



**STATE OF NEW JERSEY**

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

In the Matter of John Pienciak,  
Deputy Fire Chief (PM3241V),  
Hillside

CSC Docket No. 2018-1970

Bypass Appeal

**ISSUED: JULY 31, 2020 (SLK)**

John Pienciak, represented by Michael L. Prigoff, Esq., appeals Hillside’s decision to bypass his name for appointment from the Deputy Fire Chief (PM3241V), Hillside eligible list.

By way of background, Pienciak, a nonveteran, appeared on the PM3241V eligible list, which promulgated on June 8, 2017 and expired on June 7, 2020. Pienciak was certified on PL171432. Pienciak was the first-ranked eligible on PL171432, which was disposed of on December 20, 2017, with the second-ranked eligible being appointed. At the time the appointing authority returned the certification to the Division of Agency Services (Agency Services), it submitted a document that showed that the appointed eligible had received a certification as an Incident Management Level 1.

On appeal, Pienciak contended that he was bypassed for a less qualified, lower-ranked candidate for unspecified discriminatory reasons. He asserted that the appointing authority had never previously failed to appoint the first-ranked candidate on a certification and he believed that he was the most qualified candidate for the promotion based on his service in an acting capacity in the subject title for nearly 200 days and his achieving a much higher final average on the Civil Service examination than the second-ranked eligible.

Subsequently, the parties entered into the attached settlement agreement. The settlement agreement indicates that Pienciak will withdraw the appeal of his

bypass and he will be appointed to the position of Deputy Fire Chief with a retroactive date of appointment of July 8, 2020. The parties request that the Civil Service Commission (Commission) acknowledge the settlement agreement

### CONCLUSION

*N.J.S.A.* 11A:4-6 and *N.J.A.C.* 4A:4-3.4 provide that an eligible list may be revived in order to implement a court order or decision of the Commission in the event of a successful appeal instituted during the life of a list, to correct an administrative error, or for other good cause.

*N.J.A.C.* 4A:4-1.10(c) provides that when a regular appointment is made, a retroactive appointment date may be ordered due to administrative error, administrative delay or other good cause.

A review of the settlement agreement indicates that it complies with Civil Service law and rules. The policy of the judicial system strongly favors settlement. *See Nolan v. Lee Ho*, 120 *N.J.* 465 (1990); *Honeywell v. Bubb*, 130 *N.J. Super.* 130 (App. Div. 1974); *Jannarone v. W.T. Co.*, 65 *N.J. Super.* 472 (App. Div. 1961), *cert. denied*, 35 *N.J.* 61 (1961). This policy is equally applicable in the administrative area. A settlement will be set aside only where there is fraud or other compelling circumstances. *See Nolan, supra*. In this matter, no such compelling circumstances exist. Therefore, the Commission finds a sufficient basis to acknowledge the settlement agreement between the parties and revive the subject eligible list in order to retroactively appoint John Pienciak to the title of Deputy Fire Chief, effective July 8, 2020.

### ORDER

Therefore, the Commission acknowledges the subject settlement agreement and orders that the Deputy Fire Chief (PM3241V), Hillside, eligible list be revived to provide John Pienciak with a retroactive appointment date as a Deputy Fire Chief, effective July 8, 2020.

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 29<sup>TH</sup> DAY OF JULY, 2020

*Deirdre' L. Webster Cobb*

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Deirdré L. Webster Cobb  
Chairperson  
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