



**STATE OF NEW JERSEY**

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

In the Matter of Kelly Gogan,  
Sheriff's Officer Lieutenant  
(PC1556A), Mercer County

CSC Docket No. 2022-18

Examination Appeal

**ISSUED: NOVEMBER 1, 2021 (RE)**

Kelly Gogan requests that the examination for Sheriff's Officer Lieutenant (PC1556A), Mercer County be cancelled and reannounced, or that she be admitted to the examination.

The subject examination was announced with a closing date of November 21, 2019 and was open to employees in the competitive division who had an aggregate of one year of continuous permanent service in the title Sheriff's Officer Sergeant as of the closing date. There were five eligible candidates, and the examination was held May 25, 2021. The results are not yet available. It is noted that the petitioner permanently appointed as a Sheriff's Officer Sergeant on January 11, 2019, and did not file an application for the subject examination. Additionally, the Examination Information Alert that was posted on this agency's website indicated that the subject examination was tentatively scheduled to be held in May 2020. However, the examination was rescheduled to May 2021 due to the COVID-19 pandemic.

In her petition postmarked June 21, 2021, the petitioner maintains that the subject examination was "cancelled", and no rescheduling date was given due to the COVID-19 pandemic. She challenges the decision to reschedule instead of re-announce the subject promotional examination. The petitioner notes that she did not satisfy the time-in-grade and was short by only eight weeks. The petitioner states that had the subject announcement been cancelled and re-announced, she should would have the required time-in-grade to be admitted the examination. Additionally, she argues that since the municipal promotional examinations were

reannounced, the Sheriff's Officer series should have been reannounced as well. The petitioner contends that as it stands, the list will be exhausted prior to its expiration date, and that the next test will not be available for three or four years. She requests to be eligible and be given a make-up examination.

## CONCLUSION

*N.J.A.C.* 4A:4-2.6(a) (Eligibility for promotional examination) states, in pertinent part, that applicants for promotional examinations shall, by the application filing date, meet the criteria of having one year of continuous permanent service for an aggregate of one year immediately preceding the closing date in a title or titles to which the examination is open.

The underlying purpose of "time in grade" requirements, as reflected at *N.J.A.C.* 4A:4-2.6(a)1, is to promote and advance those individuals, who through their service, have gained the needed experience and knowledge to warrant promotion. Thus, absent administrative error or delay, any award of retroactive seniority that includes, as an additional remedy, the right to sit for a promotional examination without having the actual "time-in-grade" in the title to which the examination is open would undermine this important public policy. In the instant matter, the petitioner did not file an application for the subject examination, and would have been found ineligible for the subject examination for failure to meet the announced time-in-grade requirements if she had filed an application.

While the petitioner puts forth the argument that the number of appointments needed by the appointing authority will exceed the number of eligibles on the list prior to its expiration, the appointing authority did not request a reduction of time in grade for this examination, and the petitioner lacks the standing to make this request. *See In the Matter of Daniel McKee* (MSB, decided February 8, 2000) (There is no provision in the rules allowing for granting a waiver of the continuous permanent service requirement at the request of the applicant, as only the appointing authority has the option to make this request). Regardless, *N.J.A.C.* 4A:2-1.1(b) provides that an appellant has 20 days to file an appeal from when either the appellant has notice or should have reasonably have known of the decision, situation, or action being appealed. Therefore, the petitioner's June 21, 2021 petition was filed over a year and a half after the subject examination's closing date. Moreover, a potential candidate who did not file for an examination has no standing to request for an examination to be cancelled, or to request that an examination be announced. Therefore, the Civil Service Commission (Commission) dismisses this petition solely on those grounds.

Nevertheless, for informational purposes only, the petitioner's argument that since other municipal promotional examinations were "cancelled" and re-announced is misplaced. In that respect, examinations for jurisdictions were not cancelled,

rather, examination symbols were added for those jurisdictions indicating a need for a list. The petitioner has not established bad faith motivation or evidence of serious negligence resulting in a delay of the examination. Rather, the delay was the result of novel concerns regarding the spread of a contagious disease. The examination has already been administered, and there is no reason to cancel the results of this effort on the basis of a delay caused by the pandemic as this would be an inefficient use of resources. Similarly, the delay in conducting the examination does not provide a basis on which to permit her to file a late application and accept her time-in-grade after the November 21, 2019 closing date to admit her to the examination and provide her with a make-up examination.

Further, the Examination Information Alerts state that tentative exam dates in the alerts may change due to many factors, and candidates should periodically check the Law Enforcement Status Report and orientation guides for updates. The Law Enforcement Status Report from December 2020 states, "All New Jersey Civil Service examinations have been postponed until further notice. Therefore, the announcement for Sheriff's Officer Lieutenant will not issue on November 1, 2020. Please monitor the NJ CSC website and Law Enforcement Status report for updates as information becomes available." Lastly, the Law Enforcement Status Report from June 2021, states that "the next announcement will be issued on November 1, 2021. The examination is tentatively scheduled for May 2022." If Mercer County needs another eligible list, they will notify the Division of Agency Services to be included in the next round of announcements.

### **ORDER**

Therefore, it is ordered that this request 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 27<sup>TH</sup> DAY OF OCTOBER, 2021



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Deirdre L. Webster Cobb  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Allison Chris Myers  
Director  
Division of Appeals and Regulatory Affairs  
Civil Service Commission  
Written Record Appeals Unit  
P. O. Box 312  
Trenton, New Jersey 08625-0312

c: Kelly Gogan  
Division of Test Development and Analytics  
Records Center