



STATE OF NEW JERSEY

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

In the Matter of Marilyn Montijo,
Hearing Officer 1, State Parole Board
(PS6567I), State Parole Board

CSC Docket No. 2019-2761

Examination Appeal

ISSUED: MAY 14, 2019 (SLK)

Marilyn Montijo appeals her score on the promotional examination for Hearing Officer 1, State Parole Board (PS6567I), State Parole Board.

By way of background, the subject promotional examination was conducted on February 28, 2018 utilizing a multiple-choice examination that was developed based upon input from subject matter experts (SMEs). Candidates were required to achieve a raw score of at least 49 to pass the examination. Initially, the appellant appealed several items on the subject examination. After review, the Division of Test Development and Analytics agreed with one of the items that the appellant presented, and the examination was rescored. After the rescoring, the appellant achieved a raw score of 54 with a percentage average score of 74.760. Additionally, the appellant received five points for seniority and three points for her performance evaluation credit for a final average of 82.760. The appellant was tied as the 11th ranked eligible.

On appeal, the appellant specifically challenges question 10. The scenario for this question involved an offender who committed 3rd degree crimes and the role of the victims in the parole process in providing testimony. The keyed answer (c) indicated that victims provide testimony to a Hearing Officer concerning their economic loss. The appellant argued that the correct answer was (a) that the victims were to provide testimony to the Board panel concerning the continuing nature and extent of any physical, psychological or emotional harm suffered.

The appellant presents that *N.J.A.C.* 10A:71-3.48 provides that any victim injured as a result of a crime of the 1st or 2nd degree shall be entitled to present testimony to either a senior hearing officer, to the Board panel or to the Board; which may include, pursuant to *N.J.A.C.* 10A:71-3.48(f), “continuing nature and extent of any physical, psychological or emotional harm.” Additionally, she indicates that *N.J.A.C.* 10A:71-3.48(o) provides that any and all statements or testimony of the victim submitted to the Board to include those pertaining to the continuing nature and extent of any physical harm or psychological or emotional harm or trauma suffered. Moreover, the appellant provides that *N.J.A.C.* 10A:71-3.48(q) states that nothing in this section shall preclude the Board from receiving statements or testimony from any victim injured as a result of a crime of the 3rd or 4th degree. Further, she argues that although *N.J.A.C.* 10A:71-3.48(q) provides parameters by using language such as “however, statements shall be submitted in writing to the Board and testimony shall be received by a Hearing Officer” pursuant to section (j), that section she contends refers to the victim or nearest relative of a murder/manslaughter victim, and not 3rd degree offenses. Thus, she asserts that the Board was not precluded from receiving testimony from the victim pertaining to the continuing nature and extent of any physical, psychological or emotional effect. The appellant also requests to be reimbursed her appeal fee as her initial appeal uncovered an error made by this agency which resulted in the examination being rescored.

CONCLUSION

N.J.A.C. 4A:4-2-1.8(a) provides, in pertinent part, that a \$20.00 processing fee shall be charged for all appeals and requests filed with the Civil Service Commission subject to exemptions for certain types of appeals. *N.J.A.C.* 4A:4-2-1.8(f) provides that the fee is for processing purposes only and shall not be refunded for any reason except when submitted in error for an exempt appeal. *N.J.A.C.* 4A:4-6.3(b) provides that the appellant has the burden of proof in examination appeals.

In the instant matter, the Division of Test Development and Analytics correctly determined that answer (a) was the correct answer. A review of *N.J.A.C.* 10A:71-3.48 indicates that *N.J.A.C.* 10A:71-3.48(q) is the section that specifically addresses the input of the victim of a 3rd degree crime. This section provides that the Board can receive testimony from any victim of a 3rd degree crime. Nevertheless, this section goes on further to state, “However, statements shall be submitted in writing to the Board and **testimony** shall be received by a designated senior hearing officer pursuant to (j) above.” In other words, this section clearly indicates that victim testimony for a 3rd degree crime is to be received by a senior hearing officer and not the Board. Additionally, (j) refers to testimony of the victim **or** nearest relative of a murder/manslaughter victim before a senior hearing officer and how the case will proceed. In other words, reading (j) in conjunction with (q), the word “victim” is referring to victims of 3rd degree crimes and not just the nearest relatives manslaughter/murder of this section as indicated by the **or** in this section.

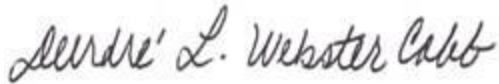
With respect to the appellant's request to be reimbursed her appeal fee, under *N.J.A.C. 4A:4-2-1.8(f)*, the appeal fee is a processing fee and is not to be refunded regardless of the outcome of an appeal. *See In the Matter of Vincent Fiscella, Jr.* (CSC, decided March 27, 2018). Further, as a scoring appeal is not one of the types of appeals that are exempt from the appeal processing fee, the processing fee was not submitted in error and cannot be refunded.

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 9th DAY OF MAY, 2019



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