



STATE OF NEW JERSEY

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

In the Matter of Stephanie Grant, *et al.*, County Correction Lieutenant (various jurisdictions)

Examination Appeals

CSC Docket Nos. 2019-3534, *et al.*

ISSUED: SEPTEMBER 12, 2019 (ABR)

Stephanie Grant (PC2913W), Atlantic County; Mauro DeGennaro, James Lapp, Besty Mathews and Edward Romero, (PC2914W), Bergen County; Ramon Pagan (PC2918W), Hudson County; Richard Soltis and Rocco Franco (PC2922W), Passaic County; and Augustin Alvarez, Krystal Pizzarelli and Marrison Taylor, (PC2923W), Union County appeal the promotional examination for County Correction Lieutenant (various jurisdictions). These appeals have been consolidated due to common issues presented by the appellants.

The subject examination was administered on May 2, 2019 and consisted of 70 multiple choice questions. It is noted that during the test administration, candidates were provided with two booklets, Booklet A (County Correction Lieutenant Supplemental Examination Material) and Booklet B (2019 County Correction Lieutenant Examination). Booklet A contained stimulus material and Booklet B contained the exam questions.

An independent review of the issues presented on appeal has resulted in the following findings:

Question 26 states that Sergeant Bloom informs the examinee that Inmate Martello, a 22-year-old female who is new to the facility, has complained of being sexually assaulted by CO Lunneman, who has worked at the facility for five years and has no disciplinary record. The question asks what should be done first to address the complaint. The keyed response is option b, “[e]nsure Inmate Martello receives a medical examination.” Soltis argues that the best option is option d, to

“[a]ssign CO Lunneman to work in a different housing unit until an investigation is conducted.” In this regard, he submits that, in accordance with the Federal Prison Rape Elimination Act of 2003 (PREA), the Burlington County Department of Corrections, Morris County Juvenile Detention Center and the Passaic County Sheriff’s Office have policies which provide that the first action to be taken is to separate the victim and the alleged abuser. Here, a review of Question 26 demonstrates that the first action to be taken among the listed options is to ensure that Inmate Martello receives a medical examination. Although the policies that Soltis cites call for an accuser to be separated from their alleged abuser while the inmate receives treatment and while staff complete an incident report, they do not call for reassigning an accused CO before providing medical care. For example, under the “On-Duty Commander Responsibilities” for the Passaic County Sheriff’s Office’s PREA Policy cited by the petitioner, step “h” is to ensure that the alleged inmate victim is taken to the Medical Department to be evaluated, while step “k” is to “[e]nsure that a custody staff member under investigation. . . is not posted where the alleged inmate is housed until the Special Investigation Division renders an opinion to the Warden that the alleged incident is unsubstantiated or unfounded and the Warden makes a final determination.” Thus, the question is correct as keyed.

Question 32 provides that while conducting a routine tour, the examinee observes an officer give a pat down to an inmate in the intake area which the examinee does not believe was thorough enough. The question asks what the best way is to handle the situation. The keyed response is option d, to “[p]ull the officer aside privately to discuss proper pat down procedures and instruct him to pat down that inmate again.” Grant selected the keyed response. As such, her appeal of this item is moot. Alvarez and Pizzarelli argue that the best response is option a, “order the officer to do the pat down again and provide guidance as necessary.” In this regard, Alvarez and Pizzarelli argue that because the keyed response does not indicate that the examinee will have another officer watch the inmate, it is not the best response because it may give the inmate a chance to conceal any possible contraband while the examinee and the officer engage in their private discussion. They assert that it would be better to order the officer to conduct a pat search while providing guidance because it would immediately address the situation without leaving the inmate unattended. The Division of Test Development and Analytics contacted Subject Matter Experts (SMEs) who have knowledge regarding the performance standards and requirements of the job. The SMEs indicate that “pull[ing] the officer aside” allows for the possibility of correcting the officer out of earshot of the inmate, while remaining within sight of him or her. The Civil Service Commission (Commission) agrees with the rationale of the SMEs. Accordingly, it finds that Question 32 is correct as keyed.

For Question 38, Taylor selected the keyed response. Accordingly, her appeal of this item is moot.

Question 39 asks for the best way to handle a situation where an inmate housed in the Disciplinary Housing Unit is smearing feces all over his cell and himself. The keyed response is option d, “[s]end a team of officers in hazmat suits to extract the inmate and bring him to medical.” Taylor selected the keyed response. As such, her appeal of this item is moot. Soltis argues that the best answer is option c, to call maintenance to clean the cell and temporarily place the inmate in a holding cell, while Lapp argues that the best answer is option a, to call a Code Grey to alert custody staff of the disturbance. In this regard, Soltis asserts that there is no reason to take the inmate to medical, as the question does not state that he sustained injuries, has a mental health issue, wants to hurt himself or is being combative. He proffers that the inmate may be displaying this behavior in an effort to have a superior officer come to his cell to address a complaint or concern. Further, Soltis contends that the keyed response is not the best response because Title 10A of the New Jersey Administrative Code (Title 10A) does not mention the use of Hazmat suits in a correctional setting. Lapp maintains that calling a Code Grey is best because it would alert facility staff about the situation and the need to standby for further instructions. In this regard, he asserts that it is imperative to attempt to speak with the inmate before taking any action because it may convince the inmate to voluntarily exit his cell and avoid the risk involved in sending officers in to extract him. The Commission disagrees with Soltis’ assertion that the scenario does not show a need for medical treatment. The inmate is clearly displaying irrational behavior which could indicate a mental illness or other health issue. As such, it is critical for officers to transport him for an evaluation by medical staff. Option c is incorrect because it does not prioritize moving him to medical. As to the lack of a reference to hazmat suits in Title 10A, the Commission notes that the applicable use of force regulation, *N.J.A.C. 10A:31-8.17(b)*, contains a non-exhaustive list of permissible physical contact and that list does not foreclose the use of a Hazmat suit to respond to an incident. Because fecal matter may carry disease, there is a clear need for responding officers to wear hazmat suits for protection. As to speaking to the inmate before taking further action, because the scenario suggests that the inmate has a serious mental health issue and it is uncertain how quickly the inmate’s condition could change, he should be taken to medical without delay. Finally, as to Lapp’s remaining arguments in support of calling a Code Grey, the SMEs state that it would not be appropriate to do so because the situation is not yet under control. Accordingly, the Commission finds that Question 39 is correct as keyed.

For Question 41, Lapp selected the keyed response. Accordingly, his appeal of this item is moot.

Question 43 involves CO Wyatt complaining to the examinee that other “officers with less seniority have more desirable post assignments,” which he thinks is unfair. The question asks for the best way to handle this situation. The keyed response is option d, to explain to CO Wyatt that “seniority is not the only factor

considered and that the assignment of people is based on who will keep the area running smoothly.” Grant, Matthews and Pizzarelli argue that option a, to have the officer “put his complaint in writing so that it can properly be addressed,” is the best response,¹ while Pagan argues that option c, asking CO Wyatt to name specific officers with less seniority who have better post assignments, is the best response. The Commission observes that option a, telling CO Wyatt to file a written complaint would not be the best response to Question 43 because telling him to do so without attempting to explain the basis for assignments could come off as impersonal and dismissive. Furthermore, it would not provide the most immediate response among the answers. As a result, it may compound his present frustration with post assignments, rather than solve the issue. Conversely, speaking with him and explaining the basis for assignments would provide him with immediate personal attention and potentially avoid the need for a more formal review of a written complaint. In this regard, the Commission notes that CO Wyatt may be given a “less desirable” post because it is an assignment which requires a higher level of skill or a greater level of attention to detail and CO Wyatt’s performance is superior to that of one or more other officers. If CO Wyatt is not satisfied with the examinee’s statement, the examinee can proceed to recommend that CO Wyatt file a written complaint. Furthermore, option c is not the best answer because having CO Wyatt name other officers with better assignments could create more tension by dragging other officers into the conflict. Therefore, the Commission finds that Question 43 is correct as keyed.

Question 47 asks what Sergeant Bloom should do first after hearing smoke detectors going off in the Medical Wing and seeing clouds of smoke, but no visible flames. The keyed response is option b, to call a Code Red. DeGennaro argues that option a, determine the source of the smoke, is the best response and Soltis argues that option c, to notify the shift commander, is the best response. DeGennaro maintains that the situation does not constitute a Code Red because Booklet A defines a Code Red as a “fire in progress” but no flames are visible in the scenario and there is no indication that fire or thermal alarms have been triggered. DeGennaro asserts that it is possible that there may be an explanation for the

¹ It is noted that Grant and Pizzarelli assert that the facility would be obligated to address CO Wyatt’s complaint under the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy) and that Pizzarelli further contends that failing to document CO Wyatt’s complaints could result in disciplinary action under the State Policy, given that it requires supervisors to refer allegations of prohibited discrimination or harassment for investigation. However, because Booklet A makes clear that the scenarios involve the fictitious Exeter *County* Correctional Facility, the State Policy does not have any applicability to this scenario. In this regard, it is noted that the State Policy extends to the State government and State agencies and does not apply to county or municipal employers. See *N.J.A.C. 4A:7-3.1, et seq.*; See also *Exec. Order No. 106* (Dec. 17, 1999) (“All State departments, commissions, State colleges, and authorities shall ensure that their practices are in conformance with this mandate.”) Furthermore, because the question does not provide any information which suggests that CO Wyatt’s complaint is based upon membership in a protected class, a concern that he may file a discrimination complaint in the future is clearly outside of the scope of this question.

smoke that does not involve fire, such as overheated food in a microwave. As such, he maintains that the smoke condition should be investigated first. Soltis cites the Passaic County Sheriff's Office's Policies & Procedures No. 2:2.8, Fire Emergency Response Plan (PCSO Fire Policy) in support of his choice to call the shift commander because he maintains that the scenario does not provide enough information about the smoke condition to confirm that a fire is in progress and because Booklet A provide sufficient detail about how a response to a Code Red is carried out. Specifically, he states that the PCSO Fire Policy calls for staff to notify their assigned the cage officer or, if one is not assigned, to call Central Control and speak to the Tour commander. Soltis states that the Tour commander would then call the equivalent of a Code Red under the PCSO Fire Policy. As such, he asserts that calling the shift commander is the best response to Question 47. Here, the Commission notes that the directions for Questions 26 through 60 on the subject examination state that those questions "measure [the examinee's] situational judgment" and that they instruct the examinees to use the stimulus material in Booklet A to help answer the questions. Since smoke detectors are going off and there is visible smoke, it is most reasonable to assume that "where there's smoke, there's fire" and call a Code Red. Doing so immediately is critical, as the purpose in calling a code is to notify appropriate staff to initiate proper protocols and any delay would make the response more difficult if there is indeed a fire. Further, it is noted that Booklet A states that the purpose of the material contained therein "is to provide candidates with a uniform set of standards to abide by, as well as a context for which to answer the scenarios presented in the situational judgment questions in the examination for County Correction Lieutenant." Consequently, the procedures in Booklet A take precedence for purposes of the examination, even though they may differ from those of an individual appointing authority. Thus, the PCSO policies are not controlling for purposes of the examination. Accordingly, Question 47 is correct as keyed.

Question 48 indicates that "[a]n attorney was caught with a cell phone while meeting with an inmate in the attorney visitation area" and it asks the examinee to consider the following actions:

- I. Ensure the attorney is immediately escorted from the facility.
- II. Ensure the inmate is banned from having future legal visits.
- III. Have the inmate strip searched before returning to his housing unit.
- IV. Have the attorney questioned by a supervisor.

The question asks for the best way to handle this situation. The keyed response is option d, "III and IV only." Romero selected the keyed response. As such, his appeal of this item is moot. Pizzarelli, Soltis and Taylor argue that option b, "I and III only," is the best response. Pizzarelli and Taylor cite the Commission's analysis of Question 40 on the 2018 County Correction Lieutenant (2018 Examination

Question) examination in its August 1, 2018 decision to argue that the best response with respect to the attorney is to escort him or her out of the facility. See *In the Matter of Francis Antonowicz, et al.* (CSC, decided August 1, 2018). As noted in that decision:

[The 2018 Examination Question] indicate[d] CO Phillips observed an attorney pass what appeared to be a small bag to his client, Inmate Smalls. When CO Phillips asked Inmate Smalls to surrender the bag for inspection, Inmate Smalls swallowed it. The question ask[ed] examinees to identify the best options to handle this situation from the following list:

- I. Immediately escort the attorney from the facility.
- II. Detain the attorney until local police arrive.
- III. Place the inmate in Prehearing Detention.
- IV. Place the inmate in a dry cell in medical until the swallowed item passes.

The keyed response to the 2018 Examination Question was option d, “I and IV only.” The Commission determined, in relevant part, that removing the attorney from the facility was the proper action because “[d]etaining the attorney without first obtaining the contraband would be considered premature, but removing him from the facility ensures that if he has any other contraband, it cannot be passed.” Pizzarelli and Taylor argue that with Question 48 it would be best to escort the attorney out of the facility so as to prevent contraband from making it into there. Taylor argues that questioning the lawyer seems irrelevant because he knew he was breaking the law when he entered the facility with his phone. Soltis submits that *N.J.A.C. 10A:31-20.6(b)*, in conjunction with *N.J.A.C. 10A:18-6.14*, provides, in relevant part, that if contraband has been detected on a visitor, the visitor shall be pat searched and that “[i]f contraband is discovered during the pat search of the visitor, the visitor shall be detained and the Special Investigations Division Investigator shall be contacted.” Soltis argues that these regulations support a conclusion that the attorney must be escorted out of the facility. The Commission notes that a key distinction with the 2018 Examination Question was that the attorney was not the individual in possession of the potential contraband at the point in time in which the scenario was being presented to the examinee. As such with the 2018 Examination Question, it was considered premature to detain the attorney. Conversely, with Question 48 on the subject examination, because the attorney is in possession of contraband (a cell phone) at the moment the examinee is presented with the scenario, there is a present basis to detain they attorney and determine why he or she had a cell phone in the attorney visitation area. Accordingly, Question 48 is correct as keyed.

Question 51 indicates that “Inmate David and Inmate Scott complained to Sergeant Welsh that their cell was extremely cold. Sergeant Welsh could feel how cold it was just by standing near the cell and notifies Lieutenant Rodriguez of the situation.” The question asks what Lieutenant Rodriguez should do next. The keyed response is option a, to relocate the inmates to another cell. Alvarez and Franco argue that the best response is option c, to contact maintenance to look at the issue. Soltis argues that the best response option d, to have Sergeant Welsh document the complaint. Alvarez argues that calling in maintenance is a better choice because they are better equipped to diagnose the problem and it may be possible for them to fix the issue quickly without having to move the inmates. Franco asserts that because Booklet A indicates that Exeter County Correctional Facility procedures require any abnormalities to be addressed immediately, the best response is to call maintenance first, particularly as moving the inmates first doesn’t address the issue of the cold cell. He also maintains that it is unnecessary to move the inmates because they could be given extra blankets to keep them comfortable under existing conditions. Soltis argues that because the question does not state the season, outdoor temperature or the temperature of the cell, the best answer is for Sergeant Welsh to document the incident. Soltis states that after the incident is documented, the inmates should be given additional blankets in accordance with *N.J.A.C. 10A:31-12.2* and/or clothing to keep them comfortable in accordance with *N.J.A.C. 10A:31-12.1*. Soltis also asserts that maintenance should be called after the incident has been documented. Here, the Commission finds that the statement that “Sergeant Welsh could feel how cold it was *just by standing near the cell*” (emphasis added) clearly indicates an extreme temperature in the cell. Given the extreme temperature, the inmates should be moved promptly. The remaining actions suggested by the appellants, including documenting the issue and contacting maintenance, can be completed once the inmates are moved to a more comfortable location. Accordingly, Question 51 is correct as keyed.

Question 59 indicates that a “visitor arrived thirty minutes late for his visitation appointment that he scheduled online and is informed his visit was cancelled because visiting hours are over. The visitor is upset and asks to speak with a supervisor. Sergeant Bloom is going to talk to the visitor.” The question what the best way is for Sergeant Bloom to handle the situation at this point. The keyed response is option c, “[a]cknowledge the visitor’s frustrations, explain why everyone must adhere to the set visiting hours, and tell the visitor the next time he will be able to visit.” DeGennaro, Lapp, Pagan and Romero argue that the best response is option b, to “[a]llow the visitor to explain the reason why he was late, and make a determination based on what the visitor tells you.” DeGennaro maintains that this is the best course of action because *N.J.A.C. 10A:18-6.5* permits the supervisor in charge to grant a special visit. Lapp argues that making a determination after hearing the visitor’s explanation is more considerate towards the visitor, even if the ultimate decision ends up being to deny the visit. Lapp submits that *N.J.A.C. 10A:31-20.8* permits special visits on an individual basis for

good cause, such as long distance travel, and that *N.J.A.C.* 10A:31-15.4 provides that professional visits shall be permitted without notice or upon reasonable notice during at least six hours each day and that only necessary security requirements can interfere with such visits. Pagan similarly asserts that there could be a valid reason for a special visit, such as the visitor having to travel a long distance and getting stuck in traffic or getting lost because they were unfamiliar with the area. Romero argues that denying the visit should not be the first course of action. Rather, he maintains that it is important to consider the reason for the visitor's delay, the impact that denying the visit would have on the inmate and whether the visit would cause overcrowding, before deciding whether to allow or deny the late visit. Romero argues that if the reason for the delay is traffic or an unforeseen circumstance, it would be wrong to deny the visit, particularly as *N.J.A.C.* 10A:31-20.5 provides, in pertinent part, that a limitation on the length or frequency of visits should be imposed only to avoid overcrowding in the visiting area. Here, with Question 59, the SMEs state that because the scenario indicates that visiting hours are over and none of the conditions listed under *N.J.A.C.* 10A:31-20.8 are presented in the prompt,² there is no basis for a special visit. The Commission agrees that based upon the facts presented, Question 59 is correct as keyed.

CONCLUSION

A thorough review of the appellants' submissions and the test materials reveals that the appellants' examination scores are amply supported by the record and the appellants have failed to meet their burdens of proof in this matter.

ORDER

Therefore, it is ordered that these appeals be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

² Specifically, *N.J.A.C.* 10A:31-20.8(b) provides that [s]pecial visits include, but are not limited to:

1. Visits from persons who have come long distances;
2. Visits to hospitalized inmates;
3. Visits to inmates in disciplinary status; and
4. Visits between inmates and:
 - i. Members of the clergy;
 - ii. Social service agency representatives;
 - iii. Prospective employers;
 - iv. Sponsors;
 - v. Parole advisors;
 - vi. Foreign counsels; and
 - vii. Representatives of the media.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 10TH DAY OF SEPTEMBER, 2019

Deirdre' L. Webster Cobb

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