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STATE OF NEW JERSEY

In the Matter of Jimmy Rios,
Police Sergeant (PM5107M),
Newark

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2015-960

Examination Appeal

ISSUED: **AUG - 4 2015**

(JH)

Jimmy Rios appeals his score on the video portion of the promotional examination for Police Sergeant (PM5107M), Newark. It is noted that Mr. Rios received a final average of 83.730.¹

This was a two-part examination, which was administered on June 1, 2013, consisting of a multiple-choice portion and video-based portion. The test was worth 80 percent of the final average and seniority was worth the remaining 20 percent.² As noted in the 2013 Police Sergeant Orientation Guide (Orientation Guide), which was available on the Commission's website, the examination content was based on a job analysis verification which was recently conducted to confirm and/or update the knowledge, skill and abilities (KSAs) that are necessary to perform the duties of a Police Sergeant. As part of this verification process, information about the job was gathered through interviews, and surveys of on-the-job activities of incumbent

¹ As indicated in the New Jersey Civil Service Commission Public Safety Testing Law Enforcement Status Report (January/February 2015), which was also available on the Commission's website, "for the 11 jurisdictions with priority promotion lists (Atlantic City, East Orange, Elizabeth, Hoboken, Jersey City, New Brunswick, Newark, Passaic, Paterson, Teaneck and Trenton), regular eligible lists will not be issued until all required priority promotions have been made . . . Test scores were issued to all candidates, but only priority promotion candidates received individual rankings. Rankings for the non-priority promotion candidates will not be made available until regular eligible lists are issued."

² At review, candidates were provided with a booklet entitled, "2013 Police Sergeant Promotional Process Candidate Score Report." This booklet provided a detailed description of how the candidate's final average was calculated.

Police Sergeants throughout the State. As a result of this process, critical KSAs were identified and considered for inclusion on the exam.

In the video-based portion of the examination, candidates were presented with two separate scenarios: Scenario #1: Michelle Jones and Scenario #2: Officer Smith. The candidates were to assume the role of a Police Sergeant as they viewed scenarios associated with the duties of a Police Sergeant. Each scenario presented information and circumstances which candidates were to consider before responding to questions in their test booklet. Each question was followed by a specific amount of time in which to respond. The amount of time allotted for each response was provided as the question was read by the video narrator. The questions for the video portion were presented in various forms.³ The video narrator provided instructions as how to answer each question as candidates progressed through each scenario.

At review, each candidate was provided with a booklet entitled, "2013 Police Sergeant Exam Candidate Review Booklet Video Portion" (Review Booklet). For the free response questions, the booklet informed candidates, "During the development of the exam, law enforcement Subject Matter Experts (SMEs) at the level of Sergeant or higher identified actions which candidates should take in order to successfully resolve the situation described in the scenario. The statements [a candidate] provided in [his or her] response were compared to these actions, identified by the SMEs, to arrive at [his or her] score." The Review Booklet further explained, "Scoring independently, two assessors reviewed each bulleted statement in your response to determine if each was a positive, neutral, or negative action . . . Some positive actions were determined, by SMEs, to be more critical than others. Thus, some positive actions were worth more than others. If the statement was a positive action that matched one of the SME approved actions, the statement was recorded and assessors awarded credit for that statement . . . [E]ach assessor used a 0-5 point scale to determine your score. Your score is based on how well your response matched the actions, and addressed the aspects of the scenario, that SMEs determined were needed to properly resolve the situation . . . Your final score for each free response question is an average of the scores from each assessor." As such, a candidate's bulleted responses must address the aspects of the scenario identified by the SMEs. In the Review Booklet, candidates were presented with an "Example of an Ideal Response." However, as noted in the Review Booklet, the example "does not represent the only way to resolve the situation. All of the actions are positive, encompass all aspects of the situation described in the scenario, and if

³ In this regard, one of the formats candidates encountered was the free answer question. The Orientation Guide defined the free answer format as "questions that may be responded to by using a narrative essay or bullet-point format. In responding to each question, candidates will be instructed on whether their answer requires complete sentences . . . or simply organized bullet-points, which are more informal and do not require proper sentence structure."

completed, would result in a successful conclusion to the incident described in the scenario.” In addition, candidates were provided with examples of additional actions that they could have taken to fully address the scenario. These were actions that could have increased a candidate’s score.

On appeal, Mr. Rios contends that the “video portion answer key is subjective and failed to include other responses suitable for the given scenarios.” In this regard, for Scenario #1: Michelle Jones, Question #2, a free answer question,⁴ he argues:

My given his responses to the *Jones* scenario were derivative [sic] from the Attorney General Law Enforcement Directive No. revised 2008 [sic].⁵ I indicated in my response: ‘complete station house adjustment form, signed by both juvenile and parent[.]’ In accordance with Guidelines in reference to completing a Stationhouse Adjustment form the procedure includes: ‘ask[ing] the juvenile, a parent or guardian/caregiver, or other responsible adult designated by the parent or guardian/caregiver [. . .] and the victim to come to the stationhouse to discuss the offense . . .’[:] ‘Police shall consider the cooperation and attitude of all parties (juvenile, parents or guardians/caregivers, or designee and victim) . . .’[:]; and] ‘The law enforcement officer must notify the juvenile’s parents or guardian/caregiver about [the] matter [. . .]’ It is reasonable to conclude that completing a Stationhouse Adjustment form entails contacting the juvenile, parent/guardian, and victim.

He further indicates that he provided the following responses which are procedures outlined in the Guidelines:

- Consult Juvenile Officer (entail conducting a welfare check)
- Require Juvenile to make Restitution
- Refer Assistance and Services, Referral Services, Contacts and phone numbers (entails contacting DYFS/CP&P)
- County Youth Services Commissions (Community Services)
- Identify the Juvenile is not an impact offender, has charges pending or history of repetitive disorderly persons offenses
- Verify activity does not constitute a violation of supervisory condition of probation, parole or home detention
- Warn Juvenile about future consequences of continued delinquency

⁴ For this question, candidates could receive a maximum score of 5 points. The appellant scored a 2.5.

⁵ Mr. Rios appears to be referring to Attorney General Law Enforcement Directive No. 2008-2, Attorney General Guidelines for Stationhouse Adjustment of Juvenile Delinquency Offenses (Revised March 2008) (Guidelines).

- Refer to Juvenile Arrest, Charging and Diversion Guidelines. Working Group

For Scenario #2: Officer Smith, for Question #1 and Question #4, both free answer questions,⁶ he presents that his responses were based on Gerald W. Garner, *Common Sense Police Supervision: Practical Tips for the First-Line Leader* (4th ed. 2008).⁷ Specifically, with respect to Question #1, he notes that he provided the following in his response:

- Rely on good common sense and proven sound advice. According to Garner, the supervisor as a counselor[,] ‘The leader skilled in the application of good common sense knows that he often must proceed to address the difficulty, whether the employee admits its existence or not.’ Id. at 190[.] Says Garner[,] ‘Just plain common sense dictates that the police supervisor will give his best to the subordinate he serves. He will do everything that ethics and legality will allow in seeking to find help for the troubled employee.’ Id. at 197[.] In addition, ‘the supervisor-planner may wish to call on some advice and assistance if someone within reach has already tackled a similar problem. The wise planner will consult his fellow supervisors and superiors for their counsel.’ Id.[.] at 150 (chain of command)[.]
- Review personnel file for insight and past entries of job performance evaluations by previous supervisors. According to Garner, the supervisor as a counselor[,] ‘Often, the employee’s personnel file can provide some insight into the past. Job performance evaluations by previous supervisors and past entries in employee logs can reveal hints of previous difficulties of similar nature.’ Id.[.] at 189.
- Treat matter as important, in private with minimum interruptions. According to Garner, the supervisor as an evaluator, ‘The evaluation session must be treated as very important. The supervisor should consider the presentation of the evaluation to be an important event for the employee. Before discussing the evaluation with the subordinate, a private place free of interruptions and distractions should be selected.’ Id.[.] at 118[.]

⁶ It is noted that for each of these questions, candidates could receive a maximum of five points. The appellant received a score of 2 for Question #1 and a score of 1.5 for Question #4.

⁷ The 2013 Police Sergeant Orientation Guide, which was available on the Commission’s website, under the section entitled, “Potential Source Material,” indicated that the Commission would utilize the Garner text, *supra*, “to develop test questions related to Police Supervision and/or Police Management.”

- Bring up issue in a thoughtful calm manner, while using a direct and forthright approach.

According to Garner, the supervisor as a counselor, 'When privacy is the rule, and work interruptions are at an absolute minimum, the supervisor may bring up the issue in a thoughtful, calm manner.' Id[.] at 188[.] Says Garner[.] 'Closely allied with message clarity is the importance of a simple, straightforward message.' Id[.] at 166[.] Thus, 'A simple, direct message about the plan or directive may be accompanied by some background but it will not dwell upon very minor points or explain itself into tedium.' Id[.] at 167.
- Express a sincere concern and a real desire to help.

According to Garner, the supervisor as a counselor, 'He cites the evidence establishing the existence of a problem, expresses a sincere desire to help, and then communicates a clear indication of the changes that he expects to see occur.' Id[.] at 189
- Cite specific examples of performance and furnish evidence or backing for all statements or opinions with factual observations, records and other evidence.

According to Garner, the supervisor as an evaluator, 'Citing specific examples of performance is vital, however.' Id[.] at 114[.] Says Garner 'Furnish evidence or backing for all evaluation statements or opinions.' Id[.] at 117[.] Thus[,] '[h]ave the necessary information and know the full story) In other words, be sure of the facts of the incident before assigning blame or responsibility.'" Id[.] at 143[.] In addition 'There are nevertheless indicators that the observant supervisor can anticipate. Some of the most readily apparent changes in the troubled employee may be actual alterations in physical appearance.' Id[.] at 186[.]
- Avoid giving the impression that the issue has been decided and the judgment rendered.

According to Garner, the supervisor as a disciplinarian, 'The supervisor must avoid giving the impression that the issue has been decided and the judgment rendered even before the employee has a chance to relate his side of the story.' Id[.] at 139.
- With all confirmed facts in hand, give the employee an opportunity to tell his side of the story.

According to Garner, the supervisor as a disciplinarian, 'Then, with all confirmed facts in hand, give the employee an opportunity to tell his side of the story.' Id[.] at 138.

- Ask brief questions as necessary to clarify points.
According to Garner, the supervisor as a counselor, 'He asks questions as necessary to clarify points, but he avoids pronouncements and judgmental comments.' Id[.] at 190 Says Garner, 'Questioning, however, should be primarily for clarification and should never be utilized as a means of attack on the speaker.' Id[.] at 171.

For Question #4, he notes that he provided the following in his response:

- Vital to help set goals and objectives involving their job status, skill and professional development.
According to Garner, the supervisor as a planner, 'One of the police supervisor's vital roles calls for him to continuously evaluate the performance of the employees under his direction. As a part of the total evaluation process, he helps his people set goals and objective involving changes in their job status, skills, and professional development.' Id[.] at 155[.] Says Garner, 'if the employee is to be given the chance to participate in the setting of goals and objectives for the evaluation, he, too, must have adequate time for thinking about his choices and putting them into words.' Id[.] at 121[.]
- Key, a well planned objective is specific, concise, and to the point, should include a deadline.
According to Garner, the supervisor as a planner, 'First of all, a well planned employee objective is, specific concise and to the point. Second, planning objectives should include some deadline for the employee to meet as he directs his efforts.' Id[.] at 155[.] Says Garner, 'A good rule of thumb for the communicator might go something like this, be brief, be concise, be gone.' Id[.] at 176 Thus, 'Good planning objectives are specific. The effective planner spells out the 'what' and 'when' expectations very clearly.' Id[.] at 153[.]
- Planning objectives generally employ action oriented verbs example, improve, broaden, increase, and gain.
According to Garner, the supervisor as a planner, 'Third, a good, written, employee objective generally employs action-oriented verbs. These verbs include words such as increase, gain, develop, broaden, improve, and others in a like vein.' Id[.] at 155[.]
- Objective planning should permit establishment of objectives that are beneficial to both the employee and police agency.

According to Garner, the supervisor as a planner, 'Fourth, employee objective planning should permit the establishment of only those objectives that are beneficial to both the police employee and the police agency.' Id[.] at 155[.] Says Garner, 'First of all, the supervisor planner must identify the end objectives he seeks. If this plan is aimed at the resolution of a particular problem, that problem must be identified before he can successfully go about solving it.' Id[.] at 149[.] Thus, 'The officer himself should, whenever possible, assist in reasonable goals that are important to him as well as the supervisor and the department.' Id[.] at 128[.] Additionally, 'The planning of employee objective need not neglect the interests of either employee or employer. Mutually beneficial goals and objectives can be devised that serve both.' Id[.] at 156[.]

CONCLUSION

An independent review of the appellant's test booklet, a listing of the SME identified actions, and other examination material, reveals no basis to award additional credit to the appellant.

The Michelle Jones scenario indicates, in part, that Michelle, a 14 year old, has been brought into the station for shoplifting which would constitute a fourth-degree crime if committed by an adult. There are no juvenile officers available. Question #2 asks for the actions that should be taken to address the situation regarding Michelle's shoplifting offense. A review of the appellant's test booklet finds that he provided the responses as noted above. The SMEs identified that in order to successfully address the situation, candidates should consider conducting a stationhouse adjustment or filing formal charges. In this regard, the example of an ideal response provided to candidates indicated: "I will establish contact with the store to discuss how the owner wishes to proceed with the offense. I will consider two options: 1. I will complete a stationhouse adjustment[;] 2. Formal charges will be filed against Michelle[.]" All of the actions listed by the appellant as included in his response are actions that could be taken pursuant to conducting a stationhouse adjustment. However, it is noted that the appellant received credit for considering a stationhouse adjustment.⁸ Thus, the appellant is requesting, in essence, to receive additional credit for each bullet point he provided regarding a stationhouse adjustment. Although the appellant claims that his statements, as indicated in his test booklet, "Ensure to consult with Juvenile Officer" and "Identify Michelle is not an impact offender, has charges pending or history of disorderly persons," it is noted that the SMEs determined that in order to successfully address the situation, candidates should contact the juvenile officer since he or she was not available at the time Michelle was brought into the station. The SMEs also determined that

⁸ In this regard, in his test booklet, the appellant provided, "Complete Stationhouse Adjustment Form sign[ed] by Juvenile and Parent."

candidates should, as part of their investigation of the shoplifting incident, gather background information on Michelle. As such, the appellant received credit for these two actions. Furthermore, the Review Booklet indicated that the appellant could have performed the following additional action to fully address the situation: "Speak to, or establish contact with, the store owner to determine how the offense will be addressed." A review of the appellant's test booklet finds that the appellant did not take this action. However, he contends that the procedures in the Attorney General Guidelines suggest that the victim, as well as the parent or guardian, would come to the station and thus, it is reasonable to infer that completing the stationhouse adjustment form entails contacting the victim. It is noted that candidates were required to provide direct answers to questions, and credit cannot be given for information that is implied or assumed. Moreover, while the appellant asserts that he provided a number of actions which are necessary to complete a stationhouse adjustment, none of those actions included speaking to the victim, *i.e.*, the store owner, and determining his or her willingness to allow this situation to be resolved in the form of a stationhouse adjustment. Thus, the appellant has failed to support his appeal of this issue.

The Officer Smith scenario indicates, in part, that Officer Smith has had a recent decline in his performance and you have called Officer Smith in for a non-internal affairs performance interview to talk about his performance on the job. Question #1 asks candidates for the actions they would take *prior* to the meeting with Officer Smith. It is noted that the appellant received credit for his responses, as provided in his test booklet, "Review personnel file and past entries of job performance evaluations by previous supervisor.;" and "Treat matter as important, in private with minimum inter[r]uptions." With respect to his response, as provided in his test booklet, "Rely on good common sense and proven sound advi[c]e," the appellant does not explain how he would apply "good common sense and proven sound advi[c]e" in preparing for the meeting. In this regard, on appeal he indicates under this action that Garner states that the supervisor may seek advice from someone who "has already tackled a similar problem" and "will consult with his fellow supervisors and superiors . . ." However, the appellant did not provide this information in his test booklet. As noted previously, candidates were required to provide direct answers to questions, and credit cannot be given for information that is implied or assumed. With regard to the remainder of his responses, as provided in his test booklet:

- Bring up issue in a thoughtful calm manner, while using a direct and forthright approach.
- Express a sincere concern and a real desire to help.
- Cite specific examples of evaluations, furnish evidence or backing of all statements or opinions by factual observations, records or other evidence.

- Avoid giving Officer Smith the impression [that] the issue has been decided and the judgment rendered.
- With confirmed facts allow Officer Smith to explain.
- Ask brief questions as necessary to clarify points.

These are actions and conclusions the supervisor would make *at the meeting* with Officer Smith and are not actions in preparation for the meeting. As such, they are not responsive to the question. Furthermore, the Review Booklet identified four examples of additional actions that the appellant could have taken to fully address the scenario: "Check attendance records for an increased number of excused or unexcused absences;" "Identify changes in Officer Smith's attitude or morale in the work environment to determine if either [is] a factor affecting his performance;" "Consult with sources such as your supervisor, Officer Smith's previous supervisor, department policies and guidelines for information on how to approach the meeting;" and "Compile a list of potential resources that may be available to Officer Smith." The appellant does not argue that he performed any of the listed actions.

Officer Smith Question #4 indicates that the meeting has ended and you are required to document this non-Internal Affairs interview with Officer Smith. The question asks candidates to list the information that should be included in a summary of the performance interview, and to indicate the next steps that should be taken. The appellant provided the following response in his test booklet:

- It is vital to set goals and objectives, involving job status, skills and professional development.
- A well[-]planned objective is specific, concise, and to the point.
- Planning objectives should include a deadline.
- Planning objectives should employ action oriented verbs improve, broaden, increase, gain and develo[p].
- Permit establishment of goals that are beneficial to both Officer Smith and the Police Agency.
- Whenever possible objective should be devised and approved by Officer Smith and me as supervisor.

Thus, the appellant's response to the question included a discussion of the process of setting goals and objectives, but he did not specify what those goals and objectives were. In addition, the appellant's response did not provide a summary of the interview or provide the steps that he would take following the interview. Moreover, the appellant's Review Booklet identified five examples of additional actions that he could have taken to fully address the scenario: "Include the reason for meeting individually with Officer Smith, the date/time held, and the parties involved;" "Include Officer Smith's acknowledgement of the current issue, his attitude during the meeting, and his response to the issues discussed;" "Indicate the issue presented to Officer Smith, or the issues identified by him, as being the cause

of the current decline in performance;" "Include the actions to be taken following the meeting with Officer Smith;" and "Include any referrals for services that were provided to Officer Smith." The appellant does not argue that he performed any of the listed actions.

With respect to the appellant's contention that the scoring of the video portion was subjective, candidates were scored in accordance with pre-established, SME identified actions to insure objectivity. In this regard, as indicated above, the SMEs helped determine acceptable responses based upon the stimulus material presented to the candidates. Prior to the examination, the assessors who assessed the performances were thoroughly trained to score candidate responses. In addition, each test booklet was evaluated by **two** assessors.

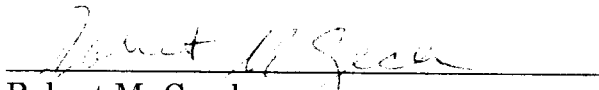
A thorough review of appellant's submissions and the test materials indicates that the decision below is amply supported by the record, and appellant has failed to meet his burden of proof in this matter.

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 29TH DAY OF JULY, 2015


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