

B-46



STATE OF NEW JERSEY

In the Matter of Kitwana Woodard,
Department of Corrections

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2014-3101

Administrative Appeal

ISSUED: **JUN 18 2015** (WR)

Kitwana Woodard, a Senior Correction Officer, Department of Corrections, represented by Alonzo Howard, PBA Local 105, requests a retroactive date of appointment.

By way of background, the appellant's name appeared on the Correction Officer Recruit (S9999F), Department of Corrections (DOC) eligible list, which promulgated February 3, 2005 and expired on December 23, 2006. The appellant was removed from the S9999F eligible list on November 30, 2006 for having an unsatisfactory driving record. Specifically, the appointing authority alleged that the appellant had unpaid driving tickets and his driving abstract exceeded the amount of points it allows under its Removal Criteria.¹ The S9999F eligible list expired on December 23, 2006. The appellant's name subsequently appeared on the the Correction Officer Recruit (S9999H), DOC eligible list, which promulgated on December 24, 2006 and expired on December 23, 2008. He was appointed from the S9999H eligible list, effective May 2, 2008.

In the instant matter, the appellant contends that he should receive a retroactive date of appointment for seniority purposes only. Particularly, he argues that his driving abstract was incorrect and thus should not have been used to remove him from the S9999F eligible list. In support, he points to his appointment

¹ It is noted that the appellant appears to have appealed his removal from the S9999F eligible list to the former Division of State and Local Operations, which forwarded the matter to the former Division of Merit System Practices and Labor Relations (MSPLR). However, it appears that MSPLR never received the appellant's appeal and there is no record that the appellant pursued his appeal.

from the S9999H eligible list. The appellant further submits a letter from his attorney which indicates that at the time the appellant was considered for appointment from the S9999F eligible list, his driving record accurately reflected the number of points on his record. However, the attorney states that in December 2006 he petitioned the Franklin Municipal Court to change what charge the appellant pleaded guilty to, in order to lower the number of points he received. Finally, the appellant relies upon *In the Matter of Wayne Robbins* (MSB, decided September 5, 1991) and *In the Matter of David Price* (MSB, decided October 4, 2002) to support his appeal.

In response, the appointing authority maintains that, according to the information available at the time, the appellant's driving abstract exceeded the amount of points allowable under its Removal Criteria. Although it concedes that four points on the appellant's driving abstract were the result of an administrative error by the Motor Vehicle Commission or Franklin Municipal Court, it nevertheless argues that it must rely on official government records when disposing of an eligible list and it is the applicant's burden to prove and correct any administrative errors. The appointing authority argues that the appellant provided a corrected driving abstract on January 7, 2007, 16 days after the S9999F eligible list expired. Accordingly, the appointing authority contends that since it based the appellant's removal on the information it possessed at the time it disposed of the S9999F eligible list, his appointment date should remain May 2, 2008.

CONCLUSION

At the outset, the Commission notes its concern given the appellant's excessive delay of approximately six years in bringing this matter forward. *N.J.A.C. 4A:2-1.1(b)* provides that an appeal shall be filed within 20 days of notice of the action, decision, or situation being appealed. It is appropriate to consider whether the delay in asserting his right to appeal was reasonable and excusable. *Appeal of Syby*, 66 *N.J. Super.* 460, 464 (App. Div. 1961) (construing "good cause" in appellate court rules governing the time for appeal); *Atlantic City v. Civil Service Com'n*, 3 *N.J. Super.* 57, 60 (App. Div. 1949) (describing the circumstances under which delay in asserting rights may be excusable). Among the factors to be considered are the length of delay and the reasons for the delay. *Lavin v. Hackensack Bd. of Educ.*, 90 *N.J.* 145 (1982). See, also *Allen*, *supra* (allowing relaxation of the Board's appeal rules where police officer repeatedly, but unsuccessfully, sought clarification of his employment status). Although the appellant appears to have appealed his removal from the S9999F eligible list, he provides no explanation why he failed to pursue his appeal. Moreover, he does not explain why he did not request a retroactive appointment date upon his appointment to the Correction Officer Recruit title on May 2, 2008. Thus, the record does not evidence any basis in this particular case to extend or to relax the time for appeal.

Nevertheless, *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. Additionally, *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 allow an appointing authority to select any of the top three interested eligibles on a promotional list, provided that no veteran heads the list. Further, *N.J.A.C.* 4A:2-1.4(c) generally provides that the appellant has the burden of proof to show by a preponderance of the evidence that the appointing authority's decision to appoint another eligible on the eligible list before him was improper.

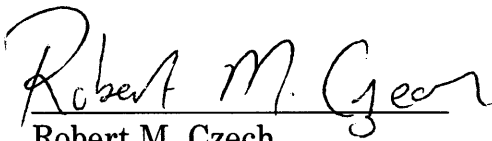
In the present matter, the appellant requests a retroactive appointment date. Specifically, he argues that since his driving record did not bar his appointment in 2008, it would not have barred his appointment in 2006. However, the appellant provides no evidence that he would have been appointed before May 2, 2008. In this regard, the record reveals that in 2006 the appellant's driving record accurately reflected the number of points on his record. Subsequently, his attorney petitioned the Franklin Municipal Court to change what charge the appellant pleaded guilty to, in order to lower the number of points he received. Moreover, unlike *In the Matter of Wayne Robbins, supra*, and *In the Matter of David Price, supra*, the appointing authority has not indicated that it would have appointed the appellant had he been eligible for appointment in 2006 nor does it support his instant request. Additionally, the appellant did not possess a vested property interest in the position at issue. 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). Accordingly, the appellant has not presented good cause to grant a retroactive date of appointment, and his request is denied.

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 17th DAY OF JUNE, 2015



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