



**STATE OF NEW JERSEY**

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

In the Matter of Brendan Lizotte,  
Fire Fighter (M1573T), Teaneck

CSC Docket No. 2019-709

Examination Appeal

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**ISSUED:** September 26, 2019 (RE)

Brendan Lizotte appeals the test administration of the physical performance portion (PPT) of the examination for Fire Fighter (M1573T), Teaneck, and requests a make-up examination.

The record establishes that appellant took the PPT portion of the examination on September 11, 2018. The physical performance portion of the exam consisted of three parts, the obstacle course, the ladder climb, and the darkened maze crawl, and each portion had a passing point. The passing time for the obstacle course was 5 minutes, and the appellant finished in 5 minutes, 59.58 seconds. Thus, he failed the examination.

In an appeal postmarked September 12, 2108, the appellant argues that he succumbed to flu-like symptoms which affected his performance and caused him to fail. He was taken to the hospital afterwards and filed an appeal when he was able. He states that he was afraid he would miss an appointment if he requested a make-up examination, and he thought he was through the worst of it. He requests to be allowed to retake the examination.

**CONCLUSION**

*N.J.A.C.* 4A:4-2.15(b)2, Rating of examinations, states that, "examinations consisting of more than one part may be rated independently, and candidates who do not receive a passing score on one part of an examination shall be deemed to have failed the entire examination." Thus, it was necessary to pass all three

portions of the PPT in order to pass the exam. If a candidate did not complete any one of the three physical performance exercises in under the allotted times, that candidate failed the examination.

*N.J.A.C. 4A:4-6.4*, (Review of examination items, scoring and administration) states that appeals pertaining to administration of the examination must be filed in writing at the examination site on the day of the examination.

As this appeal of test administration was filed the day after the examination was given, it is clearly untimely. Appeals of test administration must be filed in writing at the examination site on the test date. See *N.J.A.C. 4A:4-6.4(c)*. Monitors are required to make an announcement before the start of each examination that, should a candidate wish to appeal the test administration, he or she *must* do so at the test center. The Appellate Division of Superior Court has noted that “the obvious intent of this ‘same-day’ appeal process is to immediately identify, address and remedy any deficiencies in the manner in which the competitive examination is being administered.” See *In the Matter of Kimberlee L. Abate, et al.*, Docket No. A-4760-01T3 (App. Div. August 18, 2003).

Nevertheless, as a result of this appeal, the Center Supervisor was contacted regarding instructions to candidates, and the Center Supervisor also keeps notes of events at the test center, comments that are made, and candidates who fail portions of the PPT. In this case, the Center Supervisor noted in his report that, while performing the obstacle course, the appellant was distressed and fell numerous times. He was administered oxygen an ambulance was called, and he was taken to the hospital. He had indicated two medical conditions to the EMTS, and stated that he did not eat that day. All candidates are given a sheet entitled “Appeal Procedures” which states that appeals of test administration must be made in writing prior to leaving the test center on the day of the PPT. The appellant left the test center without filing an appeal. Medical documentation shows that the appellant was dehydrated and had vertigo, an ailment which may have been caused by his medical condition.

All candidates are provided with a Medical Clearance Form which signed by their physician and presented on the day of the physical examination in order to be admitted for testing. This form indicated that the physician certified that the appellant could safely perform the physical performance test without injury. The Disclaimer of Liability on the bottom of this form, which candidates were required to sign, indicated that, “The State of New Jersey has no knowledge of your physical condition or abilities and must therefore rely upon your representation and the representation of your physician that you can perform this test without injury. Your signature below indicates that you understand that you are assuming all risk connected with participation in this test, that you have been informed that the State of New Jersey assumes no risk or responsibility for any injury incurred during

or as a result of your participation in this test, *and that no significant changes have occurred in your medical condition since you were examined by the physician whose signature appears above.*" (Emphasis added) If a candidate is ill on the day of the examination it is his or her obligation to inform the test administration personnel, and request a make-up examination. Instead, the appellant presented the Medical Clearance Form, and did not state that he had a condition preventing him from taking the PPT, nor did he provide medical documentation regarding an illness or condition that would have prevented his participation in the PPT on that date. The appellant did not follow the make-up procedure or provide notice to the appointing authority that he was not interested at this time, but elected to take the examination and submitted a medical clearance form. Afterwards, he was dissatisfied with the examination results. The appellant started the obstacle course with medical clearance, and there are no provisions in the rules which allow for retaking an examination. This appeal is untimely and, in any case, under these circumstances a retest is not warranted.

A thorough review of the record indicates that the determination of the Division of Test Development and Analytics was proper and consistent with Civil Service Commission regulations, and that the appellant has not met 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 25<sup>th</sup> DAY OF SEPTEMBER, 2019



Deirdré L. Webster Cobb  
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c:     Brendan Lizotte  
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