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In the Matter of Leonardo Biscaia, Investigator, Bilingual in Spanish and English, (S0381S), Statewide

CSC Docket No. 2016-952

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION

Examination Appeal

ISSUED: OCT 09 2015 (SLK)

Leonardo Biscaia appeals the administration of the BICAT portion of the open competitive examination for Investigator, Bilingual in Spanish and English, (S0381S), Statewide.

By way of background, the written part of the Investigator examination, which was administered on December 4, 2014, resulted in a list of 118 eligibles with an expiration date of December 31, 2017. On his original application for the examination, the appellant did not indicate a need for an Americans with Disabilities Act (ADA) accommodation. It is noted that appellant passed the Investigator written examination with a final average of 70.000, is ranked 104th on the eligible list, and he did not request an accommodation prior to this exam nor did he file an appeal afterwards. Certification OS150537 was issued on June 29, 2015 and the appellant's name is in the 34th position. The certification has not yet been returned. On August 12, 2015, the BICAT portion of the examination was administered. On August 14, 2015, a notice was mailed to the appellant indicating that he failed the BICAT examination. In a letter post-marked August 27, 2015, the appellant filed his appeal.

On appeal, the appellant states that he is a disabled, wheelchair bound quadriplegic who does not have any motor function in his hand. He presents that his disability made it very difficult for him to fill in the answers on the multiple choice answer sheet for the BICAT examination. The appellant maintains that he tried to erase some of his answers, but was unable to do so. The appellant indicates that he contacted the Test Administration Unit (Test Administration) in order to

receive an accommodation prior to taking the BICAT examination, but he did not get an answer until after it was administered.

A review of Test Administration records reveals that the appellant did not indicate that he needed an accommodation on his original application nor is there a record that the appellant called requesting an accommodation. Moreover, there is no record that the appellant requested an accommodation at the test site. Additionally, all candidates were advised prior to taking the BICAT examination that a test administration appeal needed to be filed at the test site on the day of the examination. However, the appellant did not file such an appeal.

CONCLUSION

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

N.J.A.C. 4A:4-6.4(c) states that an examination candidate wishing to challenge the manner in which the examination was administered may file an appeal in writing at the examination site on the day of the examination.

N.J.A.C. 4A:4-6.3(b) provides that the appellant has the burden of proof in examination appeals.

It is noted that the test proctor advised the appellant at the examination center that objections to the manner in which the examination was conducted must be made in writing on a form provided at the test center. 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." A review of the record indicates that appellant took the subject examination on August 12, 2015. In a letter post-marked August 27, 2015, fifteen days after the examination date, he filed his appeal. Under these circumstances, his appeal of examination administration is clearly untimely. However, the following is provided for informational purposes only.

Under *N.J.A.C.* 4A:4-2.14, if the appellant needed an accommodation due to a disability, he needed to make this request at the time he submitted his application so that Test Administration could verify the need for the accommodation and make appropriate arrangements for the accommodation. It is also noted that the appellant did take and pass the Investigator examination, which was a multiple-

choice examination, without an accommodation. Additionally, even if the appellant did in fact call Test Administration prior to taking the BICAT examination and failed to receive a timely call back, the appellant did not raise his need for an accommodation at the test site, which precluded the test proctor from addressing his concerns and potentially providing him with a remedy before he was exposed to the test materials. In this regard, as the appellant was exposed to the exam, it would be unfair to other candidates to allow him to take the examination again. *See In the Matter of Paul Devaney* (MSB, decided December 7, 2005), (Appellant who was not contacted regarding his request for accommodation, but participated in the examination, never raised the issue of his need for an accommodation at the test center nor filed an appeal at the test center not entitled to a make-up). As such, there is no remedy that the Commission can provide the appellant.

ORDER

Therefore, it is ordered that this request 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 7th DAY OF OCTOBER, 2015

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