

B-79



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of
Jose Alves, Fire Captain
(PM1131S), Newark

Examination Appeal

CSC Docket No. 2016-2838

ISSUED: DEC 13 2016 (RE)

Jose Alves, represented by Craig S. Gumpel, Esq., appeals his score for the oral portion of the promotional examination for Fire Captain (PM1131S), Newark. It is noted that the appellant failed the subject examination.

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 2 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 2 for the oral communication component. The appellant challenges his scores for the supervision and oral communication components of the evolving scenario, and the oral communication component of the arriving scenario. As a result, the appellant's test material, video, and a listing of PCAs for the scenarios were reviewed.

The evolving scenario involves a fire in a single-story, steel-frame building built in the early 1980s. The building is a Collision and Frame Straightening garage with three bays. It is 1:30 PM on a Monday in May and the temperature is 41° Fahrenheit with clear skies and a wind blowing from west to east at 7 miles per hour. Upon arrival, it is noticed that smoke is coming from garage bay doors on side A, and from the windows of the office area on sides A and D. Dispatch indicates that an employee says that a fire started in the reception area and quickly filled the area with smoke. He is unsure if all the employees and customers were able to evacuate the building. The candidate is the commanding officer of the first

arriving engine company and he establishes command. There were two technical questions. Question 1 asked for initial actions and specific orders at the incident upon arrival. Question 2 indicates that a drop-ceiling collapse occurs in the reception area and there is a report of a missing firefighter. The question asked what actions should now be taken, based on this new information. Question 3, the supervision question, indicates that, during fire operations, the nozzleman gets distracted and hits another firefighter with the hose stream, injuring him. This question asks what should be done at the scene and after returning to the firehouse. Instructions indicate that, in responding to the questions, the candidate should be as specific as possible in describing actions, and should not assume or take for granted that general actions will contribute to a score.

In regard to the supervision component of the evolving scenario, the assessors noted that the appellant missed the opportunity to have the injured firefighter seen by EMS. On appeal, the appellant states that he did turn the firefighter over to EMS.

A review of the appellant's video and related examination materials indicates that the action that the appellant listed on appeal was in response to question 2. The appellant indicated that the trapped firefighter would be removed and turned over to EMS. However, in question 3, he took no action regarding the firefighter who was injured by the hose stream, but dealt only with the nozzleman. He missed the action noted by the assessor, and his score of 4 for this component is correct.

For the oral communication component of the evolving scenario, the assessors indicated that the appellant's presentation had a major weakness in rate, as evidenced by speaking so fast that he stumbled over words and had to re-start a total of 32 times during the presentation. They noted that, at times, it was difficult to understand the words being said. They also noted a major weakness in word usage, as evidenced by the use of "ah" and "um" a total of 128 times during the presentation. For the oral communication component of the arriving scenario, the assessors indicated that the appellant's presentation had a major weakness in rate, as evidenced by an extremely rapid pace of speech that not only made it difficult to understand but made the candidate stumble over words and use incorrect words, *i.e.*, "search and hydrate, ah I mean ventilate." He also displayed a major weakness in word usage as evidenced by using the words "ah" and "um" a total of 112 times during the presentation.

On appeal, the appellant provides one list of arguments for both oral communication component scores. He argues that it is facially inconsistent that his oral communication scores are so low when his technical scores are so high. He cites an April 14, 1994 letter from the Department of Personnel to a Fire Captain candidate in Paterson which indicates three weaknesses yet the candidate received

a score of 3; the decision *In the Matter of Stefan Vassallo* (CSC, decided May 15, 2013), where the candidate received a score of 4 for oral communication, with a weakness in word usage; and the decision *In the Matter of Louie Roman* (CSC, decided June 9, 2010), where the candidate received a score of 4 for oral communication, with a weakness in nonverbal communication. He argues that each appellant received a passing score, but that he failed simply for speaking rapidly. He argues that his score of 2 was subjective, and that the courts have rejected highly subjective scores when given by different examiners and without using a specific standard. See *Benavente, et al. v. New Jersey Department of Personnel, et al.*, Docket No. A-1390-95. He argues that there was no "standard" for the pace of speech provided, so his score must be "highly subjective." He argues that his superior officers attest to his abilities, and he submits letters from a Fire Captain and a Battalion Fire Chief in support of his appeal. In a supplement to his appeal, the appellant argues that in *In the Matter of Lawrence Kolesa, Deputy Fire Chief (PM1323), Linden* (CSC, decided February 12, 2014), the appellant's score for oral communication was raised from 4 to 5 "under similar circumstances." In that decision, the Commission did not find that the appellant spoke at an inappropriate rate and, although he spoke quickly at times, his rate of speech was not distracting.

In reply, first, 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.

Next, the appellant cannot compare his performance to that of another candidate. He is not similarly situated as Lawrence Kolesa, as he took a different examination and spoke differently than Mr. Kolesa. The appellant's other citations do not demonstrate he was scored differently than all other candidates taking the examination for Fire Captain (PM1131S), Newark. The appellant did not fail simply for speaking rapidly, but his oral communication was less than acceptable due at least to two major weaknesses. In any event, 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. Speaking rapidly, to the point of distraction of the audience, is a major oral communication

flaw. This is not an ancillary point. Further, another factor in oral communication is word usage/grammar, defined as failing to use appropriate words (such as “ah” and “um”) and using sentences that are grammatically incorrect. The weaknesses in oral communication are defined, and the application of these definitions to the presentation determines whether or not they are present. Every score assigned to oral communication is not “highly subjective,” nor is it “highly subjective” to assign the weakness of inflection/modulation/rate/volume. The factors in *Benavente* are not evident herein. For the Police Sergeant examination discussed in *Benavente*, 160 candidates were scored in one day, each by a single examiner, who may or may not have asked questions of the candidates. The court also found nothing in the record to indicate that the examiners had appropriate responses to refer to. The oral examination for Fire Captain (PM1131S), Newark is not the same. Each candidate was recorded and the videos were scored by the same two assessors, who were thoroughly versed in the possible courses of action (PCAs), and oral communication rating checklist, to which they could refer. With that said, the appellant’s presentations have been reviewed in light of the appellant’s objections, and his scores for the oral communication components for both scenarios are correct.

For the evolving scenario, the appellant began by speaking rapidly. As he did so, he used “ah” and “um” excessively, restarted ideas, and used incorrect words. For example, the appellant stated, “They’re going to pull up leaving room for the ladder. They’re going to stretch a, a 2 ½ through the front door ah, to, to locate confine and extinguish the fire from the unburned side placing the fire between any of the victims and, and ah, and the fire. They’re, they’re gonna, they’re also gonna um, ah, excuse me, they’re going to ah, also all in conjunction with the truck and ah I mean the ladder company. The, they’re going to ah, um, they’re also m.... excuse me, my second engine is going to ah establish a second source ah of water from a different main if possible. Also stretch a 2 ½ to backup the first line.” When the appellant was not faltering, he spoke rapidly without a normal cadence of speech and not pausing between sentences. He also said he would put fire between the victims and the fire.

At another point, he stated, “My roof team is going to ah, my ah roof team and inside team. My inside team is going to perform f... ah forcible entry and also ah they’re gonna do ah horizontal [mispronounced word sounding like “venilay”] of all windows and doors. They’re going to ah, they’re also going to primary search and mark all areas that have been searched all in conjunction with the ah with the ladder company. They’re, they’re, my second my outside crew is going to ladder the building, oh, oh, being aware of overhead obstructions they’re going to ah ladder the building five rungs over the roof line. They’re also going to ah sound the roof before they get on. They’re going to start performing ah horizontal ah vertical ventilation of all natural openings scuttles, skylights and, and ah bulkhead door if any.” The appellant spoke in a rush to provide information throughout the ten-minute

response period, stumbling over words and ideas. He also had the roof team horizontally and vertically ventilating.

The appellant tried to speak more quickly when answering question 2, which he was still answering at the two-minute warning. He then sped up for question 3. In his response to question 3, the appellant stated, "Ah, on, ah last scenario firefighter I'm going to tell him to stop immediately what he did was wrong. I'm going to set up a meeting with him. I'm going to investigate his files and other officers. I'm gonna meet with him and start off positive and let him know that ah, he's assets to company. I'm gonna ask him to [unintelligible word] if he was unaware unwilling and are unable to do his job." The appellant used grammatically incorrect sentences in this passage and throughout his presentation. Also, in this passage, he stated that he was going to investigate other officers. The last sentence is unclear because the question never indicated that the nozzleman was not doing his job. The appellant then continued by stating he would make the nozzleman aware, willing or able to do his job. The issue here was that the nozzleman was distracted while working, which caused an injury, not that he was idle. The appellant's oral communication for the evolving scenario was less than acceptable and the score of 2 is correct.

For the arriving scenario, when the appellant was told to begin, he started the presentation with rapid speech, but he quickly stumbled over the address of the command post. He spoke in a similar manner to that of the evolving scenario stating such sentences as, "Also a rehab unit, a lighting u... ah, rehab unit to um, rehab rest and all members. A lighting unit to light it up if needed. Ah cause and origin also to, arson to investigate the fire. I'm request a RIT team and a rescue team also just in case any trapped ah firefighters." The appellant did not speak in proper sentences, with proper word usage and grammar, and stumbled repeatedly while trying to speak quickly. At another point, he stated, "They're, once this is done they're going to stretch an inch and $\frac{3}{4}$ ah charged inch and $\frac{3}{4}$ to the front door to, to locate confine and extinguish the fire protecting the main means of egress ah, protect the interior stairs from, attacking from the unburned side ah, to protect ah place the fire the line between the victims and the fire and also search and re... and search and hydrate, I mean ventilate off the line." At another point, the appellant stated, "My second ah ladder company is going to lad... building all four sides for a secondary m... fourth means of egress. They're going to also do a 360 degree um ah recon of the building and let incident commander know. The interior group is going to perform a secondary search and also oh, perform ah horizontal, I mean ver..., excuse me horizontal ventilation and also control all utilities ah, gas, electric, and water and do a secondary search and mark the building with a second with different markings." The appellant's manner of speech was, at times, unclear and difficult to follow. Words were left out of sentences or incorrect words were used, and sentences were grammatically incorrect, making his rate of delivery choppy and

variable as he did not deliver an even flow of information. Holistically, the appellant's oral communication was less than acceptable and his score for this component is correct.

CONCLUSION

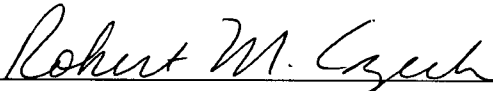
A thorough review of the appellant's submissions and the test materials indicates that the decision below is amply supported by the record, and the appellant has failed to meet his burden of proof in this matter.

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 7th DAY OF DECEMBER, 2016



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