



STATE OF NEW JERSEY

In the Matter of Michael Klepacky,
Police Chief (PM3213G), Pompton
Lakes

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

Examination Appeal

CSC Docket No. 2026-918

ISSUED: April 29, 2026 (HS)

Michael Klepacky appeals the determination of the Division of Agency Services (Agency Services), which found that he was not eligible for the promotional examination for Police Chief (PM3213G), Pompton Lakes, on the basis that he was not permanent in a title to which the examination was open.

The subject examination was announced on August 1, 2025 with an application deadline of August 21, 2025. It was open to employees who possessed an aggregate of one year of continuous permanent service in the title of Police Captain as of the October 31, 2025 closing date. Two applicants, including Anthony Rodriguez, a veteran, and R.C., a nonveteran, were deemed eligible. Subsequently, Rodriguez received a permanent appointment to the title of Police Chief, effective January 1, 2026, pursuant to *N.J.A.C. 4A:4-2.7* (promotion upon waiver of competitive examination). The appellant submitted an application on August 6, 2025 and, on or about September 17, 2025, was deemed ineligible for the subject examination as he was serving permanently in the title of Police Lieutenant.

On appeal to the Civil Service Commission (Commission), postmarked September 29, 2025, the appellant argues that “[h]istorically,” the appointing authority had always opened the Police Chief promotional examination to both Police Lieutenants and Police Captains. Here, the appointing authority was required to request an announcement for the Police Chief examination no later than June 1,

2025.¹ The appellant claims that as of the deadline, the subject examination was open to both ranks, but it “appears” the appointing authority then retroactively restricted eligibility to Police Captains only. He alleges that the appointing authority “manipulate[d]” the promotional process for Rodriguez’s career advancement. The appellant asserts that since the examination was open to Police Lieutenants and Police Captains as of the deadline for the appointing authority to request the subject announcement, the examination should now be open to both positions due to the appointing authority’s failure to meet the deadline.

The appellant complains that, effective June 26, 2024, he, as the first ranked eligible, had been bypassed for a Police Captain appointment from the Police Captain (PM3485C), Pompton Lakes, eligible list (certification PL240772) in favor of Rodriguez. He also complains that he was certified from that list on March 19, 2025 (PL250456) but never interviewed or promoted despite indicating his interest.² Then, per the appellant, R.C., a Police Captain, was suspended making Rodriguez the only “active” Police Captain. According to the appellant, this sequence – promoting a lower-scoring candidate to Police Captain and subsequently limiting the Police Chief examination to Police Captain only – effectively blocked higher-scoring, more senior candidates from competing. This “improper narrowing” of the candidate pool, the appellant contends, contravenes both the intent and spirit of open competitive examinations under the Civil Service framework. Promotions, the appellant continues, are supposed to be based on merit, fitness, and open competition, not handpicked through “artificially restricted” lists. The appellant further states that he never received a Certification Disposition Notice for either PL240772 or PL250456 and argues this was a violation of *N.J.A.C.* 4A:4-4.8. The appellant further contends that he has been “acting in the role of [Police] Captain,” which makes him eligible to participate in the Police Chief promotional process. He also urges the Commission to consider awarding him a “constructive appointment” to Police Captain, thereby restoring his eligibility for the subject examination.

Further, the appellant takes issue with Rodriguez’s appointment to Police Chief via a waiver of the competitive examination under *N.J.A.C.* 4A:4-2.7 as violative of principles of merit and fair opportunity and implicating concerns over favoritism. He also contends that the waiver process violates local ordinance § 2-42.8, Appointment, and *N.J.S.A.* 40A:14-122.4, which is referenced in said ordinance. He also contends that two of the conditions for a waiver, that the employee was successfully tested in the basic skills required for the promotional title, *N.J.A.C.* 4A:4-2.7(a)1, and that veterans preference rights are not a factor, *N.J.A.C.* 4A:4-2.7(a)4, were not met. Specifically, he states that the 2021 Police Captain examination

¹ The Commission understands this to be a reference to the Examination Information Alert concerning the 2025 Police Promotional Announcement and Testing Schedule issued February 2025 by this agency.

² Agency records indicate that the appellant was the sole eligible to appear on this certification, and his name was retained. The certification disposition was recorded by this agency on March 26, 2025.

(PM3485C) lacked an oral component, while the Police Chief examination is entirely oral. Therefore, the appellant argues, the Police Captain examination did not evaluate all requisite core competencies. Additionally, he states that the governing body, at a closed session meeting on June 11, 2025, discussed Rodriguez's veteran status as a reason for the waiver. The appellant contends this should not have been considered pursuant to *N.J.A.C. 4A:4-2.7(a)4*.

In response, the appointing authority, represented by Arthur R. Thibault Jr., Esq., maintains that it is undisputed that the appellant holds the permanent title of Police Lieutenant. It is also undisputed that the appointing authority requested, and this agency approved, that the eligibility for the subject examination be open to the rank of Police Captain only. The appointing authority is only required to open a promotional exam to one title below the title sought to be filled by promotion. There is no legal requirement that the appointing authority open the examination to all titles. The appointing authority's decision as to which titles should be eligible for a promotional examination is its prerogative. That lower titles have, in the past, been deemed eligible for promotional examination is irrelevant. The appointing authority argues that it could have opened the examination to Police Lieutenants and Police Captains or limited it to the Police Captain rank only. Choosing the latter option when there is room for two does not satisfy the high standard of appeal. Additionally, the appointing authority emphasizes that it relied upon this agency's approval and sought a waiver of examination in accordance with *N.J.A.C. 4A:4-2.7*, also approved by this agency. It maintains that for the Commission to reverse its approval of eligibility for examination now would undo the approved waiver, both of which it would then have relied upon to its detriment and the detriment of the police department.

The appointing authority also rejects the appellant's claim that he should be considered a "constructive" Police Captain or should have been promoted to Police Captain and is, therefore, eligible to participate in the Police Chief promotional process. In this regard, the decision to promote, whether permanently or in the interim, even if there was a vacancy, is a managerial prerogative. Further, the appointing authority insists that the appellant is not a Police Captain. Thinking of himself as a Police Captain and whether he is or is not fulfilling the structural or operational role in the department because he is the senior lieutenant does not make him a Police Captain eligible for an examination open only to those who hold the rank of Police Captain. The appointing authority notes its disagreement with the appellant's claim that he is performing Police Captain duties. Per the appointing authority, it is undisputed that the appellant is a Police Lieutenant; he does not hold the rank of Police Captain; even if there was a Police Captain vacancy, the appointing authority has no obligation to promote to that rank; appearing on a promotional list for Police Captain does not guarantee a promotion; the appointing authority does not need to dispose of a promotional eligible list prior to its expiration when no vacancy

exists; and the Commission lacks the authority to grant the appellant a “constructive” appointment to Police Captain.

The appointing authority adds that any appeal of the appellant’s bypass in 2024 is untimely as more than 20 days have passed since his bypass.

CONCLUSION

At the outset, it is noted that *N.J.A.C.* 4A:2-1.1(b) provides, in pertinent part, that 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 subject Police Chief (PM3213G), Pompton Lakes, examination was announced on August 1, 2025 with the appellant filing his application on August 6, 2025. However, the instant appeal was not filed until September 29, 2025, well after 20 days later. Thus, the instant appeal as it relates to whether the examination was announced properly is untimely.

The issue of timeliness aside, the appellant’s claims that the examination was open to both Police Captain and Police Lieutenant as of June 1, 2025 and that it “appear[ed]” that the appointing authority then retroactively restricted eligibility to Police Captains only are unsubstantiated. In any event, opening the examination to Police Captain only was permissible under Civil Service regulations, *see N.J.A.C.* 4A:4-2.4(a)^{1,3} and there would be no basis to disturb that action at this juncture. The mere fact that there may have been Police Chief examinations opened to Police Captains and Police Lieutenants in the past does not render the subject announcement erroneous. Further, the appellant presents no substantive evidence to support his serious allegation that opening the examination to Police Captain only was a “manipulat[ion]” of the process.

Similarly, the appellant’s complaint over not being appointed from the March 19, 2025 certification (PL250456) from the Police Captain (PM3485C), Pompton Lakes, eligible list is untimely as the instant appeal was filed almost six months after

³ *N.J.A.C.* 4A:4-2.4(a) provides:

If a title which is the subject of a promotional examination is part of a title series, the examination, with or without all or part of the open competitive requirements, as appropriate, shall be open to **one** of the following:

1. The next lower in-series title used in the local jurisdiction;
2. The next two lower in-series titles used in the local jurisdiction; **or**
3. All applicants in the unit scope who meet the open competitive requirements and all applicants in the next lower or next two lower in-series titles used in the local jurisdiction (emphases added).

the issuance of the certification. See *N.J.A.C.* 4A:2-1.1(b). Regardless, as the appellant was the sole eligible on the certification, the appointing authority was not obligated to make an appointment. See *N.J.A.C.* 4A:4-4.2(c)2.⁴ Similarly, an appeal of the appellant's bypass on the June 26, 2024 (certification PL240772) is well out of time as the present appeal was filed approximately one year and three months later. Further, *N.J.A.C.* 4A:4-4.8 did not obligate the appointing authority to send a disposition notice to the appellant in the case of either certification.

However, the appellant's appeal of the ineligibility determination is timely. In that regard, *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. Here, the appellant was properly deemed ineligible for the subject examination since he was serving permanently in the title of Police Lieutenant as of the closing date. The appellant's claim that he is essentially functioning as a Police Captain, which is disputed by the appointing authority, is not a basis for admission to the subject examination. It is noted that under Civil Service law and rules, the Commission does not recognize "acting" positions. In that regard, *N.J.S.A.* 11A:4-13 and *N.J.A.C.* 4A:4-1 *et seq.* provide for regular, conditional, provisional, interim, temporary, and emergency appointments, as well as senior executive and unclassified appointments. See *e.g.*, *In the Matter of Russell Davis* (MSB, decided August 10, 2005); *In the Matter of Michael Shaffery* (MSB, decided September 20, 2006). Nonetheless, experience acquired in an "acting" capacity is not recognizable for promotional examination purposes, as this work is intermittent in nature and the duties performed are not the primary focus of an employee's permanent title. See *e.g.*, *In the Matter of Walter Furtney* (MSB, decided April 18, 2000), *aff'd, on reconsideration* (MSB, decided September 26, 2000); *Shaffery, supra*. However, the appellant has the option of pursuing a position classification review pursuant to *N.J.A.C.* 4A:3-3.9 if he believes he is primarily performing Police Captain duties as a Police Lieutenant. Nonetheless, it is emphasized that the subject examination was open to Police Captains who possessed an aggregate of one year of continuous *permanent* service in the title of Police Captain as of the October 31, 2025 closing date. See *also N.J.A.C.* 4A:4-2.6(a)1. As such, the appellant was properly deemed ineligible for the subject examination.

Finally, given that the appellant was properly deemed ineligible for the subject examination in the first place, he lacks standing to contest the grant of a promotion upon the waiver of a competitive examination pursuant to *N.J.A.C.* 4A:4-2.7.

⁴ *N.J.A.C.* 4A:4-4.2(c)2 provides, in pertinent 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.

Nevertheless, the Commission provides the discussion in the remainder of this decision below for informational purposes only.

Local ordinance § 2-42.8, Appointment, provides, in relevant part:

Appointments to the Police Department shall be made by the Mayor with the advice and consent of the Council and in compliance with *New Jersey Civil Service Commission regulations* and the laws of New Jersey. Promotions within the force shall be based on merit as determined by suitable promotion tests and in accordance with the other provisions of *N.J.S.A. 40A:14-122.4* (emphasis added).

N.J.S.A. 40A:14-122.4 provides, in relevant part:

In any municipality wherein [*the Civil Service Act*] is operative, promotions to positions on the police department and force shall be based upon merit as determined by suitable promotion tests for such positions ... (emphasis added).

Given the references above to the Civil Service Act and regulations promulgated thereunder, the appellant's contention that the waiver process provided in *N.J.A.C. 4A:4-2.7* conflicted with local ordinance or *N.J.S.A. 40A:14-122.4* is unpersuasive.

N.J.A.C. 4A:4-2.7(a) provides that 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 does not exceed the number of promotional appointments by more than two; and (4) veterans preference rights are not a factor.

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. A review of the most current job analyses for Police Lieutenant, Police Captain, Police Inspector, Deputy Police Chief, and Police Chief titles disclosed that there were distinct differences in the basic skills required for some of these titles. However, the review determined a uniqueness of the Police Captain title because it includes basic skills found in the Police Inspector, Deputy Police Chief, and Police Chief title groups. Therefore, as it had been determined by this agency that the Police Captain test, which Rodriguez passed, also tested the basic skills of Police Chief, it was appropriate to appoint him via a waiver of the competitive examination. *N.J.A.C. 4A:4-2.7(a)*4 was not violated. Since Rodriguez, the intended appointee, was himself a veteran, veterans preference rights were “not a factor.” In other words, the provision under *N.J.A.C. 4A:4-2.7(a)*4 is intended to protect veterans preference rights but not disadvantage a veteran who can be appointed via a waiver of the competitive examination when no other eligible has veterans preference rights that are a factor. Further, a mere allegation of favoritism is insufficient to establish that the application of *N.J.A.C. 4A:4-2.7* was improper. Therefore, as the appellant has not presented any evidence that the subject promotional examination process violated any Civil Service law or rule, there is no basis to find the subject process was not based on merit and fitness or otherwise violated the State Constitution.

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 29TH DAY OF APRIL, 2026



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