

CONCLUSION

N.J.A.C. 4A:4-1.10(c) provides that the Civil Service Commission (Commission) may order a retroactive appointment date due to an administrative error, administrative delay or other good cause.

In the instant matter, there is no basic factual dispute but, rather, the central issue involves providing retroactive regular appointments to the title of Police Sergeant, effective August 9, 2018, from certification (PL190837). The individuals have been performing the duties of Police Sergeant since August 9, 2018 and are reachable under the “rule of three” on the certification for (PL190837) in accordance with *N.J.A.C.* 4A:4-4.8.

In this instance, the Commission fails to see that the lack of a request for a timely certification is an administrative error in this instance. Rather, Jersey City has displayed deliberate indifference to the Commission’s regulations. In *In the Matter of Thomas Cowan, et al. Promotional Police Titles, Jersey City* (CSC decided, March 27, 2018), the Commission granted the request of Jersey City to provide retroactive appointments to 74 individuals in the titles Deputy Police Chief, Police Captain, Police Lieutenant, and Police Sergeant. Jersey City referred to the lack of a request for a certification as an administrative error. In that decision, the Commission granted the request but cautioned the appointing authority to request a certification of eligibles for *every appointment*. In *In the Matter of Jersey City Police Promotional Appointments* (CSC decided, March 27, 2018), the Commission warned the appointing authority, stating, “All of the cases addressed by the Commission in this decision would not have been necessary had Jersey City complied with basic reporting requirements required of all Civil Service jurisdictions. ... Jersey City is reminded that in the future, its failure to accurately report its appointments with this agency may result in the Commission ordering that fines be assessed *for each violation*, up to a maximum of ten thousand dollars (\$10,000).” In *In the Matter of Environmental Specialist (M0275T), Jersey City* (CSC, decided April 4, 2018), the appointing authority was ordered to properly dispose of the certification and was fined \$1,000 for failed to dispose of a certification by the due date.

In this case, on August 9, 2018, there was a swearing-in ceremony for 15 Police Sergeants and 16 Police Captains. The Police Captains were properly appointed from a certification (PL181031) dated August 3, 2018. The Police Sergeants remained in their Police Officer title until their June 20, 2019 regular appointments to Police Sergeant. There is no explanation why Jersey City delayed its request for retroactive appointment for almost eleven months, from August 9, 2018 to the July 3, 2019 date of the request. Jersey City was clearly aware that a certification was warranted, as it requested one for the Police Captains who were sworn in on the same day. It had been warned and cautioned by the Commission in

March 2018 to request certifications prior to appointments, and yet, it did not do so. It waited for ten months, from August 2018 to June 2019 to request a certification, and another month later requested retroactive seniority.

Due to administrative delay, the subject employees should receive a regular appointment dates to Police Sergeant retroactive to August 9, 2018, and they shall be considered to have started their three-month working test period on this date. Nevertheless, Jersey City has exhibited a flagrant disregard for the established regulations to which all Civil Service jurisdictions are expected to adhere. As such, no more warnings are warranted. The Commission is specifically given the power to assess compliance costs and fines against an appointing authority, including all administrative costs and charges, as well as fines of not more than \$10,000, for noncompliance or violation of Civil Service law or rules or any order of the Commission. See *N.J.S.A. 11A:10-3* and *N.J.A.C. 4A:10-2.1(a)2*. Jersey City's deliberate indifference to compliance with merit system rules and regulations expected of all local governments warrants a severe penalty. Jersey City is ordered to pay a fine of \$10,000 for noncompliance with the Commission's order to accurately report employees as indicated in *Jersey City Police Promotional Appointments, supra*, within 30 days of the issuance date on this decision.

ORDER

Therefore, it is ordered that the request be granted, and Luz Rojas, Brian Cullinane, Daniel Joy, Sanny Fernandez, Joel Villabroza, Collin Congleton, Ahmed Azmy, Nicholas Gerardi, Michael Lang, Anthony Makofkato, Dwayne Dowell, James Mitchell, Christopher Harrison, Anthony Goodman and Michael Rivera be provided with a regular appointment as Police Sergeant, effective August 9, 2018, and their personnel records should be amended accordingly. Further, it is ordered that the appointing authority be fined in the amount of \$10,000, pursuant to *N.J.S.A. 11A:10-3* and *N.J.A.C. 4A:10-10-2.1(a)2*.

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 23rd DAY OF OCTOBER, 2019



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Joel Villabroza (CSC Docket No. 2020-323)
Collin Congleton (CSC Docket No. 2020-324)
Ahmed Azmy (CSC Docket No. 2020-325)
Nicholas Gerardi (CSC Docket No. 2020-326)
Michael Lang (CSC Docket No. 2020-327)
Anthony Makofka (CSC Docket No. 2020-328)
Dwayne Dowell (CSC Docket No. 2020-329)
James Mitchell (CSC Docket No. 2020-330)
Christopher Harrison (CSC Docket No. 2020-331)
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