



**STATE OF NEW JERSEY**

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

In the Matter of Carol Carman,  
Environmental Specialist 2  
(PS7940G), Department of  
Environmental Protection

Examination Appeal

CSC Docket No. 2020-1744

**ISSUED: JUNE 19, 2020 (HS)**

Carol Carman requests relief regarding the promotional examination for Environmental Specialist 2 (PS7940G), Department of Environmental Protection (DEP).

By way of background, the announcement for the subject examination was issued on August 1, 2018 and was open to employees in the competitive division who were currently serving as an Environmental Specialist 1 and had an aggregate of one year of continuous permanent service in the title as of the August 21, 2018 closing date. The appellant did not apply for the examination. The resulting ranked eligible list promulgated with the names of eight eligibles on May 9, 2019 and expires on May 8, 2022.

It is noted that DEP mailed the appellant a letter dated November 28, 2017 stating the following:

This letter will confirm your appointment to the title of Environmental Specialist 2 in the Compliance and Enforcement Program with an effective date of November 25, 2017. As you know, this appointment is being made on a provisional basis, pending promotional examination procedures.

The New Jersey Civil Service Commission rules and regulations mandate that provisional employees must successfully take and pass some form of a Civil Service Examination for the title they provisionally

hold, and be reachable on the resulting list, in order to retain their position.

For future reference, when you file an application to take an examination, it will be in your best interest to provide as much detail as possible and to include all relevant experience.

. . . Best wishes in your new position with our Department and good luck on the upcoming Civil Service Commission examinations.

It is also noted that DEP mailed the appellant a letter dated August 1, 2018 informing her of the subject examination announcement.

In her appeal to the Civil Service Commission (Commission), filed December 16, 2019, the appellant states that DEP informed her that she would possibly be returned to her permanent title of Environmental Specialist 1 from her provisional Environmental Specialist 2 appointment since she was not on the PS7940G eligible list. The appellant argues that such result would be unfair and claims to have been unaware that she was still provisional. She requests that she remain an Environmental Specialist 2 or, alternatively, be retroactively placed on the promotional list for Environmental Specialist 2. The appellant maintains that DEP staff did not properly inform her to apply for the PS7940G examination and presents an e-mail thread in support. That e-mail thread included the following communications:

- On August 9, 2018, the appellant e-mailed L.W., the Manager of the Bureau of Human Resource Operations, stating that she “received a letter in [her] mail about a promotion to an [Environmental Specialist 2]” and inquiring about her salary.
- On August 9, 2018, L.W. forwarded the appellant’s e-mail to L.L., Personnel Assistant 3, and others with the following message: “Can one of you help [the appellant], she is provisional and needs to file.”
- On August 10, 2018, L.L. responded to the appellant stating that the appellant had been appointed to the title of Environmental Specialist 2, effective November 25, 2017, in a “provisional status” with a salary increase.

The appellant explains that in her August 9, 2018 e-mail, she was actually referencing a previous letter that informed her of her promotion to Environmental Specialist 2, not the August 1, 2018 letter advising of the examination announcement. According to the appellant, L.W. was under the impression that the appellant was questioning the August 1, 2018 letter<sup>1</sup> and forwarded the appellant’s e-mail to her

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<sup>1</sup> Given the timing of the appellant’s August 9, 2018 e-mail; the fact that she wrote that she received a letter in her mail about a promotion to Environmental Specialist 2; and the phrasing of L.W.’s

staff. The appellant argues that the above thread, particularly the August 10, 2018 e-mail from L.L., shows that L.W.'s staff did not explain the process of filing an application for the examination announcement per L.W.'s instruction. In addition, the appellant states, in an affidavit, that she did not receive DEP's August 1, 2018 letter informing her of the subject examination announcement.

## CONCLUSION

*N.J.A.C.* 4A:2-1.1(b) provides that unless a different time period is stated, an appeal must be filed within 20 days after either the appellant has notice or should reasonably have known of the decision, situation, or action being appealed.

*N.J.A.C.* 4A:4-2.1(e) provides, in pertinent part, that applications for promotional examinations shall be submitted no later than 4:00 P.M. on the announced application filing date.

*N.J.A.C.* 4A:4-6.3(b) provides, in pertinent part, that the appellant has the burden of proof in examination and selection appeals.

Initially, it is noted that the appellant has suggested that she simply be retroactively placed onto the PS7940G eligible list. Such relief is not feasible since the appellant never took the examination. Rather, the Commission could permit the appellant to submit a late application. However, the Commission is not convinced that such relief is appropriate here, notwithstanding the appellant's affidavit attesting that she did not receive the DEP's August 1, 2018 letter concerning the subject examination announcement. In this regard, DEP's November 28, 2017 letter had informed the appellant that her appointment to Environmental Specialist 2 was provisional, pending promotional examination procedures; that Commission regulations mandated that a provisional employee must take and pass a Civil Service examination for the title provisionally held and be reachable on the resulting eligible list in order to retain the position; that the filing of an examination application would be part of the process; and that an examination was "upcoming." Additionally, L.W., in her August 9, 2018 e-mail, stated that the appellant "[was] provisional and need[ed] to file." The Commission finds that the combination of these communications placed the appellant on notice that she remained provisional and, particularly given L.W.'s statement of the appellant's "*need[ing] to file*" (emphasis added), provided her with a reasonable basis to at least inquire whether an examination had been announced for the title she was holding provisionally. The November 28, 2017 letter had in fact stated that an examination was "upcoming" and that an application would have to be filed to participate in the examination. Further, if the appellant was dissatisfied with L.L.'s response, she could have sought

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message that the appellant "[was] provisional and need[ed] to file," it is reasonable to assume that L.W. believed that the actual subject of the appellant's inquiry was the August 1, 2018 letter concerning the examination announcement.

clarification from L.W. For the foregoing reasons, the Commission finds that the appellant's appeal, filed approximately one year and four months after the August 9-10, 2018 exchange of e-mails, to be untimely and unpersuasive on the merits.

While the appellant also argues that returning her to her permanent title would be unfair, it must be noted that a provisional appointee can be removed at any time and does not have a vested property interest in the provisional title. In other words, a provisional employee has no automatic right or expectation of achieving permanent appointment to the position that she is occupying. *See O'Malley v. Department of Energy*, 109 N.J. 309 (1987) (Appointing authority was not equitably estopped from removing a provisional employee even when the provisional employee occupied the position longer than the statutory one-year limit).

### 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  
17<sup>TH</sup> DAY OF JUNE, 2020




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