



STATE OF NEW JERSEY

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

In the Matter of James Donovan,
Deputy Police Chief (PM4496C),
Bayonne

Examination Appeal

CSC Docket No. 2023-383

ISSUED: October 12, 2022 (RE)

James Donovan appeals the test administration for the examination for Deputy Police Chief (PM4496C), Bayonne.

The subject oral examination was administered to the appellant on December 15, 2021. Notifications were sent on February 9, 2022, and the appellant received a final average of 86.890 and ranked first. Thereafter, on June 7, 2022, the test was administered to a make-up candidate, who scored higher than the appellant, with a final average of 87.490. The appellant then filed this appeal, arguing that test conditions were different and gave an unfair advantage to the make-up candidate. Specifically, he explains that he was given 40 minutes to review his examination questions, then was given instructions in a separate room while being required to wear a mask. Then, in a room by himself he was allowed to remove his mask and had to reply to all four parts of the examination in the allotted 40 minutes. He was then escorted to another place where his examination material was collected, and he was sequestered until the morning session was complete. In contrast, he argues that the make-up candidate had different questions, and was tested differently, *i.e.*, with a regular non-Covid 19 protocol. He argues that the make-up candidate had an additional six months to prepare for the examination, the make-up candidate reviewed the test scores of other candidates on the Civil Service Commission's (Commission) website prior to taking his exam, and that responding to all four questions in 40 minutes required time management that was more difficult than responding to the questions in four 10-minute intervals. He requests to be restored as the highest ranking candidate.

CONCLUSION

At the outset, the New Jersey Constitution provides that appointments and promotions in the civil service of New Jersey shall be made according to merit and fitness to be ascertained, as far as practicable, by examination, which, as far as practicable, shall be competitive. *N.J. Const. art. VII, § 1, para. 2*. Consonant with art. VII, § 1, para. 2, the Legislature, under the New Jersey Civil Service Act, *N.J.S.A. 11A:1-1 to 12-6*, has declared that the selection and advancement of State employees should be dependent on considerations of merit, *N.J.S.A. 11A:1-2c*, and determined on the basis of relative knowledge, skill, and ability, *N.J.S.A. 11A:1-2a*. To implement those constitutional and statutory requirements, the Legislature vests the Commission with broad power to devise a fair, secure, merit-based testing process by which candidates are selected for employment and promotion. The Commission must provide for the announcement and administration of examinations which shall test fairly the knowledge, skills and abilities required to satisfactorily perform the duties of a title or group of titles, the “rating of examinations,” and, importantly, the security of the examination process and appropriate sanctions for breach of security. *See N.J.S.A 11A:4-1*.

Due to the highly competitive nature of public safety examinations and security concerns, it was found that there remained a need to narrow the grounds for make-up examinations for public safety titles so as to lessen or reduce the need for such make-ups. An ameliorating factor for candidates, however, is that if an individual misses a public safety examination, he or she will be able to take the next regularly scheduled test. *See 38 N.J.R. 1425* (March 20, 2006). In *In the Matter of Police Sergeant (PM3776V), City of Paterson*, 176 *N.J.* 49 (2003), the New Jersey Supreme Court ordered the Commission, for future exams, to “administer make-up exams that contain substantially different or entirely different questions from those used in the original examination.” *Id.* at 66. This procedure is well-established and the appellant’s argument that this is unfair, in that the questions are different, or the make-up candidate has more time to study, or the appellant knew the scores of other candidates, is unpersuasive.

The other factor under review are the protocols for administering the examination. When the appellant took the examination, emergency protocols were in effect for reducing the transmission of the Covid-19 virus during the pandemic. These protocols were no longer in effect when the make-up candidate took the examination. This difference in protocols is not so substantial as to invalidate the results of the examination. Both the appellant and the make-up candidate went through the same procedure of starting in the check-in room, where they were given a set of instructions and paperwork to fill out, and then were escorted to the preparation room. Each received 40 minutes to take notes and prepare their responses to the four booklets. The appellant was provided 40 minutes to respond to the four parts of the examination while alone in the examination room in order to

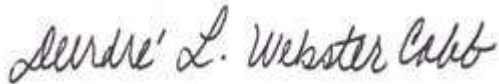
avoid prolonged contact with the monitor. He was told to budget his time, and could go back and respond to any question if he had any time remaining. The make-up candidate was tested in the standard testing process, where he was given 10 minutes for each examination part, could respond to only one part at a time, and had access to only one booklet at a time. Additionally, both the appellant and the make-up candidate were scored by the same assessor. The appellant did not file an appeal of test administration at the time of his test. The Commission is not persuaded that the pandemic protocols were unfair or that they impaired the appellant such that it affected his performance.

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 12TH DAY OF OCTOBER, 2022



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