

(b) Any employee who is serving on a provisional basis and who fails to file for and take an examination which has been announced for his or her title shall be separated from the provisional title. The appointing authority shall be

notified by the Department and shall take necessary steps to separate the employee within 30 days of notification, which period may be extended by the Commissioner for good cause.

Case Notes

Department of Energy was not equitably estopped from returning 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. 4:1-14.1). *O'Malley v. Department of Energy*, 109 N.J. 309, 537 A.2d 647 (1987).

Failure to give timely civil service examination does not vest provisional appointee with right to retain provisional appointment (citing former N.J.A.C. 4:1-16.8). *O'Malley v. Department of Energy*, 109 N.J. 309, 537 A.2d 647 (1987).

Retention of provisional employees in excess of time permitted. *Handabaka v. Division of Consumer Affairs*, 167 N.J.Super. 12, 400 A.2d 490 (App.Div.1979).

Decision to fill positions provisionally is not a mandatorily negotiable item. *State v. State Supervisory Employees Association*, 78 N.J. 54, 393 A.2d 233 (1978).

Provisional employment for eight to ten years prior to examination being held. *Omrod v. N.J. Department of Civil Service*, 151 N.J.Super. 54, 376 A.2d 554 (App.Div.1977) certification denied 384 A.2d 513.

Police officers dismissed after failure to take exam; validity. *De Larmi v. Borough of Fort Lee*, 132 N.J.Super. 501, 134 A.2d 349 (App.Div.1975) certification denied 68 N.J. 135, 343 A.2d 423.

Jurisdiction: PERC does not have authority to hear and decide unfair labor practice charges and to issue various types of affirmative remediate orders respecting them (citing former N.J.A.C. 4:6.8). *Burlington Co. Evergreen Park Mental Hospital v. Cooper*, 56 N.J. 579, 267 A.2d 533 (1970).

4A:4-1.6 Interim appointments

(a) For purposes of this rule, the term "phasedown" shall mean a phased reduction in size of a government operation, in anticipation of a closing of the operation.

(b) When an appointing authority makes an appointment to a specific position in State service or a specific title in local service, an interim appointment shall be made where the position/title is held by a permanent employee who:

1. Is on a leave of absence;
2. Is on indefinite suspension;
3. Has been removed or demoted for disciplinary reasons and is awaiting final administrative action by the Merit System Board on appeal; or
4. Has accepted an interim appointment.

(c) An interim appointment may be made where the position/title will be abolished at a future date pursuant to a closing or phasedown of a government operation. Such an interim appointment may be made only following official notification to the Commissioner of Personnel by the applicable department head, in State service, or by the appointing authority, in local service, of the closing or phasedown.

(d) An interim appointment may also be made to a vacant position/title in a government operation not scheduled for a closing or phasedown where:

1. An employee of a government operation scheduled for a closing or phasedown has accepted a reassignment to that government operation;

2. Due to operational requirements, the employee is needed by the governmental operation scheduled for the closing or phasedown while it continues to operate;

3. The government operation not scheduled for a closing or phasedown needs to fill the vacant position/title to which the employee would have been reassigned; and

4. The notification requirements in (c) above are met.

(e) When an appointing authority does not make an appointment in the situations listed in (b) above, the appointing authority shall reserve a position/title for the absent employee as a vacant position/title.

(f) Any interim appointment shall remain in effect only during the period of time that the permanent employee is on an approved leave of absence, on indefinite suspension or awaiting final administrative action of the Merit System Board on the appeal of a disciplinary demotion or removal, or during the period leading up to the date on which the closing or phasedown of the government operation is scheduled to conclude.

1. At the end of the interim appointment, the appointee shall return to his or her permanent title.

(g) An interim appointee shall possess the minimum qualifications for the title.

(h) If a complete eligible list exists for the title, the interim appointment shall be made from that list. An interim appointee's name shall remain on the eligible list for consideration for permanent employment.

1. If the closing or phasedown of a government operation is rescinded after an interim appointment has been made from an eligible list, the interim appointee who was appointed from the eligible list shall receive a permanent appointment subject to the satisfactory completion of a working test period, regardless of whether the eligible list has already expired.

(i) An interim appointee shall continue to accrue seniority in his or her permanent title.

(j) The layoff rights of an interim appointee shall be determined from his or her permanent title. See N.J.A.C. 4A:8-2.

(k) The appointing authority shall advise interim appointees of their rights under an interim appointment. See N.J.A.C. 4A:4-4.7 for effect on permanent appointment rights.

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

Revised text.

Amended by R.1996 d.174, effective April 1, 1996.
See: 27 N.J.R. 4760(a), 28 N.J.R. 1832(a).

4A:4-1.7 Temporary appointments

(a) The Commissioner may approve temporary appointments to positions in which the job assignment is for an aggregate period of not more than six months in a 12-month period. A temporary appointment for a maximum of 12 months may be approved by the Commissioner to a position established as a result of a short-term grant.

(b) A temporary appointee shall meet the minimum qualifications for the title.

(c) See N.J.A.C. 4A:4-4.7 for effect on permanent appointment rights.

(d) Consecutive temporary appointments in excess of the periods set forth in (a) above are prohibited.

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) and added (d).

Case Notes

A person who does not possess the minimum qualifications may not receive a provisional appointment (citing former N.J.A.C. 4:1-14.2). Gloucester Cty. Wel. Bd. v. New Jersey Civil Service Comm'n, 93 N.J. 384, 461 A.2d 575 (App.Div.1983).

Effect of federal funding of local civil servants on question of temporary permanent appointments. In re Hudson Cty. Probation Dep't., 178 N.J.Super. 362, 429 A.2d 368 (App.Div.1981).

Entitlement of temporary employees to positions following board establishment of eligible list. Local 866 v. Board of Education, 149 N.J.Super. 147, 373 A.2d 435 (Chanc.Div.1977).

4A:4-1.8 Emergency appointments

The Commissioner may authorize an emergency appointment for a period not to exceed 30 days when the appointing authority certifies that the failure to make such appointment will result in harm to persons or property.

4A:4-1.9 Return of employees to their permanent titles

(a) An employee with permanent status in a career service title, who is returned during or at the end of the working test period in another title, or from an appointment under N.J.A.C. 4A:4-1.3, 1.4, 1.5, 1.6, 1.7 or 1.8, to his or her permanent title, will have rights to a position in the permanent title in the same organizational unit.

1. The employee must have held the permanent title within current continuous service.

2. In State service, an organizational unit shall mean an appointing authority. In local service, an organizational unit shall mean a department or separate agency within the same governmental jurisdiction. A school district shall be considered a separate jurisdiction.

(b) The appointing authority shall use the following procedures, to effect the return of the permanent employee:

1. Reassign the employee to a vacant position/title;

2. Separate a provisional employee with no permanent status and reassign the returning employee to the position/title; or

3. Return an employee serving provisionally in the permanent title of the returning employee to his or her permanent title and reassign the returning employee to the position/title.

(c) The appointing authority and the returning employee may agree to use the following optional procedures to effect the return of the permanent employee.

1. The employee may accept appointment to other titles at the same or lower level, in the same or a different series for which the employee qualifies in the same or another organizational unit.

2. The status and compensation rights of the returning employee shall be determined in accordance with normal merit system rules and policies.

(d) When the appointing authority offers the employee options under (b) and (c) above, the employee may choose to accept either option.

(e) If the appointing authority offers only an option under (b) above, the employee must accept the option offered.

(f) Layoff procedures must be utilized when the appointing authority cannot effect the return of a permanent employee under (b) or (c) above. See N.J.A.C. 4A:4-4.8(d) on certification procedures.

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).

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 Department of Personnel

(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 Department of Personnel.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4A:4-5.2 Duration

(a) The working test period shall not include any time served by an employee under provisional, temporary, interim or emergency appointment. The working test period shall begin on the date of regular appointment. See N.J.A.C. 4A:1-1.3 for definition of regular appointment.

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

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

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

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

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

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

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

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

i. Law enforcement officers who have successfully completed the police training course prior to appointment shall begin their working test period on the date of regular appointment.

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

(e) An approved leave of absence including a furlough extension leave or a voluntary furlough shall extend the

completion of the working test period for a period of time equal to that leave or voluntary furlough.

1. A paid leave of absence for a correction officer or juvenile detention officer for the purpose of training required by N.J.S.A. 52:17B-68.1 shall not extend the length of the working test period unless the course in which the appointee is enrolled is scheduled to end after the one year period.

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

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

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

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

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

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

Revised (b)2.

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

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

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

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

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

Case Notes

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

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

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

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

4A:4-5.3 Progress reports

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

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

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

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

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

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

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

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

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

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

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

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

Case Notes

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

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

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

4A:4-5.4 Working test period appeals

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

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

Case Notes

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

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

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

1. The Commissioner may consider:

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

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

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

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

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

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

Added new (b) and relettered old (b) as new (c).

Amended by R.1990 d.553, effective November 19, 1990.
See: 22 N.J.R. 2629(a), 22 N.J.R. 3482(b).

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

SUBCHAPTER 6. EXAMINATION AND SELECTION DISQUALIFICATION AND APPEALS

4A:4-6.1 Examination and selection disqualification

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

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

8. Has failed to pay the required application processing fee in a timely manner, or for open competitive examination, has failed to provide documentation of exemption from the application processing fee in a timely manner; or

9. Other sufficient reasons.

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

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

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

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

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

Law Review and Journal Commentaries

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

Case Notes

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

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

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

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

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 (a)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 Commissioner, 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.

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."

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.

4A:4-6.4 Review of examination items, scoring and administration

(a) No later than five business days after the examination has been held, candidates for multiple choice examinations