



STATE OF NEW JERSEY

In the Matter of Daniel Klotz,
Investigator 2, Real Estate
Commission (PS7163L), Department
of Banking and Insurance

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

Administrative Appeal

CSC Docket No. 2025-1432

ISSUED: March 19, 2025 (SLK)

The Department of Banking and Insurance (DOBI) and Daniel Klotz, an Investigator 3, Real Estate Commission (Investigator 3), request that he be admitted to the Investigator 2, Real Estate Commission (Investigator 2) (PS7163L), DOBI promotional examination.

The closing date of the subject examination was June 24, 2024. The examination was open to employees in the competitive division who were currently serving as an Investigator 3 and who had one year of continuous permanent service in that title as of the closing date. A total of six employees applied and were admitted to the subject examination. The list has not yet promulgated as the test administration date has not been set.

Personnel records indicate that Klotz was provisionally appointed subject to open competitive examination procedures (PAOC) as an Investigator 3 on July 19, 2022, and remained in that status as of the subject examination closing date. It is noted that Klotz was permanently appointed as an Investigator 3 on November 30, 2024. Further from 1995 to July 2022, he was employed by the Department of Corrections in various titles.

In its January 2025 request, DOBI's Manager of Human Resources presents that she had been serving in the position for a little over a year and one-half when it was brought to her attention that there was a serious oversight in the Human

Resources Department (Department). Specifically, after advising employees to apply for the subject examination, Klotz brought to her attention his belief that he should have been able to apply for this examination based on when he started working provisionally for DOBI as an Investigator 3. Thereafter, she investigated the matter and discovered that there were examinations that had not been announced for DOBI's provisional employees. Further, when she inquired about this, she was told that the Department just never got around to it. Accordingly, as there had been provisionals serving for well more than a year, she immediately started requesting promotional announcements. Moreover, trainees who were brought in during this same time advanced to journeyman titles and now have an advantage compared to employees who were appointed PAOC who started years before them as they were ineligible for the subject examination.

DOBI surmises that if processed correctly, he should have been permanently appointed as an Investigator 3 in early 2023. It argues that because of the Department's failure to process Klotz's appointment in a timely manner, he was found ineligible for the subject examination.¹ Therefore, DOBI asks that the one-year continuous permanent service requirement be waived for Klotz, and he be allowed to submit a late application for the subject examination.

Klotz presents that he was hired on July 18, 2022. He states that around September 1, 2023, he began asking the Department as to when the open competitive examination for Investigator 3 would be announced. However, there was high turnover within the Department, and Klotz never received a response. Further, he submits emails that he sent to this agency in January 2024 inquiring about when the examination would be announced, and he was advised that the request would be forward to this agency's announcement unit.

Additionally, Klotz indicates that on or about May 31, 2024, he was informed that the subject examination was to be announced with a June 2024 examination closing date, which was approximately 24 months after he started his employment with DOBI as a provisional Investigator 3. He states that eligibility for the subject examination was based on experience and education, and the working test period for the appointees began on November 30, 2024, and will end on March 30, 2025, which is approximately 32 months after he began his employment with DOBI. He contends that his ineligibility for the subject examination was caused by the Department's failure. Therefore, he requests a retroactive appointment as a permanent Investigator 3 so that he would then be eligible for the subject examination.

Further, Klotz questions why the Civil Service Commission (Commission) would not grant the request of a State employee with 25 years of service as all he is asking is to be able to sit for the Civil Service test for the subject examination.

¹ Agency record do not indicate that Klotz applied for the subject examination.

Further, while Klotz acknowledges that an employee can serve provisionally for one year and that appointment would comply with *N.J.S.A.* 11A:4-13, he argues that this does not invalidate his argument that if the Department had requested an examination sooner, he would have been permanent as an Investigator 3 with the sufficient time needed to be eligible for the subject examination. Klotz asserts that throughout his years of State service, he has seen provisional employees take examinations after only 10 months.² Therefore, he believes he should be afforded this same opportunity.

CONCLUSION

N.J.A.C. 4A:2-1.1(b) provides that unless a different time period is stated, an appeal must be filed within 20 days after either the appellant has notice or should reasonably have known of the decision, situation, or action being appealed.

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. *N.J.A.C.* 4A:4-1.10(c) provides that when a regular appointment has been made, the Commission may order a retroactive appointment date due to administrative error, administrative delay, or other good cause, on notice to affected parties. *N.J.S.A.* 11A:4-13 provides, in pertinent part, that in no case shall any provisional appointment exceed a period of 12 months. *N.J.A.C.* 4A:4-6.3(b) provides that the appellant has the burden of proof in examination appeals.

Initially, it is noted that the subject request is untimely. Klotz indicates that he became aware of the subject examination around May 31, 2024, with a closing date in June 2024. Therefore, the record indicates that in June 2024, at the latest, Klotz knew he did not meet the eligibility requirements for the subject examination due to his lack of possessing the required continuous permanent service.³ However, the subject request was made on dated January 2, 2025, which is well after the 20-day time to appeal. *See N.J.A.C.* 4A:2-1.1(b).

Regarding the merits, Klotz and DOBI are requesting that he be given a retroactive appointment as a permanent Investigator 3 and then be given the

² It is not clear if Klotz is arguing that he has seen provisional employees with only 10 months of service and thus, who did not meet the one-year requirement take examinations; or, that generally, he has witnessed provisional employees only have to wait for 10 months or less for the applicable examination to be announced. Regardless, it is possible for individuals who are serving provisionally, pending **promotional examination procedures**, to meet the one-year continuous permanent service title requirement in a promotional announcement based on their prior permanent continuous service in an applicable title within their particular agency.

³ Indeed, and as indicated in footnote 1, he did not apply for the examination, another tacit acknowledgment that he knew he did not meet the requirement.

opportunity to file a late application for the subject examination. The parties are claiming that Klotz's ineligibility for the subject examination was based on the Department's failure to timely process his provisional Investigator 3 appointment. However, agency records indicate that Klotz was provisionally appointed as an Investigator 3 on July 18, 2022. Therefore, he could remain provisionally appointed as an Investigator 3 as late as July 17, 2023, and said appointment would still have complied with *N.J.S.A. 11A:4-13*.⁴ Further, if that was the case, he still would have lacked the required one-year of continuous permanent title service by the subject examination closing date of June 24, 2024. Additionally, even if the Department had asked for an examination shortly after Klotz's provisional appointment, based on this agency's examination process, it is merely speculative that the examination would have been announced and processed in a manner that would have afforded Klotz the required continuous permanent service for the subject examination. In other words, the record does not support that Klotz's ineligibility was necessarily based on a failure of the Department. Moreover, while Klotz questions why he is not being given the opportunity to sit for the subject test based on his 25 years of State service, Klotz's State service does not negate that he does not meet the subject examination requirements. Therefore, while the circumstances are unfortunate for Klotz, it would be unfair to the candidates who met the requirements to allow Klotz to compete for the subject examination. Further, regarding Klotz's assertion that he has seen other provisional employees take examinations after 10 months, the Commission is not aware of any specific situations he is referencing.⁵ Finally, in this case, there are six candidates who were admitted to the test. Therefore, it is anticipated that there will be a complete list and there is no basis to relax the rules.

ORDER

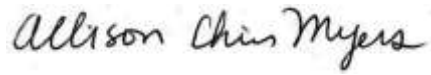
Therefore, it is ordered that this request be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

⁴ Moreover, the Commission notes that provisional appointments that extend beyond the limit proscribed in *N.J.S.A. 11A:4-13* do not provide an automatic right or expectation of achieving permanent appointment to the position. See *O'Malley v. Department of Energy*, 109 *N.J.* 309 (1987) (Appointing authority was not equitably estopped from removing a provisional employee even when the provisional employee occupied the position longer than the statutory one-year limit).

⁵ As previously indicated, it is not clear if Klotz is arguing that he has seen provisional employees who did not meet the applicable examination announcement requirements be permitted to take examinations. Regardless, he provides no evidence to support that assertion.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 19TH DAY OF MARCH, 2025



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