



STATE OF NEW JERSEY

In the Matter of Graham Koshnick,
Police Captain (PM0840A), Belleville

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

CSC Docket No. 2022-2970

**Examination Appeal
(CORRECTED DECISION)**

ISSUED: February 24, 2023 (ABR)

Graham Koshnick appeals his score on the make-up of the promotional examination for Police Captain (PM0840A), Belleville. It is noted that the appellant passed the examination with a final average of 84.470 and ranked 3A on the subject eligible list.

The appellant’s make-up examination was administered on October 23, 2021 and consisted of 80 multiple choice questions and one essay question. Candidates were given three hours and 50 minutes to complete the examination. The examination was based on a comprehensive job analysis conducted by the Division of Test Development, Analytics and Administration (TDAA), which identified the critical areas of the job. The essay portion of the examination contained four questions, labeled A through D. The prompt states that the examinee is the sole Captain of the Harper City Police Department and the scenario presented involved a call to 9-1-1 dispatch from the daughter of the Police Chief about an overdose at the home of the Police Chief. It also indicates that Sergeant Thompson and two officers respond to the scene at the same time as the examinee. Part A asks about the actions that the examinee should personally take, or ensure or are being taken, while at the scene. Part B asks what actions the examinee should personally take, or ensure are being taken, at the scene, regarding the individual alleged to have sold a controlled dangerous substance (CDS) to the Police Chief’s daughter and two other people. Part C asks how an applicable New Jersey Attorney General Directive will apply to each of the four people connected to the overdose incident. Part D involves a performance

issue related to the incident involving Sergeant Thompson at the stationhouse the next day.

On appeal to the Civil Service Commission (Commission), the appellant requests that Question 73 be considered for removal from his raw score. He submits that a review of his answer sheet showed a stray pencil mark between Questions 20 and 21 and that there appeared to be an erasure of the correct answer on Question 73. He adds that the raw score for the multiple choice of the examination was initially 61, but later changed to 62 based upon his review of his answer sheet. Given the totality of these issues, including an “unexplainable computer error that resulted in [his] original score being incorrect,” he requests that Question 73 be considered for removal from his score.

With regard to the essay question, the appellant maintains that securing the scene and setting up a perimeter should be the responsibility of a responding patrolman and that the roundsman or sergeant responding to the scene should ensure that it is accomplished. He also maintains that ambiguity in the framing of the question was problematic. In this regard, he posits that some aspects of the question suggest that Sergeant Thompson arrived on scene first, while it also states that Sergeant Thompson arrives on scene at the same time as the examinee. The appellant avers that if Sergeant Thompson had arrived first, he would have supervised the patrolmen as it pertained to securing the scene and setting up the perimeter. With that, the examinee, as a Police Captain, would then see to tasks more commensurate with his rank. He states that his response to the essay question was based on the understanding that, as a Police Captain, he would be performing tasks consistent with his rank. He further states that he “respect[s] and understand[s] that all police officers[,] regardless of rank[,] must perform basic police functions at all times.” Nevertheless, the appellant objects to the framing of the essay question, as he maintains that it seeks answers more appropriate for a Police Sergeant’s responsibilities. He further contends that a comparison of the job specifications for the titles of Police Captain and Police Sergeant support this.

Finally, the appellant challenges his seniority score of 81.707. He argues that there is time missing which could add between 0.3290 and 0.4931 to his score and, in turn, increase his rank on the PM0840A eligible list. Towards this end, he submits that the appointing authority bypassed him for appointment from the Police Lieutenant (PM1209T), Belleville eligible list while awaiting the outcome of a pending disciplinary action which ultimately resulted in minor discipline. He avers that because of his veterans preference, it was improper for the appointing authority to bypass him, absent major discipline. He asks that the Commission review this and give him proper service credit, if appropriate.

Agency records indicate that the appellant was ranked third and tied with a nonveteran on the Police Lieutenant (PM1209T) eligible list. On April 7, 2016, a

certification (PL160459) was issued, which resulted in the appointment of the eligibles ranked first and second, both nonveterans, effective April 7, 2016, and July 1, 2016, respectively. A second certification was issued from the PM1209T list on August 10, 2017 (PL170987). Pursuant to *N.J.A.C.* 4A:5-2.2, the appellant was listed in the first position on the PL170987 certification.¹ In disposing of the PL170987 certification, the appointing authority appointed nonveterans listed in the second and fourth positions,² effective August 31, 2017. The appointing authority provided a disposition code of I7—retain interested in future certifications only for the appellant; and a disposition of I2—retain others appointed (reachable for appointment) for the eligible listed in the third position.³ When returning this certification, the appointing authority provided the Certification Unit with a document labeled “Bypass Waiver for Veterans Status” which the appellant signed and dated October 20, 2017. In this document, he stated that he was agreeing to “two previous [b]ypasses that occurred in or about September of 2017, of which [he] was bypassed for Lieutenant by the Belleville Police Department.” The appellant further indicated that he wished for his name to be retained on the PM1209T list for future certifications. A subsequent certification was issued on December 20, 2017 (PL171540), in which the appellant was again listed in the first position. In disposing of the PL171540 certification on January 23, 2018, the appointing authority appointed the appellant to the title of Police Lieutenant, effective January 15, 2018.⁴

It is further noted that on June 15, 2017, the appointing authority issued a Preliminary Notice of Disciplinary Action (PNDA), which brought disciplinary charges against the appellant based upon an October 16, 2016 incident. On September 15, 2017, the appointing authority issued a Final Notice of Disciplinary Action (FNDA), which sustained the charges set forth in the June 15, 2017 PNDA and provided penalties of two losses of promotional opportunities and enhanced supervision between August 31, 2017 and February 28, 2018.

CONCLUSION

In the instant matter, the record does not provide a basis to revise the appellant’s score on the multiple choice portion of the examination. The Commission observes that the error in the calculation of the appellant’s multiple choice raw score was promptly corrected during the review process and that his final average was recalculated accordingly. The Commission also finds that a review of the appellant’s multiple choice answer sheet demonstrates that 62 is the proper raw score. As to Question 73, a review of the appellant’s test booklet shows that he initially circled

¹ The appellant and a nonveteran were tied with a rank of third on the PM1209T eligible list.

² The eligible in the second position tied ranked third on the PM1209T eligible list and the eligible in the fourth position was tied ranked fifth on the PM1209T list.

³ This eligible was tied with a rank of fifth on the PM1209T eligible list.

⁴ The appointing authority also appointed the eligibles listed in the second and third positions, both nonveterans, effective January 15, 2018.

the keyed response, option b, but then later made an “x” through it and circled option c. In addition, a handwritten “c” is recorded below the answer options. As the erasure of option b and the selection of option c on the appellant’s answer sheet are consistent with the markings in his test booklet, the Commission finds no basis to adjust his score on the multiple choice portion of the subject examination.

Additionally, the Commission finds no merit to the appellant’s objection to the essay portion of the examination. The essay prompt provides that after the 9-1-1 call, “the information is relayed to Sergeant Thompson,” “Sergeant Thompson informs [the examinee] of the situation” and that “[d]ue to the proximity of the Jones residence to headquarters, [the examinee] arrive[s] on scene at the same time as the officers and Sergeant Thompson.” The appellant states that he acted with a belief that with Sergeant Thompson on scene at or before the same time as him, Sergeant Thompson would have been responsible for ensuring a perimeter was in place. However, the Commission observes that the appellant’s impression that the fact pattern suggests that Sergeant Thompson may have been on-scene first is a misplaced assumption. Neither the statement that “the information is relayed to Sergeant Thompson” nor the statement that “Sergeant Thompson informs [the examinee] of the situation” establishes that Sergeant Thompson was at the scene. The statement that “[the examinee] arrive[s] on scene at the same time as the officers and Sergeant Thompson” makes clear that Sergeant Thompson was not present earlier and that a perimeter still needed to be established at the time of the appellant’s arrival. Moreover, the appellant concedes “that all police officers[,] regardless of rank[,] must perform basic police functions at all times.” As such, it cannot be said that it was unreasonable to expect candidates to identify the need to secure the scene/set up a perimeter as a PCA.

Finally, regarding the appellant’s seniority score, the Commission observes that agency records indicate that the appellant was appointed to the title of Police Lieutenant, effective January 15, 2018. The closing date for the subject examination was September 30, 2019. The appellant’s seniority score of 81.707 is consistent with his 623 days of service in the title of Police Lieutenant as of the closing date for the subject examination. The appellant’s contention that he should have received additional seniority credit is considered an appeal of his bypasses, which pursuant to *N.J.A.C. 4A:2-1.1(b)* is untimely, as such an appeal must be filed within 20 days of the date the appellant has notice or reasonably should have known of the decision, situation or action being appealed. Therefore, his appeal regarding this issue is moot. However, the Commission observes that even if his appeal were timely, the record would not support a change to his seniority score. In this regard, the appointment of two higher-ranked eligibles from the PL160459 certification was permissible under *N.J.A.C. 4A:5-2.2*. Further, the record establishes that the appellant consented to his nonappointment from the PL170987 certification, while indicating that he remained interested in future certifications from the PM1209T eligible list. The Commission observes that, pursuant to *N.J.A.C. 4A:5-2.2(c)*, “when a single vacancy is to be filled

from a promotional certification headed by a veteran, any veteran *among the top three interested eligibles* may be appointed in accordance with the ‘rule of three’ and “a nonveteran shall not be appointed unless the appointing authority shows cause why the veterans should be removed from the promotional list” (emphasis added). Here, since the appellant—the only veteran on the PM1209T list—indicated he was not interested in appointment, there was not a veteran “among the top three interested eligibles” on the PL170987 certification. Therefore, the appointment of two lower-positioned nonveterans from that certification was permissible and it cannot be said that the appellant was improperly bypassed.

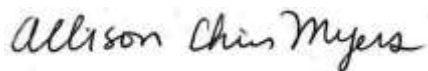
Based upon the foregoing, the appellant has not sustained his burden of proof in the instant matter.

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 22ND DAY OF FEBRUARY, 2023



Allison Chris Myers
Acting 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: Graham Koshnick
Division of Administration
Division of Test Development, Analytics and Administration
Records Center