



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Thomas Hubbard,
District Parole Supervisor (PS5491I),
State Parole Board

Examination Appeal

CSC Docket No. 2019-2850

ISSUED: MAY 28, 2019

(ABR)

Thomas Hubbard appeals his scores for seniority and for the oral portion of the promotional examination for District Parole Supervisor (PS5491I), State Parole Board (SPB). It is noted that the appellant passed the examination with a final average of 83.510 and ranked 11th on the eligible list.

This was a two-part examination consisting of a multiple-choice portion and an oral portion. Of the test weights, 50% of the score was the written multiple-choice portion,¹ 40% was the technical component and 10% was the oral communication component. Candidates also received credit for their performance assessment review ratings and seniority.

For the oral portion, each candidate was presented with a scenario and given 30 minutes to decide how to answer and 15 minutes to present their response. The scenario placed the examinee in the role of a District Parole Supervisor at a district office for a single shift. In one portion of the scenario, two Senior Parole Officers (SPO) visit parolee Madden’s home for a routine home visit. Upon arrival, the SPOs encounter investigators who claim that the parolee has been selling large quantities of untaxed cigarettes out of his residence. The investigators ask the SPOs to search the residence for evidence of this activity. The investigators do not have a search warrant and they maintain that a warrant is unnecessary because of SPOs’ right to conduct a warrantless search of the parolee’s residence. They also state that a

¹ The appellant’s score on the multiple portion of the subject examination was previously addressed by the Civil Service Commission in *In the Matter of Thomas Hubbard* (CSC, decided January 16, 2019).

Deputy Attorney General determined that the search would be legal based upon parolee's failure to obey all laws and ordinances, and because their source for this information is a registered confidential informant with a proven record of credibility and reliability. The Assistant District Parole Supervisor serving under the examinee approves the search based upon the foregoing information and the similarity of the allegations to the parolee's commitment offenses. The search does not yield evidence of untaxed cigarettes. However, the SPOs find an item that the parolee is prohibited from using, possessing or purchasing as a special condition of his parole. Later in the scenario, Parole Officer Recruits Cagney and Lacey report to the examinee that one of the SPOs assaulted the parolee after hearing the parolee make an obscene comment. They ask the examinee not to reveal that they were the ones who reported it.

Candidates were scored based on the content of their response (technical) and 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 was scored by two Test Development Specialists who were trained in current technical and oral communication scoring procedures. As part of the scoring process, the assessors observed and noted the responses of a candidate relative to the knowledge, skills and abilities (KSAs) that each exercise was designed to measure. The assessors also noted any weaknesses that detracted from the candidates overall oral communication ability. The assessors then rated the candidate's performance according to the rating standards and assigned the candidate technical and oral communication scores on that exercise. For the technical and oral communication components of the scenarios, the appellant received scores of 3 and 4, respectively. With regard to the technical portion, the assessors stated that the appellant failed to identify several issues or responses. Among the more significant items, the appellant failed to indicate that the Assistant District Parole Supervisor and the SPOs failed to meet the standard for conducting a warrantless search of the parolee's home, *i.e.*, reasonable articulable suspicion that it contained evidence of a violation of a condition of supervision or that the parolee possessed contraband in his residence. Additionally, they stated that the appellant failed to note that Cagney and Lacey could not remain anonymous because of their duty to report SPO Hutch's inappropriate/unlawful use of force against the parolee. As to the oral communication score, the assessors indicated that the appellant displayed a weakness in word usage/grammar, as evidenced by his use of "um" and "uh" throughout his response.

On appeal, the appellant argues that his technical, oral communication and seniority scores were improperly calculated. Specifically, with regard to his technical score, he argues that because State parole policies prohibit warrantless searches for the purpose of obtaining evidence of new crimes or suspected activities and the fact pattern clearly establishes that the search was for evidence of a new

crime, it was not necessary for him to specifically state that a reasonable suspicion of a parole violation was necessary to authorize a warrantless search of the parolee's residence. He also argues that it was "arbitrary and capricious" to require him to evaluate that basis for a warrantless search but not others, such as searches incident to an arrest, probable cause searches, exigencies and consent searches. He also maintains that it was unnecessary for him to specifically state that Cagney and Lacey could not remain anonymous after reporting the SPO's in-custody assault of the parolee. In this regard, he contends that his statement that Cagney and Lacey would have to complete Use of Force reports before the end of their shifts addresses this because the form requires a signature and thus cannot be completed anonymously. Further, he argues that he demonstrated his knowledge of policy through his statements regarding the process and justification for confiscating the firearm of the SPO who used excessive force. He argues that his recognition that such action was necessary was critical because of the recent controversies over the level of force used by law enforcement. He argues that the foregoing demonstrates that he should have received a technical score of 5.

As to oral communication, the appellant argues that his score of 4 was "arbitrary and capricious" because it was based upon his use of "uh" and "um" during his presentation. He maintains that it was unrealistic to expect examinees to give flawless presentations since they only had 30 minutes to prepare their responses. He contends that it is reasonable to expect speakers to use "uh" and/or "um," even with more time to prepare. In this regard, he notes that in March 2019 he attended a training session where multiple speakers uttered "uh" and "um" several times, despite having far more time to prepare. Further, he argues that his speech was clear, his ideas were expressed logically, his tone was appropriate and that he addressed complex issues in an easily understandable way. Accordingly, he argues that he should have received a score of 5 for oral communication.

Finally, he argues that he should have received 3.45 points for seniority based upon his service in the title of Assistant District Parole Supervisor between his March 8, 2014 appointment date and the August 21, 2017 closing date for the subject examination.

CONCLUSION

In the instant matter, a review of the appellant's test material, videotape, and a listing of possible courses of action for the scenarios fails to demonstrate that his technical score of 3 was incorrect. A technical score of 3 indicates that the candidate demonstrated satisfactory knowledge of SPB Policies and Procedures, relevant case law, Chapters 71 and 72 of the New Jersey Administrative Code, and supervisory techniques. The appellant argues that he should have been awarded a technical score of 5. In this regard, he contends he did not need to specifically state that a reasonable suspicion of a parole violation was necessary to authorize a search

of the parolee's residence because the scenario clearly showed that the SPOs and the Assistant District Parole Supervisor were being solicited by an outside law enforcement agency to help investigate a new offense. Additionally, he argues that it was not necessary for him to explicitly state that Cagney and Lacey could not remain anonymous because he discussed the need for them to complete Use of Force Reports. Here, because the scenario involves the warrantless search of a parolee's residence, there is a clear need to demonstrate a reasonable articulable suspicion that it will reveal evidence of a parole violation. The relevance of this particular standard, as set forth in *N.J.A.C. 10A:71-6.4(a)19* and *N.J.A.C. 10A:72-6.3(a)*, is further highlighted by the fact that Madden was found in possession of a whiskey bottle, which is evidence of a specific violation of his parole. Conversely, it is clear that this scenario did not involve other warrantless search standards, the search of the parolee's home was the only search presented in the scenario. As such, it was proper to rate examinees on their identification of this particular warrantless search standard. The appellant's contention regarding the issue of anonymity amounts to an argument that because his mention of Use of Force Reports implied that Cagney and Lacey could not remain anonymous because of the report's signature requirement, he should have received credit for addressing that issue. However, candidate scores are based on their actual responses in their performances. Credit cannot be given for information that is implied or assumed. *See e.g., In the Matter of Lawrence Lukenda* (MSB, decided February 23, 2000) (Merely mentioning words contained in suggested responses is not sufficient as scores are based on what is actually said, not the mention of buzzwords or implied information). The scorers cannot read a candidate's mind or assume he or she meant something not stated in the response. Thus, unless specifically stated, candidates do not receive credit for a response. *See e.g., In the Matter of Kevin Morosco* (MSB, decided March 24, 1998). Accordingly, the appellant was properly denied credit for failing to specifically state the applicable warrantless search standard and for failing to indicate that Cagney and Lacey could not remain anonymous.

The appellant further contends he demonstrated his strong technical knowledge and proficiency through his discussion about the protocol for confiscating the firearm of the SPO who has been accused of using excessive force against the parolee. However, Subject Matter Experts (SMEs), who helped determine acceptable responses based upon the stimulus material presented to the candidates, state that such action would be inappropriate under this fact pattern. In this regard they state that the SPO's weapon could not be confiscated unless the District Parole Supervisor believed that the SPO was not in any condition to safely maintain the firearm or the appointing authority immediately suspends him. *See* SPB Policy and Procedure 07.861, § VI.B and 02.007 § XVII.A. The SMEs indicate that the facts of the scenario do not meet either standard. The SMEs also maintain that any decision to immediately suspend the SPO would be made by a higher-level supervisor, rather than the District Parole Supervisor. As such, they submit that

having the District Parole Supervisor immediately report the allegation to the Office of Professional Standards (OPS) on an OPS Reportable Incident Form is the appropriate action. Accordingly, the foregoing supports the appellant's technical score of 3 on the oral portion of the examination.

Similarly, a review of the record fails to support the appellant's contention that his score of 4 for oral communication was incorrect. A score of 4 for oral communication indicates one minor weakness in the presentation. The assessors indicate that his word usage/grammar were a minor weakness, noting that he uttered "uh" and "um" throughout his presentation. On appeal, the appellant disputes the assertion that his use of "uh" and "um" was a minor weakness, particularly given the limited amount of time he had to prepare his response. A review of the appellant's video demonstrates that he had a minor weakness in word usage/grammar. Examples of this weakness in his response include, in part:

Um . . . I would counsel Cagney and Lacey. They did a bright thing about bringing the information about the excessive force to my attention . . . uh . . . however, they should have done it more promptly. They should have done it as soon as it happened . . . um . . . Nevertheless, the fact that they did it ih . . . is good . . . um . . . I would recall Hutch who has been . . . uh . . . given time off . . . uh sick leave for that day and the next day . . . to the office . . . uh . . . if he can't return to the office.

* * *

For that reason, the next time he is in the office, I would counsel him. Probably via performance notice counseling in regard to his insubordination and . . . um . . . and . . . uh . . . and his . . . uh . . . his . . . lying to his sergeant . . . um . . . I feel that's the appropriate . . . uh . . . course and that . . . uh . . . he'll resolve the issue . . .

* * *

He allowed . . . uh . . . an officer to leave when we had staffing issues . . . um . . . He also didn't advise his . . . uh . . . his officers to complete the proper forms before before [sic] the end of the tour of duty . . . um . . . He also didn't authorize an authorize an arrest of Mr. Madden for resisting arrest . . . um . . . these are all issues that . . . um . . . may require either counseling or reported . . . uh . . . reported with an incident form to . . . uh . . . OPS regarding . . . uh . . . these failures to adhere to policy and procedure.

Accordingly, the foregoing demonstrates that the appellant had a minor weakness in word usage/grammar which supports his oral communication score of 4.

Further, the record demonstrates that the appellant's seniority score is correct. In State service, seniority is awarded on the basis of one point per year up to a maximum of five years (five points). However, when an announcement is open to specific titles, seniority credit is only given for all periods of permanent service in those titles up to the five-year limit. *See In the Matter of Joseph Berenguer* (MSB, decided June 9, 2004). The subject examination was open to employees who possessed one year of permanent service in the title of Assistant District Parole Supervisor. A review of agency records indicates that the appellant was provisionally appointed to the title of Assistant District Parole Supervisor, effective March 8, 2014, and permanently appointed to that title, effective February 21, 2015. Accordingly, his seniority score of 2.5 was correct based upon his two years and six months of *permanent* service in the title of Assistant District Parole Supervisor as of the August 21, 2017 closing date for the subject examination.

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 ON
THE 22ND DAY OF MAY, 2019



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