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STATE OF NEW JERSEY

DECISION OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Fire Prevention  
Specialist (M0556R), Moonachie

CSC Docket Nos. 2015-1092 and  
2015-1071

Enforcement Request  
and  
Administrative Appeal

ISSUED: JUN 18 2015

(SLD)

The Division of Agency Services (DAS) requests that Moonachie be ordered to return the November 18, 2013 certification (OL131523) of the eligible list for Fire Prevention Specialist (M0556R) for proper disposition. Walter Paul, represented by J. Andrew Kinsey, Esq., requests a retroactive appointment to the title of Fire Prevention Specialist. Since these matters concern similar issues, they have been consolidated herein.

By way of background, Moonachie provisionally appointed Walter Paul, Harry R. Baker III, Bruce Greenwood and Franklin Smith, pending open competitive examination procedures, to the title of Fire Protection Inspector, effective January 1, 1997, February 1, 1997, February 27, 2002 and January 1, 2003.<sup>1</sup> However, Moonachie did not notify this agency until 2005 about these appointments. For reasons that are unclear, no examination was announced for the title of Fire Protection Inspector.

In 2011, this agency requested salary information regarding the above individuals. In response, Moonachie indicated that the positions were "volunteer" positions. Thereafter, this agency notified Moonachie that the title of Fire Protection Inspector could not be used for volunteer positions and thus, a classification review of those positions held by Paul, Baker, Greenwood and Smith was to be done. However, no classification determinations were completed since,

<sup>1</sup> Paul, Baker and Greenwood were listed as full-time employees and Smith was listed as a part-time employee.

despite repeated requests, the information necessary to perform the classification reviews was not submitted.

Thereafter, in 2012, Moonachie requested that the title be changed from Fire Protection Inspector to Fire Prevention Specialist. Again, after repeated requests for information concerning the reason for the change, the qualifications of the provisionals, and whether the provisionals were all still employed, on May 30, 2012 the provisionals' titles were changed from Fire Protection Inspector to Fire Prevention Specialist. As a result, an examination for the title of Fire Prevention Specialist was announced with a closing date of July 9, 2013. Thereafter, on August 6, 2013, Moonachie recorded the January 1, 2010 provisional appointments of Frank Boccio and Michael Sartori to the subject title.<sup>2</sup> It is noted that Paul, Smith, Boccio, Sartori and 11 other eligibles applied for and were admitted to the subject examination. The resulting eligible list of 15 names promulgated on November 14, 2013 and expires on November 13, 2016. Due to Moonachie's residency requirement, Boccio, Sartori and Smith were tied at rank one with four other eligibles, seven eligibles are tied at rank eight and Paul was listed at rank 15.

On November 18, 2013, a certification containing all 15 eligibles was issued to Moonachie. The appointing authority returned the certification, indicating that it was appointing Boccio and Smith part-time, effective January 1, 2014. The appointing authority indicated that for their salary they would receive "\$20/inspection" and "\$10/re-inspection." DAS returned the certification, indicating that Moonachie had to provide appropriate salary information. Additionally, Moonachie was notified that it needed to indicate the employment status of Paul, Baker, Greenwood and Sartori, and provide updated personnel action forms for Paul, Baker, Greenwood, Smith, Boccio and Sartori.<sup>3</sup> However, Moonachie failed to provide the requested information. Subsequently, DAS referred the matter to the Civil Service Commission (Commission) for enforcement.

Moonachie was notified that the matter had been referred to the Commission for enforcement and it was advised that any failure on its part to return the certification could subject it to the assessment of costs, charges and fines pursuant to *N.J.A.C. 4A:10-2.2(b)*. Despite additional opportunities to do so, Moonachie has not returned the certification as requested nor has it submitted any additional information.

### **Walter Paul**

In a November 25, 2013 letter, Paul appealed his placement on the subject certification to DAS. Specifically, he asserted that he had been provisionally

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<sup>2</sup> Boccio and Sartori were listed as part-time employees.

<sup>3</sup> Agency records indicate all of the provisional employees, including Paul, are still employed in the subject title.

employed by Moonachie for 18 years, and should have already received a permanent appointment, thereby obviating the need for the subject eligible list. Moreover, Paul asserts that if an eligible list had been timely issued, he would have still been a resident, and thus, would have been ranked at the top of the list. Paul maintains that he had been reappointed by Moonachie every year since 1996, and the delayed appointment process unfairly prejudiced him from attaining permanent status since he is ranked 15<sup>th</sup> on the subject eligible list solely based on his residency. Thus, he asserts that, as in *Kyer v. City of East Orange*, 315 N.J. Super. 524 (App. Div. 1998), he was a long-term provisional employee, who performed satisfactorily, and that due to the appointing authority's neglect failed to achieve permanent status. Accordingly, he argues that he is entitled to a retroactive appointment.

In a subsequent submission, Paul asserts that upon his hire in 1996, he was never told that he was "covered" by Civil Service regulations, and he did not know that there were any requirements to fulfill prior to attaining permanent status. Additionally, Paul maintains that it was not until a few years ago that he signed a document that informed him that he was covered by Civil Service regulations. The appellant maintains that this agency had been in contact with the appointing authority for several years, prior to the new Mayor who eventually called for an examination. However, Paul maintains that even though all the applicants, including him, received the same score, he was ranked last as he was no longer a resident, which was unfair since he had been a resident upon his initial hire until 2003. The appellant notes that he was employed by the appointing authority from 1996 to 2013, and was not retained simply because of his rank on the resulting eligible list. The appellant asserts that if the examination had been timely announced in 1996 or 1997, upon his initial hire, he would have attained permanent status while he was still a resident. The appellant contends that this agency acted far too late to correct the appointing authority's failure to follow Civil Service regulations, and thus, it caused him to lose the job he had been dependent upon for 17 years. In support, he submits tax returns and parts of budgets and/or resolutions from January 1996, January 1997, January 1998, January 1999, January 2001, January 2002, January 2004, January 2006, January 2007, January 2009, and January 2010 appointing Paul as a Fire Protection Inspector for a term of one year; and a January 2012 resolution appointing Paul as a Fire Prevention Specialist to a term of one year.<sup>4</sup> The appellant also submitted a letter from the

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<sup>4</sup> Moonachie used the title of Fire *Prevention* Inspector, but the Civil Service title is Fire *Protection* Inspector (emphasis added). The 1996 resolution appointed Paul Migliorino, Paul and William Jackson to the title of Fire Prevention Inspector. The 1997, 1998 and 1999 resolutions appointed Migliorino, Paul, Jackson, Fred Dressel IV and Harry Baker to the title of Fire Prevention Inspector. The 2001 and 2002 resolutions appointed Migliorino, Paul, Dressel, Baker, Jackson and Anthony Fugnitti to the title of Fire Prevention Inspector. The 2004 resolution appointed Paul, Dressel, Baker, Fugnitti, Frank Smith and Bruce Greenwood to the title of Fire Prevention Inspector. The 2006 resolution appointed Paul, Smith, Dressel, Baker, Fugnitti, and Greenwood to the title of Fire Prevention Inspector. The 2007 resolution appointed Paul, Smith, Baker, and Greenwood to the title of Fire Prevention Inspector. The 2009 resolution appointed Paul, Smith and Baker to the title of

former Mayor, Frederick J. Dressel, who was Mayor from 1984 until 2010 and who indicates that Paul began employment as a Fire Protection Inspector in 1996 and continued throughout Dressel's time as Mayor. He further indicates that he had no recollection of requesting that Paul's position be changed from provisional to permanent, and that Paul served diligently and reliably.

Despite an opportunity to do so, no response was received from the appointing authority.

## CONCLUSION

Initially, *N.J.S.A.* 11A:3-1 and *N.J.A.C.* 4A:3-3.1(a) provide that each position in the career and unclassified services shall be assigned by this agency to a job title. *N.J.A.C.* 4A:3-3.1(b) provides that titles in the career service shall be assigned on the basis of a job analysis, which describes the duties and responsibilities to be performed and the level of supervision exercised and received, and minimum education and experience requirements. Moreover, *N.J.A.C.* 4A:3-3.4 provides that no person shall be appointed or employed under a title not appropriate to the duties to be performed nor assigned to perform duties other than those properly pertaining to the assigned title which the employee holds. Furthermore, *N.J.A.C.* 4A:10-1.1(f) provides that appointing authorities shall timely supply all information, documents and other materials requested by this agency for the purpose of efficiently and accurately administering the Civil Service system. The Commission is specifically given the power to assess compliance costs and fines against an appointing authority, including all administrative costs and charges, as well as fines of not more than \$10,000, for noncompliance or violation of Civil Service law or rules or any order of the Commission. *N.J.S.A.* 11A:10-3; *N.J.A.C.* 4A:10-2.1(a)2. See *In the Matter of Fiscal Analyst (M1351H)*, Newark, Docket No. A-4347-87T3 (App. Div. February 2, 1989).

Due to Moonachie's long history of failure to comply with requested information and its failure to timely notify this agency of appointments and/or terminations, the Commission is unable to make a determination in these matters. In this regard, it is initially unclear from this record whether the title of Fire Prevention Specialist is even appropriate for the duties performed. Moreover, it is unclear who is still employed by Moonachie performing relevant duties and whether they are being paid within the salary range established for the title. Therefore, this matter is being referred to DAS to complete a classification review of all Fire Prevention Specialist and/or Fire Protection Inspector positions in Moonachie. Accordingly, Moonachie is to comply with this agency in its performance of a

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Fire Prevention Inspector (it is noted that only one page of the 2009 resolutions was submitted and it is unclear if others were also appointed to the title). The 2010 resolution appointed Paul, Smith, Baker, Michael Sartori and Frank Boccio to the title of Fire Prevention Inspector. The 2012 resolution appointed Paul, Smith, Baker, Sartori and Boccio to the title of Fire Prevention Specialist.

classification review of the positions listed above to determine whether the title is appropriate for the duties being performed, the names of the individuals performing those duties, whether those individuals are serving part-time or full-time and whether the salary paid is within the established salary range for the title. If, at any time, Moonachie does not adhere to the timeframes for the classification review, it shall be assessed fines of \$100 per day for each day of continued violation up to a maximum of \$10,000. Finally, it is ordered that Moonachie be assessed \$1,000, to be remitted within 30 days of the issuance of this decision, for the administrative costs of ensuring compliance with the classification procedures thus far.

With regard to Paul's request for a retroactive appointment, *N.J.A.C.* 4A:4-1.10(c) states that an individual may receive a retroactive date of appointment to correct an administrative error, for an administrative delay or for other good cause. In the present matter, Paul argues that he is entitled to a retroactive appointment due to the appointing authority's failure to timely request an examination. Specifically, he asserts that if the examination had been requested prior to 2003, he would have still been a resident, and would have been reachable for appointment. Moreover, he maintains that it was only a "few" years ago when he was informed that Civil Service regulations applied to his position. However, even assuming that Paul would have been deemed eligible for an earlier examination, and would have ranked higher on the eligible list, *N.J.S.A.* 11A:4-8, *N.J.S.A.* 11A:5-7, and *N.J.A.C.* 4A:4-4.8(a)3, the "Rule of Three," allows an appointing authority to select any of the top three interested eligibles on an eligible list, provided that no veteran heads the list. In the instant matter, Paul has not established that the appointing authority would have appointed him, even assuming he was reachable for appointment. Further, Paul does not possess a vested property interest in the position. 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). Finally, unlike in *Kyer*, *supra*, Paul's admission that he was "reappointed" every year by Moonachie, establishes that he knew, during the relevant times in question, that he was not a permanent employee, regardless of Moonachie's apparent neglect and/or confusion in this matter. Therefore, Paul has not presented any good cause to provide him with retroactive permanent appointment.

### ORDER AS TO THE CERTIFICATION

Therefore, it is ordered that Moonachie submit to an expedited classification review of the Fire Prevention Specialist and/or Fire Protection Inspector positions. If, at any time, the appointing authority does not adhere to the timeframes, it shall be assessed fines of \$100 per day for each day of continued violation up to a maximum of \$10,000.

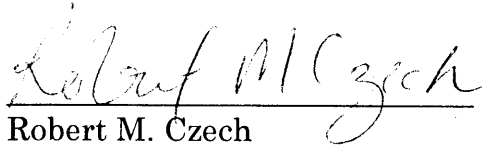
Moreover, the Commission orders that the current costs incurred by this agency in the compliance process be assessed against Moonachie in the amount of \$1,000, pursuant to *N.J.S.A.* 11A:10-3 and *N.J.A.C.* 4A:10-3.2(a)5, to be remitted within 30 days of the issuance of this order.

### ORDER AS TO PAUL

It is ordered that Paul's request for a retroactive appointment 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 17TH DAY OF JUNE, 2015



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