

B-21



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Luisa Alexopoulos,  
Department of Health

Administrative Appeal

CSC Docket No. 2016-3741

ISSUED: APR 21 2017 (HS)

Luisa Alexopoulos requests a retroactive date of permanent appointment to the title of Health Systems Specialist 2.

By way of background, the appellant, a non-veteran, took and passed the promotional examination for Health Systems Specialist 2 (PS9871H), Department of Health, which was announced on February 1, 2015 with a closing date of February 21, 2015. The resulting eligible list promulgated on January 28, 2016 and expires on January 27, 2019. The appellant's name was certified to the appointing authority on January 29, 2016. The appellant received a regular appointment from the certification effective March 19, 2016.

On appeal to the Civil Service Commission (Commission), the appellant requests a retroactive date of permanent appointment effective January 29, 2016, the certification date. The appellant argues that this relief is warranted due to "various inequitable practices, delays and other causes." The appellant states that in or about April 2014, the appellant, two other permanent State employees, and one individual with no prior State service all received provisional appointments to the title of Health Systems Specialist 2.<sup>1</sup> The appellant claims that it was inappropriate that an open competitive examination for Health Systems Specialist 2 (S0662S) was requested and announced prior to the PS9871H promotional

<sup>1</sup> The three permanent State employees received provisional appointments, pending promotional examination procedures. The individual with no prior State service received a provisional appointment, pending open competitive examination procedures.

examination<sup>2</sup> when three of the provisional appointees were permanent State employees and there were approximately 50 potential qualified permanent State employees in appropriate lower titles.<sup>3</sup> This allowed the individual with no prior State service to receive a regular appointment well before permanent State employees could.<sup>4</sup> In addition, the appellant complains that there was a gap of approximately one year between the date that the PS9871H promotional examination was announced, February 1, 2015, and the test date, January 7, 2016. The appellant argues that the requested relief is warranted for the additional reasons that at the time her name was certified, she was the only provisionally appointed incumbent who had been serving in the title for nearly two years and ranked first on the eligible list. She also argues that a retroactive appointment date would not cause any change in assignment of title or monetary/step changes, and thus, a retroactive appointment date would not require her to start at the beginning of any particular pay period. The appellant states that she received three successful performance assessment reviews during the period of her provisional appointment.

It is noted that at the time the S0662S open competitive examination was announced, there were no permanent employees serving in the underlying in-line title of Health Systems Specialist 3 in the appellant's unit scope.

### CONCLUSION

*N.J.A.C.* 4A:4-1.10(c) provides that when a regular appointment has been made, the Commission may order a retroactive appointment date due to administrative error, administrative delay or other good cause, on notice to affected parties.

*N.J.A.C.* 4A:4-2.3(a) provides that vacancies shall be filled by promotional examination unless it is determined that it is in the best interest of the career service to hold an open competitive examination. The determination to announce

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<sup>2</sup> The S0662S open competitive examination was announced on August 5, 2014 with a closing date of August 26, 2014. The resulting eligible list promulgated on January 22, 2015 and expires on January 21, 2018. Two appointments were made from the list. It is noted that the appellant did not apply for the S0662S open competitive examination.

<sup>3</sup> The appellant bases this claim on a January 30, 2015 e-mail from the appointing authority advising approximately 50 employees that they were eligible to file for the PS9871H promotional examination.

<sup>4</sup> While true, this argument is not persuasive in regard to the appellant. Since she was a current State employee and appointed as a provisional in the title on the same date as the provisional from the open competitive announcement, the Commission can find no practical disadvantage to the appellant as compared to that individual based on her later permanent appointment date. In this regard, based on her prior service, she was provisionally promoted at a higher salary step than the other individual and as a current employee, possesses greater seniority. Thus, in future potential examination or layoff situations, she would receive a higher seniority score, if applicable, and be more senior in a layoff. See *N.J.A.C.* 4A:4-2.15(d) and *N.J.A.C.* 4A:8-2.4(a).



an open competitive examination shall be based on at least one of the following conditions:

1. The vacancy is in an entrance level title;
2. There are fewer than three qualified permanent employees in appropriate lower titles in the unit scope;
3. If more than one vacancy, the total number of qualified permanent employees in appropriate lower titles in the unit scope exceed by fewer than three the total number of vacancies;
4. A list resulting from a promotional examination will be exhausted before all present or anticipated vacancies are filled; or
5. The title requires special, technical or professional training or qualifications which are not required in lower titles.

Initially, no substantive basis has been presented that an open competitive examination for the title of Health Systems Specialist 2 was improperly utilized prior to a promotional examination. In this regard, one individual with no underlying State service was appropriately provisionally appointed, pending open competitive examination procedures. The appellant was not prevented from applying for the open competitive examination. Further, *N.J.A.C. 4A:4-2.3(a)2* applies in the instant matter. Specifically, there was no one in the promotable lower level in-line title of Health Systems Specialist 3. *See In the Matter of Rejean Laliberte, Construction Official (M9665C), Berkeley Township* (MSB, decided January 29, 2003), *aff'd on reconsideration* (MSB, decided May 28, 2003) (Use of an open competitive examination for title instead of promotional examination did not thwart expected rights of employees to take a promotional examination since a complete promotional list could not be issued as no candidates served in the next lower in-series title). As such, there is no error evident in the announcement of the open competitive examination and the subsequent regular appointments from the resulting eligible list.

Similarly, the Commission rejects the appellant's contention regarding the number of qualified State employees. In this regard, as indicated above, there were no eligible current employees in the appellant's unit scope in the underlying in-line title. Thus, the promotional examination scope was necessarily announced open to certain titles or to employees who met the open competitive requirements. The fact that the appointing authority thereafter identified many current employees as potentially eligible under those requirements does not establish that it was improper to have announced either the open competitive announcement or the promotional announcement. Indeed, such employees, including the appellant, and as stated previously, were **not** precluded from applying for the open competitive announcement if they believed they met the requirements.



With respect to the appellant's complaint that there was a gap of approximately one year between the date that the PS9871H promotional examination was announced, February 1, 2015, and the test date, January 7, 2016, it is not apparent that this gap represented any unreasonable delay. Relevant in this regard is *N.J.A.C. 4A:4-2.1(d)*, which provides that a promotional examination shall be re-announced if, within one year of the closing date, the examination has not been developed and scheduled. In this case, within one year of the February 21, 2015 closing date, the examination was developed, scheduled and administered and the resulting promotional list promulgated. As such, no substantive basis has been presented that there was any unreasonable delay in the administration of the promotional examination.

The appellant's remaining arguments in favor of a retroactive appointment date are also unpersuasive. The fact that the appellant served provisionally in the title of Health Systems Specialist 2 for nearly two years does not support a retroactive appointment date. In this regard, a provisional appointee can be removed at any time and does not have a vested property interest in the provisional title. In other words, a provisional employee has no automatic right or expectation of achieving permanent appointment to the position that she is occupying. See *O'Malley v. Department of Energy*, 109 *N.J.* 309 (1987) (Appointing authority was not equitably estopped from removing a provisional employee even when the provisional employee occupied the position longer than the statutory one-year limit). Since, in this case, the appellant's provisional service did not create an automatic right or expectation of achieving permanency at all, it hardly justifies a retroactive appointment date. Similarly, that the appellant ranked first on the promotional list does not support a retroactive appointment date as individuals whose names merely appear on a list do not have a vested right to appointment. See *In re Crowley*, 193 *N.J. Super.* 197 (App. Div. 1984), *Schroder v. Kiss*, 74 *N.J. Super.* 229 (App. Div. 1962). The only interest that results from placement on an eligible list is that the candidate will be considered for an applicable position so long as the eligible list remains in force. See *Nunan v. Department of Personnel*, 244 *N.J. Super.* 494 (App. Div. 1990). Since, in this case, the appellant's placement on the promotional list did not create any vested right to appointment at all, it also hardly justifies a retroactive appointment date.

Finally, the appellant's assertions that a retroactive appointment date would not cause any change in assignment of title or monetary/step changes, and thus, not require her to start at the beginning of any particular pay period and that she received successful performance assessment reviews during the period of her provisional service do not support a retroactive appointment date. Such considerations are not examples of errors or other good causes that delayed or hindered the attainment of permanent status contemplated by *N.J.A.C. 4A:4-1.10(c)* to warrant a retroactive appointment date. See *In the Matter of Neil Layden* (MSB, decided March 23, 2005).

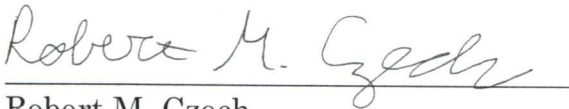
Accordingly, the appellant has not established her entitlement to a retroactive appointment date.

**ORDER**

Therefore, it is ordered that this request be denied.

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 19<sup>TH</sup> DAY OF APRIL, 2017



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