



STATE OF NEW JERSEY

In the Matter of Eric Beagin,
Paterson, Fire Department

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

CSC Docket No. 2023-1654

Request for Back Pay, Benefits and
Counsel Fees, and Administrative
Appeal

ISSUED: January 17, 2024 **(ABR)**

Eric Beagin, a Fire Fighter with Paterson, Fire Department, represented by Deborah Masker Edwards, Esq., requests back pay, benefits and counsel fees in accordance with the Superior Court, Appellate Division (Appellate Division) decision rendered on June 28, 2022. Beagin also requests to file a late application for the promotional examination for Fire Captain (PM2342C), Paterson.

By way of background, the appointing authority issued a Final Notice of Disciplinary Action removing the petitioner, effective September 18, 2015, on charges of conduct unbecoming a public employee and other sufficient cause. Specifically, the appointing authority alleged that the petitioner failed a drug test by testing positive for oxycodone. Upon the petitioner’s appeal to the Civil Service Commission (Commission), the matter was transmitted to the Office of Administrative Law (OAL) for a hearing. Following a hearing and the Commission’s *de novo* review, the petitioner’s removal was affirmed and his appeal was dismissed. Thereafter, the petitioner appealed to the Appellate Division. The Appellate Division vacated the Commission’s decision and ordered the petitioner’s reinstatement¹. The record reflects that the petitioner was suspended without pay, effective August 13, 2015, and reinstated to the payroll on June 28, 2022. However, the parties have been unable

¹ On August 17, 2022, the Appellate Division issued an order awarding the petitioner \$9,775.20 as reimbursement for the expense of his defense on his appeal pursuant to *N.J.S.A. 40A:14-28*, including \$7,500 in attorney’s fees and \$2,275.20 in costs on his appeal to the Appellate Division.

to agree on the amount of back pay, benefits and counsel fees due to the petitioner, and the petitioner has requested Commission review.

In the instant matter, the petitioner maintains that he is entitled to \$408,214.52 for the period between the August 13, 2015, effective date of his suspension without pay, and his reinstatement on June 28, 2022, representing \$650,909.45 in gross pay, plus longevity pay and an Emergency Medical Technician stipend, less a \$242,694.93 reduction² for actual income earned to mitigate his losses during the applicable period. Specifically, the petitioner presents that his wages after his separation were \$43,044 in 2015, \$47,701 in 2016, \$0 in 2017³, \$19,196 in 2018, \$33,825 in 2019, \$23,375 in 2020, \$67,590 in 2021, and \$20,833 between January 1, 2022 and June 27, 2022. He avers that pursuant to *N.J.A.C. 4A:2-2.10(d)5*, he is not required to demonstrate mitigation efforts beyond June 28, 2022. He contends that he is owed \$15,378 in gross pay between June 29, 2022, through his reinstatement on August 22, 2022, plus \$7,851.17 from August 22, 2022 until December 31, 2022, as he was not receiving full compensation and consistent pay. With regard to benefits, the petitioner avers that he is entitled to 110 leave/vacation credit days and 16 personal leave credit days. The petitioner also asserts that the appointing authority is obligated to make pension contributions from August 13, 2015, through the present and that he is entitled to any retroactive reimbursements from July 1, 2019, in accordance with the finalization of a July 1, 2019, Collective Bargaining Agreement.

With regard to counsel fees, the petitioner provides a certification of services for counsel fees from Charles J. Sciarra, Esq., who represented the petitioner with Ms. Masker Edwards, requesting \$38,510 for 192.55 hours of work at a rate of \$200 per hour for work performed by Mr. Sciarra; \$180 for 0.9 hours of work at \$200 an hour for work performed by Matthew J. Curran, Esq., who is a partner in his firm; \$2,650 for 13.25 hours of work at \$200 an hour for work performed by Christopher A. Gray, Esq., who is a partner in his firm; \$13,250 for 66.25 hours of work at \$200 an hour for work performed by Ms. Masker Edwards, who is Of Counsel; and \$14,991.34 for costs, for a total of \$69,581.34. The certification of services indicates that the Mr. Sciarra's legal practice is concentrated in employment law and that the subject attorneys entered the practice of law between 1991 and 2007.

Finally, the petitioner contends that he must be given an opportunity to take a make-up of the promotional examination that was administered for the title of Fire Captain during the intervening period.

² The petitioner has certified that his total earnings between August 13, 2015, and June 22, 2022, were \$255,564.00. However, he excludes the \$12,869.07 by which his actual earnings (\$43,044) between August 13, 2015, and December 31, 2015, exceeded what he proffers his gross wages would have been from the appointing authority (\$30,174.93) during that same period.

³ The petitioner asserts that despite significant efforts, he was unable to secure employment in 2017.

In response, the appointing authority, represented by Kenneth B. Goodman, Esq., asserts that the petitioner's entitlement to back pay is limited to the period commencing March 12, 2019, based upon the waiver of back pay in effect during the pendency of this matter in the OAL and the ALJ's order. Thus, while Beagin's gross salary between the August 13, 2015, date of his separation and his reinstatement was \$665,710.29⁴, because of the postponements in this matter, pursuant to *N.J.S.A.* 40A:14-201, the calculation should only include the period from March 12, 2019 to his reinstatement. As to counsel fees, the appointing authority avers that despite the claims of the petitioner's attorney to the contrary, the matter did not involve novel legal issues and that accordingly, the ranges set forth in *N.J.A.C.* 4A:2-2.12(c) should govern the award of counsel fees in this matter. In this regard, it proffers that the issue before the ALJ came down to whether the petitioner's specimen fell outside the margin of error for testing and that the issue of reliability of a drug test is not a novel issue, as there is case law dating back at least as far as 1985 on this issue⁵.

In reply, the petitioner argues that based upon the Commission's July 21, 2022, decision, he is entitled to back pay, benefits, seniority and attorney's fees for the full period of his separation from employment, as the Commission did not limit it. Moreover, the petitioner avers that because the Appellate Division did not remand the matter to the Commission, there is no justification to cut off his back pay and benefits by relying upon the unadopted initial decision of the ALJ. It argues that the 180-day period is not applicable, as his petition is not an application for reinstatement of pay pursuant to *N.J.S.A.* 40A:14-201 for a violation of the 180-day rule. He contends that the 180-day rule has nothing to do with reimbursement of back pay after a wrongful termination is reversed. Rather, he maintains that *N.J.A.C.* 4A:2-2.10(e), which provides that "[u]nless otherwise ordered, an award of back pay, benefits and seniority shall be calculated from the effective date of the appointing authority's improper action to the date of the employee's actual reinstatement to the payroll," is controlling. As to counsel fees, the petitioner maintains that his requested counsel fees are within the range set forth in *N.J.A.C.* 4A:2-2.12 based on the years and experience of the practitioners involved in the litigation of the petitioner's matter, as supported by appropriate certifications. The petitioner further contends that the matter involved significant complexity, as evidenced by the inability of the appointing authority's expert to provide further evidence as to industry standards, its inapplicability to individual donor test results and in the instant matter, the calibration of equipment to be bias high. The petitioner avers that the complexity of this matter is further evidenced by the Appellate Division's detailing of the

⁴ The appointing authority indicates that the petitioner's gross wages during the applicable period would have been as follows: to \$43,748.82 between August 13, 2015, and March 1, 2016; \$84,885.81 between March 2, 2016, and March 1, 2017; \$90,327.26 between March 2, 2017, and March 1, 2018; \$101,482.44 between March 2, 2018, and March 1, 2019; \$103,807.31 between March 2, 2019, and March 1, 2020; \$103,807.31 between March 2, 2020, and March 1, 2021; \$103,807.31 between March 2, 2021, and March 1, 2022; and \$33,844.03 between March 2, 2022, and June 28, 2022. The appointing authority has not submitted a gross wage calculation for any period beyond June 28, 2022.

⁵ In support, the appointing authority cites *State v. Matulewicz*, 101 *N.J.* 27, 30 (1985).

complexity of the petitioner's matter and its finding that the Commission misunderstood the appointing authority's expert's testimony.

CONCLUSION

Back Pay

N.J.A.C. 4A:2-2.10(a) provides that where a disciplinary penalty has been reversed, the Commission shall award back pay, benefits, seniority or restitution of a fine. Such items may be awarded when a disciplinary penalty is modified.

Pursuant to *N.J.A.C.* 4A:2-2.10(d), an award of back pay shall include unpaid salary, including regular wages, overlap shift time, increments and across-the-board adjustments. Benefits shall include vacation and sick leave credits and additional amounts expended by the employee to maintain their health insurance coverage during the period of improper suspension or removal. *N.J.A.C.* 4A:2-2.10(d)3 provides that an award of back pay shall be reduced by the amount of money that was actually earned during the period of separation, including any unemployment insurance benefits received, subject to any applicable limitations set forth in (d)4. Further, *N.J.A.C.* 4A:2-2.10(d)4 states that where a removal or a suspension for more than 30 working days has been reversed or modified and the employee has been unemployed or underemployed for all or a part of the period of separation, and the employee has failed to make reasonable efforts to find suitable employment during the period of separation, the employee shall not be eligible for back pay for any period during which the employee failed to make such reasonable efforts. "Reasonable efforts" may include, but not be limited to, reviewing classified advertisements in newspapers or trade publications; reviewing Internet or online job listings or services; applying for suitable positions; attending job fairs; visiting employment agencies; networking with other people; and distributing resumes. The determination as to whether the employee has made reasonable efforts to find suitable employment shall be based upon the totality of the circumstances, including, but not limited to, the nature of the disciplinary action taken against the employee; the nature of the employee's public employment; the employee's skills, education, and experience; the job market; the existence of advertised, suitable employment opportunities; the manner in which the type of employment involved is commonly sought; and any other circumstances deemed relevant based upon the particular facts of the matter. The burden of proof shall be on the employer to establish that the employee has not made reasonable efforts to find suitable employment. *N.J.A.C.* 4A:2-2.10(d)9 states that a back pay award is subject to reduction for any period of time during which the employee was disabled from working. *N.J.A.C.* 4A:2-2.10(e) states that unless otherwise ordered, an award of back pay, benefits and seniority shall be calculated from the effective date of the appointing authority's improper action to the date of the employee's actual reinstatement to the payroll.

In the instant matter, the parties agree that the petitioner is entitled to a back pay award but differ as to whether the petitioner is entitled to back pay for the period between August 13, 2015, and March 11, 2019, as part of that award. The petitioner argues that based upon the Appellate Division's reversal of his removal, he is entitled to back pay from August 13, 2015, to his reinstatement on August 22, 2022. Conversely, the appointing authority argues that the petitioner's entitlement to back pay did not begin until March 12, 2019. In this regard, the appointing authority cites petitioner's waiver of the 180-day rule during much of the pendency of proceedings at the OAL and the ALJ's October 24, 2019, order, which found that pursuant to *N.J.S.A. 40A:14-200, et seq.*, the petitioner was entitled to base pay beginning on March 12, 2019. The Commission notes that the subject waiver and the ALJ's order relate to his entitlement to base pay pursuant to *N.J.S.A. 40A:14-200, et seq.* However, the entitlement to back pay is distinct and is determined in accordance *N.J.A.C. 4A:2-2.10*. Specifically, there is nothing in *N.J.S.A. 40A:14-200, et seq.* that defines "base salary." Further, *N.J.S.A. 40A:14-203* provides that "[n]othing herein shall be construed to authorize an award of back pay before a final decision is issued pursuant to section 5 of P.L.2009, c.16 (C.40A:14-204)." As such, the Commission interprets that term as used in the pertinent statutes and rules to mean such salary, **without** regard to the back pay provisions set forth in *N.J.A.C. 4A:2-2.10*. Given these considerations, neither the waiver of the 180-day rule nor the ALJ's order awarding base pay from March 12, 2019, precludes the petitioner's entitlement to back pay prior to that time pursuant to *N.J.A.C. 4A:2-2.10*.

Accordingly, the Commission finds that pursuant to *N.J.A.C. 4A:2-2.10*, the petitioner is entitled to back pay for the period between his immediate suspension effective August 13, 2015, and his reinstatement effective August 22, 2022. Importantly, the appointing authority does not appear to argue that the petitioner failed to sufficiently mitigate during the applicable period. Pursuant to *N.J.A.C. 4A:2-2.10(d)5*, the petitioner's mitigation period ended on June 27, 2022, the date before the Appellate Division issued its decision. Accordingly, the Commission finds that the petitioner is entitled to an award of \$425,524.29, which includes the \$665,710.29 in gross wages the appointing authority has indicated the petitioner was entitled to between August 13, 2015 and June 27, 2022, plus \$15,378 in gross wages the petitioner has indicated he was entitled to between June 28, 2022 and August 22, 2022, less a mitigation deduction of \$255,564, based upon the total wages the petitioner earned between August 13, 2015 and June 27, 2022.

Regarding pension contributions, *N.J.A.C. 4A:2-2.10(d)2* provides that the award of back pay shall be reduced by the amount of taxes, social security payments, dues, pension payments, and any other sums normally withheld. Thus, the appointing authority, by rule, should reduce the petitioner's back pay award consistent with this provision and provide the petitioner with a full accounting of its deductions and pension contributions when it makes its payment to the petitioner. *See In the Matter of Ronald Dorn* (MSB, decided December 21, 2005).

Finally, pursuant to *N.J.A.C.* 4A:2-2.10(e), any dispute regarding deficient gross pay from August 22, 2022, to December 31, 2022, falls outside the scope of the Commission's review of the instant matter.

Benefits

With regard to the petitioner's request for vacation time accrued prior to his removal on September 18, 2015, and thereafter, the Commission notes that, per *N.J.S.A.* 11A:6-3(e) and *N.J.A.C.* 4A:6-1.2(g), vacation leave not taken in a given year can only be carried over to the following year. *See also In the Matter of Donald H. Nelsen, Jr.*, Docket No. A-2878-03T3 (App. Div. February 4, 2005); *In the Matter of John Raube, Senior Correction Officer, Department of Corrections*, Docket No. A-2208-02T1 (App. Div. March 30, 2004). Since the accumulation of vacation leave is statutory, the Commission is unable to award the petitioner any unused vacation leave he possessed as of September 18, 2015, or any vacation leave that he would have earned in 2016, 2017, 2018, 2019 or 2020. Accordingly, upon his reinstatement, the petitioner would have been entitled to carry over vacation days from 2021 to 2022.

As to the amount of sick leave due to the petitioner, he should receive any unused sick days up to and following his removal, since sick leave can accumulate from year to year without limit. *See N.J.S.A.* 11A:6-5 and *N.J.A.C.* 4A:6-1.3(f); *See also, In the Matter of John Raube, Senior Correction Officer, Department of Corrections*, Docket No. A-2208-02T1 (App. Div. March 30, 2004) and *In the Matter of Evan Scott* (CSC, decided September 10, 2019). As such, he should have been credited with his full entitlement of sick days for the period between his removal on September 18, 2015, and his reinstatement on August 22, 2022.

As to any other benefit days, the Commission has no authorization to review benefits provided by the local jurisdiction and not specifically awarded by Title 11A of the New Jersey Statutes Annotated. *See In the Matter of James Nance* (MSB, decided October 1, 2003).

Counsel Fees and Costs

N.J.A.C. 4A:2-2.12(a) provides that the Commission shall award partial or full reasonable counsel fees incurred in proceedings before it and incurred in major disciplinary proceedings at the departmental level where an employee has prevailed on all or substantially all of the primary issues before the Commission. *N.J.A.C.* 4A:2-2.12(c) states that, subject to the provisions of *N.J.A.C.* 4A:2-2.12(c) and (d), the following fee ranges shall apply in determining counsel fees:

1. Associate in a law firm: \$ 100.00 to \$ 150.00 per hour;

2. Partner or equivalent in a law firm with fewer than 15 years of experience in the practice of law: \$ 150.00 to \$ 175.00 per hour; or
3. Partner or equivalent in a law firm with 15 or more years of experience in the practice of law, or, notwithstanding the number of years of experience, with a practice concentrated in employment or labor law: \$ 175.00 to \$ 200.00 per hour.

N.J.A.C. 4A:2-2.12(e) provides that a fee amount may also be determined or the fee ranges in (c) above adjusted based on the circumstances of a particular matter, in which case the following factors (see the Rules of Professional Conduct of the New Jersey Court Rules, at RPC 1.5(a)) shall be considered:

1. The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
2. The fee customarily charged in the locality for similar legal services, applicable at the time the fee is calculated;
3. The nature and length of the professional relationship with the employee; and
4. The experience, reputation and ability of the attorney performing the services.

In the instant matter, the petitioner's counsel seeks counsel fees at a rate of \$200 per hour. The appointing authority avers that despite the claims of the petitioner's attorney to the contrary, the matter did not involve novel legal issues and that accordingly, the ranges set forth in *N.J.A.C.* 4A:2-2.12(c) should govern the award of counsel fees in this matter. It is noted that \$200 per hour is the upper limit of the range set forth in *N.J.A.C.* 4A:2-2.12(c). Accordingly, based upon the totality of the record, including the experience of the petitioner's counsel and the firm's concentration in the area of employment law, the Commission finds that an award of counsel fees at a rate of \$200 per hour is justified in the instant matter. Thus, the petitioner should be reimbursed for \$54,590 in counsel fees.

N.J.A.C. 4A:2-2.12(g) provides that reasonable out-of-pocket costs shall be awarded, including, but not limited to, costs associated with expert and subpoena fees and out-of-State travel expenses. Costs associated with normal office overhead shall not be awarded. Here, the \$14,492.27 in costs incurred between August 25, 2015 and November 13, 2019, includes \$20 for Commission's appeal processing fee, \$1,920.15 for reproduction and copying costs, \$375.09 for service fees and \$165 for FedEx shipping costs, and \$499.07 for costs associated with processing fees, reproduction and copying from June 28, 2022, and May 5, 2023. Pursuant to *N.J.A.C.* 4A:2-1.8(a), the Commission's appeal fee is a processing fee which is not reimbursable. *See also In the Matter of Vincent Fiscella, Jr.* (CSC, decided March 27, 2018). Further, the costs associated with reproduction and copying and the transmittal of documents

through the use of FedEx or messenger services are considered normal office expenses that, per *N.J.A.C.* 4A:2-2.12(g), are not subject to reimbursement. The remaining expenses requested by the petitioner's attorneys, including payments for transcripts and expert witnesses are reimbursable expenses pursuant to *N.J.A.C.* 4A:2-2.12(g). Therefore, the petitioner is entitled to an award of \$12,012.03 for costs incurred between August 25, 2015, and November 13, 2019.

Therefore, the Commission finds that the petitioner is entitled to reimbursement for \$54,590 in counsel fees and \$12,021.03 in costs.

Late Application

As noted above, the petitioner requests to file a late application for the promotional examination for Fire Captain (PM2342C), Paterson⁶ based upon his reinstatement. It is noted that applicants were required to possess three years of continuous permanent service in the title of Fire Fighter as of the April 30, 2021, closing date. Since the petitioner had not yet been reinstated as of the April 21, 2021, application deadline, the Commission finds that good cause exists to allow the petitioner to relax the provisions of *N.J.A.C.* 4A:4-2.6(a)4 and allow the petitioner to file an application after the application deadline date for the Fire Captain (PM2342C), Paterson examination.

ORDER

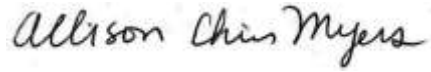
Therefore, it is ordered that Eric Beagin be awarded gross back pay in the amount of \$425,524.29 and benefits as set forth above within 30 days of the issuance of this decision. Additionally, it is ordered that the appointing authority pay Charles J. Sciarra, Esq. and his firm counsel fees with an hourly rate of \$200 an hour for a total of amount of \$54,590, plus costs in the amount of \$12,012.03 within 30 days of the issuance of this decision.

It is further ordered that the completed application and required \$50.00 application processing fee should be forwarded to: New Jersey Civil Service Commission, Division of Agency Services, P.O. Box 322, Trenton, New Jersey 08625-0322. The completed application and processing fee must be postmarked no later than 15 days from the issuance date of this decision. Failure to file the application and processing fee within the time provided will result in rejection from the examination process. Additionally, upon determination of eligibility, the petitioner shall be admitted to the subject examination. Further, should the appellant pass the make-up examination, he shall be added to the eligible list and may petition for retroactive appointment consideration.

⁶ The subject eligible list, containing 76 names, promulgated on February 16, 2023 and expires February 15, 2026. A total of 74 eligibles are presently active on the list.

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 17TH DAY OF JANUARY, 2024



Allison Chris Myers
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Nicholas F. Angiulo
Director
Division of Appeals and Regulatory Affairs
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P.O. Box 312
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Attachment

c: Eric Beagin
Deborah Masker Edwards, Esq.
Kathleen Long
Kenneth B. Goodman, Esq.
Division of Agency Services
Division of Administrative and Employee Services
Division of Test Development, Analytics and Administration
Records Center

APPLICATION FOR PROMOTIONAL EXAMINATION

NEW JERSEY CIVIL SERVICE COMMISSION —County and Municipal Government

\$ 50.00 FEE REQUIRED
 Make Check/Money Order Payable to NJCSC

FOR COMMISSION USE ONLY

INSTRUCTIONS: Please print or type. Answer all pertinent questions and ensure that all information is accurate and complete. Sign your name in Block 11. **NOTE:** No additional information may be accepted after the last date for filing applications has passed. **If you change your address, you must notify the Civil Service Commission immediately in writing.**
Return your completed application no later than the last date for filing listed on the announcement to: NJ CSC, 44 S. Clinton Ave. PO Box 322, Trenton, N.J. 08625-0322

FOR COMMISSION USE ONLY		
STATUS: <input type="checkbox"/>		
SEN: <input type="checkbox"/>	UE: <input type="checkbox"/>	REV NO REV

2. Social Security Number: * (see block 10 for additional information)	3. Symbol:
4. Name & Address:	
Last: _____ First: _____ M.I. _____	
Street: _____	
City: _____ State: _____ Zip Code: _____	
E-mail address: _____	
County: _____ Daytime Telephone: _____ <small>(Area Code) - Number</small>	

1. Title of Promotion:

Note: Applications must be postmarked by

5. BACKGROUND DATA

5a. Education (Indicate the highest level Diploma or Degree you have earned):

High School Diploma or GED (A) Associate's Degree (M) Master's Degree
 (S) Some College but No Degree (B) Bachelor's Degree (D) Doctorate

5b. Completion of this part is VOLUNTARY and is to be used only for complying with EEOC Guidelines and the New Jersey State Affirmative Action Program.

Gender: (1) Male (2) Female **Check the group you are a member of:**
 (1) Black (2) White (3) Hispanic (4) Asian (5) American Indian or Alaskan Native

6. Check the county in which you prefer to take the examination. (Check one box only)
 (1) Camden (2) Mercer (3) Essex
 (4) Monmouth (6) Atlantic (7) Bergen

7. Are you claiming veterans preference? YES NO
 Check YES if you are claiming veterans preference for this examination. If you have established veterans preference since April 1, 1980, no further action is needed. Otherwise, complete a veterans preference claim form and include the required documents. Claim forms are available on our web site at www.state.nj.us/csc and at our office at 44 S. Clinton Avenue, Trenton, NJ. Completed forms should be mailed to the Department of Military and Veterans' Affairs. For more information, visit their web site at www.state.nj.us/military or contact them at 1-888-865-8387.

8. ADA Assistance: Check the box if you would like to be contacted regarding auxiliary aid or reasonable accommodation in taking this examination in accordance with the Americans with Disabilities Act.

9. Present Permanent Title & Appointment Date:

Name & Title of Immediate Supervisor:

Telephone Number & Email Address of Immediate Supervisor:

* **10.** Your Social Security number will be kept confidential and used as your applicant I.D. number to identify and track all of your records and transactions associated with the application and testing process. Collecting this data is permissible under NJSA 11A:4-1, but its submission is voluntary. If you do not provide the number, a unique number will be assigned to you. However, once assigned, you will be responsible for remembering it for any inquiries you may have concerning your application or testing process.

11. Signature: I CERTIFY that the statements made by me in this application are true, complete, and correct to the best of my knowledge and belief, and are made in good faith. I understand that if my application is incomplete, it may be rejected. (WARNING: The Civil Service Commission may refuse to examine, or certify after examination, any applicant who makes a false statement of any material fact per NJAC 4A:4-6.2)

FOR CSC ONLY

NOTE: Your application may be released to the Appointing Authority for the purpose of verifying information with regard to your qualifications.

Signature..... Date.....