



STATE OF NEW JERSEY

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

In the Matter of Trina Lucas, Clerk 3
(PM2673B), Newark School District

Request for Reconsideration

CSC Docket No. 2022-451

ISSUED: OCTOBER 12, 2021 (HS)

Trina Lucas requests reconsideration of the final decision rendered on August 4, 2021, which upheld the determination of the Division of Agency Services (Agency Services) that she was ineligible for the promotional examination for Clerk 3 (PM2673B), Newark School District (NSD), because she had no permanent status as of the closing date. A copy of that decision is attached hereto and incorporated herein.

By way of background, in the previous matter, the petitioner had appealed the determination that she did not meet the announced requirements for the promotional examination for Clerk 3 (PM2673B), NSD, which was announced with a closing date of August 21, 2020. The examination was open to: employees in the competitive title of Clerk 2 with an aggregate of one year of continuous permanent service as of the closing date; employees in the noncompetitive title of Clerk 1 with an aggregate of one year of continuous permanent service as of the closing date in that title and who possessed two years of experience in clerical work, one year of which must have been performing duties at or equivalent to the Clerk 2 level; and employees in the competitive division with an aggregate of one year of continuous permanent service as of the closing date in any competitive title and who possessed two years of experience in clerical work, one year of which must have been performing duties at or equivalent to the Clerk 2 level. Agency Services deemed the petitioner ineligible for lack of permanent status since, as described earlier, she had been laid off, effective August 15, 2014, and been serving provisionally in the title of Clerk 3 since August 18, 2014. The petitioner appealed to the Commission, which upheld Agency Services' determination and found that the petitioner was not

entitled to be permanently appointed to Clerk 3. *See In the Matter of Trina Lucas* (CSC, decided August 4, 2021).

In her request for reconsideration, the petitioner notes that a provisional appointment should not last more than 12 months and seeks to be made permanent in the title of Clerk 3, effective August 18, 2014. The petitioner also notes that there are NSD records that show her title as “Coordinator of Security Services” rather than Clerk 3, as per CAMPS. The petitioner argues that since she was in the “unaffiliated” “Coordinator of Security Services” title in 2014, she could not pursue permanency in the title of Clerk 3 then.¹

Agency records indicate that the petitioner was laid off from employment with NSD, effective August 15, 2014, from the title of Data Entry Operator 1. In that regard, the petitioner was sent her final notice of status required by *N.J.A.C. 4A:8-1.6(f)* by letter dated August 1, 2014. The letter advised that as a result of the layoff of another employee who had been given a demotional title displacement right to the petitioner’s position, the petitioner would be laid off effective close of business August 15, 2014. The record reflects that the petitioner did not appeal her August 15, 2014 layoff.

Beginning in 2017, Agency Services attempted to resolve the issue of the NSD’s failure to record in the County and Municipal Personnel System (CAMPS) the appointments of approximately 485 individuals, whom the NSD indicated had been appointed in “unaffiliated titles.” The Civil Service Commission (Commission) ordered the NSD to properly record any appointments of individuals not previously recorded in CAMPS, including the dates of appointment, the title in which the employees were employed, and the rates of their compensation. *See In the Matter of Newark School District* (CSC, decided August 16, 2017). The petitioner was apparently one of the employees who had been appointed in an “unaffiliated title.” Specifically, she had been appointed as “Coordinator of Security Services” on August 18, 2014. Following *Newark School District*, the NSD entered into CAMPS the petitioner’s provisional appointment, pending open competitive examination procedures, to the title of Clerk 3, effective August 18, 2014.²

¹ The petitioner also complains that an open competitive examination for Clerk 3 should have been called. One, in fact, later was. Specifically, the open competitive examination for Clerk 3 (M0569B), NSD, was announced with a closing date of September 21, 2020. The petitioner has been admitted to that examination. However, the scheduling of the examination has been delayed due to the COVID-19 pandemic.

² The transaction was submitted to CAMPS on December 19, 2017 and approved August 3, 2020.

CONCLUSION

N.J.A.C. 4A:2-1.6(b) sets forth the standards by which a prior decision may be reconsidered. This rule provides that a party must show that a clear material error has occurred or present new evidence or additional information not presented at the original proceeding that would change the outcome of the case and the reasons that such evidence was not presented at the original proceeding. A review of the record reveals that reconsideration is not justified.

The petitioner suggests that because her provisional appointment as a Clerk 3 has effectively exceeded 12 months, she should be made permanent in the title retroactive to August 18, 2014. The Commission is unpersuaded. In *O'Malley v. Department of Energy*, 109 *N.J.* 309 (1987), our Supreme Court concluded that a long-term provisional employee was not entitled to retain his provisional position without complying with the examination procedures set forth in *N.J.S.A.* 11A:1-1 *et seq.* In *O'Malley*, the employee provisionally occupied a position for more than two years before he was returned to his former permanent title. No examination was conducted during this time period. The employee contended that the failure to give a timely examination vested him with the automatic right to retain his provisional position. The Court rejected this claim:

Neither the original act nor the 1986 Act expressly created such a right in favor of provisional employees. In addition, nothing in the legislative history suggests that the Legislature intended to create such a right. It is the welfare of the public, not that of a particular provisional employee, that underlies civil service legislation. We believe it would thwart the legislative intent to allow a provisional employee to retain his or her position merely because the Commission could not offer a timely test.

* * *

In the present case, however, we are persuaded that the legislative goal of appointments based on merit and fitness is the paramount consideration. *With respect to provisional employees, that goal is met by competitive examinations, not by holding a position beyond the time prescribed by the Legislature.* *Id.* at 316-317 (emphasis added).

In *Kyer v. City of East Orange*, 315 *N.J. Super.* 524 (App. Div. 1998), the court determined that the City of East Orange's (East Orange) actions in denying Kyer, a seven-year employee, the opportunity to ever achieve permanent status in her competitive career service position, contrary to the Civil Service Act, were so egregious that they warranted a unique remedy:

It is our view that a delicate balance must be struck between the public and private interests that are subject to prejudice when a governmental entity fails to comply with its statutory obligations. Estoppel is not the answer. First, the Supreme Court has precluded that solution. Second, unqualified persons may thereby be afforded an improper route to permanency. But by the same token, it is no solution to leave remediless the well-qualified, experienced, high-performing, long-term provisional employee who is unaware that her position is not permanent, who in all likelihood would have easily achieved permanency but for the municipal negligence, and whose summary discharge from employment is as obviously unfair and arbitrary as this jury found plaintiff's to be. *Id.* at 532-533.

Accordingly, the court transferred the case to this agency to retroactively determine whether Kyer would have qualified for the competitive career service position she provisionally held for seven years and, if so, "to fashion an appropriate remedy." *Id.* at 534. Ultimately, the former Merit System Board determined that, notwithstanding Kyer's years of service or the misdeeds of East Orange, she was not entitled to a permanent appointment since she did not meet the open competitive requirements for the position at the time the provisional appointment was initially made. *See In the Matter of Ruby Robinson Kyer* (MSB, decided May 4, 1999).

In this matter, the petitioner cannot be considered to be a permanent Clerk 3 simply because she served in the title provisionally on a long-term basis. *See e.g., N.J.S.A. 11A:4-13a* (permanent appointment can only be achieved when an individual takes an examination, is placed on an eligible list and is permanently appointed from that eligible list). The petitioner had no property interest in her provisional position that would give her a mandatory right to permanent appointment. *See Nunan v. Department of Personnel*, 244 *N.J. Super.* 494, 497 (App. Div. 1990) (a candidate on an eligible list only has an expectancy interest in appointment); *In re Crowley*, 193 *N.J. Super.* 197, 210 (App. Div. 1984) ("[t]he only benefit inuring to such a person is that so long as that list remains in force, no appointment can be made except from that list."); *see also, N.J.A.C. 4A:4-4.8(a)3* (appointing authority may choose any of the top three eligibles for permanent appointment).

The facts in this matter are distinguishable from those in *Kyer*. In this regard, there is no indication in the record that the petitioner was ever informed that she had become permanent in her Clerk 3 position. Kyer, in contrast, had been *specifically erroneously informed* by her employer that she was a permanent employee. Accordingly, the petitioner has not established that she is entitled to a retroactive permanent appointment to the title of Clerk 3.

That there may be *NSD* records showing the petitioner's "Coordinator of Security Services" title rather than Clerk 3 would appear unsurprising given the issue of the NSD's appointments to "unaffiliated titles" that was addressed by the Commission in *Newark School District, supra*. Such records lend no support to the petitioner's claim for permanency in the title of Clerk 3. If anything, those records undermine the claim since they cannot be construed as communicating to the petitioner that she had become *permanent in the title of Clerk 3*. Moreover, it is *this agency* that maintains the petitioner's *official* personnel records, see *N.J.A.C. 4A:4-1.10(a)*, and those records clearly indicate that the petitioner was appointed *provisionally* to the title of Clerk 3. Additionally, even assuming the truth of the petitioner's argument that she could not pursue permanency in the title of Clerk 3 in 2014 since she was in the "unaffiliated" "Coordinator of Security Services" title at that time, such argument provides no basis for an automatic grant of permanent status now, for the reasons discussed earlier.

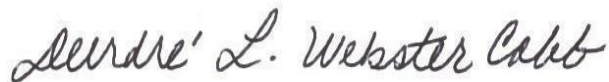
Accordingly, the petitioner has not met the standard for reconsideration as she has not shown that a clear material error has occurred or presented new information that would change the outcome of this case.

ORDER

Therefore, it is ordered that this request for reconsideration 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 6TH DAY OF OCTOBER, 2021



Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

Attachment

- c. Trina Lucas
Dr. Yolanda Méndez
Division of Agency Services
Records Center



STATE OF NEW JERSEY

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

In the Matter of Trina Lucas, Clerk 3
(PM2673B), Newark School District

Examination Appeal

CSC Docket No. 2021-1852

ISSUED: AUGUST 6, 2021 (HS)

Trina Lucas appeals the determination of the Division of Agency Services (Agency Services) that she was ineligible for the promotional examination for Clerk 3 (PM2673B), Newark School District (NSD), because she had no permanent status as of the closing date.

As background, the appellant had been serving permanently in the title of Data Entry Operator 1 with the NSD. Effective August 15, 2014, the appellant was separated from employment due to layoff.¹ Beginning in 2017, Agency Services attempted to resolve the issue of the NSD’s failure to record in the County and Municipal Personnel System (CAMPS) the appointments of approximately 485 individuals, whom the NSD indicated had been appointed in “unaffiliated titles.” The Civil Service Commission (Commission) ordered the NSD to properly record any appointments of individuals not previously recorded in CAMPS, including the dates of appointment, the title in which the employees were employed, and the rates of their compensation. *See In the Matter of Newark School District* (CSC, decided August 16, 2017). Following that decision, the NSD entered into CAMPS the appellant’s provisional appointment, pending open competitive examination procedures, to the title of Clerk 3, effective August 18, 2014.²

Subsequently, the subject examination was announced with a closing date of August 21, 2020 and was open to: employees in the competitive title of Clerk 2 with

¹ The appellant was sent her final notice of status required by *N.J.A.C.* 4A:8-1.6(f) by letter dated August 1, 2014. Agency records reflect that the appellant did not appeal her August 15, 2014 layoff.

² The transaction was submitted to CAMPS on December 19, 2017 and approved August 3, 2020.

an aggregate of one year of continuous permanent service as of the closing date; employees in the noncompetitive title of Clerk 1 with an aggregate of one year of continuous permanent service as of the closing date in that title and who possessed two years of experience in clerical work, one year of which must have been performing duties at or equivalent to the Clerk 2 level; and employees in the competitive division with an aggregate of one year of continuous permanent service as of the closing date in any competitive title and who possessed two years of experience in clerical work, one year of which must have been performing duties at or equivalent to the Clerk 2 level. The appellant submitted an application on August 20, 2020. Agency Services deemed the appellant ineligible for lack of permanent status since, as described earlier, she had been laid off, effective August 15, 2014, and been serving provisionally in the title of Clerk 3 since August 18, 2014. The examination, which was processed as an evaluation of experience, resulted in an eligible list of 11 names that promulgated on May 20, 2021 and expires on May 19, 2024. A certification issued from the list on May 24, 2021 but was cancelled. A second certification issued on July 1, 2021, but it has not yet been returned.

In her appeal to the Commission, received December 1, 2020, the appellant claims that she was “forced out” of her Civil Service title and that she never had a break in service. She states that she has passed the examination for Principal Clerk Typist and contends that she should have been permanently appointed to Clerk 3 since, in her view, the two titles are “the same.” The appellant complains about the conduct of the subject examination. Specifically, she complains that the \$25 application processing fee was nonrefundable and that there was “no test.” The appellant questions the regular appointment of N.H. as Personnel Officer with the NSD. Specifically, the appellant states that prior to that appointment, N.H. was “only” permanent in the title of Personnel Technician. The appellant complains that N.H.’s examination for Personnel Officer was based on experience. She also claims that N.H. is required to hold a certification. The appellant points to various other asserted errors. For example, she states that A.B., who appears on the eligible list for Management Assistant (M0560B), NSD, does not reside in Newark and that W.T., Director of Custodial Services, and W.D., Administrative Secretary, were ineligible for their respective positions.³ The appellant asserts that she worked out-of-title as a Management Specialist from June 2019 to July 2020.

Agency records indicate that the appellant appeared on the eligible list for Principal Clerk Typist (PM0936G), NSD, which promulgated on November 24, 2005 and expired on November 23, 2008. The appellant’s name was removed from the list on May 12, 2008 due to non-response to the certification notice. Effective March 26, 2011, the local Principal Clerk Typist title was renamed Keyboarding Clerk 3.

³ Although the appellant also questions how K.W. could have been appointed permanently to Clerk 3, agency records indicate that the appointment was processed as a voluntary demotion. See *N.J.A.C. 4A:4-7.8*.

Agency records indicate that N.H. was permanently appointed to the competitive title of Personnel Technician, effective May 17, 2011. She applied for the promotional examination for Personnel Officer (PM2729B), which had a closing date of September 21, 2020. The examination was open, in relevant part, to employees in the competitive division who had an aggregate of one year of continuous permanent service as of the closing date in any competitive title and met the listed requirements. N.H. passed the examination, which was processed as an evaluation of education and experience, and received a regular appointment from the resulting eligible list. The job specification for Personnel Officer requires that the incumbent possess a Bachelor's degree and three years of supervisory personnel experience including the review of classification problems and wage studies, handling personnel problems, and coordination of the training needs of the jurisdiction. The job specification does not include any certification requirement.

Agency records indicate that the examination for Management Assistant (M0560B) was open to residents of (1) Newark and (2) New Jersey. A.B. was a Newark resident as of the examination closing date, but later changed her address to another within New Jersey. A.B. appears on the July 6, 2021 certification from the M0560B eligible list, which has not been returned yet.

W.T. applied for the promotional examination for Director of Custodial Services (PM2728B), NSD. The examination was open, in relevant part, to employees in the competitive division who had an aggregate of one year of continuous permanent service as of the closing date in any competitive title and possessed five years of experience in work involving the cleaning of buildings and the maintenance of grounds in a large institution or agency, three of which shall have been in a supervisory capacity. W.T. passed the examination and received a regular appointment from the resulting eligible list.

W.D. applied for the open competitive examination for Administrative Secretary (M0740B), NSD. The examination was open to residents of (1) Newark and (2) New Jersey who possessed five years of experience in the capacity of a secretary to an executive or administrative official in a public or private organization. W.D. passed the examination and received a regular appointment from the resulting eligible list.

CONCLUSION

N.J.A.C. 4A:4-2.6(a)1 provides that applicants for promotional examinations shall have 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. Aggregate service shall be calculated in the same manner as seniority as set forth in *N.J.A.C.* 4A:4-2.15.

In this matter, the appellant was properly deemed ineligible for the subject examination as she did not possess permanent status as of the August 21, 2020 closing date. In this regard, the appellant separated from employment with the NSD due to layoff, effective August 15, 2014, and was *provisionally* appointed, pending open competitive examination procedures, to the title of Clerk 3, effective August 18, 2014. Thus, contrary to the appellant's claim, when she was laid off, she left the organizational/unit scope and incurred a break in service. As such, she was properly deemed ineligible for the subject examination as she did not possess permanent status as of the closing date. The Commission declines to address the merits of the appellant's August 15, 2014 layoff as any request to do so would now be untimely. *See N.J.A.C. 4A:8-2.6(b)* (Good faith and determination of rights appeals shall be filed *within 20 days* of receipt of the final notice of status required by *N.J.A.C. 4A:8-1.6(f)*).

The appellant's complaints about the conduct of the subject examination are unavailing. Specifically, the application processing fee is for processing purposes only and shall not be refunded for any reason except untimely filing of the application or cancellation of the examination. *N.J.A.C. 4A:4-2.17(e)*. Neither reason applies here as the appellant's application, submitted August 20, 2020, was timely, and the examination, of course, was not cancelled. As for the examination mode, an evaluation of experience was permissible, and a written or other test was not strictly required. *See N.J.A.C. 4A:4-2.2(a)*.

The Commission does not agree that the appellant was entitled to be permanently appointed to Clerk 3 based on her passing an examination for the title of Principal Clerk Typist (since renamed Keyboarding Clerk 3). Contrary to the appellant's view, the two titles are not "the same" as they are in fact distinct titles in the State Classification Plan. Moreover, the eligible list for Principal Clerk Typist on which the appellant appeared, and from which she was removed, expired long before the appellant's provisional appointment to Clerk 3.

The Commission finds no error in N.H.'s regular appointment to Personnel Officer. While the appellant complains that N.H. was "only" permanent in the title of Personnel Technician before that appointment, the Personnel Officer examination (PM2729B) was open, in pertinent part, to employees in the competitive division who had an aggregate of one year of continuous permanent service as of the closing date in any competitive title, of which Personnel Technician is one. Processing the PM2729B examination as an evaluation of education and experience was permissible. *See N.J.A.C. 4A:4-2.2(a)*. And contrary to the appellant's claim, the job specification for Personnel Officer does not require the incumbent to hold any particular certification.

Other alleged errors asserted by the appellant do not bear directly on her eligibility for the subject examination, but the Commission will address them in the

interest of completeness. The appellant has expressed a concern over A.B.'s non-residency in Newark. Although the Commission reviews residence requirements that apply to examination candidates, it is the responsibility of the appointing authority to review and enforce residence requirements relating to appointment and continued employment. *See N.J.A.C. 4A:4-2.11(f)*. Thus, the NSD can address the matter of A.B.'s residency as appropriate in disposing of the July 6, 2021 certification. *See N.J.A.C. 4A:4-2.11(e)* and *N.J.A.C. 4A:4-4.7(a)7*. The Commission has reviewed W.T.'s application for the PM2728B examination and W.D.'s application for the M0740B examination and finds that they were appropriately admitted to their respective examinations.⁴

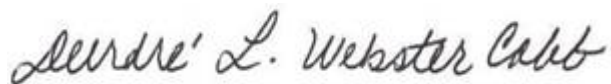
As for the appellant's assertion that she worked out-of-title from June 2019 to July 2020, the appellant's appeal as it relates to this claim is untimely. *See N.J.A.C. 4A:2-1.1(b)* (providing, in pertinent part, that an appeal must be filed *within 20 days* after either the appellant has notice or should reasonably have known of the decision, situation, or action being appealed). The appellant could have filed a position review request at the time if she believed her position was misclassified. *See N.J.A.C. 4A:3-3.9*.

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 4TH DAY OF AUGUST, 2021



Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

⁴ The applications themselves are considered confidential records. *See N.J.A.C. 4A:4-2.16(b)1*.

Inquiries
and
Correspondence

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

c. Trina Lucas
Dr. Yolanda Méndez
Division of Agency Services
Records Center