



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of Patrick Kiernan,
Police Captain (PM1366U),
Sayreville

Examination Appeal

CSC Docket No. 2017-3636

ISSUED: September 11, 2017 (RE)

Patrick Kiernan appeals his score on the oral portion of the promotional examination for Police Captain (PM1366U), Sayreville. It is noted that the appellant received a final average of 86.460 and ranks second on the resultant eligible list.

This was a two-part examination consisting of a multiple-choice portion and an oral portion, and seniority was scored as well. The test was worth 70 percent of the final average and seniority was worth the remaining 30 percent. Of the test weights, 51.7% of the score was the written multiple-choice portion, 32.4% was the technical component and 15.9% was the oral communication component. The examination content was based on a comprehensive job analysis. Senior command personnel from police departments, called Subject Matter Experts (SMEs), helped determine acceptable responses based upon the stimulus material presented to the candidates, and they scored the performances. In the oral portion of the examination, candidates were presented with a scenario. They were given thirty minutes to read the scenario and questions, and to decide how to answer. In the examination room, candidates were given instructions and read the questions, and then they were given fifteen minutes to give their response to all the questions.

Performances were audio and digitally recorded and scored by SMEs. Each performance was rated on a five-point scale, with 5 as the optimal response, in two components: (1) Oral Communication and (2) Technical Supervision/Problem Solving/Decision-Making. The appellant scored a 4 for the technical component, and a 4 for the oral communication component.

CONCLUSION

The scenario involved an accident with an officer in unmarked vehicle. The officer saw a green sedan driving erratically. It sideswiped a parked car, nearly struck two pedestrians, and drove away. The officer activated his vehicle's emergency lights and audible device, and attempted a motor vehicle stop. However, the driver would not stop, but increased his speed. Dispatch notified the officer that the car was stolen. He initiated pursuit with his supervisor's approval. One minute later, the officer lost control of his vehicle and traveled onto the sidewalk where he struck a man standing at a bus stop. The candidate reports to the scene and sees the man, who has sustained severe injuries, being placed into an ambulance. Question 1 asked for specific actions to take, or ensure are being taken, in response to the incident from the time the candidate arrives on-scene through the investigative process.

After reviewing his test materials, the appellant disagreed with his score for both components. The appellant received a score of 4, and the assessors indicated that the appellant missed the opportunity to establish command or establish a command post (question 1). On appeal, the appellant states that he notified dispatch he was en route to the scene.

In reply, instructions to candidates included, "In responding to the questions, be as specific as possible. Do not assume or take for granted that general actions will contribute to your score." This was read aloud to the appellant prior to the start of his examination. In response to question 1, the appellant stated, "Good afternoon. First and foremost, because of the nature of the incident, of a pursuit involving one of my officers on this particular afternoon, and the fact that a pedestrian was in fact struck and injured, I would be responding to the scene immediately. While en route to the scene I would notify my Chief who is out-of-town and ensure that she is brought up to speed with regards to the nature of the incident and the investigation that is unfolding. Once I responded to the scene, I would ensure that the area, or the crime scene, is well-established and maintained for the purpose of collecting evidence." The appellant then began making notifications. At no time did he state that he established command or located a command post. He spoke with the officers on scene, but did not take command of the scene. This was a formal examination setting, and credit is not given for information that is implied are assumed. The appellant's presentation has been reviewed in its entirety and his score of 4 for this component is correct.

For oral communication, the appellant received a score of 4, and the assessors indicated a weakness in organization. Specifically, they stated that he repeated courses of action, particularly regarding reviewing policies, notifying the public, and training. On appeal, the appellant indicated that he only repeated actions to

summarize each question, and that his responses were appropriate and not repetitive.

In reply, examples of a weakness in organization include presenting ideas in an illogical fashion, rambling, going on a tangent, or pausing for excessively long periods of time together thoughts. Repetition of ideas is also an example of a weakness in organization. In his presentation, the appellant repeated ideas, sometimes going into a lot of detail with one idea. For example, the appellant contacted internal affairs, the investigative bureau, and the identification bureau and explained why. After giving a few actions, the appellant stated, "Along with the ah internal affairs and the investigative, as well as the identification bureau, I would request that my traffic safety bureau respond to investigate the serious nature of the, not only of the pursuit, but of the pedestrian being struck and seriously injured." In addition to the repeating information, the appellant gave run-on sentences which resulted in tangents or providing the superfluous information that does not directly address the question. For example, the appellant was required to notify the Prosecutor's Office. For this action, the appellant stated, "I would also notify the County Prosecutor's Office of the pursuit involving injuries according to our Attorney General guidelines as that is one of our requirements anytime an officer is involved in a pursuit where in fact that we do have injuries to either the pursuing officer, a pedestrian, or the ah and he should suspect violator at, at that particular time. By doing so I would ensure that a bifurcated investigation is conducted with regards to then the pursuit and the ah, pedestrian being struck. The bifurcated investigation would be such that the Prosecutor's Office would, along with my department, conduct the ah, investigation and ensure that the officer was in fact following Attorney General guidelines, department, the department policies and procedures, and that nothing was violated or anything that could be addressed in a later training issue or amended to perhaps even ah Attorney General guidelines or more specifically department policies and procedures could be ah addressed at a later date and, updated." This passage is difficult to follow, because it includes multiple actions and reasons within only a few sentences, like a stream of consciousness. The question asked for specific actions to be taken in response to the incident, not the reasons for every action. Also, at the end of question 1, the appellant spoke about the contents of, and reasons for, a press release, for 45 seconds out of his ten-minute presentation.

In response to question 2, the appellant gave another press release, including the information he would tell the public and the guidelines followed in pursuits. He repeated information in his response to this question as well. For example, he explained to the widow, "So, so I would personally meet with her, ensure that this investigation will be ongoing and that, if in fact the officer was found to be negligent or, or wrong, that he would be charged according to the policies and procedures of our department and the County Prosecutor's Office. I would obviously express my deepest sympathy to Mr. Gaines' widow and ah, offer her any ah, additional

reassuring that I can at that particular time. Again with charges that may be forthcoming with regards to ah, Officer Hanover or, or more specifically the department if, in fact, training ah was not up to speed.” In this passage, the appellant repeats that the officer will be charged in any wrongdoing. He then established community ties, and in doing so, spoke to the public again, and indicated that there would not have been a pursuit had the individual stopped at the police officer’s request. At the two-minute warning, the appellant stated, “I would also publicly announce the department’s policies and procedures in an effort to ensure the public that the, this and the other two incidences of pursuits where in fact ah pedestrians were struck and injured, or in this case killed, that this is not the norm and it is very unacceptable for this to take place. That I would, basically publicly announce that the department’s policies and procedures and look to revamp and change not only our training, but our tactics in reference to the pursuits within our town again ensuring the public that this is not tolerated. Anytime anybody gets hurt it is, it is unacceptable.” After an additional action, the appellant stated, “Finally, I would just review our policies and procedures with regards to pursuit policy and use of force, ensuring compliance with not only ah, the Attorney General guidelines but with the public expect, expectations of us as their public safety department within the jurisdiction.” The repetition of words and ideas, and incorporation of actions within actions, resulted in a weakness in organization. Thus, the score of 4 for this component is correct and will not be changed.

A thorough review of appellant’s submissions and the test materials indicates that the appellant’s test score 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 6th DAY OF SEPTEMBER, 2017



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