



STATE OF NEW JERSEY

In the Matters of Eric Delgado and
Timothy Mitchell, Sergeant Campus
Police (PS3229J), Montclair State
University

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

CSC Docket Nos. 2024-1344, *et al.*

Examination Appeals
Administrative Appeal

ISSUED: April 9, 2025 (HS)

Eric Delgado and Timothy Mitchell, represented by David Beckett, Esq., appeal the determinations of the Division of Agency Services (Agency Services), which found that they did not meet the permanent service requirement for the promotional examination for Sergeant Campus Police (PS3229J), Montclair State University. These matters have been consolidated due to common issues presented.

As background, Delgado and Mitchell received permanent appointments to the noncompetitive title of Security Officer with the appointing authority, effective January 16, 2021. Thereafter, they received provisional appointments, pending promotional examination procedures, to the title of Campus Police Officer Recruit, effective May 16, 2021. On November 1, 2021, a promotional examination for Campus Police Officer Recruit (PS5060J), Montclair State University, was announced with a closing date of November 21, 2021. It was open to employees in the noncompetitive division who were currently serving in the title of Security Officer, had completed their working test period as of the closing date, and met the open competitive requirements. It was also open to all employees in the competitive division who had completed their working test period as of the closing date and met the open competitive requirements. Further, the announcement included the following "special note:"

If you have previously taken the entry-level Law Enforcement Examination (LEE) and you are interested in applying for this announcement, please note that the exam score you have already

achieved may be used as your exam score for this announcement. In order to use your previous exam score, you must still submit a completed application along with the \$35 processing fee, but you may not be scheduled to take the examination. Once the exam is scheduled, you will be notified if your previous score will be used.

See N.J.A.C. 4A:4-2.15(i) (“A candidate for an examination may be permitted to use an examination score for a period of time, or for more than one title or more than one test, as determined by the Chairperson or designee.”). The four applicants’ 2020 LEE scores (S9999A) were used as their examination scores for the announcement. The resulting eligible list of four names, including Delgado and Mitchell, promulgated on March 24, 2022 with an expiration date of March 23, 2023. A certification issued from the eligible list on March 24, 2022 (PS220286), and the four eligibles received permanent appointments, effective March 26, 2022, the beginning of the next pay period. At that time, Delgado and Mitchell commenced their 12-month training period as was specified in the job specification. *See N.J.A.C. 4A:3-3.7*. Upon their successful completion of that period, their appointment in the title of Campus Police Officer became permanent, effective March 26, 2023. *See N.J.A.C. 4A:3-3.7(j)*.

The examination for Sergeant Campus Police (PS3229J), Montclair State University was open to employees who possessed an aggregate of one year of continuous permanent service in the title of Campus Police Officer as of the September 21, 2023 closing date. Delgado and Mitchell were deemed ineligible for the examination as they did not possess one year of continuous permanent service in that title as of the closing date.

In their examination appeals to the Civil Service Commission (Commission), postmarked December 22, 2023 and December 15, 2023 respectively, Delgado and Mitchell maintain that they were wrongly excluded from the PS3229J examination because such determinations were based on “flawed” personnel actions. Specifically, they argue that the 22 months – *i.e.*, May 2021 to March 2023 – that they served in the Campus Police Officer Recruit title was more than the 12 months that is appropriate under the PBA State Law Enforcement Unit (SLEU) contract and Civil Service regulations. They emphasize that they did not have to sit for any new test after being appointed provisionally as Campus Police Officer Recruits. Rather, they were able to use their 2020 LEE scores. Thus, they contend that they were already eligible for permanent appointment to Campus Police Officer Recruit as of May 16, 2021, and that date, not March 26, 2022, should have been recorded as the permanent appointment date. Had that been done, they proffer, they would have become permanent Campus Police Officers as of May 16, 2022 and been eligible for the PS3229J Sergeant Campus Police examination.

In a “supplement” postmarked August 16, 2024, the SLEU, also represented by Beckett, states that the above examination appeals expose the same problems as

those for a number of other Campus Police Officers and State Park Police Officers who all served more than 12 months in the Campus Police Officer Recruit or State Park Police Officer Trainee title respectively.¹ The SLEU submits that these officers similarly served in the recruit or trainee title for longer than one year for similar reasons. Such an extended period beyond 12 months is not consistent with the SLEU contract nor *N.J.A.C.* 4A:3-3.7. The SLEU submits that the problems resulted from actions such as recruits and trainees having been brought in provisionally, delays in testing, and delaying permanent appointments as recruits and trainees. The SLEU explains that the low pay scale was the driving force for these errors because that pay scale made it impossible to hire recruits or trainees directly from the LEE list even though many had taken that test. This is because no one was applying directly to these titles and State Park Police and Campus Police developed workarounds wherein they would hire into the title of Security Officer, wait for the four-month working test period to end, and then promote to Campus Police Officer Recruit or State Park Police Officer Trainee. This workaround has instead caused continuing recruitment and retention issues because promotional examinations to the recruit or trainee titles were delayed, recruits or trainees were hired provisionally, and their permanent appointments were delayed.

The SLEU continues that because the time serving as a recruit or trainee was not counted until they were made permanent, the officers affected had extended service as recruits or trainees beyond one year and were then delayed in their move from Campus Police Officer Recruit or State Park Police Officer Trainee to full-fledged Campus Police Officer or State Park Police Officer at Step 1. Yet, even when officers were made permanent as recruits or trainees and/or promoted based upon a prior LEE score, their permanent date as a recruit or trainee was not moved back to the date of hire. And, for recruits and trainees who did not have a prior LEE score, their training period should not have been extended due to provisional status per *N.J.A.C.* 4A:3-3.7(d) and (h) and because testing was unreasonably delayed. The SLEU maintains that officers should not be “penalized” with additional months as recruits or trainees. Per the SLEU, if testing had been done timely, for example when an individual was initially hired as a Security Officer or, in some cases, “Dispatcher,”² it would have enabled them to be permanent from day one when promoted from Security Officer at the end of their four-month working test period. SLEU insists that there is good cause to correct records to show officers permanent from day one (*i.e.*, date of provisional appointment as Campus Police Officer Recruit or State Park Police Officer Trainee) and 12 months later as Step 1 Campus Police Officer or Step 1 State Park Police Officer.

¹ The August 16, 2024 “supplement[al]” submission was accepted as an administrative appeal and assigned CSC Docket No. 2025-1229 and consolidated herein.

² There is no State title known as “Dispatcher.” Based on the list of employees submitted, this is likely a reference to the noncompetitive titles of Public Safety Telecommunicator Trainee and Communications Operator Trainee.

In support, the SLEU provides, among other things, a list of employees, in addition to Delgado and Mitchell, who it maintains similarly served more than 12 months in the title of Campus Police Officer Recruit or State Park Police Officer Trainee as the case may be.

CONCLUSION

Examination Appeals

N.J.A.C. 4A:4-2.6(a)1 provides that applicants for promotional examinations must 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. Aggregate service shall be calculated in the same manner as seniority as set forth in *N.J.A.C.* 4A:4-2.15.

N.J.A.C. 4A:4-1.1(a) provides that regular appointments to titles allocated to the competitive division of the career service shall be subject to an examination process and successful completion of a working test period.

N.J.A.C. 4A:1-1.3 provides that “permanent employee” means an employee in the career service who has acquired the tenure and rights from regular appointment and successful completion of the working test period.

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.

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.

The appellants have the burden of proof in these matters. *See N.J.A.C.* 4A:2-1.4(c).

In these matters, Delgado and Mitchell only commenced permanent service in the title of Campus Police Officer on March 26, 2023. As such, they were properly deemed ineligible for the subject PS3229J Sergeant Campus Police examination as they did not possess the required one year of continuous permanent service in the title of Campus Police Officer as of the September 21, 2023 closing date. Delgado and Mitchell’s claim that their service as Campus Police Officer Recruits should have ended as of May 16, 2022, has not been timely presented in that their appeals were not filed until December 2023. *See N.J.A.C.* 4A:2-1.1(b). Thus, that claim is denied on the basis of untimeliness. Nevertheless, the below may be noted for informational purposes only.

May 16, 2021, the date of *provisional* appointment, *pending* promotional examination procedures – cannot be their date of permanent appointment to the title of Campus Police Officer Recruit because as of that date, Delgado and Mitchell had yet to be subject to the promotional examination process. *See N.J.A.C. 4A:4-1.1(a)*. Thereafter, the Campus Police Officer Recruit (PS5060J) promotional examination was announced with a November 21, 2021 closing date, and the resulting promotional list promulgated on March 24, 2022. Delgado and Mitchell received a permanent appointment date in the Campus Police Officer Recruit title, effective March 26, 2022, which was the beginning of the first pay period after the list’s promulgation.

Delgado and Mitchell maintain that it was a “flawed” personnel action for them to have remained in the title of Campus Police Officer Recruit for 22 months, *i.e.*, May 2021 to March 2023. Specifically, they were provisional from May 2021 to March 2022 and then permanent from March 2022 to March 2023. However, it was the appointing authority’s prerogative to make provisional appointments, which clearly are not prohibited under Civil Service law and rules. *See N.J.S.A. 11A:4-13b* and *N.J.A.C. 4A:3-3.7(b)*. Further, Delgado and Mitchell only served one year as permanent Campus Police Officer Recruits, and it was appropriate and consistent with *N.J.A.C. 4A:3-3.7* that the 12-month training period only commenced upon permanent appointment as a Campus Police Officer Recruit. In that regard, a provisional appointee can be removed at any time and does not have a vested property interest in the provisional title. In other words, a provisional employee has no automatic right or expectation of achieving permanent appointment to the position to which he or she is occupying. *See O’Malley v. Department of Energy*, 109 *N.J.* 309 (1987).

Delgado and Mitchell’s contention that they were already eligible for permanent appointment as Campus Police Officer Recruits as of May 16, 2021, because their 2020 LEE scores (S9999A) were used as their exam scores for the PS5060J promotional announcement is unpersuasive. In this regard, they were not appointed from the S9999A open competitive list. Rather, they received permanent noncompetitive appointments as Security Officers and, subsequently, provisional appointments as Campus Police Officer Recruits, which were then subject to the promotional examination process. Further, the regulation under which the LEE scores were used as their exam scores for the promotional announcement, *N.J.A.C. 4A:4-2.15(i)*, does not contemplate that use of such scores entitles the applicant to bypass the full promotional examination process. That process includes issuing a promotional announcement; promulgating an eligible list; and certifying the list. *See also N.J.S.A. 11A:4-13a* (permanent appointment can only be achieved when individual takes Civil Service examination, is placed on eligible list, is regularly appointed from that eligible list, and passes working test period). Thus, it cannot be said that Delgado and Mitchell were eligible for permanent promotion on May 16, 2021, merely because they had LEE scores in hand.

Notably, even if there were a basis for Delgado and Mitchell's March 26, 2023 permanent appointment date as Campus Police Officers to be backdated to May 16, 2022, they still would not be eligible for the Sergeant Campus Police (PS3229J) examination. Specifically, in order to meet the requirement of one year of permanent service, an applicant must have actually served in and performed the duties of the required title for that one-year period of time. In other words, the requirement requires actual service. *See also, In the Matter of Albert Giordano* (MSB, decided January 26, 2005) (An employee must actually serve in and perform the duties of the title to which the examination is open during the requisite year in grade in order to establish eligibility); *In the Matters of David J. Barrett, et al.* (MSB, decided November 19, 2003) (Individuals who received retroactive appointment dates to the Fire Lieutenant and Fire Captain titles but who did not meet the time-in-grade service requirements as of the closing date of the announcement were not entitled to sit for the examinations for Fire Captain and Deputy Fire Chief); *In the Matter of Daniel O. Erickson* (MSB, decided January 11, 2006).

Accordingly, Delgado and Mitchell have failed to meet their burden of proof in these matters, and a sufficient basis exists in the record to support Agency Services' determination that they were ineligible for the subject examination.

Administrative Appeal

N.J.A.C. 4A:4-1.1(a) provides that regular appointments to titles allocated to the competitive division of the career service shall be subject to an examination process and successful completion of a working test period.

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.

The appellant has the burden of proof in this matter. *See N.J.A.C.* 4A:2-1.4(c).

The SLEU's claim that the service of various other employees as either Campus Police Officer Recruits or State Park Police Officer Trainees should have ended after 12 months has also not been timely presented in that the appeal on behalf of these employees was not filed until August 2024. *See N.J.A.C.* 4A:2-1.1(b). For example, one employee listed, B.E., received a permanent appointment to the noncompetitive title of Security Officer with Kean University, effective February 2, 2022; a provisional appointment, pending promotional examination procedures, to the title of Campus Police Officer Recruit, effective July 18, 2022; and a permanent appointment to the title of Campus Police Officer, effective December 16, 2023. Another, C.O., received a permanent appointment to the noncompetitive title of Security Officer with the Department of Environmental Protection, effective September 2, 2017; a provisional appointment, pending promotional examination

procedures, to the title of State Park Police Officer Trainee, effective April 14, 2018; and a permanent appointment to the title of State Park Police Officer, effective June 8, 2019. Thus, the SLEU's claim regarding other employees is denied on the basis of untimeliness. Regardless of the timeliness issue, there would be no basis for the requested relief substantially for the reasons noted in the discussion of Delgado and Mitchell's examination appeals above. The Commission adds the following comments. The SLEU speaks of delays in testing and suggests that testing could have been done when the individual was appointed as Security Officer or "Dispatcher." However, initiating the examination process in response to a provisional appointment is clearly consistent with Civil Service law. *See N.J.S.A. 11A:4-5*. And, to reiterate, a provisional appointee can be removed at any time and does not have a vested property interest in the provisional title. In other words, a provisional employee has no automatic right or expectation of achieving permanent appointment to the position to which he or she is occupying. *See O'Malley, supra*. Further, as indicated previously, a permanent appointment can only be achieved when the individual takes a Civil Service examination, is placed on an eligible list, is regularly appointed from that eligible list, and passes a working test period. *See N.J.S.A. 11A:4-13a*.

ORDER

Therefore, it is ordered that these appeals be denied.

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

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 9TH DAY OF APRIL, 2025



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