



STATE OF NEW JERSEY

In the Matter of Andrew Casole,
Police Lieutenant (PM4787D),
Seaside Park

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

Examination Appeal

CSC Docket No. 2023-707

ISSUED: May 3, 2023 (JH)

Andrew Casole appeals the determination of the Division of Agency Services (Agency Services) which found that he lacked the required amount of permanent status in a title to which the examination was open for the promotional examination for Police Lieutenant (PM4787D), Seaside Park.

By way of background, the announcement for the subject examination was issued on July 1, 2022 and open to employees in the competitive division who had an aggregate of one year of continuous permanent service and were serving in the Police Sergeant title as of the September 30, 2022 closing date. A review of available employment records indicates that Casole received a temporary appointment to the Police Sergeant title effective April 29, 2021 and a permanent appointment effective May 2, 2022. As such, Casole possessed five months of *permanent* service in the Police Sergeant title as of the closing date. Accordingly, Agency Services determined that he was not eligible for the subject examination since he lacked the required amount of permanent status in a title to which the examination was open as of the closing date. It is noted that the subject examination was administered on October 6, 2022. It is further noted that Casole was conditionally admitted to the subject test pending the resolution of this matter.

On appeal, Casole presents that he was “sworn in as Sergeant on April 29th, 2021. There was an error made by the Borough where my status online with Civil Service was changed back to patrolman which is something that is out of my control. My duties, title, and salary as Sergeant did not change from my swearing in date which would make me eligible to take this examination for Police Lieutenant.”

CONCLUSION

N.J.A.C. 4A:4-2.6(a)1 provides that applicants for promotional examinations shall have one year of continuous permanent service for an aggregate of one year immediately preceding the closing date in a title or titles to which the examination is open.

A review of the record finds that the eligible list for Police Sergeant (PM0869V), Seaside Park, which contained the names of five eligibles, promulgated on May 24, 2018 and expired on May 23, 2022. Casole appeared as the second ranked eligible on the PM0869V list. Effective June 17, 2021, the first certification was issued from the PM0869V eligible list (Certification No. PL210595). In disposing of PL210595, which contained the names of all five eligibles, Seaside Park appointed the first ranked eligible effective June 17, 2021. Effective May 2, 2022, the second and last certification was issued from the PM0869V eligible list (Certification No. PL220634). In disposing of PL220634, which contained the names of the eligibles who appeared at ranks 2 through 4, Seaside Park appointed Casole, effective May 2, 2022.

Given that it was not apparent from the record why Casole had received a temporary appointment¹ to the Police Sergeant title, the appointing authority was contacted regarding this matter. Seaside Park explained that “in 2021, there was a vacancy in the position of Chief of Police” and Seaside Park provisionally appointed Police Lieutenant James Boag to the Police Chief title effective February 25, 2021. Seaside Park indicated that “this was a provisional appointment because [Boag] had not taken the [C]hief’s test. As such, there was not a true vacancy in the permanent position of Lieutenant. Therefore, [Police Sergeant Bryan] McKay was promoted to Lieutenant by an interim appointment and Patrolman Casole was appointed to Sergeant via an interim appointment on April 29, 2021.”² The appointing authority further explains that had the provisional Police Chief failed to achieve permanency, “he would have resumed his permanent title as Lieutenant” and McKay and Casole would have also returned to their respective permanent titles. However, Boag

¹ *N.J.A.C.* 4A:4-1.7(a) provides that a temporary appointment may be approved where the job assignment is for an aggregate period of not more than six months in a 12-month period. A temporary appointment for a maximum of 12 months may be approved by the Chairperson or designee to a position established as a result of a short-term grant. *N.J.A.C.* 4A:4-1.7(d) states that consecutive temporary appointments in excess of the periods set forth in *N.J.A.C.* 4A:4-1.7(a) above are prohibited.

² *N.J.A.C.* 4A:4-1.6(b) (Interim appointments) provides that an interim appointment may be made where a position/title is held by a permanent employee who: 1. Is on a leave of absence; 2. Is on indefinite suspension; 3. Has been removed or demoted for disciplinary reasons and is awaiting final administrative action by the Civil Service Commission on appeal; or 4. Has accepted an interim appointment. Although Seaside Park uses the term, “interim appointment,” given that above noted situation did not meet the criteria for interim appointments, McKay’s and Casole’s appointments were recorded as a temporary appointments.

“passed the [C]hief’s test and became permanent [Police C]hief on March 10, 2022.³ Consequently, Bryan McKay and Andrew Casole were permanently appointed to Lieutenant and Sergeant, respectively, with Resolutions 2022-114 and 2022-115, as there was then a true vacancy.” Seaside Park further notes that Casole has been serving as a Police Sergeant since his appointment on April 29, 2021 with no break in service. Seaside Park provides additional documentation including Seaside Park Resolution 101-2021, dated February 25, 2021, in which “the Borough of Seaside Park and Provisional Chief Boag have agreed to terms and conditions of employment for Provisional Chief Boag pending the Civil Service examination and certification”; Seaside Park Resolution 146-2021, dated April 29, 2021, in which “Sergeant Bryan P. McKay [is promoted] to the interim position of Lieutenant in the Borough of Seaside Park Police Department”; Seaside Park Resolution 147-2021, dated April 29, 2021, in which “Patrolman Andrew Casole [is promoted] to the interim position of Sergeant in the Borough of Seaside Park Police Department”; Seaside Park Resolution 2022-95, dated March 10, 2022, in which “Provisional Chief James Boag [is promoted] to the permanent position of Chief of Police in the Seaside Park Police Department;” Seaside Park Resolution 2022-114, dated April 14, 2022, in which “Lieutenant Bryan P. McKay [is appointed] to the permanent position of Lieutenant in the Borough of Seaside Park Police Department”; Seaside Park Resolution 2022-115, dated April 14, 2022, in which “Sergeant Andrew Casole [is appointed] to the permanent position of Sergeant in the Borough of Seaside Park Police Department.”

Although Casole has continuously performed the duties of Police Sergeant since his temporary appointment on April 29, 2021, Seaside Park indicates that there was not a “true vacancy” for Police Sergeant until Boag was permanently appointed

³ However, as indicated in Seaside Park Resolution 101-2021, *supra*, “pursuant to Resolution 2018-272, effective September 1, 2018, Lt. James Boag was appointed Provisional Police Chief of the Borough of Seaside Park Police Department.” In this regard, a review of the available record finds that effective September 1, 2018, the then Police Chief retired and Boag was provisionally appointed to the Police Chief title pending promotional examination. On August 1, 2019, an announcement for Police Chief (PM0990A), Seaside Park was issued and was open to employees in the competitive division who had an aggregate of one year of continuous permanent service in the title of Police Lieutenant as of the October 31, 2019 closing date. It is noted that Boag was the only applicant. The PM0990A exam was scheduled to be administered on December 11, 2019. However, a review of the record finds that Boag did not appear to take the exam. Subsequently, on February 1, 2020, an announcement for Police Chief (PM2068B), Seaside Park was issued and was open to employees in the competitive division who had an aggregate of one year of continuous permanent service in the title of Police Lieutenant or Police Sergeant as of the April 30, 2020 closing date. Three individuals, Boag, Daniel Fitzgerald and McKay, applied and were admitted to the subject test which was tentatively scheduled to be administered in June 2020. However, as indicated in the Law Enforcement Status Report (April 2020), due to the Covid-19 pandemic, all Civil Service examinations were postponed until further notice. As a result, the PM2068B exam was not administered until September 9, 2021. The resultant eligible list promulgated effective December 2, 2021 with the three eligibles in the following rank order: Fitzgerald, McKay and Boag. A certification was issued on December 6, 2021 from the PM2068B list (Certification No. PL211423) and in disposing of the certification, Seaside Park bypassed Fitzgerald and McKay and appointed Boag effective March 7, 2022.

to Police Chief on March 7, 2022. As a result, Casole did not receive a permanent appointment to the Police Sergeant title until May 2, 2022. Accordingly, Casole does not possess the requisite year of continuous *permanent* service as of the September 30, 2022 closing date. Moreover, in *In the Matter of County Correction Captain (PC1189P) and County Lieutenant (PC1202P), Hudson County*, Docket No. A-2162-14T3 (App. Div. March 9, 2017), the court found that retroactively amending an announcement to the completion of the working test period was contrary to Commission regulations and was not a reasonable application of legislative policies.

It is noted that the Commission has concerns regarding the length of Casole's temporary appointment as the appointing authority incorrectly characterized it as an interim appointment. As indicated above, Casole served in a temporary appointment for one year. In this regard, there is nothing in Casole's personnel records indicating that the appointing authority sought an extension of his temporary appointment beyond the six-month maximum. Seaside Park is cautioned that such actions in the future may subject it to fines or other penalties pursuant to *N.J.S.A. 11A:10-3* and *N.J.A.C. 4A:10-2(a)2*. Regardless, an individual cannot benefit from such an administrative procedural error, and such an error does not otherwise afford or vest the appellant with earlier permanent status as a Police Sergeant.

ORDER

Therefore, it is ordered that this appeal 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 3RD DAY OF MAY, 2023



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

c: Andrew Casole
Sandra Martin
Division of Agency Services
Records Center