

It is noted that in some instances, a LEE may be used to process promotional announcements. In those cases, the results of a candidate's LEE will automatically be applied to the promotional announcement. However, application of LEE scores to a promotional examination expires two years from the date the individual takes the LEE. The duration of a LEE list does not necessarily mean that a candidate's score could be applied to a promotional announcement up to the expiration date of a LEE list. Thus, although the LEE (S9999U) was initially set to expire on March 28, 2019, and was subsequently extended and expired on May 1, 2020, the score is only used for two years from the date a candidate takes the LEE. In these cases, Gonzalez took the LEE (S9999U) on November 5, 2016 and achieved a passing score. As such, her LEE score could be applied up to and including November 5, 2018. Wentzell took the LEE (S9999U) on October 29, 2016 and achieved a passing score. Thus, his LEE score could be applied up to and including October 29, 2018. Additionally, Gonzalez and Wentzell did not apply for or participate in the subsequent LEE (S9999A), which resulted in the current active LEE list, but the two eligibles on the promotional list did so. Therefore, it would be problematic to use scores achieved on two different test instruments to establish the subject promotional list. Consequently, since Gonzalez's and Wentzell's scores could not be applied to the subject announcement, they were recorded as "no-shows" for that examination.

It is further noted for the record that Gonzalez was provisionally appointed as a State Park Police Officer Trainee on December 21, 2019 and continues to serve provisionally in the title. Wentzel was provisionally appointed as a State Park Police Officer Trainee on October 26, 2019 and continues to serve provisionally in the title. It is also noted that the two eligibles on the subject promotional list resigned from State service effective March 2, 2020 and September 11, 2020.

In its request to the Civil Service Commission (Commission), the appointing authority states that due to a miscommunication from its Human Resources Office, Gonzalez and Wentzell were led to believe that their LEE scores would be applied to the subject announcement since the (S9999U) eligible list did not expire until May 1, 2020. Although informed by this agency to request permission to file a late application and participate in a make-up examination for the LEE (S9999A), the subject promotional list was promulgated on November 5, 2020. Additionally, the appointing authority notes that the two eligibles on the list resigned from State service prior to its promulgation. Therefore, it requests that the scores Gonzalez and Wentzell achieved on the LEE (S9999U) be applied to the subject examination. As receiving initial approvals for promotions is a lengthy process and the extensive amount of time it took to issue the subject eligible list, the appointing authority requests that Gonzalez and Wentzell be granted retroactive dates of permanent appointment.

CONCLUSION

N.J.A.C. 4A:4-2.15(i) states that a candidate for an examination may be permitted to use an examination score for a period of time, or for more than one title or more than one test, as determined by the Chairperson or designee. *N.J.A.C.* 4A:1-1.2(c) permits the Commission to relax a rule for good cause to effectuate the purposes of Title 11A, New Jersey Statutes.

In the present matter, it is appropriate to permit Gonzalez's and Wentzell's score from the (S9999U) eligible list to be applied to the promotional examination for State Park Police Trainee (PS1614G), DEP. While it was initially appropriate not to utilize those scores for the subject examination as more than two years had passed since they took the test, it cannot be ignored that the only two eligibles on the list resigned from State service prior to the list's promulgation date. Gonzalez and Wentzell would be the only two candidates competing in an examination for the subject announcement. There is no regulatory prohibition against the utilization of a score for another announcement more than two years after a candidate takes a test. It would only be inappropriate to do so if there was a psychometric basis not to utilize a test score after more than two years. As they both achieved passing scores on the LEE (S9999U), the resultant promotional eligible list for the current active employees would be ranked utilizing the same testing instrument. For example, it is noted that it is possible for the score a candidate achieves on the Supervisory Test Battery to be applied to future announcements for up to five years.

With respect to the appointing authority's request for a retroactive appointment date, *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. Generally, this unique remedy has been reserved for two particular situations. First, and germane to this matter, retroactive appointment dates have been granted in circumstances in which an employee was actually serving in and performing the duties of a title, but, due to some error or other good cause, his or her attainment of permanent status was delayed or hindered. The second situation in which an employee may be awarded a retroactive date of permanent appointment is where the name of an employee, whose appointment would have otherwise been mandated, was improperly removed from or bypassed on an eligible list, thereby preventing the appointment.

In this case, as of the promulgation date of the subject list, the two individuals on the list had not been in the employ of the State. As Gonzalez and Wentzell would have been the only two individuals competing for placement on the list, the Commission finds, under these limited circumstances, that their LEE (S9999U) scores could have been utilized. Given that Gonzalez and Wentzell have been performing the duties of the positions since their provisional appointments in 2019, and under the unique facts of this situation, good cause has been established and

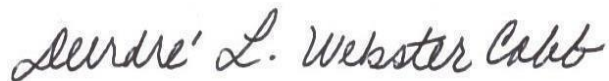
Gonzalez and Wentzell's permanent appointments as a State Park Police Officer Trainee from the PS1614G eligible list should be retroactively recorded as November 7, 2020..²

It is noted that this determination is limited to the instant matter and does not provide precedent in any other matter.

ORDER

Therefore, it is ordered that this request be granted and Brianna Gonzalez and Brody Wentzell's permanent appointments as State Park Police Officer Trainee should be recorded as November 7, 2020.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 20^H DAY OF JANUARY 2021



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² November 7, 2020 is the first pay period after the November 5, 2020 list promulgation date.