



STATE OF NEW JERSEY

In the Matter of Donald Boice, Police
Sergeant (PM0890V), City of
Wildwood

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

CSC Docket No. 2022-708

Administrative Appeal

ISSUED: FEBRUARY 7, 2022 (ABR)

Donald Boice, a Police Sergeant with the City of Wildwood (Wildwood) and Wildwood request that Boice be given a retroactive appointment date of July 7, 2020, based on administrative error. Boice and Wildwood also request that Boice be admitted to the promotional examination for Police Lieutenant (PM4192C), Wildwood.

By way of background, Boice appeared as the sixth ranked eligible on the Police Sergeant (PM0890V), Wildwood eligible list, which promulgated on May 24, 2018 and expired on May 23, 2022. The top three ranked eligibles were appointed following the disposition of the February 8, 2019 (PL190156), August 27, 2019 (PL191228) and June 29, 2020 (PL200614)¹ certifications. Boice was appointed to the title of Police Sergeant, effective February 2, 2021, following the disposition of the January 26, 2021 (PL210058) certification.

Subsequently, an examination (PM4192C) for Police Lieutenant, Wildwood was announced, which was open to applicants who possessed one year of continuous permanent service in the title of Police Sergeant as of the September 30, 2021 closing date. Boice applied for the PM4192C examination, but was deemed ineligible, as he did not possess one year of continuous permanent service in the title of Police Sergeant as of the September 30, 2021 closing date. It is noted that the appellant was conditionally admitted to the subject examination, which was administered on October 23, 2021.

¹ With the disposition of June 29, 2020 certification, Shawn Toffoli, the third ranked eligible, was appointed effective July 7, 2020; Jason Carter, the fourth ranked eligible, and Boice, the sixth ranked eligible, were recorded as “retain - interested others appointed (reachable for appointment).”

In his request, Boice asserts that he has been performing the duties of a Police Sergeant since May 2019. Specifically, he indicates that he worked in the position of “Temporary Sergeant” from May 2019 until his permanent appointment to the Police Sergeant, effective February 2, 2021. Boice asserts that Wildwood’s Chief of Police recommended that he be promoted with the disposition of the June 29, 2020 certification. However, because of an investigation involving his use of force on July 12, 2020, the appointing authority, Steven Mikulski, Wildwood’s Commissioner of Public Safety, was reluctant to support his promotion, because of concerns that Wildwood would be sued over the incident. The appellant states that the appointing authority nevertheless continued to keep him in the position of “Temporary Sergeant.” After reviews of the use of force incident concluded that the appellant’s actions on July 12, 2020 were appropriate, the appointing authority permanently appointed him to the title of Police Sergeant with the disposition of the subsequent certification, effective February 2, 2021.

Steven Mikulski, the appointing authority, states that Boice was named as a Temporary Sergeant on April 5, 2019. The appointing authority advises that when he assumed his position as Wildwood’s Commissioner of Public Safety in January 2020, he delayed making any personnel changes, including Boice’s permanent appointment, until he had a clearer understanding of departmental operations. The appointing authority stresses that because Boice was performing the duties of a Police Sergeant and being compensated based upon that rank, he did not believe it was urgent to permanently appoint Boice to the title of Police Sergeant. He also acknowledges that because of concerns over the implications of formalizing his permanent appointment while the July 12, 2020 use of force incident was in progress, he further delayed Boice’s appointment. The appointing authority emphasizes that he was unaware that his delay in effectuating Boice’s permanent appointment to the title of Police Sergeant would impair Boice’s eligibility for the Police Lieutenant examination. Based upon the foregoing, he requests that the Commission retroactively adjust the effective date of Boice’s permanent appointment to the title of Police Sergeant to July 7, 2020.

CONCLUSION

N.J.A.C. 4A:4-1.10(c) states, in pertinent part, that an individual may receive a retroactive date of appointment to correct an administrative error, for an administrative delay or for other good cause, on notice to affected parties. Generally, the award of a retroactive appointment date is for seniority purposes only and is limited to situations in which an appellant could have been appointed on the requested retroactive date, but as a result of an administrative error, he or she received a later appointment date.

N.J.A.C. 4A:4-1.6(b) provides, in pertinent part, that when an appointing authority makes an appointment to a specific title in local service, an interim appointment shall be made where the position/title is held by a permanent employee who:

1. Is on a leave of absence;
2. Is on indefinite suspension;
3. Has been removed or demoted for disciplinary reasons and is awaiting final administrative action by the Civil Service Commission on appeal; or
4. Has accepted an interim appointment.

N.J.A.C. 4A:4-1.7(a) provides that the Chairperson or designee may approve temporary appointments to positions in which the job assignment is for an aggregate period of not more than six months in a 12-month period. A temporary appointment for a maximum of 12 months may be approved by the Chairperson or designee to a position established as a result of a short-term grant. *N.J.A.C.* 4A:4-1.7(d) states that consecutive temporary appointments in excess of the periods set forth in *N.J.A.C.* 4A:4-1.7(a) above are prohibited.

In the instant matter, the record establishes that on June 29, 2020, the appellant's name was certified (PL200614) to the appointing authority from the Police Sergeant (PM0890V), Wildwood eligible list and that the appellant was reachable for appointment. The appointing authority has indicated that the appellant was performing the duties of a Police Sergeant as of that date and that he would have permanently appointed the appellant to the title of Police Sergeant, effective July 7, 2020 with the disposition of the PL200614 certification if he had understood that it would have impaired the appellant's eligibility for the Police Lieutenant (PM4192C), Wildwood examination. Therefore, based on the foregoing, ample cause exists to grant Boice a retroactive date of appointment to the title of Police Sergeant. As Boice has completed his working test period as a Police Sergeant, his permanent appointment should be recorded as July 7, 2020.

Finally, the Commission has serious concerns regarding the length of the appellant's temporary appointment. The appellant was in a temporary appointment in the title of Police Sergeant from April 5, 2019 to February 2, 2021. However, this temporary appointment was not recorded in the County and Municipal Personnel System (CAMPS). Moreover, there is nothing in the appellant's personnel records reflecting that the appointing authority sought an extension of his temporary appointment beyond the six-month maximum. Wildwood is cautioned that such actions in the future may subject it to fines or other penalties pursuant to *N.J.S.A.* 11A:10-3 and *N.J.A.C.* 4A:10-2.1(a)2.

ORDER

Therefore, it is ordered that Boice's and Wildwood's requests be granted and the June 29, 2020 certification of the Police Sergeant (PM0890V), Wildwood eligible list be amended to reflect the permanent appointment of Boice, effective July 7, 2020. Additionally, it is ordered that Boice be admitted to the promotional examination for Police Lieutenant (PM4192C), Wildwood and that his examination be scored.

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 2ND DAY OF FEBRUARY 2022

Deirdre' L. Webster Cobb

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