



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Gilberto Ortega,
Sanitation Driver (PM0548U),
City of Perth Amboy

Examination Appeal

CSC Docket No. 2017-186

ISSUED: **NOV 15 2016** (ABR)

Gilberto Ortega appeals the determination of the Division of Agency Services (Agency Services), which found that he did not meet the experience requirement for the promotional examination for Sanitation Driver (PM0548U), City of Perth Amboy.

The subject examination was announced with a closing date of March 21, 2016, and was open, in part, to employees in the Sanitation Worker title who possessed at least one year of experience in driving a truck with tandem/dual rear axles and gross vehicle weight of at least 26,000 pounds and with auxiliary equipment such as a snow plow, salt spreader, power take-off, winch, lift body, or hydraulic lifting device. It is noted that the appellant was one of two applicants for the subject promotional examination, which was cancelled on July 22, 2016, as both applicants were deemed ineligible.

On his application, the appellant indicated that he served provisionally as a Sanitation Driver from January 2016 through the closing date, as a Sanitation Worker from March 2011 to December 2015, and as a Laborer 1 from February 2004 to March 2011. The appellant indicated, in part, that his major duties as a Sanitation Worker and a Laborer 1 included filling-in for absent Sanitation Drivers and performing corresponding duties including: daily inspection of vehicles; minor truck repair; refueling; ensuring that assistant laborers had proper safety equipment; assisting laborers with loading trash onto vehicles; logging illegal mixed trash disposed of by residents; transporting collected trash to transfer stations or landfills; scaling and logging trash material; cleaning equipment; and performing

snow removal duties, as necessary, during the winter months. However, Agency Services noted that any applicable duties that the appellant may have performed while serving in the title of Sanitation Worker and Laborer 1 would be out-of-title. Therefore, he was found to be lacking nine months of applicable experience.

On appeal to the Civil Service Commission (Commission), the appellant argues that he has been performing applicable duties since 2009. In support, the appointing authority confirms the appellant's experience and notes that the appellant has performed Sanitation Driver duties for more than 350 days, which exceeds the 260 days that normally comprise one work year. The appointing authority submits copies of memoranda from the Director of its Department of Public Works to its Business Administrator and its Payroll Supervisor which indicate that the appellant was performing out-of-title Sanitation Driver duties on various dates between December 2010 and January 2016.

Agency records indicate that the appellant continues to serve provisionally in the subject title.

CONCLUSION

N.J.A.C. 4A:4-2.6(a) provides that applicants must meet all requirements specified in the promotional examination announcement by the closing date. *N.J.A.C. 4A:4-2.6(c)* provides that, except when permitted for good cause, applicants for promotional examinations may not use experience gained as a result of out-of-title work to satisfy eligibility requirements.

Agency Services correctly determined that the appellant was ineligible for the subject examination because he lacked the requisite amount of creditable experience as of the March 21, 2016, closing date. On appeal, the appellant claims that he performed applicable duties while serving in the Sanitation Worker and Laborer 1 titles. However, the appellant's performance of applicable duties while serving in that title would be considered out-of-title work. Ordinarily, the Commission looks to whether or not "good cause" has been established in determining whether to grant or deny appeals involving out-of-title work. Generally, the Commission finds good cause where the record evidences that the examination situation is not competitive, no third parties are adversely impacted, and the appointing authority wishes to effect a permanent appointment and verifies that the appellant has performed the relevant duties which otherwise satisfy the eligibility requirements. *See In the Matter of John Cipriano, et al.* (MSB, decided April 21, 2004). The appointing authority has indicated that the appellant possessed more than one year of experience performing applicable out-of-title duties while serving in the Sanitation Worker and Laborer 1 titles. Moreover, the record evidences that the examination situation is not competitive since the examination was cancelled, given that both applicants were deemed ineligible. Furthermore, the

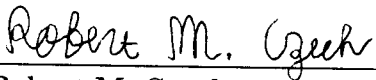
appellant continues to serve provisionally in the subject title. As such, good cause exists in this particular case to accept the appellant's out-of-title work experience, for eligibility purposes only, and admit him to the examination.

ORDER

Therefore, it is ordered that this appeal be granted, the cancellation of the examination be rescinded and the appellant's application be processed.

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

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 10TH DAY OF NOVEMBER, 2016



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

c: Gilberto Ortega
Adam E. Cruz
Kelly Glenn
Records Center