



STATE OF NEW JERSEY

In the Matter of Vincent Conti, Essex
County

**FINAL ADMINISTRATIVE ACTION
OF THE CHAIR/
CHIEF EXECUTIVE OFFICER,
CIVIL SERVICE COMMISSION**

CSC Docket No. 2023-2126

Classification Appeal

ISSUED: October 3, 2023 (ABR)

The Essex County Superior Officers' Association (Association) appeals the March 16, 2023, classification decision of the Division of Agency Services (Agency Services), which found that Vincent Conti's position with the Essex County Department of Corrections was properly classified as Investigator Secured Facilities. The Association seeks a Senior Investigator Parole and Secured Facilities or Principal Investigator Parole and Secured Facilities classification.

The record in the present matter establishes that at the time of the Association's request for a classification review on behalf of Conti in March 2021, he was serving in his permanent title of Investigator Secured Facilities with the Essex County Department of Corrections. In support of the classification review request, Conti submitted a Position Classification Questionnaire (PCQ) detailing the different duties he performed. On December 20, 2021, following completion of a desk audit and a thorough review of all documentation, Agency Services issued a final classification determination which found that Conti's position should be reclassified from Investigator Secured Facilities to Senior Investigator Parole and Secured Facilities, effective June 15, 2021, unless he was assigned duties commensurate with the title of Investigator Secured Facilities. On August 23, 2022, the appointing authority advised that, rather than implement Conti's reclassification to the title of Senior Investigator Parole and Secured Facilities, it chose to assign Conti duties commensurate with the title of Investigator Secured Facilities. On March 1, 2023,

Agency Services determined, after a review of the second PCQ, that Conti's position was properly classified as Investigator Secured Facilities, effective August 23, 2022.

On appeal, the Association argues that the appointing authority's August 23, 2022, correspondence was an untimely request for reconsideration of Agency Services December 20, 2021, decision that should have been denied. The Association argues that "Conti should have been permanently appointed by default having served so long as a provisional and by being ranked #1 on the certification for the position." The Association complains that on or about August 12, 2022, representatives of this agency held a conference call with appointing authority representatives regarding personnel matters without including the Association or affected employees in the conversation, despite the existence of contested cases. It proffers that within an hour of this call, two County Correctional Deputy Police Wardens were demoted via email and that on the following Monday, others with docketed appeals, including Conti, were compelled to submit new PCQs under duress and without the benefit of representation or counsel. It also submits that in one case, a supervisor was ordered to complete a PCQ on an employee's behalf, even though the employee had not been to work in the preceding nine months and the supervisor had not been responsible for that employee prior to that employee's leave of absence. The Association complains that it was inappropriate for Agency Services to "retroactively demote[] Conti" based on the appointing authority's "one-sided assertions" regarding what had transpired in the preceding two years, particularly as Conti was ranked first on both the November 21, 2022, (PL221670) and June 5, 2023, (PL231034) certifications for Senior Investigator Parole and Secured Facilities. Accordingly, the Association requests "review, reconsideration and reversal of the action" and that a "full evidentiary hearing be held not only on this instant matter but on the entire title series" and the appointing authority's "repeated unlawful retaliatory conduct against those that assert their rights" under the Civil Service law and rules.

CONCLUSION

Initially, the Association requests a hearing in this matter. *N.J.A.C.* 4A:2-1.1(d) provides that except where a hearing is required by law, this chapter or *N.J.A.C.* 4A:8, or where a material and controlling dispute of fact exists that can only be resolved by a hearing, an appeal will be reviewed on a written record. No material issue of disputed fact has been presented which would require a hearing. *See Belleville v. Department of Civil Service*, 155 *N.J. Super.* 517 (App. Div. 1978).

N.J.A.C. 4A:3-3.9(e) states that in classification appeals, the appellant shall provide copies of all materials submitted, the determination received from the lower level, statements as to which portions of the determination are being disputed, and the basis for appeal. Information and/or argument which was not presented at the prior level of appeal shall not be considered.

N.J.A.C. 4A:3-3.5(a)1 provides that when duties and responsibilities of a position change to the extent that they are no longer similar to the duties and responsibilities set forth in the specification and the title is no longer appropriate, the Chairperson or designee, shall after review:

1. Reclassify the position to a more appropriate title if there is one;
2. Establish a new title to which the position shall be reclassified; or
3. Take other appropriate action based on the organizational structure of the appointing authority.

N.J.A.C. 4A:3-3.5(c) states that no reclassification of any position shall become effective until notice is given to affected permanent employees and approval is given by an appropriate Commission representative. *N.J.A.C.* 4A:3-3.5(c)1 indicates that within 30 days of receipt of the reclassification determination, unless extended by the Chairperson or designee in a particular case for good cause, the appointing authority shall either effect the required change in the classification of an employee's position; assign duties and responsibilities commensurate with the employee's current title; or reassign the employee to the duties and responsibilities to which the employee has permanent rights. Any change in the classification of a permanent employee's position, whether promotional, demotional, or lateral, shall be effected in accordance with all applicable rules. *N.J.A.C.* 4A:3-3.5(c)2 provides that should an employee in the career or unclassified service in State or local service, or an appointing authority in local service, disagree with a reclassification determination, an appeal may be filed in accordance with *N.J.A.C.* 4A:3-3.9.

In the instant matter, the record fails to establish that the Association has met its burden of proof. Critically, the Association does not appear to have presented any substantive argument that the duties assigned to Conti in the subject PCQ were more consistent with the Senior Investigator Parole and Secured Facilities or Principal Investigator Parole and Secured Facilities titles. Rather, in essence, the Association argues that the appointing authority's August 23, 2022, request was an untimely request for reconsideration and the Association also contests the manner in which the appointing authority had Conti and others complete new PCQs. Regarding the former, Agency Services' consideration of Conti's duties following the appointing authority's August 23, 2022, correspondence was not reconsideration of Agency Services' December 20, 2021, decision, as Agency Services' March 1, 2023 decision, reviewed Conti's duties, effective August 23, 2022, and Conti's County and Municipal Personnel System (CAMPS) record continues to reflect his provisional service in the title of Senior Investigator, Parole and Secured Facilities between June 15, 2021 and that date. Further, *N.J.A.C.* 4A:3-3.9 does not preclude employees or appointing authorities from seeking a new classification review if the duties of a position change. Again, the Association does not appear to contest that Conti's duties changed. Moreover, it cannot be said that Conti had a vested right to remain in a title which he held provisionally. In this regard, it is noted that the disposition of the PL221670

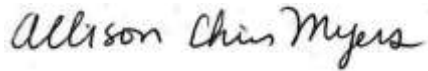
and PL231034 certifications were recorded on May 17, 2023, and June 23, 2023, respectively, and that because the certifications contained only two names, they were considered incomplete. Given this situation, the appointing authority did not effectuate any permanent appointments and it was not required to do so. *See N.J.A.C 4A:4-4.2*. Further, 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). *Shroder 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).

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.

DECISION RENDERED ON
THE 26TH DAY OF SEPTEMBER, 2023



Allison Chris Myers
Chair/Chief Executive Officer
Civil Service Commission

Inquiries
and
Correspondence

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

c: Vincent Conti
James Troisi
Catherine M. Elston, Esq.
Jacqueline Jones
Division of Agency Services
Records Center