



STATE OF NEW JERSEY

In the Matter of Michael Acosta,
Police Lieutenant (PM0971A), West
New York

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

CSC Docket No. 2020-800

Examination Appeal

ISSUED: October 29, 2019 (JH)

Michael Acosta requests that he be permitted to submit an application for the promotional examination for Police Lieutenant (PM0971A), West New York, after the application filing deadline.

By way of background, the announcement for the subject examination was issued on July 1, 2019 with an application filing deadline of July 22, 2019 and all on-line applications had to have been received by that date. It is noted the Police Lieutenant test was administered on October 10, 2019. A review of the record finds that 12 applications were filed.

In an appeal filed September 10, 2019, Acosta maintains that he “was assigned to work in our Juvenile Outreach Taurus station on June 30[,] 2019 and was unaware that this station had issues with the email system. Due to this fact, even though I was checking my email, I did not see the email which the Department did, in fact, send because it did not appear in my inbox on the computer in this station. I agree that the department did send out the notice, but it was impossible for me to see it due to this fact and although I am required to check my email, which I did during this time, I did not see anything show up.” He explains that “there were many circumstances which made it so I did not report to the Main Police department . . . I was assigned to the Boy Scout youth academy program in our town and the carnival and can drive fundraisers for it which both (the program and the fundraisers) took place exactly during the notice period.” He further explains that a personal matter during this time “consumed all of my focus.” Acosta presents that “it was not until August that I discovered that the email system was not

working . . . and I reported the problem to tech support. This is when I reported to the Main Police department and checked my email discovering the unopened email.”¹ In support of his appeal, Acosta submits additional documentation including: a photo of what he purports to be his email inbox and the unread email containing the announcement; and an email sent on September 11, 2019 from Xenia Rivero, Qualified Purchasing Agent, Town of West New York, “Subject: regarding the JAB Office” which states, “I want to bring to your attention that there were issue[s] in the fios email at [REDACTED] West New York, NJ during July and August[.] [T]hey had u[s] down as a regular business[,] not as Government[, and] therefore[,] it was disconnected.”

In a letter dated October 2, 2019, the Town of West New York, represented by Andres Acebo, Esq., presents that “the Town appropriately notified all eligible candidates of the promotional examination . . . An email was sent out on July 1, 2019, and a notice was promptly posted outside the Police Director’s office on the Union’s bulletin board.”² The Town refers to a report dated September 27, 2019 by Sergeant Karriem Shabazz, Technical Services supervisor, in which Sergeant Shabazz provides, “[W]e had issues with email during June and July, with the longest outage being on July 18 for a time period of 54 minutes at 2004 hrs – 2058 hrs. If parties had individual email concerns regarding the time it took to open their emails, etc., I was not made aware of it. The system itself was operational.” Sergeant Shabazz also indicates that there were no problems with the email system specifically in the Juvenile Division in July 2019 as “the Juvenile Division accesses the same Exchange server and network at HQ, except they are using a VPN . . .” Sergeant Shabazz further indicates that on July 1, 2019, Acosta “received 8 emails. He opened 4 and did not open 4 . . . I cannot determine whether they were opened from a department computer or mobile device . . . A deeper forensic analysis would be necessary.” The Town also refers to a second report by Sergeant Shabazz, also dated September 27, 2019, in which Sergeant Shabazz presents that the Microsoft ActiveSync Manage Mobile Phone Utility indicates that a mobile device was

¹ In an email sent on August 20, 2019 from Acosta to the Division of Agency Services (Agency Services), he provides:

I did have every intention of taking the test as I went ahead and paid for and am currently attending a test prep study class which cost \$2500. It was in this class which I was made aware that our police department had changed their process of applying for the test. Every test prior to this was handled by the director[']s office which made us fill out an application and give then a check issued to civil service. I jetting [*sic*] waiting for the director[']s office to contact me to do this and when I asked a coworker in the study group, he informed me that the department had changed their process this time and made it more direct.

² The Town refers to an email sent on August 21, 2019 from Mark Flores, Police Director, to Agency Services in which Director Flores indicates that he personally viewed “the bulletin [board] that is outside the Police Director’s office. The notice[s] for the Lieutenant and Captain test [are] posted on the union’s bulletin board. “

synchronized with Acosta's work email on April 27, 2019 and last synchronized on September 18, 2019 and a second mobile device was synchronized with Acosta's work email on July 12, 2019 and last synchronized on September 21, 2019. The Town argues that "the record does not support any justifiable neglect or technical issues with Acosta's access to his work emails, particularly when he has multiple mobile devices connected to the Department's email network." The Town further refers to the Standard Operating Procedure (SOP) for the West New York Police Computer Network and Enforsys Operating System which provides, in part, that "the email system is available to officers during non-working hours. All members of the West New York Police Department . . . will check their email at least once during their shift on every tour . . ." The Town argues that the SOP "clearly outlines that all members are to remain current with their emails by checking it at least once during their shift. Acosta fails to demonstrate how an alleged technical delay in the email system resulted in him not being able to view emails generally, and the subject emails specifically, for at least 22 days." West New York submits copies of the following: the email sent on August 21, 2019, as noted above, from Mark Flores to Agency Services; the report dated September 27, 2019, as noted above, from Sergeant Shabazz regarding the email system; the report dated September 27, 2019, as noted above, from Sergeant Shabazz regarding linked mobile devices; and, as noted above, the Standard Operating Procedure (SOP) for the West New York Police Computer Network and Enforsys Operating System.

CONCLUSION

N.J.A.C. 4A:4-2.1(e) provides, in part, that applications for promotional examinations shall be submitted no later than 4:00 p.m. on the announced application filing date. *N.J.A.C.* 4A:4-6.3(b) provides that the appellant in an examination appeal shall have the burden of proof.

With respect to the appellant's claim that he was unable to access his email during the application filing period, West New York provides reports from the Technical Services supervisor that the email system was operational and while there were some outage issues during July, he was not made aware of any issues regarding opening email messages. The Technical Services supervisor further indicated that there were no problems specifically with the email system in the Juvenile Division in July 2019. In addition, Acosta does not claim that the appointing authority did not send an email regarding the subject exam prior to the July 22, 2019 application filing deadline. *See N.J.A.C.* 4A:4-2.1(b).

Furthermore, as noted above, in his email sent August 20, 2019 to Agency Services, Acosta indicated that he was preparing for the Police Lieutenant examination by taking a study course. It is noted that the Examination Information Alert Police Promotional Schedule (2019) (EIA) issued by the Division of Test Development and Analytics in January 2019 and available on the

Commission website, indicated that announcements for Police Lieutenant were to be issued on July 1, 2019 and the application filing deadline would be July 22, 2019.³ Since Acosta was in anticipation of and preparing for the subject test, it is not clear from the record as to why he was unaware of the application filing deadline, even assuming that he was unable to access his email at the Outreach station for 22 days, given the available resources on the Commission's website in addition to the two mobile devices Acosta had linked to his work email account.

ORDER

Therefore, it is ordered that this request 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 23RD DAY OF OCTOBER, 2019

Deirdre' L. Webster Cobb

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³ It is noted that the revised version of the July 2019 Civil Service Commission Public Safety Testing Law Enforcement Status Report, which was available on July 17, 2019, indicated that West New York was one of the anticipated jurisdictions that would be tested.