



STATE OF NEW JERSEY

In the Matter of Michael Deaney,
Police Captain, Keansburg

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

CSC Docket No. 2023-874

Examination Appeal

ISSUED: January 18, 2023 (JH)

Keansburg requests that Michael Deaney be assigned a retroactive appointment date to the Police Captain title. In addition, Michael Deaney seeks his eligibility for the promotional examination for Deputy Police Chief (PM5066D), Keansburg.

By way of background, the eligible list for Police Captain (PM1825W), Keansburg, promulgated on March 14, 2019 and expired on March 13, 2022, with the names of two eligibles, in rank order: Sandra Burton and Michael Deaney. Effective May 11, 2020, the first certification was issued from the PM1825W eligible list (Certification No. PL200502). In disposing of PL200502, Keansburg appointed the first ranked eligible effective June 1, 2020. Effective December 20, 2021, the second and last certification from the PM1825W eligible list was issued (Certification No. PL211465). In disposing of PL211465, Keansburg appointed the appellant effective December 28, 2021.

In its request, Keansburg’s appointing authority explains that in May 2021, a certification request was sent “via United States Postal Service and I believed the request was received. Once it was brought to my attention that the certification request was not received by [the Civil Service Commission (Commission)], I emailed a request to certify the list. After several weeks, certification notices had still not been received and I reached out to [the Commission] via email regarding this, as we believed there may have [been] an issue with United States Postal Service during the pandemic. On July 1, 2021, the Borough promoted several officers and then notified [the Commission] of those promotions.” Keansburg indicates that “despite

several attempts to rectify this issue, Mr. Deaney's promotional date still is recorded as December 28, 2021." In support of its request, Keansburg provides copies of Deaney's "Official Oath of Office" as Police Captain dated July 1, 2021, and a copy of payroll records for the period from June 5, 2021 to June 18, 2021 and from June 19, 2021 to July 2, 2021.

In his appeal, Deaney indicates that before July 1, 2021, he was informed by Keansburg that it had "requested to certify the promotional list and I should be receiving my Notification of Certification shortly. Time went by and I never received the certification notice." He presents that the Borough contacted the "CSC Human Resource Consultant into the delay. July 1st 2021 came and I was officially sworn in as Captain. In mid-December of 2021, I still ha[d] not received my certification notice." He explains that he then contacted the Human Resource Consultant who informed him that the matter would be looked into. He indicates that in late December 2021, he received a Notification of Certification dated December 20, 2021. Subsequently, he contacted the Human Resource Consultant and the Certification Unit and was informed that his appointment date to the Police Captain title was recorded as December 28, 2021. In support of his appeal, he provides additional documentation including: an email sent June 29, 2021 from Keansburg to the Human Resource Consultant inquiring whether the lists for Police Sergeant, Police Lieutenant and Police Captain had been certified; an email sent July 2, 2021 from Keansburg to the Human Resource Consultant indicating that the Borough held promotional ceremonies on July 1 and "I am assuming I would still have to fill out paperwork for civil service when it is received"; an email sent July 8, 2021 from the Human Resource Consultant to Keansburg which provides, "Please request certification for each title;" an email sent July 8, 2021 from Keansburg to the Human Resource Consultant which provides, "Here are the certifications you requested" with the attached Request for Certification forms, signed and dated July 8, 2021, for Police Captain, Police Lieutenant, Police Sergeant, Police Chief and Deputy Police Chief; an email sent August 5, 2022 from Deaney to the Certification Unit indicating that "according to what records we have the certification requests were sent to you on July 8th, 2021. However, CSC does not have me promoted until 12/28/2021;" and an email sent August 5, 2022 from the Certification Unit to Deaney indicating that the Certification Unit "received a request in December 2021, which prompted the issuance of the cert. If the request I received in December was not, in fact, the first attempt, I have no record of it."

CONCLUSION

A retroactive appointment date "for seniority purposes only" may be approved when it is evidenced that an appellant could have been appointed on the subject date, but through error on the part of either the appointing authority or the Commission, received a later appointment date, or for other good cause. See *N.J.A.C. 4A:4-1.10(c)*. The "for seniority purposes only" appointment designation

establishes that an appellant has no claim for or entitlement to back pay. However, such an award establishes that for seniority-based programs, such as salary step placement, layoffs, and vacation leave time entitlement, seniority is predicated upon the retroactive appointment date. *See In the Matter of Wayne A. Robbins* (Merit System Board, decided September 5, 1991).

In the instant matter, the record establishes that Deaney's name appeared on the eligible list for Police Captain (PM1825W), Keansburg as the second ranked eligible. However, due to reasons that are unclear from the record, a certification was not issued at the time Keansburg appointed Deaney to Police Captain on July 1, 2021. Nevertheless, had a certification been issued at the time of Deaney's appointment, Deaney would have been the only eligible listed. Furthermore, the appointing authority verifies that Deaney has been performing Police Captain duties since July 1, 2021, and has successfully completed a working test period. Therefore, based on the foregoing, it is appropriate to grant a retroactive date of permanent appointment to Deaney as Police Captain effective July 1, 2021, for seniority and record keeping purposes.

With respect to Deaney's eligibility for the Deputy Police Chief examination, on August 1, 2022, the promotional announcement for Deputy Police Chief (PM5066D), Keansburg, was issued and this examination was open to employees in the competitive division who had an aggregate of one year of continuous permanent service in the title of Police Captain as of the October 31, 2022 closing date. It is noted that only two individuals applied, Sandra Burton and the appellant. Given that the available record at the time that eligibility was determined indicated that Deaney was regularly appointed as a Police Captain in Keansburg, effective December 28, 2021, the Division of Agency Services (Agency Services) determined that he lacked the required amount of permanent status in a title to which the examination was open as of the October 31, 2022 closing date. A review of the record finds that the appointing authority submitted a request, dated August 3, 2022, to process the subject announcement as a waiver of competitive examination pursuant to *N.J.A.C. 4A:4-2.7*. In this regard, *N.J.A.C. 4A:4-2.7* provides, in part, that following the announcement of a promotional examination, the promotion of a qualified permanent employee in the career service by regular appointment without competitive examination and without the establishment of an eligible list may be made if: 1. The employee has been successfully tested in the basic skills required for the promotional title; 2. The employee has not failed, within one year prior to the announced closing date, a promotional examination for that title. However, an employee who subsequently passed an examination for that title shall be eligible for promotion; 3. The number of interested eligibles for the promotional examination does not exceed the number of promotional appointments by more than two; and 4. Veterans preference rights are not a factor. A review of the record reveals that Burton met all of the requirements listed in *N.J.A.C. 4A:4-2.7* for a waiver of an examination. In particular, Burton was successfully tested in the basic skills, *i.e.*,

she had passed the Police Captain examination, and she had not failed a promotional examination within a year.¹ Moreover, as indicated above, Burton and the appellant were the only applicants for the Police Chief examination and veterans preference rights were not at issue. Consequently, Agency Services determined to grant the request. As such, Deaney's appeal regarding his eligibility for the subject promotional examination is rendered moot.

ORDER

Therefore, it is ordered that this request be granted and the permanent appointment of Deaney to the Police Captain title be recorded as July 1, 2021, and all of his seniority based benefits be adjusted accordingly. It is further ordered that the appeal regarding his eligibility for the promotional examination for Deputy Police Chief (PM5066D), Keansburg be dismissed as moot.

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



Allison Chris Myers
Acting Chairperson
Civil Service Commission

¹ The New Jersey Supreme Court has upheld the waiver of an examination through the predecessor rule to *N.J.A.C. 4A:4-2.7* as being within the lawful discretion of the Civil Service Commission. See *Pringle v. Department of Civil Service*, 45 *N.J.* 329 (1965) and *Falcey v. Civil Service Commission*, 16 *N.J.* 117 (1954). In *Pringle, supra*, the court, in a footnote, suggested that the subject rule should indicate that the way to determine whether a candidate had been tested successfully in the basic skills for the title was if the candidate had previously taken and passed an examination for the basic skills required in the position to which he was being promoted. A test administered by the Commission ensures that a consistent standard is applied as there is no way to ensure consistency in the evaluation of employees serving in supervisory and managerial titles. In 1998, a review of the job analyses for Police Sergeant, Police Lieutenant, Police Captain, Inspector, Deputy Police Chief and Police Chief titles, disclosed that there were distinct differences in the basic skills required for some of these titles. Thus, it was determined that the basic skills were different among the following promotional title groups: 1) Police Sergeant; 2) Police Lieutenant/Police Captain; 3) Police Captain, Inspector, Deputy Police Chief and Police Chief. The review determined a uniqueness of the Police Captain title because it includes basic skills found in Lieutenant/Captain and Captain, Inspector, Deputy Chief and Chief title groups. Additionally, certain areas covered in the Police Chief examination (criminal law, police administration, police management, and community relations), were not included in the testing for Lieutenant.

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