



STATE OF NEW JERSEY

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

In the Matter of Bryan Mullen,
Public Works Superintendent,
(PM2184B), Delran Township

Examination Appeal

CSC Docket No. 2021-889

ISSUED: AUGUST 6, 2021 (ABR)

Bryan Mullen appeals the determination of the Division of Agency Services (Agency Services), which found that he did not meet the experience requirement for the promotional examination for Public Works Superintendent (PM2184B), Delran Township.

The subject examination was open, in part, to applicants in the competitive division who possessed five years of supervisory experience in the construction, maintenance, and repair of streets, sewer, water, sanitation, or other public works facilities or similar heavy construction or maintenance work as of the February 21, 2020 closing date. The subject examination was cancelled on January 3, 2021 after the appellant, the only applicant, was deemed ineligible.

On his application, the appellant stated that he served provisionally as a Public Works Superintendent from July 2019 to the closing date (February 2020); as a Supervisor of Garage Services from June 2014 to July 2019; as a Mechanic from April 2012 to June 2014; as a Mechanics Helper from June 2007 to April 2012; and as a Laborer from February 1999 to June 2007. Agency records indicate that the appellant was appointed to the unclassified title of Superintendent of Public Works¹, effective November 4, 2019, and continues to serve in that title. Agency Services credited the appellant with four months of applicable experience based

¹ It is noted that the definition sections of the job specifications for both the unclassified title of Superintendent of Public Works and the competitive title of Public Works Superintendent state: "Under direction, performs administrative and supervisory duties in planning and organizing the installation, maintenance, and repair of various public works facilities; does other related work as required."

upon his provisional experience in the subject title. Agency Services did not credit the appellant with any other applicable experience. Accordingly, the appellant was deemed ineligible, as he did not possess an additional four years and eight months of applicable experience.

On appeal, the appellant asserts that he possesses sufficient applicable experience for the subject examination. In this regard, he avers that after he was promoted to the title of Supervisor of Garage Services in 2013, he assisted the Public Works Superintendent with all Department of Public Works operations and decisions on a daily basis, including working with contractors and engineers on large projects such as roads and parks. He further submits that he has been performing the duties of a Superintendent of Public Works since his predecessor retired in June 2019, with responsibility for assigning, supervising and disciplining employees. He also indicates that he supervises the construction and maintenance of streets, roads and public facilities.

The appointing authority submits a letter of support in which it asserts that in June 2013, it assigned the appellant the out-of-title duties of an Assistant Public Works Superintendent while he was serving in the title of Mechanic after the prior incumbent in that title retired. It states that at the time, the appellant was the most qualified to assume the duties of an Assistant Public Works Superintendent and that it did not have any other employee with a supervisory title or supervisory experience who could fill that position. Moreover, it adds that after June 2019, it assigned the appellant the duties of a Public Works Superintendent after the then-serving incumbent began to utilize his accumulated leave time ahead of his retirement in October 2019. It proffers that the appellant continues to perform these duties.

CONCLUSION

N.J.A.C. 4A:4-2.6(a) provides that applicants must meet all requirements specified in a promotional examination announcement by the closing date. *N.J.A.C.* 4A:4-2.6(c) provides that, except when permitted for good cause, applicants for promotional examinations may not use experience gained as a result of out-of-title work to satisfy eligibility requirements.

In this matter, Agency Services correctly determined that the appellant was ineligible for the subject examination because he did not meet the experience requirement as of the February 21, 2020 closing date. A review of the record indicates that the appellant performed applicable duties as a Supervisor of Garage Services. However, any applicable duties he performed while serving in that title would be considered out-of-title work. Ordinarily, the Commission looks to whether or not “good cause” has been established in determining whether to grant or deny appeals involving out-of-title work. Generally, the Commission finds good cause

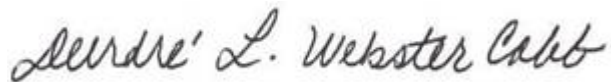
where the record evidences that the examination situation is not competitive, no third parties are adversely impacted, and the appointing authority wishes to effect a permanent appointment and verifies that the appellant has performed the relevant duties which otherwise satisfy the eligibility requirements. *See In the Matter of John Cipriano, et al.* (MSB, decided April 21, 2004). Here, the appointing authority has confirmed that the appellant possesses four years and eight months of applicable out-of-title work experience. Furthermore, the record evidences that the subject examination was cancelled, after the appellant, the only applicant, was deemed ineligible. Moreover, the appellant continues to serve in the comparably-defined unclassified title of Superintendent of Public Works. Therefore, good cause exists to accept the out-of- title work experience for the appellant, for eligibility purposes only, and admit him to the subject examination.

ORDER

Therefore, it is ordered that this appeal be granted and the appellant's application be processed.

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



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