



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of County Correctional  
Police Officer (S9999R), Mercer  
County

Request for Enforcement

CSC Docket No. 2019-2329

ISSUED: JANUARY 30, 2020 (ABR)

The Division of Agency Services (Agency Services) requests that Mercer County be ordered to return the September 4, 2013 certification (OL161062) from the County Correctional Police Officer (S9999R),<sup>1</sup> Mercer County eligible list for proper disposition.

By way of background, the eligible list for County Correctional Police Officer (S9999R) promulgated on May 2, 2014 and expired on March 22, 2017. Archerlious Page, Joshua Flesch and Alvin Checo were ranked 11720, 12964 and 13023, respectively, on the subject eligible list. On September 9, 2016, a certification (OL161062) of 200 names was issued to Mercer County with a due date of March 9, 2017. Mercer County initially returned the certification to Agency Services for disposition on February 19, 2018, indicating, in part that 24 eligibles were appointed. It is noted that Page, Flesch and Checo were appointed effective February 23, 2017; February 23, 2017; and February 14, 2017, respectively. Mercer County also indicated that 13 eligibles ranked between 13066 and 16608 were appointed effective February 13, 2017. Mercer County further indicated that 176 eligibles were removed, bypassed, or not selected for appointment.

Agency Services sent Mercer County a Disposition Deficiency Notice on July 13, 2018. On August 7, 2018, the Division of Agency Services sent an email to Mercer County outlining the deficiencies in the certification it returned.

<sup>1</sup> At the time of the certification this title was known as County Correction Officer. Pursuant to P.L. 2019, c.219, the title of County Correction Officer was retitled as County Correctional Police Officer, effective December 1, 2019.

Specifically, it indicated that Mercer County failed to provide sufficient support for its proposed disposition for 24 eligibles on the subject eligible list. On November 1, 2018, Mercer County submitted an amended certification with additional documentation. Nevertheless, the information Mercer County provided with the amended certification failed to adequately support its proposed disposition for a significant number of eligibles. On December 5, 2018, Agency Services sent a second Disposition Deficiency Notice to Mercer County with a detailed explanation about each deficiency in the amended certification that needed to be addressed.

Subsequently, Mercer County was notified that the matter had been referred to the Civil Service Commission (Commission) for enforcement and it was advised that any failure on its part to properly dispose of and return the certification could subject it to the assessment of costs, charges and fines. Thereafter, on December 3, 2019, Mercer County submitted arguments and documentation to the Division of Appeals and Regulatory Affairs (DARA) in support of its proposed disposition of the certification. On December 26, 2019, DARA sent a letter advising Mercer County of deficiencies with its proposed disposition for 18 of the eligibles on the certification remained after its December 3, 2019 submission. Specifically, DARA outlined the information that would be necessary to support each deficient list removal request and it noted that Mercer County could not provide Page, Flesch and Checo with appointment dates which were later than lower-ranked eligibles unless each provided written consent to such an appointment date. DARA further informed Mercer County that if it did not return a properly disposed of certification by January 15, 2020, the matter would be forwarded to the Commission for a final determination. Mercer County did not submit any additional information in response to DARA's December 26, 2019 letter.

It is noted that on October 31, 2019, Mercer County submitted a layoff plan proposing the layoff of 72 County Correctional Police Officers from the Mercer County Correctional Facility for reasons of economy or efficiency, effective January 15, 2020. On November 26, 2019, Agency Services approved the layoff plan. Subsequently, the planned effective date of this layoff action was delayed to February 18, 2020.

## CONCLUSION

*N.J.A.C.* 4A:4-4.8(b) requires an appointing authority to notify Agency Services of the disposition of a certification by the disposition due date in the manner prescribed by this agency. *N.J.A.C.* 4A:4-4.8(c) provides that failure to dispose of a certification by the due date may result in constructive appointment or other remedial action as set forth in *N.J.A.C.* 4A:10-2. *N.J.A.C.* 4A:10-2.2(b) indicates that when an appointing authority fails to properly appoint from a complete certification, the Commission may take action under *N.J.A.C.* 4A:10-2.1. *N.J.A.C.* 4A:10-2.1(a) provides that when the Commission finds evidence of a

violation of or noncompliance with Title 11A, New Jersey Statutes, or Title 4A, *N.J.A.C.*, it may:

1. Issue an order of compliance;
2. Assess costs, charges, and fines not to exceed \$10,000;
3. Order the appointment of an eligible from an outstanding list;
4. In State service, consolidate personnel functions;
5. Initiate a civil action in the Superior Court;
6. Recommend criminal prosecution; or
7. Take other appropriate action pursuant to law or rule.

*N.J.A.C.* 4A:4-1.10(a) provides that all appointments, promotions, and related personnel actions in the career, unclassified or senior executive service are subject to the review and approval by this agency. It is settled that an appointment is not valid or final until it is approved by this agency. *See Thomas v. McGrath*, 145 *N.J. Super.* 288 (App. Div. 1976) (Morgan, J.A.D. dissenting), *rev'd based on dissent*, 75 *N.J.* 372 (1978); *Adams v. Goldner*, 79 *N.J.* 78 (1979); *In the Matter of Donald Gates* (MSB, decided June 6, 2007).

In the instant matter, Mercer County has clearly violated the requirements of *N.J.A.C.* 4A:4-4.8(b). Despite multiple opportunities, Mercer County still has not properly disposed of the subject certification despite the clear guidance that Agency Services and DARA provided regarding the steps necessary to properly dispose of the certification. Moreover, the Commission observes that more than three years have passed since the certification was issued in September 2016 and any remedial action that may be taken to resolve this matter is complicated due to the length of time that has elapsed and Mercer County's pending layoff action. In this regard, the Commission observes that any eligible who could not have been bypassed or removed with the disposition of the subject certification would have been considered for appointment by Mercer County. However, because of the layoff action, no vacancies presently exist for any eligible that Mercer County improperly attempted to remove or bypass, as any eligible appointed from the subject certification who remained employed in the subject title by Mercer County are currently expected to be laid off, effective February 18, 2020. The record indicates that some of these individuals have sought intergovernmental transfers in accordance with *N.J.A.C.* 4A:4-7.1A. However, these intergovernmental transfers cannot be approved until their regular appointments have been recorded by this agency. *See Gates, supra*. Therefore, the constraints of the specific layoff situation compel the Commission to order Agency Services to record the 24 appointments listed in the amended certification. However, because there is no evidence that Page, Flesch and Checo consented to receiving later appointment dates than the eligibles ranked below them between 13066 and 16608, their appointment dates are inconsistent with the "Rule of Three." *See N.J.A.C.* 4A:4-4.8(a)3. In order to remedy this deficiency, Agency Services shall record the effective date of their appointments as February

13, 2017 for seniority purposes only.<sup>2</sup> As to the remaining 176 eligibles who were removed, bypassed, or not selected for appointment on the amended certification, because Mercer County failed to provide sufficient proof to support many of its requested list removals, the Commission orders that these eligibles be recorded as retained on the subject eligible list.

Finally, the Commission observes that it 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. *N.J.S.A.* 11A:10-3; *N.J.A.C.* 4A:10-2.1(a)2. *See In the Matter of Fiscal Analyst (M1351H), Newark*, Docket No. A-4347-87T3 (App. Div. February 2, 1989). The Commission finds that such a prolonged and egregious failure to properly dispose of the certification warrants a \$5,000 fine. However, the Commission also recognizes that Mercer County has implemented a layoff action for reasons of economy and efficiency. Thus, under the particular circumstances of this matter, it would not be appropriate to assess Mercer County the full amount of this fine. However, it is appropriate to assess it a partial fine in the amount of \$2,500.

### ORDER

Therefore, the Division of Agency Services is ordered to record the disposition of the September 4, 2013 certification (OL161062) from the County Correctional Police Officer (S9999R), Mercer County eligible list, as set forth above. In doing so, the remedy provided herein is limited to the facts of this case and may not be used as precedent in any other matter.

Moreover, the Commission orders that a fine be assessed against Mercer County in the amount of \$2,500, pursuant to *N.J.S.A.* 11A:10-3 and *N.J.A.C.* 4A:10-2.1(a)2, to be remitted within 30 days of the issuance of this decision.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

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<sup>2</sup> The Commission notes that 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 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* (MSB, decided September 5, 1991).

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 29<sup>TH</sup> DAY OF JANUARY, 2020

*Deirdre' L. Webster Cobb*

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