



**STATE OF NEW JERSEY**

In the Matter of M.D., Police  
Sergeant

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

CSC Docket No. 2022-1953

Examination Appeal

**ISSUED:** September 21, 2022 (JH)

M.D. appeals the administration of the promotional examination for Police Sergeant.<sup>1</sup>

By way of background, the subject two-part examination, which was administered on February 26, 2022, consisted of a video-based portion, items 1 through 20, and a multiple-choice portion, items 21 through 85.<sup>2</sup> It is noted that candidates were provided with 25 minutes for the video portion<sup>3</sup> and two hours and 30 minutes for the multiple-choice portion. On his application, the appellant checked the box that he needed an accommodation in accordance with the Americans with

<sup>1</sup> In order to address any concerns regarding the confidentiality of this matter, initials are being used to caption this appeal and no reference will be made to the specific symbol or jurisdiction utilized for the subject announcement. In this regard, it is noted that on October 1, 2021, 171 jurisdictions issued announcements for the subject Police Sergeant testing cycle.

<sup>2</sup> For the subject exam, it is noted that the Commission previously addressed exam item appeals in *In the Matter of Albert Herbert, et al., Police Sergeant* (CSC, decided August 24, 2022).

<sup>3</sup> It is further noted that the video portion was guided. In this regard, candidates were instructed, in part, “During the video portion you will be shown two scenarios requiring your attention . . . The narration in the video will instruct you to bubble your responses on your answer sheets . . . As the video progresses, questions will be presented for you to answer in the time provided. The questions will be clearly indicated as they appear on the screen and will be read aloud by the narrator on the video.”

Disabilities Act (ADA).<sup>4</sup> The Division of Administrative and Employee Services approved his request and on the test date, the appellant was to be provided additional time to complete the test.

On appeal, the appellant indicates that he did not receive his approved accommodation at the test center. In this regard, he explains that “as the exam time came to an end for the majority we were all given five minutes to complete this exam. My accommodatio[n] for extra time was not noted. As a result I was rushed and made a decision not to leave any questions unanswered although I did not get a chance to analyze each question due to no remaining time.”

## CONCLUSION

*N.J.A.C.* 4A:4-2.14(a) provides that otherwise qualified applicants with disabilities may request an accommodation in taking an examination by indicating their request on the examination application and, upon receipt, the Civil Service Commission shall make reasonable accommodation where appropriate and notify the candidate of the arrangements.

A review of the record finds that an approval letter dated December 14, 2021, sent by the Division of Administrative and Employee Services to the appellant indicated that the “CSC would reach out to you when this test is scheduled to coordinate this accommodation. When the time comes, we’d ask that you would take the lead in making arrangements with appropriate staff at your location to secure a testing area . . . Typically when it comes time for you to take the test for this title, we’ll reach out to you to coordinate your accommodation needs for this exam. If for some reason you haven’t heard from us about your accommodations by the time you receive your test notice, please contact our office.” A review of the Center Supervisor report indicates that after testing had concluded, the appellant approached the Center Supervisor and explained that he was an ADA candidate with an approved accommodation. The Center Supervisor further indicated that when the appellant arrived at the test site, he did not approach testing staff to indicate that he was an ADA candidate.

The record establishes that the appellant requested and was approved for an accommodation. The appellant subsequently took the subject test on February 26, 2022 without receiving an accommodation. It is not clear from the record why the appellant did not notify testing staff upon arriving at the test site that he was to receive an accommodation. However, it is noted that the Commission has previously

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<sup>4</sup> *N.J.A.C.* 4A:4-2.14(a) provides that otherwise qualified applicants with disabilities may request an accommodation in taking an examination by indicating their request on the examination application and, upon receipt, the Civil Service Commission shall make reasonable accommodation where appropriate and notify the candidate of the arrangements.

indicated that this agency is in the best position to know when an examination is scheduled, who will be participating, and which of those candidates have been approved for an accommodation. *See In the Matter of Richard Hopkins* (MSB, decided August 24, 2011). As such, equitable relief is warranted in this case given that the appellant's approved accommodation was not provided on the test date. As such, the appellant should be offered the opportunity for a make-up examination.<sup>5</sup> The Commission emphasizes that the appellant is not required to take a make-up but rather, this is the remedy that is being provided to the appellant should he choose to accept it.<sup>6</sup> Should the appellant determine to take a make-up, his original score,<sup>7</sup> will remain active until his make-up score is issued, which will replace his original score at that time.

### ORDER

Therefore, it is ordered that this appeal be granted and the appellant be provided with a make-up examination.

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 SEPTEMBER, 2022

*Dolores Gorczyca*

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Dolores Gorczyca  
Presiding Member  
Civil Service Commission

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<sup>5</sup> It is noted that in *In the Matter of Police Sergeant (PM3776V), City of Paterson*, 176 N.J. 49 (2003), the New Jersey Supreme Court ordered the Civil Service 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. As a result, public safety candidates are given a make-up exam when the next regularly scheduled exam for their particular title is administered. In this regard, the make-up test is typically the same as that to be taken by candidates who apply for the next cycle of announcements and make-up candidates are directed to refer to the Orientation Guide associated with the next cycle of tests.

<sup>6</sup> *N.J.A.C.* 4A:2-1.1 provides, in pertinent part, that all appeals to the Civil Service Commission shall include the reason for the appeal and the specific relief requested. It is noted that the appellant did not indicate any proposed remedies in his appeal letter.

<sup>7</sup> It is noted that to date, the results are not yet available.

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and  
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