

# DECLARATION OF MAILING

In the Matter of the Appeal by:

Case No. 08-0461N

**Respondent:**

Personnel Officer  
Forestry and Fire Protection  
P.O. Box 944246  
Sacramento, CA 94244-2460

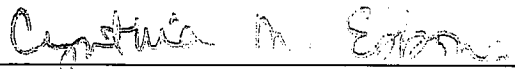
**Appellant:**

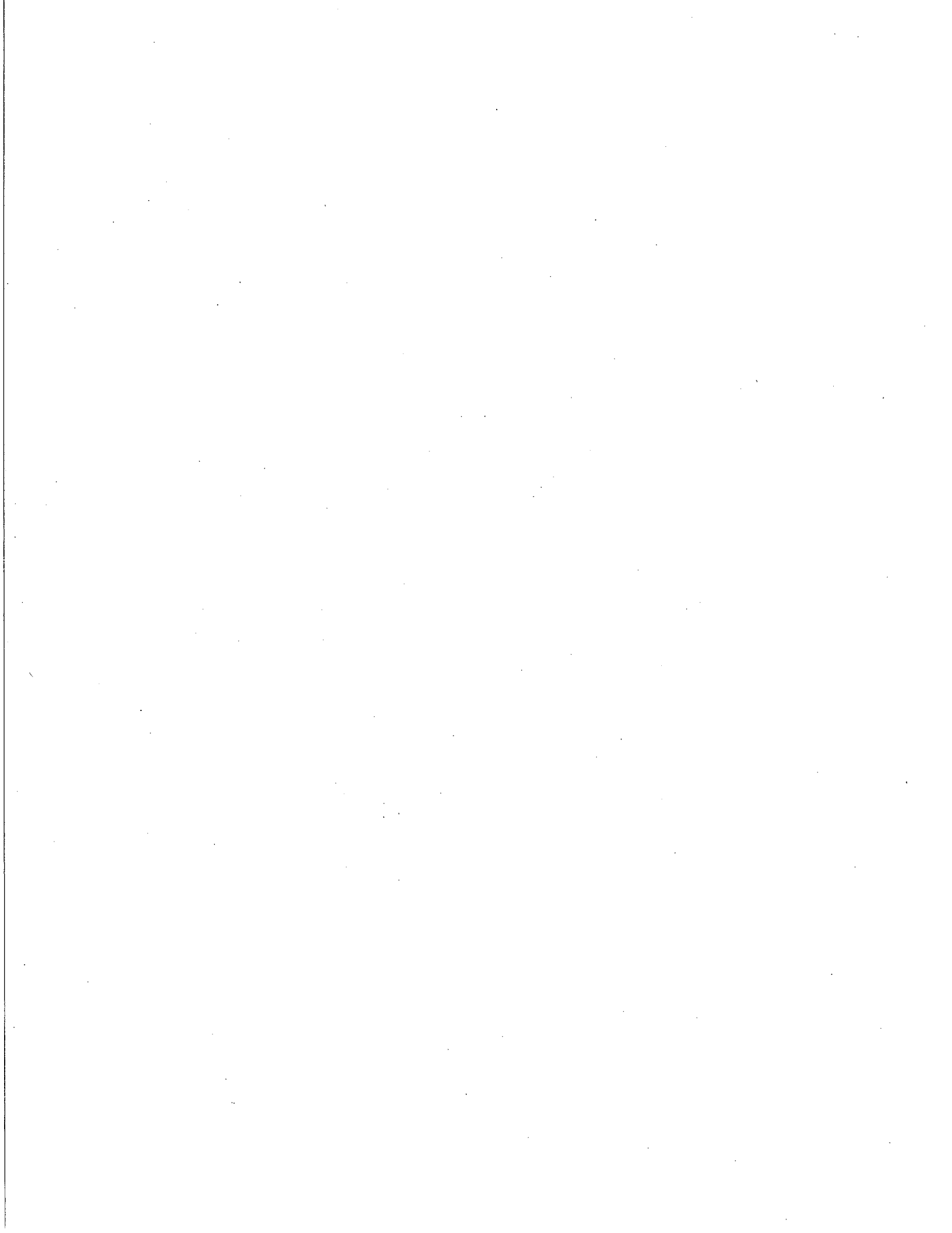
I, the undersigned, say and declare that at all times herein mentioned I was a citizen of the United States, over the age of eighteen years, and not a party to the above entitled proceeding; that I was employed in the County of Sacramento, State of California, and that my business address was 801 Capitol Mall, Sacramento, California. On the date shown below I served the attached RESOLUTION and PROPOSED RECOMMENDATION on each of the State agencies and persons hereinafter specified by placing true copies thereof in separate envelopes respectively addressed to said State agencies and persons named herein.

Said addresses were the last known addresses of specified agencies and persons. Each envelope was then sealed and deposited in the United States mail, at Sacramento, California, with postage thereon fully prepaid. On said date there was delivery service by United States mail at each of the places so addressed or there was regular communication by United States mail between said place of mailing and each of the places so addressed.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed on November 16, 2009, at Sacramento, California.

  
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Cynthia Esbona





**CALIFORNIA STATE PERSONNEL BOARD**

801 Capitol Mall • Sacramento, CA 95814

██████████, et al.

v.

CALIFORNIA DEPARTMENT OF  
FORESTRY AND FIRE PROTECTION

Appeal from Examination

Case No. 07-4559N, et al.

RESOLUTION

WHEREAS, the State Personnel Board has considered carefully the findings and analysis of the staff of its Appeals Division in the above matter; and

WHEREAS, by said Proposed Recommendation the examination appeals are granted and various remedial measures recommended,

WHEREAS, in implementing these recommendations care must be taken to do so in a manner that is least disruptive to the Department's personnel operation as possible,

IT IS RESOLVED that the findings of fact, determination of issues, and Proposed Recommendations of the Appeals Division staff in said matter are hereby adopted by the State Personnel Board as its decision in this matter on the date set forth below, that a true copy of the Proposed Recommendation shall be attached to this Resolution for delivery to the parties in accordance with the law, and that adoption of the Resolution shall be reflected in the record of the meeting and the Board's minutes.

IT IS FURTHER RESOLVED that the Executive Officer shall enforce the recommended actions; including setting a timeline for compliance and obtaining reimbursement for enforcement costs.

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The foregoing resolution was made and adopted by the State Personnel Board in Case Number 07-4559N, et al. at its meeting on November 9, 2009, as reflected in the record of the meeting and Board minutes.



██████████, et al.<sup>1</sup>

v.

CALIFORNIA DEPARTMENT OF  
FORESTRY AND FIRE  
PROTECTION

Appeals from Examination

Case Nos. 07-4559N, et al.  
Proposed Recommendation

**STATEMENT OF CASE**

The California Department of Forestry and Fire Protection (CAL FIRE) administered the Fire Captain and Fire Captain (Paramedic) examination on an open and promotional basis with a final filing date of July 12, 2007. The examination bulletin stated that the exam would consist of a Supplemental Application weighted 30% and a Qualification Appraisal Panel (QAP) test weighted 70%. The Appeals Division (AD) received twenty eight appeals from individuals who received notification that they had failed the Fire Captain examination. The Appellants cited several issues in their appeals including erroneous interpretation, significant irregularity in the examination process, and discrimination. Other issues cited included inaccurate scoring or consideration of Supplemental Applications, and irregularities that may have occurred during the QAP test.

Due to the common issues cited, the appeals were reviewed as a Group Examination appeal. The AD initiated an in-depth investigation into the examination

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process that involved the review of Appellant's complaints and all examination material pertaining to the administration of the examination. The AD finds that the following issues are cause for concern:

- 1) The examination plan and examination bulletin, specifically the scoring criteria identified in the bulletin was not followed in the actual scoring;
- 2) The Supplemental Application tested Knowledge, Skills & Abilities not addressed in the Class Specification and the job analysis;
- 3) The examination retention and security processes practiced by CAL FIRE.

### DEPARTMENT'S POSITION

The AD staff requested additional information from CAL FIRE to assist in reviewing the appeals. The department submitted to the SPB the job analysis used for the administration of the Fire Captain examination, the examination material used for the Supplemental Application component of the examination, and a lengthy memorandum detailing the Fire Captain examination process. CAL FIRE states, "The selection process for this examination has been in existence for over 10 years and the examination has been reviewed over the years by the SPB Appeals Unit." CAL FIRE provided the following additional response to the AD's concerns:

- 1) The examination plan and examination bulletin, specifically the scoring criteria identified in the bulletin was not followed in the actual scoring.

CAL FIRE advertised the Fire Captain examination as a combination Supplemental Application weighted 30% and a QAP weighted 70% with a minimum score of 70% to pass. In actuality, the Fire Captain examination was administered as a combination Supplemental Application Pass/Fail and QAP weighted 100%. In other words, candidates were eliminated from the examination after taking the Supplemental Application component and not allowed to take the QAP component. Furthermore, the

Supplemental Application score received by candidates that were not eliminated in the Supplemental Application component was not calculated into the final score.

When asked to explain the scoring methodology used, CAL FIRE provided the following response:

CAL FIRE states that the Fire Captain examination was to be administered as combination Supplemental Application and QAP test. CAL FIRE made this determination, stating that although some of the Knowledge, Skills, and Abilities (KSAs) lend themselves to testing in several different ways (e.g., written test, interviews, performance test, etc.) due to circumstances such as, the emergency nature of CAL FIRE's organization, the need to expedite the list release, the large number of candidates competing in the examination, and the financial constraints, the combination Supplemental Application and QAP test was determined as the best testing method.

2) The Supplemental Application tested Knowledge, Skills & Abilities (KSAs) not addressed in the Class Specification and the job analysis.

The KSAs for the Fire Captain classification state that education is not required to meet the minimum qualifications; however, the equivalent to the completion of the twelfth grade is desirable. Candidates who have not completed the equivalent of a twelfth grade education and have no additional training can qualify to take the examination based solely on their experience. Despite this, CAL FIRE designed the Supplemental Application component in a way that disadvantages candidates that have multiple years of experience and favors those candidates that have college education and additional formal training, regardless of work experience.

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CAL FIRE was asked why so much emphasis was placed on education when it is not a job requirement. CAL FIRE provided the following response:

The Supplemental Application was divided into three segments: Education/Training; Supervisory/Personnel Management Experience; and Project/Program Management Experience. In the first segment of the Supplemental Application, the Education/Training segment, candidates were asked to list their education, medical certifications, California journey-level certifications, and specialized certifications. Regarding education, points were awarded to candidates who possess a two-year or four-year degree.

CAL FIRE states, "While not a job requirement, candidates who have a college degree typically have the ability to learn quickly and have general training in communication, writing, and critical thinking." In addition, "College graduates also have experience making presentations, writing reports, analyzing situations, meeting deadlines, time management, etc."

In addition to college education, CAL FIRE states that a portion of the Supplemental Application addresses a candidate's possession of specialized certificates. Points were awarded to candidates if they had received specialized certificates from relevant training courses at the Company Officer level. The training courses used in this examination were based on standard curriculum that is widely available to the candidate pool (e.g., State Fire Marshal courses or industry standards for Incident Command System (ICS) courses at the national level). CAL FIRE adds that the completion of State Fire Marshal courses significantly enhance job performance and reduce the need for additional training.

3) The examination retention and security processes practiced by CAL FIRE:

In order to conduct the investigation, all examination material was requested from CAL FIRE. CAL FIRE failed to provide some of the requested material related to the QAP component of the examination. When asked why they could not provide the requested material, they provided the following response:

CAL FIRE states that the Fire Captain exam panel members were instructed to keep notes of the interviews in a secure place for 12 months after the interviews; at the end of the 12 months, the examination material was destroyed. The department states, "We no longer have copies of the panel member rating sheets."

**LEGAL STANDARD**

California Constitution, article 7, section 1(b), states:

In the civil service permanent appointment and promotion shall be made under a general system based on merit ascertained by competitive examination.

California Code of Regulations, title 2, section 250, mandates:

b) Eligible lists shall be created on the basis of merit and fitness, and, as such, shall result from: recruitment strategies designed to be as broad and inclusive as necessary to best meet the selection need; and candidate performance in selection procedures that assess job-related qualifications, are competitive in nature, are designed and administered to fairly and objectively identify those candidates who meet the selection need, and result in the ranking of candidates based on their job-related qualifications.

(d) All phases of the selection process, including recruitment and examining, eligible list creation, appointment, and completion of the civil service probationary period, shall provide for the fair and equitable treatment of applicants and employees on an equal opportunity basis without regard to political affiliation, race, color, ancestry, national origin, sex, sexual orientation, religion, disability, medical condition, age, or marital status.

Government Code section 19702.2 states:

Educational prerequisites or testing or evaluation methods which are not job-related shall not be employed as part of hiring practices or promotional practices conducted pursuant to this part unless there is no adverse effect.

Nothing in this section shall be interpreted to limit the authority of the State Personnel Board regarding the state merit selection and examining program under Article VII of the California Constitution and this division.

Government Code section 18930 states:

Examinations for the establishment of eligible lists shall be competitive and of such character as fairly to test and determine the qualifications, fitness, and ability of competitors actually to perform the duties of the class of position for which they seek appointment.

Government Code section 18500, subdivision (c)(2), states:

Appointments are based upon merit and fitness ascertained through practical and competitive examination.

### **ANALYSIS AND CONCLUSION**

The AD initiated an investigation that involved the review of Appellant's complaints and all available examination material pertaining to the administration of the examination. The AD requested additional information from the department to assist in addressing the issues identified in the appeals. Included in the request was the job analysis used for the administration of this examination, the methodology utilized for the selection of the selection procedure, the methodology utilized in the construction of the examination components, and the relationship between the selection components and the requirements of the job. In addition, the department was asked to answer several questions pertaining to the construction of the examination components. Based on the

information received from Appellants and the information submitted by the department, the AD has determined the following:

- 1) The examination plan and examination bulletin, specifically the scoring criteria identified in the bulletin was not followed in the actual scoring.

The AD finds that the examination plan, provided by CAL FIRE, indicates that the Fire Captain exam was to be administered as an open and promotional examination with a list life of 24 months. The examination bulletin states the Supplemental Application component was to be weighted 30% and the QAP test component was to be weighted 70%, with a minimum score of 70% to pass. A review of the examination material provided by CAL FIRE reveals that the examination was conducted as a Pass/Fail for Supplemental Application and a QAP test weighted 100%. In other words, candidates may be eliminated from the examination after taking the Supplemental Application component and not allowed to take the QAP component. Furthermore, to exacerbate the problem candidates were eliminated from the examination because the Supplemental Application improperly tested for education as further described in Section 2. The AD has determined that the Fire Captain examination was not conducted as it was advertised on the examination bulletin.

- 2) The Supplemental Application tested Knowledge, Skills & Abilities (KSAs) not addressed in the class specification and the job analysis.

The AD reviewed the KSAs required of the Fire Captain classification, as stated in the classification specification, as well as the information provided in the job analysis. The class specification provides the following:

**ADDITIONAL DESIRABLE QUALIFICATION**

Education equivalent to completion of the twelfth grade.

Despite the straightforward wording of the class specification, the Supplemental Application tests for college education and additional formal training. Specifically, candidates received points for education, but not for experience. The Supplemental Application awards candidates with college education, even in a field unrelated to Fire Suppression, more points than what is achievable by a candidate with multiple years of experience and no college education.

The AD has determined that the Supplemental Application component used by CAL FIRE lacks content validity and cannot be linked to either the class specification or the job analysis conducted for the Fire Captain classification. The use of education and training as a means of measuring candidates' job related skills cannot be supported by the job analysis or the class specification. The use of education and training as rating criteria disadvantages those who have acquired the necessary job skills through experience and favors those who acquired the necessary job skills through formal training. In addition, the Fire Captain examination developed by CAL FIRE did not elicit information from the candidates to determine the existence of the required KSAs to be successful at the Fire Captain level, nor was the examination administered following the Federal Uniform Guidelines of Employee Selection Procedures.

In addition, as part of the investigation, the AD consulted with SPB's Examination unit staff as well as the Test, Validation and Construction unit (TV&C). The Examination unit and TV&C were each presented with a copy of the examination material submitted by CAL FIRE. The SPB's Examination unit staff, as well as TV&C, support the AD in their determination that the Supplemental Application component used for the Fire

Captain examination cannot be supported by the past or current job analysis and lacks content-validity.

Finally, CAL FIRE asserts that the testing methods utilized for the Fire Captain examination were selected because of various constraints faced by CAL FIRE, including financial and personnel availability for test development. However, the SPB developed two written examinations for CAL FIRE in conjunction with the job analysis conducted in 1999. The AD found no evidence that these written examinations, developed specifically for CAL FIRE's Fire Captain classification, have been utilized in any of the past several administrations of this examination.

3) The examination retention and security processes practiced by CAL FIRE:

As noted previously, the AD was unable to obtain material related to the QAP component of the examination, including interview rating sheets completed by each panel member, interview tapes, panel notes and the tabulation of the final scores. As a result, the AD is unable to determine whether there was any significant irregularity in the QAP component of the examination. Further inquiry revealed that the examination material was given to panel members with the instruction to retain the material for 12 months. Once the 12 months of retention had passed, the panel members were instructed to destroy the material despite the fact that the AD was investigating appeals concerning the administration of this examination. Pursuant to Selection Manual Section 3120, the retention schedule provided by the SPB states that examination material should be retained for two years from the date of the list or until resolution of appeal, whichever is longer. In this case CAL FIRE failed to retain documents for the requisite amount of time and destroyed materials despite being notified of pending

appeals. In addition, the manner in which materials were stored is questionable as the examination material should be maintained in a secure manner in a centralized location. In this case, CAL FIRE allowed each panel member to individually store examination materials. CAL FIRE's practices of storing confidential examination material calls into question the department's understanding of the examination retention standards and requirements, as stated in the Selection Manual Section 3120 and mandated by the SPB.

The AD finds that sufficient grounds exist to recommend that the appeals be granted based on significant irregularities in the examination process and a lack of content validity in the examination material utilized. Although CAL FIRE states that the selection process used for the Fire Captain examination has been reviewed over the years by the AD, the information discovered through the investigation does not support the continued use of this examination material. As such, the AD finds that CAL FIRE's examination practices do not adhere to all the recommended and legally defensible methods of selection as supported by Government Code section 18930.

#### **RECOMMENDATION**

Based on the foregoing, it is recommended that the appeals included in this group, be **GRANTED**. In addition, after a thorough review of the examination materials utilized by CAL FIRE in the 2007 Fire Captain examination, the AD makes the following recommendations:

It is the recommendation of the AD that CAL FIRE abolish the Fire Captain Certification List generated from this examination and cease using it to fill any future vacancies. In addition, the department must conduct a new job analysis, develop a new


test, and administer a new examination for the Fire Captain classification that fully adheres to all the recommended and legally defensible methods of selection. The new examination must ensure there is no adverse impact to any individual or group and that testing methodologies are based on rationale relative to job performance and in conjunction with the KSAs established for the Fire Captain classification through a properly conducted job analysis.

The AD further recommends that all administrations of the Fire Captain examination, using the same methodologies and examination materials that resulted in the 2007 appeals, should cease.

CAL FIRE's participation in the Decentralized Testing Program should be suspended until the SPB can determine that CAL FIRE selection staff has received proper training from the SPB in the State Civil Service Examination Process that is supported by the SPB and re-trained in the department's role and responsibilities in the Delegated Examination Program, which adheres to the Federal Uniform Guidelines of Employee Selection Procedures.

The AD recommends that the SPB conduct an audit of CAL FIRE's personnel practices to determine whether additional violations have occurred in the course of any other examinations administered by CAL FIRE. To date, the AD has received hundreds of appeals regarding examinations conducted by CAL FIRE. The SPB's review of CAL FIRE's examination history files including but not limited to examination planning documents, examination bulletins, competitor's state applications, selection instruments, rating criteria, scoring methods, and resulting eligible lists will determine if the personnel

practices of CAL FIRE adhere to the State's laws, regulations and policies pertaining to the merit based selection process.

  
Linda J. Story  
Appeals Division