



STATE OF NEW JERSEY

In the Matter of Darin Hutchinson,
County Correction Sergeant
(PC2571T) and Michael Cumiskey,
County Correction Lieutenant
(PC2542T), Bergen County

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

CSC Docket Nos. 2018-734 and
2018-736

Administrative Appeal

ISSUED: July 19, 2018 (JH)

The Division of Agency Services (Agency Services), on behalf of Bergen County, requests that Darin Hutchinson and Michael Cumiskey be assigned retroactive appointment dates to the County Correction Sergeant and County Correction Lieutenant titles, respectively.

By way of background, the eligible list for County Correction Sergeant (PC2571T), Bergen County, promulgated on November 17, 2016 with the names of 73 eligibles and is set to expire on November 16, 2019. Hutchinson ranked fourth on the PC2571T eligible list, which was certified on November 25, 2016 and September 19, 2017. In disposing of the November 25, 2016 certification (Certification No. PL161421), which contained the names of the eligibles who appeared at ranks 1 through 6, Bergen County appointed the eligibles who appeared at ranks 1 through 3 effective January 3, 2017. In disposing of the September 19, 2017 certification (Certification No. PL171148), which contained the names of the eligibles who appeared at ranks 4 through 9, Bergen County appointed Hutchinson, effective September 19, 2017, and the fifth and sixth ranked eligibles, effective December 19, 2017. The eligible list for County Correction Lieutenant (PC2542T), Bergen County, promulgated on November 17, 2016 with the names of 21 eligibles and is set to expire on November 16, 2019. Cumiskey ranked third on the PC2542T eligible list, which was certified on December 7, 2016 and September 19, 2017. In disposing of the December 7, 2016 certification (Certification No. PL161470), which contained the names of the eligibles who appeared at ranks 1 through 6, Bergen County appointed the eligibles who appeared at ranks 1 and 2 effective January 3, 2017. In disposing of the September 19, 2017 certification

(Certification No. PL171149), which contained the names of the eligibles who appeared at ranks 3 through 5, Bergen County appointed Cumiskey, effective September 19, 2017, and the fifth ranked eligible, effective December 19, 2017.

In its request, Agency Services indicates that both Hutchinson and Cumiskey were reachable for appointment on Certification No. PL161421 and Certification No. PL161470, respectively, had the appointing authority taken action at that time. In support of its request, Agency Services attaches additional documentation including a memorandum dated September 1, 2017 from the Bergen County Sheriff's Office Payroll/Personnel Unit in which it indicates that "on January 19, 2017 the Bergen County Sheriff's Office promoted Correction Officer Darin Hutchinson to Correction Officer Sergeant (PC2571T) and Correction Officer Sergeant Michael Cumiskey to Correction Officer Lieutenant (PC2542T)" but inadvertently did not "certify the promotional lists for the two (2) above stated promotions which took place on January 19, 2017;" a memorandum dated January 17, 2017, from Kevin Pell, Sheriff's Officer Chief, Bergen County Sheriff's Office, in which he indicates that on January 19, 2017, Cumiskey will be promoted to the Lieutenant title and Hutchinson will be promoted to the Sergeant title; a Bergen County Hours Detail Inquiry sheet for Cumiskey dated September 1, 2017 for the period January 17 to January 31, 2017; a Bergen County Employee Status Information sheet for Cumiskey dated September 1, 2017 indicating his "Authorized position/auth" as County Correction Lieutenant; a Bergen County Hours Detail Inquiry sheet for Hutchinson dated September 1, 2017 for the period January 19 to February 3, 2017; and a Bergen County Employee Status Information sheet for Hutchinson dated September 1, 2017 indicating his "Authorized position/auth" as County Correction Sergeant.

CONCLUSION

A retroactive appointment date "for seniority purposes only" may be approved when it is evidenced that an appellant could have been appointed on the subject date, but through error on the part of either the appointing authority or the Civil Service Commission, received a later appointment date, or for other good cause. *See N.J.A.C. 4A:4-1.10(c)*. The "for seniority purposes only" appointment designation establishes that an appellant has no claim for or entitlement to back pay. However, such an award establishes that for seniority-based programs, such as salary step placement, layoffs, and vacation leave time entitlement, seniority is predicated upon the retroactive appointment date. *See In the Matter of Wayne A. Robbins* (Merit System Board, decided September 5, 1991).

In this matter, the record establishes that the appointing authority intended to promote Cumiskey to County Correction Lieutenant and Hutchinson to County Correction Sergeant, effective January 19, 2017, as evidenced by the memoranda from the Bergen County Sheriff's Office Personnel Unit and Chief Pell. However,

due to an administrative error, the appointing authority did not record their appointments. As noted previously, Hutchinson ranked fourth on the list for County Correction Sergeant (PC2571T). Effective November 25, 2016, the first certification was issued from this list (Certification No. PL161421) and only the first three ranked eligibles were appointed. Cumiskey ranked third on the list for County Correction Lieutenant (PC2542T). Effective December 7, 2016, the first certification was issued from the PC2542T list (Certification No. PL161470) and only the first and second ranked eligibles were appointed. It is noted that both PL161421 and PL161470 were returned for disposition on January 25, 2017. Thus, the appointing authority could have recorded permanent appointments for Hutchinson and Cumiskey effective January 19, 2017 on these certifications.

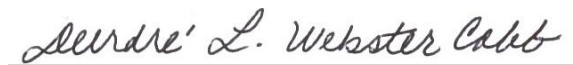
Therefore, based on the foregoing, it is appropriate to grant retroactive dates of permanent appointment to Hutchinson as County Correction Sergeant and Cumiskey as County Correction Lieutenant effective January 19, 2017, for seniority and record keeping purposes.

ORDER

Therefore, it is ordered that Hutchinson and Cumiskey receive dates of permanent appointment to County Correction Sergeant and County Correction Lieutenant, respectively, of January 19, 2017 and all of their seniority based benefits be adjusted accordingly.

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



Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Christopher S. Myers
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

c: Michael Saudino
Darin Hutchinson
Michael Cumiskey
Kelly Glynn
Records Center