



**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. 08-1962N, et al.

RESOLUTION

**WHEREAS**, the State Personnel Board (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; and

**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; and

**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 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; and

**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 Board in Case Number 08-1962N, et al. at its meeting on January 19, 2010, as reflected in the record of the meeting and Board minutes.



██████████ et al.<sup>1</sup>

v.

CALIFORNIA DEPARTMENT OF  
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Appeals from Examination

Case Nos. 08-1962N, et al.

Proposed Recommendation

**STATEMENT OF CASE**

The California Department of Forestry and Fire Protection (CAL FIRE) administered the Fire Fighter II (FF II) and Fire Apparatus Engineer (FAE) examination on an open and non-promotional basis, with a final filing date of August 23, 2007. The examination bulletin stated that the exam would consist of a Supplemental Application weighted 100%. The Appeals Division (AD) received 49 appeals from individuals who received notification that they had failed the examinations. The Appellants cited the following issues in their appeals: erroneous interpretation, fraud, discrimination, significant irregularity, inaccurate scoring or failure to obtain a passing score on the Supplemental Applications.

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During the initial review of the appeals, twelve of the cases were reviewed and denied, based on the selection criteria presented by CAL FIRE and information submitted by Appellants.<sup>2</sup> The AD determined that Appellants were unable to provide the necessary documentation or verification to obtain credit for certifications required on the Supplemental Application, so no grounds were found to support their appeals. However, new and compelling information was presented during a concurrent review of CAL FIRE's Fire Captain appeals, calling for a more in-depth assessment of the job analysis and job specification for processing the remaining FF II and FAE appeals.

After review of all the Appellants' complaints and all exam material, the AD finds that the following issue is a cause for concern:

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

#### **DEPARTMENT'S POSITION**

The AD staff requested information from CAL FIRE to assist in reviewing the appeals. CAL FIRE provided the job analysis used for the administration of the FF II and FAE examinations, the examination material used for the Supplemental Application, the scoring criteria used, and a response to each of the Appellants' appeals. CAL FIRE administered the FF II and FAE examinations using a Supplemental Application weighted 100%. This information was provided in the examination announcement.

The minimum qualifications for the FF II and FAE classification(s) provides that education is not required, however, equivalent to the completion of the twelfth grade is desirable. Candidates who have not completed the equivalent of a twelfth grade

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<sup>2</sup> List of Appellants that were denied: Curtis, Thomas; Bautista, Richard; Bartlett, Brandon; Lewandowski, Steven; Garabedian, David; Dalton, Matthew; Alba, Jay; Yuill, Shawn; Maloney, John; Patino, Angel; Hill, Joshua; and White, William.

education and have no additional training can qualify to take the examination based solely on their experience performing fire fighting duties. Despite this, CAL FIRE designed the Supplemental Application examination in a way that disadvantages candidates having multiple years of experience and favoring those candidates having formal education (i.e. high school or college) and additional formal training, regardless of work experience.

The Supplemental Application was divided into three segments: Education, Training/Certification, and Experience. Each segment asked that the candidate record his/her completed education, relevant training courses completed, relevant certifications acquired, and any firefighting experience obtained. In addition, candidates were required to submit written verification to substantiate the information they provided.

In the first segment of the Supplemental Application, Education, candidates were asked to list their education, and thus granted varied points depending on the amount of education completed. For example, if a candidate had completed high school, he/she was granted two points; if a candidate had obtained a Bachelor's degree, he/she was awarded fifteen points.

The second segment of the Supplemental Application addressed the candidate's possession of specialized certificates. Points were awarded to candidates if they received specialized certificates for medical certification(s), courses given by the CAL FIRE/CDF Training Center, or courses given by the State Fire Marshal. The Supplemental Application listed approximately eight pages of courses; points were awarded to candidates who had completed each course and could provide verification of course completion. 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 courses at the national level).

The third segment of the Supplemental Application addressed the candidate's experience. Each candidate was asked to document his/her experience gained while working in the fire suppression field. To receive credit for experience, each candidate was required to submit written documentation verifying work experience listed:

### 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 171, mandates:

... Each announcement shall state the title, salary range, and where appropriate, the duties of the class; the method of evaluating the education, experience, and personal qualifications of the competitors; such information as is required by the act and these rules; and such additional information as the executive officer may deem proper. An examination may be canceled by the executive officer at any time prior to the establishment of the employment list.

California Code of Regulations, title 2, section 250, subdivisions (b) and (d), mandate:

(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 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 18930.5 states:

The board may designate an appointing power to design, announce, or administer examinations for the establishment of employment lists in accordance with Section 18654 and board rule. No later than January 1, 1987, the board shall authorize or assess the ability of appointing powers to design, announce, or administer designated examinations for the establishment of employment lists. The board may audit examinations and order corrective action or nullify any examination or parts thereof which have been conducted improperly.

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

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

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.

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### ANALYSIS AND CONCLUSION

Due to the information disclosed in the CAL FIRE's FF II and FAE appeals, the AD initiated an in depth investigation that involved the review of Appellants' complaints and all available examination material pertaining to the administration of the examination(s). The AD requested additional information from CAL FIRE to assist in addressing the issues identified in the appeals. Included in the request was the job analysis used for the administration of these examinations, the class specification, and each Appellant's Supplemental Application. Based on the information received from the Appellants and CAL FIRE, the AD has determined the following:

The AD reviewed the Knowledge, Skills and Abilities required of the FF II and FAE classification(s), as stated in the class specification, as well as the information provided in the job analysis. The class specification provides the following:

#### **FF II experience:**

Pattern I: Three months of fire-fighting experience.

Or Pattern II: One year of experience as a certified volunteer fire fighter.

Or Pattern III: Completion of training courses, prerequisite for Fire Fighter I Certification.

Or Pattern IV: One year of experience as a Fire Prevention Specialist I and successful completion of the mandatory training courses prescribed for a Department of Forestry and Fire Protection Fire Fighter I.

#### **FAE experience:**

Pattern I: Eight months of fire-fighting experience.

Or Pattern II: Enrollment in the California Fire Fighter Joint Apprenticeship Committee Pre-apprenticeship Outreach Program

and three months fire-fighting experience until December 31, 1984; or eight months fire-fighting experience thereafter.

Or Pattern III: Two years of experience as a certified volunteer firefighter. (Candidates who are within two months of satisfying the experience requirement under Pattern I above for this class will be admitted to the examination, but they must fully meet the experience requirement before being eligible for appointment.)

Or Pattern IV: Two years of experience as a Fire Prevention Specialist II and successful completion of the mandatory training courses prescribed for a Department of Forestry and Fire Protection Fire Fighter I.

Specifically, the class specifications do not require any formal education (i.e. high school or college). In reference to education, it states: **ADDITIONAL DESIRABLE QUALIFICATION: Education equivalent to completion of the twelfth grade.**

Despite the straightforward wording of the class specification, CAL FIRE's Supplemental Application tests for education and awarded candidates points based on the level of education attained. As an example, the Supplemental Application awards two (2) points for a high school diploma up to a maximum of fifteen (15) points for a college degree, even in a major unrelated to fire suppression. Awarding of points for education disadvantages the candidate who has years of valuable experience in the fire suppression field, but no high school diploma, college courses, or degrees.

The Supplemental Application also awards up to 35 points for specialized training and/or certificates. The class specification allows candidates to qualify for the examination using just experience or a combination of experience and formalized training. The Supplemental Application gives an advantage to candidates who qualified under the patterns requiring training and minimal experience and disadvantages candidates that qualify using experience alone. The possession of formalized training

and/or certificates by a candidate should only be used to assist a candidate to qualify for the classification, when experience alone does not.

Based upon the foregoing, the AD has determined that the Supplemental Application used by CAL FIRE lacks content validity and cannot be linked to either the class specification or the job analysis conducted for the FF II and FAE classification. The use of education or training certificates 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 certificates as a rating criterion disadvantages those who have acquired the necessary job skills through experience alone. In addition, the FF II and FAE examination developed by CAL FIRE does not elicit information from the candidates to determine the existence of the required Knowledge, Skills and Abilities to be successful in job performance, nor was the examination administered following the Federal Uniform Guidelines on Employee Selection Procedures.

As part of the investigation, the AD consulted with SPB's Examination unit and the Test, Validation and Construction Program (TV&C). The Examination unit and TV&C were each presented with a copy of the examination material submitted by CAL FIRE. Upon review, the SPB's Examination unit, as well as TV&C, support the AD in their determination that the Supplemental Application used for the FF II and FAE examinations cannot be supported by the Knowledge, Skills and Abilities and lacks content validity.

The AD finds that sufficient grounds exist to recommend that the appeals be granted based on a lack of content validity in the examination material utilized. 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, the 12 appeals previously denied are to be reversed and are now granted. After a thorough review of the examination materials utilized by CAL FIRE in the 2008 FF II and FAE examination, the AD makes the following recommendations:

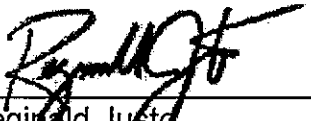
It is the recommendation of the AD that CAL FIRE abolish the FF II and FAE Certification List generated from this examination and cease using it to fill any future vacancies. In addition, the department must conduct a new job analysis, develop a new test, and administer a new examination for the FF II and FAE classification(s). Furthermore, the testing methodology must be based on rationale relative to job performance and in conjunction with the Knowledge, Skills and Abilities established for the FF II and FAE classifications through a properly conducted Job Analysis.

The AD further recommends that all administrations of the FF II and FAE examination(s), using the same methodologies and examination materials that resulted in the 2008 appeals, should cease.

CAL FIRE's participation in the Decentralized Testing Program was recently suspended by SPB. Therefore, the AD staff recommends that CAL FIRE continue to work with SPB staff until it can be determined that CAL FIRE selection staff has received proper training and demonstrates the ability to conduct an examination that

adheres to the Federal Uniform Guidelines of Employee Selection Procedures and an understanding of a department's role in the Delegated Examination Program.

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, competitors' 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.

  
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Reginald Justice  
Appeals Division