

B-78



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of  
Raylor Adames, Fire Captain  
(PM1131S), Newark

Examination Appeal

CSC Docket No. 2016-2834

ISSUED: DEC 13 2016

(RE)

Raylor Adames appeals his score for the oral portion of the promotional examination for Fire Captain (PM1131S), Newark. It is noted that the appellant passed the subject examination with a final score of 82.320 and his name appears as the 70<sup>th</sup> ranked eligible on the subject list.

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 5 for the technical component, a 4 for the supervision component, and a 3 for the oral communication component. For the arriving scenario, the appellant scored a 5 for the technical component, a 5 for the supervision component, and a 3.5 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.

As to the oral communication component of the evolving scenario, the assessors noted weaknesses in rate and nonverbal communication. Specifically, they indicated that the appellant's rate of speech made it difficult to understand him, and that his hand gestures were distracting throughout the presentation. On appeal, the appellant argues that his accent may have affected his score. He argues that if he was difficult to understand, how could his technical and supervisory components be clearly assessed. He states that he has a speech disability incurred when serving in the Army, and will have surgery to correct the problem. He invokes the "Americans with Disabilities Act" (ADA), stating that he has been

discriminated against because of his speech caused by a lifelong disability and which only surgery can correct. As to hand gestures, the appellant stated that he was unable to find information stating that body language or gestures would affect his score, and "hand gestures" cannot be measured. He argues that his scores and his assessors were subjective.

In reply, a factor in oral communication is inflection/modulation/rate/volume. A weakness in this factor is defined as failing to speak at an appropriate rate (pauses), failing to maintain appropriate pitch and volume, and failure to properly use pitch to convey meaning or emphasis. Another factor is nonverbal communication. A weakness in this factor is defined as failing to use gestures effectively, thereby causing confusion or distractions, and failing to maintain eye contact with the camera when speaking. 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. Further, it is noted that test conditions were standardized in their application to all candidates, *i.e.*, nonverbal communication was assessed for all candidates.

A foreign accent occurs when a person speaks one language using some of the rules or sounds of another one. For example, if a person has trouble pronouncing some of the sounds of a second language, they may substitute similar sounds that occur in their first language. This sounds wrong, or "foreign," to native speakers of the language. In this case, a review of the appellant's presentation indicates that his English was easily understood, but his speech was rapid and slurred. The appellant spoke more rapidly than normal, and he maintained a rapid pace throughout his ten-minute response periods, making his presentation difficult to follow. At times, slight pauses that are heard in normal speech, such as after the end of a sentence were not there, making the presentation seem to be a quick stream of words. For some sentences, the cadence of normal speech was absent, and the articulation rate was fast. When he began answering question 3 for the evolving scenario, he spoke even more quickly than he had been doing, without the usual pauses between sentences. For the arriving scenario, the appellant spoke more slowly and appropriately for the second question. However, he spoke rapidly at times in response to question 1, and used distracting verbal mannerisms, such as "ah," over 30 times.

As to nonverbal communication, throughout the evolving scenario, the appellant held his left arm out and placed his fingertips on the table. He then lifted his arm and placed his fingertips down on the table repeatedly, usually after delivering a phrase or piece of information, and sometimes waved his hand about. The rest of his body remained stationary. At times, he appeared to be bracing himself against the table, and during questions 2 and 3 for the evolving scenario, he waved his hand repeatedly. The behavior was continuous and distracting. At the end of the

evolving scenario, the appellant gave a summary, but held his pen and waved his hand in front of him while speaking, sometimes pointing with the pen and sometimes counting topics with his fingers. In the arriving scenario presentation, the appellant initially held a pen in each hand, and waved one around and pointed with it while presenting topics. Later, only his right hand was visible with the pen. At times, he fiddled with the edge of a sheet of paper. With the hand waving, the listener was sidetracked from the information being presented and it was difficult not to watch the hands rather than the presenter. When he put both hands down, it was only for 12 seconds and 20 seconds during his response to the first question. Then his right hand came back with the pen, and the waving began again, with pen twirling and pointing at times. The behavior was similar for the response to the second question.

In regard to the difference in scoring of both components for these scenarios, the components measured in the oral examination are viewed as independent and are scored accordingly. Behaviors can be attributed to each component which are sufficiently distinguishable to warrant a unique score. Thus, candidates can completely answer the questions for the technical component, while exhibiting negative behaviors or weaknesses in the oral communication component. Or, candidates can fail to properly answer the questions for the technical component, while exhibiting no weaknesses in the oral communication component. As such, an independent score can be assigned for the technical and oral communication components within a performance. Thus, a candidate's behavior on one component cannot be used to score his behavior on another component, and is not reflective of a score for another component. Lastly, the assessors have the benefit of the video, and are able to listen to portions which are difficult to follow multiple times if the need arises. They are not required to score a component after listening to it just once. It is noted that the appellant did not evidence a weakness in clarity, which was another factor in oral communication. His presentation had minor weaknesses in rate and nonverbal communication for both scenarios. His scores of 3 and 3.5, respectively, will not be changed.

As to the appellant's charge of discrimination based on the ADA, a review of the presentation does not evidence a speech disability. It is also unclear how a disability makes a person speak more rapidly, and the appellant did not provide any medical documentation. Regardless, while accommodation of the preparation time and provisions of assistance such as a reader or a marker are routinely provided to assist candidates who make such a request under the ADA, no accommodation can be made in the test scoring. That is, the scoring standards and requirements cannot be adjusted or eliminated as an accommodation. This performance was scored in the same manner as those for all other candidates. There is no nexus to show discrimination on the basis of a disability.

CONCLUSION

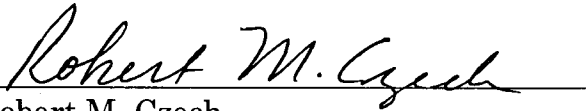
A thorough review of the appellant's submissions and the test materials indicates that the decision below is amply supported by the record, and the appellant has failed to meet his burden of proof in this matter.

ORDER

Therefore, it is ordered that this appeal be denied.

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 7<sup>th</sup> DAY OF DECEMBER, 2016



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