



STATE OF NEW JERSEY

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

In the Matter of Airan Fernandez,
Police Captain (PM1838W),
Linden

DOP Docket No. 2020-1155

Request for Reconsideration

ISSUED: JULY 20, 2020 (RE)

Airan Fernandez petitions the Civil Service Commission for reconsideration of the decision rendered on September 10, 2019, which found that his scores are correct on the promotional examination for Police Captain (PM1838W), Linden.

By way of background, two-part examination consisting of a multiple-choice portion and an oral portion, which had two components, 1) Oral Communication and (2) Technical Supervision/Problem Solving/Decision-Making. The appellant challenged his score for the technical component. The Commission addressed the appellant's concerns, provided a complete analysis, and found that the appellant was correctly scored.

In the present matter, the appellant continues to appeal his score for the technical component. The Commission found that the appellant did not state that he would develop an improvement plan for Lieutenant Jones that they both agreed on in response to question 2. However, the Commission explained that this was a separate and distinct action from the actions provided by the appellant on appeal that could be taken to address the situation. The Commission also noted that the appellant's response to question 2 was general and did not focus on the problem presented in the question. As such, it found that the appellant's presentation did not warrant a score higher than a 3.

On request for reconsideration, the appellant contends that a clear material error occurred as he conducted a meeting with Lieutenant Jones because of his recent

performance issues, did not criticize him, depersonalized the situation, provided training, and had Internal Affairs conduct an after-action review. He also stated that deficiencies identified by Internal Affairs would be addressed. He maintains that his actions were synonymous with an employee development plan, and he requests credit for this action.

CONCLUSION

N.J.A.C. 4A:2-1.6(b) provides that a petition for reconsideration must show the following:

1. New evidence or additional information not presented at the original proceeding which would change the outcome and the reasons that such evidence was not presented at the original proceeding; or
2. That a clear material error has occurred.

Applying this standard to the instant matter, the petitioner has not demonstrated that reconsideration should be granted. The appellant's concerns were addressed in the decision below and he has not demonstrated that a clear material error has occurred or presented new information which would change the outcome.

Specifically, the possible courses of action (PCAs) are a guideline for scoring, and the assessor notes are examples of missed behaviors, but they are not inclusive of all aspects of behavior in a presentation. Behaviors are viewed holistically and compared with PCAs listed by the SMEs which are expected in response to questions about given scenarios. As stated by the Commission, general actions did not contribute to a score, and credit is not given for information that is implied or assumed. On reconsideration, the appellant is again arguing for credit for an implied response, not a given one.

In this case, question 2 indicated that Jones has since been distracted and has submitted reports with careless mistakes. The SMEs determined that the Police Captain should develop an improvement plan for Lieutenant Jones that they both agreed on. In response to question 2, the appellant stated, "I will contact Lieutenant Jones and have a meeting with Lieutenant Jones. At that meeting, he will be offered, he will be offered, employee assistance, and we will encourage him to seek counseling being that it seems that this event has, has caused some post traumatic stress disorder. I will remind Lieutenant Jones that he is a good officer and this was not his fault. In addition, Lieutenant Jones will be provided training in the future in addition to all supervisors in the department how to identify signs of, how to identify signs of officers who might be involved in domestic issues at home." At no point did the appellant develop an improvement plan for Lieutenant Jones that they both agreed on. The passage above was the sum of the pertinent information regarding

actions to take to address the situation with Lieutenant Jones as his supervisor. This response was minimum, as the appellant missed half of the actions he could have taken.

After this response the remaining portion of the appellant's response was not a direct response to question 2, but was general talk regarding the situation and the Department. For example, he continued with, "An after-action critique will be conducted by an administrative lieutenant, Internal Affairs Lieutenant, to identify how we handled this investigation, what things we did right, what we did wrong, what we could improve on. Departments have hundreds of policies and incidents like this flush out our deficiencies in policies and in training. Therefore, there is a responsibility to make those changes. He will also analyze possi... policies for decoupling where officers' actions were not in direct congruence with our policies and procedures. Upon completion of that assessment, I will have a command staff meeting with the commander of the professional standards bureau and the training bureau. We will discuss changes and updates to the policy and awareness training for our officers and our Department." None of this information is pertinent to handling the situation specific to Lieutenant Jones. Rather, it is a general handling of how the situation could be rectified and addressed in the future throughout the whole department. This was not a question on the examination. The appellant also missed the other action noted by the assessor, although he did not appeal that issue. The appellant's responses to both questions warrant a score of 3, which is acceptable, but the presentation did not include actions which would elevate it to "more than acceptable." There is no material error in this decision, and the appellant's score of 3 is correct.

The appellant has failed to present a basis for reconsideration of this matter since he failed to establish that a clear material error occurred in the original determination or that new evidence presented would change the outcome of the appeal.

ORDER

Therefore, it is ordered that this request 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 17TH DAY OF JULY, 2020

Deirdre' L. Webster Cobb

Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

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Attachment

c: Airan Fernandez
Michael Johnson
Records Center

CONCLUSION

The scenario involved a possible domestic dispute incident between a Police Sergeant (Sergeant Adams) who reports to a Police Lieutenant (Lieutenant Jones) who reports to the candidate, and the Police Officer's girlfriend (Erica). The girlfriend inquired about a restraining order, then was reluctant to explain a black eye, but admitted that Adams had hit her the night before. Question 1 asked candidates for steps to be taken regarding an allegation of Domestic Violence against Adams. Question 2 indicated that Jones has since been distracted and has submitted reports with careless mistakes. This question asked for actions to address this situation.

After reviewing his test materials, the appellant disagreed with his score for the technical component. For this component, the appellant received a score of 3, and the assessor indicated that the appellant missed the opportunity to ascertain whether Erica needs medical assistance, which was a response to question 1, and to develop an improvement plan for Lieutenant Jones that you both agree on, which was a response to question 2. On appeal, regarding Lieutenant Jones, the appellant summarizes his response to question 2, and states that he had a meeting with Jones, told Jones he was a good officer and the incident was not his fault, told him he and other supervisors were going to training, conducted an after-action review/critique of the incident, and addressed identified deficiencies. He argues that these actions are synonymous with an employee development plan.

In reply, instructions to candidates included, "In responding to the questions, be as specific as possible. Do not assume or take for granted that general actions will contribute to your score." This was read aloud to the appellant prior to the start of his examination. The appellant took the actions that he argues that he took. As a result, he received credit for having a meeting with Jones, providing training, and providing positive feedback. However, the SMEs determined that developing an improvement plan for Lieutenant Jones that you both agree on was a separate and distinct action that could be taken to address the situation. If the appellant wanted to take this action, he needed to have stated it, rather than implied it. This was a formal examination setting, and credit is not given for information that is implied or assumed. A review of the presentation indicates that in response to question 2, the appellant gave actions that were more general to the department than specific to Jones. For example, conducting an after-action review/critique of the incident is not specific to the situation with Jones. His score of 3 for this component is correct.

A thorough review of appellant's submissions and the test materials indicates that the appellant's test score is amply supported by the record, and 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 10th DAY OF SEPTEMBER, 2019



Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

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