



STATE OF NEW JERSEY

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

In the Matter of Patrick Dugan, Fire
Fighter (M1560T), Ocean City

List Revival
Acknowledgment of Settlement

CSC Docket No. 2021-311

ISSUED: OCTOBER 2, 2020 (DASV))

Patrick Dugan, represented by Carl N. Tripician, Esq., and Ocean City, represented by Dorothy F. McCrosson, Solicitor, petition the Civil Service Commission (Commission) for revival of the Fire Fighter (M1560T), Ocean City, eligible list and acknowledgment of a settlement agreement reached by the parties which provides for Dugan’s appointment.

By way of background, Dugan appeared as the sixth ranked non-veteran eligible on the eligible list for Fire Fighter (M1560T), Ocean City, which promulgated on March 11, 2016 and expired on March 28, 2019. A certification was issued on February 14, 2019 (OL190154) and Dugan was listed in the first position. In disposing of the certification, the appointing authority bypassed Dugan and appointed K.M., the third listed eligible, effective April 1, 2019. Dugan filed an appeal of his bypass to the Commission. However, the Commission did not find sufficient evidence to conclude that Dugan’s bypass was improper or an abuse of the appointing authority’s discretion under the “Rule of Three.” *See N.J.S.A. 11A:4-8, N.J.S.A. 11A:5-6 and N.J.A.C. 4A:4-4.8(a)3i.* Accordingly, the Commission determined that Dugan had not met his burden of proof pursuant to *N.J.A.C. 4A:2-1.4(c)* and denied his appeal. *See In the Matter of Patrick Dugan* (CSC, decided September 25, 2019). Thereafter, Dugan pursued an appeal with the Superior Court of New Jersey, Appellate Division (Appellate Division).

In consideration for settling the Appellate Division appeal, the parties entered into an agreement. As set forth in the attached General Release, the parties agreed, among other things, that Dugan would withdraw his pending appeal with the Appellate Division and Ocean City would appoint him as a Fire Fighter contingent upon the revival of the Fire Fighter (M1560T), Ocean City, eligible list. Therefore, the parties request that the Commission revive the subject eligible list. It is noted that the agreement provides for Dugan's current appointment.

CONCLUSION

N.J.A.C. 4A:4-3.4 states that the Commission may revive an expired eligible list under the following circumstances: 1. to implement a court order, in a suit filed prior to the expiration of the list; 2. to implement an order of the Commission in an appeal or proceeding instituted during the life of the list; 3. to correct an administrative error; 4. to effect the appointment of an eligible whose working test period was terminated by a layoff; or 5. for other good cause. Further, *N.J.A.C.* 4A:4-4.9(a)2 provides in relevant part that an eligible shall not be appointed and begin work after the expiration date of the eligible list except when there is limited revival or statutory extension of an employment list, except that no appointment shall be made beyond the statutory extension date.

In the instant matter, the parties have reached a settlement agreement concerning the appellant's appeal of his bypass with the Appellate Division. 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.* A review of the General Release finds no such compelling circumstance exist. Moreover, in light of the fact that the parties have amicably resolved their differences and agree to a current date of appointment, the Commission finds good cause to revive the Fire Fighter (M1560T), Ocean City, eligible list pursuant to *N.J.A.C.* 4A:4-3.4 and record Dugan's current appointment pursuant to *N.J.A.C.* 4A:4-4.9(a)2. The appointing authority is directed to revise the February 14, 2019 certification and submit the amended certification to the Division of Agency Services to record Dugan's appointment. Accordingly, the Commission finds a sufficient basis to acknowledge the settlement agreement between the parties.

ORDER

Therefore, the Commission acknowledges the subject settlement agreement and orders that the Fire Fighter (M1560T), Ocean City, eligible list be revived and

Patrick Dugan be reflected as appointed from the February 14, 2019 certification in accordance with this decision.

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 30TH DAY OF SEPTEMBER, 2020

Deirdre' L. Webster Cobb

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