



**STATE OF NEW JERSEY**

In the Matter of Jerry Brown, Jersey  
City

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

CSC Docket No. 2022-3217

Administrative Appeal

**ISSUED:** December 7, 2022 (SLK)

Jerry Brown, represented by Seth B. Kennedy, Esq., requests that his provisional appointment as a Heavy Equipment Manager be changed to a permanent appointment in order to extend him rights to appeal his removal.

By way of background, on September 9, 2015, the Jersey City Incinerator Authority (Incinerator Authority), a non-Civil Service agency, was absorbed by Jersey City. In *In the Matter of Jersey City Incinerator Authority* (CSC, decided October 19, 2016), the Civil Service Commission (Commission) granted Jersey City’s request that the former employees of the Incinerator Authority be recorded as employees of its Department of Public Works, effective April 2, 2016. Employees who had worked for one year or more with the Incinerator Authority prior to the April 2, 2016, transfer date were deemed to have attained permanent status in their present positions with Jersey City. Employees who held career service titles but possessed less than one year of employment with the Incinerator Authority prior to the transfer date were afforded provisional appointments and needed to proceed through the examination process in order to achieve permanent status.

Personnel records indicate that Brown was provisionally appointed as an Equipment Operator on December 3, 2018. Thereafter, Brown applied for the Heavy Equipment Operator (PM1193A), Jersey City promotional examination, which had an August 21, 2019, closing date. On December 11, 2019, this agency sent him notice advising that he was ineligible for the PM1193A examination because he had no

permanent status as of the closing date. Agency records do not indicate that he appealed that determination. On September 28, 2020, Brown was provisionally appointed as a Heavy Equipment Operator. On January 24, 2022, Jersey City issued a Preliminary Notice of Disciplinary Action (PNDA) suspending him effective December 15, 2021, for failing a random drug test on December 7, 2021. On June 7, 2022, Jersey City issued a Final Notice of Disciplinary Action (FNDA) removing Brown. On June 14, 2022, he appealed his removal to the Commission. On August 2, 2022, this agency advised Brown pursuant to *N.J.S.A. 11A:2-6* and *N.J.A.C. 4A:2-2.1*, he did not have the right to appeal his removal to the Commission as he did not have permanent status in a career service title. On August 26, 2022, Brown requested that the Commission “reconsider”<sup>1</sup> the determination that he is classified as a provisional employee.

In his request, Brown presents that on or about January 1, 2016, the Department of Public Works merged with the Incinerator Authority. He states that Local 641 represented a collective bargaining unit of employees at the Incinerator Authority, including him, and continued to represent those employees as a discrete collective negotiations unit following the merger. Brown indicates that when the merger took place, the former Incinerator Authority employees were initially designated as provisional employees. However, shortly thereafter, those employees were supposed to be reclassified as permanent employees.

Brown asserts that throughout the disciplinary process, Jersey City treated him as a permanent employee. He presents the initial PNDA, as well as a subsequent amended PNDA that Jersey City issued to him, identified his permanent Civil Service title as Heavy Equipment Operator. Further, at the departmental hearing, Jersey City never alleged that he was a provisional employee. Similarly, Brown provides that the FNDA identified his permanent Civil Service title as Heavy Equipment Operator. Therefore, he asserts that there was no dispute between Jersey City and Local 641 throughout the disciplinary process that he was a permanent Heavy Equipment Operator.

In response, Jersey City, represented by James B. Johnston, Assistant Corporation Counsel, notes that this was the second time that Brown failed a drug test as he previously failed a June 30, 2020, drug test. It presents that the statement that Brown was represented by Local 641 at the time the Incinerator Authority was absorbed by Jersey City is inaccurate as he did not begin to work for Jersey City until 2018, which was three years after the time that the Incinerator Authority was absorbed by Jersey City. Jersey City states that Brown has provided no evidence that there is an Order that requires him to be a permanent employee. It asserts that Brown’s claims that because the Department of Public Works allegedly treated him

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<sup>1</sup> Although the parties refer to this matter as a “reconsideration,” as no Commission decision has been issued regarding Brown’s requests, this matter is considered an initial request and the reconsideration standards are not applicable.

like he was a permanent employee or because his provisional title was inserted in the box on the disciplinary forms labeled “Permanent Civil Service Title” automatically makes him a permanent employee is meritless as he has presented no legal authority to support this position. Moreover, Jersey City indicates that it held a departmental hearing concerning his discipline so that he would not be treated like a second-class employee. However, it asserts that this did not create a new right for him to appeal his removal to the Commission which does not exist under the law. Jersey City submits a certification from its Director of the Division of Human Resources certifying that Brown’s personnel record is accurate and he was never a permanent employee.

### CONCLUSION

*N.J.A.C. 4A:1-1.3* provides that “permanent employee” means an employee in the career service who has acquired the tenure and rights from regular appointment and successful completion of the working test period.

*N.J.A.C. 4A:2-1.1(b)* provides that unless a different time period is stated, an appeal must be filed within 20 days after either the appellant has notice or should reasonably have known of the decision, situation, or action being appealed.

*N.J.A.C. 4A:2-2.1(a)* provides that the Major Discipline subchapter applies only to permanent employees in the career service or a person serving a working test period.

*N.J.A.C. 4A:4-1.1(a)* provides that regular appointments to titles allocated to the competitive division of the career service shall be subject to an examination process and successful completion of working test period.

Initially, it is noted that Brown’s appeal of his provisional status is untimely. On December 11, 2019, this agency sent him notice advising that he was ineligible for the PM1193A examination because he had no permanent status as of the closing date, which he did not appeal. Therefore, the subject June 14, 2022, appeal is well after 20 days from when he knew or should have known that he did not have permanent status in a Civil Service title and he cannot now claim that he is a permanent employee to appeal his removal to the Commission.

Personnel records indicate that Brown was initially provisionally appointed as an Equipment Operator on December 3, 2018, and subsequently provisionally appointed as a Heavy Equipment Operator on September 28, 2020. Therefore, both appointments were well after the Commission’s October 19, 2016, decision which afforded certain former Incinerator Authority employees permanent status with Jersey City, effective April 2, 2016. As such, that decision does not afford Brown permanent status. Further, contrary to Brown’s assertion that employees were

supposed to be reclassified as permanent employees, the decision specifically indicated that employees who held career service titles but possessed less than one year of employment with the Incinerator Authority prior to the transfer date were afforded provisional appointments and needed to proceed through the examination process in order to achieve permanent status. Regardless, that decision is inapplicable to Brown, as he was not employed with the Incinerator Authority or Jersey City at the time of that decision. As there is nothing in the record that indicates that Brown went through any Civil Service examination process to achieve permanent status, there is nothing in the record that suggests that Brown's appointments were permanent.

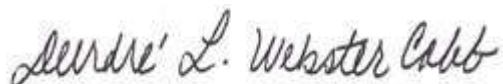
Additionally, Brown argues that throughout the disciplinary process, Jersey City treated him as a permanent employee by issuing PNDAs that identified him by his "permanent" Civil Service title, holding a departmental hearing, not alleging that he was a provisional employee, and issuing a FNDA that identified his "permanent" Civil Service title. Therefore, he asserts that there was no dispute between Jersey City and the union throughout the disciplinary process that he was a permanent Civil Service employee. However, an appointing authority cannot convey permanent status to an employee in a competitive career service title without that employee acquiring such status through the Civil Service examination process. Moreover, as stated above, the record indicates that this agency provided him notice in December 2019 that he was not eligible for a promotional examination because he did not have permanent status, which he did not appeal at that time. Therefore, his argument that he believed he had permanent status based on the way Jersey City treated him during the disciplinary process is unpersuasive.

### **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 7<sup>TH</sup> DAY OF DECEMBER, 2022



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