

Commission's (Commission) policy to accept a test for Deputy Fire Chief as a basic skills test for Fire Chief.

On appeal, Pennsauken argues that because Hutton began this process when he was provisionally appointed to the title of Fire Chief in January 2023, it should not be bound by the May 2023 memorandum². Further, it proffers that Hutton's permanent title of Fire Captain is the next lower in-series rank and has never received a rule appointment or waiver. It also contends that as Hutton is the only candidate that registered for the subject examination, there is a non-competitive situation where he will essentially be testing against himself. As such, it believes that a waiver of examination should be granted. Pennsauken states that it is confident that the knowledge, skills and abilities that Hutton has demonstrated while serving provisionally in the title of Fire Chief further support the granting of a waiver of examination.

CONCLUSION

N.J.A.C. 4A:4-2.2(a) states that the Chairperson or designee shall administer examinations for appointment in the competitive division of the career service which may include any one or more of the following: written tests; oral tests; performance tests; physical performance tests; evaluation of education, training or experience; computer-based tests; assessment exercises; and other appropriate measures of knowledge, skills and abilities (KSAs).

N.J.A.C. 4A:4-2.7(a) states, following the announcement of a promotional examination, the Chairperson or designee may authorize 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 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 referred to in (a) above does not exceed the number of promotional appointments by more than two; and
4. Veterans preference rights are not a factor.

² Prior to the May 2, 2023, memorandum, a January 2, 2018, memorandum to all appointing authorities similarly provided that a Battalion Fire Chief or Deputy Fire Chief test would be accepted as a basic skills test for Fire Chief.

A review of the record indicates that a promotion upon the waiver of a competitive examination cannot be granted in this matter. As indicated above, *N.J.A.C. 4A:4-2.7(a)* requires that all four conditions be met before the Commission can consider a promotional examination waiver. The New Jersey Supreme Court has upheld the processing of an examination through the provisions of *N.J.A.C. 4A:4-2.7* as being within the lawful discretion of this agency. 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*, 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 this agency 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.

Although Pennsauken states that Hutton has been tested in the basic superior officer skills of Fire Captain, he has not been tested in the basic skills for the Fire Chief title. Indeed, reviews of the job analyses for 1st Level Fire Supervisor, 2nd Level Fire Supervisor, Deputy Fire Chief/Fire Officer 3, and Fire Chief/Fire Officer 4 titles indicate 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) 1st Level Fire Supervisor and 2nd Level Fire Supervisor; 2) 2nd Level Fire Supervisor and Battalion Fire Chief; and 3) Battalion Fire Chief, Deputy Fire Chief and Fire Chief. The review determined a uniqueness of the Battalion Fire Chief title because it includes basic skills found in the 2nd Level Fire Supervisor, and the Deputy Fire Chief and Fire Chief title groups. Additionally, certain areas covered in the Fire Chief examination (fire department administration, budgeting and finance), were not included in the testing for the 1st Level Fire Supervisor titles. It was determined that if a candidate successfully tested for a 1st Level Fire Supervisor titles and was even waived into a 2nd Level Fire Supervisor title, that candidate must still be tested in the basic skills of Battalion Fire Chief, Deputy Fire Chief or Fire Chief if seeking a promotion to one of those titles. It is noted that the amount of supervisory experience is an experience requirement, not a KSA.

At issue is not whether Hutton has satisfactorily performed the duties of a provisional Fire Chief, but rather, whether he has been previously tested in the basic skills required by the Fire Chief title. As the basic skills of a Fire Captain, a 1st Level Fire Supervisor title, are different from those of Fire Chief, an examination must be held³. See *In the Matter of Thomas DePaul* (MSB, decided December 18, 2002), *In the Matter of Police Chief (PM3512G)*, *City of Bordentown* (MSB, decided July 27, 2005).

³ The Commission notes that it would have reached the same conclusion if the January 2, 2018, memorandum was still controlling.


A thorough review of all material presented indicates that Agency Services' determination is supported by the record and that Pennsauken has failed to support its burden of proof in this matter.

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 28TH DAY OF FEBRUARY, 2024



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