



In the Matter of David Bryson,
Supervising Auditor Taxation
(PS6642U), Treasury

CSC Docket No. 2018-3041

STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

Examination Appeal

ISSUED: July 24, 2018 (CSM)

David Bryson appeals the determination of the Division of Agency Services (Agency Services) which found that he lacked the required amount of permanent status in a title to which the examination was open for the promotional examination for Supervising Auditor Taxation (PS6642U), Treasury.

The examination at issue was announced with specific requirements that had to be met as of December 21, 2017. Specifically, the examination was only open to employees in the competitive division who had an aggregate of one year of continuous permanent service as of the announced closing date in title of Auditor 1, Taxation. A total of 25 employees applied for the subject examination that resulted in a list of 20 eligibles with an expiration date of June 6, 2020. It is noted that three certifications have been issued from the subject list all with disposition due dates of September 11, 2018. Since the appellant was permanently appointed as an Auditor 1, Taxation on January 12, 2017, he did not possess the required one year of continuous permanent service in the title to which the examination was open. Therefore, Agency Services found that he was not eligible for the subject examination.

On appeal, the appellant states that he took on the responsibility of Team Leader from January 2, 2016 to June 16, 2017, after the regular supervisors retired. Therefore, he submitted a request for a desk audit on March 31, 2016. Agency Services conducted a classification review of the appellant's positions and in its June 3, 2016 determination found that his position should be classified as Auditor 1, Taxation effective May 14, 2016. Subsequently, the appellant states that he received notification from the appointing authority that he had been permanently

appointed to the title of Auditor 1, Taxation effective January 12, 2017. The appellant states that it took almost one year from the time he submitted his desk audit request until the time he was permanently appointed to Auditor 1, Taxation. The appellant maintains that he should not be punished by not being able to take the test for Supervising Auditor Taxation (PS6642U) when he filed a timely request to have his position reclassified in March 2016. In this regard, he states that if his desk audit would have been “reviewed and approved two week earlier, I would then be eligible to take the” subject examination.

It is noted that in accordance with the time frames specified in *N.J.A.C. 4A:3-3.9(c)*, the appointing authority submitted the appellant’s classification review request on April 21, 2016. Therefore, in accordance with *N.J.A.C. 4A:3-3.9(e)*, Agency Services properly established the effective date of reclassification of the position and the appellant was provisionally appointed, pending promotional examination procedures as Auditor 1, Taxation, effective May 14, 2016. Additionally, the appellant’s name appeared on the promotional list for Auditor 1, Taxation (PS8544U) as the 16th ranked eligible that promulgated on May 22, 2014 and expired on May 21, 2016. On March 1, 2016, the appellant’s name was certified from this list (PS160305) and he was listed in the 4th position. In disposing of that certification, the appointing authority permanently appointed the eligible in the 6th position, bypassed the eligibles in the 1st and 5th positions, and the eligibles in the 2nd, 3rd, and 4th (the appellant) positions, indicated that they were not interest at this time, but to retain their names on the list for future certifications. As the PS8544U list expired on May 21, 2016, the appellant’s name could not be certified again from that list. Therefore, the appointing authority requested that the PS8544U list be revived since there was not a subsequent promotional list for this title or any pending promotional announcements. As such, the list was revived and again certified on September 30, 2016 (PS161353) and the appellant was permanently appointed effective January 12, 2017.

N.J.A.C. 4A:4-2.6(a)1 provides that applicants shall meet all requirements specified in the promotional examination announcement by the closing date and have one year of continuous permanent service for an aggregate of one year immediately preceding the closing date in a title or titles to which the examination is open.

CONCLUSION

In the present matter, a review of the documentation demonstrates that the appellant is not eligible for the examination since he did not have one year of continuous permanent service as an Auditor 1, Taxation prior to the December 21, 2017 closing date. In this regard, the appellant’s request for a classification review of his position was processed in accordance with the time frames specified in *N.J.A.C. 4A:3-3.9(c)* and the effective date of position reclassification was properly

set as May 14, 2016. The appellant has not demonstrated any error or that his classification appeal was not processed within the required timeframes. However, when a position is reclassified, the incumbent is only appointed provisionally, pending certification and/or examination procedures. As such, the appellant was provisionally appointed to Auditor 1, Taxation on May 14, 2016.

Regardless, the appellant's name was in fact certified for appointment from the Auditor 1, Taxation (PS8544U) promotional list during the period of his classification review and in disposing of that certification the appointing authority provided documentation signed by the appellant indicating that he was not interested in the position at that time. Even though the results of his classification review had not been finalized, the two eligibles listed before him on the certification indicated that they were only interested in future certifications. As such, even though his position had not yet been reclassified, he was reachable for appointment at that time and could have expressed interest to be considered for the position that was filled by a lower-ranked eligible. The fact that the appellant's position was not reclassified and made retroactive to May 14, 2016 until June 3, 2016 did not preclude him from expressing appointment consideration from the promotional list from which his name is certified.

Rather, after his retroactive provisional appointment, since the PS8544U list expired and could no longer be certified, the appointing authority requested that it be revived in order to appoint the appellant. Thereafter, the PS8544U list was revived and certified on September 30, 2016, but the appointing authority did not permanently appoint the appellant until January 12, 2017. In this regard, it has been well established that internal departmental processing delays, over which this agency has no control, generally do not provide sufficient basis for a retroactive permanent effective date of a position classification. *See In the Matter of Anthony Bruno, et al.* (Commissioner of Personnel, decided August 3, 2000). Further, there is no basis on which to relax the controlling regulatory provision to admit the appellant to the Supervising Auditor Taxation (PS6642U) examination, as the list is complete, containing the names of 20 eligibles.

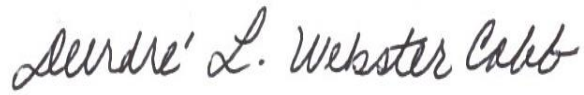
A thorough review of all material presented indicates that the determination of the Division of Agency Services, that the appellant did not meet the announced requirements for eligibility by the examination closing date, is supported by the record. Thus, the appellant has failed to support his burden of proof in this matter.

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
18TH DAY OF JULY, 2018



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