



**STATE OF NEW JERSEY**

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

In the Matter of Joseph Maloney,  
Section Chief, Materials (PS0281T),  
Department of Transportation

CSC Docket No. 2020-1740

Examination Appeals

**ISSUED: FEBRUARY 14, 2020 (SLK)**

Joseph Maloney appeals the determination of the Division of Agency Services (Agency Services) that he did not meet the education requirements for the promotional examination for Section Chief, Materials (PS0281T), Department of Transportation.

The examination at issue was announced with specific requirements that had to be met as of the July 22, 2019 closing date. The requirements were a Bachelor's degree in Engineering and five years of materials engineering experience in the physical and/or chemical testing and inspection of materials and products used in highway and building construction and maintenance, and/or construction engineering experience involving the acceptance of materials and applications of materials specifications; two years of which shall have been in a supervisory capacity. Additionally, an Engineer-In-Training (EIT) certification issued by the Division of Consumer Affairs could substitute for the education requirement. Also, possession of a valid Professional Engineer's license issued by the State Board of Professional Engineers and Land Surveyors could substitute for the Bachelor's degree in Engineering. Further, employees hired by the appointing authority on or before July 1, 1999 who did not possess the required Bachelor's degree could substitute a Bachelor's degree in Engineering Technology in a field related to civil engineering from an accredited college having a curriculum approved by the Accreditation Board for Engineering and Technology (ABET) **or** completion of 45 college credits in Engineering or an Engineering Technology program and three and one-half years of full-time experience in engineering related work. The 45 college

credits included a minimum of 24 credits in Engineering/Engineering Science and a minimum of 21 credits in general science and higher-level math courses. A total of 16 candidates applied for the subject examination and 13 were admitted. It is noted that there are currently two provisionals serving in the subject title, including the appellant, who are in unit scope T505, which is the unit scope that this examination was open. The test for this announcement has not yet been scheduled.

The appellant's college transcript indicated that he possessed a Bachelor's degree in Geology. Additionally, personnel records indicate that he provisionally served in the subject title from April 2019 to the July 22, 2019 closing date, provisionally served as a Section Chief from August 2017 to April 2019, was a Project Engineer, Materials from May 2005 to August 2017, a Principal Engineer, Materials from November 2002 to May 2005, a Senior Engineer, Materials from June 1999 to November 2002, an Assistant Engineer, Materials from December 1989 to June 1999, a Construction and Maintenance Technician 4 from September 1988 to December 1989, and an Engineering Aide 1, Materials from August 1987 to December 1989. Agency Services determined that he met the experience requirements, but lacked a degree in Engineering or 45 college credits in Engineering.

On appeal, the appellant presents that in 1989, he was promoted from Construction and Maintenance Technician 4 to Assistant Engineer, Materials after passing the test. Thereafter, he highlights that he has been appointed to the Materials variants from all levels of Engineering from Assistant Engineer, Materials to Project Engineer, Materials by meeting the open-competitive requirements. Subsequently, he indicates that he was provisionally appointed as Section Chief and then provisionally appointed in the subject title after the Section Chief, Materials variant was created.

## CONCLUSION

*N.J.A.C.* 4A:4-2.6(a) provides that applicants shall meet all requirements specified in the promotional announcement by the closing date. *N.J.A.C.* 4A:4-6.3(b) provides that the appellant has the burden of proof in examination appeals.

In the instant matter, a review of the record indicates that when the appellant was first appointed as an Assistant Engineer, Materials, the job specifications for that title allowed for a Bachelor's degree in several areas including Geology, which he possesses. Thereafter, in 1998, the education requirement for Assistant Engineer, Materials was changed to a Bachelor's degree in Engineering only. However, the appellant was able to be promoted through the Engineer, Materials title series (Assistant-Senior-Principal-Project) as he had one year of permanent service in the in-series title at the time of each promotional announcement and was not required to meet the education requirement for those promotional announcements. Further, even if he was not in the in-series title, the

appellant did not have to meet the education requirements for the Senior-Principal-Project Engineer, Materials promotions due to the substitution clause for education on the relevant announcements, which indicated that employees hired by the appointing authority prior to June 30, 1999 who had held permanent status in a professional engineering title were considered to satisfy the education requirement. However, when the titles and job specifications for the new Section Chief variant titles, Engineering, Materials, Planning and Utilities, were established in April 2019, the appointing authority and this agency agreed to a different substitution clause. Specifically, the appointing authority requested that appointees have a minimum of 24 college credits in Engineering/Engineering Science and 21 college credits in general science and higher-level math courses. Therefore, while these minimum engineering education requirements may not have been in place when the appellant was first provisionally appointed to Section Chief and then subsequently provisionally appointed as Section Chief, Materials, as the appellant does not have at minimum 24 college credits in Engineering/Engineering Science as now required for the subject examination, Agency Services correctly determined that the appellant did not meet the education requirement.

Concerning the appellant's argument that he has been able to advance through all levels of the Materials variants, the appointing authority is entitled to work with this agency to request examination requirements that best suit its evolving needs as long as those requests are in compliance with Civil Service rules and regulations. Moreover, 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 to which he or she is occupying. *See O'Malley v. Department of Energy*, 109 N.J. 309 (1987). Additionally, the appointing authority need not guarantee a career path for the appellant. Further, there is no reason to relax the rules for the subject examination as it is anticipated that this list shall be complete based on the fact that 13 candidates were admitted to the subject examination and there are only two anticipated vacancies for the subject title as there are only two provisionals serving in that title in the T505 unit scope.<sup>1</sup> Accordingly, there is no basis to disturb Agency Services' determination.

### **ORDER**

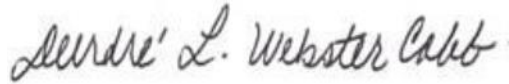
Therefore, it is ordered that this appeal be denied.

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

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<sup>1</sup> It is noted that there were three provisionals serving in the subject title at the time that the appointing authority requested the subject announcement. However, one of those provisionals retired. Regardless, even if there are three vacancies, it is still anticipated that the list shall be complete based on the number of admitted candidates.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 12<sup>th</sup> DAY OF FEBRUARY, 2020



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