

B-27



STATE OF NEW JERSEY

In the Matter of Lewis Perez, Family
Service Specialist 1, Bilingual in
Spanish and English (PS3421K),
Department of Children and Families

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2016-4511

Examination Appeal

ISSUED: APR 11 2017 (CSM)

Lewis Perez appeals his disqualification from the bilingual portion of the promotional examination for Family Service Specialist 1, Bilingual in Spanish and English (PS3421K),¹ Department of Children and Families.

By way of background, the appellant passed the written portion of the examination and was listed in the 16th position on certification (PL160342) that was issued on March 15, 2016. As the subject title has a bilingual variant, the appellant was required to pass the Bilingual Communication Abilities Test (BICAT) at the time his name was certified for appointment consideration. The appellant was scheduled to take the BICAT on April 12, 2016. After completing his examination, the monitor advised the appellant as he was handing in his test papers that he was going to be disqualified for cheating.

In an appeal postmarked June 23, 2016, the appellant states that when he handed in his test papers on April 12, 2016, the monitor accused him of cheating and advised him that he would receive a failing score even if he actually passed the examination. The appellant maintains that the BICAT is a comprehension test and that there was no reason for anyone to attempt to cheat because comprehension is not something a person could just "copy" from. Further, he asserts that there is no evidence to support the proctor's claims because "she never questioned me once during the exam." In a supplemental submission, the appellant states that he e-mailed staff from this agency on April 12, 2016 after he took the test indicating that he intended to appeal. However, it was not until June 8, 2016 when he received notification from this agency about his score and given notice that he had 20 days

¹ This list expired on July 27, 2016.

from the date of that notice to appeal the decision in writing. Therefore, the appellant maintains that he submitted a timely appeal.

A review of the Report on Conduct of Examination indicates that the monitor recorded at 8:45 a.m., that the appellant "keeps glancing at his neighbor's answer sheet" and that she would monitor the situation to see if it continues. Between 8:50 a.m. and 9:00 a.m., the monitor reports that the situation is continuing. At 9:20 a.m., the monitor reports that the candidate sitting next to the appellant gets up to hand in her test paper and the appellant "tries to take a final look at her Scantron as he gets up." At 9:23 a.m., the monitor reported that as the appellant handed in his Scantron and test papers, she advised him that she had to disqualify him for cheating. Further, the monitor noted that the appellant did not fill out an appeal form at the test site. Later that same day after the appellant left the test center, the monitor reported at 1:14 p.m. that she received an e-mail from the appellant, denying the allegation that he cheated stating "there is no evidence of (sic) to make her claims valid." Further, the e-mail complains that the monitor was "very unprofessional" as she did not ask him any questions while he was taking the test, call a supervisor for assistance or have him sit elsewhere if she believed that he cheated. At 3:48 p.m., the monitor indicated that she spoke with building facilities staff to preserve any videos that were filming in the test room at the time of the examination.

The appellant's completed Scantron was compared to the candidate's Scantron whom was sitting next to him. This review indicates that the appellant and the candidate sitting next to him had 37 out of 40 answers in common. Further, on Question #2, the appellant and his neighbor selected the same answer choice, but only 10% of the other candidates in the room chose that answer while 70% of the other got the question correct. For Question #13, the appellant and his neighbor selected the same answer choice, but only 5% of the other candidates chose that answer and 90% of the other candidates got the question correct. On Question #15, the appellant and his neighbor selected the same answer choice, while only 35% of the other candidates made the same selection and 60% got the question correct. For Question #19, the appellant and his neighbor selected the same choice, but only 25% of the other candidates made the same selection and 75% of the other candidates got the question correct. On Question #21, the appellant and his neighbor selected the same answer, but only 25% of the other candidates selected the same answer and 50% of the other got the question correct. For Question #36, 25% of the other candidates chose the same answer as the appellant and his neighbor, while 70% of the other candidates got the question correct.

A statistical index used to determine whether an applicant copied answers is:

$$\frac{\text{Number of Matches} - \text{Expected Matches}}{\text{Standard Error}^2}$$

The number of matches in common between the appellant and his neighbor was 37. The expected matches for the 22 candidates was 31. The standard error for the 22 candidates was 1.173296. Utilizing the above equation results in a score of 5.11. A score greater than 3.72 on this index indicates "very strong evidence" that the candidate is copying.

The record also indicates that prior to taking the examination, the appellant signed a form entitled "BICAT PLEDGE." This form indicates, in pertinent part:

In addition, I understand that any administrative appeal has to be filed today at the test center before I leave, per *N.J.A.C. 4A:4-6.4(c)*, if I experience a problem concerning the way my test was proctored or the test environment.

CONCLUSION

Initially, *N.J.A.C. 4A:4-6.4(c)* states that an examination candidate wishing to challenge the manner in which the examination was administered may file an appeal in writing at the examination site on the day of the examination. As previously noted, the examination was conducted on April 12, 2016 but the appellant did not file his formal appeal challenging the manner in which the examination was monitored until June 23, 2016. In this regard, it is noted that all candidates for examinations are provided with an informational flyer at the examination center, in this case, the BICAT PLEDGE, that specifically informs them of the need to appeal administration issues, including how the examination is conducted. Indeed, the record demonstrates that the appellant received this notification and signed that he understood that he needed to file any appeal regarding how the test was proctored before leaving the examination center. In *In the Matter of Kimberlee L. Abate, et al.*, Docket No. A-4760-01T3 (App. Div. August 18, 2003), the court 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." In this case, the appellant did not file an appeal at the test center so there was no opportunity for supervisory staff to review the situation and, if warranted, provide a remedy. Clearly, he knew *before* he left the test center that he was going to be disqualified for suspected cheating and had complaints with how the monitor proctored the test, but chose not to file an appeal before leaving the test center as required. As such, the appellant's appeal is dismissed as untimely.

² Detecting Answer Copying on High-Stakes Test, *The Bar Examiner*, Vol. 73, No. 2, May 2004.

Nevertheless, the evidence indicates that the appellant's score was properly disqualified. This agency has a duty to ensure the security of the examination process and to provide sanctions for a breach of security. See *N.J.S.A. 11A:4-1(c)*. In order to carry out this statutory mandate, *N.J.A.C. 4A:4-2.10* identifies a number of prohibited actions in the conduct or administration of an examination and provides for the disqualification of candidates participating in such actions. Specifically, *N.J.A.C. 4A:4-2.10(b)5* prohibits, in pertinent part, the copying or attempting to copy from, or helping or attempting to help another applicant in any part of an examination or performance of work assigned. *N.J.A.C. 4A:4-2.10(c)* provides that anyone participating in a prohibited action shall be disqualified from the examination and may be rejected from future examinations and subject to punishment as provided by law.

In this case, it is statistically improbable that one candidate could have the exact answer selections for 37 out of 40 test questions as another candidate. Indeed, the statistical index utilized in this case found "very strong evidence" of answer copying. Moreover, given that the appellant participated in the same examination, sat next to the individual with the same responses, and was observed by the monitor on several occasions glancing at that candidate's Scantron, coupled with the fact that he did not appeal the monitor's disqualification of him at the test center, make his assertions that he did not cheat improbable. See *In the Matter of Hemaben Bhavsar and Yogeshkumar Bhavsar* (MSB, decided February 8, 2006). Accordingly, it was appropriate to disqualify him from the subject promotional examination.

One additional matter warrants comment. Given the seriousness of this matter, the Commission strongly recommends that the Department of Children and Families consider instituting appropriate disciplinary charges against the appellant.

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 ON THE
5TH DAY OF APRIL, 2017



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Director
Division of Appeals
and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

c: Lewis Perez
Linda Dobron
Kelly Glenn
Records Center