



STATE OF NEW JERSEY

In the Matter of Daniel Estremera, *et al.*, Police Sergeant (PM4605C), Newark

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

CSC Docket Nos. 2023-21, *et al.*

Examination Appeal

ISSUED: December 7, 2022 (JH)

Daniel Estremera, Loramny Rodriguez, Jonuz Bojkovic and Victor Lopez, represented by Ronald J. Ricci, Esq., appeal the determinations of the Division of Agency Services (Agency Services) which found that they lacked the required amount of permanent status in a title to which the examination was open for the promotional examination for Police Sergeant (PM4605C), Newark.

By way of background, the announcement for the subject examination was issued on October 1, 2021 and was open to employees in the competitive division who had an aggregate of three years of continuous permanent service and were serving in the Police Officer title as of the December 31, 2021 closing date. It is noted that the subject examination was administered on February 26, 2022. A review of the record finds that in February 2019, Estremera, Rodriguez, Bojkovic and Lopez entered into settlement agreements with Newark¹ which indicate that Estremera entered the New Jersey State Police Academy (NJSPA) on or around August 29, 2017, and Bojkovic and Lopez entered on August 8, 2018. Estremera was dismissed from the NJSPA on or around August 29, 2017, Bojkovic was dismissed on August 20, 2018, and Lopez

¹ It is noted that to date, despite numerous requests, the City of Newark has not provided a copy of the settlement agreement for Rodriguez. It is also noted that Mr. Ricci was notified, in a letter dated October 3, 2022, that the Division of Appeals and Regulatory Affairs (DARA) had been unable to obtain a copy of Rodriguez' settlement agreement from Newark. It is further noted that Mr. Ricci did not provide copies of any of the settlement agreements during the appeal process nor has he claimed that the terms of Rodriguez' settlement agreement differ from those indicated in the settlement agreements for Estremera, Bojkovic and Lopez.

was dismissed on September 5, 2018. The terms of the agreements provide, in pertinent part:

The Recruit shall take as an unpaid leave of absence the time between his or her dismissal from the NJSPA and the respective date upon which he or she physically reports for duty with the City . . .

Promotional seniority benefits shall be impacted by the amount of time of the Recruit's unpaid leave of absence. The recruit acknowledges that his or her unpaid leave of absence is deducted from his or her service credit. The Recruit acknowledges that his or her ability to sit for any promotional examination is contingent on the rules and regulations of the Civil Service Division.

A review of available employment records finds that Estremera was appointed effective July 31, 2017, and Rodriguez, Bojkovic and Lopez effective August 6, 2018, to the Police Officer title. However, as a result of the terms of the settlement agreements, their employment records further show that they took unpaid leaves of absence for personal reasons from August 29, 2017 to February 18, 2019 for Estremera; from September 10, 2018 to February 18, 2019 for Rodriguez; from August 20, 2018 to February 18, 2019 for Bojkovic; and from September 5, 2018 to February 18, 2019 for Lopez. Agency Services found Estremera, Rodriguez, Bojkovic and Lopez ineligible as they did not possess three years of continuous permanent service in Newark as of the December 31, 2021 closing date.

On appeal, the appellants assert that they "are under the belief that a leave of absence would not disqualify them as applicants for a promotional examination." They refer to *N.J.A.C. 4A:6-1.1(a)* which "specifically states what their understanding was regarding their rights to be promoted in the Newark Police Department. As such, it is clear that the above section of the Administrative [C]ode speaks to the instant issue."

CONCLUSION

N.J.A.C. 4A:4-2.6 (Eligibility for promotional examinations) provides in pertinent part that applicants for promotion from entry level law enforcement or firefighter titles shall have three years of continuous permanent service in a title to which the examination is open.

N.J.A.C. 4A:4-2.6(a) provides that service shall be calculated in the same manner as seniority as set forth in *N.J.A.C. 4A:4-2.15*. *N.J.A.C. 4A:4-2.15* (Rating of examinations) provides, in pertinent part:

(d) In calculating seniority for promotional examinations:

1. Continuous permanent service accumulated prior to an intergovernmental transfer pursuant to *N.J.A.C.* 4A:4-7.1A (except as provided in (d)3 below), voluntary furloughs and the following types of leaves shall not be deducted from seniority.
 - i. All leaves with pay including sick leave injury (SLI);
 - ii. Military, educational, gubernatorial appointment, personal sick, disability, family, furlough extension, and voluntary alternative to layoff leaves of absence without pay; and
 - iii. In local service, leave without pay to fill elective office .

- (e) Suspensions, other leaves of absence without pay not identified in (d) above, and any period an employee is laid off shall be deducted when calculating seniority.

N.J.A.C. 4A:4-2.15(d) clearly does not include a leave of absence without pay for personal reasons as one of the types of leaves that is not deducted from seniority. Thus, *N.J.A.C.* 4A:4-2.15(e) governs this matter and the time during which the appellants are recorded as taking leaves of absences without pay for personal reasons was correctly not included in the calculation of their seniority for eligibility purposes.

With regard to the appellants' argument that pursuant to *N.J.A.C.* 4A:6-1.1(a), a leave of absence does "not disqualify them as applicants for a promotional examination," it is noted that *N.J.A.C.* 4A:6-1.1(a) provides:

- (a) In local service, appointing authorities shall establish types of leaves and procedures for leaves of absence.
1. Pursuant to this subchapter, employees in local service shall also be entitled to vacation leave (*N.J.A.C.* 4A:6-1.2(b) through (h)); sick leave (*N.J.A.C.* 4A:6-1.3(a) through (h)); military leave (*N.J.A.C.* 4A:6-1.11); gubernatorial appointment leave (*N.J.A.C.* 4A:6-1.12); convention leave (*N.J.A.C.* 4A:6-1.13); elective office leave (*N.J.A.C.* 4A:6-1.17); family leave under State law (*N.J.A.C.* 4A:6-1.21A); and Federal family and medical leave (*N.J.A.C.* 4A:6-1.21B).
 2. An appointing authority may grant a permanent employee a leave of absence without pay for a period not to exceed one year. A leave may be extended beyond one year for exceptional circumstances upon request of the appointing authority and written approval of the Chairperson or designee.

3. An appointing authority may grant unpaid union leave pursuant to *N.J.A.C. 4A:6-1.16*.
4. Vacation and sick leaves for police officers and firefighters are established by local ordinance. *See N.J.S.A. 40A:14-7 and 40A:14-118.*

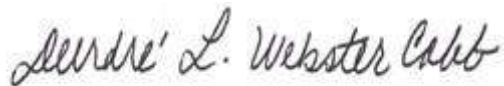
Thus, while *N.J.A.C. 4A:6-1.1(a)* establishes that employees in local service are entitled to certain types of leave, it does not address how leave may or may not impact an individual's eligibility for a promotional examination. Rather, as noted above, *N.J.A.C. 4A:4-2.6* and *N.J.A.C. 4A:4-2.15* govern this matter. Accordingly, the appellants' reliance on this provision is misplaced.

ORDER

Therefore, it is ordered that these appeals 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 7TH DAY OF DECEMBER, 2022



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