



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Michael Katsoudas,
Police Captain (PM1292T), Hillside

Examination Appeal

CSC Docket No. 2016-1234

ISSUED: **OCT 21 2016**

(HS)

Michael Katsoudas requests a make-up examination for the promotional examination for Police Captain (PM1292T), Hillside.

By way of background, the examination announcement for Police Captain (PM1292T), Hillside was issued on July 1, 2015 with an application filing deadline of July 24, 2015 and a closing date of September 30, 2015. The announcement instructed applicants to visit this agency's website to file applications. The examination was open to employees in the competitive division who had an aggregate of one year of continuous permanent service in the title of Police Lieutenant as of the closing date. Subsequently, based on a call from a candidate for the subject examination, this agency was informed that the examination announcement had not been posted properly by the appointing authority in the appropriate department. Based on this information and due to the specific testing schedule, paper announcements and applications were provided in September 2015, to those eligible individuals, including the appellant, who had not filed an application during the original filing period. These individuals were instructed that the application should be postmarked by September 18, 2015. The appellant and five other applicants filed applications within this timeframe, and were admitted to the October 22, 2015 written examination.

It is noted that three candidates, including the appellant, who were admitted to the subject examination after filing late applications, requested make-up examinations. They expressed concern over the manner in which they were notified of the subject examination announcement and claimed they had less time to study

than the candidates whom the appointing authority timely notified. This agency approved the candidates' request with an acknowledgment by them that their make-up examinations would be administered during the next testing cycle and that they would be considered for prospective employment opportunities only. However, the appellant instead filed the instant appeal.

In his appeal, the appellant requests a make-up examination, and that the subject examination be postponed until the next testing cycle and the eligible list for Police Captain (PM7518P), Hillside be extended.¹ The appellant states that the announcement for the subject examination had not been posted conspicuously, that the announcement appears to have been learned of by word of mouth, and that the procedures for the announcement of promotional opportunities indicated in *N.J.A.C. 4A:4-2.1(b)* were not followed. He argues that in the past, he had always been notified of examination announcements personally. The appellant claims that it was not until the week of September 14, 2015 that he was notified of the announcement for the subject examination. At that time, he was called to the office of the Mayor's assistant, provided with the announcement and application, and directed to sign off that he had received the information. The appellant highlights the instruction, included with the information, that the paper application must be postmarked by September 18, 2015 as proof that the examination was not announced properly. The appellant states that he was under the false assumption that an examination would be given at a later date. He opines that a handful of candidates were "tipped off" about the examination and had the advantage of additional time to study due to the lack of appropriate notice to other candidates. Further, the appellant seeks reimbursement of his application fee and states that he will pay the fee during the next testing cycle should he be allowed to take the examination at that time.

In response, the appointing authority, represented by Robert F. Varady, Esq., requests that the appellant's appeal be denied. It argues, among other things, that the appellant was first advised of the subject examination via an e-mail dated July 1, 2015 from a Police Captain with the Hillside Police Department. The Police Captain's e-mail, which had "Promotional Exam Announcements for Lieutenant and Captain" as its subject and included the appellant as a recipient, read as follows:

Please electronically register with the New Jersey Civil Service Commission to take the promotional exams for your next respective rank. The announcement has been placed on the NJCSC Website but we have yet to receive any notification from the township to notify candidates. The deadline is three weeks from now, please do not delay

¹ The PM7518P eligible list promulgated on February 28, 2013 and expired on February 27, 2016. The appellant was one of two active eligibles remaining on that list at its expiration. The PM7518P eligible list was not extended.

going to the NJCSC Website to complete this required registration. We no longer hand out the hard copy registration for completion.

In support, the appointing authority submits, among other documents, a copy of the July 1, 2015 e-mail.

CONCLUSION

N.J.A.C. 4A:4-2.9(c) provides, in pertinent part, that for police promotional examinations, make-up examinations may be authorized only in cases of: (1) death in the candidate's immediate family; (2) error by the Civil Service Commission or appointing authority; (3) when required for certain persons returning from military service (see *N.J.A.C.* 4A:4-4.6A); or (4) a catastrophic health condition or injury as defined in the rule. Moreover, *N.J.A.C.* 4A:4-2.1(b) provides: "In order to notify all employees of promotional opportunities, promotional examination announcements shall be posted on, and applications shall be made available through, the Civil Service Commission web site and may also be made available through the web sites of affected appointing authorities. If an affected appointing authority does not maintain or utilize a web site, promotional examination announcements shall be conspicuously posted by the affected appointing authority at all geographic locations within the unit scope (in State service) or department (in local service) to which the examination is open. Appointing authorities shall also ensure the notification by electronic or other means of all eligibles of the promotional examination announcement. Appointing authorities shall maintain a record of promotional examination announcement postings and the notification of eligibles of the announcement."

Initially, it should be noted that due to allegations that the appointing authority had not properly posted the subject examination announcement, paper announcements and applications were provided to those eligible individuals who had not filed applications during the original filing period. As a result, six additional candidates filed applications. Five of those candidates, including the appellant, were admitted to the examination, which was scheduled for October 22, 2015. Three of those candidates, including the appellant, requested make-up examinations, arguing that they had minimal study time due to the appointing authority's failure to properly notify them. In the interest of fairness, the candidates were informed that if they chose to take a make-up examination, it would be administered at the time of the next examination cycle and would be for prospective employment opportunities only. Two of the candidates agreed and opted to take the make-up examination. However, the appellant refused and filed the instant appeal in which he asserted that it was unfair for the remedy to be prospective when the appointing authority failed to properly notify candidates of the examination. Subsequently, this agency was notified that all of the candidates were notified on July 1, 2015, by e-mail, about the subject examination. Although

the Civil Service Commission (Commission) is now aware of the e-mail, the Commission finds that the appellant should still be permitted to take a make-up examination in light of the make-up examinations that were already granted to the other candidates. It is noted that the New Jersey Supreme Court, in *In the Matter of Police Sergeant (PM3776V), City of Paterson*, 176 N.J. 49 (2003), ordered this agency, for future exams, to “administer make-up exams that contain substantially different or entirely different questions from those used in the original examination.” As a result, the appellant will be given a make-up examination when the next regularly scheduled examination for Police Captain is administered. However, for the reasons indicated below, the appellant is not entitled to any retroactive relief and should be considered for prospective employment opportunities only. Nevertheless, the Commission also reminds the appointing authority that it must follow the notification procedures of *N.J.A.C. 4A:4-2.1(b)*.

With regard to the appellant’s request to postpone the subject examination and extend the PM7518P eligible list due to his allegation that he was not notified of the subject examination announcement until the week of September 14, 2015, these claims are not persuasive. As previously noted, a July 1, 2015 e-mail was sent to candidates, including the appellant, which advised them that the subject examination had been announced. The announcement, in turn, indicated that the examination was “tentatively scheduled to be administered in October 2015.” As such, the appellant’s related claims that other candidates were “tipped off” and had more time to study are similarly unpersuasive. Since the appellant had notice of the announcement on July 1, 2015, and he has failed to establish that other candidates were told prior to July 1, 2015, he has not established he was provided less study time. Further, promotional examinations for law enforcement titles are announced and given according to established schedules for each title group, and the schedules and promotional announcements are published on this agency’s website. The goal of issuing law enforcement promotional announcements in accordance with a regular testing cycle is to ensure that valid promotional lists are always available for the filling of vacancies with permanent appointees. Based on these considerations, the postponement of the subject examination and extension of the PM7518P eligible list are unwarranted in this case.

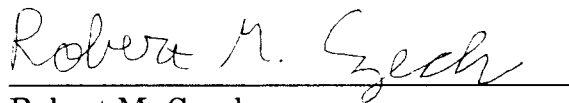
Finally, there is no basis to reimburse the appellant for his payment of the application fee. *N.J.A.C. 4A:4-2.17(e)* provides, in pertinent part, that the fee is for processing purposes only and shall not be refunded for any reason except untimely filing of the application or cancellation of the examination. As already discussed, the Commission has determined that the appellant should be permitted to take a make-up examination but that the subject examination should not be postponed.

ORDER

Therefore, it is ordered that the appellant be scheduled for a make-up examination, for prospective employment opportunities only.

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 OCTOBER, 2016



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