



**STATE OF NEW JERSEY**

In the Matter of James Stigliano,  
Correctional Police Major (PS8871I),  
Department of Corrections

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

CSC Docket No. 2020-2109

Examination Appeal

**ISSUED: JANUARY 22, 2021 (JH)**

James Stigliano appeals his seniority score and rank on the promotional examination for Correctional Police Major (PS8871I), Department of Corrections. The appellant received a final average score of 91.780 and appears at rank 10 on the subject eligible list.

The subject examination was open to employees in the competitive division who had an aggregate of one year of continuous permanent service and were serving in the Correctional Police Lieutenant title as of the December 21, 2018 closing date. The subject test was administered on May 2, 2019.

On appeal, Stigliano presents that “on April 7, 2012, I was promoted from the Correctional Police Lieutenant title to Assistant Superintendent 1 Corrections. This new title granted me authority over Correctional Police Lieutenants . . . On March 21, 2015, I was promoted to Associate Administrator – Prison Complex. I directly supervised the Correctional Police Majors . . . Both the Assistant Superintendent and Associate Administrator titles have more authority than a Correctional Police Lieutenant.” He refers to *N.J.A.C. 4A:4-2.15* (Rating of examinations) and maintains that this provision “delineates all the types of leave that are not deducted from seniority points . . . While I may be on a ‘leave of absence’ from the Correctional Police Lieutenant title, I do not have a break in service and I have been continually ‘with pay.’” He refers to *N.J.A.C. 4A:4-7.8* (Voluntary demotion),<sup>1</sup> *N.J.A.C. 4A:4-7.9*

<sup>1</sup> *N.J.A.C. 4A:4-7.8* (Voluntary demotion) provides, in part:

(Resignation/new appointment),<sup>2</sup> and *N.J.A.C.* 4A:6-1.1 (Leaves of absence)<sup>3</sup> and argues that “NJAC contains numerous examples of protection for employees on leaves of absence. NJAC does not penalize employees, seeking promotion, due to military service, illness, injury, etc. Surely, the intention is not to penalize employees that accept unclassified promotions, within their respective departments. While I have been on a leave of absence from the Correctional Police Lieutenant title, I have no breaks in service. I supervise the Correctional Police Majors, including their PAR evaluations. My authority and experience is far above that of a Correctional Police Lieutenant. Accordingly, my seniority should be aggregated from July 31, 2010 to the present.” He argues that his “leave of absence from the Correctional Police Lieutenant title, to the Associate Administrator title, is a leave with pay. It could only be categorized as such – because the only alternative is a leave without pay. I have continuously remained in pay status, throughout my state career.”

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- (a) A voluntary demotion is:
    1. The voluntary movement of a permanent employee from his or her permanent title to a lower title in local service; or
    2. In State service, the voluntary movement to another title with a lower class code, within the same organizational unit.
  - (b) Permanent status and seniority shall be retained when the demotion is to a lower related title. *See N.J.A.C.* 4A:8-2.1(b) for criteria on determining related titles.
    1. When the demotion is to any title previously held on a permanent basis during current continuous service, permanent status shall be retained. All permanent continuous service in the previously held title shall be aggregated for seniority purposes . . .
  - (f) When an employee is returned to his or her prior permanent title after a voluntary demotion, seniority in the prior permanent title shall be aggregated when:
    1. The demotion was necessary due to the temporary loss of licensure required to perform the duties of the position;
    2. The demotion was agreed to by both the employee and the appointing authority; and
    3. The demotion was for a set period of time up to a maximum of one year.

<sup>2</sup> *N.J.A.C.* 4A:4-7.9 (Resignation/new appointment) provides, in part:

- (a) A permanent employee who is appointed from an open competitive list to a title in a different organizational unit within the same governmental jurisdiction shall be considered to have resigned from the previous permanent title.
  1. Accumulated service for purposes of promotional eligibility and scoring, determining sick and vacation leave entitlements and seniority in layoffs, and in State service only, administrative leave entitlements, shall be retained.

<sup>3</sup> Stigliano specifically refers to *N.J.A.C.* 4A:6-1.1(d) which provides that a leave of absence shall not disqualify an applicant for a promotional examination.

## CONCLUSION

A review of the record finds that Stigliano received a regular appointment to the Correction Officer Lieutenant title effective July 31, 2010; effective April 7, 2012, he took a leave of absence without pay from his Correctional Police Lieutenant position to accept an unclassified appointment to the Associate Administrator Prison Complex title; effective March 21, 2015, he accepted an unclassified appointment to the Assistant Superintendent title and continued the leave of absence without pay from his Correctional Police Lieutenant position.

*N.J.A.C.* 4A:4-2.15 (Rating of examinations) provides, in pertinent part:

(d) In calculating seniority for promotional examinations:

1. Continuous permanent service accumulated prior to an intergovernmental transfer pursuant to *N.J.A.C.* 4A:4-7.1A (except as provided in (d)3 below), voluntary furloughs and the following types of leaves shall not be deducted from seniority.
  - i. All leaves with pay including sick leave injury (SLI);
  - ii. Military, educational, gubernatorial appointment, personal sick, disability, family, furlough extension, and voluntary alternative to layoff leaves of absence without pay; and
  - iii. In local service, leave without pay to fill elective office .

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(e) Suspensions, other leaves of absence without pay not identified in (d) above, and any period an employee is laid off shall be deducted when calculating seniority.

*N.J.A.C.* 4A:4-2.15(d) clearly does not include a leave of absence without pay in order to accept an unclassified appointment as one of the types of leaves that is not deducted from seniority. Thus, *N.J.A.C.* 4A:4-2.15(e) governs this matter and the time during which Stigliano took leave of absences without pay from his Correctional Police Lieutenant position were correctly not included in his seniority score. Seniority, for purposes of promotional examination scoring credit is based on the amount of an employee's *permanent service*. Permanent service can only be accrued in career service titles. In this regard, the "career service" is defined as those positions and job titles subject to the tenure provisions of Title 11A. A permanent employee is defined as an employee in the career service who has acquired the tenure and rights resulting from regular appointment and successful completion of the working test period. Conversely, "unclassified service" is defined as those positions and job titles outside the senior executive service **not subject to the tenure**

**provisions of Title 11A or these rules unless otherwise specified.** The Associate Administrator Prison Complex and Assistant Administrator titles are allocated to the unclassified service. As such, since *N.J.A.C. 4A:4-2.15(d)* provides, with the limited exception of gubernatorial appointments, that calculation for seniority is based on continuous permanent service, he cannot be credited with seniority gained in a non-permanent title. For gubernatorial appointments, *N.J.S.A. 52:14-16.2* requires that career service employees who are appointed by the Governor “shall continue to hold the said office, position, employment in which he has tenure or is protected and shall retain all of the rights, privileges and benefits, including his rating and status in the civil service...” Thus, a gubernatorial appointee is explicitly permitted to accrue his or her seniority that he or she would have gained in the underlying permanent career service title.<sup>4</sup> Conversely, there is no such statutory provision for a leave of absence to accept an unclassified appointment. Furthermore, it is not clear why Stigliano relies on *N.J.A.C. 4A:4-7.8* and *N.J.A.C. 4A:4-7.9* as he was not subject to a voluntary demotion or a resignation/new appointment.

With regard to the appellant’s argument that he has “continuously remained in pay status, throughout my state career” and thus, his leaves of absence were with pay, the appellant fails to take into consideration that he was not, in essence, receiving two paychecks. In other words, while he was on leave, he was not receiving compensation based on both his permanent Correctional Police Lieutenant title *and* the unclassified Associate Administrator title or the Assistant Superintendent title. Rather, effective April 7, 2012, he was receiving compensation solely based on the Associate Administrator title and subsequently, effective March 21, 2015, he was receiving compensation solely based on the Assistant Superintendent title, which are both unclassified titles. Thus, since April 7, 2012 to the present, the appellant has not been receiving compensation based on his permanent title of Correctional Police Lieutenant. As *N.J.A.C. 4A:4-2.15(d)* only permits the awarding of seniority credits for promotional examinations for service in permanent titles to which an individual receives current compensation, except for the limited exception for gubernatorial appointments, he cannot be awarded seniority credit because he receives compensation in an unclassified title.

Regarding the appellant’s seniority score, in State service, seniority is awarded on the basis of one point per year up to a maximum of five years (five points). When an announcement is opened to the open competitive requirements, seniority credit is given for all periods of service in a permanent capacity in any title currently in the competitive division up to the announced closing date. However, when an announcement is open to specific titles, seniority credit is only given for permanent service in those titles up to the five-year limit. That is, only seniority in the title(s) to which the examination is open is awarded credit. Thus, the appellant’s contention

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<sup>4</sup> In this regard, it is noted that Stigliano does not claim or present any evidence that his appointment to the Associate Administrator Prison Complex title or the Assistant Superintendent title were gubernatorial appointments.

that the unclassified titles he has served in have greater authority than that of a Correctional Police Lieutenant or he has supervisory duties with respect to Correctional Police Majors is not pertinent for the purposes of his seniority score. The subject announcement was open to those employees serving in the Correctional Police Lieutenant title. Accordingly, only the time Stigliano served in the Correctional Police Lieutenant title may be included in the seniority score for the Correctional Police Major (PS8871I) exam. Thus, as of the closing date, the appellant served one year, eight months and six days in the Correctional Police Lieutenant title. Established seniority tables indicate that the appropriate amount of credit for candidates with one year, eight months and six days of permanent service is 1.683 points. As such, the appellant has provided no compelling arguments or evidence that his examination was improperly scored or that he should have received a higher seniority score and rank on the subject eligible list. Therefore, the appellant has failed to support his burden of proof.

### **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 20<sup>H</sup> DAY OF JANUARY 2021

*Deirdre' L. Webster Cobb*

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