



STATE OF NEW JERSEY

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

In the Matter of Ismael Rivera, Jr.,
Investigator 2, NJ Motor Vehicle
Commission (PS5382T)

Examination Appeal

CSC Docket No. 2018-3637

ISSUED: FEBRUARY 25, 2019 (ABR)

Ismael Rivera, Jr. appeals the administration of the promotional examination for Investigator 2, NJ Motor Vehicle Commission (PS5382T).

By way of background, the subject promotional examination was administered on June 7, 2018 as a written multiple-choice examination at three different examination centers throughout the State. Candidates were required to answer questions 36 to 85 and questions 96 to 115 in their test booklets and to achieve a minimum raw score of 40 to pass the examination. A total of 18 employees applied for the subject examination that resulted in an eligible list of 11 names, which promulgated on July 5, 2018 and expires on July 4, 2021. It is noted that six candidates failed the subject examination and one candidate was a no-show. A certification (PS181158) was issued on September 12, 2018 which resulted in the appointment of three eligibles. Eight eligibles presently remain active on the subject eligible list.

On appeal to the Civil Service Commission (Commission), the appellant argues that he erroneously began the examination at question one, but keyed the corresponding answers beginning at question 36 on the answer sheet because the monitor did not provide sufficiently clear instructions. Specifically, he contends that the monitor failed to instruct the examinees to begin at question 36 in the test booklet and on the answer sheet. Accordingly, he requests a make-up examination.

It is noted that the appellant submits a copy of his answer sheet stub, which stated that he was to answer questions 36 to 85 and questions 96 to 115.

Additionally, it is observed that there is no record of the appellant filing an appeal in writing at the examination site on the day of the examination.¹ Rather, the appellant initiated the instant appeal by letter dated June 13, 2018.

CONCLUSION

N.J.A.C. 4A:4-6.4(c) provides that an examination candidate wishing to challenge the manner in which the examination was administered must file an appeal in writing at the examination site on the day of the examination. The Appellate Division of the Superior Court has 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.” *See In the Matter of Kimberlee L. Abate, et al.*, Docket No. A-4760-01T3 (App. Div. August 18, 2003). In the instant matter, because there is no record of the appellant filing an appeal regarding the administration of the examination until after the test date, his appeal is considered untimely. Regardless of the foregoing, the Commission will address the substantive issues in this matter. It is noted that *N.J.A.C.* 4A:4-6.3(b) provides that the appellant shall have the burden of proof in examination administration appeals.

The appellant argues that the monitor and test material instructions were ambiguous and led him to begin the exam at question one in the test booklet but key the corresponding answers beginning at question 36 on the answer sheet. Nevertheless, the record demonstrates that he received an answer stub that stated that he was to answer questions 36 through 85 and questions 96 through 115 and “Instructions for Multiple Choice Test” which detailed how to properly mark his answer sheet.

It is noted that the examination booklet contained tests for several titles under three different examination symbols. This is common in Civil Service examinations. Different titles covered by the examination booklet are assigned different questions to answer. In many cases, there are examination areas common to several titles that can be efficiently tested using the same booklet. In the instant matter, candidates for the Investigator 2, NJ Motor Vehicle Commission (PS5382T) examination were required to answer questions 36 through 85 and questions 96 through 115 in the booklet. Thus, although the test booklet began with question one, applicants for the subject examination were only required to answer questions 36 through 85 and questions 96 through 115 in the booklet.

The Division of Administration provides sufficient notice to all candidates regarding what questions they are to answer when an examination booklet is

¹ The monitor’s report states that the appellant reported that his answer sheet listed an incorrect Social Security number. However, neither the monitor’s report nor the Center Supervisor’s report indicates that the appellant filed an appeal regarding the administration of the examination.

utilized to test multiple titles and symbols. In this regard, monitors are specifically trained to tell the candidates that the specific questions they must answer for the examination they are completing is printed on the stub portion of their answer sheets in the space below their applicant/Social Security number. The monitors explain that the test booklet may contain more questions than they are required to answer the questions noted on the stub portion of the answer sheets. Moreover, the monitor instructions emphasize this fact so that candidates understand that they must answer each question in the correct spot on the answer sheet. For example, if only questions 36 through 85 are indicated on the stub, candidates are instructed to start marking their answer sheets at question 36 on the answer sheet. Indeed, the computerized answer sheet unambiguously indicates "Answer These Questions," followed by the questions the candidate is to answer under the candidate's applicant/Social Security number.

As noted above, it is common to use one test booklet to examine multiple titles and symbols that are being examined utilizing the booklet. Test booklets are passed out "face down," and candidates are instructed to read the "Instructions for Multiple Choice Test" that are printed on the back cover *before* any other instructions are provided. These instructions specifically advise candidates, "on your ANSWER SHEET locate the ROW of circles opposite the NUMBER of the question you are answering. Find the CIRCLE that corresponds to the letter of the answer you have chosen as being best. Blacken in this circle with your PENCIL." Thus, reasonable and clear notice is provided to all candidates regarding what questions to answer in the test booklets utilized to examine multiple titles.

It is evident that when instructed to "answer these questions," one should address the questions so specified. In this regard, it is noted that the Merit System Board, the predecessor of the current Commission, found that the answer stub provided unambiguous notice to candidates about where to begin answering questions in the text booklet and to mark them on the corresponding space on the answer sheet provided. *See In the Matter of Clarivel Colon, et al.* (MSB, decided August 11, 2004). Accordingly, the appellant has failed to support 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 ON
THE 20TH DAY OF FEBRUARY, 2019

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