



STATE OF NEW JERSEY

In the Matter of Benjamin Ouckama,  
Fire Fighter (M1557T), North  
Hudson Fire and Rescue,

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

CSC Docket No. 2017-2455

Administrative Appeal

ISSUED: OCT 06 2017 (VJ)

Benjamin Ouckama, represented by Robert K. Chewning, Esq. appeals the denial of veterans' preference for the examination for Fire Fighter (M1557T), North Hudson Fire and Rescue.

By way of background the open-competitive examination for Fire Fighter (M1557T) was announced with a closing date of August 31, 2015. The appellant applied for and was admitted to the subject examination. The written portion of the examination was scheduled for October 15, 2015. The resulting eligible list of 12,270 names promulgated on March 11, 2016<sup>1</sup> and expires on March 10, 2018.

Upon the appellant's return from active duty, the appellant was provided a makeup examination on November 15, 2016, which he passed. As a result, the appellant's name was added to the subject list on January 13, 2017, as the 1494 ranked non-veteran eligible.

Also, upon the appellant's return from Active Duty, the appellant applied for veteran's status from the Department of Military and Veterans Affairs (DMAVA). On August 15, 2016, the appellant was granted veterans' status. However, since the eligible list for the Fire Fighter (M1557T) promulgated on March 11, 2016, the appellant's veterans' status did not apply for the subject examination.

<sup>1</sup> The subject eligible list actually issued on March 3, 2016 prior to the promulgation date. The record indicates that the appellant was ranked as a non-veteran on the subject list.

At the outset, it is noted that effective March 1, 2001, Chapter 127 of Public Law 2000 was enacted which provided that DMAVA shall determine the status of veterans in certain cases, including civil service veterans' preference. In this regard, the Civil Service Commission (Commission) no longer reviews requests to establish veterans' preference for Civil Service testing. Rather, once it makes a determination, DMAVA causes the appropriate coding for approved veterans or disabled veterans preference to be entered in the Commission's database. The date this occurs establishes the date of the Adjutant General's initial determination for veterans or disabled veterans' preference. See *N.J.A.C. 5A:9*. In this case, DMAVA determined that the appellant was entitled to veterans' preference for Civil Service testing effective August 15, 2016. Therefore, the only issue to be reviewed in this proceeding is whether the appellant submitted the required documents for establishment of his entitlement to veterans' preference for the subject examination eight days prior to the list issuance for the subject examination, as required by statute.

On appeal, the appellant argues that his veterans' preference should have been applied to the subject examination as he had taken the written portion of the Fire Fighter examination in November 2016, prior to his name being added to the eligible list on January 13, 2017. The Commission issued a notification of eligibility, indicating that the appellant's name was added to the subject eligible list as a non-veteran. The appellant argues that he should be listed as a veteran on the subject eligible list as his status as a veteran is undisputed. He argues that he had previously been told by a representative of the agency, that he would be listed on the subject eligible as a veteran, as long as he was given veteran's status prior to taking the make-up examination, which he did. Furthermore, the appellant argues that *N.J.S.A. 11A:5-1* is to be liberally construed in favor of veterans. See *Chester v. Department of Civil Service*, 90 *N.J. Super.* 176, 179 (App. Div. 1966). The appellant requests that he receive credit for his veteran's preference on the current list and be given immediate consideration for appointment because of his age. He also requests back pay, costs and counsel fees and any other just equitable relief due to the delay caused by the failure to properly credit his veteran's status.

### CONCLUSION

The ultimate issue in this matter is whether the appellant's veterans' preference was properly applied. *N.J.S.A. 11A:5-1(b)* provides in part that:

"Veteran" means . . . any soldier, sailor, marine, airman, nurse or army field clerk, who has served in the active military or naval service of the United States and has been discharged or released under other than dishonorable conditions from that service in any of the following wars or conflicts and who has presented to the Adjutant General of the Department of Military and Veterans' Affairs sufficient evidence of the

record of service *and received a determination of status no later than eight days prior to the issuance of an employment list, for which that individual received a passing score on an examination* (emphasis added):

*See also, N.J.A.C. 4A:5-1.1(b)12. Additionally, N.J.S.A. 11A:5-1.1 provides that:*

The Adjutant General of the Department of Military and Veterans' Affairs shall be responsible for determining whether any person seeking to be considered a "veteran" or a "disabled veteran" under *N.J.S.A. 11A:5-1*, for the purpose of receiving civil service preference, meets the criteria set forth therein and adjudicating an appeal from any person disputing this determination. The determination of the Adjutant General shall apply only prospectively from the date of initial determination or date of determination from an appeal, as appropriate, and shall be binding upon the [Civil Service Commission].

*See also, N.J.A.C. 4A:5-1.3. Moreover, N.J.A.C. 4A:4-2.9(d) provides that:*

Employees returning from military leave shall have an opportunity to take promotional examinations that have not yet been administered, or make-up examinations for active promotional lists for which they were eligible while on military leave. If the eligible passes the examination, his or her name will be placed on the eligible list, for prospective appointment only, based upon the score obtained, as if the examination had been taken when originally held.

*N.J.S.A. 11A:5-1(b) and N.J.A.C. 4A:4-2.9(d), N.J.S.A. 11A:5-1.1 and N.J.A.C. 4A:4-2.9(d) clearly provide that the determination of veterans' status is to be applied prospectively. The amendment to N.J.S.A. 11A:5-1(b) provided an applicant additional time to qualify for veterans' status. Specifically, the cutoff date for the determination was moved from the closing date of the examination to eight days prior to the issuance of the subject eligible list. See In the Matter of Daniel Donnerstag (CSC, decided August 17, 2012) (Permitting eligibles to establish the preference eight days prior to the issuance of eligible lists expanded the window of opportunity for veterans to enjoy the benefits of that preference for examinations, but also ensured that appointing authorities would be able to rely on the issued lists, without the lists being continuously updated with changed rankings of eligibles who established veterans' preference after the list was issued). Moreover, the Commission has previously determined that the "issuance" of the eligible list referenced by N.J.S.A. 11A:5-1(b) refers to the issuance date of the eligible list, and not to when a specific eligible is added to the eligible list after taking a make-up examination. See In the Matter of Russell Surdi (CSC, decided March 7, 2012)*

(Appellant who did not establish veterans' preference within eight days of list issuance, who took a make-up examination for the title after he had established veterans' preference, not entitled to veterans' preference on the subject list). See also, *In the Matter of John Fasanella*, Docket No. A-4455-07T1 (App. Div. December 5, 2009). A thorough review of all material presented clearly demonstrates that the appellant failed to meet the requirements for veterans' status for the subject examination. In order for his veteran status to be applied for the subject examination, the appellant must have established his veterans' preference eight days prior to March 3, 2016, the issue date of the eligible list. Moreover, pursuant to *N.J.S.A. 11A:5-1.1* and *N.J.A.C. 4A:5-1.3*, veterans' preference is only to be applied prospectively. For the appellant, that meant that veterans preference would only be applied to eligible lists issued no later than eight days after the Adjutant General's determination status.

A thorough review of all material presented clearly demonstrates that the appellant failed to meet the requirements for veterans' status for the subject examination. In order for his veterans' status to be applied for the subject examination, the appellant must have established his veterans' preference eight days to the March 3, 2016, the issue date of the eligible list. Moreover, pursuant to *N.J.S.A. 11A:5-1.1* and *N.J.A.C. 4A:5-1.3*, veterans' preference is only to be applied prospectively. Fr the appellant, that meant that veterans' preference would only be applied to eligible lists issued no later than eight days *after* the Adjutant General's determination of status.

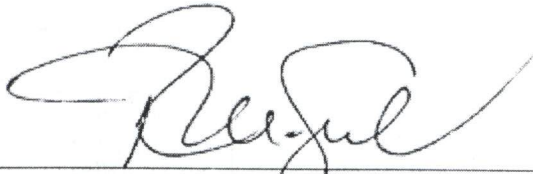
The appellant took the written portion of the Fire Fighter examination in September 2016 and received a Notification of Eligibility for the subject examination with a status of non-veteran dated January 13, 2017 and was added to the eligible list effective March 11, 2016. As previously noted, *N.J.S.A. 11A:5-1* provides that veterans may establish veteran status eight days prior to list issuance. Therefore, since the appellant had not established veterans' status eight days prior to list issuance, he was correctly listed as a non-veteran on the subject eligible list.

### **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 BY THE  
CIVIL SERVICE COMMISSION ON  
THE 4<sup>th</sup> DAY OF OCTOBER 2017



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