



STATE OF NEW JERSEY

In the Matter of Brian Day, Assistant
Institutional Fire Chief (S0455B),
Statewide

CSC Docket No. 2022-908

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

Request for Reconsideration

ISSUED: JANUARY 21, 2022 (RE)

Brian Day petitions the Civil Service Commission (Commission) for reconsideration of the decision rendered on April 28, 2021, which denied his appeal regarding his ineligibility for the open-competitive examination for Assistant Institutional Fire Chief (S0455B), Statewide.

In the prior decision, the Commission explained that the petitioner was credited with one month of experience in his provisional position, and thus was found to be lacking eleven months of applicable full-time experience 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. As such, the Commission found that the petitioner was not eligible for the subject examination and indicated he should be removed from his provisional appointment. The petitioner continues to serve provisionally in the title under test. The resultant eligible list of seven names has been certified once, but no appointments have yet been made.

In the present matter, the petitioner argues that his new evidence is that he was deployed in Afghanistan for the appeal process, recently returned, and filed this request within 39 days of the end of his deployment tour. He claims that he was deployed so that he did not have access to all of his documents, and he supplies a myriad of documents relating to his employment, his certifications and training, and his duty in the Air National Guard. As to an error in the decision, the petitioner continues to argue that the job announcement was unclear that full-time

experience was expected. He argues that had the job announcement been forthcoming with this information, one could have been better-prepared when filing the application. In this regard, if the information he provided on appeal and reconsideration were considered, his weekly number of hours of active volunteer service increases from 10 to 30. The petitioner also requests to log his military time as applicable firefighting experience. He claims that as a veteran he should be admitted so that veteran's preference can rank him first on the list.

CONCLUSION

N.J.A.C. 4A:2-1.6(a) states that within 45 days of receipt of a decision, a party to the appeal may petition the Commission for reconsideration. *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 occurred or present new evidence or additional information not presented at the original proceeding which would change the outcome of the case and the reasons that such evidence was not presented at the original proceeding.

Initially, the Commission made a final administrative determination on April 28, 2021, and its decision was issued on May 3, 2021. The petitioner's request for reconsideration was date stamped as received on October 15, 2021, 165 days or 5 months, 12 days after the issue date. The appellant argues that he was deployed until September 6, 2021, 126 days or 4 months, 3 days from the May 3, 2021. Under these particular circumstances, the Commission finds that the petitioner's request for reconsideration is timely.

In this case, the petitioner has not met the standard to grant reconsideration. The petitioner's concerns were addressed in the prior decision and he has not demonstrated that a clear material error has occurred or presented any new information which would change the outcome. In this regard, he continues to argue that the job announcement should have specified full-time employment as the petitioner did not have the requisite amount of pro-rated full-time experience based on his part-time volunteer firefighter/EMT employment. The petitioner argues that he would like to increase his part-time volunteer firefighter/EMT hours from 10 to 30 per week on the basis that he was training and taking classes during that time. However, in response to the question on his original application that requested applicants to provide the number of hours per week worked, the petitioner clearly indicated he worked 10 hours a week as a volunteer firefighter/EMT. Under *N.J.A.C.* 4A:4-2.1(g), the Commission can accept clarifying information in eligibility appeals. However, *N.J.A.C.* 4A:4-2.1(f) provides that an application may only be amended prior to the announced closing date. Regardless, an employment history does not change in retrospect. The requirement was one year of experience as a career firefighter and/or in performing fire prevention work, OR three years of active experience in a volunteer fire unit. The number of hours an individual

dedicates to completing training courses or certifications is not the equivalent of active experience as a volunteer firefighter required to establish eligibility for the subject title. Moreover, it cannot be ignored that the petitioner filed for another examination, Inspector 1 Fire Safety (S0941A), wherein he indicated that his part-time hours were 10 per week for his Firefighter/EMT volunteer position, which is consistent with this application.

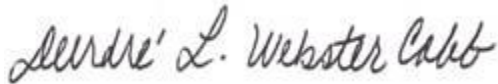
The appellant has failed to present a basis for reconsideration of this matter since he failed to establish that a clear material error occurred in the original determination or that new evidence presented would change the outcome of the appeal.

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 19TH DAY OF JANUARY, 2022



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