appellant did receive credit for notifying the Office of Bias Crimes and Community Relations. However, the indicated missed opportunity of “notification shall be made by telephone” could have enhanced the appellant’s score. In addition, it is noted that overall, the appellant failed to demonstrate a comprehensive knowledge of when and how the Office of Bias Crimes and Community Relations in the Division of Criminal Justice should be contacted. In this regard, a review of the appellant’s test booklet finds that the appellant failed to identify approximately 70% of the SME approved responses for this part.⁵ Regarding Part C, the appellant indicated in his response, “I will inform officers that it is important to collect evidence. Then, I will assign officers the task to interview victims and witness[es] . . . Setting a perimeter is important to catch suspects who were not yet arrested. After, I would notify all other law enforcement agencies in the area to be on the look out for suspects.” Thus, the appellant did not indicate that he was setting a perimeter in order to protect and preserve the crime scene but rather, as a means to apprehend suspects. As noted above, credit cannot be given for information that is implied or assumed. In addition, “collecting evidence” does not mean that the affirmative step of protecting or preserving the scene has been taken prior to or during the collection of evidence. Again, credit cannot be given for information that is implied or assumed.

Regarding written communication, as noted on the Calculation Sheet, under the heading, “Components of Your Score,” “Written Communication raw score, which is weighted at 15% of your overall exam score. (This is a composite score based on your response to the New Jersey Attorney General Guidelines essay [(Question 3)] and the Supervision/Interpersonal Relations essay [(Question 5)]) . . . **Please note: The Search and Seizure/Arrest essay item [(Question 4)] was deleted from the scoring process.**” However, the Combined Scoring Sheet informed candidates that “Based on the candidate’s overall response to **Questions 3-5** on the 2017 Sheriff’s Officer Lieutenant examination, the candidate received a written communication score of . . .” The Division of Test Development and Analytics was contacted regarding this apparent discrepancy and indicated that during the scoring process, the Division found that overall, the candidates’ Question 4 essays

⁵ It is emphasized that the “missed opportunities” indicated on a candidate’s Combined Scoring Sheet did not constitute a complete list of the responses missed by the candidate but rather, as noted above, they were examples of some of the actions or statements that a candidate could have provided to fully address the question.

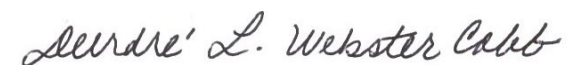
were not responsive to the issues presented and they were not consistent with the actions that would address the situation as determined by the SMEs. In addition, the Division of Test Development and Analytics determined that a portion of the question was affected by a recent change in relevant case law. As a result, the question was determined to be deficient and the technical score for this item was omitted from scoring. However, the Division of Test Development and Analytics further determined that since that candidates had provided a response for this item, those responses remained valid for the purposes of evaluating written communication. The Commission expresses its concern that candidates were not clearly informed of this distinction at review. Nevertheless, a review of the appellant's Combined Scoring Sheet finds that the assessors noted the following: "sentence structure as evidenced by several awkwardly phrased sentences throughout the response. For example, the first sentences in both #4(A) and #5(A) were poorly worded and confusing;" and "word choice/usage as evidenced by numerous incorrect use of singular/plural forms of nouns and words." While the assessors highlighted the first indicated weakness by providing an example from question 4, this weakness, as noted in the comment, existed throughout his responses and the assessors further cited an example from question 5. Thus, the appellant's argument that he was penalized solely for his response in question 4 is misplaced. Moreover, a review of the appellant's test booklet finds that there is no basis to award additional credit.

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 6TH DAY OF MARCH, 2019



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