



STATE OF NEW JERSEY

In the Matter of Peter Antonucci, *et al.*, Police Chief (PM1120V),
Long Branch

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

CSC Docket Nos. 2018-931, *et al.*

Examination Appeal

ISSUED: March 28, 2019 (JH)

Peter Antonucci, Michael McGlennon, Frank Rizzuto and Robert Wiener, represented by David J. DeFillippo, Esq., appeal the determination of the Division of Agency Services, which found that Jason Roebuck met the experience requirements for the promotional examination for Police Chief (PM1120V), Long Branch.

The subject examination was open to employees in the competitive division who had an aggregate of one year of continuous permanent service and were serving in the Deputy Police Chief or Police Captain title as of the October 31, 2017 closing date. It is noted that five candidates, the appellants and Roebuck, applied for the subject test which resulted in an eligible list containing four names (in rank order): Roebuck, Antonucci, McGlennon and Rizzuto.¹

On appeal, the appellants note that “prior to the summer of 2017, the Long Branch Police Department was headed by a civilian Public Safety Director, Jason Roebuck. The highest sworn law enforcement title was that of Police Captain. This changed last summer when [Long Branch] passed an ordinance establishing the titles of Chief of Police as well as Deputy Chief of Police.” The appellants present the following timeline:

April 13, 2012 [Roebuck] promoted . . . to Captain . . .

¹ A review of the record finds that Wiener did not appear to take the subject test.

March 12, 2013	[Roebuck] appointed as the City's Director of Public Safety and is granted [successive leaves of absence] from his [permanent] title of Captain . . .
July 25, 2017	[Roebuck] resigns as Director of Public Safety and resumes duties of Police Captain . . .
July 26, 2017	[Roebuck] appointed as provisional Police Chief . . .
January 16, 201[8]	[Roebuck] promoted as City's permanent Chief of Police . . .

The appellants argue that Roebuck did not possess the requisite year in grade as of the October 31, 2017 closing date. In this regard, they assert that Roebuck “served continuously as Police Captain for only 11 months between April 13, 2012 and March 12, 2013. Thereafter, he served continuously again, as Police Captain (albeit as Provisional Police Chief) for only 4 months between July 25, 2017 and October 31, 2017.” They refer to *N.J.A.C.* 4A:4-2.6 and argue that Roebuck “did not serve **continuously** in the rank of Police Captain for an aggregate of one year ‘**immediately preceding**’ the October 31, 2017 closing date. Rather, during the aforesaid one year period immediately preceding said closing date, Roebuck had served as the City’s civilian Director of Public Safety for approximately 9 months and only **3 months** as a Police Captain (and Provisional Police Chief)! Indeed, although not directly at issue in the instant appeal, it is plainly evident that Roebuck was ineligible to serve as Provisional Police Chief at the time of his July 26, 2017 appointment[.] Pursuant to *N.J.A.C.* 4A:4-1.5(a)(3) [*sic*],² Roebuck had to meet ‘the minimum qualifications for the title at the time of the appointment[.]’ . . . It is beyond dispute that as of his July 26, 2017 appointment as Provisional Chief of Police[,] Roebuck had served as a Police Captain for only 11 months – albeit 4 years prior to said appointment[.]” The appellants contend that the determination in *In the Matter of George L. Venturi, et al., Deputy Police Chief (PM3634V), Irvington (MSB, decided June 2, 1998)*³ “is not consistent with the plain meaning of *N.J.A.C.*

² *N.J.A.C.* 4A:4-1.5(a) provides:

A provisional appointment may be made only in the competitive division of the career service when all of the following conditions are met:

1. There is no complete list of eligibles, and no one remaining on an incomplete list will accept provisional appointment;
2. The appointing authority certifies that the appointee meets the minimum qualifications for the title at the time of the appointment; and
3. The appointing authority certifies that failure to make the provisional appointment will seriously impair its work.

As such, it appears that the appellants are referring to *N.J.A.C.* 4A:4-1.5(a)2.

³ In *In the Matter of George L. Venturi, et al., supra*, the appellants claimed that a candidate did not possess the requisite year in grade in the Police Captain title as the candidate had returned from a leave of absence of over two years approximately five months prior to the closing date. The Merit

4A:4-2.6(a)(1). Indeed, if [*In the Matter of George L. Venturi, supra*,] is allowed to control, same would render void or otherwise meaningless the aforesaid regulation's 'continuous' service requirement. Moreover, [while *In the Matter of George L. Venturi, supra*,] decision states that '[t]he longstanding interpretation of this rule is that permanent service before and after a leave of absence is combined . . .', no citation to any other decision is cited to document this alleged 'longstanding interpretation.'"

In reply, the appointing authority, represented by Jonathan F. Cohen, Esq., argues that "according to the Appellants, the Commission should disregard its decision in the nearly identical case of [*In the Matter of George L. Venturi, et al., supra*] . . . Tellingly, Appellants cite no contrary authority . . . but only offe[r] an alternative construction of the language of the regulation . . . which fails to provide a persuasive basis for the Commission to depart from its longstanding interpretation of this regulation."

CONCLUSION

At the outset, it is noted that the Legislature has entrusted the Civil Service Commission with broad power to supervise all aspects of the civil service selection process. *See, e.g., N.J.S.A. 11A:2-11; Bor. of Park Ridge v. Salimone*, 21 *N.J.* 28, 48 (1956). In addition, the Commission has been given great flexibility by the Legislature to ensure that our civil service laws are administered to achieve their primary purpose to promote efficient service in government through appointments based on merit and fitness. *N.J. Const.*, Art. VII, sec. 1, par. 2; *Avalon v. Dept. of Civil Service*, 32 *N.J. Super.* 39, 43 (App. Div. 1954). To this end, the Commission is charged with "establish[ing] the minimum qualifications for promotion and shall provide for the granting of credit for performance and seniority where appropriate." *See N.J.S.A. 11A:4-14.*

In this regard, *N.J.A.C. 4A:4-2.6(a)1* provides that applicants for promotional examinations shall 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. Aggregate service shall be calculated in the same manner as seniority as set forth in *N.J.A.C. 4A:4-2.15*.⁴ A review of the record finds that

System Board noted that the longstanding interpretation of *N.J.A.C. 4A:4-2.6(a)1* is that permanent service before and after a leave of absence is combined, or aggregated, to fulfill the one year time-in-grade requirement.

⁴ *N.J.A.C. 4A:4-2.15* provides, in pertinent part:

(d) In calculating seniority for promotional examinations:

1. Continuous permanent service accumulated prior to an intergovernmental transfer pursuant to *N.J.A.C. 4A:4-7.1A* (except as provided in (d)3 below), voluntary furloughs and the following types of leaves shall not be deducted from seniority:

Roebuck received a regular appointment to the Police Captain title effective April 13, 2012. Effective March 12, 2013, Roebuck took a leave of absence to accept an unclassified appointment to the Director of Public Safety title. Effective July 26, 2017 he returned from leave to accept a provisional appointment to the Police Chief title and received a regular appointment effective January 16, 2018. As such, the Division of Agency Services determined that Roebuck possessed the requisite year in grade and was found eligible for the subject examination.

Regarding the appellants' argument that Roebuck does not meet the requirements of *N.J.A.C. 4A:4-2.6(a)1*, *i.e.*, he "did not serve **continuously** in the rank of Police Captain for an aggregate of one year '**immediately preceding**' the October 31, 2017 closing date," it is noted that the appellants inexplicably and consistently ignore the term "aggregate" in their analysis. As noted above, *N.J.A.C. 4A:4-2.6(a)1* explicitly states that applicants for promotional examinations shall "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." This provision further indicates how aggregate service is to be calculated, *i.e.*, "**Aggregate** service shall be calculated in the same manner as seniority as set forth in *N.J.A.C. 4A:4-2.15*." Due to their selective reading of *N.J.A.C. 4A:4-2.6(a)1*, the appellants erroneously conclude that a leave of absence is a break in service for the purposes of promotional examination eligibility. However, examining the history of this provision demonstrates that the practice of aggregating service has been consistently and explicitly stated in the rule rather than an unsupported "longstanding practice" as claimed by the appellants. In this regard, the predecessor of *N.J.A.C. 4A:4-2.6*, *N.J.A.C. 4:1-8.6*,⁵ provided, in pertinent part, that "(b) An applicant for a promotional examination shall meet all of the following criteria by the closing date for filing an application: 1. Have permanent status in a title to which the examination is open for an aggregate of one year. Such

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- i. All leaves with pay including sick leave injury (SLI);
 - ii. Military, educational, gubernatorial appointment, personal sick, disability, family, furlough extension, and voluntary alternative to layoff leaves of absence without pay; and
 - iii. In local service, leave without pay to fill elective office . . .
- (e) Suspensions, other leaves of absence without pay not identified in (d) above, and any period an employee is laid off shall be deducted when calculating seniority.

⁵ Effective September 25, 1986, pursuant to Public Law 1986, Chapter 112, the former Department of Civil Service was replaced by the Department of Personnel. The rules contained in Title 4 of the New Jersey Administrative Code, Department of Civil Service, were repealed and pursuant to several rulemakings from 1987 to 1990 and new rules of the Department of Personnel were adopted and codified in Title 4A. (On June 30, 2008, Public Law 2008, Chapter 29 was signed into law and took effect, abolishing the Department of Personnel and transferring its functions, powers and duties primarily to the Civil Service Commission).

permanent service shall be without interruption except for an approved leave of absence (continuous service).” See 15 *N.J.R.* 1755(a). Effective December 1, 1986, *N.J.A.C.* 4:1-8.6(b)1 was amended to provide, “Have continuous permanent service in a title to which the examination is open for an aggregate of one year. Such service shall be without interruption except for an approved leave of absence.” Effective June 6, 1988, *N.J.A.C.* 4:1-8.6 was repealed and *N.J.A.C.* 4A:4-2.6 was adopted which provided, in pertinent part, “(a) Applicants for promotional examinations shall meet all of the following criteria by the announced closing date: 1. Have one year of continuous permanent service for an aggregate of one year in a title or titles to which the examination is open. Aggregate service does not include periods of suspension, leaves of absence without pay and periods of layoff or furlough.” See 20 *N.J.R.* 1183. Effective March 15, 1993, *N.J.A.C.* 4A:4-2.6(a)1 was amended to its current form, *i.e.*, “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. Aggregate service shall be calculated in the same manner as seniority as set forth in *N.J.A.C.* 4A:4-2.15.” See 25 *N.J.R.* 1085. Thus, this “longstanding practice” has been unequivocally stated in the applicable rule prior to and at the time of the determination in *In the Matter of George L. Venturi, et al.*, *supra*.⁶ Thus, although the appellants argue that *In the Matter of George L. Venturi, et al.*, *supra*, “is not consistent with the plain meaning of *N.J.A.C.* 4A:4-2.6(a)(1),” this determination clearly illustrates the application of what is explicitly stated in the rule. In other words, the determination in *In the Matter of George L. Venturi, et al.*, *supra*, exemplifies the plain meaning of *N.J.A.C.* 4A:4-2.6(a)1.

With respect to the appellants’ claim that Roebuck did not meet the minimum qualifications for a provisional appointment to the Police Chief title, it appears that the appellants have erroneously relied on *N.J.A.C.* 4A:4-2.6 (Eligibility for promotional examination) in their analysis. As indicated above, *N.J.A.C.* 4A:4-1.5(a)2 requires an appointee to meet “the minimum qualifications for the title at the time of the appointment.” In this regard, a review of the job specification for Police Chief indicates that the experience requirements are five years of supervisory

⁶ Furthermore, other provisions also indicate that a leave of absence is not considered a break in service. For example, *N.J.A.C.* 4A:6-1.2(c) provides, in pertinent part, that “continuous service, for purposes of this section, shall mean employment for the same jurisdiction . . . without actual interruption due to resignation, retirement or removal . . . 2. Periods of employment before and after a suspension or leave without pay shall be considered continuous service.” Moreover, it is noted that other provisions delineate when seniority may not be aggregated. For example, *N.J.A.C.* 4A:4-7.10(d) provides that seniority for such purposes as eligibility for promotion and the awarding of points in promotional examinations, and layoff rights, commences as of the date of regular reemployment. Therefore, the rules do not permit an individual who returns to his or her former employer from a regular reemployment list to aggregate his or her prior service for purposes of continuous permanent service for promotional examination eligibility or layoff determinations. See *e.g.*, *In the Matter of Steven Hadley* (CSC, decided April 6, 2011) and *In the Matter of Carmen L. Salas* (MSB, decided April 18, 2000).

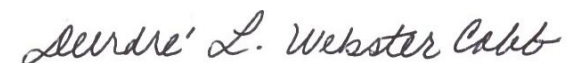
police experience providing assistance and protection to persons, safeguarding of property, observance of the law, and apprehension of lawbreakers. Thus, experience in a particular title is not required in order to receive a provisional appointment as Police Chief.

ORDER

Therefore, it is ordered that these appeals 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 27TH DAY OF MARCH, 2019



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