

(d) An employee who is serving a working test period shall not be eligible for a promotional examination from that title.

Case Notes

Employee who worked out of title during working test period and did not perform the duties of the position was not entitled to permanent status (citing former N.J.A.C. 4:1-13.1 and 13.2). *Cipriano v. Dep't of Civil Service*, 151 N.J.Super. 86, 376 A.2d 571 (App.Div.1977).

Actual completion of a working test period is a basic condition of permanent employment (citing former N.J.A.C. 4:1-6.4). *Cipriano v. Dep't of Civil Service*, 151 N.J.Super. 86, 376 A.2d 571 (App.Div.1977).

Working out of title during working test period. *Cipriano v. Department of Civil Service*, 151 N.J.Super. 86, 376 A.2d 571 (App.Div.1977).

CETA hired police officers. Att'y Gen. F. O. 1977-No. 25 (see footnote).

Initial Decision (2007 N.J. AGEN LEXIS 825) adopted, which found that a clerical worker was properly removed at the end of her working test period where she was absent for an astounding 50 days, blatantly disregarded sick-leave procedures, and failed to give adequate notice that she would not be coming to work. In re *Barnes*, OAL Dkt. No. CSV 3764-06, 2008 N.J. AGEN LEXIS 540, Final Decision (January 30, 2008).

Procedural violations of N.J.A.C. 4A:4-5.1 et seq., including the non-receipt of progress reports, may create a presumption of bad faith; however, that presumption can be rebutted via evidence that the employee was otherwise aware of work performance and other deficiencies during the working test period. Thus, where a county correction officer was advised of his performance deficiencies, had been disciplined during the working test period, and had been warned regarding excessive usage of leave time, there was ample evidence that the officer's attendance and performance was less than satisfactory during the working test period; therefore, whether or not he actually received the progress reports would not change the conclusion that the officer's working test period was conducted in good faith and that his release was for legitimate, work-related reasons. In re *Matus*, OAL Dkt. No. CSV 5064-07, 2007 N.J. AGEN LEXIS 1029, Final Decision (December 5, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 35) adopted, which found that the probationary or working test period under N.J.A.C. 4A:4-5.1 is part of the testing process and an employee must demonstrate competency to discharge the duties of the position without further training; only upon a showing of bad faith under N.J.A.C. 4A:2-4.3 will an employer's decision to release an employee be scrutinized. In re Mabson, OAL Dkt. No. CSV 2164-05, 2006 N.J. AGEN LEXIS 1101, Final Decision (March 8, 2006).

Initial Decision (2005 N.J. AGEN LEXIS 608) adopted, which found that in order to be considered a good faith decision, the decision to terminate an employee at the end of the working test period must be formed based upon actual observations of the employee's performance of the duties of the position, and must be an honest assessment as to whether the employee will be able to satisfactorily and efficiently perform those duties if the appointment becomes permanent; if the decision to terminate is not based upon actual observations of performance, or, if it is made based upon dishonest motives, bias, prejudice or self-interest, or is made with ill will toward the employee or because of some furtive design, it must be set aside. In re Abdelrahim, OAL Dkt. No. CSV 2229-05, 2005 N.J. AGEN LEXIS 1251, Final Decision (November 22, 2005).

Initial Decision (2005 N.J. AGEN LEXIS 608) adopted, which found that a nurse's aide was released in good faith following his working test period due to the frequency of his absences during that period; there was no evidence of bad faith. In re Abdelrahim, OAL Dkt. No. CSV 2229-05, 2005 N.J. AGEN LEXIS 1251, Final Decision (November 22, 2005).

Dismissal of employee at end of working test period for unsatisfactory performance was warranted, despite employee's claims that decision to dismiss her was made in bad faith. Schopf v. New Jersey Department of Labor, 96 N.J.A.R.2d (CSV) 853.

Release of family service specialist at end of working test period was not improper when based in part on comments of co-employees. Nwosu v. Department of Human Services, 95 N.J.A.R.2d (CSV) 436.

Working test period justified school security guard's removal for incompetency. Hogan v. Vineland Board of Education, 95 N.J.A.R.2d (CSV) 400.

Food service worker on approved medical leave was entitled to additional working test period. Singletary v. Bergen Pines County Hospital, 95 N.J.A.R.2d (CSV) 370.

Laborer granted new working test period because job requirement of commercial driver's license not documented in progress report or final report. Niosi v. Department of Public Works, 95 N.J.A.R.2d (CSV) 238.

Release of drug abuse counselor at end of working test period; lack of veracity, good communication skills, punctuality and reliability. Memmot v. Department of Health, Twp. of Freehold, 95 N.J.A.R.2d (CSV) 118.

Correction officer properly released at end of working test period. Muhammad v. Department of Corrections, 94 N.J.A.R.2d (CSV) 609.

Probationary employee failed to show that he was released in bad faith. Lindsley v. Department of Buildings and Grounds, Monmouth County, 94 N.J.A.R.2d (CSV) 604.

Deficiency in both quality and quantity of work; release at end of working test period. Brown v. Department of Labor, 94 N.J.A.R.2d (CSV) 362.

Demotion justified; performance did not substantially improve during three-month test period. Smith v. Jersey City Housing Authority, 94 N.J.A.R.2d (CSV) 381.

Termination of hospital attendant at end of working test period was justified. Vaidier v. Mercer County Geriatric Center, 94 N.J.A.R.2d (CSV) 94.

Release of probationary police officer; working test period. Burchardt v. Union Township Police Department, 93 N.J.A.R.2d (CSV) 618.

Release of assistant engineer at end of his working test period justified. De Botton v. Borough of Fair Lawn, 93 N.J.A.R.2d (CSV) 579.

Release at end of work test period was not justified. Hall v. Newark Housing Authority, 93 N.J.A.R.2d (CSV) 432.

Removal at end of working test period for unsatisfactory services was not in bad faith. Amin v. Department of Transportation, 93 N.J.A.R.2d (CSV) 406.

Release at end of working test period was not in bad faith. Capone v. State-Operated School District of Jersey City, 93 N.J.A.R.2d (CSV) 395.

No showing of bad faith; termination at end of employee's working test. Capone v. State-Operated School Dist. of City of Jersey City, Hudson County, 93 N.J.A.R.2d (CSV) 395.

Removal at end of working test period was not action taken in bad faith. Aller v. Department of Labor, 93 N.J.A.R.2d (CSV) 390.

Decision to remove at the conclusion of working test period was not formulated in bad faith. Aller v. Department of Labor, 93 N.J.A.R.2d (CSV) 390.

Termination of officer was in bad faith. Bowers v. Irvington Township Police Department, 93 N.J.A.R.2d (CSV) 55.

Good faith; termination at the end of a working test period. Davis v. Department of Transportation, 92 N.J.A.R.2d (CSV) 769.

Suspension and release at end of working test period. Evelina v. William Paterson College of New Jersey, 92 N.J.A.R.2d (CSV) 738.

Release from position at the end of working test period was justified. Meyrick v. Hunterdon County Sheriff's Office, 92 N.J.A.R.2d (CSV) 692.

No error in release at the end of working test period. Edington v. Treasury Department, 92 N.J.A.R.2d (CSV) 673.

Release after working test period; not bad faith. Phillips v. New Jersey Department of Human Services, 92 N.J.A.R.2d (CSV) 602.

Department of Transportation improperly used a working test period as a basis for terminating inspector's employment. Andres v. N.J. Department of Transportation, 92 N.J.A.R.2d (CSV) 481.

Employee released in good faith at end of working test period. Johnson v. Vineland Developmental Center, 92 N.J.A.R.2d (CSV) 363.

Bad faith termination of recruit because of unsatisfactory working test period. Smith v. Northern State Prison, 92 N.J.A.R.2d (CSV) 342.

Release at end of extended working test period; not justified. Vegotsky v. Office of Administrative Law, 92 N.J.A.R.2d (CSV) 162.

Release at end of working test period; failure to demonstrate bad faith. Downs v. Marlboro Psychiatric Hosp., 92 N.J.A.R.2d (CSV) 94.

Appellant failed to show that employer (Newark Free Public Library) acted in bad faith in denying her a fair evaluation of her work performance and releasing her at the end of her working test period based on claim that her services were unsatisfactory (citing former N.J.A.C. 4:1-13.7). Davis v. Newark Public Library, 9 N.J.A.R. 84 (1987).

4A:4-5.2 Duration

(a) The working test period shall not include any time served by an employee under provisional, temporary, interim or emergency appointment. The working test period shall

begin on the date of regular appointment. See N.J.A.C. 4A:1-1.3 for definition of regular appointment.

(b) The length of the working test period, except as provided in (c) through (e) below, shall be as follows:

1. In local service, a period of three months of active service, which may not be extended.

2. In State service, a period of four months of active service, which the Commissioner may extend on request of an appointing authority for an additional two months. Such request should be submitted to the Department of Personnel at least five working days before the end of the four month period. The appointing authority shall notify the employee of the extension in writing on or before the last day of the four month period.

i. Regularly appointed employees serving in intermittent titles shall serve a working test period of 88 work days, which, upon the request of the appointing authority, may be extended by the Commissioner for an additional 44 work days. For purposes of this subsection, any part of a day shall constitute a work day.

ii. An employee serving in an intermittent title who is furloughed prior to completing the working test period, shall resume the working test period upon return from furlough.

(c) When notice of termination is served following the last day of the working test period pursuant to N.J.A.C. 4A:2-4.1(c), the working test period shall end on the date of service of the notice.

(d) Persons appointed to entry level law enforcement, correction officer, juvenile detention officer and firefighter titles shall serve a 12-month working test period. A law enforcement title is one that encompasses use of full police powers, but shall not include the local service competitive title of Police Assistant. See N.J.A.C. 4A:3-3.7A. Persons appointed in local service to the competitive title of Police Assistant shall serve a three-month working test period.

1. In local service, law enforcement officers who are required by N.J.S.A. 52:17B-66 et seq. (Police Training Act) to complete a police training course shall not begin their working test period until notification is received by the appointing authority from the Police Training Commission of the successful completion of the police training course. However, major disciplinary procedures applicable to employees serving in a working test period (see N.J.A.C. 4A:2-2) shall also be applicable to such officers from the date of appointment until completion of police training. Upon successful completion of the working test period, the date of appointment from the eligible list shall be recorded as the date of regular appointment.

i. Law enforcement officers who have successfully completed the police training course prior to appointment

shall begin their working test period on the date of regular appointment.

2. Appeals from failure to successfully complete the police training course shall be in accordance with procedures established by the Police Training Commission. See N.J.A.C. 13:1-11.

(e) An approved leave of absence including a furlough extension leave or a voluntary furlough shall extend the completion of the working test period for a period of time equal to that leave or voluntary furlough.

1. When a paid leave of absence is granted to a correction officer or juvenile detention officer for the purpose of training required by N.J.S.A. 52:17B-68.1, such leave shall not extend the length of the working test period unless the course in which the appointee is enrolled is scheduled to end after the one-year period. Regarding appointments to the title of Correction Officer Apprentice, see N.J.A.C. 4A:3-3.7B.

Amended by R.1989 d.569, effective November 6, 1989.

See: 21 N.J.R. 1766(a), 21 N.J.R. 3448(b).

In (d): added "juvenile detention officer."

In (d)1: added text, "However . . . regular appointment." Added 1. to subsection (e) regarding a paid leave of absence.

Amended by R.1993 d.270, effective June 7, 1993.

See: 25 N.J.R. 1085(b), 25 N.J.R. 2509(a).

Revised (b)2.

Amended by R.1995 d.12, effective January 3, 1995.

See: 26 N.J.R. 4126(a), 27 N.J.R. 145(a).

Amended by R.2006 d.104, effective March 20, 2006.

See: 37 N.J.R. 4351(a), 38 N.J.R. 1425(a).

In introductory paragraph (d), added ", but shall not include the local service competitive title of Police Assistant," reference to N.J.A.C. 4A:3-3.7A and the last sentence.

Amended by R.2010 d.061, effective April 19, 2010.

See: 42 N.J.R. 9(a), 42 N.J.R. 775(a).

In (e)1, substituted "When a" for "A", "is granted to" for "for" following "absence" and "one-year" for "one year", inserted ", such leave", and inserted the last sentence.

Case Notes

Appointing authority properly removed a correction officer for his failure to complete the requisite police academy training after three opportunities to do so; the authority was under no obligation to provide endless opportunities for training and the officer was on notice that he was charged with failing to complete the academy since that specification appeared on the Preliminary Notice of Disciplinary Action and was later sustained. In re Dickerson, OAL Dkt. No. CSV 11065-06, 2008 N.J. AGEN LEXIS 1084, Final Decision (September 10, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 316) adopted, which concluded that any slight delays in transmitting the request to extend an employee's working test period were certainly not indicative of bad faith on the part of the appointing authority, where the employee was released at the end of the extended working test period. In re Villecca, OAL Dkt. No. CSV 2978-06, 2008 N.J. AGEN LEXIS 710, Final Decision (June 25, 2008).

Employee with permanent title of Children's Supervisor who accepted a position as a Human Services Specialist I with the county appointing authority when the county privatized its Children's Shelter was never laid off; the county rescinded its planned layoff, as all affected employees had accepted alternate employment within the county, and the employee's new position was a provisional appointment, pending promotional examination procedures. In re Garcia, OAL Dkt. No. CSV

11932-07, 2008 N.J. AGEN LEXIS 595, Merit System Board Decision (May 7, 2008).

Initial Decision (2007 N.J. AGEN LEXIS 673) adopted, which concluded that assessments of a secretarial assistant's work made before and after her working test period were of no consequence in determining whether the appointing authority acted in good faith when it returned her to her formerly held position; of critical importance was the assessment of her performance during the working test period by those individuals who were directly responsible for her supervision. In re Coleman, OAL Dkt. No. CSV 6637-06, 2007 N.J. AGEN LEXIS 1151, Final Decision (December 5, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 1035) adopted, which found that a conditional police officer recruit who had resigned from the Police Academy was subject to termination under the terms of his conditional employment, despite his testimony that he was not aware that he was resigning, because Academy staff testified that the proper forms had been submitted and that the recruit had understood what he was doing when he resigned. The recruit's working test period had not begun because he had not completed his Academy training. In re Clark, OAL Dkt. No. CSV 09764-05, 2007 N.J. AGEN LEXIS 1072, Final Decision (February 28, 2007).

N.J.A.C. 4A:6-1.1 does not prohibit an appointing authority from granting a non-permanent employee a leave of absence for a period up to one year, and employees in their working test period can be granted leaves of absence. In re Mortimer, OAL Dkt. No. CSV 6378-05, 2006 N.J. AGEN LEXIS 543, Merit System Board Decision (April 26, 2006).

Correction officer, who was unreasonably denied a leave of absence when she was hospitalized during the one-year working test period, was not a permanent employee because she did not complete the one-year working test period; the officer could not accrue credit towards completing a working test period during a leave of absence, and a new working test period was required in order to provide the appointing authority the opportunity to fully assess the officer's performance. In re Mortimer, OAL Dkt. No. CSV 6378-05, 2006 N.J. AGEN LEXIS 543, Merit System Board Decision (April 26, 2006).

New four-month working test period was granted in the title of Assistant District Parole Supervisor based on the totality of the circumstances, including the employee's satisfactory performance during the majority of the working test period and the lack of opportunity to remedy performance deficiencies brought to the employee's attention during the latter part of the working test period; the procedural irregularity caused by the fact that the working test period start date was not the same as the regular appointment date was not enough to justify granting permanent status to the employee under N.J.A.C. 4A:2-4.1(c). In re Bellini, OAL Dkt. No. CSV 3584-02, 2006 N.J. AGEN LEXIS 209, Final Decision (January 25, 2006).

Merit System Board directed the Division of Human Resource Information Services to reevaluate DOP practice of approving regular appointment dates that were not consistent with working test period start dates, resulting in uncertainties concerning the ending date of an employee's working test period and the time within which notice must be served under N.J.A.C. 4A:2-4.1(c). In re Bellini, OAL Dkt. No. CSV 3584-02, 2006 N.J. AGEN LEXIS 209, Final Decision (January 25, 2006).

Family Services Supervisor was given new working test period despite angry behavior that was inappropriate for a supervisor. The employee had demonstrated a willingness to work long hours and her proficiency for her job. In re Williams-Kline, OAL Dkt. No. CSV 11386-03, 2006 N.J. AGEN LEXIS 203, Final Decision (January 6, 2006).

Release of police officer after his working test period was not justified. The officer had missed 95 working days during the last six months of his working test period, but his father, and then his mother, had died, and he had sustained an injury in the line of duty. A large portion of the officer's absences were approved leaves of absence due to his unfortunate circumstances, which should have automatically

extended his working test period under N.J.A.C. 4A:4-5.2(e). In re Robinson, OAL Dkt. No. CSV 11727-03, 2006 N.J. AGEN LEXIS 128, Final Decision (December 21, 2005).

Working test period extended 30 days to compensate for four weeks of approved leave and vacation. *Regrut v. Warren County*, 95 N.J.A.R.2d (CSV) 460.

Working test period for public employee was extended by approved leave of absence. *Wilczynski v. Water Pollution Control*, 95 N.J.A.R.2d (CSV) 378, reversed 96 N.J.A.R.2d (CSV) 300.

Food service worker on approved medical leave was entitled to additional working test period. *Singletary v. Bergen Pines County Hospital*, 95 N.J.A.R.2d (CSV) 370.

Supervisor was entitled to two-month extension of second working test period. *McClellan v. Department of Community Affairs*, 94 N.J.A.R.2d (CSV) 19.

4A:4-5.3 Progress reports

(a) The appointing authority shall prepare a progress report on the employee at the end of two months and a final report at the conclusion of the working test period. If the Commissioner has extended the working test period in State service pursuant to N.J.A.C. 4A:4-5.2(b)2, the appointing authority shall also prepare a progress report at the end of five months and a final report at the conclusion of the extended working test period.

(b) For entry level law enforcement, correction officer and firefighter titles, the appointing authority shall prepare a progress report on the employee at the end of six months and a final report at the conclusion of the working test period.

(c) The appointing authority shall furnish the employee with a copy of all reports.

(d) In State service, the appointing authority shall:

1. Retain all reports for an employee in his or her individual personnel file;

2. When an employee is being separated or returned to his or her permanent title due to unsatisfactory performance, submit to the Department of Personnel, within five days following the last day of the working test period, copies of all progress reports and the final report and the written notice of separation or return to his or her permanent title;

3. Retain all progress reports and related material for the length of an employee's service and for six years following his or her separation from State service, if applicable; and

4. Retain for auditing any other records so identified by the Department of Personnel.

(e) In local service, the appointing authority shall furnish working test period progress reports to the Department of Personnel upon request.

Amended by R.1993 d.270, effective June 7, 1993.

See: 25 N.J.R. 1085(b), 25 N.J.R. 2509(a).

Revised (c); added new (d) and (e).

Case Notes

Initial Decision (2008 N.J. AGEN LEXIS 316) adopted, which concluded that the absence of a justification letter along with the employee's fifth-month progress report did not constitute a showing of bad faith entitling the terminated employee to a new working test period; the employee was counseled numerous times about her deficiencies. In re Villecca, OAL Dkt. No. CSV 2978-06, 2008 N.J. AGEN LEXIS 710, Final Decision (June 25, 2008).

Social Service Aide was entitled to a new working test period because, in failing to provide the aide with timely written notification of his deficiencies through the progress reports required by N.J.A.C. 4A:4-5.3, the appointing authority denied him a fair evaluation of his work performance and the authority's release of the aide for deficiencies in job performance that were not adequately brought to his attention through the required progress reports evidenced a lack of good faith. In re Maldonado, OAL Dkt. No. CSV 07337-04, 2008 N.J. AGEN LEXIS 396, Initial Decision (June 6, 2008), adopted (Civil Service Comm'n July 30, 2008).

Initial Decision (2007 N.J. AGEN LEXIS 830) adopted, which concluded that a correction officer was legally entitled to only two evaluations during his working test period, even though a collective bargaining agreement provided for six evaluations; a negotiated collective bargaining agreement could not contravene or supersede a term or condition of employment that was set by statute. In re Britton, OAL Dkt. No. CSV 8350-06, 2008 N.J. AGEN LEXIS 520, Final Decision (January 30, 2008).

Procedural violations of N.J.A.C. 4A:4-5.1 et seq., including the non-receipt of progress reports, may create a presumption of bad faith; however, that presumption can be rebutted via evidence that the employee was otherwise aware of work performance and other deficiencies during the working test period. Thus, where a county correction officer was advised of his performance deficiencies, had been disciplined during the working test period, and had been warned regarding excessive usage of leave time, there was ample evidence that the officer's attendance and performance was less than satisfactory during the working test period; therefore, whether or not he actually received the progress reports, pursuant to N.J.A.C. 4A:4-5.3, would not change the conclusion that the officer's working test period was conducted in good faith and that his release was for legitimate, work-related reasons. In re Matus, OAL Dkt. No. CSV 5064-07, 2007 N.J. AGEN LEXIS 1029, Final Decision (December 5, 2007).

Evaluation of probationary police officer's performance during working test period was deficient. *Love v. Irvington Township Police Department*, 93 N.J.A.R.2d (CSV) 482.

Failure to give employee written progress report during working test period; bad faith. *Sokolowsky v. Township of Freehold Dept. of Code Enforcement*, 92 N.J.A.R.2d (CSV) 155.

Employee was entitled to new working test period. *Richardson v. Department of Corrections, New Jersey State Prison*, 92 N.J.A.R.2d (CSV) 63.

4A:4-5.4 Working test period appeals

(a) An employee may be separated for unsatisfactory performance at the end of the working test period. See N.J.A.C. 4A:2-4 for procedures.

(b) An employee may be disciplined during the working test period. See N.J.A.C. 4A:2-2 and 3 for procedures.

Case Notes

In a proceeding to remove a police officer after his working test period, the appointing authority could not look to the officer's behavior during police academy training, but could only consider incidents that occurred during the officer's actual working test period. In re

Kowalczyk, OAL Dkt. No. CSV 4443-05, 2006 N.J. AGEN LEXIS 866, Final Decision (September 6, 2006).

Disciplinary action during a working test period, especially relating to performance, may provide sufficient justification to release an employee after a working test period. In re Kowalczyk, OAL Dkt. No. CSV 4443-05, 2006 N.J. AGEN LEXIS 866, Final Decision (September 6, 2006).

Police officer was properly released at the end of his working test period because the disciplinary violations he committed during that period related to his job performance and clearly established the unsatisfactory nature of his performance; specifically, the officer was counseled regarding his leaving his post, yet he did so again on two separate emergencies that involved potential public safety hazards. In re Kowalczyk, OAL Dkt. No. CSV 4443-05, 2006 N.J. AGEN LEXIS 866, Final Decision (September 6, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 342) adopted, which upheld the dismissal of a civil engineer trainee at the end of her working test period. Fellow employees had documented her unsatisfactory performance and after levying a charge of rape against a fellow employee, the trainee had given unsubstantiated answers, which had not led to any discipline against the fellow employee. In re Scozzari, OAL Dkt. No. CSV 10613-04, 2006 N.J. AGEN LEXIS 528, Final Decision (May 24, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 39) adopted, which concluded that a licensed practical nurse was properly removed during her working test period after she prepared medication for a patient that was approximately 10 times in excess of the prescribed dosage and then, just two days later, administered medication to another patient that was approximately four times in excess of the prescribed dosage; the hospital was entitled to assume that the nurse possessed the appropriate competencies for her position and was not required to provide her with additional training during the working test period. In re Wrede, OAL Dkt. No. CSV 5372-05 (CSV 7936-04 On Remand), 2006 N.J. AGEN LEXIS 1117, Final Decision (March 22, 2006).

Initial Decision (2005 N.J. AGEN LEXIS 311) adopted, which found that agency decision not to hire Public Safety Telecommunicator Trainee at the end of her working test period was appropriate prior to hiring her as incoming 9-1-1 operator, rejecting her contention that she should have been evaluated as a trainee and not as a test-period employee. The employee's supervisor and co-workers had observed her performance and testified that she was unable to effectively multi-task and had attitude problems, and therefore there was no bad faith in the decision not to hire her after her training. In re Daniels, OAL Dkt. No. CSV 10112-03, 2005 N.J. AGEN LEXIS 1174, Final Decision (September 7, 2005).

Improperly terminated public employee with some work deficiencies was entitled to new working test period instead of permanent appointment to position. *Saleem v. Department of Citizen Services*, 95 N.J.A.R.2d (CSV) 204.

4A:4-5.5 Restoration to eligible list or former title

(a) An employee who, either during or at the end of a working test period, resigns in good standing or is separated due to unsatisfactory performance may, upon request, be restored to an eligible list, if the Commissioner determines that the employee is suitable for appointment to another position.

1. The Commissioner may consider:

- i. Whether the list can be certified to another appointing authority;
- ii. The recommendation of the employee's former appointing authority; and

iii. Any other relevant factors.

2. Any employee who has been removed for disciplinary reasons shall not be restored to an eligible list.

3. Any employee who has filed an appeal pursuant to N.J.A.C. 4A:2-4 shall have his or her request for restoration held in abeyance pending the appeal.

(b) An employee who is laid off during the working test period shall be restored to the eligible list from which he or she was appointed.

(c) A permanent employee serving a working test period in another title shall continue to accrue seniority in his or her permanent title for the duration of the working test period. See N.J.A.C. 4A:4-1.9 for procedures on restoration to a former title.

Amended by R.1989 d.570, effective November 6, 1989.
See: 21 N.J.R. 2429(a), 21 N.J.R. 3451(a).

Added new (b) and relettered old (b) as new (c).
Amended by R.1990 d.553, effective November 19, 1990.
See: 22 N.J.R. 2629(a), 22 N.J.R. 3482(b).

Provision insures that permanent employee accrues seniority in permanent title during working test period in another title.

SUBCHAPTER 6. EXAMINATION AND SELECTION DISQUALIFICATION AND APPEALS

4A:4-6.1 Examination and selection disqualification

(a) A person may be denied examination eligibility or appointment when he or she:

1. Lacks the job requirements;
2. Is ineligible, by law, for employment in the title;
3. Is physically or psychologically unfit to perform effectively the duties of the title. However, an injury incurred in the armed forces shall not be considered a disqualification unless the Commissioner considers the condition incapacitating;
4. Has failed to pass examination procedures;
5. Has been removed from the public service for disciplinary reasons after an opportunity for a hearing;
6. Has made a false statement of any material fact or attempted any deception or fraud in any part of the selection or appointment process;
7. Has a prior employment history which relates adversely to the title; or
8. Has failed to pay the required application processing fee in a timely manner, or for open competitive examination, has failed to provide documentation of exemption from the application processing fee in a timely manner; or

9. Other sufficient reasons.

(b) Except where precluded by law, a person who is disqualified pursuant to (a)5 and 7 above may, for good cause, be admitted to an examination and, with the appointing authority's concurrence, certified for appointment.

(c) Any action specified in this section shall be effective upon receipt of written notice of disqualification.

Amended by R.1993 d.270, effective June 7, 1993.

See: 25 N.J.R. 1085(b), 25 N.J.R. 2509(a).

Added new (a)8; redesignated (a)8 to (a)9.

Law Review and Journal Commentaries

Arrests—Civil Service—Police. Judith Nallin, 133 N.J.L.J. No. 6, 57 (1993).

Case Notes

Arrest justifies removal of applicant's name from eligibility list where circumstances surrounding arrest adversely relate to the employment sought, and agency must state specifically its reasons for removal. *Tharpe v. City of Newark Police Dept.*, 261 N.J.Super. 401, 619 A.2d 228 (A.D.1992).

Remand was required where administrative record from Merit System Board did not disclose basis for Board's equation of police officer candidate's personality traits with finding that candidate was mentally unfit. *Matter of Vey*, 124 N.J. 534, 591 A.2d 1333 (1991).

Removal of provisional juvenile detention officer from eligible list because of prior employment history was improper without hearing by Merit System Board. *Matter of Wiggins*, 242 N.J.Super. 342, 576 A.2d 932 (A.D.1990).

Initial Decision (2008 N.J. AGEN LEXIS 318) adopted, which concluded that removal of applicant's name from the eligibility list for Human Service Specialist I was warranted because the applicant could not communicate in English sufficiently to perform the functions of the position. In re *Sheth*, OAL Dkt. No. CSV 5771-07, 2008 N.J. AGEN LEXIS 507, Final Decision (May 21, 2008).

Modification of removal to resignation in good standing was warranted where employee underwent successful rehabilitation after arrest on drug charges. *Beachum v. Vineland City Board of Education*, 96 N.J.A.R.2d (CSV) 312.

Fact that drug screening guidelines were not strictly followed during unannounced screening did not require removal of positive test result from state police recruit's record. In the *Matter of the Appeal of Wayne Paterno*, 96 N.J.A.R.2d (POL) 5.

Removal of dismissed provisional police officer's name from eligibility list was justified by poor past performance. *Grafje v. Hudson County Sheriff*, 95 N.J.A.R.2d (CSV) 476.

Advanced information about contents of promotional examination disqualified public employee from eligibility for promotion. *Motiani v. State Department of Transportation*, 95 N.J.A.R.2d (CSV) 121.

Removal of assistant engineer traffic's name from list for senior engineer traffic appropriate; employee attempted to get knowledge about examination. *Motiani v. State Department of Transportation*, 95 N.J.A.R.2d (CSV) 121.

Removal from eligibility list for fire lieutenant not warranted. *Brown v. City of Gloucester*, 93 N.J.A.R.2d (CSV) 464.