

STATE OF NEW JERSEY

In the Matter of Gabriele Spallacci,
et al.

FINAL ADMINISTRATIVE ACTION
 OF THE
 CIVIL SERVICE COMMISSION

CSC Docket No. 2026-1023

Court Remand

ISSUED: November 10, 2025

The Superior Court of New Jersey, Appellate Division, in *Spallacci, et al. v. Civil Service Commission*, Docket No. A-1777-23 (App. Div. August 22, 2025), reversed and remanded the determination of the Civil Service Commission (Commission) in *In the Matter of Gabriele Spallacci, et al.* (CSC, decided January 17, 2024), which found that the elimination of the final 10 questions from the February 23, 2019, administration of the Police Sergeant examination was justified. The court did not retain jurisdiction.

The long and tortured substantive history of this matter need not be presented in detail. For procedural completeness, the issue in this matter was originally appealed to the Commission and decided in *In the Matter of Melvin Jumper, et al., Police Sergeant (various jurisdictions)* (CSC, decided March 24, 2021). Appellants Gabriele Spallacci, Victor Lora, Novar Vidal, Lillian Sanchez, Juan Garcia, Pedro Borrero, Robert Klein, Juan Cosme, Felipe Diaz, Jose Castellanos, Marquis Brock, Mohamad Diabate, Angel Pared, Valeria Sanchez-Bermudez, and Isabel Reyes from Newark and Paterson pursued an appeal to the Appellate Division, which remanded the matter to the Commission for further proceedings. *See In the Matter of Gabriele Spallacci, et al.*, Docket No. A-2369-2 (App. Div. August 7, 2023). Subsequently, the Commission issued its January 17, 2024, decision referenced above. The appellants again appealed to the Appellate Division.

On August 22, 2025, the Appellate Division reversed the Commission's determination to eliminate the final 10 questions from the subject examination and re-score the examination without those questions. The court explained why the elimination of the final 10 questions was inappropriate. In particular, the Appellate Division concluded:

We agree with petitioners that the Commission’s decision to omit the last ten questions after the test was taken undermines the agency’s exam instructions because it essentially penalizes the examinees who allocated their time and provided answers to these questions. There is no indication the Commission explored alternatives to eliminating the last ten questions that did not punish examinees, such as petitioners, who diverted time away from the first seventy-five questions to ensure they completed the last ten questions. Petitioners were wrongfully penalized for following the instructions. *Spallacci v. Civil Service Commission*, 2025 WL 2426656 at 4 (App. Div. Aug. 22, 2025).

And among other things, the court was “not persuaded by the Commission’s decision that the last ten questions eliminated . . . the exam’s discriminatory disparate impact,” and found that the Commission did not “produce vital data to justify its rescoring.” *Ibid.*

Importantly, the court did not direct the Commission to re-score the examination with the final 10 questions. Instead, it instructed as follows:

Because the integrity of the exam and its scoring has been undermined, we conclude that the exam results should be invalidated, and a new exam be administered. *Id.* at 5.

Upon receipt of the Appellate Division’s current decision, and prior to implementation, the Commission afforded the appellants the opportunity to provide comments or argument.¹ In response, the appellants, represented by Albert J. Seibert, Esq., indicated that they interpret the court’s decision to invalidate and order a new examination statewide and not as limited just to the appellants or their jurisdictions. Regarding proposed remedies, the appellants ask for a myriad of remedies, including, *inter alia*, retroactive permanent appointments to Police Sergeant, make up examinations to missed examinations for Police Lieutenant and Police Captain, back pay, salary and overtime adjustments, pension credits, *etc.* They also request counsel fees, costs and “an award for damages.”

¹ Notice was sent by way of letter, which was copied to the appointing authorities of Newark and Paterson. In that regard, the letter noted that based on the court’s decision, the appointing authorities were required, pursuant to *N.J.A.C.* 4A:4-1.4(d), to notify any previous appointees from the subject eligible list as well as any other candidates who were appointed from subsequent Police promotional lists who were originally a candidate on the subject Police Sergeant list that their appointments are considered conditional. This letter was not copied to the other jurisdictions.

CONCLUSION

The purpose of this decision is to implement the court's decision. In that regard, a threshold issue needs to be discussed, namely the scope of the court's decision and whether it requires invalidation of the examination statewide or is more limited to the appellants and their jurisdictions. The court was presented with a challenge brought by individual appellants from only two specific jurisdictions. The remedy quoted above is not clear as to whether it applies to just the appellants before it and the two jurisdictions or to all candidates and jurisdictions that were subject to the February 23, 2019, administration of the Police Sergeant's examination.²

Crucial to this consideration are the nature of appointments made during the pendency of examination appeals. Under *N.J.A.C. 4A:4-1.4*, appointments are conditional until the resolution of any disputes or appeals that may affect final appointments. That regulation states:

- (a) A conditional regular appointment may be made in the competitive division of the career service when disputes or appeals concerning higher ranking eligibles may affect the final appointments. The names of conditional appointees shall remain on the eligible list for consideration for other employment.
- (b) If the rights of a higher ranked eligible are upheld, the conditional regular appointment shall end.
- (c) If the final determination of appointment rights causes no change in the selection process, the conditional appointment will be changed to a regular appointment. The original date of appointment will be retained.
- (d) The appointing authority shall advise conditional appointees of their status and rights, including any change in appointment status.

In other words, any appointments made by an appointing authority during the pendency of an appeal, such as an examination appeal, would be a conditional appointment rather than a regular appointment. *N.J.A.C. 4A:4-1.4(a)*. If there is no change in the selection process following resolution of the examination appeal, then the conditional appointments become regular appointments. *N.J.A.C. 4A:4-1.4(c)*. Otherwise, the conditional appointments shall end. *N.J.A.C. 4A:4-1.4(b)*.

Here, since appellants filed an examination appeal, all appointments made off of the certified list of eligibles following administration of the February 23, 2019,

² The record indicates that 40 appointing authorities were administered the subject examination.

Police Sergeant examination were conditional appointments subject to conversion to a regular appointment or termination, depending upon the outcome of the appeal. Therefore, no candidate, even those previously appointed, is entitled to a permanent appointment. Moreover, merely having one's name appear on a certified list of eligibles does not, standing alone, confer a vested right to appointment. See *In re Crowley*, 193 N.J. Super. 197, 210 (App. Div. 1984) (“[A] person who successfully passes an examination and is placed on an eligible list does not thereby gain a vested right to appointment. The only benefit inuring to such a person is that so long as that list remains in force, no appointment can be made except from that list.”). 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).

With this in mind, the Commission rejects the appellants' interpretation of the order as invalidating the entire administration of the examination for all jurisdictions. The Commission interprets the court's ordered remedy as only applying to the appellants before it, and, by extension, the two jurisdictions where they are or were employed, Newark and Paterson. No one from any other jurisdiction but Newark and Paterson objected to the Commission's scoring or were involved in this litigation. Invalidating the examination statewide would affect the thousands of examinees throughout the state who took the examination and, potentially, the appointments made therefrom, even though no test-takers from any municipalities other than Paterson and Newark have challenged the validity of the exam. Such individuals possibly had little or no notice of the dispute concerning the exam. The Commission therefore does not interpret the Court's decision as intending to apply to the promotions of all test-takers statewide, and instead concludes that the court's intent was to limit it to the specific appellants in this matter and, by extension, their appointing authorities. Conditional appointees in those jurisdictions are the only ones who might be impacted by the appellants obtaining the relief they sought, *i.e.*, appellants' re-taking the examination and possible re-ranking.

As indicated previously, the appellants were given the opportunity to provide comments regarding the implementation of the court's decision. As such, the appellants' requested remedies will be discussed. In their submissions, the appellants request, *inter alia*,³ retroactive appointments to Police Sergeant and back pay. Rather, the court's order merely now affords the appellants, as well as all the other previous candidates who took the subject examination in Newark and Paterson the opportunity to take a new examination and compete for permanent appointments from the resultant eligible lists. Moreover, while other candidates were appointed from the previous now-invalid eligible lists in the affected jurisdictions, the appellants cannot establish that, even if the examination was not invalidated, that they would have been *entitled* to an appointment to Police Sergeant. Nothing in the

³ Several of the requested remedies, such as “damages,” are not contemplated under Civil Service law and rules, and thus, cannot be granted and will not be discussed.

court order impairs appointing authorities' discretion to make appointments from a list of eligibles. See *N.J.S.A.* 11A:4-8 (the "Rule of Three" that "[a] certification that contains the names of at least three interested eligibles shall be complete and a regular appointment shall be made from among those eligibles."). See also *N.J.A.C.* 4A:4-4.8(a)3ii. As long as that discretion is utilized properly, an appointing authority's decision will not be overturned. Even following a re-examination and re-ranking of the appellants on a list of eligibles, their appointing authorities would retain discretion to select other eligibles from that list and, thus, appellants' alleged entitlement to their suggested remedies is speculative at best. And because no appellant alleges that he or she performed the job duties of Police Sergeant prior to any conditional appointment – to the extent any appellant even received such an appointment from the February 23, 2019, examination, they are not entitled to back pay. Accordingly, as the appellants are not entitled to the remedy of a permanent appointment to Police Sergeant, their requests for appointment and their other various remedies are denied.

The appellants also request counsel fees and costs. That request is denied. Counsel fees for non-disciplinary matters are covered under *N.J.A.C.* 4A:2-1.5(b) which states, in pertinent part, that counsel fees "may be granted where the appointing authority has unreasonably failed or delayed to carry out an order of the [Commission] or where the Commission finds sufficient cause based on the particular case. A finding of sufficient cause may be made where the employee demonstrates that the appointing authority took adverse action against the employee in bad faith or with invidious motivation." Clearly, in this matter, the appellants are not entitled to counsel fees as they do not meet the standard above. Initially, they have challenged the Commission's action, not that of an appointing authority. Further, their challenge to the examination has merely been successful in allowing them the additional opportunity to compete for a Police Sergeant appointment. As such, sufficient cause to award counsel fees has not been established.

ORDER

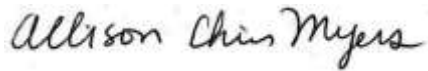
Therefore, it is ordered that the February 23, 2019, Police Sergeant examination administered to Newark and Paterson is invalidated and the opportunity to take a new examination shall be afforded to the original eligible applicants from those jurisdictions. This examination shall be administered as soon as practicable.

It is further ordered that appointments from the Police Sergeant eligible lists resulting from the subject examination in Newark and Paterson, as well as any other appointments from subsequent Police promotional lists of employees who were originally promoted from these Police Sergeant lists are deemed conditional and, shall be handled as follows: should any previously appointed candidate be subsequently permanently appointed from the eligible lists promulgated as the result

of the new examination, their permanent appointment date shall be the date of their conditional appointment. Any previously appointed candidates whose conditional appointment(s) is terminated as the result of the new examination shall have their personnel records corrected to reflect that their appointment to Police Sergeant, or any subsequent title, was provisional, pending promotional examination procedures, until the date they are returned to their previous Police Officer title. Any candidate who is newly appointed as the result of the new examination shall receive a current permanent appointment date upon successfully completing a current working test period. Such candidates are not entitled to any other remedies. Further, the other requested remedies from the original appellants in this matter are 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 5TH DAY OF NOVEMBER, 2025



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