



**STATE OF NEW JERSEY**

In the Matter of Nicholas Petronzi  
and Michael Kempe, Police Sergeant  
(PM5111N), Elmwood Park

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

CSC Docket Nos. 2020-726, 2020-727  
2020-724 and 2020-725

Administrative Appeal

**ISSUED:** September 26, 2019 (JH)

The Division of Agency Services (Agency Services), on behalf of Elmwood Park, requests that Nicholas Petronzi and Michael Kempe be assigned retroactive appointment dates to the Police Sergeant title. In addition, the Borough of Elmwood Park, represented by Kyle J. Trent, Esq., seeks the eligibility of Petronzi and Kempe for the promotional examination for Police Lieutenant (PM0928A), Elmwood Park.

By way of background, the eligible list for Police Sergeant (PM5111N), Elmwood Park, promulgated on August 7, 2014 with the names of 12 eligibles and expired on May 23, 2018.<sup>1</sup> Petronzi and Kempe appear at ranks 7 and 8, respectively, on the subject eligible list. Effective August 12, 2014, the first certification was issued from the PM5111N eligible list (Certification No. PL140982). In disposing of PL140982, which contained the names of the first six eligibles, Elmwood Park appointed the first and second ranked eligibles effective September 18, 2014. Effective March 10, 2015, the second and last certification was issued (Certification No. PL150246). In disposing of PL150246, which contained the names of the eligibles who appeared at ranks 3 through 6, Elmwood Park appointed the third, fourth and sixth ranked eligibles effective April 16, 2015 and the fifth ranked eligible effective May 1, 2015.

<sup>1</sup> It is noted that the initial expiration date of the PM5111N list, August 6, 2017, was extended one year. See *N.J.A.C. 4A:4-3.3(b)1*. The subsequent Elmwood Park Police Sergeant eligible list, PM0794V, was promulgated on May 24, 2018.

In its request, Agency Services indicates that due to the departure of the former Borough Clerk and technical difficulties with the Borough's computer system, the appointing authority is unable to locate records indicating whether or not the Borough requested a certification at that time. Agency Services also notes that Petronzi and Kempe have been performing Police Sergeant duties since October 6, 2016. In support of its request, Agency Services attaches additional documentation including Borough of Elmwood Park Resolutions R-334-16 and R-335-16 which indicate the appointments of Petronzi and Kempe, respectively, as Police Sergeants effective October 6, 2016.

## CONCLUSION

*N.J.A.C.* 4A:4-3.4 provides that an expired eligible list may be revived under the following circumstances: 1. To implement a court order, in a suit filed prior to the expiration of the list; 2. To implement an order of the Commissioner or Board in an appeal or proceeding instituted during the life of the list; 3. To correct an administrative error; 4. To effect the appointment of an eligible whose working test period was terminated by a layoff; or 5. For other good cause. *See N.J.S.A.* 11:4-6. 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 the instant matter, the record establishes that the appointing authority intended to promote Petronzi and Kempe to Police Sergeant effective October 6, 2016, as evidenced by Borough of Elmwood Park Resolutions R-334-16 and R-335-16. However, the appointing authority is unable to establish whether it requested a certification. Nevertheless, had the appointing authority requested a certification at that time, Petronzi and Kempe would have been listed in the first and second positions, respectively, and reachable for appointment. Under these circumstances, good cause has been presented to revive the Police Sergeant (PM5111N), Elmwood Park list to permit the issuance of a single certification from the list in order to effectuate the regular appointments of Petronzi and Kempe. Furthermore, the appointing authority verifies that Petronzi and Kempe have been serving as Police Sergeants since October 6, 2016. Therefore, based on the foregoing, it is appropriate to grant retroactive dates of permanent appointment to the appellants as Police Sergeant effective October 6, 2016, for seniority and record keeping purposes.


With respect to the eligibility of Petronzi and Kempe for the promotional examination for Police Lieutenant (PM0928A), Elmwood Park,<sup>2</sup> this examination was open to employees in the competitive division who had an aggregate of one year of continuous permanent service in the title of Police Sergeant as of the closing date of September 30, 2019. As noted previously, Petronzi and Kempe have been serving as a Police Sergeant in Elmwood Park and they could have been permanently appointed on October 6, 2016. Thus, as of the September 30, 2019 closing date, they had completed the requisite one year period.

### ORDER

Therefore, it is ordered that this request be granted and the Police Sergeant (PM5111N), Elmwood Park eligible list be revived in order to permit the issuance of a single certification from the list in order to effectuate the permanent appointments of Petronzi and Kempe to the Police Sergeant title. It is further ordered that following the disposition of that certification, Petronzi and Kempe be granted retroactive dates of appointment effective October 6, 2016, and all of their seniority based benefits be adjusted accordingly. It is also ordered that Petronzi and Kempe be admitted to the Police Lieutenant (PM0928A), Elmwood Park promotional examination.

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  
THE 25TH DAY OF SEPTEMBER, 2019



Deirdre L. Webster Cobb  
Chairperson  
Civil Service Commission

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<sup>2</sup> It is noted that the subject test is scheduled to be administered on October 10, 2019.

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and  
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