



STATE OF NEW JERSEY

In the Matter of Desi Fioravanti, *et al.*, The College of New Jersey

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

CSC Docket No. 2022-2868, *et al.*

Administrative Appeals

ISSUED: JULY 25, 2022 (ABR)

The College of New Jersey (TCNJ) requests retroactive permanent appointment dates for Desi Fioravanti, Kevin Cullen, Kyle Pukenas, Nicholas O'Brien and Tyler McGilligan to the title of Campus Police Officer.

By way of background, TCNJ regularly appointed Fioravanti, Cullen, O'Brien and McGilligan to the non-competitive title (RAN) of Security Officer, effective May 15, 2017, November 8, 2017, May 22, 2017 and August 19, 2019, respectively. Pukenas was appointed RAN to the title of Public Safety Telecommunicator Trainee, effective January 22, 2018. TCNJ subsequently appointed Fioravanti and O'Brien provisionally, pending promotional procedures (PAP) to the title of Campus Police Officer Recruit, effective March 31, 2018. TCNJ appointed Cullen PAP and Pukenas provisionally, pending open competitive procedures (PAOC), to the title of Campus Police Officer Recruit, effective August 27, 2018. Fioravanti and O'Brien were appointed PAP to the title of Campus Police Officer, effective March 30, 2019. TCNJ promoted Cullen and Pukenas to the title of Campus Police Officer, effective August 31, 2019, recording their appointments as temporary appointments (TA). Fioravanti's and O'Brien's appointment types for the title of Campus Police Officer were also changed to TA, effective August 31, 2019. TCNJ states that the recording of their appointment types as TA was due to administrative error. TCNJ further indicates that it promoted McGilligan to the title of Campus Police Officer Recruit, effective February 16, 2020, and to the title of Campus Police Officer, effective February 16, 2021, but that it failed to properly record his appointments to these

titles due to administrative error related to the impact of the COVID-19 pandemic, including college staffing shortages, turnover and office closures. TCNJ states that all five employees successfully completed working test periods and that Fioravanti, Cullen and McGilligan continue to serve in the title of Campus Police Officer. Pukenas and O'Brien resigned in good standing from their positions as Campus Police Officers, effective September 27, 2021, and March 27, 2022, respectively.

The Division of Agency Services (Agency Services) advises that there was no special reemployment list active for the title of Campus Police Officer Recruit or Campus Police Officer when these employees were appointed to each respective title. Further, Agency Services states that no special reemployment list presently exists for the title of Campus Police Officer.

It is noted that a promotional list for the title of Campus Police Officer Recruit (PS3498J), TCNJ, containing four names,¹ promulgated on April 13, 2017, and expired on April 13, 2020. However, due to an administrative error, TCNJ failed to request certifications from that list and three permanent appointments to the title of Campus Police Officer were subsequently effectuated² to correct this error. *See e.g., In the Matter of Daniel Butchko* (CSC, decided December 5, 2018).

It is noted that Fioravanti, Cullen, Pukenas and McGilligan applied for and were admitted to the 2016 Law Enforcement Examination (LEE) (S9999U).³ Fioravanti, Cullen, Pukenas and McGilligan all achieved passing scores on the S9999U examination and were ranked on the resultant eligible lists, which promulgated on March 29, 2017, and expired on May 1, 2020. It is also noted that Fioravanti, Cullen and McGilligan applied for the promotional examination for Sergeant Campus Police (PS8710J), which had a closing date of May 23, 2022, and required applicants to possess an aggregate of one year of continuous permanent service in the title of Campus Police Officer as of the closing date.

CONCLUSION

N.J.A.C. 4A:3-3.7(c) provides that upon regular appointment, trainees must successfully complete a working test period.

¹ The individuals involved in the instant matter were not among the eligibles who applied for the PS3498J examination.

² These actions occurred after the eligible ranked first on the PS3498J eligible list, Philip Hamner, resigned in good standing from his provisional appointment to the title of Campus Police Officer Recruit, effective November 20, 2017.

³ On their applications for the S9999U examination, Fioravanti, Cullen and Pukenas selected Campus Police Officer Recruit as one of their preferred titles and Mercer County as one of their work location preferences. O'Brien did not apply for the S9999U examination.

N.J.A.C. 4A:3-3.7(d)1 provides that in the case of trainees and recruits only, the length of the training period shall be designated by the job specification for the particular title.

N.J.A.C. 4A:3-3.7(j) provides that the advancement of the successful, permanent trainee, apprentice, recruit, or intern, as applicable, to the appropriate primary title shall be accomplished without the usual promotional examination process, but rather by regular appointment of the employee to the appropriate title.

N.J.A.C. 4A:4-5.2(d) states, in pertinent part, that persons appointed to entry level law enforcement officer titles shall serve a 12-month working test period in order to obtain permanent status.

N.J.A.C. 4A:4-2.6(a)2 provides that applicants shall meet all requirements specified in the examination announcement by the announced closing date. *N.J.A.C.* 4A:1-1.2(c) provides that a rule may be relaxed for good cause shown in a particular situation.

With respect to the appointing authority's request for retroactive appointment dates, *N.J.A.C.* 4A:4-1.10(c) provides that when a regular appointment is made, a retroactive appointment date may be ordered due to administrative error, administrative delay or other good cause. Generally, this unique remedy has been reserved for two particular situations. First, and germane to this matter, retroactive appointment dates have been granted in circumstances in which an employee was actually serving in and performing the duties of a title, but, due to some error or other good cause, their 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, Fioravanti and O'Brien were provisionally appointed as Campus Police Officer Recruits, effective March 31, 2018, while Cullen and Pukenas were provisionally appointed as Campus Police Officer Recruits, effective August 27, 2018. TCNJ also failed to record McGilligan's appointment to the title of Campus Police Officer Recruit, effective February 16, 2020, and failed to request a certification from the S9999U eligible list for Campus Police Officer Recruit, TCNJ. It is evident that Fioravanti's, Cullen's, Pukenas' and McGilligan's names would have appeared on such a certification, given that they selected Campus Police Officer Recruit and Mercer County as preferences on their S9999U examination applications. Thereafter, on March 30, 2019, Fioravanti and O'Brien were provisionally appointed to the title of Campus Police Officer; on August 31, 2019, Fioravanti, O'Brien, Cullen and Pukenas were temporarily appointed to the title of Campus Police Officer; and on

February 16, 2021, McGilligan was promoted to the title of Campus Police Officer.⁴ Further, TCNJ has stated that these employees successfully completed working test periods and that Fioravanti, Cullen and McGilligan continue to serve in the title of Campus Police Officer. Therefore, the Commission finds that Fioravanti's personnel record should be corrected to reflect that he was permanently appointed as a Campus Police Officer Recruit, effective March 31, 2018. The Commission finds that Cullen's and Pukenas' personnel records should be corrected to reflect that they were permanently appointed as Campus Police Officer Recruits, effective August 25, 2018, to coincide with the beginning of the applicable pay period. Additionally, McGilligan's personnel record should be corrected to reflect his permanent appointment to the title of Campus Police Officer Recruit, effective February 16, 2020. Further, as the job specification for Campus Police Officer Recruit indicates that appointees who successfully complete the 12-month training period will be eligible for advancement to the title of Campus Police Officer and *N.J.A.C. 4:3-3.7(j)* provides that such advancement is accomplished by regular appointment without the usual promotional procedures, and the appointing authority has stated that Fioravanti, Cullen, Pukenas, and McGilligan completed the recruit period, Fioravanti's advancement to Campus Police Officer should have occurred on March 30, 2019; Cullen's and Pukenas' advancement to Campus Police Officer should have occurred on August 31, 2019; and McGilligan's advancement to Campus Police Officer should have occurred on February 13, 2021⁵. Conversely, there does not appear to be a basis to amend O'Brien's personnel record to effectuate his permanent appointments to the titles of Campus Police Officer Recruit and Campus Police Officer, as he could not have been permanently appointed as a Campus Police Officer Recruit from the S9999U list, since he did not apply for that examination and he resigned in good standing from his position, effective March 27, 2022.

Further, as Fioravanti's, Cullen's and McGilligan's personnel records now indicate that they possessed one year of continuous permanent service in the title of Campus Police Officer as of the closing date for the promotional examination for Sergeant Campus Police (PS8710J), TCNJ, good cause exists to admit all three to that examination.

It is noted that this determination is limited to the instant matter and does not provide precedent in any other matter.

ORDER

Therefore, it is ordered that the requests for retroactive appointment dates for Desi Fioravanti, Kevin Cullen, Kyle Pukenas and Tyler McGilligan be granted and that their personnel records be amended as indicated above. It is further ordered that the request for retroactive appointment dates for Nicholas O'Brien be denied.

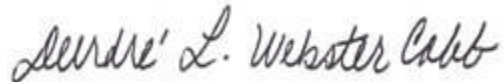
⁴ As noted above, TCNJ failed to record McGilligan's appointment to the title of Campus Police Officer.

⁵ This earlier date coincides with the beginning of the applicable pay period.

Additionally, it is ordered that Desi Fioravanti, Kevin Cullen and Tyler McGilligan be admitted to the promotional examination for Sergeant Campus Police (PS8710J), TCNJ.

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 20TH DAY OF JULY 2022



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Chairperson
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