



STATE OF NEW JERSEY

In the Matter of Richard DeFazio,
 Correctional Police Major (PS8871I),
 Department of Corrections

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

CSC Docket No. 2019-3246

Examination Appeal

ISSUED: July 31, 2019 (JH)

Richard DeFazio appeals the determination of the Division of Agency Services, which found that he did not meet the experience requirements for the promotional examination for Correctional Police Major (PS8871I), Department of Corrections.¹

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 Correctional Police Lieutenant title as of the December 21, 2018 closing date.² The subject test was administered on May 2, 2019.

On appeal, the appellant presents that “on or about 4/5/17, I was informed that I was being promoted to a Correction Lieutenant on 4/29/17.” However, in a letter dated April 25, 2017 from the Department of Corrections, he was informed that his promotion was not approved “because I was under investigation for an incident that occurred at New Jersey State Prison on 12/1/16, even though I was not the primary target.” Subsequently, he filed a grievance “for not being promoted on 4/29/17 and for the investigation taking longer than it should for the incident.” He

¹ On May 1, 2018, Public Law 2017, Chapter 293 took effect, renaming Correction Major to Correctional Police Major. *See also N.J.S.A. 11A:2-11.1.*

² Correction Lieutenant was renamed to Correctional Police Lieutenant pursuant to Public Law 2017, Chapter 293, *supra*. *See also N.J.S.A. 11A:2-11.1.*

indicates that on August 18, 2018, he was promoted to Correctional Police Lieutenant³ but “the [g]rievance continued to go forward. On 11/8/18, a settlement agreement was reached and approved by the Governor’s Offic[e] of Employee Relations (Camille Warner, Esq.), the NJDOC Office of Employee Relations (Director Victoria Kuhn, Esq.), NJSLEA President (William Toolen) and [m]yself that gave me [s]eniority back at 4/29/17.” He presents that the settlement agreement “was then approved by the Civil Service Commission⁴ and all records of my seniority date were changed to show my official promotion to Correction Lieutenant as 4/29/17.” The appellant indicates that he filed an application for the subject test on December 2, 2018 and on April 21, 2019, he received a Notification of Ineligibility dated April 11, 2019 which indicated that he “lack[ed] required amount of permanent status in a title to which examination is open as of the closing date.” He contends that “as of 4/28/18, I would have been eligible to take the test. I have an additional seven and a half months over that amount as my seniority date is 4/29/17.” In support of his appeal, the appellant submits additional documentation including: a letter dated April 25, 2017 from Veronica Tingle, Custody Recruitment Unit, Office of Human Resources, Department of Corrections in which she indicates that “the promotion [to Correction Lieutenant] was not approved because you are the subject of an open investigation;” a copy of a settlement agreement signed on November 28, 2018 by the Department of Corrections, the New Jersey Law Enforcement Supervisors Association and the Office of Employee Relations, which provides, in part, that the appellant “will be promoted to the position of Correction Lieutenant at Northern State Prison retroactive to April 29, 2017 for seniority purposes only;” and an email, sent date not indicated, from the appointing authority to the appellant in which the appointing authority indicates that “your records were updated in December 2018 when the signed settlement was received. We must keep the date of appointment[, *i.e.*, August 18, 2018] (date you began functioning in the title) intact, we therefore process what is called a seniority override screen which makes the 4/29/17 seniority date part of the official record . . . In addition, when DOC provided the required information to CSC for the processing of the Majors promotional exam, we utilized the 4/29/17 date.”

In a letter dated May 7, 2019, Elizabeth L. Whitlock, Director, Office of Human Resources, Department of Corrections, indicates that “prior to Lt. DeFazio’s appointment to Correctional Police Lieutenant on August 18, 2018, Lt. DeFazio was

³ A review of the record finds that the appellant received a regular appointment to the Correctional Police Lieutenant title effective August 18, 2018.

⁴ The Civil Service Commission (Commission) acknowledges settlement agreements to allow for the resolution of matters properly before it. The Commission also reviews settlement agreements to ensure compliance with Civil Service law and rules. It is noted that the Commission was not a party to the subject settlement agreement. It is further noted, despite the appellant’s claims, that the subject settlement agreement was not presented to the Commission for acknowledgement. Rather, as noted above, a seniority override was processed to his PMIS record.

bypassed for promotion five (5) times due to an executive decision. Upon receipt of a grievance and change in NJDOC's administration, the Department implemented corrective action by processing the promotion to Correctional Police Lieutenant, voluntarily entering into a settlement agreement on November 28, 2018 and processing a seniority override in PMIS effective April 29, 2017." She requests that the one-year service requirement in the title of Correctional Police Lieutenant be reduced to the completion of the working test period pursuant to *N.J.A.C.* 4A:4-2.6(g).⁵

CONCLUSION

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.

With respect to the eligibility of DeFazio for the promotional examination for Correctional Police Major (PS8871I), Department of Corrections, it is noted that a candidate for the subject test must have actually served in and performed the duties of the Correctional Police Lieutenant title during the requisite one-year period in order to be eligible. *See In the Matter of Daniel O. Errickson* (MSB, decided January 11, 2006) (The appellant, who received a retroactive appointment date to the Correction Sergeant title on the basis of administrative delay, was not eligible to sit for a Correction Lieutenant examination as there was no evidence that he performed the duties of a Correction Sergeant during the requisite year-in-grade); *In the Matter of Albert Giordano* (MSB, decided January 26, 2005) (Employee must actually serve in and perform the duties of the title to which the examination is open during the requisite year-in-grade in order to establish eligibility); *In the Matters of David J. Barrett, et al.* (MSB, decided November 19, 2003) (Individuals who received retroactive appointment dates to the Fire Lieutenant and Fire Captain titles solely on equitable considerations but who did not meet the time-in-grade service requirements as of the closing date of the announcement were not entitled to sit for the examinations for Fire Captain and Deputy Fire Chief). Thus,

⁵ *N.J.A.C.* 4A:4-2.6(g) provides:

The time requirements specified in (a) and (b) above may be reduced to completion of the working test period if:

1. There is currently an incomplete promotional list and/or the number of employees eligible for examination will result in an incomplete list;
2. It appears that vacancies to be filled within the duration of the promotional list will exceed the maximum number of eligibles that could result from examination; or
3. Other valid reasons.

DeFazio cannot use the April 29, 2017 retroactive date for the purposes of examination eligibility.⁶ Therefore, even assuming that the settlement had been acknowledged by the Commission, DeFazio did not actually serve in the title until August 18, 2018. Moreover, the opportunity to apply for and take a promotional examination was neither explicitly stated nor inferred in the settlement agreement. As such, DeFazio has not demonstrated that eligibility for the PS8871I test was an intended consequence of the agreement.

Accordingly, based on the foregoing, the appellant has not provided a basis to disturb the determination of the Division of Agency Services.

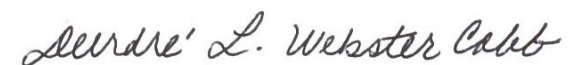
Regarding the request to reduce the year in grade requirement to completion of the working test period pursuant to *N.J.A.C. 4A:4-2.6(g)*, the subject announcement was issued, with the above noted year in grade requirement, on December 1, 2018 and closed on December 21, 2018. In *In the Matter of County Correction Captain (PC1189P) and County Lieutenant (PC1202P), Hudson County*, Docket No. A-2162-14T3 (App. Div. March 9, 2017), the court found that retroactively amending an announcement to the completion of the working test period was contrary to Commission regulations and was not a reasonable application of legislative policies. Given this, the Commission cannot consider the request made by the Department of Corrections.

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 31ST DAY OF JULY, 2019



Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

⁶ As indicated previously, the appellant received a regular appointment to and began performing the duties of the Correctional Police Lieutenant title on August 18, 2018. Therefore, as of the December 21, 2018 closing date, he only possessed four months of *actual* service in that title. As such, the Division of Agency Services determined that he did not possess the requisite year in grade.

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