



**STATE OF NEW JERSEY**

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

In the Matter of Raul Virella,  
District Supervisor, Wage and Hour  
Compliance (PS9723N), Department  
of Labor and Workforce Development

CSC Docket No. 2020-2385

Examination Appeal

**ISSUED: AUGUST 26, 2020 (RE)**

Raul Virella, represented by Arthur Murray Esq., appeals the test conditions for the promotional examination for District Supervisor, Wage and Hour Compliance (PS9723N), Department of Labor and Workforce Development.

The subject examination was administered to ten candidates on January 28, 2020, utilizing the Supervisory Test Battery (STB), and four candidates passed. Candidates were required to achieve a raw score of 512 to pass the examination, and the appellant earned a final score of 466. As a result, he did not achieve a passing score.

In a letter dated January 31, 2020, postmarked February 1, 2020, the appellant stated that he was in pain during the examination, did not have room to spread out the supporting documentation, and was forced to sit at an awkward angle holding the documents in his hand. He also indicated that he suffered an injury in 2008 which has caused him “always to be in pain,” but medication has made his life manageable. The appellant noted that “I did not file for a reasonable accommodation, because, at the time, I did not believe that he needed one.” He supplied medical documentation dated January 29, 2020, which indicates a need for extra time to complete the examination, and frequent position changes. The appellant argued that the Trenton location was sub-par compared to other facilities as there was inadequate space to place, store, and review hard copies of supplemental test materials due to laptop mountings and close seating arrangements. By response letter dated March 2, 2020, staff from this agency’s Division of Appeals and Regulatory Affairs (DARA) advised the appellant that

*N.J.A.C.* 4A:4-6.4(c) states that examination candidates 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. Thus, since the test was administered on January 28, 2020, but the appellant did not file his appeal until February 1, 2020, his appeal was untimely. Nevertheless, staff reviewed the Examination Center Supervisor and the Test Monitor's reports on the examination and noted that he did not raise any of the concerns he raised in his appeal to staff at the examination site on the day of the examination.

In response, the appellant reiterated his argument regarding the testing conditions at the examination site and how they exacerbated the constant pain in which he suffers, making it difficult to concentrate and properly answer the questions. Additionally, he asserts that had he been aware that the STB was not entirely computer-based, he would have sought ADA Accommodations. The appellant concedes that he technically could have sought an accommodation, but emphasizes that even with his medical condition, he has taken other Civil Service examinations and never needed an accommodation. Regardless, had he known how the computers were set up, the arrangement of the desks, and the arrangement of the seating beforehand, the appellant argues that he would have been on notice of what to expect and would have made the appropriate request. Further, he notes that the promotional announcement did not indicate that the supplemental test materials were not computer-based but would be in hard copy. Moreover, contends that it is mere speculation that examination staff would have made accommodations for him if he raised his concerns at the examination site, and that he did not file a "same day" challenge because he had no information about the testing conditions at the other test sites. The appellant requests the pass/fail rates among all STB locations, photographs of test sites utilized to administer the STB, a breakdown of locations that used laptops verses computers with separate keyboards, and a breakdown of which locations had mounted verses moveable computers. The appellant also requests he be permitted to finish the STB he started, administered an alternate version of the test, or that the matter be referred for a hearing at the Office of Administrative Law.

## CONCLUSION

At the outset, *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. Since this appeal of test administration issues was not submitted on the test date, it is untimely. Specifically, the appellant took the examination on the January 28, 2020 and filed an appeal three days later, on February 1, 2020. In *In the Matter of Kimberlee Abate, et al.*, Docket No. A-4760-O1T3 (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.” The monitors and center supervisors to take notes of circumstances at the examination site. In this case, they noted that the only issue that the appellant brought up was to have the “Sr.” suffix removed from his name. He did not mention any medical condition before or during the examination. The appellant was clearly cognizant of his medical condition and how he asserts the room configuration and hard copy test materials caused him pain on the night of the examination, but never raised these concerns at the test center. As noted above, the intent of the “same-day” appeal process is examination center staff can immediately identify, address and remedy any deficiencies in how the test is being administered. In this case, since the appellant never raised any concerns about the testing conditions at the test center, examination center staff did not have the opportunity to try and address his concerns. Further, the appellant was not precluded from raising the issue of his needs at the examination center. Indeed, the issue of his medical condition and how the configuration of the test room was only raised on appeal after he had received his score, three days after the scheduled examination. As such, his appeal is untimely and is dismissed solely on those grounds.

Although the Civil Service Commission (Commission) is dismissing the appellant’s appeal solely on basis that it is untimely, the following is provided for information purposes only. The appellant claims he had a medical condition which required extra time to complete the examination, and frequent position changes. Nonetheless, he did not make a request for an accommodation for these conditions in advance. The appellant argues that he was unaware that this examination was not entirely administered by computer, and that he would be required to refer to a test booklet. However, the Commission supplies information regarding the STB examination on its web site. Specifically, there is a link to the STB guide. This guide states:

Candidates are provided with a booklet of background information about the organization, along with a booklet containing in-basket items, such as memos and letters. Candidates are given a total of 3 hours and 15 minutes to answer the 89 questions on this test. Additional time has been built into this total time to allow candidates an opportunity to review the background information and in-basket item booklets. Candidates are encouraged to spend at least 30 minutes reviewing this material prior to answering any questions. After this review, candidates may then begin answering multiple-choice test questions on a computer. Test questions deal with issues, tasks, situations, decisions, etc., that the candidate will need to handle as a supervisor in the fictitious organization. The candidate may keep the background information and booklet of memos and letters throughout the examination and may refer to them at any point during the test.

As such, the appellant was on notice that he would be given a booklet of background information to review, use and reference while answering the questions on the computer.

The appellant argues that he did not have the same space and accommodations as other candidates in other facilities. The Center Supervisor was contacted regarding this issue. She indicated that the layout of the testing locations varies slightly. In the Trenton location, there was an extra seat next to each candidate to allow space to work with the supplemental materials, and candidates were observed using this space. Laptops next to candidates were open if it was necessary to move a candidate who was having a technical issue. If the laptop next to the appellant made things difficult for him manage, it would have been closed at his request. The appellant did not bring this issue up to the room monitor, nor did he inform the monitor of a medical issue which required special accommodations which he did not anticipate. Had he done so, because of the noted basis for the same-day appeal rule, some accommodations may have been made on site. Additionally, the appellant could have requested a make-up examination based on a medical issue (excessive pain that day) if he had explained his condition *prior to starting the examination*. The appellant's medical documentation, which provided insufficient information to formulate an acceptable accommodation, was dated January 29, 2020, the day after the examination.

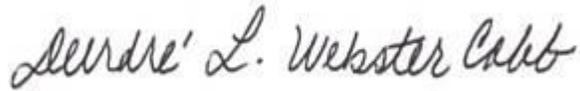
*N.J.A.C. 4A:4-2.9(c)*, (Make-up examinations), has no provision for a retest. The appellant has taken the examination and in fairness to other candidates, cannot take the examination again. A make-up examination is not warranted. Additionally, the appellant asked for a breakdown of the pass/fail rates on all locations, photographs of the test sites, a list of which locations had laptops, and which had separate keyboards, and a list of which locations had mounted computers, and which had movable ones. Even assuming *arguendo* that this information is somehow relevant to the reason as to why he did not advise examination center staff of his various concerns and discomfort on the night of the examination, which it is not, as his appeal is dismissed as untimely, there is no basis on which to provide this information or to refer the matter for a hearing. As previously noted, he appellant was on notice that supplemental materials would be used in the examination, he did not request ADA accommodations or provide medical documentation prior to the examination, he did not alert the monitor that he was having pain, he did not request a different arrangement of the area in his work station due to his issues, and he did not file an appeal of test conditions at the test center. Regardless of the layout of other facilities, this appeal is untimely, and the appellant had not supported his burden of proof.

### **ORDER**

Therefore, it is ordered that this appeal be dismissed as untimely.

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

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 19<sup>TH</sup> DAY OF AUGUST 2020



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