STATE OF NEW JERSEY

In the Matter of Philip Kandl, Union County	**FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION**
CSC Docket No. 2019-2669	Administrative Appeal

ISSUED: FEBRUARY 28, 2020 (ABR)

Philip Kandl appeals the determination of the Division of Agency Services (Agency Services), which found that it did not have a basis to adjust his record to reflect continuous permanent service.

By way of background, the appellant was permanently appointed to the title of Accounting Assistant with Union County, effective June 11, 1998. The appellant resigned in good standing, effective October 2, 1998, in order to accept a temporary appointment as a Workforce Investment Board (WIB) Assistant,[1] effective October 3, 1998. The appellant was thereafter appointed to the career service title of Contract Administrator 1, effective January 1, 2015. Subsequently the appellant accepted an unclassified appointment as a County Division Head, effective November 22, 2016.[2] On October 23, 2018, the appellant requested that Agency Services amend his employment record to show continuous permanent service in a full-time Civil Service position for the period between October 2, 1998 and December 31, 2014, maintaining that his employment history made clear that he was not a "temporary" employee and that the appointing authority arbitrarily denied him a Civil Service title and Public Employees' Retirement System (PERS) enrollment, while providing the same to all other WIB employees. On March 8, 2019, Agency Services denied his request, stating that it could not make the requested amendment to his personnel record unless it received the request from the appointing authority.

[1] The Commission notes that the WIB Assistant title is not a Civil Service title.

[2] The appellant has been placed on continuous leaves of absence from his career service title, since November 22, 2016.

On appeal, to the Civil Service Commission (Commission), the appellant argues that his 15 years of full-time employment as a WIB Assistant between October 1998 and December 2014 should not have been classified as "temporary," since the appointing authority's actions related to his appointment and status were unlawful, arbitrary and capricious. The appellant describes his duties as a WIB Assistant in detail and he asserts that his resignation from his position as an Accounting Assistant, effective October 2, 1998 was "unilaterally imposed" and illegal. In support, the appellant submits various documentation from his personnel record, including a Request for Personnel Action/Interim Profile (DPF-66 A) which indicates that he was resigning from his position as an Accounting Assistant in good standing, effective October 2, 1998, to accept a non-Civil Service position in the Union County Department of Human Services; and Union County Universal Employee Transaction Form which indicates that the appellant was temporarily appointed as a WIB Assistant, effective October 3, 1998. The appellant also submits Internal Revenue Service Forms W-2 for 1998-2000, 2002-2007, 2013 and 2014; and pay stubs from 2010 and 2011 as evidence that he was employed by Union County throughout the period at issue. The petitioner also furnishes a Request for Personnel Action (Form CS-60) which he signed on September 29, 1998, which indicates that he was being temporarily appointed as a WIB Assistant, effective October 3, 1998. The appellant maintains that he did not sign any resignation form or letter when he changed positions in 1998. In this regard, he notes that although the Form DPF-66A references an attached resignation letter, the appointing authority has not been able to produce a copy of such a letter.

The appellant further argues that the appointing authority's rationale for classifying his appointment as a WIB Assistant as temporary was arbitrary and capricious. Specifically, the appellant states that when he accepted the WIB Assistant position in 1998, the appointing authority told him that his position would be full-time, but "categorized as temporary" and excluded from PERS because more than 51% of the funding for it came from the Workforce Investment Act of 1998 (WIA). In doing so, the appointing authority cited an internal policy, which provided that if more than 51% of the funding for a position came from the WIA, it was exempt from Civil Service law and rules, and from PERS (WIA Policy). The appellant asserts that the appointing authority's WIA Policy does not conform to *N.J.S.A.* 43:15A-7(h), as the intent of that statute is to exclude youth paid to participate in summer programs through WIA funds from the pension system.[3] He maintains that the statute was not intended to deny permanent full-time employees the right to participate in Civil Service. He avers that Union County is the only county in the State that "mistakenly administers its [WIA] program" in this manner. He also argues that he was entitled to Civil Service status as a full-time employee and that his position as a WIB Assistant was never contingent upon federal WIA funding. Rather, he submits that the funding was legally guaranteed

[3] *N.J.S.A.* 43:15A-7(h) states, in pertinent part, that "[a] temporary employee who is employed under the federal Workforce Insurance Act shall not be eligible for membership in the system."

and funded by an allocation from the New Jersey Department of Labor. Furthermore, the appellant maintains that the Union County Department of Human Services arbitrarily enforces its WIA Policy, as other Union County employees had permanent Civil Service status and were enrolled in PERS, despite being paid from the same WIA funds. The appellant names eight individuals that he claims were Union County "administrative" employees with Civil Service titles and PERS membership even though their positions were fully funded through WIA grants administered by the United States Department of Labor.[4] Moreover, he states that virtually all other employees in the Union County Department of Human Services were classified as permanent employees despite being funded from federal Housing and Urban Development Administration grants. The appellant also cites a November 21, 2016 email from the Union County Department of Finance as evidence that other WIA-funded employees were enrolled in PERS and that he could have been enrolled in it as well if Union County had properly recorded his movement to the WIB Assistant position as a permanent Civil Service appointment.

The appellant also submits a November 29, 2017 determination letter from the Department of the Treasury, Division of Pensions and Benefits (Division of Pensions and Benefits), which notes that his PERS membership ceased with his resignation from his position as an Accounting Assistant, effective October 2, 1998 and that he was enrolled in PERS again after he was appointed as a Contract Administrator, effective January 1, 2015. The Division of Pensions and Benefits found that the appellant was unable to purchase service credit for the period of employment between October 3, 1998 and April 30, 2005. Specifically, the Division of Pensions and Benefits indicated that *N.J.S.A.* 43:15A-7(h) rendered him ineligible to participate in PERS during the period in which he served as a temporary employee employed under the Federal Job Training Partnership Act/WIA.

The appointing authority, represented by Jennifer Roselle, Esq., argues that the Commission does not have jurisdiction over this matter because Title 11A of the New Jersey Statutes does not vest it with jurisdiction to render pension eligibility determination. Rather, it contends that such a determination must be made by the Division of Pensions and Benefits and/or the Pension Board of Trustees and that, per *N.J.S.A.* 43:15A-7.3, PERS membership appeals must be filed with the Office of Administrative Law.

The appointing authority further argues that even if the Commission does have jurisdiction over this matter, the appellant's request is untimely, as he failed

[4] Agency records were located for seven of these individuals. Agency records do not indicate that any of these seven employees served in the WIB Assistant title. Moreover, the supporting documentation the appellant submits does not establish that the WIA was the funding source for any of these positions.

to appeal his October 2, 1998 resignation in good standing to the Commission until March 2019. The appointing authority submits that on September 29, 1998 the appellant signed a Request for Personnel Action Form (CS-60) which showed that he was receiving a temporary appointment to the title of WIB Assistant, effective October 3, 1998. It also furnishes a Request for Personnel Action signed by the appellant on August 24, 2000 in connection with a change in salary and grade for his position, which shows his temporary appointment. As such, it maintains that the appellant was aware of his change in status at least 21 years ago. It further notes that the underlying determination by Agency Services in this matter was initiated by letter dated October 23, 2018, wherein the appellant acknowledged that he had learned of his situation approximately two years earlier. Accordingly, it asserts that even assuming *arguendo* the appellant was unaware of his status during his tenure as a WIB Assistant, the record establishes that he knew of it circa 2016 and did not timely seek relief from Agency Services.

Further, the appointing authority avers that the appellant's position as a WIB Assistant was not a career service position. Rather, it states that his position was a grant-funded position which was contingent upon the receipt of WIA funding and that the appellant voluntarily accepted it. Consequently, it was considered temporary, outside the scope of the career service and statutorily excluded from PERS in accordance with *N.J.S.A.* 43:15A-7(h). The appointing authority asserts that the appellant knew or should have known that he was excluded from PERS as a WIB Assistant because he had access to the County Handbook which stated the WIA Policy. It maintains that the appellant has not offered any proof that his WIB Assistant position was not contingent upon WIA grant funding. It further contends that the appellant has failed to supply any support for his interpretation of *N.J.S.A.* 43:15A-7(h).

In reply, the appellant argues that the instant request is not untimely. In this regard, he maintains that he never signed a resignation letter or form. He also argues that he had no reason to question the legality of the appointing authority's WIA Policy when he accepted the position in October 1998 and he was unaware that he was the only Union County WIB employee without a Civil Service title or PERS enrollment until approximately two years prior requesting that Agency Services amend his personnel record.

CONCLUSION

Initially, the Commission emphasizes that it does not have jurisdiction to review any challenge to the appellant's PERS eligibility, including the interpretation of *N.J.S.A.* 43:15A-7(h), and that its review is limited to his request to revise his employment record in accordance with the Civil Service law and rules. However, it is noted that when the Legislature considered *N.J.S.A.* 43:15A-7(h) in 1986, the Assembly Labor Committee, in a statement to the proposed legislation,

indicated that the workers affected by the bill were those serving as administrators, job placement officers and secretaries. The Assembly Labor Committee also noted that these were "non-classified" county employees who were paid with federal funds channeled through the State, and that the counties classified these employees as "temporary."

Although the appellant presents a substantive challenge to the appointing authority's actions in resigning him in good standing from his Civil Service position and appointing him to a temporary position which was not a Civil Service title, the controlling issue in this matter is the untimely filing of his appeal. *N.J.A.C.* 4A:2-1.1(b) provides that unless a different time period is stated, an appeal shall be filed within 20 days after either the appellant has notice or should reasonable have known of the decision, action, or situation being appealed. *N.J.A.C.* 4A:1-1.2(c) provides that the Commission may relax a rule for good cause shown in a particular situation. The record demonstrates that, per the Request for Personnel Action Form he signed on September 29, 1998, the appellant knew or should have known that he was relinquishing his permanent status as an Accounting Assistant and accepting a temporary appointment to the title of WIB Assistant, effective October 3, 1998. However, he did not challenge this action with this agency until October 2018, approximately 20 years after it occurred. Even assuming that the appellant failed to recognize a need to challenge his temporary appointment in 1998, the record indicates that he received a November 29, 2017 determination letter from the Division of Pensions and Benefits, which clearly stated he was ineligible to purchase PERS service credit for the period between October 3, 1998 and April 30, 2005 because he was classified as a temporary employee after he resigned from his position as an Accounting Assistant, effective October 2, 1998. However, he also fails to provide any explanation as to why he failed to seek relief from this agency, until October 2018, almost a year later. The purpose of time limitations is not to eliminate or curtail the rights of appellants, but to establish a threshold of finality. In the instant case, the delay in filing the appeal unreasonably exceeds that threshold of finality. Thus, it is clear that the appellant's appeal is untimely. Moreover, since the appellant has failed to provide any reasonable explanation for the delay, there is no basis to extend or relax the time for appeal.

Even though the appellant's appeal is untimely, the Commission will address the remainder of the appellant's arguments. *N.J.S.A.* 11A:4-13(c) provides, in pertinent part, that a temporary appointment may be made, without regard to the provisions of Chapter 4 of Title 11A, to temporary positions established for a period aggregating not more than six months in a 12-month period as approved by the Commission. These positions, include, but are not limited to seasonal positions. Positions established as a result of a short-term grant may be established for a maximum of 12 months. Appointees to temporary positions shall meet the minimum qualifications of a title. However, even if the appellant had timely appealed his temporary status while serving as a WIB Assistant, his appointment

would not have automatically become a permanent career service appointment. Temporary appointments that span more than the allowable period of time set forth in *N.J.S.A.* 11A:4-13(c) do not automatically become permanent appointments. Rather, the only requirement is for the temporary appointment to have been terminated. *See In the Matter of Michael Morris* (CSC, decided April 3, 2013), *aff'd on reconsideration* (CSC, decided September 4, 2013). Absent a showing of invidious motivation, there is no basis to award permanent status to a temporary employee who exceeds the regulatory maximum period of time. *See In the Matter of Justin Peggs* (CSC, decided September 3, 2014). Here, although the appellant argues that the appointing authority "unilaterally imposed" the October 1998 employment action, and that it erroneously classified him as a temporary employee on the basis of the funding source for his WIB Assistant position, he does not offer any evidence that the appointing authority did so for invidious reasons. Accordingly, the appellant has failed to satisfy his burden of proof in this matter.

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 26TH DAY OF FEBRUARY, 2020

Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Christopher S. Myers
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

c: Philip Kandl
Laura M. Scutari
Jennifer Roselle, Esq.
Kelly Glenn
Records Center