



as a career firefighter or in performing fire prevention work. Or, his 10 hours per week of work as a volunteer Fire Fighter prorated to one year, two months of full-time experience, and thus he did not possess one year, ten months of active experience in a volunteer fire unit.

On appeal, the appellant argues that he is not in agreement on the proration of hours determining the three year active volunteer service requirement. He would like to see a document defining active volunteer experience, specifically, regarding active volunteer experience equating to 40 hours per week/per year. He argues there is no “full time” or hourly number associated with the volunteer experience requirement, and should not be calculated down to a 40 hour/full-time job. In the alternative, he argues that his 1 year, 2 months of volunteer service should be accepted as equivalent to one year of experience as a career firefighter. He states that not doing so is biased, arguably discriminatory, and contradictory to the posting requirements.

Next, the appellant indicates that that this position also requires a Incident Management Level 1 certification issued by the Department of Fire Service, Department of Community Affairs, and states that it requires a minimum of 3 years satisfactory experience. He indicates that he possesses this certification, as well as Levels 2 and 3, and should be eligible on this basis.

Lastly, he argues that he has held a provisional appointment for over a year, since March 16, 2020, and no test has been held. He believes that since he was not afforded the opportunity to test, he should be regularly appointed to the title on this basis. He states that the examination is excluding people as it has been closed for over a year, and he could have satisfied the one year career requirement if a new announcement is held.

## CONCLUSION

*N.J.A.C.* 4A:4-2.3(b) provides that applicants shall meet all requirements specified in the open competitive examination announcement by the closing date.

*N.J.S.A.* 11A:4-13(b) provides that in no case shall any provisional position exceed a period of 12 months. However, failure to give a timely Civil Service examination does not vest the provisional appointee with the right to retain the provisional appointment or the right to a permanent appointment absent a showing of negligence or intentional misconduct on the appointing authority’s part. See *O’Malley v. Department of Energy*, 109 *N.J.* 309 (1987); see also *Kyer v. City of East Orange*, 315 *N.J. Super.* 524 (App. Div. 1998) and *Melani v. County of Passaic*, 345 *N.J. Super.* 579 (App. Div. 2001).

A review of the appellant's application reveals that the decision by Agency Services, denying the appellant's admittance to the subject examination since he does not possess the required experience, was correct. Specifically, the experience requirements stated that one year of experience as a career firefighter and/or in performing fire prevention work was required. The appellant was credited with one month of experience although he was provisionally appointed on March 16, 2020, and the closing date was March 23, 2020. All candidates must meet the requirements as of the closing date, and the appellant did not have one year of experience as a career firefighter by the closing date. It is noted that the appellant was on military leave with pay from April 2020 to August 2020, and again starting in March 2021 until July 2021.

In the alternative, three years of active experience in a volunteer fire unit was acceptable. These are different requirements, or they would not be separately listed in the qualifications. As such, one year of full-time experience in a volunteer fire unit is not the same as one year of experience as a career firefighter and/or in performing fire prevention work. They are not interchangeable. As to the hours, it is not acceptable to credit part-time experience as full-time experience. For example, if one candidate works 8 hours per week, another 15 hours per week, another 20 hours per week and another 35 hours per week, they are not all providing the employer with the same amount of work. A person working 10 hours per week is not doing the same amount of work as one working 20 hours per week, double the number of hours. "Active service" must be quantified in some measure in order to level the playing field and in fairness to all candidates. If the requirement meant to be part-time, say 17.5 hours per week, then the requirement could simply be halved, to one year, six months of full-time work. As volunteers work all number of hours, a set number of months, in this case 36, properly ensures that all candidates have met the same requirements. The appellant's part-time experience was prorated to one year, two months of full-time experience and he lacks one year, ten months of experience in a volunteer fire unit.

As to the Incident Management Level 1 certification issued by the Division of Fire Service, Department of Community Affairs, it is noted that one of the requirements for this certification is, "The member must have been a member of a fire department who has been qualified and performed as a 'structural firefighter' for at least three years prior to application." It is not clear from this description that the Department of Community Affairs has the same standard of full-time experience as this agency. Nor has the appellant provided proof of three years of full-time volunteer experience that he may have provided to the Department of Community Affairs. The appellant began his part-time volunteer experience in March 2016, and his certificate was issued on October 7, 2019. If the appellant relied on this experience to receive his certification, then clearly the Department of Community Affairs does not require full-time volunteer experience.

As to a delay in the examination, the Civil Service Commission has a duty to ensure that all applicants for an examination are given equal opportunity to demonstrate their relative merit and fitness. *N.J.A.C.* 4A:4-2.1(d) states that a promotional examination may be reannounced if, within one year of the closing date, if the examination has not been developed and scheduled. However, this examination is open competitive, and as such, is for use by all appointing authorities who use the title. *N.J.A.C.* 4A:4-2.1(d) does not pertain to open competitive examinations, and this is not a promotional examination for the appellant's singular unit scope. A strict reading of the rules does not direct that the examination be reannounced, but the above-cited statutory section provides that the appellant should be removed from his provisional appointment. The appellant does not meet the examination requirements.

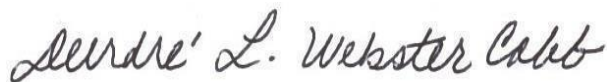
The appellant was denied admittance to the subject examination since he lacked the minimum requirements in experience. An independent review of all material presented indicates that the decision of Agency Services, that the appellant does not meet the announced requirements for eligibility by the closing date, is amply supported by the record. The appellant provides no basis to disturb this decision. Thus, the appellant has failed to support his burden of proof in this matter.

### **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 28th DAY OF APRIL, 2021



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