



STATE OF NEW JERSEY

In the Matter of B.M., Police
Sergeant

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

CSC Docket No. 2022-2023

Examination Appeal

ISSUED: September 21, 2022 (JH)

B.M. appeals the administration of the promotional examination for Police Sergeant.¹

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 85.² It is noted that candidates were provided with 25 minutes for the video portion³ and two hours and 30 minutes for the multiple-choice portion. It is noted that to date, the results have yet to be released. On his application, the appellant checked the box that he needed

¹ 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.

² 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).

³ 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.”

an accommodation in accordance with the Americans with Disabilities Act (ADA).⁴ The Division of Administrative Services approved his request and on the test date, the appellant was to be provided additional time to complete the test.

In an appeal filed on March 2, 2022, the appellant argues that for the video portion, he was “not provided with a reasonable accommodation for my disability for this section as covered under the Americans with Disabilities Act (ADA) . . . One of the hardest tasks for me with my disability is reading comprehension . . . It always takes several attempts to read and even skipping over areas and going back to read at a later time in an attempt to comprehend what is being asked at an extremely slow pace.” He maintains that as he “began my exam I was surprised to hear that extra time would not be given to me for the video component because this part of the exam was a ‘real time’ scenario. Yet, the questions being asked are still written and need to be answered by reading them . . . The process and instructions were [v]ery confusing and by the time I understood what was happening the test time was already up and the video was moving on the next section leaving me with little to no time to properly answer the questions being asked.” He presents that once the video component had completed, the test booklets were taken away but “had these test questions not been taken away I would have been able to go back and look at my notes and read the questions until I was able to understand and comprehend what [w]as being asked.” In a separate appeal filed on March 21, 2022, regarding the multiple choice component, he argues that questions 57 and 59⁵ “asked for spelling errors and grammar errors these types of questions are the main component to my ADA disability . . . I asked the CSC for a reasonable accommodation for spelling and grammar questions prior to the test and they were unable to provide any accommodation for [me] stating they could not discuss what would be on the test.”

CONCLUSION

N.J.A.C. 4A:4-6.4 states that appeals pertaining to administration of the examination must be filed in writing at the examination site on the day of the exam. It is noted that all monitors for the subject exam were provided with the same set of instructions and they were directed to read the instructions to the candidates as written. In this regard, the monitor instructions provide, after check-in is completed and prior to the test administration, in pertinent part:

⁴ *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.

⁵ It is noted that the Commission discussed question 59 in *In the Matter of Albert Herbert, et al., supra*. It is further noted that a review of the record finds that the appellant selected the correct response for that item.

Any objections to the manner in which the examination was administered must be made in writing immediately following the completion of the examination by completing a Comment or an Appeal of Civil Service Commission Examination Form prior to leaving the examination center. This form can be obtained from the Center Supervisor. No appeal relating to the manner in which the examination was administered shall be permitted after the test date.

In *In the Matter of Kimberlee L. Abate, et al.*, Docket No. A-4760-01T3 (App. Div. August 18, 2003), the court noted that “the obvious intent of this ‘same-day’ appeal process is to immediately identify, address and remedy any deficiencies in the manner in which the competitive examination is being administered.”

In the instant matter, B.M.’s appeal of the sufficiency of his accommodation is untimely and is dismissed on those grounds. As noted previously, the subject exam was administered on February 26, 2022 and B.M. subsequently filed the subject appeal on March 2, 2022. Therefore, his appeal of this matter is untimely. However, the following is being provided for informational purposes only.

The ADA, 42 U.S.C.A. sec. 12101, *et seq.*, requires that a “reasonable accommodation” be provided to a qualified individual. Under the ADA, the term “reasonable accommodation” means: (1) modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position such qualified applicant desires; or (2) modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position; or (3) modifications or adjustments that enable a covered entity's employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities. Reasonable accommodation may include but is not limited to: (1) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and (2) job restructuring: part-time or modified work schedules; reassignment to a vacant position; acquisition or modifications of equipment or devices; appropriate adjustment or modifications of examinations, training, materials or policies; the provision of qualified readers or interpreters; and other similar accommodations for individuals with disabilities. *See* 29 C.F.R. § 1630.2(o) (2011). The ADA does not provide the “correct” answer for each employment decision concerning an individual with a disability. Instead, the ADA simply establishes parameters to guide employers in how to consider, and to take into account, the disabling condition involved. *See* 29 C.F.R. § 1630.2(o) and 29 C.F.R. § 1630.9.

As noted in the 2022 Police Sergeant Orientation Guide, for the video-based portion, candidates were to “assume the role of a Police Sergeant as they view

scenarios associated with the duties of a Police Sergeant. Each video will present information and circumstances which candidates will have to consider before responding to the questions.” The Orientation Guide further noted that candidates should be prepared to encounter the following test format options:

Multiple-Choice: Following information presented in the video, questions will have up to four choices from which candidates will select one answer which BEST addresses the problem or situation.

Two-Option Format: Following information presented in the video, candidates will be presented with several follow-up questions they may wish to ask or actions they may choose to take based on the information presented. Candidates will have to choose between two options to successfully resolve the situation. The options may be phrased in different ways depending on the scenario presented in the video . . . Questions in both the multiple choice and video based portions will be preceded by directions which will instruct candidates on how they should answer each type of question.

On the test date, candidates were instructed with regard to the video portion, in part:

During the video portion you will be shown a scenario requiring your attention. While it will be important that you hear the instructions and dialogue associated with each scenario, a close visual inspection of the screen is not necessary . . . As the scenario plays out, you will be asked questions on how you should respond and what actions you should take to deal with the events described in the scenarios . . . 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 . . . Answer each question in the time provided. During the response time, the video will display a number which corresponds to the amount of response time remaining . . . Once the video presentation begins, it WILL NOT be paused or rewound.

As such, each question was read aloud to the candidates, and candidates were required to mark their response in the time provided for each item in their test booklet. All candidates were given the same amount of time to provide their responses, which were based on the situation presented in the scenario.⁶

With respect to the appellant’s concerns regarding “spelling and grammar questions” in the multiple-choice portion, the appellant is essentially requesting an

⁶ It is noted that a review of the record finds that for the video-based portion (items 1 through 20), the appellant selected the correct response for 17 of those items.

accommodation in the form of the removal of test items. As noted in the Orientation Guide, the test was based on information obtained from the most recent job analysis verification of the Police Sergeant, which included descriptions of the duties performed by incumbents and identified the knowledge, skills and abilities that are required to effectively perform each of these duties. As such, the ADA would not require an alternative test format and thus, it would be improper to remove test items. Accordingly, the appellant received the proper accommodation on the test date, *i.e.*, additional time to complete the test only for those portions of the test that he was required to read the questions and supplemental material needed to answer those questions.

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 21ST DAY OF SEPTEMBER, 2022

Dolores Gorczyca

Dolores Gorczyca
Presiding Member
Civil Service Commission

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c: B.M.
Division of Test Development and Analytics
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