



STATE OF NEW JERSEY

In the Matter of John Clements and
James Herbek, Police Sergeant
(PM5126N), Lincoln Park

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

CSC Docket Nos. 2018-149 and
2018-682

Administrative Appeal

ISSUED: September 25, 2017(JH)

The Division of Agency Services (Agency Services), on behalf of Lincoln Park, requests that John Clements and James Herbek be assigned retroactive appointment dates to the Police Sergeant title. Mr. Clements and the Division of Agency Services also seeks Mr. Clements' eligibility for the promotional examination for Police Lieutenant (PM2033V), Lincoln Park.

By way of background, the eligible list for Police Sergeant (PM5126N), Lincoln Park, promulgated on August 7, 2014 with the names of ten eligibles and expired on August 6, 2017. Mr. Herbek ranked fourth and Mr. Clements ranked fifth on the subject eligible list, which was certified on July 1, 2015 and April 24, 2017. In disposing of the July 1, 2015 certification (Certification No. PL150736), which contained the names of the eligibles who appeared at ranks 1 through 10, Lincoln Park appointed the eligibles who appeared at ranks 1 through 3 effective July 2, 2015. In disposing of the April 24, 2017 certification (Certification No. PL170538), which contained the names of the eligibles who appeared at ranks 4 through 8, Lincoln Park appointed Messrs. Herbek and Clements effective April 25, 2017.

In its request, Agency Services indicates that in disposing of PL150736, Lincoln Park initially indicated inappropriate effective dates of appointment for the first three ranked eligibles. As a result, the certification was returned to Lincoln Park for correction and the corrected certification was returned to Agency Services on March 21, 2017. Agency Services explains that until this matter was resolved, no further certifications from PM5126N could be issued. In support of its request,

Agency Services attaches additional documentation including a letter dated May 8, 2017, from Michael S. Runfeldt, Chief of Police, Lincoln Park Police Department, in which he explains that Mr. Clements “was promoted to Sergeant by the Borough of Lincoln Park on September 19, 2016” and Mr. Herbek “was promoted to Sergeant by the Borough of Lincoln Park on January 3, 2017;” Lincoln Park Resolution R16-223 which approves Mr. Clements’ promotion to Sergeant effective September 19, 2016; Lincoln Park Police Department Organizational Chart dated September 19, 2016; Lincoln Park Resolution R17-1B which approves Mr. Herbek’s promotion to Sergeant effective January 1, 2017; and Lincoln Park Police Department Organizational Chart dated January 3, 2017.

CONCLUSION

A retroactive appointment date “for seniority purposes only” may be approved when it is evidenced that an appellant could have been appointed on the subject date, but through error on the part of either the appointing authority or the Civil Service Commission, received a later appointment date, or for other good cause. *See N.J.A.C. 4A:4-1.10(c)*. The “for seniority purposes only” appointment designation establishes that an appellant has no claim for or entitlement to back pay. However, such an award establishes that for seniority-based programs, such as salary step placement, layoffs, and vacation leave time entitlement, seniority is predicated upon the retroactive appointment date. *See In the Matter of Wayne A. Robbins* (Merit System Board, decided September 5, 1991).

As noted previously, Messrs. Herbek and Clements ranked fourth and fifth, respectively, on the list for Police Sergeant (PM5126N). Effective July 1, 2015, the first certification was issued from this list (Certification No. PL150736). Had the outstanding issues regarding PL150736 been resolved, the appointing authority could have requested subsequent certifications from the PM5126N list prior to April 2017 and Mr. Clements could have been permanently appointed on September 19, 2016 and Mr. Herbek on January 3, 2017.¹

Therefore, based on the foregoing, it is appropriate to grant retroactive dates of permanent appointment to Mr. Clements as Police Sergeant effective September 19, 2016 and Mr. Herbek effective January 3, 2017, for seniority and record keeping purposes.

With respect to the eligibility of Mr. Clements for the promotional examination for Police Lieutenant (PM2033V), Lincoln Park,² this examination was

¹ Mr. Herbek’s name could have been bypassed pursuant to the “rule of three.” *See N.J.S.A. 11A:4-8* and *N.J.A.C. 4A:4-4.8(a)3*.

² It is noted that the subject announcement indicates that the test is tentatively scheduled to be administered in October 2017.

open to employees in the competitive division who had an aggregate of one year of continuous permanent service in the title of Police Sergeant as of the closing date of September 30, 2017. As noted previously, Mr. Clements has been serving as a Police Sergeant in Lincoln Park and he could have been permanently appointed on September 19, 2016. Thus, as of the September 30, 2017 closing date, he had completed the requisite one year period.

ORDER

Therefore, it is ordered that Messrs. Clements and Herbek receive dates of permanent appointment to Police Sergeant of September 19, 2016 and January 3, 2017, respectively, and all of their seniority based benefits be adjusted accordingly. It is also ordered that Mr. Clements be admitted to the Police Lieutenant (PM2033V), Lincoln Park promotional examination.

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 20TH DAY OF SEPTEMBER, 2017



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