



**STATE OF NEW JERSEY**

In the Matter of Marc Berkeyheiser,  
Police Sergeant (PM5159N), Trenton

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

CSC Docket No. 2022-2894

Administrative Appeal

**ISSUED:** November 2, 2022 (JH)

The Division of Agency Services (Agency Services), on behalf of the Trenton, requests that Marc Berkeyheiser be assigned a retroactive appointment date to the Police Sergeant title pursuant to a settlement agreement.

By way of background, the announcement for Police Sergeant (PM5159N), Trenton, was issued on September 1, 2011 with an application filing deadline of September 21, 2011. The subject examination was open to employees in the competitive division who had an aggregate of three years of continuous permanent service in the Police Officer title as of the closing date of September 30, 2011. However, in *In the Matter of Police Sergeant Promotional Lists* (CSC, decided September 19, 2012), the Division of Selection Services<sup>1</sup> requested that *N.J.A.C. 4A:4-2.6(a)2* be relaxed to allow it to amend the closing date of the 2010 and 2011 announcements for Police Sergeant to September 30, 2012, the same closing date as the announcements in 2012 for the title of Police Sergeant.<sup>2</sup> As a result, the 2010<sup>3</sup>

<sup>1</sup> Now the Division of Agency Services.

<sup>2</sup> In January 2010, the United States Department of Justice (USDOJ) filed a complaint against the State of New Jersey and the Civil Service Commission (Commission), alleging that the selection process utilized by the State to test and appoint candidates to the Police Sergeant title between 2000 and 2008 had a disparate impact on African-American and Hispanic candidates in violation of Title VII of the Civil Rights Act of 1964, 42 *U.S.C.* §2000e *et seq.*, as amended. During the pendency of this litigation, the parties agreed to the terms of a settlement which was formulated into a Consent Decree which the Court approved and entered as final on June 12, 2012. The terms of the Consent Decree provided, in pertinent part, that the State, in consultation with USDOJ, develop a new Police Sergeant examination and scoring process.

and 2011 announcements were reissued, on August 1, 2012, with a September 30, 2012 closing date. It is noted that the Police Sergeant examination for the 2010, 2011 and 2012 announcements was administered on June 1, 2013.

A review of available employment records finds that Berkeyheiser was on military leave on the test administration date and was granted a make-up examination for PM5159N.<sup>4</sup> A review of the record finds that Berkeyheiser returned from active duty in September 2017. It is noted that announcements for the 2017 Police Sergeant testing cycle were issued on July 1, 2017, with a September 30, 2017 closing date and the examination was administered on October 28, 2017.<sup>5</sup> A review of the record finds that Berkeyheiser was admitted to and took the PM0901V exam which also served as the make-up exam for PM5159N. By notices dated May 16, 2018, the Division of Agency Services informed Berkeyheiser of his final average (88.540) and rank (20) for the PM0901V exam and his final average (88.100) and rank (A)<sup>6</sup> for the PM5159N exam.<sup>7</sup>

The PM5159N eligible list, containing 13 names, was promulgated on January 28, 2016.<sup>8</sup> The first certification of the PM5159N list, which was issued on

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<sup>3</sup> Due to the above noted litigation with the USDOJ, in *In the Matter of Police Sergeant Promotional Lists* (CSC, decided August 17, 2011), the closing date for the 2010 Police Sergeant announcements was amended to November 30, 2011.

<sup>4</sup> In *In the Matter of Police Sergeant (PM3776V), City of Paterson*, 176 N.J. 49 (2003), the New Jersey Supreme Court ordered the Commission, for future exams, to “administer make-up exams that contain substantially different or entirely different questions from those used in the original examination.” *Id.* at 66. As a result, public safety candidates are given a make-up exam when the next regularly scheduled exam for their particular title is administered.

<sup>5</sup> The next announcement for Police Sergeant issued by Trenton following the PM5159N announcement was for the 2017 testing cycle, PM0901V.

<sup>6</sup> Berkeyheiser achieved a final average that was higher than the first ranked eligible on the PM5159N list. As such, his rank is denoted as “A.”

<sup>7</sup> For both PM5159N and PM0901V, the test was worth 80 percent of the final average and seniority was worth the remaining 20 percent. As noted in both the 2013 and 2017 Police Sergeant Orientation Guides, the seniority score combines two elements: length of service and record of service. The first element, length of service, is the time from the regular appointment date of the eligible title (Police Officer) to the *closing date of the announcement*, minus the time spent on suspensions, layoffs, and regular leaves of absence without pay *other than military*. The second element, record of service, adds a maximum of 10 points to the seniority score. The 10 points are reduced by disciplinary suspensions which have occurred up to five years prior to the closing date. As previously noted, the closing date for PM5159N was September 30, 2012 and September 30, 2017 for PM0901V.

<sup>8</sup> The terms of the Consent Decree provided, in pertinent part, that all test results must be reviewed and approved by the United States Department of Justice prior to list issuance. As indicated in the New Jersey Civil Service Commission Public Safety Testing Law Enforcement Status Report (Law

August 11, 2016 (Certification No. PL160984), contained the names of the eligibles who appeared at ranks 1 through 11. In disposing of PL160984, Trenton appointed the eligibles appearing at ranks 1 through 8 effective December 19, 2016.<sup>9</sup> Subsequently, the PM0910V eligible list, containing 86 names, promulgated on May 24, 2018. On June 21, 2018, the first certification of the PM0901V list was issued (PL180876) on which Berkeyheiser's name, from the PM5159N list, was placed in the first certification position<sup>10</sup> and contained names of the eligibles who appeared at ranks 1 through 7 (certification positions 2 through 8). In disposing of PL180876, Trenton appointed the eligibles appearing at certification positions 1 through 6 effective August 20, 2018.

In its request, Agency Services indicates that Trenton and Berkeyheiser entered into a settlement agreement dated March 31, 2020, in which the parties indicate that in February 2019, the bargaining unit filed a grievance on Berkeyheiser's behalf, indicating, in part, that he should be promoted to Sergeant "retroactive to December 19, 2016, the date on which [Berkeyheiser] would have been promoted to Sergeant but for his active duty service . . . citing the requirements of the Uniformed Services Employment and Re-Employment Rights Act of 1994 (USERRA)." In support of its request, Agency Services provides a copy of the settlement agreement dated March 31, 2020.

## CONCLUSION

When a regular appointment has been made, the Commission may order a retroactive appointment date due to administrative error, administrative delay, or other good cause, on notice to affected parties. *N.J.A.C.* 4A:4-1.10(c).

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Enforcement Status Report) (July/August 2014), which was available on the Commission's website, "The Civil Service Commission (CSC) is in the process of finalizing the results of the 2013 Police Sergeant exam, as approved by the United States Department of Justice. It will be several weeks before the CSC issues individual test results and eligible lists . . ." Subsequently, as noted in the Law Enforcement Status Report (October 2014), "For the 11 jurisdictions with priority promotion lists (Atlantic City, East Orange, Elizabeth, Hoboken, Jersey City, New Brunswick, Newark, Passaic, Paterson, Teaneck and Trenton), regular eligible lists will not be issued until all required priority promotions have been made. For this reason, only priority promotion lists were issued for these jurisdictions on August 6, 2014. Test scores were issued to all candidates, but only priority promotion candidates received individual rankings. Rankings for the non-priority promotion candidates will not be made available until regular eligible lists are issued."

<sup>9</sup> The second and last certification of the PM5159N list was issued on December 12, 2017 (Certification No. PL171572), which contained the names of the eligibles appearing at ranks 9 through 13. In disposing of PL171572, Trenton appointed the eligibles appearing at ranks 9 through 12 effective February 12, 2018.

<sup>10</sup> See *N.J.A.C.* 4A:4-2.9(c) and *N.J.A.C.* 4A:4-4.6. See also *N.J.A.C.* 4A:4-4.6A.

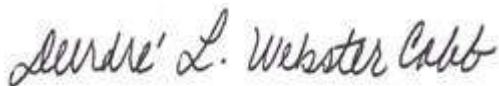
In this matter, a settlement was reached between the parties. The policy of the judicial system strongly favors settlement. *See Nolan v. Lee Ho*, 120 N.J. 465 (1990); *Honeywell v. Bubb*, 130 N.J. Super. 130 (App. Div. 1974); *Jannarone v. W.T. Co.*, 65 N.J. Super. 472 (App. Div. 1961), *cert. denied*, 35 N.J. 61 (1961). This policy is equally applicable in the administrative area. A settlement will be set aside only where there is fraud or other compelling circumstances. *See Nolan, supra*. No such compelling circumstances exist here. Further, a review of the settlement agreement indicates that it does not violate Civil Service law or rules. Accordingly, good cause exists to grant Berkeyheiser a retroactive date of permanent appointment to the title of Police Sergeant, effective December 19, 2016, for seniority purposes.

### ORDER

Therefore, the Commission orders that the permanent appointment of Marc Berkeyheiser to the title of Police Sergeant, effective December 19, 2016, be recorded, for seniority purposes.

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  
THE 2<sup>ND</sup> DAY OF NOVEMBER, 2022




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