



STATE OF NEW JERSEY

In the Matter of Aida Johnson,
Master Probation Officer, Bilingual
in Spanish and English, Judiciary

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

CSC Docket No. 2023-1707

Examination Appeal

ISSUED: July 19, 2023 (HS)

Aida Johnson, represented by Lynsey A. Stehling, Esq., appeals her score on the multiple choice Bilingual Communication Abilities Test (BICAT) for the title of Master Probation Officer, Bilingual in Spanish and English, Judiciary.

As background, the appellant received a permanent appointment to the title of Master Probation Officer, effective October 9, 2006. She took the BICAT, multiple choice format, on February 7, 2023 and achieved a Level 1 proficiency. However, Master Probation Officer, Bilingual in Spanish and English requires a Level 2 proficiency. Therefore, the appellant failed the BICAT for the title. It is noted that the score remains in effect for one year. *See In the Matter of Michael Arroyo* (CSC, decided June 20, 2012) (bilingual examination can be taken again after one year has lapsed).

On appeal to the Civil Service Commission (Commission), the appellant states that she had effectively performed bilingual duties from 1994 until November 2022, when her caseload changed to solely English-speaking clients. Notwithstanding that she had been performing bilingual duties exceptionally without the appropriate designation since 1994, she registered for the BICAT “to receive the designation” for work she had been performing effectively. The appellant argues that good cause exists to consider her to have passed the examination in light of her personal and educational background and because she had effectively performed bilingual duties for many years with numerous individuals, with whom she has worked on a regular basis, supporting her contention that she possesses the competencies to be designated

a Master Probation Officer, Bilingual in Spanish and English. The individuals observed her on a regular basis speaking Spanish with clients, the families of clients, and court users at the request of judges. One of these individuals, who is bilingual, certifies that the appellant is proficient in Spanish. No one has ever suggested that she was unable to communicate effectively in Spanish. Thus, the appellant proffers that she should be deemed to have passed the Level 2 examination and cites *In the Matter of Joseph Adingra* (CSC, decided March 26, 2014) and *In the Matter of Roxanne Feasel* (CSC, decided May 7, 2014) in support. Additionally, the appellant, citing *In the Matter of William Malayter* (MSB, decided March 22, 2006), contends that there is a sufficient basis here to waive the examination requirement and provide her with a retroactive permanent appointment to the title of Master Probation Officer, Bilingual in Spanish and English because the Judiciary assigned her a bilingual caseload for approximately 29 years and thereby provided the impression that she was a bilingual employee. The appellant provides supporting certifications; awards and accolades received; and other documents.

The Judiciary, represented by Susanna J. Morris, Esq., indicates that it takes no position on this appeal.

CONCLUSION

The BICAT is used to test titles with a Bilingual in Spanish and English variant. The three Levels of proficiency include Limited Working Proficiency, for positions which need to satisfy routine or limited work requirements and casual conversations on non-technical subjects; Working Proficiency, for positions requiring accuracy and vocabulary in formal and informal situations and the ability to discuss with ease particular interests or fields in general terms with few errors in grammar; and Advanced Working Proficiency for positions requiring a high degree of fluency and accuracy in speaking and understanding conversation on all professional levels, and the ability to read difficult or specialized materials in the job area. The subject area includes titles requiring a Working Proficiency in the languages, which is Level 2. With a working proficiency, candidates are expected to be able to speak Spanish to anybody, not just to residents of their neighborhoods or people who have specific dialects. Candidates at this Level should speak the language with sufficiently structured accuracy and vocabulary to participate effectively in most conversations at a practical, social, and professional level without requiring specialized vocabulary. They should be able to have discussions regarding particular interests or special fields of competence in general terms with reasonable ease, comprehend a normal rate of speech, have good command of grammar and syntax, and not let errors interfere with understanding. They also need the ability to read and understand standard newspaper, correspondence, and official documents. This was a formal examination setting, and inherent in that setting is the expectation that proper and correct Spanish and English will be tested.

The appellant argues that there is good cause to consider her to have passed the examination based on such factors as her education and experience. However, as noted above, this was a formal examination setting where Level 2 proficiency was required to pass. The appellant's score was based entirely on her responses to the current examination, and credentials such as education and experience had no bearing on this score. Although the appellant cites *Feasel, supra*, that case involved the acceptance of applicable out-of-title work experience to allow Feasel to be admitted to a promotional examination and did not even remotely involve the issue of whether a required BICAT proficiency level should effectively be lowered. *Adingra, supra*, also cited by the appellant, is distinguishable. In that case, Level 2 proficiency had originally been required to pass the BICAT for the title of Juvenile Officer, Bilingual in Spanish and English. Upon review of Adingra's appeal, the Commission agreed that the proficiency level should be Level 1. In doing so, the Commission noted, among other things, that the job specification for Juvenile Officer did not contain an educational requirement, suggesting that a person without a high school education could apply; the job specification indicated that duties were clerical and repetitive in nature; and the incumbent was not required to explain complex rules and regulations. These characteristics do not fit the title of Master Probation Officer, which requires a Bachelor's degree and where the incumbent, among other duties, performs case management functions; prepares reports for the court; directs the activities of the probationer at a higher level complex case type; and handles higher level complex responsibilities in addition to the assigned caseload. While positions in clerical work can converse at a Level 1, the technicalities of the Master Probation Officer position require a greater proficiency. Master Probation Officers must be able to communicate technical information and advice in a complete and accurate manner, regardless of which language is spoken.

Additionally, the appellant contends that there is a sufficient basis to waive the examination requirement altogether and provide her with a retroactive permanent appointment to the title of Master Probation Officer, Bilingual in Spanish and English and cites *Malayter, supra*, in support. In granting Malayter retroactive permanent status in that case, the former Merit System Board (MSB) found that Malayter had been led to believe that he enjoyed status as a permanent employee and the rights and emoluments commensurate with permanent status. In that regard, on the three occasions where Malayter had been subjected to major disciplinary action, he had been afforded notice and an opportunity for a departmental hearing as well as appeal rights to the MSB. The MSB also highlighted a letter where Jackson Township (Township) supplied him with documents "which would appear to suggest civil service status, or notice to [this agency] that [Malayter] was being treated by the Township as though he had civil service status." Here, however, there is insufficient evidence in the record that the appellant had been led to believe that she was already *permanent* as a Master Probation Officer, Bilingual in Spanish and English. There are no documents in the record that would suggest permanent status in that title or notice to this agency that the Judiciary was treating the appellant as though she

already had permanency in the title. The appellant also argues that the Judiciary's assignment to her of a bilingual caseload for many years, which provided the impression that she was a bilingual employee, justifies the requested examination waiver and award of retroactive permanent status. The Commission disagrees. If the appellant was assigned out-of-title bilingual duties, the issue could have been pursued through classification review procedures. *See N.J.A.C. 4A:3-3.9.* The assignment of those duties does not now entitle the appellant to retroactive permanent status and a waiver of established examination procedures, procedures of which the appellant was apparently aware as she acknowledges that she registered for the BICAT "to receive the [bilingual] designation."

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 19TH DAY OF JULY, 2023

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