

B-51



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of  
Gerald Behnke, Fire Captain  
(PM1136S), Paterson

Examination Appeal

CSC Docket No. 2016-2790

ISSUED: **OCT 25 2016** (RE)

Gerald Behnke appeals his score for the oral portion of the promotional examination for Fire Captain (PM1136S), Paterson. It is noted that the appellant passed the subject examination with a final score of 87.390 and his name appears as the 39<sup>th</sup> ranked eligible on the subject list.

It is noted for the record that this two-part examination consisted of a written multiple-choice portion and an oral portion. Candidates were required to pass the written portion of the examination, and then were ranked on their performance on both portions of the examination. The test was worth 80 percent of the final score and seniority was worth the remaining 20 percent. Of the test weights, 31.35% of the score was the written multiple-choice portion, 22.49% was the technical score for the evolving exercise, 7.53% was the supervision score for the evolving exercise, 4.28% was the oral communication score for the evolving exercise, 19.23% was the technical score for the arriving exercise, 7.53% was the supervision score for the arriving exercise, and 7.59% was the oral communication score for the arriving exercise.

The oral portion of the Fire Captain examination consisted of two scenarios: a fire scene simulation with questions designed to measure the knowledge of safe rescue tactics and procedures to safeguard citizens, supervision of fire fighters and the ability to assess fire conditions and hazards in an evolving incident on the fireground (evolving); and a fire scene simulation designed to measure the knowledge of safe rescue tactics and procedures to safeguard citizens, supervision of firefighters and the ability to plan strategies and tactics based upon a building's

structure and condition (arriving). Knowledge of supervision was measured by questions in both scenarios, and was scored for each. For the evolving scenario, candidates were provided with a 15-minute preparation period, and candidates had 10 minutes to respond. For the arriving scenario, a five minute preparation period was given and candidates had 10 minutes to respond.

The candidates' responses were scored on technical knowledge and oral communication ability. Prior to the administration of the exam, a panel of Subject Matter Experts (SMEs) determined the scoring criteria, using generally approved fire command practices, firefighting practices, and reference materials. Scoring decisions were based on SME-approved possible courses of action (PCAs) including those actions that must be taken to resolve the situation as presented. For a performance to be acceptable, a candidate needed to present the mandatory courses of action for that scenario. Only those oral responses that depicted relevant behaviors that were observable and could be quantified were assessed in the scoring process. Each performance was evaluated by two SMEs who currently are a first level supervisor or higher. If the SME scores differed by 1 point, the score was averaged. If they differed by more than 1 point, the SMEs were required to confer with each other until they agreed on a score. Scores were then converted to standardized scores.

Candidates were rated on a five-point scale, with 5 as the optimal response, 4 as a more than acceptable passing response, 3 as a minimally acceptable passing response, 2 as a less than acceptable response, and 1 as a much less than acceptable response. For each of the scenes, and for oral communication, the requirements for each score were defined. For the evolving scenario, the appellant scored a 3 for the technical component, a 5 for the supervision component, and a 4 for the oral communication component. For the arriving scenario, the appellant scored a 5 for the technical component, a 3.5 for the supervision component, and a 3 for the oral communication component.

The appellant challenges his scores for the oral communication components of both scenarios. As a result, the appellant's test material, video, and a listing of PCAs for the scenarios were reviewed.

For the oral communication components of both scenarios, the assessors indicated that the appellant displayed a major weakness in confidence by his use of such phrases as, "try to," "hopefully," "if we can," and "if possible." For example, in the evolving scenario, they indicated that the appellant frequently used words such as, "try to search," "try to find victims," and "if possible." In the arriving scenario, he indicated that the appellant stated such actions as, "If we can ventilate," and "Hopefully able to find/confine the fire to the first floor." They also indicated that the arriving presentation showed a weakness in nonverbal communication, by

failing to maintain eye contact with the camera and frequently looking down. On appeal, the appellant contends that the assessor comments were subjective and unfair, and he used the words "try to" because searching for victims is not an absolute. He states that performing an action, such as searching, with absolute certainty is simply not always possible, and there is always the possibility of missing a victim. He also states that his presentation was based in reality and efforts are not always successful. As to eye contact, the appellant states that he was not told that eye contact would be part of the scoring process. If he had known that, he would have requested a change of classroom, since snow was falling and people were walking outside the window behind the camera, which he found distracting. He states that, at the beginning of the arriving scenario, he lost his train of thought and looked down his notes for a prolonged period of time to prevent himself from being distracted. He argues that his many years of experience is in opposition to the opinion that he lacks confidence or seems unsure of his abilities.

In reply, the orientation guide that was available to each candidate indicated that oral communication, the ability to communicate clearly and concisely, was a component of this portion of the exam. Two factors in oral communication are demonstrating confidence and certainty about one's position, and nonverbal communication, which includes using gestures effectively without causing confusion or distractions, and making eye contact when speaking. Only behaviors exhibited during a presentation are used in scoring. Demonstrating confidence and certainty is observable by the use of pauses to reorganize, through demeanor, by word usage, and by actions.

In the evolving scenario, the assessors gave a score of 4 for the oral communication component, and referred to a weakness in confidence. A review of the evolving scenario indicates that the appellant's presentation contained this weakness. At the start, the appellant states, "I will try to do a thorough exam of the structure on as many sides as I can get to. It says I cannot get to the D side of the ah, building. Um, I will ah, establish a primary and secondary water supply, preferably off of two separate ah, water mains with the engine companies that are arriving." In this passage, the appellant "tries" to examine the bakery. Although he says that the scenario indicates he cannot get to side D, that is not the case. The scenario indicates that side C faces a fenced in area that is not accessible the fire apparatus, and on side D, there is a similarly constructed one story building 10 feet away. A firefighter on foot could examine the structure. Then, the appellant does not definitively establish two water supplies off of two separate water mains, but he only indicates that he would prefer to do so.

Later on, the appellant states, "First crews on scene, tried to do a quick search of the building for occupants using a right, ah, or left search pattern and using a search rope and target exiting device." In this sentence, the appellant's word usage

lacks certainty, as he tries to do a search, and they can do so with either a right search pattern or left search pattern. The appellant went on to say that he would “try to ascertain” if the ANSUL system in the kitchen was activated, and if not, he would activate it. He does not state what he would do if he could not ascertain if it was activated. This word usage demonstrates a lack of certainty. Additionally, the appellant stated, “Um, ask the ladder company, first arriving ladder company, to ah, perform ah, ah ventilation ah, both ah horizontal if ah necessary, or vertical, if possible, working off of an aerial basket ah, knowing that the truss roof ah construction is ah dangerous when to operate on,” and “Back in the firehouse, I would ah try to lay out exactly what the specific problem is.” The appellant did not demonstrate certainty and confidence in his response to the evolving scenario.

Additionally, in the evolving scenario, the appellant’s lack of eye contact was a weakness. The appellant states that he was unaware that eye contact, *i.e.*, nonverbal communication, would be scored. In this respect, candidates were permitted to use their notes, but they were told to make their presentation to the camera. Further, it is noted that test conditions were standardized in their application to all candidates, *i.e.*, nonverbal communication (including eye contact) was assessed for all candidates. Prior to commencing the examination, the room monitor reads the same information to every candidate. When giving instructions, the monitor told the appellant to direct his responses to the video camera and not to her, as she will not be involved in the scoring of the examination. She said, “Make your presentation to the camera as though the camera were your audience.” It was at this point that the appellant should have brought up the issue of the positioning of the camera in front of the windows if it was a problem for him. He did not mention this issue at all.

At this point in time, any argument regarding camera positioning is a test administration appeal. Appeals of test administration must be filed in writing at the examination site. See *N.J.A.C. 4A:4-6.4(c)*. Monitors are required to make an announcement before the start of each examination that, should a candidate wish to appeal the test administration, he or she *must* do so at the test center. Additionally, all candidates for examinations are provided with an informational flyer that specifically informs them of the need to appeal administration issues, including how the examination is conducted, at the examination center. The Appellate Division of Superior Court has 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.” See *In the Matter of Kimberlee L. Abate, et al.*, Docket No. A-4760-01T3 (App. Div. August 18, 2003).

During the evolving scenario, the appellant did not make his presentation to the camera. Instead, he spent a significant amount of time looking down, either at his

notes, the diagrams, or simply at the table. He rarely looked up at the camera. For example, the appellant began speaking his response while looking down, and did not look up for 24 seconds, and then it was just a glance. The next time he looked up was 13 seconds later, and again, it was just a glance. The third time that the appellant looked at the camera was 3 minutes, 58 seconds later, or 4 minutes, 35 seconds into his presentation. The appellant's lack of eye contact was a major weakness, and his presentation also had a weakness in confidence. Thus, his score for the oral communication component should be reduced from 4 to 3.

As to the arriving scenario, a review of the appellant's presentation indicates that it contained the weaknesses noted by the assessor. The appellant indicated a lack of certainty when he stated, "If we can ventilate the roof of the fire building to ah, prevent ah, extension ah, to the other ah occupancies ah that's ah, that's fine if there's no firewalls we have to be ah, careful not to ah, chase the fire throughout the building." In this sentence, it is unclear if the appellant is going to vertically ventilate or not. He stated, "I will ah attempt to find out exactly what the best course of action is through, ah, suggestions um, ah, from training and personnel, what the findings are through personnel files and, and knowing the ah, firefighters." In this sentence, the phrase "attempt to find out" denotes a lack of certainty that he will find the information he is looking for. He stated, "Whatever ah discipline, ah oral discipline ah progressive discipline scale is ah, ah, is needed to do is what we will ah handle." In this sentence, the appellant is unsure of what type of discipline he is going to give the subordinate. There are other examples as well.

Additionally, the appellant had very little eye contact with the camera during this presentation. His first quick glance to the camera was 20 seconds after starting the presentation, and his second glance was 1 minute, 23 seconds after the first glance. The appellant went for long periods of time, many minutes, without looking at the camera. Sometimes he looked up for a second or so, but it was not towards the camera. This was a formal examination setting, and candidates were expected to follow directions. Many candidates gave their responses to the camera as directed, but the appellant did not do so. The scoring was performed by SMEs who reviewed the tapes, and the appellant did not bring up the issue of distractions from the windows while in the examination room. His exam administration issue would be untimely, as noted above. He did not make his presentation to the camera as directed, and his presentation contains at least two weaknesses. His score for this component will not be changed.

CONCLUSION

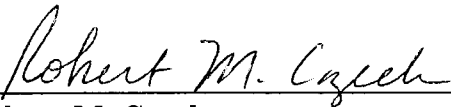
A thorough review of the appellant's submissions and the test materials indicates that the decision below is amply supported by the record, and the appellant has failed to meet his burden of proof in this matter.

ORDER

Therefore, it is ordered that this appeal be denied, and the score for the oral communication component of the evolving scenario be reduced from 4 to 3.

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  
THE 19<sup>th</sup> DAY OF OCTOBER, 2016

  
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