



**STATE OF NEW JERSEY**

In the Matter of Saleh Judeh and  
Michael Ng, Police Captain, various  
jurisdictions

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

CSC Docket Nos. 2023-866 and  
2023-864

Examination Appeal

**ISSUED:** February 22, 2023

Saleh Judeh (PM4724D), Paterson; and Michael Ng (PM4746D), Woodbridge; appeal the promotional examination for Police Captain (various jurisdictions). These appeals have been consolidated due to common issues presented by the appellants.

The subject exam consists of two parts: a multiple-choice portion and an oral portion. The multiple-choice (written) portion was administered on October 6, 2022 and consisted of 70 multiple choice questions.

Ng presents that he was only provided with 30 minutes for review and he was not permitted to review his test booklet and scored answer sheet. Ng requests that any appealed item in which he selected the correct response be disregarded and that if he misidentified an item number in his appeal, his arguments be addressed.

Regarding review, it is noted that the time allotted for candidates to review is a percentage of the time allotted to take the examination. The review procedure is not designed to allow candidates to retake the examination, but rather to allow candidates to recognize flawed questions. First, it is presumed that most of the questions are not flawed and would not require more than a cursory reading. Second, the review procedure is not designed to facilitate perfection of a candidate's test score, but rather to facilitate perfection of the scoring key. To that end, knowledge of what choice a particular appellant made is not required to properly evaluate the correctness of the official scoring key. Appeals of questions for which the appellant selected the correct answer are not improvident if the question or keyed answer is flawed.

With respect to misidentified items, to the extent that it is possible to identify the items in question, they are reviewed. It is noted that it is the responsibility of the appellant to accurately describe appealed items.

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

Question 12 indicates that Timothy Danvers has been arrested and the determination whether to charge him by complaint-warrant or complaint-summons must be made. Candidates were provided with four risk factors to consider. The question provided, “N.J. Attorney General Directive No. 2016-6 v3.0 [(September 27, 2017)] specifically states that a defendant need be charged by complaint-warrant only when some release condition or conditions are appropriate to manage.” The keyed response, option c, does not include statement IV, “self-harming behavior by defendant.”<sup>1</sup> Ng argues that statement IV is correct and refers to Rule 3:3-(d), which, in part, “authorizes a judge to overcome the presumption of charging by complaint-summons where the judge finds that: (1) the defendant has been served with a summons for any prior indictable offense and has failed to appear; (2) there is reason to believe that the defendant is dangerous to self, or will pose a danger to the safety of any other person or the community if released on a summons; (3) there are one or more outstanding warrants for the defendant . . .”<sup>2</sup> It is noted that it is not clear

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<sup>1</sup> Directive No. 2016-6 v3.0, Section 4, “Determining Whether to Charge by Complaint-Summons or Complaint-Warrant,” under “4.1 General Policy Considerations,” provides, in part:

The decision whether to charge by complaint-summons (commonly referred to as a CDR-1) or complaint-warrant (commonly referred to as a CDR-2) takes on enhanced significance under the Bail Reform Law . . . The Bail Reform Law provides that a defendant should be released on the least restrictive conditions necessary to assure his or her appearance at court proceedings and to prevent defendant from committing new crimes. *See N.J.S.A. 2A:162-17*. Consistent with that legislative policy, under this Directive a defendant need be charged by complaint-warrant only when some release condition or conditions are appropriate to manage the risk of flight, the risk to the safety of the community, witnesses, and victims, and/or the risk that defendant will obstruct the criminal justice process . . . In other words, charging by complaint-summons rather than by complaint-warrant generally would be appropriate when the facts known at the time of the charging decision reliably indicate that the defendant requires no monitoring. A complaint-warrant, in contrast, generally should be sought when the defendant poses some level of risk of flight, new criminal activity or violence, or threat to the criminal justice process that should be managed by monitored release conditions, if not by the defendant's pretrial detention. Furthermore, a complaint-warrant should be sought in domestic violence cases where imposition of a no-contact or other restraint is reasonably necessary to assure the immediate protection of the victim.

<sup>2</sup> Directive No. 2016-6 v3.0, under “4.3.1 Standard for Overcoming Presumption of Issuing a Complaint-Summons” provides:

In any case where there is probable cause to believe the defendant has committed any indictable crime or disorderly persons offense and the case is not otherwise covered

what this item is asking candidates to determine. In this regard, Section 4.1 further provides:

In other words, charging by complaint-summons rather than by complaint-warrant generally would be appropriate when the facts known at the time of the charging decision reliably indicate that the defendant requires no monitoring. A complaint-warrant, in contrast, **generally** should be sought when the defendant poses some level of risk of flight, new criminal activity or violence, or threat to the criminal justice process that should be managed by monitored release conditions, if not by the defendant's pretrial detention. Furthermore, a complaint-warrant should be sought in domestic violence cases where imposition of a no-contact or other restraint is reasonably necessary to assure the immediate protection of the victim. (emphasis added)

As such, it is not clear if the item is asking for the presumptions or circumstances under which a complaint-warrant would be issued or if the item is asking when a complaint-warrant would be mandatory ("need be").<sup>3</sup> As a result, the Division of Test Development and Analytics determined to omit this item from scoring prior to the lists being issued.

Question 41 refers to Kenneth J. Peak, *et al.*, *Managing and Leading Today's Police* (4th ed. 2018), and indicates that your department uses a progressive disciplinary process that follows the one described by Peak, *et al.* The question

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under Section 4.4 (mandatory charging by complaint-warrant) or Section 4.5 (presumption of charging by complaint-warrant), a law enforcement agency shall issue a complaint-summons unless an assistant prosecutor or deputy attorney general consulted in accordance with Section 3.2 of this Directive, or a supervisory officer designated pursuant to subsection 3.3.2 and authorized by the County Prosecutor to overcome presumptions under Section 4 of this Directive, determines that application for a complaint-warrant is reasonably necessary to protect the safety of a victim or the community, to reasonably assure the defendant's appearance in court when required, or to prevent the defendant from obstructing or attempting to obstruct the criminal justice process, and further determines that there is a lawful basis to apply for a complaint-warrant pursuant to Rule 3:3-(d) as recently amended.

<sup>3</sup> See *e.g.*, Section 4.4 (Cases Where Law Enforcement Must Apply for a Complaint-Warrant without Exception); Section 4.5 (Cases Where There is a Rebuttable Presumption of Applying for a Complaint Warrant); Section 4.3.1 (Standard for Overcoming Presumption of Issuing a Complaint-Summons);. In addition, Section 1.5, "General Approach Taken by This Directive," indicates:

The presumptions established in this Directive on when to issue a complaint-summons or to apply for a complaint-warrant . . . are designed to guide the exercise of law enforcement/prosecutorial discretion . . . A presumption is the starting point for case specific analysis, but does not necessarily dictate the outcome of that analysis . . . Furthermore, nothing in this Directive restricts a prosecutor or designated supervisory officer for considering any relevant fact or circumstance, including those that do not automatically trigger a presumption.

further indicates that one of your subordinates' actions requires discipline and you are trying to determine which disciplinary action would be appropriate for the situation. The question asks, according to Peak *et al.*, for the true statement. The keyed response is option d, A letter of reprimand "identifies what specific corrective action must be taken to avoid subsequent more serious disciplinary steps." Judeh maintains that option a, "is usually the first step in progressive disciplinary process," is the best response. Judeh argues that the text "states 'usually the 2<sup>nd</sup> step' with the key word being 'usually.' Letter D did not provide any information regarding the second step so I chose letter A based on 'usually' which is not defined as MUST." The question specifically referred to the subject text which provides:

*Letter of reprimand.* This is a formal written notice regarding significant misconduct, more serious performance violations, or repeated offenses. It is usually the second step in the disciplinary process and is intended to provide the employee and agency with a written record of the violation of behavior. It identifies what specific corrective action must be taken to avoid subsequent more serious disciplinary steps.

As noted above, the question asked for the *true* statement regarding letters of reprimand. In this regard, the text provides that documented oral counseling is "usually the first step in a progressive disciplinary process . . ." whereas a letter of reprimand is usually the second step. Thus, according to the text, option a is incorrect. However, regardless of the step in the progressive disciplinary process, a letter of reprimand "identifies what specific corrective action must be taken to avoid subsequent more serious disciplinary steps." Accordingly, option d is the best response.

Question 46 refers to Peak, *et al.*, *Managing and Leading Today's Police*, *supra*, and indicates that you are preparing to conduct your department's semi-annual performance appraisal for your direct subordinates. You are aware that performance appraisals serve a number of organizational purposes. According to Peak, *et al.*, the performance appraisal can be used to discipline officers in some instances. Candidates were required to complete the following sentence, "The authors state that this is especially applicable when an officer . . ." The keyed response is option c, "fails to meet departmental expectations but does not do anything that violates policies or lies outside the bounds of acceptable behavior." Judeh asserts that option a, "has violated departmental policies and needs to be informed of what he has done wrong," is the best response. Specifically, Judeh refers to the subject text<sup>4</sup> and maintains

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<sup>4</sup> Judeh refers to the section, "Formal and Informal Communications," which provides:

Formal communications generally flow downward, although feedback and information about problems and issues are sometimes transmitted upward by subordinates. Katz and Kahn found that downward communications fall into one of five categories: (1) job instructions, (2) rationale or explanations about jobs, (3) procedures, practices, and

that “if you violate department policy, you will get disciplined and advised of it via performance appraisal.” The subject text provides in the section, “Performance Appraisal”:

**Discipline.** In some instances, the performance appraisal can be to discipline officers. This is especially applicable when an officer fails to meet departmental expectations but does not do anything that violates policies or lies outside the bounds of acceptable behavior. Performance that is consistently below average or otherwise deficient can be documented on the performance appraisal form.

Thus, pursuant to the text, a performance appraisal is not the appropriate forum to address a violation of policy. As such, the question is correct as keyed.

Question 70 is based on the Tuition Reimbursement Policy provided to candidates in the test booklet and candidates were instructed that they are the Administrative Lieutenant of the Pineboro Police Department. The question indicates that Officer Fletcher has some questions regarding the Tuition Reimbursement Policy. The question asks, “The answer to which of these questions is **NOT** found in the policy?” The keyed response is option a, “Which particular colleges/institutions are accredited?” Judeh argues that option c, “What verifying documents must be submitted with the Tuition Reimbursement Form?”, is correct. Judeh contends that he “did not find a section which explained verifying documents and forms verbatim [*sic*]. I did observe [the policy] mentioning that you must attend ac[c]redited colleges which was self-explanatory. It did not explain verifying documents with forms.” It is noted that section I.F. provides:

At the completion of a semester in which an officer was approved for tuition reimbursement, a Tuition Reimbursement Form along with verifying documents must be submitted to Pineboro’s Human Resources Manager . . .

1. The verifying documents necessary for a reimbursement check to be issued are:
  - a. Proof of payment (e.g., receipt or paid invoice) to the college/institution for the approved courses, and
  - b. Transcript or grade report showing the grade achieved in the approved course

As such, option c is incorrect. With respect to option a, both Section I.C.2. and Section II.D.2. provide, “To be eligible for reimbursement, courses must be taken at an accredited college/institution. There is no restriction as to the format of the class; the

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policies, (4) feedback on individual performance, and (5) efforts to encourage a sense of mission and dedication toward departmental goals.

class may be delivered solely through the internet, solely through in-person instruction, or a hybrid of the two.” Although Judeh asserts that these sections are self-explanatory, the fact remains that the policy does not indicate which particular colleges/institutions are accredited. Accordingly, the question is correct as keyed.

**CONCLUSION**

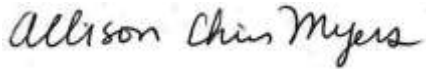
A thorough review of appellants’ submissions and the test materials reveals that, other than the scoring change noted above, the appellants’ examination scores are amply supported by the record, and the appellants have failed to meet their burden of proof in this matter.

**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 22<sup>ND</sup> DAY OF FEBRUARY, 2023



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