



STATE OF NEW JERSEY

In the Matter of Juan Mendoza,
Hudson County

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

CSC Docket No. 2023-1053 and
2024-838

Administrative Appeals

ISSUED: July 24, 2024 (DASV)

Juan Mendoza, a Sheriff's Officer with Hudson County, represented by Michael L. Prigoff, Esq., challenges the appointments made from the May 27, 2022 (PL220793) certification of the Sheriff's Officer Sergeant (PC2608V), Hudson County, eligible list.¹

By way of background, the Sheriff's Officer Sergeant (PC2608V), Hudson County, eligible list promulgated on December 13, 2018 with 42 eligibles and expired on November 1, 2022.² The eligible list was certified six times and resulted in 14 appointments. The last (PL220793) certification, which is germane to the issues raised herein, was issued on May 27, 2022. The certification contained the names of five eligibles, who ranked 13th to 17th on the subject eligible list. C.M., A.L., and J.C. were positioned in the first, third, and fourth positions on the certification and were appointed effective October 31, 2022. As further explained below, A.L. had initially been bypassed for appointment.³ The second positioned eligible was removed due to his resignation. The fifth positioned eligible was reachable but not appointed. The appellant, a non-veteran who ranked 36th on the subject eligible list, was not certified

¹ The appellant filed his first appeal *pro se* which primarily challenges the appointments of C.M. and J.C. as invalid. In his second appeal, the appellant is represented by counsel, and he objects to the appointment of A.L., as well as maintaining his claims from his first appeal.

² The subject eligible list was to expire on December 12, 2021, but it was extended and expired on November 1, 2022, as a result of the issuance of the Sheriff's Officer Sergeant (PC4995C), Hudson County, eligible list on November 2, 2022.

³ In both the original and amended certification, the appointees' salaries were also indicated.

prior to the expiration of the eligible list. It is noted that the (PL220793) certification disposition due date was extended to October 31, 2022, and the certification was returned and recorded as disposed on November 14, 2022. Thereafter, the Sheriff's Officer Sergeant (PC4995C), Hudson County, eligible list promulgated on November 3, 2022 with 46 eligibles and expires on November 2, 2025. This eligible list was certified on March 16, 2023 (PL230322) and July 21, 2023 (PL231397). No appointments were made from the March 16, 2023 (PL230322) certification. However, the first and second ranked eligibles were appointed, effective October 2, 2023, from the July 21, 2023 (PL231397) certification which contained six names. The appellant appears as the fourth ranked eligible. He was reachable on the certification but not appointed. Regarding A.L., in October 2023, the appointing authority requested that the May 27, 2022 (PL220793) certification be amended to record A.L.'s appointment consistent with the date of appointment of the other appointees which had been October 31, 2022, for record purposes. The amendment was approved in December 2023, as A.L. was reachable for appointment. The request stemmed from a settlement agreement reached by A.L. and the appointing authority.

On appeal, the appellant argues that promotions had been made after the Sheriff's Officer Sergeant (PC2608V), Hudson County, eligible list expired. In that regard, he notes that C.M. and J.C. were not notified of their appointments until November 2, 2022 and that "they were getting promoted" on November 7, 2022. He indicates that he contacted this agency and this agency confirmed that the May 27, 2022 (PL220793) certification was not returned as of the October 31, 2022 due date. He points to information on this agency's website that says, "[w]hen a Certification List is issued prior to the list expiring, the Appointing Authority may make appointments from the Certification up to the date that the Certification is due to be returned to the Civil Service Commission" (Commission). Thus, the appellant contends that the May 27, 2022 (PL220793) certification "should have been expired." Furthermore, the appellant asserts that the appointing authority failed to notify the Commission that eligibles had been suspended, no longer employed, or had already been promoted. He maintains that, had the appointing authority reported these personnel actions, other eligibles, such as the eligible who ranked number 19, could have been certified. The appellant claims that "[t]his was not the first time this tactic was used to avoid [his] promotion" and recounts a prior eligible list (PC1001N) where 10 promotions were made in 2015, one month prior to a new list's issuance where he ranked number nine. The new list (PC1570S) expired in 2018 and the appellant "was left on this list without a promotion." Moreover, he asserts that "[i]f you follow the [C]ivil [S]ervice rules and past certifications eligibility list[,] candidates are certified in 3's," and thus, he could have been certified. In support of his appeal, the appellant presents the 2022 Annual Attendance Record of C.M. and J.C., which states that they were "Promoted to Sergeant on 11/7/2022." Additionally, he submits an email invitation to the swearing-in ceremony which was held on November 7, 2022. Furthermore, he maintains this agency confirmed that only C.M. and J.C. were appointed as of November 22, 2022, and A.L. was bypassed at that time. The

appellant further provides a copy of a Personnel Order, dated November 3, 2022, which states that “[t]he following Sheriff’s Sergeants & Sheriff’s Officers will be officially promoted to the ranks of Sheriff’s Lieutenant & Sheriff’s Sergeant respectively within the Hudson County Sheriff’s Office effective 1130 Hours, Monday, November 7, 2022, in the Hudson County Administration Building . . . sworn-in by [a] Superior Court Assignment Judge.” C.M. and J.C. were included in the list of promoted officers. The appellant reiterates that none of the appointees from the May 27, 2022 (PL220793) certification were notified of their promotions prior to the expiration of the subject eligible list nor were their appointments effective prior to that time.

In a supplemental submission, the appellant maintains that there has been a violation of Civil Service law and rules. Specifically, he highlights that pursuant to *N.J.A.C. 4A:4-3.3(a)*, “[a]n eligible list shall be considered issued on the date on which it is available for review by candidates, appointing authorities and members of the public” and, per *N.J.A.C. 4A:4-3.3(e)*, “the extended list shall expire when the new promotional list is issued.” He contends that the appointments of C.M. and J.C. did not occur on October 31, 2022, but rather they were appointed on November 7, 2022, and thus, the appointments were in violation of Civil Service law and rules. The appellant emphasizes that appointments from an expired list have been held by the court to be invalid. Furthermore, he alleges that A.L. “was arrested, suspended without pay” from August 13, 2021 to September 15, 2023 and he should have been removed from the subject eligible list for “inability, unavailability” for appointment pursuant to *N.J.A.C. 4A:4-4.7(a)3* or *N.J.A.C. 4A:4-6.1(a)5* which provides that a person may be denied examination eligibility or appointment when he or she has been removed from the public service for disciplinary reasons. The appellant also notes that A.L. did not file an appeal of his bypass within 20 days of November 7, 2022. See *N.J.A.C. 4A:2-1.1*. In addition, the appellant requests a hearing in this matter as he argues that “[f]acts exist in this appeal, such as the promotions that occurred on 11/7/2022 from the expired list.” Moreover, the appellant alleges that the appointing authority “has a History and Pattern of Retaliation,” and the “list of events shows how the appointing authority has specifically singled [the appellant] out in [his] working conditions and [his] past union activity while serving [as] a Union Official for the Local PBA #334.” The “list of events” the appellant refers to are as follows: an overtime compensation complaint filed by the appellant with the Public Employment Relations Commission (PERC) which settled in 2017 and the appellant was paid for 18 hours of overtime; a two-day suspension levied against the appellant which he appealed to the Superior Court of New Jersey, Law Division, and the appellant was awarded back pay “and the expungement” of the suspension in 2017; and a grievance and administrative appeal that the appellant filed with the Commission in 2018 which could not proceed since the Commission lacks the jurisdiction over grievances of local employees, cannot enforce or interpret items contained in a collective bargaining agreement, or could not review the salary dispute that the appellant presented.

The appellant indicates that he is not arguing that he has “a right to be promoted under promotional list PC2608V.” Rather, he states that he provided an example whereby on the prior Sheriff’s Officer Sergeant (PC1570S), Hudson County, eligible list that expired in 2018, he was left on the list without a promotion despite being ranked number nine. In summation, the appellant states that if his appeal is granted and the appointments of C.M., A.L., and J.C. are found to be invalid, he contends that he would have been promoted by October 2, 2023, as a total of five promotions occurred: three from the expired list (PC2608V) and two from the new list (PC4995C), which he is currently positioned as number two. In further support of his appeal, the appellant submits a Personnel Order, which indicates that A.L. was promoted to Sheriff’s Officer Sergeant on October 2, 2023. The appellant presents another Personnel Order issued on January 8, 2024, which lists the effective date of A.L.’s promotion to be October 31, 2022. Moreover, the appellant provides municipal court documents that A.L. was arrested in 2021 and pled guilty in 2023 to simple assault, a disorderly persons offense. In addition, the appellant submits the 2021, 2022, and 2023 Annual Attendance Record of A.L., which states that A.L. was a detective in 2021 and 2022 and a Sergeant in 2023. The appellant also presents PERC decisions rendered in 2023 that relate to unfair practice charges he filed against PBA Local 334.

On appeal specifically with respect to A.L., the appellant challenges A.L.’s appointment to Sheriff’s Officer Sergeant which he contends was made on October 2, 2023. He emphasizes that A.L. is not on the current Sheriff’s Officer Sergeant (PC4995C), Hudson County, eligible list but was on the previous expired eligible list. Nonetheless, the appellant indicates that the appointing authority appointed A.L., as well as the first and second ranked eligibles on October 2, 2023. He states that “[s]uch action by the Department was clearly a violation of the Civil Service Act and regulations promulgated thereunder.” Thus, the appellant urges the Commission to set aside the promotion of A.L. and order the appointing authority “to promote the next two candidates on the list to fill the remaining vacancies.” In that regard, he notes that the July 21, 2023 (PL231397) certification consisted of six eligibles, “presumably for the four outstanding vacancies,” which had been “declared” on the March 16, 2023 (PL230322) certification from which no appointments were made. Further, the appellant restates that he is now number two on the Sheriff’s Officer Sergeant (PC4995C), Hudson County, eligible list, and recounts the “timeline of events” as set forth above to support his appeal. He maintains that “[w]hat transpired here is patently evident. [A.L.] was bypassed from promotion on the previous list in October 2022, as he was suspended without pay after being charged with assault. Immediately upon receiving the new list in early November 2022, and seeing that [the appellant] was now on the promotional list, the Department rushed to appoint [C.M. and J.C.] from the prior, now expired list, in derogation of Civil Service rules. Then, in October of the following year, the Department tried to promote [A.L.] from the prior list along with two candidates from the current list” in

circumvention of Civil Service law and rules. The appellant disputes that the May 27, 2022 (PL220793) certification was amended as the “predicate facts underlying this are not true.” The appellant emphasizes that A.L. was suspended without pay from August 13, 2021 until September 25, 2023 and was not promoted until October 2, 2023. Further, this agency confirmed to the appellant that only C.M. and J.C. had been promoted and personnel records did not reflect A.L.’s appointment as of October 11, 2023. The appellant contends that had A.L. been promoted in October 2022 and the subsequent actions were merely to correct an administrative error, “that would be one thing.” However, he asserts that this was not the case. What the appointing authority “is trying to do is improperly legitimize a promotion from an expired list . . . and while a current list is in effect that the officer is not on.” Furthermore, the appellant states that, while A.L. was “available” on the prior eligible list, his availability expired with the expiration of that list on November 1, 2022. Lastly, although the appellant acknowledges that he does not have a right to be promoted from the list, he “does have a right to his position on that list.” He reiterates that if the appointing authority did not make an invalid promotion of A.L., he would be “#1 on the list and have a better chance of being promoted before this list expires.”⁴

CONCLUSION

N.J.A.C. 4A:4-3.3(a) provides that an eligible list shall be considered issued on the date on which it is available for review by candidates, appointing authorities and members of the public. The list shall be considered promulgated on the date on which it is available to be certified to an appointing authority and from which appointments may be made.

N.J.A.C. 4A:4-3.3(e) indicates that when a promotional list for a law enforcement or firefighter title is extended until a new promotional list is available for certification and appointments, the extended list shall expire when the new promotional list is issued, provided however, that certifications of and appointments from the new list shall not be made until the promulgation date of the new list.

N.J.A.C. 4A:4-4.9(a) states that:

An eligible shall not be appointed and begin work after the expiration date of the eligible list except:

1. When the eligible is on military leave, or, in the case of promotional appointments, is on an approved leave of absence. Persons returning from military leave or an approved leave of absence may begin work upon their return to active service.

⁴ If the current Sheriff’s Officer Sergeant (PC4995C), Hudson County, eligible list is to be certified again, the appellant’s name would appear in the second position.

2. When there is limited revival or statutory extension of an employment list, except that no appointment shall be made beyond the statutory extension date; or
3. When the certification is made just prior to the expiration of the eligible list, in which case the date of appointment and the date the eligible begins work shall be no later than the disposition due date.

N.J.A.C. 4A:4-3.4(a) provides that the Commission may revive an expired eligible list under the following circumstances:

1. To implement a court order, in a suit filed prior to the expiration of the list;
2. To implement an order of the [Commission] in an appeal or proceeding instituted during the life of the list;
3. To correct an administrative error;
4. To effect the appointment of an eligible whose working test period was terminated by a layoff; or
5. For other good cause.

In the instant matter, the issue to be determined is whether the appointments of C.M., A.L., and J.C. from the May 27, 2022 (PL220793) certification of the Sheriff's Officer Sergeant (PC2608V), Hudson County, eligible list should be invalidated. The appellant challenges those appointments and contends that they were not made on October 31, 2022, but rather, documents such as Personnel Orders, Annual Attendance Records, and an invitation to the swearing-in ceremony, demonstrate that the actual appointments of C.M. and J.C. were made on November 7, 2022 and A.L.'s appointment was not made until October 2, 2023, after the expiration of the eligible list. The appellant also requests a hearing in this matter, stating that "[f]acts exist in this appeal, such as the promotions that occurred on 11/7/2022 from the expired list." Initially, in that regard, administrative appeals are generally treated as reviews of the written record. *See N.J.S.A.* 11A:2-6(b). Hearings are granted in those limited instances where the Commission determines that a material and controlling dispute of fact exists which can only be resolved through a hearing. *See N.J.A.C.* 4A:2-1.1(d). No material issue of disputed fact has been presented which would require a hearing. *See Belleville v. Department of Civil Service*, 155 *N.J. Super.* 517 (App. Div. 1978). As further explained below, the Commission finds that the effective date of appointment of C.M., A.L., and J.C. to Sheriff's Officer Sergeant was October 31, 2022, and there is no basis to invalidate the appointments.

There is no dispute that the May 27, 2022 (PL220793) certification disposition due date was extended to October 31, 2022, and the certification was returned and recorded as disposed on November 14, 2022. The appointing authority clearly indicated on the certification that C.M. and J.C.'s appointment date would be October 31, 2022. Thus, regardless of whether internal Hudson County documents have the

appointees being “officially promoted” and sworn-in at a later date on November 7, 2022, that does not have any bearing on the appointment date in this instance as the certification disposition and approval by this agency are the mechanisms on which a regular appointment is effective. In that regard, there is no reference in Civil Service law or rules to the requirements of participating in a swearing-in ceremony in order to perfect a regular appointment. Arguments that individuals are appointed on their swearing-in ceremony date are misplaced. *See e.g., In the Matter of Joseph Schisani* (CSC, decided March 13, 2014) (Given the history and tradition of the swearing-in ceremony, as well as local ordinances requiring swearing in, it is not unreasonable if Fire Captain duties were not immediately assigned on the appointment date. Nevertheless, this does not negate the appointment date, wherein the appointees could have been required to perform the duties of their title). Moreover, *N.J.A.C. 4A:4-1.10(a)* provides that all appointments, promotions, and related personnel actions in the career, unclassified or senior executive service are subject to the review and approval of the Chairperson or designee, *i.e.*, this agency. It is settled that an appointment is not valid or final until it is approved by this agency. *See Thomas v. McGrath*, 145 *N.J. Super.* 288 (App. Div. 1976) (Morgan, J.A.D. dissenting), *rev’d based on dissent*, 75 *N.J.* 372 (1978); *Adams v. Goldner*, 79 *N.J.* 78 (1979); *In the Matter of Donald Gates* (MSB, decided June 6, 2007); *In the Matter of Reena Naik* (MSB, decided February 28, 2007). *See also, In the Matter of Asa Paris* (MSB, decided February 13, 2008), *aff’d on reconsideration* (CSC, decided September 10, 2008). (Internal documentation indicating that the appellant was promoted to County Correction Sergeant did not establish that he was permanently appointed since the promotion was not approved by the appointing authority or this agency). It is reiterated that this agency approved the disposition of the May 27, 2022 (PL220793) certification, reflecting the October 31, 2022 appointments, as of November 14, 2022. Even if it were to be considered that C.M. and J.C.’s appointments were not made until November 7, 2022, the certification was arguably further extended by this agency in its acceptance of the certification and recording of it on November 14, 2022. Therefore, the alleged November 7, 2022 date of appointment and the date the eligibles began work⁵ were no later than the certification disposition due date. However, for the reasons set forth above, there is no basis to disturb the appointment date of October 31, 2022. Therefore, the Commission finds that the appointment date of C.M. and J.C. was October 31, 2022, prior to the certification due date and the expiration of the subject eligible list, notwithstanding any internal documents to the contrary. Accordingly, their appointments are valid and in accordance with Civil Service law and rules.

With regard to A.L.’s appointment, what the appellant is not aware of, and not privy to as he is not a party to that agreement or even on the certification in question, is a settlement agreement reached by A.L. and the appointing authority. As set forth above, the appointing authority requested that the subject certification be amended

⁵ As noted above, immediate assignment of duties does not negate the appointment date. Indeed, for A.L., his October 31, 2022 appointment date is for record purposes.

to record A.L.'s appointment consistent with the date of appointment of the other appointees which had been October 31, 2022. The amendment was approved as A.L. was reachable for appointment. As such, since the settlement agreement did not arise from a matter that was before the Commission, this agency was able to address it administratively. Nonetheless, in order for this issue to be put to rest and since the main thrust of the appellant's argument is that A.L. was appointed from an expired list, the Commission shall confirm the appointment of A.L. and is so doing revive the Sheriff's Officer Sergeant (PC2608V), Hudson County, eligible list, for that limited purpose. It has been long held that the policy of the judicial system strongly favors settlement. *See Nolan v. Lee Ho*, 120 N.J. 465 (1990); *Honeywell v. Bubb*, 130 N.J. Super. 130 (App. Div. 1974); *Jannarone v. W.T. Co.*, 65 N.J. Super. 472 (App. Div. 1961), *cert. denied*, 35 N.J. 61 (1961). This policy is equally applicable in the administrative area. A settlement will be set aside only where there is fraud or other compelling circumstances. *See Nolan, supra*. In this matter, no such compelling circumstances exist. Therefore, the Commission finds good cause to revive the subject eligible list pursuant to N.J.A.C. 4A:4-3.4(a)5 and confirm A.L.'s appointment to Sheriff's Officer Sergeant, effective October 31, 2022, for record purposes. Accordingly, the appellant's arguments in that regard are dismissed as moot.

As to the appellant's other claims, it is noted that an appointing authority must return a certification to this agency for disposition, *i.e.*, the certification is reviewed by this agency to ensure that it is in compliance with Civil Service law and rules. It is during the disposition process that the appointing authority may request the removal of an individual's name. In other words, contrary to the appellant's arguments, there is no requirement that an appointing authority update an eligible list prior to certification. Any updates may be accomplished during the disposition process. Moreover, as to the appellant's suggestion that A.L.'s name should be removed from the subject eligible list, it is underscored that removal is at the appointing authority's request, which it did not make in this case, and/or determined appropriate by this agency or the Commission. *See N.J.A.C. 4A:4-6.1 and N.J.A.C. 4A:4-4*. Based on the circumstances of this case, the Commission declines to disturb the appointing authority's appointment of A.L.

Furthermore, to clarify the appellant's statement that "candidates are certified in 3's," N.J.A.C. 4A:4-4.2(c)2 provides in part that an appointing authority shall be entitled to a complete certification for consideration in making a permanent appointment, which means from promotional lists, the names of three interested eligibles for the first permanent appointment, and the name of one additional interested eligible for each additional permanent appointment. However, an appointing authority may request additional names if it finds that the number of names provided are insufficient to meet its needs, but it can appoint from an incomplete list of less than three individuals. Thus, candidates are not necessarily certified in threes. For instance, if there are two positions, the certification may contain four names to be considered complete. In the present matter, there is

insufficient evidence to find that the failure of the appellant's name to be certified in any of the eligible lists he references was in error or in retaliation as he maintains. The appellant's arguments are speculative at best.

Additionally, there is no merit to the appellant's remaining claim that he would have been promoted by October 2, 2023, as a total of five promotions occurred since October 31, 2022. While the appellant is more concerned with the new eligible list, it must be first said that even if the three appointments were invalidated, the appellant was ranked number 36 on the prior Sheriff's Officer Sergeant (PC2608V), Hudson County, eligible list. He was not reachable for certification or appointment. On the current Sheriff's Officer Sergeant (PC2608V), Hudson County, eligible list, the appellant was certified, and he ranks fourth. The first and second ranked eligibles were appointed, and if the fiction were to be applied to this eligible list, the other three appointments could have been afforded to the third, fifth, and sixth ranked eligibles on the July 21, 2023 (PL231397) certification. In other words, the appellant, therefore, could have been bypassed. As such, the appellant's claim of appointment cannot be sustained as individuals whose names merely appear on a list do not have a vested right to appointment. *See In re Crowley*, 193 N.J. Super. 197 (App. Div. 1984), *Schroder v. Kiss*, 74 N.J. Super. 229 (App. Div. 1962). The only interest that results from placement on an eligible list is that the candidate will be considered for an applicable position so long as the eligible list remains in force. *See Nunan v. Department of Personnel*, 244 N.J. Super. 494 (App. Div. 1990).

ORDER

Therefore, it is ordered that these appeals be denied and the Sheriff's Officer Sergeant (PC2608V), Hudson County, eligible list be revived in order to confirm A.L.'s appointment as a Sheriff's Officer Sergeant, effective October 31, 2022, for record purposes.

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 24TH DAY OF JULY, 2024



Allison Chris Myers
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: Juan Mendoza
Michael L. Prigoff, Esq.
Frank X. Schillari
Rose Tubito, Esq.
Records Center
Division of Human Resource Information Services