



**STATE OF NEW JERSEY**

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

In the Matter of F.P., County  
Correctional Police Officer, Bergen  
County Sheriff's Office

CSC Docket No. 2022-3101

Administrative Appeal

**ISSUED: September 21, 2022 (DASV)**

F.P., a County Correctional Police Officer with the Passaic County Sheriff's Office, represented by Annette Verdesco, Esq., appeals the denial of the Bergen County Sheriff's Office to intergovernmentally transfer him to the title of County Correctional Police Officer due to psychological reasons.

By way of background, the appellant received a regular appointment as a County Correctional Police Officer,<sup>1</sup> effective August 15, 2016, with the Passaic County Sheriff's Office and is permanent. On or about February 4, 2022, the appellant indicated that he sought an intergovernmental transfer to the Bergen County Sheriff's Office. He certified that he was then instructed by a County Correctional Police Sergeant to submit to a psychological pre-employment examination, which was held on May 10, 2022. On May 11, 2022, the appellant stated that the County Correctional Police Sergeant informed him by email that he was disqualified based on the results of the psychological examination. He was further informed that he could appeal to the Civil Service Commission (Commission) within 20 days.<sup>2</sup> The appellant filed an appeal on May 27, 2022. However, by letter dated July 7, 2022, agency staff advised the appellant that the Commission was without

<sup>1</sup> The title was formerly known as County Correction Officer. The title changed to County Correctional Police Officer effective December 1, 2019.

<sup>2</sup> In reviewing the email, the County Correctional Police Sergeant said "[u]nfortunately due to the results of your examination we will not be continuing in the process with you. Sorry I have to deliver the bad news." He did not indicate in the email that the appellant could file an appeal with the Commission. It is unclear if the appellant was verbally informed in that regard.

jurisdiction to review a disapproved transfer by a receiving jurisdiction since the intergovernmental transfer rules require the receiving jurisdiction's consent to the transfer. *See N.J.A.C. 4A:4-7.1A*. Therefore, since an intergovernmental transfer is considered a discretionary agreement between appointing authorities and the permanent employee, the appellant was informed that the reasons for the disapproval, *i.e.*, a failed psychological examination could not be appealed. Consequently, the file was closed.

In the instant matter, the appellant requests that the Commission re-open his appeal and review his rejection by the Bergen County Sheriff's Office to intergovernmentally transfer to the title of County Correctional Police Officer. He argues that the "[the Commission] has failed to point to any authority, statute, and/or case, that codifies such transfer as discretionary." He maintains that the intergovernmental rules of the New Jersey Administrative Code referenced by agency staff have "no apparent or implied language [that] directs that an intergovernmental transfer is strictly discretionary." Nonetheless, the appellant asserts that even if "the language was included in the Codes," the Commission "is one of four parties required to consent to a transfer." He cites *N.J.A.C. 4A:4-7.1A(b)* and writes with emphasis that "[a]n intergovernmental transfer shall require the consent in writing of the sending jurisdiction, the receiving jurisdiction, the affected employee, and the **approval of the Chairperson of the Civil Service Commission.**"<sup>3</sup> Therefore, the appellant maintains that "it is counterintuitive that if the [Commission] is required to offer approval and or disapproval on a transfer, that they would then argue they do not have the authority to review the same disapproved transfer by the receiving jurisdiction." He reiterates that the Commission "is a consenting party in the matter that is required to participate in the agreement between appointing authorities and the permanent employee." Finally, the appellant argues that according to *N.J.S.A. 11A:2-28*, the Commission "shall provide, by regulation, for intergovernmental transfers by law enforcement officers, including county sheriff and corrections officers, as **part of the [C]ommission's intergovernmental transfer program**" [emphasis added by the appellant]. Therefore, he maintains "that without consent and/or over objection, the [Commission] does have the authority and/or jurisdiction to both, hear and challenge the appeal per an intergovernmental transfer."

## CONCLUSION

*N.J.S.A. 11A:2-28* states that:

1.a. The [C]ommission shall provide, by regulation, for intergovernmental transfers by law enforcement officers, including county sheriff and corrections officers, as part of the [C]ommission's intergovernmental transfer program. These law enforcement officers,

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<sup>3</sup> The appellant's citation does not precisely mirror the regulation.

county sheriff and corrections officers shall be granted all privileges under the intergovernmental transfer program, including the option to waive all accumulated sick leave and seniority rights.

b. The waiver of accumulated sick leave and seniority rights shall require the consent in writing of the receiving jurisdiction, the affected employee, and the [C]ommission.

c. The sending jurisdiction shall not pay supplemental compensation for accumulated sick leave to any law enforcement officer, county sheriff or corrections officer, approved for an intergovernmental transfer and shall certify, to the receiving jurisdiction and the [C]ommission, that no supplemental compensation was paid.

*N.J.A.C. 4A:4-7.1A* provides in relevant part that:

(a) An intergovernmental transfer is the movement of a permanent employee between governmental jurisdictions operating under Title 11A, New Jersey Statutes, or the appointment of an employee, by a governmental jurisdiction operating under Title 11A, within one year of the effective date of a layoff for reasons of economy or efficiency in which the employee is separated from service from another governmental jurisdiction operating under Title 11A.

1. Non-permanent employees serving in entry-level law enforcement titles who were appointed from an eligible list and who have completed the required Police Training Commission training course may intergovernmentally transfer upon consent of the sending and receiving jurisdictions, but will be required to complete the full 12-month working test period with the receiving jurisdiction.

(b) An intergovernmental transfer shall require the consent in writing of the sending jurisdiction, if any, the receiving jurisdiction, and the affected employee, and the approval of the Chairperson [of the Commission] or designee.

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(c) A transferred employee shall be moved to a title substantially at the same level.

1. The existence of an open competitive or promotional list in the receiving jurisdiction shall not be a bar to the transfer.

2. Where the title to which the employee is transferring is different from that held on a permanent basis in the sending jurisdiction, or from that held on a permanent basis prior to the effective date of a separation from service due to layoff, as the case may be, the receiving jurisdiction shall request that the Chairperson or designee approve the title, based on [specified] criteria . . .

(d) Permanent employees serving in law enforcement and firefighter titles shall be eligible only for an intergovernmental transfer to the corresponding entry-level title in the receiving jurisdiction.

In the instant matter, the appellant requests that his appeal be re-opened regarding his intergovernmental transfer as a County Correctional Police Officer to the Bergen County Sheriff's Office. The appellant states that the intergovernmental transfer was not approved by the Bergen County Sheriff's Office due to the results of his psychological examination, which he also wishes to appeal. The appellant argues that the above-cited law and regulations do not preclude the Commission from reviewing his rejection since he asserts that the Commission "is a consenting party in the matter that is required to participate in the agreement between appointing authorities and the permanent employee." This assertion, however, is incorrect.

*N.J.A.C.* 4A:4-7.1A(b) states that "[a]n intergovernmental transfer shall require the consent in writing of the sending jurisdiction, if any, the receiving jurisdiction, and the affected employee, and the approval of the Chairperson of the Commission or designee." It is clear from the plain language of the regulation that consent must be given by the three parties to the agreement, namely the sending jurisdiction, receiving jurisdiction, and the affected employee. The Chairperson, and by extension, this agency and the Commission are not actual parties to an intergovernmental transfer *agreement*. When the parties to the agreement do consent to the transfer, it is then this agency's role to review whether the pertinent criteria set forth in *N.J.A.C.* 4A:4-7.1A have been met in order to approve the transfer.<sup>4</sup> For example, if a non-law enforcement employee is not permanent, the transfer cannot be approved. While the Commission has relaxed portions of the governing regulation when all parties consent to the transfer and good cause has been shown,<sup>5</sup> it has not compelled a jurisdiction to provide its consent to a transfer. *See e.g., In the Matter of Laureen Baer* (MSB, decided December 15, 2004) (Participating in the Intergovernmental Transfer Program is solely at the option of the receiving agency and transferring employee, and thus, all terms must be agreed upon by the

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<sup>4</sup> Compare *N.J.S.A.* 11A:2-28 where, by statute, the Commission must provide its **consent** regarding the waiver of accumulated sick leave and seniority rights by the affected employee.

<sup>5</sup> For example, *N.J.A.C.* 4A:4-7.1A(a)1 promulgated as a result of numerous cases where the intergovernmental transfer rules had been relaxed as jurisdictions requested approval of the transfers where the law enforcement employee was not yet permanent but there was a public safety need for the transfer. *See* 49 *N.J.R.* 492(a), 49 *N.J.R.* 2239(a).

parties prior to an employee leaving one jurisdiction for another and this agency does not have standing to create a binding retroactive agreement between parties); *In the Matter of Kindred Brunson* (MSB, decided January 12, 2005) (Refusal to consent to intergovernmental transfer of the appellant was an exercise of discretion afforded to receiving agency and the appellant did not demonstrate an abuse of this discretion); *In the Matter of Barry Hunter* (MSB, decided February 9, 2005) (Appointing authority would not consent to the appellant's intergovernmental transfer since it was losing trained Police Officers to other jurisdictions, but not gaining any in return. It was noted that participation in the Intergovernmental Transfer Program is not an entitlement. Rather, participation is at the discretion of the parties involved in the transfer. Moreover, although the appellant raised the issue that the appointing authority was abusing its discretion, the record reflected that all Police Officers were treated similarly by the appointing authority); and *In the Matter of Intergovernmental Transfer Program* (CSC, decided March 11, 2009) (Commission declined to grant a rule relaxation request that would have permitted Police Officers to intergovernmentally transfer to other jurisdictions without requiring the consent of the sending jurisdiction as the requesting officers had not shown discriminatory hiring practices as suggested nor presented evidence that the receiving jurisdictions were interested in hiring through the Intergovernmental Transfer Program).

Therefore, based on statutory and regulatory provisions and the cases cited herein, the Commission finds that an intergovernmental transfer is a discretionary agreement between the sending jurisdiction, receiving jurisdiction, and the permanent employee. Since this transfer is discretionary, the Commission does not have the authority to review or reverse the appellant's disapproved transfer by the Bergen County Sheriff's Office nor the reasons for it.<sup>6</sup> The Commission declines to substitute its judgment for that of the parties, since as noted in *Baer, supra*, the terms of the transfer must be agreed upon by the parties prior to an employee leaving one

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<sup>6</sup> The Commission notes that the appellant does not raise an argument that the appointing authority abused this discretion. Rather, the reason why his transfer was disapproved was due to the results of a psychological examination. While a psychological examination is not required to effect an intergovernmental transfer since a permanent County Correctional Police Officer ordinarily would have been subjected to such an examination by the sending jurisdiction prior to the initial appointment, under the appellant's situation, it could have been warranted. However, the record in that regard is silent. In terms of list removal appeals pursuant to *N.J.A.C. 4A:4-6.5*, the Commission has indicated that a recent psychological examination can only be considered part of an updated background check after the Commission has already found the eligible to be psychologically suited if either: (1) the eligible had not previously been subject to such an examination, or (2) based on information obtained during the updated background check regarding events that occurred between the original certification and the updated background check, an appointing authority has a legitimate concern that intervening circumstances require that the eligible undergo an updated psychological evaluation to ensure such fitness. A psychological evaluation would be appropriate if the appointing authority, for example, learns that the eligible during the updated background check had been through a traumatic event or some other circumstance which may have significantly affected the eligible psychologically. See *In the Matter of Juan C. Betancourth* (MSB, decided February 27, 2002 and *In the Matter of O.C.* (CSC, decided February 3, 2021).

jurisdiction for another. In the present case, it is evident that the Bergen County Sheriff's Office conditioned the transfer on the results of the appellant's psychological examination and the appellant agreed to undergo one. Accordingly, since the Commission's jurisdiction to review this matter has not been established, there is not a basis to re-open the appeal. Rather, the appellant's appeal is dismissed for the Commission's lack of jurisdiction.

**ORDER**

Therefore, it is ordered that this appeal be dismissed.

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 21<sup>ST</sup> DAY OF SEPTEMBER, 2022

*Dolores Gorczyca*

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