



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

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

CSC Docket No. 2023-956

Request for Reconsideration

ISSUED: December 21, 2022 (RE)

James Donovan petitions the Civil Service Commission (Commission) for reconsideration of the decision rendered on October 12, 2022, which found that the test administration for the examination for Deputy Police Chief (PM4496C), Bayonne was fairly administered.

By way of background, the subject oral examination was administered to the petitioner on December 15, 2021, and the petitioner 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 petitioner, with a final average of 87.490. The petitioner then argued that test conditions were different, specifically, the make-up candidate had different questions, was tested differently, *i.e.*, with a regular non-Covid 19 protocol, had an additional six months to prepare for the examination, the make-up candidate reviewed the test scores of other candidates on the Commission’s 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 requested to be restored as the highest-ranking candidate.

The Commission found that 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 petitioner’s argument that this is unfair, in that the questions are different, or the make-up candidate has more time to study, or the petitioner knew the scores of other candidates, is unpersuasive. It also found that the difference in regular protocols and those for Covid-19 isolation is not so substantial as to invalidate the results of the examination. The Commission was not persuaded that the pandemic protocols were unfair or that they impaired the petitioner such that it affected his performance.

In the present matter, the petitioner argues that the four make-up candidates had a higher average score on the examination than the 10 candidates who took the original examination. He believes that either the testing format or easier test content accounted for that fact.

## 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 petitioner’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 Commission previously addressed the petitioner’s original arguments and the petitioner’s current arguments on reconsideration that the examination results for make-up candidates invalidate the examination are misplaced. Specifically, he states that there is a statistical difference in the scores of the original candidates compared with those for the make-up candidates. In that regard, the petitioner is only considering the scores of the candidates who passed the examination. For the 2021 administration there was a 78% pass rate, and for the 2022 administration there was a 57% pass rate. An analysis of the raw scores of both administrations indicates that each has an average raw score of 33, and the overall the average scores on questions 1 through 4 are essentially even. Because of the small population sizes, there is no statistical equation that can effectively analyze the differences. From a raw score perspective, there are no major differences in scores that would point to the 2022 administration of the make-up examination having easier questions.

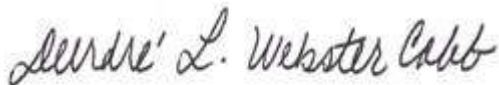
Accordingly, the petitioner has failed to present a basis for reconsideration of this matter since he failed to establish that a clear material error occurred in the original determination or that new evidence presented would change the outcome of the appeal.

**ORDER**

Therefore, it is ordered that this petition 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 21<sup>st</sup> DAY OF DECEMBER, 2022



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Deirdré L. Webster Cobb  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Nicholas F. Angiulo  
Director  
Division of Appeals and Regulatory Affairs  
Civil Service Commission  
Written Record Appeals Unit  
P. O. Box 312  
Trenton, New Jersey 08625-0312

c: James Donovan  
Division of Test Development and Analytics  
Records Center