

**CHAPTER 4**  
**SELECTION AND APPOINTMENT**

**Authority**

N.J.S.A. 11A:2-6(d), 11A:4-1 et seq., 11A:7-13, 38:23A-2, 40A:9-1.3 through 1.10, 40A:14-9.9, 40A:14-10.1a, 40A:14-12, 40A:14-45, 40A:14-123.1a, 40A:14-127, 40A:14-127.1 and 40A:14-180; P.L. 1992, c.197 and P.L. 2008, c.29; and Executive Order No. 10 (1982).

**Source and Effective Date**

R.2009 d.95, effective February 20, 2009.  
See: 40 N.J.R. 5891(a), 41 N.J.R. 1206(a).

**Chapter Expiration Date**

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 4, Selection and Appointment, expires on February 20, 2016. See: 43 N.J.R. 1203(a).

**Chapter Historical Note**

Chapter 4, Selection and Appointment, was adopted as R.1988 d.259, effective June 6, 1988. See: 20 N.J.R. 327(a), 20 N.J.R. 1183(b). See, also, the Historical Notes and annotations at repealed N.J.A.C. 4:1, Civil Service Rules, specifically Subchapters 8 through 16; repealed N.J.A.C. 4:2, State Service, specifically Subchapters 6, 11, 13 and 14; and repealed N.J.A.C. 4:3, Local Service, specifically Subchapters 6, 11, 13 and 14.

Pursuant to Executive Order No. 66(1978), Chapter 4, Selection and Appointment, was readopted as R.1993 d.270, effective May 12, 1993. See: 25 N.J.R. 1085(b), 25 N.J.R. 2509(a).

Notice of Receipt of and Action on a Petition for Rulemaking. See: 29 N.J.R. 1568(a).

Pursuant to Executive Order No. 66(1978), Chapter 4, Selection and Appointment, was readopted as R.1998 d.291, effective May 8, 1998. See: 30 N.J.R. 890(a), 30 N.J.R. 1975(a).

Chapter 4, Selection and Appointment, was readopted as R.2003 d.395, effective September 10, 2003. See: 35 N.J.R. 2389(a), 35 N.J.R. 4711(c).

Chapter 4, Selection and Appointment, was readopted as R.2009 d.95, effective February 20, 2009. See: Source and Effective Date. See, also, section annotations.

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## SUBCHAPTER 1. TYPES OF APPOINTMENTS

### 4A:4-1.1 Career service appointments

(a) 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.

(b) The Commissioner may authorize an appointing authority to make a regular appointment of a qualified person to a title in the noncompetitive division of the career service without an examination. Preference shall be given to disabled veterans and then veterans. See N.J.A.C. 4A:5 on veterans preference.

(c) The Commissioner may authorize the promotion, through promotional examination procedures, from the non-competitive division, of permanent employees who meet the open competitive requirements, to:

1. A related entry level title in the competitive division;  
or
2. In appropriate situations, to a related above-entry level title in the competitive division.

#### Case Notes

Physician/director of county medical services in unclassified service; definition of "institution" used in statute. *Morris Cty. v. Civil Service Dept.*, 177 N.J.Super. 25, 424 A.2d 852 (1980).

Validity of appointment to positions for which a vacancy had not been certified. *Adams v. Goldner* 156 N.J.Super. 299, 383 A.2d 1149 (App.Div.1977) affirmed 79 N.J. 78, 397 A.2d 1088 (1979).

Local service employer may only make intra-class transfers on a temporary basis (citing former N.J.A.C. 4:1). In *Matter of Lemko*, 151 N.J.Super. 242, 376 A.2d 971 (App.Div.1977).

Good grounds were shown for an order relaxing relevant regulations to allow the Department of Law and Public Safety (DLPS) to make a provisional appointment, pending promotional examination procedures, to the title of Administrative Analyst 2, Accounting. The proposed appointee was currently serving in the noncompetitive title of Investigator 4 but DLPS claimed that due to business necessity, the appointee had been assigned higher level duties of an accounting and auditing nature and that advancement in his present track was not an appropriate option as the appointee no longer performed investigative work and was currently performing out-of-title duties consistent with those of the proposed title. In granting relief, the Civil Service Commission noted that there was no dispute that the proposed appointee met the open competitive requirements for the title at issue, with the consideration of his out-of-title experience. Moreover, the facts showed that his duties had changed due to operational needs such that the primary focus of his position was now consistent with the Administrative Analyst 2, Accounting title. Additionally, it was appropriate to

relax applicable regulations to announce a promotional examination for the title of Administrative Analyst 2, Accounting in the appointee's unit scope to incumbents serving in the unrelated noncompetitive title of Investigator 4, Law and Public Safety, who meet the open competitive requirements, as well as to any other title scope deemed appropriate by Selection Services. Finally, good cause also was established in accordance to accept the proposed appointee's out-of-title work to qualify him for the promotional examination. In re Booktor, Dep't of Law & Pub. Safety, CSC Docket No. 2014-1807, 2014 N.J. CSC LEXIS 246, Final Administrative Determination (April 26, 2014).

For equitable considerations, it was appropriate to relax the provisions of N.J.A.C. 4A:4-1.1(c) and N.J.A.C. 4A:4-2.5(d) and to authorize the provisional appointment of an employee to the competitive title of Senior Stock Clerk. The employee had been assigned out-of-title duties as a Senior Stock Clerk due to the needs of the appointing authority. Further, the Division of Classification and Personnel Management (CPM) issued a classification determination indicating that the proper classification of the employee's title was Senior Stock Clerk, and CPM was in support of the appointing authority's request. In re Igor Milewski, Dep't of Law and Public Safety, CSC Dkt. No. 2014-2243, 2014 N.J. CSC LEXIS 363, Final Decision (April 25, 2014).

There is no such designation as an "acting" appointment under Civil Service rules. 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. In re Mullan, Dep't of Law & Pub. Safety, CSC Docket No. 2013-1602, 2013 N.J. CSC LEXIS 1199, Final Administrative Action (December 19, 2013).

After a classification review revealed that the position held by an employee was properly classified as Data Entry Operator 2, a title that was allocated to the competitive division and was not a related entry or related above-entry level title to that of Clerk, which was the title that the employee held on a permanent basis, the equities of the situation were such that the provisions of N.J.A.C. 4A:4-1.1(c) and N.J.A.C. 4A:4-2.4(c) were properly relaxed, as permitted by N.J.A.C. 4A:1-1.2(c), to allow the employee to be provisionally promoted from the non-competitive title of Clerk to the competitive title of Data Entry, Operator 2, which promotion would be pending promotional examination procedures. In re Smalls, Dep't of the Treasury, CSC Docket No. 2014-1312, 2013 N.J. CSC LEXIS 1160, Final Administrative Decision (December 4, 2013).

Incumbent in the title of Auditor 2, Taxation was not entitled to reclassification of the position, which was located in the Department of the Treasury, to Auditor 1, Taxation, for various reasons including that the fact that he was given the title of "acting Auditor 1" by a supervising special agent was not entitled to any weight in the determination because there was no such designation as an "acting" appointment under Civil Service rules. Rather, N.J.S.A. 11A:4-13 and N.J.A.C. 4A:4-1 et seq. provided for regular, conditional, provisional, interim, temporary, and emergency appointments. That being so, the Department of the Treasury was precluded from appointing an individual in an "acting" capacity where, as here, the individual's appointment can be recognized under any one of the above classifications. In re Curry, Dep't of the Treasury, CSC Docket No. 2013-2939, 2013 N.J. CSC LEXIS 1136, Final Administrative Action (December 4, 2013).

Civil Service Commission found it appropriate to relax the provisions of N.J.A.C. 4A:4-1.1(c)2 and N.J.A.C. 4A:4-2.4(c) and ordered that a promotional examination for Supervising Account Clerk in an employee's unit scope be announced. The employee obtained the necessary experience required for the title when she previously held a regular appointment in the subject title. In re Kathleen Castaldo, Mercer Cnty., CSC Dkt. No. 2014-869, 2013 N.J. CSC LEXIS 686, Final Decision (October 16, 2013).

Provisions of N.J.A.C. 4A:4-1.1(c)2 were relaxed in order to allow a promotional examination for Social Worker to be announced open to employees in the competitive and noncompetitive division who met the open-competitive requirements and who had at least one year of continuous permanent service. None of the employees in the competitive division who would potentially apply for a Social Worker promotional

## Case Notes

Employee no longer eligible for promoted position reverts to former position (citing former N.J.A.C. 4:3-8.3). In the Matter of Williams, 198 N.J.Super. 75, 486 A.2d 858 (App.Div.1984).

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 and thus his new position was a provisional appointment within current continuous service pending promotional examination procedures. Therefore, when the provisional appointment was terminated for unsatisfactory performance, the employee was entitled to be returned to his permanent title; if the permanent title was no longer utilized, the county was required to implement layoff procedures, including giving 45 days' notice to the employee. In re Garcia, OAL Dkt. No. CSV 11932-07, 2008 N.J. AGEN LEXIS 595, Merit System Board Decision (May 7, 2008).

Return to position of corrections sergeant at end of working test period was appropriate. Heaney v. Mahon Correctional Facility, 93 N.J.A.R.2d (CSV) 529.

Employee returned to her former position at end of working test period. Durmer v. Ocean County Board of Social Services, 93 N.J.A.R.2d (CSV) 242.

Return to former position at end of working test period was justified. Arroyo v. Department of Corrections, 93 N.J.A.R.2d (CSV) 3.

#### 4A:4-1.10 Approval of appointments by Civil Service Commission

(a) All initial and subsequent appointments, promotions, and related personnel actions in the career, unclassified, or senior executive service are subject to the review and approval of the Civil Service Commission.

1. The Civil Service Commission may direct personnel action freezes in connection with layoffs or other emergent circumstances.

(b) Following submission and review of personnel actions, the appointing authority shall be notified by an appropriate representative of the Civil Service Commission whether the action has been approved or disapproved and the reasons for any disapproval. The appointing authority shall provide written notice to all affected employees of such personnel actions. See N.J.A.C. 4A:3-4.1(b)1 for State appointing authority payroll certification requirements.

(c) When a regular appointment has been made, the Civil Service Commission may order a retroactive appointment date due to administrative error, administrative delay, or other good cause, on notice to affected parties.

Amended by R.1993 d.270, effective June 7, 1993.  
See: 25 N.J.R. 1085(b), 25 N.J.R. 2509(a).

Revised (a).

Amended by R.1994 d.619, effective December 19, 1994.

See: 26 N.J.R. 3510(a), 26 N.J.R. 5002(a).

Amended by R.1998 d.291, effective June 1, 1998.

See: 30 N.J.R. 890(a), 30 N.J.R. 1975(a).

In (a), inserted "in the career, unclassified or senior executive service" following "personnel actions" and added a new (c).

Amended by R.2013 d.001, effective January 7, 2013.

See: 44 N.J.R. 2149(a), 45 N.J.R. 25(a).

Section was "Approval of appointments by Department of Personnel". In the introductory paragraph of (a), inserted a comma following "unclassified" and substituted "Civil Service Commission" for "Department of Personnel"; in (a)1 and (c), substituted "Civil Service Commission" for "Commissioner"; in (b), substituted "an appropriate representative of the Civil Service Commission" for "the Department of Personnel" and inserted the last sentence; and in (c), inserted a comma following "delay".

## Case Notes

Representatives of public defender had actual authority to promise promotion to assistant deputy public defender, who accepted lower position than position for which he was eligible based on expectation that he would be promoted after one year. Walsh v. State, 290 N.J.Super. 1, 674 A.2d 988 (A.D.1996).

Employee did not sustain the burden of proving, as required by N.J.A.C. 4A:2-1.4(c), that he was entitled to a retroactive employment date for the position of Correction Sergeant pursuant to N.J.A.C. 4A:4-1.10(c). The fact that another candidate with the same ranking for certification was appointed before the employee was of no consequence because it was within the appointing authority's discretion per N.J.A.C. 4A:4-4.8(a)3 to select any of the top three interested eligibles in any order. The appointing authority thus was permitted to select the other candidate first, and the employee had not presented any substantive evidence regarding his bypass for the initial appointment that could lead the Civil Service Commission to conclude that the appointing authority had acted improperly or had abused its discretion. In re Loney, Dep't. of Corr., CSC Docket No. 2013-1651, 2013 N.J. CSC LEXIS 1200, Final Admin. Action (November 20, 2013).

Employee was entitled to a retroactive date of appointment for salary step placement and seniority-based purposes under N.J.A.C. 4A:4-1.10(c). An administrative oversight resulted in nearly five years passing before a promotional examination to Fire Official was announced and the permanent appointment of the employee was effectuated. In re Danny Norman, Cinnaminson Fire Dist. #1, CSC Dkt. No. 2013-1303, 2013 N.J. CSC LEXIS 865, Final Decision (October 16, 2013).

Employee was entitled to a retroactive date of appointment for salary step placement and seniority-based purposes only under N.J.A.C. 4A:4-1.10(c). An administrative error required her to pass a higher level of the bilingual examination than was required of the Judiciary Clerk 2, Bilingual in Spanish and English eligible list, and a review of the eligible list revealed that if the error had not been made, her name would have been reachable for appointment on an earlier date. In re Marisol Perez-Wilson, Judiciary Clerk 2, Bilingual in Spanish and English (S0630K), CSC Dkt. No. 2014-446, 2013 N.J. CSC LEXIS 726, Final Decision (October 16, 2013).

Employee received a retroactive date of appointment under N.J.A.C. 4A:4-1.10(c) after her name was removed in error from the special reemployment certification list for Clerk Stenographer 1. That error resulted in the failure of the appointing authority to permanently appoint her on an earlier date. In re Carolyn Young, Clerk Stenographer 1 (SPECIAL), Newark Sch. Dist., CSC Dkt. No. 2014-577, 2013 N.J. CSC LEXIS 694, Final Decision (October 16, 2013).

Candidate was entitled to a retroactive date of appointment to the eligible list for Police Lieutenant pursuant to N.J.A.C. 4A:4-1.10(c). Beachwood Borough failed to request the Police Lieutenant eligible list to complete the process. A review of the eligible list revealed that the candidate's name would have been reachable for appointment. In re Robert Tapp, Police Lieutenant (PM2525H), Beachwood Borough, CSC Dkt. No. 2014-631, 2013 N.J. CSC LEXIS 908, Final Decision (October 2, 2013).

N.J.A.C. 4A:4-3.4(a) authorized an order reviving the eligible list for the position of Sewer Repairer (PM0849J), Middle Township, so that the permanent appointment to that position of the individual serving therein as a provisional appointee since March 5, 2007 could be recorded. Though the individual appeared on the eligible list for that appointment, administrative error within the meaning of N.J.A.C. 4A:4-1.10(c) on the part of the township had resulted in the certification thereof neither being issued nor requested prior to the list's expiration. The individual would have been reachable on any certification because he was the only person on the list. Moreover, he in fact had been appointed to the position and was performing the duties thereof. Given those circumstances, N.J.A.C. 4A:4-1.10(c) authorized the grant of a retroactive date of appointment. In re Stephen Mills, Sewer Repairer (PM0849J), Middle Twp., CSC Dkt. No. 2013-2794, 2013 N.J. CSC LEXIS 464, Final Decision (August 2, 2013).

Where issues relative to the proper classification of certain positions persisted over a period of time, with three employees who presumably would fill those positions remaining in an unclassified title pending their obtaining required professional certifications, a request by the appointing agency to extend the deadline for the completion of such certification processes was properly granted because, once such certifications were finalized, N.J.A.C. 4A:3-3.4 would not permit the employees to remain in the unclassified title in which they were currently placed. It was also appropriate to determine that at such time as the affected employees met the requirements of the title and were appointed thereto, and assuming that the current working test periods were successfully completed, good cause was shown to consider those appointments permanent as of the date of the initial appointment per N.J.A.C. 4A:4-1.10(c), and a separate request for such an order would not be necessary. In re Substance Abuse Evaluator, Judiciary, CSC Dkt. No. 2013-3426, 2013 N.J. CSC LEXIS 630, Final Decision (August 1, 2013).

Candidate did not present good cause to grant a retroactive date of appointment under N.J.A.C. 4A:4-1.10(c) to the Correction Sergeant title. On an earlier certification, he was not reachable for appointment because he was not among the top three interested eligibles pursuant to N.J.S.A. 11A:4-8 and N.J.A.C. 4A:4-4.8(a)3, and the appointing authority did not support the request for a retroactive date of appointment. In re Derrick Smith, corr. Sergeant (PS1818I), Dep't. of Corr., CSC Dkt. No. 2013-897, 2013 N.J. CSC LEXIS 684, Final Decision, (July 17, 2013).

When, due to an administrative error, an appointing authority failed to permanently appoint a candidate from the Administrative Analyst 3 eligible list and that eligible list expired, the Civil Service commission granted the candidate a retroactive date of appointment pursuant to N.J.A.C. 4A:4-1.10(c). The Commission found that the candidate's name would have been reachable for appointment before the eligible list expired. In re Daniel O'Rourke, Administrative Analyst 3 (PS8032K), Dep't. of Children and Families, CSC Dkt. No. 2013-3038, 2013 N.J. CSC LEXIS 572, Final Decision (June 26, 2013).

Unemployment insurance clerk was not entitled to a retroactive date of appointment under N.J.A.C. 4A:4-1.10(c). Although she contended that she was improperly found ineligible for the subject examination, she failed to provide a detailed and complete listing of the duties she performed in her prior positions as required and fully explained on the application form. The mere fact that the Division of Selection Services and Recruitment reconsidered its decision based on clarifying information the clerk submitted on appeal was not evidence that the initial determination that she was ineligible was incorrect. In re Sharon Redwanski, Dep't. of Labor and Workforce Dev., CSC Dkt. No. 2013-1261, 2013 N.J. CSC LEXIS 629, Final Decision (May 15, 2013).

Custodians were entitled to retroactive dates of appointment under N.J.A.C. 4A:4-1.10(c). The school district's oversight resulted in its failing to appoint them from certifications of the subject eligible list, and both their names would have been reachable for appointment had the district not overlooked their provisional appointments. In re Jerry Montalvo and Jason Skillern, Custodian (PM0136F), Newark Sch. Dist., CSC Dkt. Nos. 2013-2791, 2013-2793, 2013 N.J. CSC LEXIS 628, Final Decision (May 15, 2013).

Police Sergeant was entitled to a retroactive date of permanent appointment under N.J.A.C. 4A:4-1.10(c). She was already serving in that position under a provisional appointment but the appointing authority improperly failed to call for a certification to permanently appoint her. The appointing authority did not object to the request, and a review of the eligible list revealed that her name would have been reachable for appointment had a certification been issued. In re Qiana Brown, Twp. of Hillside, CSC Dkt. No. 2013-89, 2013 N.J. CSC LEXIS 626, Final Decision (May 15, 2013).

Retroactive certification was issued under N.J.A.C. 4A:4-1.10(c) to allow a candidate to be appointed as a firefighter due to the existence of good cause. His name appeared on the eligible list as of January 2, 2013, but the appointment was not made until April 2013 due to administrative delay. He was reachable for appointment on January 2, 2013 because the first-ranked veteran was not interested in the position. In re Michael Ratcliffe, Fire Fighter (M2545M), Lawrence Township, CSC Dkt. No. 2013-2651, 2013 N.J. CSC LEXIS 338, Final Decision (May 2, 2013).

Applicant was entitled to a retroactive date of appointment pursuant to N.J.A.C. 4A:4-1.10(c). It was an oversight by the Borough of Brooklawn that resulted in its failure to request a certification to record the applicant's appointment date. In re Shamus Ellis, Police Sergeant (PM2644L), Borough of Brooklawn, CSC Dkt. No. 2013-2405, 2013 N.J. CSC LEXIS 237, Final Decision (May 1, 2013).

Fire captain was not entitled to reconsideration of a Civil Service Commission decision pursuant to N.J.A.C. 4A:2-1.6(b) because he did not present new or additional information that would have changed the outcome of the case. As provided in the original decision, he did not have displacement rights to the title of Fire Prevention Specialist because he was neither properly serving as a provisional nor was he permanent in that title. There was no record of the City appointing him from a certification as required under N.J.A.C. 4A:4-1.10(a). In re Agripino Figueroa, City of Camden, CSC Dkt. No. 2012-2660, 2013 N.J. CSC LEXIS 57, Final Decision (January 10, 2013).

#### 4A:4-1.11 (Reserved)

New Rule, R.1990 d.48, effective January 16, 1990.

See: 21 N.J.R. 3337(a), 22 N.J.R. 166(b).

Repealed by R.1996 d.97, effective February 20, 1996.

See: 27 N.J.R. 4048(a), 28 N.J.R. 1201(a).

Section was "Vacancy Review Board: State service".

## SUBCHAPTER 2. COMPETITIVE EXAMINATIONS

### 4A:4-2.1 Announcements and applications

(a) On a daily basis, open competitive examination announcements shall be posted on, and applications made available through, the Civil Service Commission web site (<http://www.state.nj.us/csc>) and may be publicized by other appropriate means, as approved by the Chairperson of the Civil Service Commission or designee, to secure sufficient qualified candidates.

(b) In order to notify all employees of promotional opportunities, promotional examination announcements shall be posted on, and applications shall be made available through, the Civil Service Commission web site and may also be made available through the web sites of affected appointing authorities. If an affected appointing authority does not maintain or utilize a web site, promotional examination announcements shall be conspicuously posted by the affected appointing authority at all geographic locations within the unit scope (in



5. Evaluation of education, training or experience;
6. Assessment exercises; and
7. Other appropriate measures of knowledge, skills and abilities.

(b) The Department of Personnel may select special examiners to act as subject matter specialists or to provide other assistance. Employees of the State or local jurisdictions may be so engaged as part of their official duties during normal working hours with the approval of their appointing authority. Extra compensation may be provided by the Department of Personnel for such service outside normal working hours.

(c) See N.J.A.C. 4A:4-2.14 for rules regarding the accommodation and waiver of examinations for persons with disabilities.

Amended by R.1994 d.72, effective February 7, 1994.  
See: 25 N.J.R. 4821(b), 26 N.J.R. 794(b).

#### Case Notes

Authority of Commission to design and administer exams versus "real authority" of municipalities regarding hiring practices. *United States v. State of N.J.*, 473 F.Supp. 1199 (1979).

Elements of examination process discussed in relation to labor negotiations. *State v. State Supervisory Employee Association*, 78 N.J. 54, 393 A.2d 233 (1978).

Authority to inquire as to basis for appointments and promotions. *Hackensack v. Winner*, 162 N.J.Super. 1, 392 A.2d 187 (App.Div.1978) modified 82 N.J. 1, 410 A.2d 1146 (1980).

Validity of list established by inappropriate exam. *Flynn v. Megaro*, 112 N.J.Super. 148, 270 A.2d 638, (App.Div.1970) cert. denied 57 N.J. 594, 274 A.2d 49.

Applicant who had been provisionally appointed to a position as a Claims Examiner Unemployment and Disability Insurance (PS3089K), Department of Labor and Workforce Development, but who then failed the competitive examination for that position was not entitled to be placed on the eligible list for appointment notwithstanding her failing score and was properly returned to her prior non-competitive division position of Intermittent Labor Services Worker. Given the authority possessed by the Civil Service Commission per N.J.A.C. 4A:4-2.2 to determine the most appropriate selection instrument, the applicant's dissatisfaction with the mode of the examination (multiple choice) and the subjects included therein was not a valid reason to readminister the examination to the candidate population using a different test mode, particularly after the eligible list had been promulgated and appointments had been made. Nor did the applicant show a valid basis for a re-scoring of the examination. In *Re Christina Traphagen*, Claims Examiner Unemployment/Disability Insurance (PS3089K), Department Of Labor and Workforce Development, CSC Dkt. 2013-1209, 2013 N.J. CSC LEXIS 88, Final Decision (February 25, 2013).

#### 4A:4-2.3 Open competitive examinations

(a) Vacancies shall be filled by promotional examination unless the Commissioner determines that it is in the best interest of the career service to hold an open competitive examination. The determination to announce an open competitive examination shall be based on at least one of the following conditions:

1. The vacancy is in an entrance level title;
2. There are fewer than three qualified permanent employees in appropriate lower titles in the unit scope (See N.J.A.C. 4A:1-1.3 for definition of unit scope);
3. If more than one vacancy, the total number of qualified permanent employees in appropriate lower titles in the unit scope exceed by fewer than three the total number of vacancies;
4. A list resulting from a promotional examination will be exhausted before all present or anticipated vacancies are filled; or
5. The title requires special, technical or professional training or qualifications which are not required in lower titles.

(b) Unless otherwise specified, an applicant shall meet the following criteria by the announced closing date:

1. Be a resident of the State or specified local jurisdiction (see N.J.A.C. 4A:4-2.11), except when:
  - i. A different residency requirement is specified by law or provided by the Commissioner; or
  - ii. It appears that there is an inadequate number of qualified residents available for the title.
2. Meet all requirements specified in the examination announcement:
  - i. Applicants for the titles of Municipal Firefighter and Municipal Police Officer must be under the age of 35 on the announced closing date for an open competitive examination to be eligible to take the examination. Former State troopers, sheriff's officers, sheriff's deputies, County or Municipal Police Officers, New Jersey Transit police officers, Southeastern Pennsylvania Transit Authority (SEPTA) police officers, Amtrak police officers, or any persons who were previously employed by any State or Federal law enforcement agency or other public entity, and who performed duties comparable to the law enforcement duties performed in the positions specifically listed in N.J.S.A. 40A:14-127.1, 45 years of age or under who resigned in good standing may adjust their age by subtracting previous years of service from their actual age on the closing date. Former law enforcement officers as defined above who were involuntarily separated from service due to layoff, regardless of age, may adjust their age by subtracting previous years of service from their actual age on the closing date.
  - ii. For good cause, the Commissioner may deem an individual a former law enforcement officer as defined in (b)2i above, even though the individual's separation from service shall not occur except upon a new appointment.

iii. Veterans who are above a maximum age requirement, may recalculate their age for recording purposes pursuant to N.J.S.A. 38:23A-2; and

3. File an application with all supporting documents or proofs by the announced filing date.

(c) In announcing open competitive examinations, the Department of Personnel may provide a single application for several announcements and/or title areas (such as police, sheriff, corrections and bilingual). The applicant's eligibility for particular announcements and/or title areas may depend upon the applicant's residency as indicated on the application.

(d) When a promotional examination is announced, an open competitive examination may also be announced.

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

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

In (b)2i: added text, "Former Municipal Police Officers ... the closing date."

Amended by R.1997 d.482, effective November 17, 1997.

See: 29 N.J.R. 3385(a), 29 N.J.R. 4864(b).

Inserted new (c); and recodified (c) as (d).

Amended by R.1998 d.291, effective June 1, 1998.

See: 30 N.J.R. 890(a), 30 N.J.R. 1975(a).

In (b)2, inserted references to State troopers, sheriff's officers, sheriff's deputies and County Municipal police Officers in i, added a new ii and recodified former ii as iii.

Amended by R.2000 d.444, effective November 6, 2000.

See: 32 N.J.R. 2178(a), 32 N.J.R. 3981(a).

In (b)2, rewrote i and ii.

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

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

In (c), deleted "including, but not limited to, entry-level law enforcement examinations," and substituted "shall" for "may."

#### Law Review and Journal Commentaries

Civil Service—Administrative Procedure—Counties—Municipalities.  
Judith Nallin, 134 N.J.L.J. No. 17, 50 (1993).

#### Case Notes

Limiting open competitive examination to residents for position of police chief, violated the Civil Service Act, the Board's own regulations, and the rule-making provisions of the Administrative Procedure Act. *Matter of Police Chief (M2010P)* South Orange Village, 266 N.J.Super. 101, 628 A.2d 809 (A.D.1993).

Equitable estoppel: provisional employee worked 8-10 years before test was promulgated. *Omrod v. N.J. Department of Civil Service*, 151 N.J.Super. 54, 376 A.2d 554 (App.Div.1977) certification denied 75 N.J. 534, 384 A.2d 513.

Issue of examination as artificial barrier to employment. *DeLarmi v. Borough of Fort Lee*, 132 N.J.Super. 501, 334 A.2d 349 (App.Div.1975) certiorari denied 68 N.J. 135, 343 A.2d 423.

Requirement that employee serve specified time in lower classification before becoming eligible for promotion upheld (citing former N.J.A.C. 4:1-8.6). *Watson v. Farrell*, 116 N.J.Super. 434, 282 A.2d 756 (App.Div.1977).

Removal of a laborer was reversed and a three-month suspension ordered after an administrative law judge found that he violated a township's Driver's License Policy pursuant to N.J.A.C. 4A:4-2.3. Neither the laborer nor anyone on his behalf notified the township immediately of his license suspension, and he did not show that his illness had so incapacitated him as to relieve him of that responsibility. However, the township did not sustain its burden of proving that the

laborer committed a violation of federal regulations regarding drug or alcohol use because it cited the wrong regulation. In addition, it did not sustain its burden in a charge of insubordination when it failed to show that the laborer was verbally abusive in any way towards his supervisors, and there was no evidence of a direct countermanding of any lawful direction from those supervisors by the laborer. In re Kevin Enright, Hazlet Twp., Dep't. of Public Works, OAL Dkt. No. CSV 12816-13, 2014 N.J. AGEN LEXIS 440, Initial Decision (July 28, 2014).

Decision of the Division of Selection Services that an applicant did not meet the announced requirements for the open competitive examination for program Technician as required by N.J.A.C. 4A:4-2.3(b) was amply supported by the record. Applicants for this examination were required to have experience applying rules, regulations, procedures, or policies in the processing of technical actions in a specific program area. Clearly the applicant's work as an Attorney did not match this requirement. Her work as an Attorney was in a profession, not a program. Next, her work did not have processing technical actions as a primary focus. The practice of law could not be considered to be a "technical action," within the meaning of the term in the job specification, which was much narrower in focus. In re Louann Wonski, Program Technician (S0835R), Statewide, CSC Dkt. No. 2014-2377, 2014 N.J. CSC LEXIS 366, Final Decision (April 25, 2014).

Independent review by the Civil Service Commission of all material presented indicated that the decision of the Division of Selection Services, that the applicant did not meet the announced requirements for eligibility for the open-competitive examination for Public Health Representative 2 Emergency Medical Services by the closing date as required by N.J.A.C. 4A:4-2.3(b), was amply supported by the record. He did not list experience as a paramedic or registered nurse in a mobile intensive care program providing advanced life support services for any of his positions. If he continually staffed a medical intensive care unit as part of his job requirements, this was an ancillary duty and not the primary focus. In re Douglas Boles, Public Health Representative Emergency Medical Serv. (S0833R), Statewide, CSC Dkt. No. 2014-2075, 2014 N.J. CSC LEXIS 361, Final Decision (April 25, 2014).

Civil Service Commission ordered that a candidate's appeal be granted and that his application for the open competitive examination for Marine Mechanic be processed. The Division of Selection Services appropriately found that, pursuant to N.J.A.C. 4A:4-2.3(b)2, the candidate was not qualified for the title based on his failure to meet the experience requirements. However, the Commission was willing to accept the candidate's sworn statement that he had submitted his resume with his application in a timely manner and concluded that the resume provided clarifying information demonstrating that the candidate satisfied both the educational and experience requirements for admission to the examination. In re William Tunney, Marine Mechanic (S0727R), Statewide, CSC Dkt. No. 2014-573, 2014 N.J. CSC LEXIS 254, Final Decision (April 10, 2014).

Applicant provided no basis to disturb a decision of the Division of Selection Services that he did not meet the announced experience requirements for eligibility for the open competitive examination for Principal Stock Clerk as required by N.J.A.C. 4A:4-2.3(b)2. The primary focus of his position as a Package Handler/Container Mover with the FedEx Corporation was not work involving requisitioning, receiving, storing and recording office supplies in a stockroom, as specifically required by the examination announcement. While the appointing authority noted that supervisory duties formed a significant responsibility in the position, the examination announcement did not call for supervisory experience. In re Al'Jawann Reed, Jr., Principal Stock Clerk (S0550R), Statewide, CSC Dkt. Nos. 2014-1228, 2014 N.J. CSC LEXIS 9, Final Decision (April 10, 2014).

Though the Division of Selection Services and Recruitment (DSSR) had correctly determined that an applicant seeking admission to the open competitive examination for Animal Health Technician, (C0631R), Essex County did not meet the education requirements, the applicant, who was serving provisionally in the title under test, had shown good cause for an order admitting her to that examination. Though DSSR had found that the applicant lacked seven biology or other related credits, the job specification for the title indicates that an incumbent, under the

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)1; deleted (c)2; redesignated existing (c)3 to (c)2.

#### Case Notes

Department of Energy could return employee to his permanent position as senior engineer when promotional examination was not given between date of his provisional appointment and date of demotion (citing former N.J.A.C. 4:1-1.1). *O'Malley v. Department of Energy*, 109 N.J. 309, 537 A.2d 647 (1987).

Civil Service Commission's notification to police sergeant candidates regarding the June 1, 2013, promotional examination date was done in an appropriate manner under the circumstances. It was not required that a candidate receive two to three weeks written notice for an examination. Each candidate was notified by August 1, 2012, via promotional announcement that the primary source of information regarding the promotional examinations was the Commission's website, that a test date was not yet set as of the date of each promotional announcement, and that information concerning the test date and other information would be updated on the Commission's website. Additionally, as early as May 14, 2013, which was over two weeks prior to the test administration date, the Commission's website was updated to reflect the June 1, 2013 test date. Finally, approximately eight days prior to the exam, reasonable steps were taken to make all the candidates aware of the June 1, 2013 test date. The argument that any candidate did not have a sufficient opportunity to study and was disadvantaged was misplaced because the candidates had applied for the subject examinations from as early as September 2010 up to September 2012. Thus, each one expected to take the examination and could have started studying when he or she applied for the test. *Police Sergeant Promotional Examination 2013*, CSC Dkt. Nos. 2013-3160 and 2013-3352, 2014 N.J. CSC LEXIS 398, Final Decision (March 13, 2014).

The Division of Selection Services and Recruitment (DSSR) acted properly in denying requests made by four applicants for make-up examinations for the October 25, 2012 open competitive examination for Judiciary Clerical Series (S0291P), Statewide. Three of the applicants cited scheduling conflicts as their reason for seeking make-up examinations but the same did not provide a valid reason for a make-up examination as provided by N.J.A.C. 4A:4-2.9(a). Moreover, the claims made by two candidates that they had arrived ten minutes after the 6:00 pm scheduled start of the exam but had been turned away were belied by the test center supervisory report which indicated that they did not arrive at the test center until 6:25 pm, which was ten minutes after the expiration of the grace period that mitigated the requirement in N.J.A.C. 4A:4-2.8(c) that test-takers be at the examination site at the required time. Since none of the applicants showed that they were entitled to a make-up examination, DSSR's decision denying their requests was proper. In re Barahona, et al., Judiciary Clerical Series (S0291P), Statewide, CSC Docket No. 2013-1469, 2013 N.J. CSC LEXIS 866, Final Administrative Decision (August 15, 2013).

Criteria in N.J.A.C. 4A:4-2.9 governing the grant of a request for a make-up examination were not satisfied where a candidate claimed that she had been unable to take the exam due to what she described as an "unexpected problem" requiring her to be seen by her doctor at 4 pm, two hours before the exam was to be administered. Though the candidate provided a letter from the doctor, it did not specify the date or time that the candidate was seen in the doctor's office or indicate that she was medically unable to take the examination on schedule. Moreover, the fact that the candidate arrived at the testing site, albeit after the expiration of the grace period per N.J.A.C. 4A:4-2.8(c), suggested that she in fact was both willing and able to take the examination, which also obviated against a finding that the candidate was entitled to a make-up examination due to medical reasons. In re Dorothy Hrynyk, Substance Abuse Counselor 1 (S0024P), Statewide, CSC Docket No. 2013-1767, 2013 N.J. CSC LEXIS 198, Final Agency Action (April 17, 2013).

#### 4A:4-2.9 Make-up examinations

(a) Make-up examinations, except for professional level engineering promotional examinations under (b) below and public safety open competitive and promotional examinations under (c) below, may be authorized for the following reasons:

1. Error by the Civil Service Commission or appointing authority;
2. Serious illness or disability of the candidate on the test date, provided the candidate submits a doctor's certificate specifying that the candidate was not able to take the test on that day for medical reasons;
3. Documented serious illness or death in the candidate's immediate family;
4. Natural disaster;
5. Prior vacation or travel plans outside of New Jersey or any contiguous state, which cannot be reasonably changed, as evidenced by a sworn statement and relevant documentation;
6. When required for certain persons returning from military service (see N.J.A.C. 4A:4-4.6A); and
7. Other valid reasons.

(b) For professional level engineering promotional examinations, make-up examinations may be authorized only in cases of:

1. Debilitating injury or illness requiring an extended convalescent period, provided the candidate submits a doctor's certification containing a diagnosis and a statement clearly showing that the candidate's physical condition precluded his or her participation in the examination;
2. Death in the candidate's immediate family as evidenced by a copy of the death certificate;
3. A candidate's wedding which cannot be reasonably changed as evidenced by relevant documentation;
4. When required for certain persons returning from military service (see N.J.A.C. 4A:4-4.6A); or
5. Error by the Civil Service Commission or appointing authority.

(c) For police, fire, correction officer, sheriff's officer, juvenile detention officer, and other public safety open competitive and promotional examinations, make-ups may be authorized only in cases of:

1. Death in the candidate's immediate family;
2. Error by the Civil Service Commission or the appointing authority;

3. When required for certain persons returning from military service (see N.J.A.C. 4A:4-4.6A); or

4. A catastrophic health condition or injury, which shall be defined as either:

i. A life-threatening condition or combination of conditions; or

ii. A period of disability required by the candidate's mental or physical health or the health of the candidate's fetus which requires the care of a physician who provides a medical verification of the need for the candidate's absence from work for 60 or more work days.

(d) Subject to applicable provisions in N.J.A.C. 4A:4-4.6A, employees returning from military leave shall have an opportunity to take promotional examinations that have not yet been administered, or make-up examinations for active promotional lists for which they were eligible while on military leave. If the eligible passes the examination, his or her name will be placed on the eligible list, for prospective appointment only, based upon the score obtained, as if the examination had been taken when originally held, except that in the case of certain persons returning from military service, applicable provisions of N.J.A.C. 4A:4-4.6A shall govern placement on an eligible list.

(e) Employees who have been removed for disciplinary reasons or indefinitely suspended pending criminal charges, and are thereafter exonerated, shall have an opportunity to take promotional examinations that have not yet been administered, or make-up examinations for active promotional lists, if the suspension or removal resulted in the employee's non-participation in the promotional examination.

(f) Except as provided in N.J.A.C. 4A:4-4.6A, a candidate must request, in writing, a make-up examination, within five days after the examination date due to one of the valid reasons set forth in (a), (b), or (c) above, as applicable. However, a candidate must submit a written request for a make-up examination within five days of receipt of the examination notice in case of one of the valid reasons set forth in (a), (b), or (c) above, as applicable, of which a candidate is aware upon receipt of the examination notice, except that the candidate shall follow the procedures set forth in N.J.A.C. 4A:4-4.6A, where applicable.

(g) Make-up examinations will be administered to the extent possible under the same conditions as the original examination but, in the case of public safety examinations under (c) above, shall be different in content from the original examination.

(h) The name of any candidate passing a make-up examination will be added to the eligible list. Except for error by the Civil Service Commission or appointing authority, prior appointments from the eligible list will not be affected by the addition of a name to the list.

(i) All candidates taking make-up examinations, except physical performance examination, shall, as a precondition to taking the make-up examination, be required to sign a statement that they have no knowledge of the content of the examination as a result of information gained from or furnished by other candidates who participated in the original examination, or third parties, provided that:

1. In the case of open competitive and promotional public safety examinations referred to in (c) above, candidates shall sign an additional statement accepting the make-up examination as a substitute for the original examination, provided, however, that signing this statement shall not preclude the candidate from challenging the validity of the make-up examination's items, the scoring of the make-up or the make-up test conditions. See N.J.A.C. 4A:4-6.3 and 6.4.

(j) In extraordinary circumstances, such as an examination that requires a multiple assessment of a candidate which results in a group consensus rating by a panel of experts, a make-up examination shall not be held. In such cases, candidates will be so notified at least 45 days prior to the date of the examination. The only exceptions will be documented error on the part of the Civil Service Commission or appointing authority, in which case a make-up may be granted if practicable, or where N.J.A.C. 4A:4-4.6A applies in the case of certain persons returning from military service.

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

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

In (a): added language regarding police and fire promotional examinations.

Relettered old (b)-(g) as (c)-(h) with no change in text.

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), (e), (g) and (h).

Amended by R.1994 d.114, effective March 7, 1994.

See: 25 N.J.R. 4823(a), 26 N.J.R. 1225(a).

Amended by R.1994 d.285, effective June 6, 1994.

See: 26 N.J.R. 1183(a), 26 N.J.R. 2256(b).

Amended by R.1997 d.72, effective February 18, 1997.

See: 28 N.J.R. 4978(a), 29 N.J.R. 549(a).

Inserted new (d) and recodified former (d) through (h) as (e) through (i).

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

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

Rewrote the section.

Amended by R.2014 d.061, effective April 7, 2014.

See: 45 N.J.R. 520(a), 46 N.J.R. 619(a).

Rewrote the section.

#### Case Notes

Civil Service Commission ordered that applicants be scheduled for make-up examinations for the Entry Law Enforcement Examination pursuant to N.J.A.C. 4A:4-2.9(c). The Commission accepted sworn statements from the applicants that they did not receive Notifications to Appear for Examination. In re Vache Michael Assadourian, et al., Entry Law Enforcement Examination (S9999R), Statewide, CSC Dkt. No. 2014-1908, 2014 N.J. CSC LEXIS 349, Final Decision (April 25, 2014).

Applicant who took a promotional examination for Cottage Training Technician (PS8361K), New Lisbon Developmental Center but did not achieve a passing grade was not entitled to a retest. In seeking a retest, the applicant claimed that someone had tampered with his answer sheet, arguing that there were erasures on the sheet that were not his. However, a review of the physical sheet revealed that there were 13 erasures on the



Request made by the Division of Selection Services and Recruitment (DSSR) for an order extending, by six months, the eligible list for the Entry Level Law Enforcement Examination (LEE) (S9999M) was properly granted because the subject list otherwise would expire approximately six months before a new list will become available. Otherwise, appointing authorities that have a need, in the interim, to fill vacancies in order to provide for public safety would not be able to do so through permanent appointments from an active eligible list even though such appointments were preferable to provisional appointments. Given those considerations, the DSSR's request satisfied the requirement in N.J.A.C. 4A:4-3.3(b)1 that "good cause" for the extension be shown. In re Entry Level Law Enforcement Examination (S9999M), CSC Docket No. 2013-2568, 2013 N.J. CSC LEXIS 195, Final Agency Action (April 17, 2013).

Civil Service Commission declined to revive the eligible list for Police Sergeant pursuant to N.J.S.A. 11A:4-6 and N.J.A.C. 4A:4-3.4 and to extend that list pursuant to N.J.S.A. 11A:4-6 and N.J.A.C. 4A:4-3.3(b)1 when the list had already been extended once and was in effect for four years. There was no court order nor was the request made during the life of the list to correct an administrative error. There would be over 20 candidates eligible for the next Police Sergeant examination that would be denied the opportunity to compete for the position if the list were extended. In re Police Sergeant (PM2621J), West Milford, CSC Dkt. No. 2013-241, 2013 N.J. CSC LEXIS 185, Final Decision (March 6, 2013).

City's request per N.J.A.C. 4A:4-3.4 and N.J.A.C. 4A:4-3.3(b)1 that the Civil Service Commission revive and extend the eligible list for the position of city fire chief, which list was promulgated on December 24, 2009 and expired on December 23, 2012, was granted on findings that there were two eligibles on the list on the date of its expiration, that the request for extension was mailed to the Commission prior to the date of expiration, that the Division of Selection Services and Recruitment supported the City's request, and that the filling of vacancies through permanent appointments from an active eligible list was preferable to making provisional appointments. In re Fire Chief (PM3610L), City of Vineland, CSC Dkt. No. 2013-1845, 2013 N.J. CSC LEXIS 96, Final Decision (February 21, 2013).

Lone eligible candidate on the list for Animal Control Officer (M0094P), Phillipsburg, was not entitled to a provisional appointment despite her invocation of N.J.A.C. 4A:4-4.2(c)2i because the examination on which the list was based had erroneously been announced as open to Warren County, where the lone eligible candidate resided, instead of only being open to residents of Phillipsburg, where the provisional appointee had resided. Given that error and given that a new, open competitive examination was announced for Animal Control Officer (M0689P), Phillipsburg, good cause existed pursuant to N.J.A.C. 4A:4-3.3(b) to cancel the eligible list on which the lone eligible candidate for the position had relied in seeking to compel appointment. However, the candidate was properly reimbursed for the examination application fee that she had incurred. In re Animal Control Officer, (M0094P), Phillipsburg, CSC Dkt. No. 2013-1650, 2013 N.J. CSC LEXIS 81, Final Decision (February 20, 2013).

Request by the Department of Human Services per N.J.A.C. 4A:4-3.4 and N.J.A.C. 4A:4-3.3(b)1 that the Civil Service Commission revive and extend the eligible list for Police Sergeant, Human Services (PS3751K), Department of Human Services, which list was promulgated on January 28, 2010 and expired on January 27, 2013, was granted on findings that there were 35 eligibles on the list on the date of its expiration and that the purpose of the request was to allow it to make permanent appointments, three of which would be made following the finalization of a settlement agreement that could result in the reinstatement of an employee to the subject list. Because the filling of vacancies through permanent appointments from an active eligible list was preferable to making provisional appointments, the Commission held that good cause had been shown to revive and extend the eligible list for Police Sergeant, Human Services (PS3751K), Department of Human Services until April 27, 2013. In re Police Sergeant, Human Services (PS3751K), Department of Human Services, CSC Docket No. 2013-1882, 2013 N.J. CSC LEXIS 40, Final Decision (February 12, 2013).

List for Executive Assistance 2 (PS3198I) was extended for good cause under N.J.A.C. 4A:4-3.3(a)1 and N.J.A.C. 4A:4-3.4(a) to allow the Department of Corrections to permanently appoint an employee. The Department did not anticipate approval of its request for an exemption from a promotional freeze prior to the expiration date of the list, and extending the list would allow it to permanently appoint the employee when it received the approval, therefore avoiding the possibility of having to remove a provisional employee from the title. In re Executive Assistant 2, (PS3198I), Dep't. of Corr., CSC Dkt. No. 2013-1540, 2013 N.J. CSC LEXIS 55, Final Decision (January 9, 2013).

Initial Decision (2009 N.J. AGEN LEXIS 21) adopted, which found that although a corrections officer was PRFS eligible based upon his age at the time of the closing date of his first examination in 1996, the list promulgated as a result of that examination had expired and, thus, was no longer in effect. The officer's prior PRFS participation terminated when petitioner withdrew his accumulated pension contributions in May 2006; thereafter, he was re-hired from the regular re-employment list for the same position and, because he was 38 years old, he did not meet the age limit to enroll in the PFRS, absent eligibility for age reduction. In re Ottaviano, OAL Dkt. No. TYP 742-08, 2009 N.J. AGEN LEXIS 945, Final Decision (February 10, 2009).

#### 4A:4-3.4 Revival of eligible lists

(a) The Commissioner may revive an expired eligible list under the following circumstances:

1. To implement a court order, in a suit filed prior to the expiration of the list;
2. To implement an order of the Commissioner or Board in an appeal or proceeding instituted during the life of the list;
3. To correct an administrative error;
4. To effect the appointment of an eligible whose working test period was terminated by a layoff; or
5. For other good cause.

Amended by R.1989 d.570, effective November 6, 1989.

See: 21 N.J.R. 2429(a), 21 N.J.R. 3451(a).

In (a): deleted "or" between 3 and 4. Added new 4 and relettered old 4 as new 5.

#### Case Notes

Appointing authority did not provide any compelling arguments for the Civil Service Commission to revive and extend the eligible list for Police Sergeant, Edgewater, pursuant to N.J.S.A. 11A:4-6 and N.J.A.C. 4A:4-3.4. The eligible list was already extended once and was in effect for four years. There was no court order nor was the instant request made during the life of the list to correct an administrative error. In fact, the appointing authority's request came nearly one year after the list had expired. A review of official records revealed that 14 candidates from Edgewater have taken the current examination which was yet to be scored. To grant the current request would deny those individuals the opportunity to compete for the position. In re police Sergeant (PM2590K), Edgewater, CSC Dkt. No. 2014-2286, 2014 N.J. CSC LEXIS 364, Final Decision (April 10, 2014).

Candidates' request to revive the eligible list for Police Sergeant, Atlantic City, pursuant to N.J.A.C. 4A:4-3.4 to include their names was denied by the Civil Service Commission. The request was based solely on the candidates' assertion that an administrative error was committed when the appointing authority failed to request additional names in order to offset the three eligibles who had retired. The appointing authority initially wished to fill six vacancies and it was provided with a certification containing ten names, which was a complete certification. The names of the retired eligible could not be removed prior to the

certification being issued. Moreover, even if the candidates had been included on this certification, it would have been within the discretion of the appointing authority not to appoint them. In re Chris Cavaretta, Christopher Cruse, and Edward Riegel, police Sergeant (PM2575K), Atlantic City, CSC Dkt. No. 2013-3172, 2014 N.J. CSC LEXIS 81, Final Decision (April 10, 2014).

Good cause was presented to revive the eligible list for Police Officer pursuant to N.J.S.A. 11A:4-6 and N.J.A.C. 4A:4-3.4 so that two candidates could be appointed to the title. The record established that they appeared on the certification for Police Officer, Township of Montville, but in error, the appointing authority failed to complete the necessary paperwork to effectuate their appointments. The candidates had been successfully performing the duties of a Police Officer. Furthermore, a review of the record indicates they were both reachable for appointment under N.J.A.C. 4A:4-4.8(a)3. In re Matthew McCue and Dana Reid, Police Officer (S9999M), Twp. of Montville, CSC Dkt. Nos. 2014-1887 and 2014-1888, Final Decision (April 10, 2014).

Notwithstanding the administrative error on the part of a development center that failed to recertify the eligible list for Cottage Training Technician (PS7529K) after an eligible updated her geographical preference to include the county in which the center was located, sufficient cause was shown per N.J.A.C. 4A:4-3.4(a), to revive the list, which had expired in the interim. That was because center personnel incorrectly understood that a certification was currently outstanding when in fact it was not. In re Cottage Training Technician (PS7529K), Woodbine Developmental Ctr., CSC Docket No. 2014-1543, 2013 N.J. CSC LEXIS 1085, Final Administrative Action (December 18, 2013).

An eligible list for the position of Fire Captain (PM3509F) was ordered revived in response to a request by a city based on the city's having agreed to settle litigation by appointing a candidate to that position. N.J.A.C. 4A:4-3.4 authorized that action where, as here, the same was necessary if a court order was to be obeyed. In re Munoz, Fire Captain (PM3509F), Camden City, CSC Docket No. 2014-1425, 2013 N.J. CSC LEXIS 1128, Final Administrative Action (December 6, 2013).

A township did not establish entitlement to an order reviving the Police Sergeant (PM2604K) eligible list, which list had already reached its statutorily mandated maximum duration of four years. The only grounds on which revival of the list would have been proper are those described in N.J.A.C. 4A:4-3.3(a)1 and N.J.A.C. 4A:4-3.4(a)5, which did not address the delay in this instance, which was caused by the existence of protracted litigation with the U.S. Department of Justice regarding the state's promotion practices. In re Police Sergeant (PM2604K), Lakewood, CSC Docket No. 2014-1250, 2013 N.J. CSC LEXIS 1084, Final Administrative Action (December 5, 2013).

A state psychiatric hospital had shown good cause within the meaning of N.J.A.C. 4A:4-3.3(a)1 and N.J.A.C. 4A:4-3.4(a)5 for extending an eligibility list containing more than 200 eligible candidates for the position of Human Services Technician (PS7399K) for one year beyond the original expiration date in that an extension of the eligibility list would address current and anticipated vacancies and would allow the appointing authority to make permanent appointments to fill vacancies, therefore avoiding the possibility of having to remove provisional employees from the title. In re Human Servs. Technician (PS7399K), Ancora Psychiatric Hosp., CSC Dkt. No. 2014-927, 2013 N.J. CSC LEXIS 1114, Final Administrative Action (November 7, 2013).

Civil Service Commission ordered the revival of the eligible list for Correction Officer Recruit under N.J.S.A. 11A:4-6 and N.J.A.C. 4A:4-3.4 so that a candidate's name might be certified to the appointing authority for consideration at the time of the next certification. The candidate was arrested only one time in 1996 when he was 16 years old, 14 years prior to the closing date of the examination, and he had no other arrests in his record. The length of time from the arrest and the fact that it was an isolated incident indicated evidence of rehabilitation. Thus, the appointing authority failed to establish that the candidate's criminal record was sufficient to support the removal of his name from the subject eligible list. In re Joseph Nelson, Corr. Officer Recruit

(S9987M0, Dep't. of Corr., CSC Dkt. No. 2014-614, 2013 N.J. CSC LEXIS 907, Final Decision (October 3, 2013).

Good cause within the meaning of N.J.A.C. 4A:4-3.3(b)1 and N.J.A.C. 4A:4-3.4 was shown by a township to extend and revive an eligible list for the position of Police Chief (PM3565M) because the request was made prior to the list's expiration, because the position was vacant and because a substantial number of eligible candidates remained on the list. Moreover, if the list was not revived and extended, vacancies would have to be filled through provisional appointments, which were disfavored. In re Police Chief (PM3565M), Twp. of Middletown, CSC Docket No. 2014-335, 2013 N.J. CSC LEXIS 778, Final Administrative Decision (August 15, 2013).

N.J.A.C. 4A:4-3.4(a) authorized an order reviving the eligible list for the position of Sewer Repairer (PM0849J), Middle Township, so that the permanent appointment to that position of the individual serving therein as a provisional appointee since March 5, 2007 could be recorded. Though the individual appeared on the eligible list for that appointment, administrative error within the meaning of N.J.A.C. 4A:4-1.10(c) on the part of the township had resulted in the certification thereof neither being issued nor requested prior to the list's expiration. The individual would have been reachable on any certification because he was the only person on the list. Moreover, he in fact had been appointed to the position and was performing the duties thereof. Given those circumstances, N.J.A.C. 4A:4-1.10(c) authorized the grant of a retroactive date of appointment. In re Stephen Mills, Sewer Repairer (PM0849J), Middle Twp., CSC Dkt. No. 2013-2794, 2013 N.J. CSC LEXIS 464, Final Decision (August 2, 2013).

Chief Audit Activity, Treasury, eligible list was revived under N.J.A.C. 4A:4-3.4 to effectuate a candidate's permanent appointment to a vacant position when it was not advantageous to announce a new examination. In re Chief Audit Activity, Treasury (PS2347U), Dep't. of the Treasury, CSC Dkt. No. 2013-647, 2013 N.J. CSC LEXIS 661, Final Decision (July 17, 2013).

Fire Captain eligible list was revived under N.J.A.C. 4A:4-3.4(a) to record the permanent appointment of a candidate. The appointing authority failed to include his name on the certification although he was in fact appointed Fire Captain and had been performing the duties of the title. Further, since the appointing authority verified that the Fire Captain completed his working test period and continued to perform successfully the duties of a Fire Captain, he was considered as having successfully completed his working test period. In re Walter Harris, City of Orange, CSC Dkt. No. 2013-2748, 2013 N.J. CSC LEXIS 633, Final Decision (May 15, 2013).

When a candidate could not be placed on the Plumber and Steamfitter (S0119M) eligible list, good cause was presented under N.J.S.A. 11A:4-6 and N.J.A.C. 4A:4-3.4 to revive the eligible list for Plumber and Steamfitter (S6900H) and restore his name in accordance with N.J.A.C. 4A:4-5.5(a) for a one-time certification of his name at the time of the certification. Although he withdrew his appeal of his release at the end of the working test period, the appointing authority amended its personnel records to reflect that the candidate's separation was one in good standing in accordance with the settlement of his civil rights complaint. Furthermore, he was found eligible for placement on the prior Plumber and Steamfitter (S6900H) eligible list, from which the appointing authority had appointed him. In re Anthony Woods, The College of New Jersey, CSC Dkt. No. 2012-3335, 2013 N.J. CSC LEXIS 239, Final Decision (May 2, 2013).

Good cause was presented to revive the eligible lists for Judiciary Clerk 2, Bilingual in Spanish and in English under N.J.S.A. 11A:4-6 and N.J.A.C. 4A:4-3.4, to allow for the permanent appointments of four candidates. Due to an administrative error, these individuals were required to pass a higher level of the bilingual examination than was required for the subject title, and they would have been reachable from their respective lists. In re Judiciary Clerk 2, Bilingual in Spanish and English (S0630K) and (S7350P), CSC Dkt. No. 2013-2406, 2013 N.J. CSC LEXIS 277, Final Decision (April 3, 2013).

disabled veterans on the list, as appropriate, based on the applicant's retained final average.

(d) If the active list has not resulted from the same test mode, the test mode for both the expired list and the active list shall be reconciled in the best interest of the applicant as provided in (d)2 below.

1. There are five broad categories, or modes, of competitive examination: multiple choice; written (short answer or essay); oral communication; performance of endurance, skill, or aptitude (for example, physical performance, typing, in-basket exercise); and unassembled (an evaluation of education, training, and/or experience).

2. Accordingly, as an example, if the test mode used to generate the expired list was a multiple choice and the test mode for the active list was a performance of endurance, skill or aptitude, the test modes shall be considered different and the applicant shall be scheduled as soon as possible for a make-up examination utilizing the same test mode as that used for the active list.

i. The applicant's final average earned on the make-up examination shall apply to the active list. The applicant's name shall be added to the active list in accordance with the provisions of (c)2 above.

ii. If the applicant fails the make-up examination, the applicant's name shall not be placed on the active list and the applicant shall not have a further opportunity to be placed on an active list within one year of filing the application.

(e) If both the expired list and the active list have resulted from an unassembled examination, the education, training, and/or experience on the application filed by the applicant in accordance with (a)1 above shall be evaluated based on the announced closing date for the test that resulted in the active list.

1. Where the unassembled examination method for both tests is ranked, the higher of the two final averages earned by the applicant shall apply to the active list. Where the unassembled examination method for both tests is unranked, the applicant shall receive the same score as all other eligibles on the active list.

2. Where the unassembled examination method is different (for example, the first being unranked and the second ranked), the applicant shall receive the final average in accordance with the unassembled examination method resulting in the active list, and this final average shall apply to the active list.

3. The applicant's name shall be added to the active list in accordance with the provisions of (c)2 above.

(f) An applicant may request the placement of his or her name on a maximum of two active open competitive eligible lists in accordance with this section, subject to (a) through (e) above and the following requirements:

1. If the first active list on which the applicant's name is placed under this section expires in less than 12 months following the filing of an application, and the applicant so requests in writing, he or she shall be placed on a second active list, so long as placement on the second active list can be effected within 12 months following the filing by the applicant of an examination application upon returning from active Federal duty.

2. No examination application processing fee shall be charged for an applicant's written request to be placed on a second active list.

3. If the applicant's name cannot be placed on a second active list within 12 months following the filing of the application, the applicant's name shall not be placed on a second active list.

New Rule, R.2014 d.061, effective April 7, 2014.  
See: 45 N.J.R. 520(a), 46 N.J.R. 619(a).

#### 4A:4-4.7 Removal of names

(a) The name of an eligible may be removed from an eligible list for any of the following reasons:

1. The causes for disqualification listed in N.J.A.C. 4A:4-6.1;

2. Regular appointment through certification to the title for which the list was promulgated or made appropriate, except that the appointment to a lower title will not be cause for removal;

3. Inability, unavailability or refusal of eligible to accept appointment. An eligible who has declined appointment may, upon written request, have his or her name withheld from future certifications until available for appointment. An appropriate representative of the Civil Service Commission must be notified when the eligible wishes to be considered for certification;

4. The eligible has a criminal record which adversely relates to the employment sought.

i. The following factors may be considered in determining whether a criminal record adversely relates to employment:

- (1) The nature and seriousness of the crime;
- (2) The circumstances under which the crime occurred;
- (3) The date of the crime and age of the eligible when the crime was committed;
- (4) Whether the crime was an isolated event; and
- (5) Evidence of rehabilitation.

ii. The presentation of a pardon or an expungement shall prohibit removal from a list, except for law enforcement, correction officer, juvenile detention officer,

firefighter or judiciary titles and other titles as the Chairperson of the Civil Service Commission or designee may determine.

5. Notice by the postal authorities that they are unable to locate or deliver mail to the eligible;

6. Non-compliance with the instructions listed on the notice of certification;

7. Discontinuance of an eligible's residence in the jurisdiction to which an examination was limited or for a title for which continuous residency is required;

8. Discontinuance of the eligible's employment in the unit scope to which a promotional examination was limited, except when the eligible has accepted a temporary or interim appointment in another unit scope. An employee who subsequently returns to the unit scope within current continuous service may request, in writing to an appropriate representative of the Civil Service Commission, that his or her name be restored to the promotional list;

9. Employees who are involuntarily transferred shall be retained on a promotional list until they have had an opportunity to take a promotional examination in the new promotional unit scope or have been appointed from the list;

10. Failure to maintain interest in a geographical area or choice; and

11. Other valid reasons as determined by the Chairperson of the Civil Service Commission or designee.

(b) An appointing authority that requests removal of an eligible's name from a list shall submit to an appropriate representative of the Civil Service Commission, no later than the date for disposition of the certification, all documents and arguments upon which it bases its request.

1. Upon request of the eligible or upon the eligible's appeal, the appointing authority shall provide the eligible with copies of all materials sent to the appropriate Commission representative.

2. If the appointing authority fails to provide either the appropriate Commission representative or the eligible with copies of materials, the request for removal may be denied.

(c) An appropriate representative of the Civil Service Commission shall determine if there are sufficient grounds for removal, notify the appointing authority and the eligible of its decision, and advise the eligible of his or her appeal rights.

(d) An eligible may appeal his or her removal from an eligible list utilizing the procedures in N.J.A.C. 4A:4-6.3.

(e) The removal of names from an eligible list will advance the rank order of all names below it. The Chairperson of the Civil Service Commission or designee may supplement

a certification to provide the appointing authority with the number of names necessary for a complete certification.

(f) Acceptance or refusal of a temporary or interim appointment shall not be cause for removal from an eligible list.

(g) When the Civil Service Commission has accepted a single application for one or more title areas, pursuant to N.J.A.C. 4A:4-2.3(c), an eligible whose name has been removed from the pool of eligibles for one jurisdiction or title area for cause shall be removed from the pool of eligibles for any other jurisdiction or title area.

(h) When an eligible has received a regular appointment from a certification of a pool of eligibles, the eligible shall be removed from the pool of eligibles for that title area only.

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

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

Revised (a)8; added new (f).

Amended by R.1997 d.482, effective November 17, 1997.

See: 29 N.J.R. 3385(a), 29 N.J.R. 4864(b).

Added (g) and (h).

Amended by R.1998 d.291, effective June 1, 1998.

See: 30 N.J.R. 890(a), 30 N.J.R. 1975(a).

Rewrote (b)1.

Petition for Rulemaking.

See: 37 N.J.R. 675(a), 1540(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 (a)2, substituted "Regular" for "Permanent"; in (g), deleted "law enforcement"; in (h), substituted "received a regular appointment" for "been permanently appointed."

Amended by R.2012 d.032, effective February 6, 2012.

See: 43 N.J.R. 2639(a), 44 N.J.R. 226(a).

In (a)3, substituted "An appropriate representative of the Civil Service Commission" for "The Department of Personnel"; in (a)4ii and (a)11, substituted "Chairperson of the Civil Service Commission or designee" for "Commissioner"; in (a)4ii, substituted "juvenile detention officer, firefighter or judiciary" for "or firefighter"; in (a)8, substituted "an appropriate representative of the Civil Service Commission" for "the Department of Personnel"; in the introductory paragraph of (b), substituted "an appropriate representative of the Civil Service Commission" for "the Department"; in (b)1 and (b)2, substituted "appropriate Commission representative" for "Department"; in (c), substituted "An appropriate representative of the Civil Service Commission" for "The Department of Personnel"; in (e), substituted "Chairperson of the Civil Service Commission or designee" for "Department"; and in (g), substituted "Civil Service Commission" for "Department of Personnel".

#### Case Notes

Statements made in report of background check of police officer applicant. *Pollinger v. Loigman*, 256 N.J.Super. 257, 606 A.2d 1113 (A.D.1992).

Appointing authority for position of Police Officer (S9999M), Jersey City, was properly permitted to remove the name of a candidate from the eligible list for appointment on the basis of an unsatisfactory background report, to wit, an open traffic warrant. Even though the candidate argued that the warrant was not against her but was against another person with a similar name, the candidate did not take any steps to clear the warrant including presenting documentation substantiating her claims. Moreover, the appointing authority noted that the candidate's driver's license had been suspended on several occasions in the prior four years. In sustaining the appointing authority's action, the Civil Service Commission found that the candidate's driving record showed a pattern of disregard for the law and questionable judgment. The same afforded adequate grounds for the appointing authority's determination that the



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.

#### Case Notes

When a candidate could not be placed on the Plumber and Steamfitter (S0119M) eligible list, good cause was presented under N.J.S.A. 11A:4-6 and N.J.A.C. 4A:4-3.4 to revive the eligible list for Plumber and Steamfitter (S6900H) and restore his name in accordance with N.J.A.C. 4A:4-5.5(a) for a one-time certification of his name at the time of the certification. Although he withdrew his appeal of his release at the end of the working test period, the appointing authority amended its personnel records to reflect that the candidate's separation was one in good standing in accordance with the settlement of his civil rights complaint. Furthermore, he was found eligible for placement on the prior Plumber and Steamfitter (S6900H) eligible list, from which the appointing authority had appointed him. In re Anthony Woods, The College of New Jersey, CSC Dkt. No. 2012-3335, 2013 N.J. CSC LEXIS 239, Final Decision (May 2, 2013).

### 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 Chairperson of the Civil Service Commission or designee 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;
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.

(d) See N.J.A.C. 4A:4-4.6A for disqualifications of certain persons returning from military service.

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.

Amended by R.2014 d.061, effective April 7, 2014.  
See: 45 N.J.R. 520(a), 46 N.J.R. 619(a).

In (a)3, substituted "Chairperson of the Civil Service Commission or designee" for "Commissioner"; in (a)7, deleted "or" from the end"; and added (d).

#### 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).

Appointing authority for position of Police Officer (S9999M), Jersey City, was properly permitted to remove the name of a candidate from the eligible list for appointment on the basis of an unsatisfactory background report, to wit, an open traffic warrant. Even though the candidate argued that the warrant was not against her but was against another person with a similar name, the candidate did not take any steps to clear the warrant including presenting documentation substantiating her claims. Moreover, the appointing authority noted that the candidate's driver's license had been suspended on several occasions in the prior four years. In sustaining the appointing authority's action, the Civil Service Commission found that the candidate's driving record showed a pattern of disregard for the law and questionable judgment. The same afforded adequate grounds for the appointing authority's determination that the candidate's name was properly removed from the list of eligibles. In re Scherry, Police Officer (S9999M), Jersey City, 2014 N.J. CSC LEXIS 393, Final Administrative Determination (April 29, 2014).

Sufficient basis existed in the record to remove an applicant's name from the eligible list for Habitation Plan Coordinator pursuant to N.J.A.C. 4A:4-4.7(a), in conjunction with N.J.A.C. 4A:4-6.1(a). While the experience she gained as a Direct Support Professional might have involved the direct care of individuals with developmental disabilities, such experience did not rise to the level and scope of treatment and rehabilitation of individuals or implementation of programs for clients with developmental disabilities necessary to meet the announced requirements. In re Takeria McCallum, Habitation Plan Coordinator (S0847P), CSC Dkt. No. 2014-900, 2014 N.J. CSC LEXIS 261 Final Decision (April 25, 2014).

Sufficient basis existed in the record to remove an applicant's name from the eligible list for Correction Officer Recruit pursuant to N.J.A.C. 4A:4-4.7(a), in conjunction with N.J.A.C. 4A:4-6.1(a). Despite signing an acknowledgement that he understood that he was to disclose if he had ever been arrested or charged with a crime, regardless of whether the arrest or charge was subsequently expunged, the applicant indicated that

he had never been arrested or charged with a crime despite an arrest for possession of marijuana in 2005. His intent in failing to disclose an arrest on an application was immaterial to whether he falsified his application. In re Alberto Miranda, Corr. Officer Recruit (S9987M), Dep't of Corr., CSC Dkt. No. 2014-896, 2014 N.J. CSC LEXIS 260, Final Decision (April 25, 2014).

Applicant's criminal record and his failure to disclose the entirety of that record constituted a sufficient basis to remove his name from the eligible list for Correction Officer Recruit pursuant to N.J.A.C. 4A:4-4.7(a)1, in conjunction with N.J.A.C. 4A:4-6.1(a)6. The record indicated that the applicant was arrested in 2005 for possession of marijuana and entered into a PTI program but he failed to provide any evidence of rehabilitation. On the contrary, he was charged with criminal mischief in 2006 and was arrested in 2013 and charged with obstruction. He failed to list the 2006 charge of criminal mischief on his application. Although the applicant claimed that all of the charges, including those in 2005, were false, he provided no evidence in support. Clearly, his criminal record adversely related to the position sought. In re Glen Sidel, Dep't of Corr., CSC Dkt. No. 2014-538, 2014 N.J. CSC LEXIS 253, Final Decision (April 25, 2014).

Candidate's unsatisfactory background constituted sufficient cause to remove her name from the special reemployment eligible list for Police Officer, City of Trenton, pursuant to N.J.A.C. 4A:4-4.7(a)11 and N.J.A.C. 4A:4-6.1(a)9. The appointing authority requested the candidate's removal due to an ongoing investigation for fraud, and the candidate did not provide any arguments or evidence in response. The investigation by the Prosecutor's Office for fraud was a serious matter, and the Civil Service Commission is ever mindful of the high standards that are placed upon law enforcement candidates and personnel. In re Tamika Veal-Johnson, Police Officer, City of Trenton, CSC Dkt. No. 2013-1475, 2014 N.J. CSC LEXIS 342, Final Decision (April 10, 2014).

Appointing authority failed to adequately establish sufficient justification for removing an applicant's name from the eligible list for Correction Officer Recruit pursuant to N.J.A.C. 4A:4-4.7(a)1, in conjunction with N.J.A.C. 4A:4-6.1(a)6, for failing to disclose charges on his employment application. It was doubtful that any employer, including a law enforcement agency, would find the one-time careless actions of a nine-year-old that led to his being criminally charged to reflect adversely on his character some 20 years later and make him an unsuitable candidate for employment. The one isolated incident could by no means be considered material to the position sought. Additionally, the sworn statements from the applicant and his mother adequately established that he did not intend to deceive the appointing authority in the selection process. In re Giuseppe Tubito, Corr. Officer Recruit (S9987M), Dep't of Corr., CSC Dkt. No. 2013-3434, 2014 N.J. CSC LEXIS 83, Final Decision (April 10, 2014).

Appointing authority showed sufficient cause for removing a candidate's name from the Correction Officer Recruit eligible list pursuant to N.J.A.C. 4A:4-4.7(a)1, in conjunction with N.J.A.C. 4A:4-6.1(a)6. Although he indicated on his application that he had never been charged with a criminal offense, a background report revealed that he had been arrested as a juvenile and charged with 4th degree criminal mischief. His argument that he was not aware of the incident because he was never prosecuted was unpersuasive because he provided a detailed statement concerning the arrest after he was advised of the background check. In re Emanuel Cosme, Corr. Officer Recruit (S9987M), Dep't of Corr., CSC Dkt. No. 2014-1408, 2014 N.J. CSC LEXIS 28, Final Decision (April 9, 2014).

Removal, by a city, of a candidate's name from the Fire Fighter (M2559M), City of Orange, eligible list on the basis that he did not possess a valid driver's license as of the January 9, 2012 certification date and at the time of his interview was authorized because the candidate's lack of a driver's license meant that he could not meet a requirement of the position at the time of the certification or at the time of his interview. In re Osborne, Fire Fighter (M2559M), City of Orange, 2014 N.J. CSC LEXIS 131, Final Decision (March 27, 2014).

Appointing authority showed sufficient cause for removing a candidate's name from the Police Officer (S9999M), City of East Orange eligible list pursuant to N.J.A.C. 4A:4-4.7(a)1, in conjunction with N.J.A.C. 4A:4-6.1(a)2. The Civil Service Commission agreed with the Division of Classification and Personnel Management's determination upholding the appointing authority's removal of the candidate as she was not under the age of 35 as of the closing date for the subject examination. There was no evidence that the City of East Orange made an offer of employment, and there was no evidence that the candidate suffered an extraordinary harm by relying on any representations from the appointing authority. In re Miosha Sorey, Police Officer (S9999M), City of East Orange, CSC Dkt. No. 2014-635, 2014 N.J. CSC LEXIS 226, Final Decision (March 26, 2014).

Department of Corrections' decision to remove a candidate's name from the eligible list for correction officer recruit was not in error because although the candidate plausibly explained why he was unable to appear for two separate court hearings, the record reflected that his driving record contained 14 adverse incidents from May 3, 2004 to October 25, 2011 and indicated that his driver's license was suspended 11 times between June 21, 2005 and October 16, 2012. The candidate's driving record as a whole showed a pattern of disregard for the motor vehicle laws and questionable judgment on his part, and he offered no substantive explanation for the infractions. In re Lamar Williams, CSC Dkt. No. 2014-4, 2014 N.J. CSC LEXIS 396, Final Decision (February 26, 2014).

There was a sufficient basis in the record to remove a candidate's name from the eligible list for Correction Officer Recruit pursuant to N.J.A.C. 4A:4-4.7(a)1, in conjunction with N.J.A.C. 4A:4-6.1(a)6. She failed to disclose a criminal charge on her application, and it was irrelevant as to the final disposition of the charges. It also had no bearing on the matter that the paperwork concerning the charge was not given to her by the courts or that she had since misplaced it. The candidate's own statements made it clear that she fully knew of the charge, and therefore, she had a duty to accurately report the charge on her employment application. In re Edna Souza, Corr. Officer Recruit (S9987M), Dep't of Corr., Dkt. No. 2013-2563, 2013 N.J. CSC LEXIS 1063, Final Decision (December 19, 2013).

Appointing authority presented a valid basis to substantiate its request to remove a candidate's name from the eligible list for Correction Office Recruit pursuant to N.J.A.C. 4A:4-4.7(a)1, in conjunction with N.J.A.C. 4A:4-6.1(a)9, based on his unsatisfactory background. He had a long history of arrests, reached a PTI agreement for a serious crime, and had numerous traffic violations. The candidate did not provide any evidence of rehabilitation and did not support his contention that his criminal and driving records were not accurate. His multiple adverse encounters with law enforcement and failures to appear for court demonstrated his disregard of the law. In re Naazir Jackson, Corr. Office Recruit (S9987M), Dep't. of Corr., CSC Dkt. No. 2013-2222, 2013 N.J. CSC LEXIS 998, Final Decision (December 19, 2013).

Decision of the Division of Classification and Personnel Management (CPM) that there existed a sufficient basis to remove a candidate's name from the Correction Officer Recruit (S9987M), Department of Corrections (DOC) eligible list per N.J.A.C. 4A:4-4.7(a)1 and N.J.A.C. 4A:4-6.1(a)6 for an unsatisfactory background report, an unsatisfactory employment record and falsification of his application was incorrect. DOC did not provide an evidence to support its claim that the candidate improperly held himself out as a state trooper or that he had exposed himself to an unidentified woman, and the fact that a police department had conducted an investigation of those claims was not, in and of itself, a sufficient basis for removal of the candidate's name. Moreover, the fact that the candidate's employment by two employers had been terminated was not a proper basis for a finding that he had an unsatisfactory work history. Finally, the candidate accurately listed material information in response to questions on the application and thus did not falsify his application. That being so, the candidate was entitled to have his name restored to the eligible list. In re Persico, Corr. Officer Recruit (S9987M), Dep't of Corrs., CSC Docket No. 2013-1966, 2013 N.J. CSC LEXIS 1176, Final Administrative Action (December 4, 2013).

driving record included numerous violations for failure to obey directional signal, speeding, being an unlicensed driver, and improper turn, as well as two suspensions and two violations for operating while suspended or revoked, and 10 suspensions for non-payment of insurance surcharges, with the most recent suspension for that reason in July 2005. His record evidenced a disregard for the motor vehicle laws and the exercise of poor judgment, and such qualities were unacceptable for an individual seeking a position as a law enforcement officer. In re Cymande Jones, Correction Officer Recruit (S9987M), Department of Corrections, CSC Dkt. No. 2013-330, 2013 N.J. CSC LEXIS 3, Final Agency Action (January 24, 2013).

Applicant's name was improperly removed from the Police Officer eligible list under N.J.A.C. 4A:4-4.7(a)1 in conjunction with N.J.A.C. 4A:4-6.1(a)6 for an unsatisfactory employment background and for failure to accurately complete his employment application when inaccurate information was reported to the appointing authority regarding the applicant's background. However, the eligible list could not be revived because it had been promulgated and expired pursuant to a pilot program. Therefore, the applicant would not be considered removed from the list but his name would be recorded on the subject certification as not appointed. In re Garrett Brown, Police Officer (M7777L), City of Camden, CSC Dkt. No. 2012-1887, 2013 N.J. CSC LEXIS 73, Final Decision (January 23, 2013).

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.

History of erratic emotional instability warranted removal of applicant's name from eligible list for family service specialist position. *Calhoun v. Division of Youth and Family Services*, 93 N.J.A.R.2d (CSV) 268.

County was justified in removing applicant's name from open competitive list. *Strasser v. Camden County*, 92 N.J.A.R.2d (CSV) 497.

#### 4A:4-6.2 Actions against disqualified persons

(a) A disqualification under N.J.A.C. 4A:4-6.1 may result in:

1. Rejection of examination application;
2. Refusal to test an individual;

3. Refusal to place a candidate's name on an eligible list;
4. Refusal to certify an eligible's name;
5. Removal of an eligible's name from the eligible list;
6. Removal from employment; or
7. Other appropriate action.

(b) See N.J.A.C. 4A:4-4.6A for disqualifications of certain persons returning from military service.

(c) Major disciplinary procedures shall be applicable to removal of an employee who is permanent or serving in a working test period.

Amended by R.2014 d.061, effective April 7, 2014.

See: 45 N.J.R. 520(a), 46 N.J.R. 619(a).

Added new (b), and recodified former (b) as (c).

#### Case Notes

Remand was required where record did not disclose basis for agency'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).

Process servers have no statutory right to tenure (citing former N.J.A.C. 4:1-8.14). *New Jersey District Court Assoc., Inc., v. New Jersey Superior Court*, 205 N.J.Super. 582, 501 A.2d 596 (App.Div.1985) affirmed 208 N.J.Super. 527, 506 A.2d 742 (1986), certification denied 104 N.J. 386, 517 A.2d 393, certiorari denied 107 S.Ct. 1289, 479 U.S. 1086, 94 L.Ed.2d 146.

Absent contractual, statutory or implied right to continued employment, employment termination invokes no substantive due process protection of a property interest (citing former rule N.J.A.C. 4:1-8.14). *N.J. District Court Associates, Inc., v. N.J. Superior Court*, 205 N.J.Super. 582, 501 A.2d 596 (Law Div.1985) affirmed 209 N.J.Super. 527, 506 A.2d 742 (App.Div.1986), certification denied 104 N.J. 386, 517 A.2d 393, certiorari denied 107 S.Ct. 1289, 479 U.S. 1086, 94 L.Ed.2d 146.

Where a former public employee's dismissal was not attributable to delinquency or misconduct, former N.J.A.C. 4:1-8.14 did not disqualify the employee from public service in the future. *Battaglia v. Union County Welfare Bd.*, 88 N.J. 48, 438 A.2d 530, 1981 N.J. LEXIS 1683 (1981), writ of certiorari denied by 456 U.S. 965, 102 S. Ct. 2045, 72 L. Ed. 2d 490, 1982 U.S. LEXIS 2038, 50 U.S.L.W. 3881 (1982).

Interest in liberty protected by due process clause; right to post-termination evidentiary hearing (citing former N.J.A.C. 4:1-8.14). *Campbell v. Atlantic Cty. Bd. of Freeholders*, 145 N.J.Super. 316, 367 A.2d 912 (Law.Div.1976) affirmed per curiam 158 N.J.Super. 14, 385 A.2d 311 (App.Div.1978).

Appellant suspended and subsequently removed from title of Senior Systems Analyst reinstated to duties appropriate to his permanent title; appointing authority failed to support charges of falsifying residency address, falsely signing affidavit with intent to defraud county and failing to complete assignments timely and correctly (citing former N.J.A.C. 4:1-6.4). *Valluzzi v. Bergen County*, 10 N.J.A.R. 89 (1988), adopted—*Merit System Bd.*, App.Div. A-3269-87, 3/3/88.

Discretion of Bd. of Trustees to refund contributions to pension fund after employee was dismissed for delinquent performance of his duties. Refund granted (citing former N.J.A.C. 4:1-8.14). *Maddox v. Bd. of Trustees*, 2 N.J.A.R. 372 (1980).

**4A:4-6.3 Examination and selection appeals****(a) Appeals may be made on:**

1. Examination items, scoring, and administration (see N.J.A.C. 4A:4-6.4);

2. Disqualification for medical or psychological reasons (see N.J.A.C. 4A:4-6.5); and

3. Examination related matters other than (a)1 and 2 above (see N.J.A.C. 4A:4-6.6) including:

i. Disqualifications under N.J.A.C. 4A:4-6.1;

ii. List extension or revival; and

iii. Denial of veterans preference for a particular examination.

(b) The appellant shall have the burden of proof, except for medical or psychological disqualification appeals, where the appointing authority shall have the burden of proof.

(c) Unless ordered by the Civil Service Commission, the filing of an appeal shall not affect the promulgation of a list, a certification, or an appointment. See N.J.A.C. 4A:4-1.4 for conditional appointments.

(d) A person who has filed an appeal concerning an examination disqualification may, where appropriate, be admitted to the examination. However, the person's examination results will not be processed while the review is pending.

(e) All appeals shall be in writing and include the examination title and symbol number where appropriate, the action being appealed, the specific objections and requested relief.

(f) A party to an appeal must serve copies of all materials on every other party.

(g) The non-selection of an employee for an advancement appointment in accordance with N.J.A.C. 4A:3-3.2A shall not be subject to examination appeal procedures. Grievance appeal procedures shall apply. See N.J.A.C. 4A:2-3.

Amended by R.1989 d.569, effective November 6, 1989.  
See: 21 N.J.R. 1766(a), 21 N.J.R. 3448(b).

In (a)1: Made stylistic revisions.

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

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

In (a)3iii, added "for a particular examination."

Amended by R.2014 d.099, effective June 2, 2014.

See: 45 N.J.R. 500(a), 46 N.J.R. 1331(c).

In (a)1, inserted a comma following "scoring"; in the introductory paragraph of (a)3, substituted "2" for "(a)2"; in (c), substituted "Civil Service Commission" for "Commissioner", and inserted a comma following "certification"; and added (g).

**Case Notes**

Merit System Board bears burden of establishing job-validity of its psychological tests. *Matter of Vey*, 124 N.J. 534, 591 A.2d 1333 (1991).

Appointing authority has discretion under "rule of three" statute to appoint any of top three candidates while statute mandating preference

for residents in the event of tie scores were pertinent in placing three people on list (citing former N.J.A.C. 4:1-9.6; 4:2-9.1; 4:3-9.1). *Galagher v. Irvington*, 190 N.J.Super. 394, 463 A.2d 969 (App.Div.1983).

Claim of failure to promote due to anti-union animus. *City of Hackensack v. Winner*, 162 N.J.Super. 1, 392 A.2d 187 (App.Div.1978). Modified and affirmed 82 N.J. 1, 410 A.2d 1146 (1980).

Jurisdiction, Civil Service Commission and PERC. *City of Hackensack v. Winner*, 162 N.J.Super. 1, 392 A.2d 187 (App.Div.1978) modified 82 N.J. 1, 410 A.2d 1146.

Juvenile Justice Commission presented a sufficient basis to remove a candidate's name from the eligible list for Correction Officer Recruit (S9986M), Juvenile Justice Commission, on the ground that he had failed to complete pre-employment processing. Though the candidate had completed required paperwork on January 3, 2012, he failed to return for the first day of training on January 4, 2012. Though the Commission left telephone messages for the candidate on three successive days, which the candidate allegedly did not return, the Commission still offered to reschedule his training for January 9. Also, while the candidate claimed to have driven to the facility on January 9, 2012 to participate in such training but that he was not permitted to enter, he offered no explanation for why he did not then contact human resources to resolve the matter so that he might enter and commence training. Because the candidate did not provide a reasonable explanation for his failure to commence training on the rescheduled date of January 9, his name was properly removed from the eligible list. In re Salerno, Corr. Officer Recruit (S9986M), Juvenile Justice Comm'n, CSC Docket No. 2013-646, 2014 N.J. CSC LEXIS 344, Final Administrative Determination (April 23, 2014).

Decision of the Division of Classification and Personnel Management (CPM) that there existed a sufficient basis to remove a candidate's name from the Police Officer (S9999M), East Orange eligible list on the basis of his failure to respond to the Notice of Certification was incorrect. The candidate carried his burden to rebut the presumption that mail that was correctly addressed, stamped and mailed was received by the addressee by providing a notarized statement attesting to the fact that he did not receive it. Moreover, while the appointing authority's cognate claim that the candidate had failed to attend a required psychological examination was accurate, that failure had occurred in connection with a different certification and the appointing authority in fact had disposed of that issue by retaining the candidate's name on the earlier list. In any event, that failure had not been raised as grounds for removal of the candidate's name from the certification at issue and did not provide a basis for the order that was now requested. In re Santos, Police Officer (S9999M), East Orange, CSC Docket No. 2014-1480, 2014 N.J. CSC LEXIS 235, Final Administrative Determination (April 23, 2014).

Determination of the Division of Selection Services that an applicant did not meet the experience requirements for the promotional examination for Personnel Assistant 4, Board of Public Utilities, as required by N.J.A.C. 4A:4-6.3(b), was supported by the record. Her prior work experience as an Administrative Assistant was not relevant since the primary focus of her position was not technical experience in a personnel program of a public or private organization. Although the job duties of an Administrative Assistant might include some aspects of the requirements, it did not encompass the scope required for the subject title. The applicant could not receive credit for her college credits from Kaplan University Online because this information was not listed on her original application. In re Dondru Phillips, Personnel Assistant 4 (PS8518R), Bd. of Public Util., CSC Dkt. No. 2014-1000, 2014 N.J. CSC LEXIS 5, Final Decision (April 10, 2014).

Reinstated correction facility officer was entitled to be paid for any unused sick days up to and following his removal, since sick leave can accumulate from year to year without limit. However, the same was not true as to vacation days. That is, the officer was not entitled to vacation leave that was unused in the year of his removal because the same did not carry over to subsequent years while he was entitled to be paid for vacation leave that would have accrued in later years had he not been removed. In re Hopkins, Mercer Cnty., 2014 N.J. CSC LEXIS 378, Final Administrative Determination (March 14, 2014).