In the Matter of Priscilla Alvarado, Entry Level Law Enforcement Examination (S9999F)
DOP Docket No. 2005-1124
(Merit System Board, decided February 23, 2005)

Priscilla Alvarado appeals the administration of the open competitive Entry Level Law Enforcement Examination (LEE) (S9999F).

By way of background, the subject examination was administered on September 18, 2004 and consisted of 70 multiple-choice problem-solving questions and 100 behavioral items that measured attitudes, beliefs, and opinions. Ms. Alvarado was disqualified from the examination since she possessed a cell phone during the administration of the examination.

In a timely appeal filed at the examination center, Ms. Alvarado states that she was "pulled out of my examination minutes after David had notified John that I had a cell phone." Ms. Alvarado maintains that "David" told her to put her phone away and advised her to continue with the examination. Nevertheless, she states that she was taken to another room and advised she was disqualified since she had a cell phone. Ms. Alvarado presents that the only reason she had a cell phone was because she needed to call her ride when she was finished the examination. However, while in the middle of taking her test, the phone fell because the "clip is no good." Ms. Alvarado argues that her intentions were not to break the rules and that she was willing to put her phone somewhere else until the test was over.

On subsequent appeal, in a letter dated September 24, 2004 (postmarked September 28, 2004), Ms. Alvarado raises an additional issue not raised at the examination center on the day of the test. Specifically, Ms. Alvarado maintains that "some other young man that was there just 2 rows and 5 seats down she told to put his phone away and shut it off." Ms. Alvarado argues that it was unfair that she was disqualified because her phone fell out of her pocket and that the other candidate was advised just to put his phone away and shut it off. Therefore, the appellant argues that the monitor did not treat all of the candidates the same and alleges that the monitor's actions were discriminatory.

CONCLUSION

At the outset, the Department of Personnel (DOP) has a duty to ensure the security of the examination process and to provide sanctions for a breach of security. *See N.J.S.A.* 11A:4-1(c). In order to carry out this statutory mandate, *N.J.A.C.* 4A:4-2.10 identifies a number of prohibited actions in the conduct or administration of an examination and provides for the disqualification of candidates participating in such actions. As such, the Notification to Appear for the Examination specifically advises the candidate that possession of cell phones, pagers, calculators, or recording devices during the test administration is prohibited and that candidates bringing these devices into the test center may be disqualified.

Additionally, the examination orientation guide that was available to all candidates specifically indicated:

> The use of pagers, cellular phones and other communication devices will NOT be permitted during testing. Please do not bring any of these devices into the test center. If you are found to have an unauthorized communication device while at the test center, your test will be collected and considered invalid.

It is also noted that the standardized instructions read by the monitors to all candidates prior to taking the examination informed candidates:

> You were advised on your candidate notice that electronic devices such as cell phones are not permitted. If any such devices are found in your possession during the test administration, you will be disqualified.

In the matter at hand, it was appropriate to disqualify Ms. Alvarado from the examination. It is clear that all candidates for this examination were advised, on the notice to appear, in the orientation guide, and by the monitor on the day of the test that possession of a cell phone would result in disqualification. At approximately 10:55 a.m., the Center Supervisor reported that Ms. Alvarado was removed from the classroom and disqualified for possession of a cell phone. Ms. Alvarado does not dispute the fact that she possessed a cell phone in the examination room, but argues that she needed it to make a call when she was done with the test and that she did not intend to break the rules. However, it is irrelevant if Ms. Alvarado intended or not to break the rules. All candidates were advised of the consequences if they were found to possess a cell phone during the examination. Moreover, Ms. Alvarado could have approached the room monitor or Center Supervisor prior to the start of the test and arrangements regarding her cell phone could have been made at that time. *See In the Matter of Linda Melchionna et al.* (MSB, decided February 25, 2004).

With respect to Ms. Alvardo's claim that the test monitor treated her unfairly because she permitted another candidate to simply put his phone away, *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. This particular issue was not raised by the appellant on the day of the test administration. Thus, this portion of her appeal is untimely. In this regard, it is noted that all candidates for this examination were provided with an informational flyer called "Taking A Department of Personnel Examination" that specifically informs them of the need to appeal administration issues, including how the examination is conducted,

at the examination center. The Appellate Division of 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 matter at hand, Ms. Alvardo challenged her disqualification at the test center, but did not raise the issue of another candidate possessing a cell phone in her original appeal. Indeed, it seems unusual that this was not brought up at the test center on the day of the examination given that she was disqualified from the examination. Nevertheless, a review of the Report on Conduct of the examination does not evidence that any other candidate was found in possession of a cell phone and the monitor advises that the appellant was the *only* candidate found in possession of a cell phone during the test.

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.