



STATE OF NEW JERSEY

In the Matter of Scott Defibaugh, *et al.*, County Correctional Police Sergeant (PC4828C), Ocean County

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

CSC Docket Nos. 2023-213, *et al.*

Examination Appeals

ISSUED: December 7, 2022 (**ABR**)

Scott Defibaugh, Daniel Dowd, Benjamin Riley and Robert Ford appeal the promotional examination for County Correctional Police Sergeant (PC4828C), Ocean County. These appeals have been consolidated due to common issues presented by the appellants.

The subject examination was administered on June 1, 2022 and consisted of 70 multiple choice questions. Candidates were tested in one of two sessions, the morning session or the afternoon session. Candidates in the morning session received two booklets, Booklet A (County Correctional Police Sergeant Supplemental Examination Material) and Booklet B (2022 County Correctional Police Sergeant Examination). Candidates in the afternoon session also received two booklets, Booklet C (County Correctional Police Sergeant Supplemental Examination Material) and Booklet D (2022 County Correctional Police Sergeant Examination). Booklets A and C contained stimulus material and Booklets B and D contained the exam questions. Booklets A and C presented identical stimulus materials. Booklets B and D contained the same exam questions, but each booklet presented the questions in a different order.

An independent review of the issues presented on appeal has resulted in the following findings:

Question 43 in Booklet D (Question 57 in Booklet B) indicates that Sergeant Shaeffer and a corrections officer (CO) were touring the Female Housing Unit when they observed an inmate sitting hunched over in her cell, facing the wall, and anxiously looking back to see if anyone is watching her. It then asks for the best way for Sergeant Shaeffer to handle the situation. The keyed response is option a, to ask the inmate if she needs any assistance. Defibaugh selected option b on his answer sheet. Defibaugh and Ford argue on appeal that the best response is option c, to ensure the unit is secured and order the inmate to exit her cell to speak with her. In this regard, Defibaugh and Ford observe that the supplemental materials in Booklets A and C indicate that there has been an increase in inmate overdoses and that the Warden has asked staff to be “extra mindful” of inmates acting like they are hiding something and to respond quickly when inmates are having a medical emergency. Defibaugh and Ford contend that simply asking the inmate what they are doing is inconsistent with the Warden’s order to be “extra mindful.” Defibaugh presents that it may not help Sergeant Shaeffer find out what the inmate is hiding since her back is to him and that it is better to instead take the inmate out of her cell to quickly see what she is doing and what may be in her hands. Defibaugh maintains that it is imprudent to assume that the inmate will be honest, so it is imperative to be extra mindful and investigate what is actually occurring. Further, Defibaugh presents that locking the tier in would ensure the safety and security of all inmates if the situation escalates. Ford proffers that because the inmate’s body language suggests that she may be hiding something and inmates are often reluctant to provide custodial staff with information that could subject them to discipline, securing the unit and taking the inmate out of her cell is the proper way for Sergeant Shaeffer to gather information, observe the inmate’s behavior and make an appropriate decision. The Division of Test Development, Analytics and Administration (TDAA) contacted two Subject Matter Experts (SMEs) who have knowledge regarding the performance standards and requirements of the job. The SMEs assert that it is important to keep the lines of communication open while also taking a cautious approach by asking the inmate if she needs assistance. They maintain that the inmate’s response would then dictate their next course of action. The SMEs advise that option c would be an overreaction to this situation. In this regard, they proffer that it would be inappropriate to remove the inmate without knowing the actual problem or seeing a sign that she is likely to harm herself. Additionally, the SMEs present that locking down the unit and pulling the inmate out would publicly announce that this inmate has an issue and later cause the other inmates to have problems with her. TDAA concurs with the SMEs’ assessment. The Civil Service Commission (Commission) finds that the rationale of TDAA and the SMEs supports the keyed response to Question 43.

Question 44 in Booklet D (Question 58 in Booklet B) provides that Inmate Hamman attempted suicide; however, due to the quick response from staff, he was not successful. When debriefing the incident with the staff involved, CO Flint comments that Inmate Hamman is manipulative and attention-seeking based on the

suicide attempt. The question then asks for the best response. The keyed response is option b, “[e]ven if Inmate Hamman did attempt suicide for attention, it still means that he is struggling. It is important that we remember inmates are people and their mental health should be taken seriously.” Defibaugh and Riley selected option c on their answer sheets, “[i]t’s understandable that we may be burnt out after dealing with a lot of intense situations and develop a jaded view towards inmates. You should think through your comments before sharing.” Defibaugh and Riley argue on appeal that the best response is option d, “[t]hat’s not our job to decide why an inmate attempted suicide. Let’s just focus on the positive that we were successful in stopping the suicide.” In this regard, both assert that it is not the function of custodial staff members to determine why an inmate tried to commit suicide and that the focus should instead be on protecting inmates’ lives and safety. Further, Defibaugh contends that it is important to show appreciation for the responding officers’ work in saving Inmate Hamman’s life. The Commission finds that Question 44 is correct as keyed. In this regard, it is imperative to reinforce the need for custodial staff to see inmates as people and take their physical and mental health seriously. A necessary step in getting Inmate Hamman proper mental health treatment will be to assess why he attempted suicide. Option d is not the best response because it glosses over both the need for custodial staff to remember the humanity of the inmates and does not address the need to assess the reasons for Inmate Hamman’s suicide attempt. Importantly, the expressions “that’s not our job” and “let’s just focus” in option d seem to dismiss Inmate Hamman’s struggle and the need to consider his mental health. While it is true that mental health professionals will largely be responsible for assessing the cause of Inmate Hamman’s suicide attempt and determining the proper course of treatment for him, it is imperative for custodial staff to acknowledge that need and to ensure that Inmate Hamman gets those resources.

Question 49 in Booklet D (Question 50 in Booklet B) presents that CO Jindal was part of an extraction team with five officers and Sergeant Paulson. The inmate they were extracting splashed an unidentified liquid on the extraction team, and two of the officers retaliated by throwing the inmate to the ground and kicking him until he was unconscious. The inmate was brought to the medical unit. Sergeant Paulson and the rest of the team did not document this misuse of force. The question then asks for the best way for CO Jindal to handle the situation. The keyed response is option a, to contact internal affairs. On the examination, Defibaugh, selected option b, “[c]onfront the officers who committed the abuse privately.” On appeal, he argues on that the best response is option d, to talk to Sergeant Paulson privately. Defibaugh presents that at his facility, use of force reports are first reviewed by the Chief of Security, who approves or disapproves the force and then forwards the report to internal affairs. Defibaugh also observes that Booklet C indicates that Sergeant Paulson has become laid back and not as conscientious as he approaches retirement. Defibaugh contends that, as a result, Sergeant Paulson may not have noticed what transpired or forgot to enter it into his report. Thus, by talking to him, CO Jindal can see how Sergeant Paulson reacts and then assess whether to report the information

to internal affairs. Moreover, Defibaugh maintains that regardless of whether CO Jindal reports the incident to internal affairs, it will eventually receive the reports and take proper action. The SMEs maintain that option a, contacting internal affairs, is the best response because correctional officers are obligated to report any excessive use of force. The SMEs state that options b and d are wrong answers because an officer who witnesses or has knowledge of an excessive use of force must report it and speaking privately to an officer would violate *N.J.A.C. 10A:31-8.22*. TDAA agrees with the SMEs and similarly notes that the incident must be reported and that option a is the only way to guarantee that the incident will be reported. TDAA further presents that this question is based on an incident at a Department of Corrections facility in which staff filed false reports after forcible extractions that followed a similar “splashing” incident. The Commission observes that since force was used, *N.J.A.C. 10A:31-8.17(f)* provides that “[f]ollowing the use of physical force, written reports shall be prepared and completed before the completion of the tour of duty by the custody staff members involved.” Moreover, *N.J.A.C. 10A:31-8.22(a)* states:

The custody staff member shall immediately contact the shift commander and shall write a special report when the custody staff member participated in, or witnessed an incident in which:

1. A firearm was discharged outside of the firing range area;
2. A use of force resulted in death or serious bodily harm; and/or
3. An individual alleges that serious bodily harm has been inflicted.

Additionally, *N.J.A.C. 10A:31-8.22(b)* indicates that the report shall contain the following information:

1. A description of the incident including events leading up to the use of force;
2. The type of force used;
3. The reason(s) for employing force;
4. A list of all participants and witnesses to the incident;
5. A description of the injuries suffered, if any, and medical treatment given; and
6. Other relevant facts or comments about the incident or conduct of employees or inmates.

Finally, *N.J.A.C. 10A:31-8.22(c)* states that:

All reports shall be provided to the Administrator and/or directors of custody operations and/or investigation unit in accordance with internal

management procedures of the adult county correctional facility. The Administrator shall then report the incident to the governing body of the county or the County Board of Freeholders.

Taken together, since an inmate was rendered unconscious because of the use of force by custodial staff, there was serious bodily harm that requires CO Jindal to file reports in accordance with *N.J.A.C.* 10A:31-8.17(f) and *N.J.A.C.* 10A:31-8.22. The failure to document the misuse of force by Sergeant Paulson and the rest of the team is clearly a “relevant fact[] . . . about the incident or conduct of employees,” that CO Jindal should report. Since *N.J.A.C.* 10A:31-8.22(c) provides that reports shall be provided “to the Administrator and/or directors of custody operations and/or investigation unit in accordance with internal management procedures” in accordance with facility procedures, option a represents the action most consistent with these regulations. Options b and d fall short of that obligation. Therefore, the Commission finds that Question 49 is correct as keyed.

Question 55 in Booklet D (Question 37 in Booklet B) states that Inmate Carey was recently informed that his brother passed away and did not take the news well. While the examinee conducts a tour, they notice Inmate Carey lying face down on his bed. The question then asks what should be done first. The keyed response is option b, to ask Inmate Carey if he is ok. Dowd and Riley argue that the best response is option c, to open Inmate Carey’s cell door. Dowd and Riley maintain that effective communication here would begin with removing as many barriers as possible. Dowd proffers that opening the cell door is particularly important because it inhibits the ability to read body language. Further, Dowd suggests that walking by Inmate Carey’s cell and nonchalantly asking him how he is doing with the door closed is not going to give Inmate Carey the feeling that he genuinely cares. Dowd also submits that attempting the conversation through a door in a housing unit is also problematic because it makes Inmate Carey’s personal information very public within the housing unit. Riley contends that it is reasonable to infer that the inmate would have closed the door to his cell, at least in part, in order to hide away. Riley also avers that having a clear view of the status of the room might provide valuable information about Inmate Carey’s mental health state and possible intentions. The SMEs maintain that option b is the best response and is the first action that should be taken. They state that the nature of the response or even the lack of a response would help determine the next action to be taken. They also indicate that sometimes simply asking an inmate if they are ok will help to motivate them to seek mental health counseling or to at least encourage them to open up and talk about it. The SMEs contend that the fact pattern does not provide any information to suggest that the inmate is in danger or likely to harm himself and that its important to attempt to ascertain the inmate’s state of mind before deciding whether to take an action like opening the cell door, particularly as an officer cannot automatically know what thoughts are going through the inmate’s mind. They also note that it is possible that the inmate may wish to grieve on his own. TDAA similarly maintains that the keyed response is the best

response, as custody staff should gather information before deciding what other actions should be taken. The Commission notes that Riley and Dowd do not dispute that asking Inmate Carey if he is ok is an action that should be taken. Instead, the dispute is whether it is the step that should be taken first. The Commission finds that the explanations provided by the SMEs and TDAA demonstrate that Question 55 is correct as keyed.

Question 58 in Booklet D (Question 35 in Booklet B) presents that while CO Marino was supervising inmates in the dayroom area of Housing Unit South Block C, two inmates began verbally arguing over a book each wanted to read. In an effort to quell the situation, CO Marino ordered all inmates to lock in their cells. However, the inmates refused to do so and started complaining. CO Marino then had to call for backup to secure the unit. The question then asks which action CO Marino could have taken first to better de-escalate the situation. The keyed response is option b, to “[m]ediate the argument between the two inmates.” Defibaugh and Ford argue that the best response is option c, to order the two inmates arguing to lock in their cells. In this regard, Defibaugh compares it to Question 34 on the 2014 County Correction Sergeant¹ Examination (2014 Examination), which involved a confrontation between two cellmates and Question 38 on the 2018 County Correction Sergeant Examination (2018 Examination), which involved multiple inmates shouting at a trustee while in a food line and an inmate throwing his tray to the ground in frustration. It is noted that the keyed response for Question 34 on the 2014 Examination was for the CO to move to a secure area and call for additional officers and that the keyed response to Question 38 on the 2018 Examination was to order all the inmates to lock in. Defibaugh maintains that by mediating without separating and locking in the two inmates, it creates an opportunity for the situation to escalate, for the officer to be harmed, and/or for other inmates to get involved. He presents that if the two quarreling inmates are locked in, it would allow for each of them to be talked with individually. Defibaugh maintains that much as the correct response to Question 38 on the 2018 Examination was to have inmates lock in to reduce the risk of the situation turning into a riot, locking in the inmates with Question 58 on the 2022 Examination is the best response because there is a similar risk of the argument between the inmates turning into a physical altercation. Ford contends that the word “argument” in the 2022 Examination question is vague and that ordering the inmates involved in the argument to lock in immediately de-escalates the situation and would allow the officer to safely mediate between the two inmates. Ford also suggests that Question 38 on the 2018 Examination sets a precedent for that action being the proper choice in response to the question at issue on the 2022 Examination. The SMEs argue that the keyed response is the best response, as the fact pattern demonstrates that the disagreement is merely a verbal argument involving the two inmates and does not indicate that their argument was loud or aggressive. They assert that speaking to the inmates and attempting to mediate should be tried first

¹ Pursuant to P.L. 2019, c. 219, the title of County Correction Sergeant was retitled as County Correctional Police Sergeant, effective December 1, 2019.

and may avoid larger issues. They emphasize that because the question asks for the first action, a measure like a having the inmates lock into their cells could still be utilized if the effort at mediation is not successful. They proffer that Question 38 from the 2018 Examination is distinguishable because that involved a larger group of frustrated inmates, including one who threw a tray to the ground, and thus a greater potential to lead even more inmates to act up over the food. Since the interaction in Question 58 on the present examination involves only the two inmates and not anyone else, the SMEs maintain that they could easily de-escalate the situation by talking to both inmates. TDAA similarly presents that because the two inmates were not being aggressive in Question 58 that there is ample support for option b, to mediate the argument between them. The Commission agrees that because there is not an altercation like on Question 34 from the 2014 Examination or an act of aggression like the scenario present on the 2018 Examination, the fact pattern for Question 58 supports the conclusion that the first action taken should be to try and mediate the argument. Accordingly, the Commission finds Question 58 correct as keyed.

Question 59 in Booklet D (Question 34 in Booklet B) states that CO Potts and CO Phelps go to Sergeant Shaeffer with a problem. CO Potts claims that CO Phelps is too relaxed when enforcing rules and regulations, which CO Phelps disagrees with. The question then directs candidates to consider the following:

- I. What information she needs to resolve the problem.
- II. How whatever decision she makes will affect the officers.
- III. Which CO has a better track record regarding inmate interactions

Question 59 then asks, when making a decision on how to solve the problem, which should not factor into Sergeant Shaeffer's decision. The keyed response is option b, "III only." Dowd and Ford argue that the best answer is option d, "II and III only." In this regard, Dowd maintains that "[h]ow whatever decision she makes will affect the officers" should not factor into her decision because it is imperative that Sergeant Shaeffer consider the overall situation and the truth of the matter, and make an impartial decision regardless of how it might impact each person involved. Ford observes that *N.J.A.C. 10A:31-16.1(a)* provides that "[e]quitable and consistent inmate discipline shall be employed to ensure the maintenance of security and the orderly operation of all adult county correctional facilities." Ford argues that it is critical to ensure safety and security within the facility and that it should take priority over considering how the decision will affect the officers. Upon review, TDAA has determined to omit this item from scoring prior to the list being issued. Accordingly, Dowd's and Ford's appeals concerning Question 59 are moot.

CONCLUSION

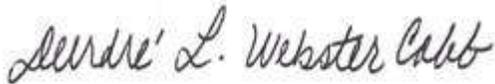
A thorough review of the appellants' submissions and the test materials reveals that, other than the scoring change noted above, the appellants' examination scores are amply supported by the record, and the appellants have failed to meet their burden of proof in this matter.

ORDER

Therefore, it is ordered that these appeals 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 7TH DAY OF DECEMBER, 2022



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