



STATE OF NEW JERSEY

In the Matter of Craig Bell, Quality Assurance Specialist, Health Services (PS7302H), Department of Health	:	FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION
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CSC Docket No. 2022-3260	:	Administrative Appeal
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ISSUED: January 18, 2023 (HS)

Craig Bell, represented by Jennifer Curley, Senior Staff Representative, CWA Local 1040, appeals the determination of the Division of Agency Services (Agency Services), which found that he was not eligible for the promotional examination for Quality Assurance Specialist, Health Services (PS7302H), Department of Health, because he was not employed in the announced unit scope.

The subject examination was announced with a closing date of December 21, 2021 and open to employees with an aggregate of one year of continuous permanent service in any competitive title who were employed in the Behavioral Health Services (H955) unit scope and met the open competitive requirements. The resulting eligible list promulgated on June 9, 2022 with one eligible and expires on June 8, 2025. A certification issued on June 28, 2022, and the sole eligible was appointed effective July 16, 2022.

Agency records indicate that prior to July 3, 2021, the appellant was employed in the Ancora Psychiatric Hospital (Ancora) (H355) unit scope in his permanent title of Social Worker 1, Psychiatric. Effective July 3, 2021, the appellant received a provisional appointment, pending promotional examination procedures, to the Quality Assurance Specialist, Health Services title in the Behavioral Health Services (H955) unit scope. Effective January 1, 2022, the appellant returned to the Ancora unit scope in his permanent title. On June 1, 2022, Agency Services deemed the appellant ineligible for the examination on the basis that he was not employed in the unit scope to which the examination was announced open.

It is noted that effective November 19, 2022, the appellant received a provisional appointment, pending promotional examination procedures, to the title of Program Coordinator Mental Health in the Ann Klein Forensic Center (H362) unit scope.

In his appeal to the Civil Service Commission (Commission), postmarked June 20, 2022, the appellant contends that there was no legitimate reason for his return to Ancora in his permanent title. The appellant notes that he filed a grievance concerning that action on January 13, 2022 and received a Step One decision on or about April 18, 2022. According to him, he is currently awaiting the scheduling of Step Two of the grievance process. Additionally, the appellant takes issue with Agency Services' determination to deem him ineligible for the examination.¹ Further, the appellant asserts that several employees serving in the Quality Assurance Specialist, Health Services title are retiring at Ancora, and he would like to be able to take an examination in order to have an opportunity to fill one of those positions.

The appointing authority did not submit any information for the Commission's review despite the opportunity to do so.

CONCLUSION

Initially, *N.J.A.C.* 4A:2-1.1(b) provides, in pertinent part, that 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.² In this case, the appellant contends that there was no legitimate reason for his return to Ancora in his permanent title. Although that action was effective January 1, 2022, the instant appeal was not filed until July 20, 2022, more than six months later. For that reason, the appeal, as it relates to that action, has not been timely presented. Nor is there any basis in this case to extend or to relax the time for appeal. *See N.J.A.C.* 4A:1-1.2(c) (the Commission has the discretionary authority to relax rules for good cause). In this regard, it is appropriate to consider whether the delay in asserting the appellant's right to appeal was reasonable and excusable. *Appeal of Syby*, 66 *N.J. Super.* 460, 464 (App. Div. 1961) (construing "good cause" in appellate court rules governing the time for appeal); *Atlantic City v. Civil Service Com'n*, 3 *N.J. Super.* 57, 60 (App. Div. 1949) (describing the circumstances under which delay in asserting rights may be excusable). Among the factors to be considered are the length of delay and the reasons for the delay. *Lavin v. Hackensack Bd. of Educ.*, 90 *N.J.* 145 (1982). *See e.g., Matter of Allen*, 262 *N.J. Super.* 438 (App. Div. 1993) (allowing relaxation of former Merit System Board's appeal rules where police officer repeatedly, but

¹ The appellant misconstrues the reason he was deemed ineligible as he claims he was deemed ineligible due to "not being in the title at the time of the exam." In fact, he was deemed ineligible on the basis that he was not employed in the announced unit scope.

² It is noted that pursuant to a rule modification, this timeframe is 60 days so long as the emergency declared pursuant to Executive Order No. 103 (Murphy, March 9, 2020) is in effect. 52 *N.J.R.* 971(a).

unsuccessfully, sought clarification of his employment status). In this case, the record does reflect that the appellant filed a grievance. However, the Commission can find no apparent reason in the record why the appellant's utilization of his grievance process precluded the earlier, timely filing of the instant appeal, and the appellant has not otherwise presented any substantial explanation for the delay in seeking relief from the Commission. It is no excuse that the appellant was not deemed ineligible for the PS7302H examination until June 1, 2022. The appellant's return to Ancora in his permanent title was effective January 1, 2022. The appellant was not in any way required to wait to be deemed ineligible for the examination before appealing the January 1, 2022 action to the Commission. The Commission thus declines to review the appellant's claim that his return to Ancora in his permanent title was not legitimately undertaken as the issue was not timely raised. As such, the Commission will not disturb that action.³

The appellant's appeal as it relates to Agency Services' June 1, 2022 ineligibility determination, however, is timely. A review of the record reveals that the appellant was technically still in the announced unit scope as of the December 21, 2022 closing date, but Agency Services' determination that the appellant was ineligible is appropriate in light of *N.J.A.C.* 4A:4-4.7(a)8, which provides that the name of an eligible may be removed from an eligible list for the following reason:

Discontinuance of the eligible's employment in the unit scope to which a promotional examination was limited, except when the eligible has accepted a temporary or interim appointment in another unit scope. An employee who subsequently returns to the unit scope within current continuous service may request, in writing to an appropriate representative of the Civil Service Commission, that his or her name be restored to the promotional list.

Thus, even assuming the appellant had been placed on the resulting eligible list and been certified to the appointing authority, he would have been subject to removal from the list in accordance with the above-cited regulation since, as of January 1, 2022, the appellant's employment in the announced unit scope was discontinued as a result of his return to the Ancora (H355) unit scope in his permanent title. Nevertheless, should the appellant return to the Behavioral Health Services (H955) unit scope within current continuous service during the life of the PS7302H eligible list, he may at that time petition the Commission to reopen the matter of his ineligibility for the examination.

³ The Commission further notes that a provisional employee does not have a vested right to a provisional position and may be separated from that appointment for any legitimate reason. The Commission will not review the separation of a provisional employee absent evidence of invidious or discriminatory motives.

The appellant also asserts that several employees serving in the Quality Assurance Specialist, Health Services title are retiring at Ancora, and he would like to be able to take an examination in order to have an opportunity to fill one of those positions. However, the determination as to whether a vacancy exists and/or will be filled is generally left to the discretion of the appointing authority. *See In the Matter of Michael Shaffery* (MSB, decided September 20, 2006). *See also, In the Matter of Todd Sparks* (MSB, decided April 6, 2005); *In the Matter of Deputy Fire Chief (PM3654F), Borough of Roselle* (MSB, decided March 23, 2005); *In the Matter of Institution Fire Chief* (MSB, decided January 12, 2005).

ORDER

Therefore, it is ordered that this appeal be denied. Should Craig Bell return to the Behavioral Health Services (H955) unit scope within current continuous service during the life of the Quality Assurance Specialist, Health Services (PS7302H), Department of Health, eligible list, he may at that time petition the Civil Service Commission to reopen the matter of his ineligibility for the examination.

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 18TH DAY OF JANUARY, 2023



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