



STATE OF NEW JERSEY

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

In the Matter of Charles Richardson,
Building Superintendent(PM0013A),
Trenton

Examination Appeal

CSC Docket No. 2020-1794

ISSUED: May 1, 2020 (RE)

Charles Richardson appeals the determination of the Division of Agency Services (Agency Services) which found that he did not meet the experience requirements for the promotional examination for Building Superintendent (PM0013A), Trenton.

The subject examination announcement was issued with a closing date of January 22, 2019, and was open to employees in the competitive division who had an aggregate of one year of continuous permanent service as of the closing date in the title Assistant Building Superintendent OR in any competitive title and who met the announced requirements of two years of experience in work involving the inspection, planning the cleaning and maintenance of furniture, offices, and buildings, and/or the reconditioning, care and maintenance of grounds, two of which shall have been in a supervisory capacity. As there were no admitted candidates, the examination was cancelled on June 21, 2019.

On his application, the appellant listed the following positions: provisional Building Superintendent from October 2018 to the January 2019 closing date, Road Repair Supervisor from October 2016 to October 2018, Motor Broom Driver from October 2008 to September 2016, Equipment Operator from October 2005 to September 2008, Truck Driver from February 2005 to September 2005, Laborer 1 from July 2001 to January 2005, and Site Supervisor with Richardson Construction from th th th th April 1984 to June 2001. Official records indicate that prior to his provisional position the appellant was a Motor Broom Driver from October 2000 to October 2018, and had not been appointed as a Road Repair Supervisor. He was

credited with four months of experience in his provisional position and was found to be lacking four years, eight months of applicable experience.

On appeal, the appellant argues that he accrued five years of experience as a site supervisor for Richard construction. He states that he began working for this company as a Laborer, and moved up to Supervisor, and his daily work entailed keeping offices, buildings, grounds and construction sites clean by sweeping, dusting, mopping, waxing, removing debris, collecting trash, and repairing and adjusting furniture and fixtures. He also states that he gained supervisory experience in this position, as well as in his position as a Road Repair Supervisor. He states that from 2010 to 2018 he provided exterior maintenance of facility grounds for several buildings, ensured grass and debris was maintained, and necessary building repairs were made. He also resolved fire code violations, inspected building repairs, maintained the budget for the division, prepared budget estimates and division reports, and supervised the interior cleaning and maintenance of buildings. He provides a revised set of duties for his position as a Road Repair Supervisor. Lastly, he separates his time at Richardson Construction into two positions, General Supervisor from 1991 to 2001, and Laborer from 1984 to 1991, and provides duties for each.

CONCLUSION

N.J.A.C. 4A:4-2.6(a) provides that applicants shall meet all requirements specified in the promotional examination announcement by the closing date. *N.J.A.C.* 4A:4-2.6(c) provides in pertinent part that applicants for promotional examinations with open competitive requirements may not use experience gained as a result of out-of-title work to satisfy the requirements for admittance to the examination or for credit in the examination process, unless good cause is shown for an exception.

N.J.A.C. 4A:4-1.5(a) states that 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.

In order to ensure that the work of an appointing authority will not be adversely impacted by the absence of a list of interested eligibles for a specific position, *N.J.A.C. 4A:4-1.5(a)* provides for provisional appointments until a competitive examination and employment roster can be promulgated. This approach balances both the immediate needs of an appointing authority to staff critical positions with the underlying purpose of the Civil Service system to ensure that permanent appointments are made on the basis of merit and fitness. Acting within the parameters of the Civil Service law and rules, it is the appointing authority's function to determine how to organize its functions and determine its staffing needs. Subsequently, this agency reviews the appointing authority's actions to ensure that Civil Service rules have been followed and to advise appointing authorities to take corrective measures when they have not followed the rules.

Against this setting, the appellant's application was reviewed as he has been a provisional employee for over a year and remains in that position. The appellant was correctly denied admittance to the subject examination since he lacked the required amount of experience. That is, the announced experience should be the main duty of the listed position.

When an applicant indicates extensive experience in titles established under the State Classification Plan, it is appropriate to utilize the job specifications to determine the primary focus of the duties of incumbents serving in career service titles. The Road Repair Supervisor is defined as supervising a group of employees engaged in the maintenance, repair, resurfacing, and/or construction of roads, and/or staff responsible for the installation and maintenance of traffic lines and traffic signs; supervises the maintenance of grounds. On his application, the appellant listed his duties for that position as follows:

Oversaw the entire day to day functions of the division. Supervised approximately 30 employees. Set up work details and gave assignments to the employees. Supervised work being performed such as maintenance of facility grounds. Facility grounds include the following locations ... Ensured office and building areas were clean and maintained. Ensured fire code violations were addressed. Performed inspections after requested work. Ensured city streets and alleys were clean. Provided office with reports of work completed. Supervised establishment of records. Requisitions supplies, materials and equipment; placed orders as needed. Provided budget estimates for building repairs and equipment. Performed employee evaluations. Recommended employees from disciplinary action.

This description matches the definition of the title, and while it does not involve the inspection, and planning the cleaning and maintenance of furniture and

offices, it does include reconditioning, care and maintenance of grounds. On appeal, the appellant is selective in the duties that he lists for this position, and includes only those for buildings and grounds. Additionally, he extends his service in this position to 2010 (no months given). The appellant was not appointed to Road Repair Supervisor, and from October 2008 to October 2018, the appellant was in the non-supervisory title, Motor Broom Driver. Even if the original dates for out-of-title duties as a Road Repair Supervisor were to be accepted, two years, the appellant would still fall short by two years, eight months. The appellant's duties as an Equipment Operator, Truck Driver, and Laborer are clearly inapplicable.

It is noted that each position can have only one primary focus, and the duties performed most of the time and the importance of those duties, or the preponderance of the duties, identify the primary focus of the position. On his application, the appellant did not list two positions with Richardson Construction, only one, Site Supervisor. On appeal he breaks that down to Site Supervisor and Laborer and provides duties for each. Originally, the duties reported were:

Hands on Supervisor of Laborers responsible for 8 to 10 employees for masonry business. Responsible for obtaining job contracts and ensuring that all required work was completed correctly in a timely fashion. Supervised Laborers responsible for keeping facility clean. Inspected assignments throughout and upon completion. Experience in operating back hoe, front end loader, bobcat, milling machine and paving machine as needed. Experience with obtaining licenses and permits from work sites and home renovations. Ensure job assignments stay within budget. Order supplies and equipment as necessary.

In his appeal, the appellant stated that he supervised cleaning of buildings, offices, construction sites in various work locations while as a General Supervisor, and cleaned buildings and offices, and property grounds and construction sites, and rearranged, repaired and adjusted furniture fixtures and equipment as a Laborer. These additional duties are unsupported by the record, as they were not listed on the original application and a masonry business, or even a construction business, is not involved in care and maintenance of grounds, and certainly not involved in cleaning and maintaining furniture, offices and buildings. It is also not credible that any out-of-title work performed as a Road Repair Supervisor extended from October 2016 back to 2010, particularly when the appellant accounted for his employment during that period as a Motor Broom Driver.

Next, the requirements of *N.J.S.A.* 11A:4-13(b) allow for an appointing authority to certify that an appointee meets the minimum qualifications for the title at the time of appointment, but the fact that the appointing authority erroneously determined that a provisional appointee satisfies the minimum qualifications for

the title prior to an actual eligibility determination by this agency, does not automatically establish a presumption of eligibility when the examination is announced. *See In the Matter of Cynthia Bucchi, Maria D'Angelo, Rosalind R. James, Carla M. Lewis, and Rhonda McLaren, Management Assistant (PS5831F), Department of Education, Docket No. A-1266-04T2 (App. Div. February 27, 2006).* Since the appellant does not meet the minimum qualifications for the title, contrary to *N.J.A.C. 4A:4-1.5(a)2*, he should be returned to his permanent title immediately upon receipt of this decision, and the duties of Building Superintendent be reassigned.

An independent review of all material presented indicates that the decision of Agency Services, that the appellant did not meet the announced requirements for eligibility by the closing date, is amply supported by the record. The appellant provides no basis to disturb this decision. Thus, the appellant has failed to support his burden of proof in this matter.

ORDER

Therefore, it is ordered that this appeal be denied, and the appellant be returned to his permanent title.

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 29TH DAY OF APRIL , 2020



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