



**STATE OF NEW JERSEY**

In the Matter of S.G., Township of  
West Orange

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

CSC Docket No. 2023-849

Examination Appeal

**ISSUED: February 1, 2023 (HS)**

S.G. requests permission to submit a late application for the promotional examination for Deputy Fire Chief (PM5172C), Township of West Orange (Township).

The announcement for the subject examination issued on December 1, 2021 with a closing date of December 21, 2021. The resulting eligible list of six names promulgated on September 29, 2022 and expires on September 28, 2025. The list has yet to be certified. The petitioner did not submit an application.

In his request, initially postmarked October 18, 2022, the petitioner notes that he is one of the individuals involved in *In the Matters of F.B., et al., Township of West Orange* (CSC, decided March 2, 2022) and *In the Matters of F.B., et al., Township of West Orange* (CSC, decided October 12, 2022). He states that he did not actually return to work until “mid/late June” 2022 due to an injury. The petitioner maintains that he waited to pursue the instant petition in order to avoid “further retaliation” from the Township. As examples of “harassment” already suffered, the petitioner points to: a Township proposal, apparently during settlement efforts to resolve various proceedings, that “all Firefighters seeking a promotion shall be required to be fully vaccinated in order to . . . receive a promotion;” the Township’s order that he provide information concerning back pay mitigation no later than May 25, 2022, under the threat of disciplinary action if he failed to provide the information; a mask-and-test requirement that remained in place through August 2022; and the Township’s (as of December 19, 2022) nonpayment of the backpay ordered in *In the Matters of F.B., et al., Township of West Orange* (CSC, decided October 12, 2022). The

petitioner recounts that on September 22, 2022, following the end of the mask-and-test requirement, he requested a letter from the Fire Chief to be able to sit for the subject examination. On October 10, 2022, the Fire Chief provided a letter, which stated that the petitioner was on unpaid leave from October 15, 2021 to March 25, 2022 and, during that time, was not required to access the Fire Department's electronic communications platform, through which the subject examination announcement was distributed to eligible candidates on December 1, 2021. The petitioner notes that he filed the instant petition soon after receiving the Fire Chief's letter.

## CONCLUSION

*N.J.A.C.* 4A:4-2.1(e) provides, in pertinent part, that applications for promotional examinations shall be submitted no later than 4:00 P.M. on the announced application filing date.

Initially, *N.J.A.C.* 4A:2-1.1(b) provides, in pertinent part, that a request for relief must be filed within 20 days after either the petitioner has notice or should reasonably have known of the decision, situation, or action being appealed.<sup>1</sup> In this case, the petitioner indicates that he returned to work in "mid/late June" 2022. However, the instant petition was not filed until October 18, 2022, approximately four months later. For that reason, the petition 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) (Civil Service 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 petitioner's right to petition 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 unsuccessfully, sought clarification of his employment status). In this case, the petitioner maintains that he was justified in delaying the filing of the instant petition because the Township would have retaliated against him if he had filed the petition earlier. To support this argument, the petitioner states that the Township had already taken various supposedly harassing actions such as a proposal during settlement efforts that Fire Fighters seeking promotion be required to be fully vaccinated; an order to provide back pay mitigation information under threat of disciplinary action; a mask-and-test requirement; and the (as of December

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<sup>1</sup> 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).

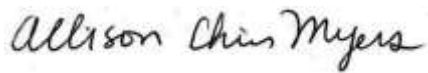
19, 2022) nonpayment of the backpay ordered in *In the Matters of F.B., et al., Township of West Orange* (CSC, decided October 12, 2022). The petitioner's argument is unconvincing because none of the cited events bear any clear nexus to the filing of a petition to submit a late application for the subject examination. Thus, the petitioner's fear of retaliation was generalized and speculative and so cannot serve to excuse the delayed filing.<sup>2</sup> It is also no excuse that it was not until October 10, 2022 that the Fire Chief provided the petitioner with a letter stating that the petitioner was on unpaid leave and not required to access the electronic communications platform at the time the subject examination announcement was distributed. The petitioner was not strictly required to be in possession of such letter before he could petition to submit a late application, irrespective of his subjective beliefs as to the necessity of the letter. The petitioner has not otherwise presented any substantive explanation for the delay in seeking relief. Accordingly, there is no basis in this case to allow the petitioner to file a late application.

### ORDER

Therefore, it is ordered that this petition 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 1<sup>ST</sup> DAY OF FEBRUARY, 2023




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Allison Chris Myers  
Acting Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Nicholas F. Angiulo  
Director  
Division of Appeals and Regulatory Affairs  
Civil Service Commission  
Written Record Appeals Unit  
P.O. Box 312  
Trenton, New Jersey 08625-0312

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<sup>2</sup> It should be noted that appointing authorities are explicitly prohibited from obstructing a person's lawful pursuit of any remedy or appeal under Title 11A, New Jersey Statutes, and Title 4A, New Jersey Administrative Code. See *N.J.A.C. 4A:10-1.1(c)*.

c: S.G.  
John Gross  
Division of Agency Services  
Records Center