



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Jose Santana,
Police Sergeant (PM2041V),
Jersey City

CSC Docket No. 2022-2048

Administrative Appeal

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ISSUED: APRIL 11, 2022

Jose Santana appeals that he was inappropriately bypassed on the certification (PL210072) for Police Sergeant (PM2041V), Jersey City and requests retroactive seniority and back pay to January 28, 2021.

By way of background, an examination for Police Sergeant (PM2041V), Jersey City was announced with a closing date of July 21, 2017. The appellant’s application was not processed due to a problem with the filing fee. He appealed, and that Civil Service Commission (Commission) permitted him to file an application and be scheduled for a make-up examination. *See In the Matter of Craig Hausmann and Jose Santana, Police Sergeant (various jurisdictions)* (CSC, decided May 23, 2018). The original examination had been given on October 28, 2017, and the appellant subsequently took a make-up examination on February 23, 2019. He passed with a final average of 91.250 which placed him at rank A52 (just above rank 52) on the Eligible Roster. This addition to the roster was made on November 15, 2019. The roster had been certified once prior to the appellant’s name being added, on June 20, 2019, and *Hausmann, supra*, indicated that should the appellant achieve a passing score, his name should be added to the eligible list for prospective appointment consideration. Although there were 15 appointments from that certification, they are undisturbed by these circumstances. The list will expire on May 23, 2022.

There were three certifications after the addition of the appellant’s name, (PL200294) dated February 27, 2020 with 21 appointments, (PL210072) dated January 28, 2021 and with 15 appointments, and (PL220121) dated February 4,

2022, which is not yet disposed. Of the 24 eligibles on (PL200294), they ranked 19 through 42, and 21 were appointed on November 24, 2020, while two were removed, and one was bypassed. As this certification did not reach the appellant's rank, it has no bearing on this determination. Similarly, (PL220121) dated February 4, 2022 has no bearing as it starts with a ranking after the appellant's rank.

A review of the appointments on (PL210072) shows the appellant's name along with candidates ranking 36 (the previously bypassed candidate), and 43 through 60. Two candidates ranked 50. Candidates 36 (retired), 43 52 were removed; candidates 44 through 50, and 53 through 58 (14 in total) were appointed on January 28, 2021, and candidates 59 and 60 were interested but not appointed. The appellant ranked between 51 and 52, with an appointment date of February 25, 2021, and was the sole candidate with the later appointment date.

On appeal, the appellant describes these circumstances and indicates that the candidates who were appointed on January 28, 2021 were sworn in on November 24, 2020 at which time they commenced Police Sergeant duties. The appellant believes that certification (PL200294), contained the names of candidates ranking 19 through 58, instead of through 42, and believes he should have been included in those appointments. The appellant then submits that he is aware of the proper ranking on that certification and that Jersey City is required to request certifications prior to making appointments and to fill vacancies. *See In the Matter of Jersey City Police Promotional Appointments* (CSC, decided June 20, 2018). He argues that the appointing authority did not act quickly to appoint him after receiving notice that he was on the eligible list. He claims that those appointed on January 28, 2021, and himself, should have retroactive appointment dates to November 24, 2020.

CONCLUSION

N.J.A.C. 4A:4-4.8(c), states, in pertinent part, that upon receipt of the certification, an appointing authority shall appoint one of the top three interested eligibles (rule of three) from an open competitive or promotional list, and shall notify the Commission (of the disposition of the certification by the disposition due date.

N.J.A.C. 4A:4-1.10(c) provides that when a regular appointment is made, the Commission may order a retroactive appointment date due to administrative error, administrative delay or other good cause. Generally, this unique remedy has been reserved for two particular situations. First, the Commission has granted retroactive permanent appointment dates in circumstances in which an employee was serving in and performing the duties of a title, but, due to some error or other good cause, his attainment of permanent status was delayed or hindered. The second situation in which an employee may be awarded a retroactive date of

permanent appointment is where the name of an employee, whose appointment would have otherwise been mandated, was improperly removed from or bypassed on an eligible list, thereby preventing the appointment.

In the instant matter, it is noted that the certification (PL200294), was dated February 27, 2020, nine months prior to the swearing in date of November 24, 2020; and certification (PL210072), was dated January 28, 2021, two months after the swearing in date. The appellant reasons that since there were removals from the certifications, his rank should have risen to be included on certification (PL200294), which capped at rank 42. This is simply erroneous. Candidates removed from a certification are not replaced by lower ranking candidates. Candidates are labeled as removed for multiple reasons, appointed, or retained, but new candidates are not added to this outstanding certification for those reasons. The appellant has no claim to an appointment from certification (PL200294), as his rank was between 51 and 52, this certification was capped at rank 42 and it was disposed of on January 27, 2021.

As to certification (PL210072), this certification was issued on January 28, 2021, the day after the prior certification was disposed. It could not be issued prior to that date with an outstanding certification awaiting disposition as the prior candidates had to be considered first. Certification (PL210072) was disposed on July 6, 2021, and the candidates were given an appointment date of January 28, 2021, the date of the certification. Appointments cannot be given by appointing authorities prior to the certification date. It should be noted that an appointment is not valid or final until it is approved by this agency.

One factor to consider is if the candidates on certification (PL210072) should receive retroactive appointment dates to their swearing in ceremony on November 24, 2020. In that regard, it is noted that the appellant was sworn in on February 25, 2021. He does not have standing to request retroactive appointment dates for other candidates, and as such, this issue is moot. Nonetheless, a regular, permanent appointment in the competitive division of the career service is conditioned upon completion of the entire examination and certification process. All rights and benefits associated with a regular appointment are conditional upon the Commission's approval of a certification disposition and successful completion of the required working test period. There was no administrative error in this matter, rather, the appointing authority could not request another certification until the older one had been disposed. Jersey City did not delay its request for a certification after disposing of the prior certification (PL200294).

With that said, the appellant is the sole candidate on the list with a February 25, 2021 appointment date, which is the date of his swearing in ceremony. Six candidates below him were appointed on January 28, 2021. While there may have been some confusion on the addition of his name to the list, it was promulgated

prior to his swearing in date. There are six candidates below him with an earlier effective date; however, this is not evidence of an inappropriate bypass. The Rule of 3 indicates that an appointing authority shall appoint one of the top three interested eligibles. As such, the appellant was bypassed for each of these appointments, and there were no other eligible candidates who were bypassed. Each of the candidates appointed earlier were doing the duties of the position while the appellant was not. As such, the appointing authority would have sufficient grounds to bypass the appellant.

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 6TH DAY OF APRIL 2022

Deirdre L. Webster Cobb

Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

c: Jose Santana
John Metro
Division of Agency Services
Records Center