

B-48



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of William Peppard,
County Police Sergeant (PC5095N),
Bergen County

Examination Appeal

1865
CSC Docket No. 2017-~~7865~~

ISSUED: MAY 03 2017

(RE)

William Peppard, represented by the Bergen County PBA Local 49, requests a retroactive appointment based on his eligibility to take a make-up examination for County Police Sergeant (PC5095N), Bergen County.

The petitioner was scheduled to take the subject examination on June 1, 2013 and did not show. On May 30, 2013, he mailed a request for a make-up examination, stating only that he was on military duty, and he did not supply requested documentation in support of his appeal. Upon receipt of his National Guard Orders, the Civil Service Commission (Commission) granted Mr. Peppard a make-up examination, indicating that if he passed, his name should be added to the list for prospective certification only. Further, it was ordered that should Mr. Peppard receive a permanent appointment to the subject title and successfully complete a working test period, he or the appointing authority could petition the Commission for a retroactive appointment date for seniority purposes. *See In the Matter of William Peppard, County Police Sergeant (PC5095N), Bergen County* (CSC, decided February 26, 2014). It is noted that the appellant has veteran's status for examination purposes.

The petitioner took the make-up examination with the next test administration for the title, in January 2016, and he was added to the eligible list with a rank of 2A. The eligible list for County Police Sergeant (PC5095N), Bergen County was promulgated on August 7, 2014, and expires on August 6, 2017. It was certified once (PL141067) on August 22, 2014, and 5 appointments were made, effective October 1, 2014.

On December 8, 2016, the petitioner filed a request for a retroactive appointment from the August 22, 2014 certification (PL141067), noting that he has veteran's status, due to the delay in the administration of the make-up examination. He notes that vacancies exist to which he can be promoted, and his appointment will not displace any previous appointee.

CONCLUSION

The record establishes that the petitioner was scheduled to take the subject examination on June 1, 2013 and did not take it. He did not submit his orders with his original request, but did so on appeal, and was granted a make-up examination. Nevertheless, the order stated that if the petitioner passed, his name should be added to the list for prospective certification only. In that regard, *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. Specifically, the Commission has granted retroactive permanent appointment dates in circumstances where an employee was actually serving in and performing the duties of a title, but, due to some error or other good cause, the employee's attainment of permanent status was delayed or hindered. Also, the Commission has ordered a retroactive date for permanent employees when their appointment would have otherwise been mandated or when their name was improperly removed from or bypassed on an eligible list. When the Commission subsequently corrects the improper list removal or bypass on appeal, the Commission also orders the employee's appointment and a retroactive date of permanent appointment commensurate with the date of which other candidates were appointed from the certification of the eligible list. See *In the Matter of Neil Layden* (MSB, decided March 23, 2005); *In the Matter of Ciri Castro, Jon Martin, and Luis Sanchez* (MSB, decided January 12, 2005). For example, when a veteran eligible is improperly removed from an open competitive list, he or she is entitled to the remedy of a retroactive permanent appointment date because *N.J.A.C. 4A:4-4.8(a)3i* requires the appointment of veterans in the order of ranking, absent any reason for disqualification.

The appellant relies on *In the Matter of Meter Reader (M1344L), Lavallette Borough* (CSC, decided February 22, 2012), wherein a provisional appointee was granted an appointment as the examination was announced three years after his provisional appointment, and his appointment did not result in the displacement of a previous appointee. However, the appellant is not similarly situated. He was not a provisional appointee performing the duties of his provisional title for three years prior to an examination announcement. Therefore, the Commission does not have a legal obligation to issue a corrected certification when the petitioner was granted a make-up examination due to his unavailability to sit for the initial test and he was not serving provisionally in the subject title.

The petitioner also states that veterans have preferential treatment on eligible lists and cannot be bypassed. In that regard, the appellant was not bypassed on the certification PL141067 as he was not on the list when it was certified. As such, his veteran's rights were not disregarded. Further, even if a vacancy exists, the appointing authority has the right to decide what positions to create, and how to manage its workforce. The Commission has no authority to dictate how an appointing authority organizes its functions. If the appointing authority has a vacancy that it is willing to fill, it requests a certification and must make an appointment from among the top three interested eligible candidates. See *N.J.S.A. 11A:4-5*. The New Jersey Administrative Code does not mandate that Departments or jurisdictions spend funds to make promotional appointments, and promotional opportunities are not entitlements, but are based on factors such as the needs of the appointing authority to fill a vacancy subject to fiscal and other considerations, which include merit and fitness. See *In the Matter of Gerard Tarino* (CSC, decided September 24, 2008). The certification process is strictly regulated by Title 11A of the New Jersey Statutes and Title 4A of the New Jersey Administrative Code. The petitioner does not possess a vested property interest in a vacant 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).

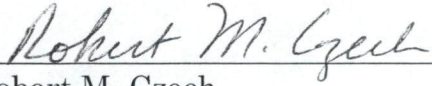
Next, the Commission's February 26, 2014 decision indicated that the petitioner was granted prospective relief only and this request is also untimely. *N.J.A.C. 4A:2-1.1(b)* states that, unless a different time period is stated, an appeal must be filed within 20 days after either the appellant has notice or should reasonably have known of the decision, situation or action being appealed. Additionally, *N.J.A.C. 4A:2-1.6(a)* states that within 45 days of receipt of a decision, a party to the appeal may petition the Commission for reconsideration. The petitioner's request was received over a year and nine months after the Commission's decision. This request is clearly untimely, and without merit.

ORDER

Therefore, it is ordered that the 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
THE 3rd DAY OF MAY, 2017



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