

**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 See, also, the Historical Notes and annotations at repealed N.J.A.C. 4:1, Civil Service Rules, specifically Subchapters 8 through 16; repealed N.J.A.C. 4:2, State Service, specifically Subchapters 6, 11, 13 and 14; and repealed N.J.A.C. 4:3, Local Service, specifically Subchapters 6, 11, 13 and 14.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).

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.

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 examination expressed any interest in the position, and the appointing authority had several employees in noncompetitive clerical titles who expressed interest and who met the open-competitive requirements for the title. For the employees in the clerical titles, a promotion to Social Worker might be their only opportunity for advancement as clerical promotions had all but ceased due to budgetary cutbacks. Opening the promotional examination to the non-competitive division would also be more cost effective because it was always less expensive to promote from within than to hire a new employee. The appointing authority had a vacancy for the position of Social Worker that it needed to fill as soon as possible. In *re Social Worker*, Burlington Cnty. Bd. of Social Serv., CSC Dkt. No. 2014-590, 2013 N.J. CSC LEXIS 918, Final Decision (October 3, 2013).

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 authorize an employee's provisional appointment, pending promotional examination procedures to Administrative Assistant 3. Although the position of Clerk Transcriber to which the employee was currently appointed and Administrative Assistant 3 were not related titles, she was assigned out-of-title duties as an Administrative Assistant 3 due to the needs of the appointing authority. Further, the Division of Selection Services and Recruitment determined that, based on experience she gained in the private sector, the employee met the open-competitive requirements for Administrative Assistant 3, and the Division of Classification and Personnel Management was in support of the appointing authority's request. In *re Denise Farfalla*, Dep't. of Law and Public Safety, CSC Dkt. No. 2014-656, 2013 N.J. CSC LEXIS 909, Final Decision (October 2, 2013).

Good cause within the meaning of N.J.A.C. 4A:1-1.2(c) was shown in connection with a request by the Director, Division of Classification and Personnel Management (CPM), acting on behalf of the Department of Law and Public Safety, seeking the relaxation of provisions of N.J.A.C. 4A:4-1.1(c) to permit three employees to be provisionally appointed, pending promotional examination procedures, to the competitive title of Fingerprint Processing Technician Apprentice, which employees had been performing the duties of the subject title since June 1, 2013 due to staffing needs of the appointing authority. However, since the permanent title of Clerk Typist currently held by all three employees was noncompetitive and unrelated to the Fingerprint Processing Technician Apprentice per N.J.A.C. 4A:4-1.1(c) and N.J.A.C. 4A:4-2.5(d), they would otherwise be subject to open competitive examination procedures. Moreover, all three had successfully completed the training program that was required for advancement to the journeyman title upon completion of the two year training period. Nor were there any existing open-competitive or special re-employment lists that are currently available for the Fingerprint Processing Technician Apprentice title. Given these facts, it was appropriate to relax the relevant rules to authorize the provisional appointment of the three employees pending promotional exam procedures. In *re Gosley*, et al., Dep't of Law & Pub. Safety, CSC Docket Nos. 2014-204, 2014-464, 2014-466, 2013 N.J. CSC LEXIS 937, Final Administrative Determination (September 4, 2013).

Good cause within the meaning of N.J.A.C. 4A:1-1.2(c) was shown in connection with a request by the Director, Division of Classification and Personnel Management (CPM), seeking the relaxation of provisions of N.J.A.C. 4A:4-1.1(c) to permit an employee to be provisionally appointed, pending promotional examination procedures, to the competitive title of Customer Service Representative 2, which appointment was in accordance with N.J.A.C. 4A:3-3.9(f). Relevant factors included that the employee's credentials were reviewed by the Division of Selection Services and Recruitment (DSSR) resulting in a finding that if the employee's out-of-title work was accepted, she would meet the requirements for the Customer Service Representative 2 title. In *re Messiha*, Dep't of Law & Pub. Safety, CSC Docket No. 2014-203, 2013 N.J. CSC LEXIS 936, Final Administrative Determination (September 4, 2013).

An appointing authority was directed to cease assigning out-of-title supervisory duties to an employee who was classified as a Fire Fighter. Nor was it permissible for the appointing authority to assign that employee, who had failed the Fire Captain examination and thus was ineligible for appointment to that title, to serve as "acting" Fire Captain to cover for other personnel that were either on long-term sick leave or vacation. There was no such designation as an "acting" appointment under N.J.S.A. 11A:4-13 and N.J.A.C. 4A:4-1 et seq., which provided for regular, conditional, provisional, interim, temporary, and emergency appointments. Nor did the applicable law and rules countenance assignment of out-of-title work or acting appointments. In re Dwayne Patrick, City of East Orange, CSC Dkt. No. 2013-3045, 2013 N.J. CSC LEXIS 457, Final Decision (July 19, 2013).

Good cause was established pursuant to N.J.A.C. 4A:4-2.6(c) to accept a candidate's applicable out-of-title experience to satisfy the experience requirement for Executive Assistant 1. The candidate had acquired the required experience, albeit out-of-title, while serving in the title of Research Scientist 2. Due to business necessity and a continued hiring freeze, it was difficult to fill the position and the candidate had been performing the duties of the title for six years. In addition, because the candidate had been in the competitive division before being in the title of Research Scientist 2, the Civil Service Commission concluded that, for equitable considerations, it was appropriate to relax the provision 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 the candidate pending promotional examination procedures. In re Lisa Asare, Dep't. of Health, CSC Dkt. No. 2013-2119, 2013 N.J. CSC LEXIS 660, Final Decision (July 18, 2013).

Civil Service Commission authorized the provisional appointment of an applicant to the competitive division title of Administrative Analyst 1, Procurement, pending promotional examination procedures, pursuant to N.J.A.C. 4A:4-1.1(c)2. Because the applicant's new position was the result of a classification determination and there was no current list for that title, good cause was established to accept out-of-title experience to satisfy the experience requirement for his title. In re Ronald Calderon, Administrative Analyst 1, Procurement, Dep't of Health, CSC Dkt. No. 2013-2462, 2013 N.J. CSC LEXIS 283 Final Decision (April 17, 2013).

Clarifying information provided by an applicant seeking admission to the promotional examination for the position of Program Coordinator, Mental Health (PS9842K), Trenton Psychiatric Hospital was properly accepted by the Civil Service Commission per N.J.A.C. 4A:4-1.1(g) despite the fact that the deadline set by N.J.A.C. 4A:4-2.6(a) for satisfying all admission prerequisites had passed. That information established that even though the applicant did not possess one of the Bachelor's Degrees listed on the announcement, her Bachelor's Degree in Labor Studies was properly accepted as equivalent to a Bachelor's Degree in Social Science. The applicant was properly admitted to the exam based on appropriate confirmation from Rutgers University, which had awarded the applicant's degree, that it would accept credits in the Labor Studies area as satisfying the requirements for a Bachelor's Degree in Social Science. In re Fredisha Collins, Program Coordinator, Mental Health (PS9842K), Trenton Psychiatric Hospital, CSC Docket No. 2013-568, 2013 N.J. CSC LEXIS 358, Final Decision (April 3, 2013).

Township was justified in twice bypassing appointment of police lieutenant, who was on eligible list, to position of police captain. Robert Oches v. Middletown Township, 96 N.J.A.R.2d (CSV) 647.

4A:4-1.2 Senior executive service appointments: State service

(a) A senior executive service appointment may be made to any position allocated to the senior executive service by the Board.

(b) Permanent career service employees and qualified persons without permanent status are eligible for senior executive service appointments. See N.J.A.C. 4A:3-2.

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).

4A:4-1.3 Unclassified appointments

(a) An unclassified appointment may be made to any title or position allocated to the unclassified service by statute or the Board.

(b) The permanent appointment rights of Title 11A, New Jersey Statutes, are not applicable to unclassified appointments. See N.J.A.C. 4A:3.

Case Notes

Promotion of officer with lesser seniority, municipality not governed by civil service. *Gaskill v. Mayor & Comm'rs. of Bor. of Avalon*, 143 N.J.Super. 391, 363 A.2d 359 (Law Div.1976, affirmed 149 N.J.Super. 364, 373 A.2d 1019 (App.Div.1977)).

Basis for promotion in unclassified service. *State Troopers Fraternal Ass'n State*, 115 N.J.Super. 503, 280 A.2d 235 (Ch.Div.), affirmed 119 N.J.Super. 375, 291 A.2d 840 (App.Div.1972), affirmed 62 N.J. 302, 301 A.2d 141 (1973).

4A:4-1.4 Conditional regular appointments

(a) A conditional regular appointment may be made in the competitive division of the career service when disputes or appeals concerning higher ranking eligibles may affect the final appointments. The names of conditional appointees shall remain on the eligible list for consideration for other employment.

(b) If the rights of a higher ranked eligible are upheld, the conditional regular appointment shall end.

(c) If the final determination of appointment rights causes no change in the selection process, the conditional appointment will be changed to a regular appointment. The original date of appointment will be retained.

(d) The appointing authority shall advise conditional appointees of their status and rights, including any change in appointment status.

4A:4-1.5 Provisional appointments

(a) A provisional appointment may be made only in the competitive division of the career service when all of the following conditions are met:

1. There is no complete list of eligibles, and no one remaining on an incomplete list will accept provisional appointment;
2. The appointee meets the minimum qualifications for the title at the time of the appointment; and
3. The appointing authority certifies that failure to make the provisional appointment will seriously impair its work.

(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, 334 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).

Division of Selection Services appropriately found that a candidate was below the experience requirements for the promotional examination for Personnel Officer as required by N.J.A.C. 4A:4-2.6(a). Because the Personnel Officer title required completion of a Bachelor's degree with a substitution clause, which permitted additional experience in lieu of the college credits, as well as two years of relevant experience, it was considered a professional title under N.J.A.C. 4A:4-2.5(a)1, and because there was no bridge title to the subject title, she was required to meet the open competitive requirements. As the candidate did not indicate that she was primarily performing work required of a Personnel Officer, if the appointing authority wanted her to remain in her current position, it had to provide a duties questionnaire to the Division of Classification and Personnel Management detailing the duties of the position, along with a completed examination application. Otherwise, since the candidate does not meet the minimum qualifications for the title, contrary to N.J.A.C. 4A:4-1.5(a)2, she should be returned to her regular prior-held title immediately upon receipt of the decision. In re *Sonia Neira*, Pers. Officer, Perth Amboy, CSC Dkt. No. 2014-433, 2013 N.J. CSC LEXIS 1036, Final Decision (November 8, 2013).

Because, per N.J.A.C. 4A:4-1.5(a), a public employee holding a provisional appointment as a social worker had no vested property interest in the provisional title and was subject to removal at any time, claims made by such an employee who was challenging his removal from the provisional position were not properly heard. Moreover, the employee did not satisfy the minimum qualifications for the title of Social Worker in any event so no relief was warranted. In re *Anand Patel*, Hudson Cnty., CSC Docket No. 2012-3570, 2013 N.J. CSC LEXIS 333, Final Agency Action (April 17, 2013).

Because, per N.J.A.C. 4A:4-1.5(a), a public employee holding a provisional appointment had no vested property interest in the provisional title and was subject to removal at any time, claims made by an employee seeking redress on account of her removal from her provisional position as a Fiscal Analyst were not considered by the Civil Service Commission. In re *Remonda Said*, Hudson Cnty., CSC Docket No. 2013-345, 2013 N.J. CSC LEXIS 312, Final Agency Action (April 17, 2013).

Applicant was not eligible for a make-up examination for the open competitive examination for Child Care Quality Assurance Inspector 1 (S0194P). Although the Department of Children and Families provisionally appointed her to the title and retained her in a provisional capacity, the provisions of N.J.A.C. 4A:4-1.5 and N.J.S.A. 11A:4-13b did not create a presumption of a passing score for provisional appointees or a score high enough to be reachable for appointment when they ultimately took a competitive examination to attain permanent status. In re *Brendaly Mora-Pires*, Child Care Quality Assurance Inspector 1 (S0194P), CSC Dkt. No. 2013-1186, 2013 N.J. CSC LEXIS 68, Final Decision (January 9, 2013).

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).

Case Notes

When an administrative law judge's recommended decision to reverse the removal of a youth worker and impose a suspension was deemed adopted as final when there was no record that the employment decision had been the subject of a final determination by the Civil Service Commission, it was appropriate to grant reconsideration under N.J.A.C. 4A:2-1.6(b) to address the youth worker's exceptions. In re Robert Zorn, Mercer County, CSC Dkt. No. 2011-404, 2013 N.J. CSC LEXIS 242, Civil Service Comm'n Decision (May 3, 2013).

Applicant's appeal pertaining to the administration of an open-competitive examination for Senior Quality Reviewer was not timely under N.J.A.C. 4A:4-6.4(c) because it was not filed on the day of the examination. However, given what appeared to be a misunderstanding

based on what the applicant said she was told by the monitor, the Civil Service Commission reviewed the merits of the case, concluding that no remedy was warranted because all candidates were given the same passage, questions, and directions on the same pages. The applicant was removed from her interim appointment pursuant to N.J.A.C. 4A:4-1.6(h) because there were active eligibles on the list for the position. In re Carolina Ocampo, Senior Quality Control Reviewer (S0369P), CSC Dkt. No. 2013-719, 2013 N.J. CSC LEXIS 267, Final Decision (April 17, 2013).

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).

Although an employee's interim appointment exceeded the 12-month maximum in N.J.A.C. 4A:4-1.7(a), the fact that he had inappropriately served as a temporary appointee for the position of Project Manager, Transportation, over seven years did not equitably estop the appointing authority from removing him even though he occupied the position longer than the statutory limit for temporary appointment. In re Anthony Davis, Project Manager, Transp., CSC Dkt. No. 2013-2195, 2013 N.J. CSC LEXIS 462, Final Decision (July 18, 2013).

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.

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).

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.

(g) For purposes of this section, in the case of a position within a job band, "title" shall mean the entire job band. See N.J.A.C. 4A:3-3.2A.

Amended by R.2014 d.099, effective June 2, 2014.
See: 45 N.J.R. 500(a), 46 N.J.R. 1331(c).

In the introductory paragraph of (a), inserted a comma following "1.7"; in the introductory paragraph of (c), substituted a colon for a period; and added (g).

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 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 State service) or department (in local service) to which the examination is open. Appointing authorities shall also ensure the notification by electronic or other means of all eligibles of the promotional examination announcement. Appointing authorities shall maintain a record of promotional examination announcement postings and the notification of eligibles of the announcement.

(c) Examination announcements shall include at least the following information:

1. Title of the examination;
2. Salary information;

3. Minimum qualifications for admission to the examination;

4. Filing information; and

5. In open competitive examinations, a reference to duties and responsibilities.

(d) A promotional examination shall be reannounced if, within one year of the closing date, the examination has not been developed and scheduled.

(e) Unless otherwise provided for by the Chairperson of the Civil Service Commission or designee, applications for open competitive and promotional examinations shall be submitted to the Civil Service Commission no later than 11:59 P.M. on the announced application filing date. When an application is mailed, the application's postmark date shall be considered the date on which the application is submitted.

(f) Prior to the announced application filing date, an applicant may amend a previously submitted application.

(g) The Civil Service Commission may request clarifying information from an applicant.

(h) All examination applications shall remain confidential, except as the Chairperson of the Civil Service Commission or designee may determine to be in the public interest.

(i) See N.J.A.C. 4A:4-2.17 for application processing fee procedures.

Petition for Rulemaking: Promotional examination process regarding announcement procedures.

See: 21 N.J.R. 1581(b), 21 N.J.R. 2675(a).

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 (d) and recodified old (d)-(g) as (e)-(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).

Added new (i).

Amended by R.1997 d.481, effective November 17, 1997.

See: 29 N.J.R. 3383(a), 29 N.J.R. 4864(a).

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

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

Rewrote (a).

Amended by R.2014 d.062, effective April 7, 2014.

See: 45 N.J.R. 783(a), 46 N.J.R. 617(a).

Rewrote (a), (b), and (e); in (f), inserted "announced application"; in (g), substituted "Civil Service Commission" for "Department of Personnel"; and in (h), substituted "Chairperson of the Civil Service Commission or designee" for "Commissioner".

Case Notes

Announcement of competitive examination was required to contain "minimum qualification requirements" for admission (citing former N.J.A.C. 4:1-8.3). In the Matter of Critchlow, 201 N.J. Super. 371, 493 A.2d 66 (App.Div.1985).

The Division of Selection Services and Recruitment (DSSR) correctly determined that an applicant seeking admission to the open competitive examination for Legal Secretary 2 (S1046P), Statewide did not possess the minimum experience required for admission as required by N.J.A.C. 4A:4-2.3(b)2, which was one year of experience in transcribing or typing legal dictation or documents. The application for admission only referred to two months of experience and the applicant's appeal-related

submission noting her previous employment as a senior clerk typist in another agency could not be considered because it constituted amended information that was not properly accepted after the closing date for the exam per N.J.A.C. 4A:4-2.1(f). Nor was there any other appropriate ground on which the requirements for admission were properly relaxed. In re McCathern, Legal Secretary 2 (S1046P), Statewide, CSC Docket No. 2013-2766, 2013 N.J. CSC LEXIS 1183, Final Administrative Action (December 19, 2013).

Sufficient basis existed in the record to support the Division of Selection Services' determination that a candidate was ineligible for the open competitive examination for Habilitation Plan Coordinator under N.J.A.C. 4A:4-2.3(b)2. Although the experience the candidate gained as a Skill Instructor involved the care of individuals with developmental disabilities, that experience did not rise to the level and scope of treatment and rehabilitation of individuals or implementation of programs for clients with developmental disabilities as contemplated by the examination announcement. The experience she gained after the closing date would not be considered clarifying information under N.J.A.C. 4A:4-2.1(g), which might be allowed, but rather, was considered amended information, which was not permitted after the closing date of an examination under N.J.A.C. 4A:4-2.1(f). In re Stephanie Menagh, Habilitation Plan Coordinator (S0847P), CSC Dkt. No. 2013-2869, 2013 N.J. CSC LEXIS 1134, Final Decision (December 18, 2013).

Though the Division of Selection Services (DSS) correctly determined that an applicant for the open competitive examination for Rent Regulation Officer (M0411R), New Brunswick, lacked two years and seven months of applicable general experience and five months of supervisory experience needed to qualify for the subject examination, the applicant, who was serving provisionally in that title, had shown good cause within the meaning of N.J.A.C. 4A:1-1.2(c) to relax the requirement in N.J.A.C. 4A:4-2.3(b)2 requiring all applicants to meet all of the listed requirements by the closing date and in N.J.A.C. 4A:4-2.1(f) providing that applications may only be amended prior to the filing date. Specifically, the applicant failed to list her experience as an office supervisor in a private enterprise on her original application. There were, nonetheless, good reasons to grant relief, including that the appointing authority supported the applicant's request to take the examination, that the applicant had gained another year of experience due to her provisional appointment, and that the totality of the applicant's experience satisfied the required general and supervisory experience. Moreover, the exam had been cancelled due to lack of qualified applicants. These factors provided grounds to accept the applicant's amendment of her application and admit her to the exam. In re Azcona, Rent Regulation Officer (M0411R), New Brunswick, CSC Docket No. 2014-663, 2013 N.J. CSC LEXIS 1207, Final Administrative Action (December 4, 2013).

Though the Division of Selection Services and Recruitment (DSSR) had correctly determined that two applicants seeking admission to the promotional examination for Senior Data Processing Programmer (PC1224R), Morris County, did not meet the minimum experience requirements for that exam, the applicants showed good cause within the meaning of N.J.A.C. 4A:4-2.6(c) and N.J.A.C. 4A:1-1.2(c) for an order relaxing those requirements and admitting them to the examination. However, on appeal, the applicants submitted more detailed descriptions as to how each had utilized their programming skills on various projects for more than two years. Such clarifying information was properly considered per N.J.A.C. 4A:4-2.1(g). Moreover, both of the applicants were presently serving provisionally in the title under test. Where, as here, the examination had been cancelled due to a lack of qualified candidates, there was good cause to relax the provisions of N.J.A.C. 4A:4-2.6(a) and admit the applicants to the subject examination. In re Cocco et al., Senior Data Processing Programmer (PC1224R), Morris Cnty., CSC Docket Nos. 2014-447, 2014-562 (Consolidated), 2013 N.J. CSC LEXIS 1186, Final Administrative Action (December 5, 2013).

Candidate was not eligible for the promotion examination for Supervising Engineer Utilities by the announced closing date as required by N.J.A.C. 4A:4-2.6(a)2. The significant amount of additional information submitted by the candidate was not considered clarifying, which could be allowed, but rather, amended information, which was not permitted

after the closing date under N.J.A.C. 4A:4-2.1(f). Also, the positions listed did not have the announced experience as the primary focus and did not involve supervision. In re Rupal Patel, Supervising Eng'r. Util. (PS8139R), Bd. of Public Util., CSC Dkt. No. 2014-323, 2013 N.J. CSC LEXIS 1033, Final Decision (November 8, 2013).

Though the Division of Selection Services and Recruitment (DSSR) had correctly determined that an applicant seeking admission to the open competitive examination for Supervisor, Senior Citizen Outreach and Referral Program (C0512R), Monmouth County, did not meet the minimum experience requirements for admission to that exam by the closing date as required by N.J.A.C. 4A:4-2.3(b)2, the applicant's application had focused mainly on her marketing and fundraising duties for a private foundation. The more detailed information that she submitted on appeal clarified her qualifications as permitted by N.J.A.C. 4A:4-2.1(g) and provided grounds for a finding that she in fact possessed the requisite experience. She thus was entitled to be admitted to the exam. In re Lewis, Supervisor, Senior Citizen Outreach & Referral Program (C0512R), Monmouth County, CSC Docket No. 2014-368, 2013 N.J. CSC LEXIS 1038, Final Administrative Determination (November 7, 2013).

Though the Division of Selection Services and Recruitment (DSSR) had correctly determined that an applicant seeking admission to the open competitive examination for Supervisor, Senior Citizen Outreach and Referral Program (C0512R), Monmouth County, did not meet the minimum experience requirements for admission to that exam, the applicant, who was serving provisionally in that title, had shown good cause within the meaning of N.J.A.C. 4A:1-1.2(c) to relax the requirement in N.J.A.C. 4A:4-2.3(b)2, which required all applicants to meet all of the listed requirements by the closing date and in N.J.A.C. 4A:4-2.1(f), which provided that an applicant may amend a previously submitted application only prior to the announced closing date, and admit the candidate to the examination. Her online application listed only her provisional experience in the subject title, but she submitted an affidavit in which she stated under oath that she had mailed her resume, which reflected her many years of experience working with the relevant population, to the DSSR. Thus, though the resume apparently was not received by DSSR, the Civil Service Commission's review of the same disclosed that the applicant had far more than the minimum experience required to take the exam and she was properly admitted to it. In re Kam, Supervisor, Senior Citizen Outreach & Referral Program (C0512R), Monmouth County, CSC Docket No. 2014-350, 2013 N.J. CSC LEXIS 1035, Final Administrative Decision (November 7, 2013).

Civil Service Commission ordered the admission of a candidate to the promotional examination for Customer Service Representative 2 (PS4615H), Department of Health. N.J.A.C. 4A:4-2.1(g) allowed the Commission to accept the candidate's clarifying information about his duties in his Vault Clerk and Senior Vault Clerk positions, including daily telephone contact in the provision of information and services to the public/customers. In re Martin Hammond, Customer Service Representative 2 (PS4615H), Dep't. of Health, CSC Dkt. No. 2013-2508, 2013 N.J. CSC LEXIS 833, Final Decision (October 16, 2013).

Candidate was admitted to the promotional examination for Maintenance Worker 3, Grounds (PC1203R), Camden County, after he was allowed to submit a more detailed description of his experience in landscaping, tree-trimming, and tree and grounds clean-up pursuant to N.J.A.C. 4A:4-2.1(g). Moreover, the examination resulted in an incomplete employment roster of one eligible, and the candidate had been serving provisionally in the title under test. The appointing authority strongly supported the candidate's appeal and considered him to be an experienced and valuable employee. In re Joseph Vasquez, Maintenance Worker 3, Grounds (PC1203R), Camden Cnty., CSC Dkt. No. 2014-346, 2013 N.J. CSC LEXIS 734, Final Decision (October 16, 2013).

Applicant was not eligible to take the open competitive examination for Administrative Analyst 1, Fiscal Management. Her experience did not meet the announced requirements pursuant to as required by N.J.A.C. 4A:4-2.3(b)2 because her duties did not involve fiscal analysis and budgeting. Even with the applicant's clarifying description of her duties on her resume, none of her positions involved job responsibilities in the overall operational analysis of a specialized area in the organi-

zation with the direct responsibility for the recommendation, planning, or implementation of fiscal management systems for the agency. The Civil Service Commission did not permit the amendment of her application with work experience submitted after the announced closing date pursuant to N.J.A.C. 4A:4-2.1(f). Nevertheless, none of the work experience submitted on appeal involved job responsibilities in the required area. In re Lori Ghavami, Administrative Analyst 1, Fiscal management (S0931P), CSC Dkt. No. 2013-2426, 2013 N.J. CSC LEXIS 979, Final Decision (October 8, 2013).

Good cause existed to accept a candidate's application for the open competitive examination under N.J.A.C. 4A:4-2.3(b)2 and add her to the employment list for Violations Clerk. On her application she described her major duties with a private law firm as establishing payment plans between clients and defendants; serving as collections paralegal to over 20 attorneys; interacting with attorneys, defendants, paralegals and court officers; negotiating out of court settlements; initiating legal proceedings, liens, bank levies and wage garnishments. On appeal, the candidate submitted a more detailed description of her nearly five year employment with the law firm, which clearly involved the maintaining/keeping of records, and the Civil Service Commission accepted that clarifying information pursuant to N.J.A.C. 4A:4-2.1(g). In re Dana Parrello, Violations Clerk (M0256R), West Milford, CSC Dkt. No. 2014-144, 2013 N.J. CSC LEXIS 911, Final Decision (October 2, 2013).

Good cause existed to relax the provisions of N.J.A.C. 4A:4-2.6(a)4 and accept a candidate's experience for admittance to the promotional examination for Section Chief Health Care Facility after the closing date. He waited until the application filing period had almost expired before attempting to complete his application, and thus, his application was not received by the closing date as required by N.J.A.C. 4A:4-2.1(e). Nevertheless, the candidate was serving as a provisional in the subject title since October 1, 2005, and the eligible list was incomplete with only two applicants. This was the first time in his lengthy career that the candidate was required to complete an application online, and he and his supervisor admitted that he was not computer literate. In re Willis Parker, Section Chief Health Care Facility (PS2526K), Greystone Park Psychiatric Hospital, CSC Dkt. No. 2013-1675, 2013 N.J. CSC LEXIS 875, Final Decision (September 23, 2013).

Candidates were properly not listed as having filed applications for the promotional examination for County Services Specialist pursuant to N.J.A.C. 4A:4-2.6(a)4 and 4A:4-2.1(e) because they did not prove that an error was made by the appointing authority nor that they submitted applications. Official records revealed that no applications were on file for them. The County Services Specialist promotional announcement was posted in their office in a locked glass cabinet pursuant to N.J.A.C. 4A:4-2.1(b) for the required time period, and the locked glass cabinets were conspicuously located. In addition, an e-mail was sent to all staff advising them of the on-line application system with detailed instructions on how to apply using the new on-line system. In re Juliana Ebevo et al., Cnty. Serv. Specialist (PS1394K), Dep't. of Children and Families, CSC Dkt. Nos. 2013-3293, 2013-3312 (Consolidated), 2013 N.J. CSC LEXIS 780, Final Decision (September 23, 2013).

Good cause existed to relax the provisions of N.J.A.C. 4A:4-2.1(e) and accept candidates' applications to take a promotional examination for Unemployment Insurance Clerk, Reemployment Call Center, after the closing date. They maintained that they did not receive the application for the examination nor were they aware of the announcement being posted at work prior to the closing date. Because they provide notarized statements under oath and showed that they were not timely aware of the examination, they sufficiently rebutted the presumption of mailing. In re Claudia Buitrago et al., Unemp't. Ins. Clerk, Reemp't. Call Ctr. (PS8432N), Dep't. of Labor and Workforce Dev., CSC Dkt. Nos. 2013-2087, 2013-2098, 2013-2383, 2013-2088, 2013-2095, 2013-2090, 2013-2092 (Consolidated), 2013 N.J. CSC LEXIS 834, Final Decision (September 19, 2013).

The Division of Selection Services and Recruitment (DSSR) correctly determined that an applicant seeking admission to the promotional examination for Affirmative Action Officer 2 (PS3656K), Department of Human Services, was ineligible because she did not meet the applicable experience requirement and thus did not satisfy N.J.A.C. 4A:4-2.6(a).

The applicant had argued that her experience as a provisional Affirmative Action Officer 2, an Investigator, and as a night audit manager at a hotel should be accepted to qualify her for the examination, and she described her experience in the title under test as: Investigate allegations of discrimination from employees, prepare investigative reports containing findings of facts and conclusions, review policies and procedures of all divisions on affirmative actions and equal employment opportunity. However, this experience was deemed to not be equivalent to the required experience in the planning and/or operation of programs designed to further the training and employment opportunities for youth, minorities, women veterans, the handicapped, and/or older workers. Nor was the primary focus of her positions as an investigator similar to that which was required to establish eligibility for the title under test. Finally, because the applicant did not indicate her experience as a night audit manager in her original application, her submission of that information at this juncture was foreclosed by N.J.A.C. 4A:4-2.1(f), which required any amendments to applications to be made prior to the announced closing date. Thus, while the decision of the DSSR was correct, it was appropriate for the applicant's assigned duties and responsibilities to be reviewed to determine the position's appropriate classification. In re Eckeard, Affirmative Action Officer 2 (PS3656K), Dep't of Human Servs., CSC Docket No. 2013-2391, 2013 N.J. CSC LEXIS 848, Final Administrative Decision (September 18, 2013).

Good cause existed under N.J.A.C. 4A:4-2.1(e) to permit a candidate to file an application for the promotional examination for Police Lieutenant after the filing deadline because he might not have been properly notified of the test. The posting was placed on a board in the squad room that was the briefing area for the patrol division. This was an area that most of the officers frequented, but that was not in the assigned work area of the candidate. Also his individual notice might have been placed in a common notice tray for the detective bureau that was an alternative place for staff to place notices for the detectives. In re Jeffrey Martin, Police Lieutenant (M1480R), Little Egg Harbor Twp., CSC Dkt. No. 2014-38, 2013 N.J. CSC LEXIS 789, Final Decision (September 18, 2013).

Good cause was established to relax the provisions of N.J.A.C. 4A:4-2.1(f) to allow a candidate to amend her application to include experience in transcription of dictation using recording equipment and admit her to the promotional examination for Senior Clerk Transcriber. The examination was cancelled due to a lack of eligible applicants, and the candidate had been serving provisionally in the subject title for over 12 years. In re Lisa Newkirk, Senior Clerk Transcriber (PM0960R), CSC Dkt. No. 2014-291, 2013 N.J. CSC LEXIS 781, Final Decision (September 18, 2013).

Good cause within the meaning of N.J.A.C. 4A:1-1.2(c) was shown to relax the provisions of N.J.A.C. 4A:4-2.1(e) and accept an application for the promotional examination for Technical Support Specialist 1 (PS6430U), Office of Information Technology filed by an employee whose July 2012 classification appeal challenging his permanent title of Information Technology Specialist was pending on the date that the promotional examination was announced. It was as a result of that appeal that the applicant was provisionally appointed as Technical Support Specialist 1 effective August 11, 2012. Although the appointing authority confirmed that he had been notified of the examination, the appointing authority did not at that time have a practice of advising employees with pending classification appeals of the need to file an application for an exam for their prospective title, a practice that the appointing authority later adopted. Given these facts and the fact that the employee had the support of the appointing authority, the Civil Service Commission concluded that good cause had been shown to relax the requirement, in N.J.A.C. 4A:4-2.1(e), that applications were required to be filed no later than the announced filing deadline, thereby allowing this employee to be admitted to a make-up examination. In re Byrd, Tech. Support Specialist 1 (PS6430U), Office of Information Tech., CSC Docket No. 2014-23, 2013 N.J. CSC LEXIS 938, Final Administrative Determination (September 4, 2013).

The Division of Selection Services and Recruitment (DSSR) did not err in concluding that an applicant who was seeking entry to the open competitive examination for Rehabilitation Counselor, Mental Health (S0805P) was below the minimum requirements in experience for that

examination. The applicant, who was serving provisionally in the subject title, could not now rely on her experience as a licensed minister because she did not list that on her application and she was not permitted to add new positions after the closing date for the examination per N.J.A.C. 4A:4-2.1(f). Moreover, other employment experience that was listed on her application was not pertinent because in order for experience to be considered applicable, it was required to have as its primary focus the full-time duties and responsibilities in the areas required in the announcement. Because a thorough review of all of the materials indicated that DSSR's decision that the candidate did not meet the announced requirements for eligibility by the exam closing date as required by N.J.A.C. 4A:4-2.3(b) was supported by the record, the candidate failed to carry her burden to show otherwise. In re Blackmon, Rehab. Counselor, Mental Health (S0805P), CSC Docket No. 2013-2214, 2013 N.J. CSC LEXIS 851, Final Administrative Decision (August 16, 2013).

The Division of Selection Services and Recruitment (DSSR) correctly determined that an applicant seeking admission to the open competitive examination for Construction Official (S1035P) was ineligible because he did not meet the applicable experience requirement and thus did not satisfy N.J.A.C. 4A:4-2.6(a). His original application did not indicate that he possessed a Construction Official license nor did he list any entries in the "experience" section of the application. Though on appeal he argued that his experience as an electrical contract since 1978 met the experience requirement, his failure to include such information in his original application meant that he could not provide additional clarifying detail per N.J.A.C. 4A:4-2.1 about that experience in connection with the instant appeal. In re Pentimone, Construction Official (S1035P), CSC Docket No. 2013-2641, Final Administrative Decision (August 15, 2013).

Applicant for admission to a promotional examination for the position of Supervising Family Service Specialist 2 (PS6696K), Department of Children and Families (DCF), showed good cause for a determination that the provisions of N.J.A.C. 4A:4-2.1(e) requiring that applications for such examinations be filed no later than the announced date for the same were properly relaxed as permitted by N.J.A.C. 4A:1-1.2(c). The applicant provided a notarized statement indicating that she did not receive an email from the department's human resource office notifying her of the date of the examination. In re Van De Wal, Supervising Family Serv. Specialist 2 (PS6696K), Dep't of Children and Families, DOP Docket No. 2013-3480, 2013 N.J. CSC LEXIS 785, Final Decision (August 14, 2013).

An applicant who sought appointment to the position of Habilitation Plan Coordinator (S0847P) won admission to the open competitive examination for that position notwithstanding a determination by the Division of Selection Services and Recruitment that she did not meet the experience requirements for the position. Based on what the Civil Service Commission (CSC) characterized as "clarifying" information, the consideration of which was authorized by N.J.A.C. 4A:4-2.1(g), the CSC held that the applicant had demonstrated that she met the experience requirement by showing that her duties while serving in the title of Mental Health Associate at a behavioral health agency included developing treatment plans and implementing programs and activities relevant to coping skills, positive self-esteem, healthy life choices, good nutrition, anger management, relaxation techniques, illness education, symptom recognition, cognitive therapy, assertiveness skills, peer support, drug and alcohol addiction and discharge planning which duties were performed through case management, analysis, development, and implementation of programs. Because those duties were the primary focus of the Habilitation Plan Coordinator (S0847P) position, the applicant possessed the requisite one year of experience and was entitled to admission to the examination. In re Apryl Huggins-Anis, Habilitation Plan Coordinator (S0847P), CSC Dkt. No. 2013-2741, 2013 N.J. CSC LEXIS 408, Final Decision (August 2, 2013).

An applicant who was a provisional appointee to the position of Habilitation Plan Coordinator (S0847P) won admission to the open competitive examination for that position notwithstanding a determination by the Division of Selection Services and Recruitment (DSS) that she did not meet the experience requirements for the position. Based on what the Civil Service Commission (CSC) characterized as "clarifying" information, the consideration of which was authorized by N.J.A.C. 4A:4-2.1(g),

the CSC held that the applicant had demonstrated that she met the experience requirement by showing that her job duties while serving in the title of Case Manager for Unity Place I included the care and treatment of individuals with developmental disabilities. Additionally, her responsibilities included developing treatment plans and implementing programs to promote wellness, peer support and recovery. Such job duties had been performed in a community setting since June 2011. Since this experience was properly considered to be applicable, the applicant in fact possessed the requisite one year of experience and was entitled to admission to the examination. In re Melissa A. Ashmen, Habilitation Plan Coordinator (S0847P), CSC Dkt. No. 2013-2740, 2013 N.J. CSC LEXIS 407, Final Decision (August 2, 2013).

Employee whose application for admission to the promotional examination for Family Service Specialist 1 (PS3420K), Dep't of Children & Families (DCF) was filed more than three months after the closing date and thus well beyond the deadline was not entitled to relief from the requirement that it be filed no later than the announced deadline because, given the facts, there was no basis to relax the controlling regulatory provision in N.J.A.C. 4A:4-2.1(e). In re Derrick L.W. Harris, Family Service Specialist 1 (PS3420K), Dep't of Children & Families, CSC Dkt. No. 2013-2591, 2013 N.J. CSC LEXIS 486, Final Decision (August 1, 2013).

Provision in N.J.A.C. 4A:4-2.1(e) requiring applications for open-competitive and promotional examinations to be filed no later than the announced filing date was properly relaxed as permitted by N.J.A.C. 4A:1-1.2(c) to allow an applicant seeking admission to the promotional examination for Administrative Analyst 1 (PS8077K), Department of Children and Families, notwithstanding the fact that the applicant did not complete the submission of his application prior to the closing date. The applicant, a first-time user of the Online Application System (OAS), completed the application prior to the deadline but did not realize until two days later – which was after the deadline – that the Division of Selection Services had not received his application fee and was treating his application as incomplete. The facts as established, taken with the fact that the applicant had never used the OAS process before and thus was unfamiliar with it, constituted good cause to relax the rule and treat the application as having been timely filed. In re Brian J. Connolly, Admin. Analyst 1 (PS8077K), Dep't of Children & Families, CSC Dkt. No. 2013-3195, 2013 N.J. CSC LEXIS 482, Final Decision (August 1, 2013).

Five applicants who did not meet the education and experience requirements for the open-competitive examination for Sales Representative 2, State Lottery (S0066R), Department of the Treasury, which requirements included a bachelor's degree and two years of experience in areas including telemarketing sales, direct sales, customer service, sales promotion, or sales support, were properly denied admission to the examination. Information submitted by two of the applicants who had been found to lack the minimum required experience detailing service in positions that they had not previously listed on their applications could not be considered on appeal because the same was not "clarifying" information within the meaning of N.J.A.C. 4A:4-2.1(g) and to accept the same after the announced closing date would be contrary to N.J.A.C. 4A:4-2.1(f), which only permitted amendment of an application prior to the announced closing date. In re John Carr, et al., Sales Representative 2, State Lottery (S0066R), Dep't. of the Treasury, CSC Dkt. No. 2013-3169, 2013 N.J. CSC LEXIS 415, Final Decision (August 1, 2013).

An applicant seeking admission to the open competitive examination for Superintendent Parks and Forestry 4 (S0859P) did not possess the minimum experience required for admission as required by N.J.A.C. 4A:4-2.3(b)2, including a bachelor's degree in one of several specified disciplines. Though the applicant possessed a Bachelor's degree in Civil Engineering and Master's degree in Environmental Policy and Management, she did not provide the documentation that was required if the Division of Selection Services and Recruitment (DSSR) was to permit substitution of bachelor's and master's degrees that she possessed for the required degree in Forestry, Landscape Architecture, Park Planning, Park Management, Park Administration, Parks and Recreation, or Natural Resources Management. Nor did the applicant establish that she possessed the relevant experience. Specifically, because the duties performed by the applicant in her prior position as a seasonal park

specialist for the Northern Region Office of the State Park Service, duties which she sought to clarify on appeal as permitted by N.J.A.C. 4A:4-2.1(g), did not involve the overall operation, implementation, administration, maintenance or general supervision of the facility, the DSSR's refusal to credit the applicant with the required experience based on that employment was appropriate. In re Marie Raffay, Superintendent Parks & Forestry 4 (S0859P), CSC Dkt. No. 2013-2679, 2013 N.J. CSC LEXIS 398, Final Decision (August 1, 2013).

An applicant was not entitled to relief from a decision of the Division of Selection Services and Recruitment (DSSR) that he did not meet the experience requirements for an open competitive examination for Construction Official (S1035P), Department of Community Affairs nor from its decision to remove him from the eligible list for Construction Official (PS4611D), Department of Community Affairs (DCA), the latter of which decision was based on the DSSR's discovery that he had been included on the list due to administrative error. Though N.J.A.C. 4A:4-2.1(g) authorized the Civil Service Commission to accept "clarifying" information in eligibility appeals, N.J.A.C. 4A:4-2.1(f) allowed amendment of an application only prior to the announced closing date. The additional information provided by the applicant pertained to the applicant's supervisory experience, experience that he had not addressed in his original materials. Because such information was a significant additional of information, it was not "clarifying" information within the meaning of N.J.A.C. 4A:4-2.1(g) and could not be credited in this proceeding. Moreover, because the applicant did not meet the experience requirements for the relevant promotional examination, he was not entitled to relief from the DSSR's action to remove him from the eligible list for Construction Official (PS4611D). In re Robert Latham, Construction Official (S1035P) and Construction Official (PS4611D), Dep't of Cmty. Affairs, CSC Dkt. Nos. 2013-2746 and 2013-3241 (Consolidated), 2013 N.J. CSC LEXIS 391, Final Decision (July 31, 2013).

Good cause existed to amend the application filing date of an announcement for the promotional examination for Police Captain when the Police Department did not utilize its usual procedures for the announcements pursuant to N.J.A.C. 4A:4-2.1(b). The department did not provide individual notification or require eligibles to sign for the test, and the locations where the announcement was posted did not necessarily afford all eligibles the opportunity to see the postings. Further, there was no follow up to ensure that the subject announcements remained posted and/or visible during the entire filing period. In re Police Captain (PM7521P), Jackson, CSC Dkt. Nos. 2013-1056, 2013-826, 2013-828, 2013-1434, 2013 N.J. CSC LEXIS 609, Final Decision (June 5, 2013).

Determination by the Division of Selection Services and Recruitment that an applicant was ineligible for the promotional examination for Program Coordinator, Mental Health, was proper. As of the closing date of the examination, she had not indicated that she possessed a Bachelor's Degree in Sociology/Anthropology, and although she was afforded an opportunity to submit the details of her degree, she failed to do so. To permit the applicant to amend her application under N.J.A.C. 4A:4-2.1(f) would have been manifestly unfair to the many other applicants who were sufficiently diligent to present a completed application with all the requisite documentation by the closing date, particularly where a complete eligible list existed. In re Velma L. Bourne, Program Coordinator, Mental Health (PS9830K), Greystone Park Psychiatric Hospital, CSC Dkt. No. 2013-929, 2013 N.J. CSC LEXIS 244, Final Decision (May 1, 2013).

Relief from a decision of the Division of Selection Services and Recruitment that an applicant was ineligible per N.J.A.C. 4A:4-2.6(a) for the examination for Administrative Analyst (PC0297P), Mercer County, a title in which she had served provisionally from November 2006 until the closing date, because she lacked the required five years experience was appropriate because the Director of Housing and Community Development indicated that the applicant's duties since 2006 had included assessing and evaluating administrative procedures and organizational functions, reviewing administrative operations of the program/office and recommending improvements, and assisting with formulating the annual budget. Although that experience did not precisely mirror the requirements as stipulated in the examination announcement, the totality of the applicant's experience as a provisional Administrative Analyst since

2006 warranted her admission to the examination, especially since clarifying information provided by the Director as permitted by N.J.A.C. 4A:4-2.1(g) had confirmed that the applicant was qualified for the examination. Other supporting facts included that the applicant continued to serve provisionally in the title and that the examination had been cancelled due to lack of qualified applicants. In re Paoline, Administrative Analyst (PC0297P), Mercer County, CSC Dkt. No. 2013-344, 2013 N.J. CSC LEXIS 269, Final Agency Action (April 5, 2013).

Police officer was not entitled to relief from a determination of the Division of Selection Services that he was ineligible to take a promotional examination for the position of police lieutenant due to his having not filed his application for the examination prior to the application deadline because the officer did not show that a notice of that examination was not provided to him as required by N.J.A.C. 4A:4-2.1(b) nor adduce persuasive evidence that, due to extenuating circumstances, he was unable to comply with the filing deadline. In re Michael Pastirko, Police Lieutenant (PM5007P), Bridgeton, CSC Dkt. No. 2013-749, 2013 N.J. CSC LEXIS 229, Final Agency Action (April 5, 2013).

Provision in N.J.A.C. 4A:4-2.1(e) requiring that applications for promotional examinations be filed no later than the announced filing date was properly relaxed as permitted by N.J.A.C. 4A:1-1.2(c) to allow an employee who was provisional in the title of Technical Support Specialist 1 (PS6430U), Office of Information Technology (OIT) to take the examination notwithstanding his failure to file a timely application. Not only was the employee unfamiliar with the examination procedures but the appointing authority strongly supported his appeal. While such a circumstance would not be a persuasive reason to accept an untimely application, when the employee's inexperience with the examination process was taken in tandem with his successful provisional service in the subject title and the support of the appointing authority, good cause was established. In re Apoldite, Technical Support Specialist 1 (PS6430U), Office of Information Technology, CSC Docket No. 2013-2101, 2013 N.J. CSC LEXIS 352, Final Decision (April 3, 2013).

Applicant for the promotional examination for Family Service Specialist 1 did not make a timely filing as required by N.J.A.C. 4A:4-2.1(e). It was undisputed that the appointing authority properly and timely notified the applicant of the examination announcement by sending notification to her home via certified mail nearly two weeks prior to the closing date and the certified mail was received at her home address. Her contention that her husband did not give her the certified mail or that it might have somehow been misplaced due to the commotion surrounding the birth of her child did not provide a valid reason to accept her untimely application. In re Eileen M. Galvan, Family Service Specialist 1 (PS3420K), Dep't of Children and Families, CSC Dkt. No. 2013-2298, 2013 N.J. CSC LEXIS 335, Final Decision (April 3, 2013).

Candidate was not permitted to file an application after the closing date for the promotional examination for County Services Specialist. Given that the subject announcement was posted in a conspicuous location at the candidate's assigned office during the filing period, there was no basis to relax the provisions of N.J.A.C. 4A:4-2.1(e) to permit the filing of an application after the closing date. In re Jennifer Dinella, Cnty. Serv. Specialist (PS1394K), Dep't. of Children and Families, CSC Dkt. No. 2013-570, 2013 N.J. CSC LEXIS 189, Final Decision (March 6, 2013).

Even if N.J.A.C. 4A:4-2.1(f) did not prohibit the Civil Service Commission from considering, on appeal, additional materials bearing on work that was not previously listed on an applicant's application or resume because the same was not "clarifying" information that could be considered per N.J.A.C. 4A:4-2.1(g), the duties described by the applicant did not match the announced experience requirement for the position of Assistant Library Director (PM0700P), Hackensack and provided no basis for relief from a decision of the Division of Selection Services and Recruitment finding that she did not satisfy the experience requirements for the promotional examination for that position. In re Schuit, Assistant Library Director (PM0700P), Hackensack, CSC Dkt.

No. 2013-714, 2013 N.J. CSC LEXIS 19, Final Agency Action (January 25, 2013).

Candidate did not meet the education and experience requirements for the promotional examination for Program Coordinator mental health (PS9830K) as required by N.J.A.C. 4A:4-2.6(a). His evaluation of foreign degree indicated that his coursework had the U.S. equivalency of a Bachelor's degree in Economics and a Master's degree in Public Administration, which were unacceptable degrees. Additional positions that were not listed on his original application could not be considered pursuant to N.J.A.C. 4A:4-2.1(f), and his experience as a Technical Assistant did not match the announced requirement of experience. Admittance to a prior examination for the same title had no bearing on this determination. In re Olayemi Arajuwa, Program Coordinator Mental health (PS9830K), Greystone Park Psychiatric Hospital, CSC Dkt. No. 2013-784, 2013 N.J. CSC LEXIS 9, Final Decision (January 25, 2013).

Provision in N.J.A.C. 4A:4-2.1(e) requiring that applications for open-competitive and promotional examinations were to be filed no later than the announced filing date for applications was appropriately relaxed to accept a late-filed application from a current provisional project manager who demonstrated that his failure to meet the deadline was caused by personal circumstances including a severe spinal injury that required him to take medications that caused drowsiness, dizziness, mental confusion and intestinal problems and a series of health crises affecting his wife which left her unable to care for herself. Also relevant was the fact that the appointing authority had advised the Commission that it supported a grant of relief to the applicant, who was performing duties that the appointing authority deemed to be critical to its system. Though such personal circumstances ordinarily would not be a persuasive reason to accept an untimely application, the severity of the applicant's medical situation, the additional stress caused by caring for his seriously ill wife, and the support of the appointing authority, taken together, constituted good cause for the Commission to exercise the discretion granted by N.J.A.C. 4A:1-1.2(c) to relax the provisions of the rule. In re Charles Chrupcala, Project Manager, Data Processing (PS2588U), Office of Information Technology, CSC Docket No. 2013-1175, 2013 N.J. CSC LEXIS 74, Final Decision (January 24, 2013).

4A:4-2.2 Types of examinations

(a) The Commissioner of the Department of Personnel shall administer examinations for appointment in the competitive division of the career service which may include any one or more of the following:

1. Written tests;
2. Oral tests;
3. Performance tests;
4. Physical performance tests;
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).

Three candidates did not meet the announced requirements for eligibility for the open competitive examination for Nursing Services Clerk by the closing date and therefore were correctly denied admission to the examination pursuant to N.J.A.C. 4A:4-2.3(b). One applicant listed positions as Insurance Counselor, Agency Manager, and Scanning Coordinator, while a second applicant served as a church Program Aide. The third applicant worked as a Senior Account Claims Representative. The positions of all three candidates were not clerical as a primary focus,

and they were not in a medical or long-term care facility or office. In re Sue Barber, et al., Nursing Serv. Clerk (S0266R), Statewide, CSC Dkts. No. 2014-583, 2014-615, 2014-814, 2014-531 (Consolidated), 2013 N.J. CSC LEXIS 1194, Final Decision (December 23, 2013).

Civil Service Commission ordered that a candidate's application for the open competitive examination for Assistant Youth Opportunity Coordinator be processed for future employment opportunities only. His service as an Assistant Youth Opportunity Coordinator was applicable experience, and therefore, he possessed 10 months of applicable experience as of the closing date of the examination. Moreover, he continued to serve in the title of Assistant Youth Opportunity Coordinator after the closing date. Furthermore, his clarified service as a Recreation Aide would also be considered applicable experience, thereby providing him with more than the required experience pursuant to N.J.A.C. 4A:4-2.3(b). In re Donald Johnson, Assistant Youth Opportunity Coordinator (M0237R), City of Elizabeth, CSC Dkt. No. 2014-448, 2013 N.J. CSC LEXIS 1192, Final Decision (December 23, 2013).

Candidate did not meet the minimum requirements in experience for the competitive examination for Clerk 4 as required by N.J.A.C. 4A:4-2.3(b). In her second listed position, she indicated that she was providing consultative services and expertise on a broad spectrum of human resource functions. In her third position, processing mail, managing schedules, and maintaining an office supply inventory appeared to be ancillary duties to the primary focus, which was assisting in human resource functions. In re Kishon Ridley, Clerk 4 (M0303R), Plainfield, CSC Dkt. No. 2014-418, 2013 N.J. CSC LEXIS 1098, Final Decision (December 23, 2013).

The Division of Selection Services and Recruitment (DSSR) correctly determined that an applicant seeking admission to the open competitive examination for Legal Secretary 2 (S1046P), Statewide did not possess the minimum experience required for admission as required by N.J.A.C. 4A:4-2.3(b)2, which was one year of experience in transcribing or typing legal dictation or documents. The application for admission only referred to two months of experience and the applicant's appeal-related submission noting her previous employment as a senior clerk typist in another agency could not be considered because it constituted amended information that was not properly accepted after the closing date for the exam per N.J.A.C. 4A:4-2.1(f). Nor was there any other appropriate ground on which the requirements for admission were properly relaxed. In re McCathern, Legal Secretary 2 (S1046P), Statewide, CSC Docket No. 2013-2766, 2013 N.J. CSC LEXIS 1183, Final Administrative Action (December 19, 2013).

Sufficient basis existed in the record to support the Division of Selection Services' determination that a candidate was ineligible for the open competitive examination for Habilitation Plan Coordinator under N.J.A.C. 4A:4-2.3(b)2. Although the experience the candidate gained as a Skill Instructor involved the care of individuals with developmental disabilities, that experience did not rise to the level and scope of treatment and rehabilitation of individuals or implementation of programs for clients with developmental disabilities as contemplated by the examination announcement. The experience she gained after the closing date would not be considered clarifying information under N.J.A.C. 4A:4-2.1(g), which might be allowed, but rather, was considered amended information, which was not permitted after the closing date of an examination under N.J.A.C. 4A:4-2.1(f). In re Stephanie Menagh, Habilitation Plan Coordinator (S0847P), CSC Dkt. No. 2013-2869, 2013 N.J. CSC LEXIS 1134, Final Decision (December 18, 2013).

Sufficient basis existed in the record to support the Division of Selection Services' determination that a candidate was ineligible for the Habilitation Plan Coordinator examination under N.J.A.C. 4A:4-2.3(b)2. His experience as a School Counselor did not satisfy the experience requirement because, although he might have had experience in case management, he did not have experience in the analysis, development and implementation of programs for clients with developmental disabilities. While he might have had experience in the treatment of individuals with developmental disabilities, he did not possess experience in the care and rehabilitation of those individuals. Moreover, even if he was performing the duties listed in either prong of the

experience requirement, it did not appear that such duties were the primary focus of his position. In re Joseph Hammell, Habilitation Plan Coordinator (S0847P), CSC Dkt. No. 2013-2769, 2013 N.J. CSC LEXIS 1131, Final Decision (December 18, 2013).

Candidate was ineligible for the open competitive Habilitation Plan Coordinator examination pursuant to N.J.A.C. 4A:4-2.3(b)2 because she did not meet the experience requirements. While the experience Ms. Steinmetz gained might have involved the 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 as contemplated by the examination announcement. Nonetheless, even if this experience were applicable, she would only have gained five months of experience by the closing date. In re Sara Steinmetz, Habilitation Plan Coordinator (S0847P), CSC Dkt. No. 2014-1038, 2013 N.J. CSC LEXIS 1104, Final Decision (December 18, 2013).

Though the Division of Selection Services and Recruitment (DSSR) had correctly determined that an applicant seeking admission to the open competitive examination for Cook (M0307R), Plainfield, did not meet the minimum experience requirements for admission to that exam, the applicant, who was serving provisionally in that title, had shown good cause within the meaning of N.J.A.C. 4A:1-1.2(c) to relax the requirements and admit the candidate to the examination. DSSR credited the appellant with only five months of experience based on her CAMPS record indicating that she was provisionally appointed in December 2012 but, on appeal, her supervisor corrected that information to reflect that she in fact was provisionally appointed October 15, 2012. Moreover, the candidate continued to serve provisionally in the title of Cook after the closing date, thereby providing her with an additional eight months of applicable experience. Finally, the examination situation was not competitive since the examination was cancelled due to the lack of any qualified candidates. Under these circumstances, good cause existed to relax the provisions of N.J.A.C. 4A:4-2.3(b) and accept the candidate's provisional experience after the closing date, for eligibility purposes only, which will provide her sufficient experience for the subject examination. In re Mercedes, Cook (M0307R), Plainfield, CSC Docket No. 2014-674, 2013 N.J. CSC LEXIS 1179, Final Administrative Action (December 6, 2013).

The Division of Selection Services and Recruitment (DSSR) correctly determined that an applicant seeking admission to the open competitive examination for Public Health Consultant 2, Nutrition (S0212R), Statewide did not meet the education requirements required for admission per N.J.A.C. 4A:4-2.3(b)2. Though the applicant possessed a Master's degree in Healthcare Administration, that degree was not applicable to the education requirement, which included graduation from an accredited college or university with a Bachelor's degree, supplemented by a Master's degree in any nutrition specialty, such as Public Health Nutrition, Human Nutrition, Dietetics, Food Service Administration or Nutrition Education. A review of the program that applicant had completed showed that the degree was a management degree that was not specific to nutrition. That meant that the DSSR was correct in determining that the applicant's Master's degree was not applicable. Finally, because there were six eligible candidates, there was no basis to relax the announced requirements. In re Nocks, Pub. Health Consultant 2, Nutrition (S0212R), Statewide, CSC Docket No. 2014-180, 2013 N.J. CSC LEXIS 1125, Final Administrative Action (December 5, 2013).

The Division of Selection Services and Recruitment (DSSR) correctly determined that an applicant seeking admission to the open competitive examination for Accountant (M0325R), Newark School District did not meet the education requirement for admission as required by N.J.A.C. 4A:4-2.3(b)2, which requirements included that a candidate possess a bachelor's degree including or supplemented by twenty-one semester hour credits in professional accounting subjects. The applicant possessed a Master's degree in Business Administration (MBA) and an Associate's degree in Business Administration. However, for purposes of examination eligibility, all semester hour credits are weighted the same without regard to whether they were obtained through graduate or undergraduate coursework, so the candidate's claim that his graduate school credits should be more heavily weighted lacked merit. Moreover, as there were a sufficient number of eligible candidates, there was not

"good cause" to relax the requirements. In re Pucciarelli, Accountant (M0325R), Newark Sch. Dist., CSC Docket No. 2014-435, 2013 N.J. CSC LEXIS 1093, Final Administrative Action (December 5, 2013).

Good cause within the meaning of N.J.A.C. 4A:1-1.2(c) was shown to relax the provisions of N.J.A.C. 4A:4-2.4(c) to announce a promotional examination for Supervisor, Public Works open to employees in the entry level non-competitive titles of Truck Driver and Truck Driver, Heavy who met the open competitive requirements and applicants serving in any competitive title who met the complete open competitive requirements. Because public interests were best served when more rather than fewer individuals were presented with employment opportunities and because Civil Service rules generally favored the filling of vacancies by promotional examination unless it is deemed in the best interest of the career service to hold an open competitive examination per N.J.A.C. 4A:4-2.3(a). In re Supervisor, Public Works, Sayreville, CSC Docket No. 2014-1082, 2013 N.J. CSC LEXIS 1087, Final Administrative Action (December 5, 2013).

Though the Division of Selection Services (DSS) correctly determined that an applicant for the open competitive examination for Rent Regulation Officer (M0411R), New Brunswick, lacked two years and seven months of applicable general experience and five months of supervisory experience needed to qualify for the subject examination, the applicant, who was serving provisionally in that title, had shown good cause within the meaning of N.J.A.C. 4A:1-1.2(c) to relax the requirement in N.J.A.C. 4A:4-2.3(b)2 requiring all applicants to meet all of the listed requirements by the closing date and in N.J.A.C. 4A:4-2.1(f) providing that applications may only be amended prior to the filing date. Specifically, the applicant failed to list her experience as an office supervisor in a private enterprise on her original application. There were, nonetheless, good reasons to grant relief, including that the appointing authority supported the applicant's request to take the examination, that the applicant had gained another year of experience due to her provisional appointment, and that the totality of the applicant's experience satisfied the required general and supervisory experience. Moreover, the exam had been cancelled due to lack of qualified applicants. These factors provided grounds to accept the applicant's amendment of her application and admit her to the exam. In re Azcona, Rent Regulation Officer (M0411R), New Brunswick, CSC Docket No. 2014-663, 2013 N.J. CSC LEXIS 1207, Final Administrative Action (December 4, 2013).

The Division of Selection Services and Recruitment (DSSR) correctly determined that an applicant seeking admission to the promotional examination for Supervising Program Development Specialist, Community Service (PC0278R), Essex County per N.J.A.C. 4A:4-2.3(b)2 did not possess the minimum experience, which was an aggregate of one year of continuous permanent service in the competitive title of Senior Program Development Specialist, Community Service or an aggregate of one year of continuous permanent service in any competitive title who met the education and experience requirements thereof. Because the applicant did not meet the education requirement, which was that she possessed a Bachelor's degree, she was required to substitute an additional year of experience for each 30 credits of course work that would have been completed for a degree. Using that formula, she was required to possess no less than seven years of applicable experience. While she was serving provisionally in the title under test, she did not possess sufficient relevant experience nor was there a reason to relax the requirements. In re Van Dyke, Supervising Program Development Specialist, Cmty. Serv. (PC0278R), Essex County, CSC Docket No. 2014-367, 2013 N.J. CSC LEXIS 1039, Final Administrative Action (November 7, 2013).

Though the Division of Selection Services and Recruitment (DSSR) had correctly determined that an applicant seeking admission to the open competitive examination for Supervisor, Senior Citizen Outreach and Referral Program (C0512R), Monmouth County, did not meet the minimum experience requirements for admission to that exam by the closing date as required by N.J.A.C. 4A:4-2.3(b)2, the applicant's application had focused mainly on her marketing and fundraising duties for a private foundation. The more detailed information that she submitted on appeal clarified her qualifications as permitted by N.J.A.C. 4A:4-2.1(g) and provided grounds for a finding that she in fact possessed

the requisite experience. She thus was entitled to be admitted to the exam. In re Lewis, Supervisor, Senior Citizen Outreach & Referral Program (C0512R), Monmouth County, CSC Docket No. 2014-368, 2013 N.J. CSC LEXIS 1038, Final Administrative Determination (November 7, 2013).

Though the Division of Selection Services and Recruitment (DSSR) had correctly determined that an applicant seeking admission to the open competitive examination for Supervisor, Senior Citizen Outreach and Referral Program (C0512R), Monmouth County, did not meet the minimum experience requirements for admission to that exam, the applicant, who was serving provisionally in that title, had shown good cause within the meaning of N.J.A.C. 4A:1-1.2(c) to relax the requirement in N.J.A.C. 4A:4-2.3(b)2, which required all applicants to meet all of the listed requirements by the closing date and in N.J.A.C. 4A:4-2.1(f), which provided that an applicant may amend a previously submitted application only prior to the announced closing date, and admit the candidate to the examination. Her online application listed only her provisional experience in the subject title, but she submitted an affidavit in which she stated under oath that she had mailed her resume, which reflected her many years of experience working with the relevant population, to the DSSR. Thus, though the resume apparently was not received by DSSR, the Civil Service Commission's review of the same disclosed that the applicant had far more than the minimum experience required to take the exam and she was properly admitted to it. In re Kam, Supervisor, Senior Citizen Outreach & Referral Program (C0512R), Monmouth County, CSC Docket No. 2014-350, 2013 N.J. CSC LEXIS 1035, Final Administrative Decision (November 7, 2013).

Civil Service Commission adopted an administrative law judge's (ALJ's) recommendation that increased a custodial worker's working day suspension on charges of chronic or excessive absenteeism or lateness, neglect of duty, and other sufficient cause under N.J.A.C. 4A:2-2.3. There was no evidence that the ALJ inappropriately considered charges that were dismissed at the departmental hearing. Even if the charges regarding his actual days absent were not considered, the other sustained charges warranted the increase in penalty based on the scope of his lateness and his prior disciplinary record. In re Barry Ashford, OAL Dkt. No. CSV 02884-13, 2013 N.J. CSC LEXIS 987, Final Decision (October 16, 2013).

Division of Selection Services properly determined that an applicant was below the minimum requirements in education for the open competitive examination for Accountant as required by N.J.A.C. 4A:4-2.3(b). Although she was registered for Managerial Accounting for the Spring 2013 trimester, she had not completed the course as of the April 24, 2013 closing date. In re Leslie Jackson, Accountant (M0325R0), Newark School Dist., CSC Dkt. No. 2014-628, 2013 N.J. CSC LEXIS 951, Final Decision (October 16, 2013).

Action of appointing authority in removing a Senior Correction Officer from her position was justified after she engaged in an unduly familiar relationship with a known inmate in violation of N.J.A.C. 4A:2-2.3(a)(6). The depth of their conversations during two phone calls, the level of familiarity, and the topics discussed showed a romantic, closely personal relationship between the officer and the inmate. In re Venus Naylor, Adult Diagnostic and Treatment Ctr., Dep't. of Corr., OAL Dkt. No. CSR 06023-13, 2013 N.J. CSC LEXIS 740, Final Decision (October 16, 2013).

Applicant was not eligible to take the open competitive examination for Administrative Analyst 1, Fiscal Management. Her experience did not meet the announced requirements pursuant to as required by N.J.A.C. 4A:4-2.3(b)2 because her duties did not involve fiscal analysis and budgeting. Even with the applicant's clarifying description of her duties on her resume, none of her positions involved job responsibilities in the overall operational analysis of a specialized area in the organization with the direct responsibility for the recommendation, planning, or implementation of fiscal management systems for the agency. The Civil Service Commission did not permit the amendment of her application with work experience submitted after the announced closing date pursuant to N.J.A.C. 4A:4-2.1(f). Nevertheless, none of the work experience submitted on appeal involved job responsibilities in the required area. In re Lori Ghavami, Administrative Analyst 1, Fiscal

management (S0931P), CSC Dkt. No. 2013-2426, 2013 N.J. CSC LEXIS 979, Final Decision (October 8, 2013).

The Division of Selection Services and Recruitment (DSSR) correctly determined that an applicant seeking admission to the open-competitive examination for Deputy Municipal Court Administrator (M0235P), Jersey City, did not meet the minimum experience requirements. The applicant's listed experience, which included Public Safety Dispatcher with the Department of Defense, Campus Public Safety Officer with City University of New York, Hospital Police Officer with New York City Health and Hospital, Community Service Officer/Dispatcher with the Montclair Police Department, and Municipal Court Attendant/Bailiff with the Jersey City Municipal Court. Though incumbents in the position for which the applicant was seeking access were responsible for attending to the municipal court judge, making proclamations and announcements, serving papers issued from court and other tasks relating to the preparation and processing of legal documents, none of the experience cited by the applicant included administrative operations including the preparation or processing of legal documents as a primary focus. Given the primacy of those skills for the position at issue, the record amply supported the determination of the DSSR that the applicant had not met the requirements for the exam by the closing date as required by N.J.A.C. 4A:4-2.3. In re Shannon Adams, Deputy Municipal Court Administrator (M0235P), Jersey City, CSC Docket No. 2013-332, 2013 N.J. CSC LEXIS 993, Final Decision (October 7, 2013).

Civil Service Commission ordered the granting of a candidate's appeal after the Division of Selection Services and Recruitment found that he was below the minimum requirements in experience for the open competitive examination for Supervising Code Enforcement Officer pursuant to N.J.A.C. 4A:4-2.3(b). Although the candidate failed to follow basic instructions in filling out his application when he did not include additional positions as an Electrical Subcode Official and Electrical Inspector, the Commission concluded that his experience as Electrical Inspector satisfied the Code Enforcement Officer requirements for an additional period. However, the Commission cautioned the candidate to fully complete any future applications. In re Patrick Callahan, Supervising Code Enforcement Officer (M0285R), Manasquan, CSC Dkt. No. 2014-166, 2013 N.J. CSC LEXIS 927, Final Order (October 7, 2013).

Candidate did not meet the announced experience requirements for eligibility to take the open competitive examination for Administrative Analyst 3 and therefore the determination of the Division of Selection Services and Recruitment was appropriate under N.J.A.C. 4A:4-2.3(b)2. Her "Mini-MBA" could not be substituted for one year of experience because it was not an accredited Master's program. Even with the candidate's clarifying description of her duties as serving in the acting supervisor's absence and planning, recommending, or implementing budgets for the City of Newark, none of her positions involved job responsibilities in the required areas. In re Lori Ghayami, Administrative Analyst 3 (S0708P), CSC Dkt. No. 2013-2187, 2013 N.J. CSC LEXIS 980, Final Decision (October 3, 2013).

Candidate did not meet the minimum requirements in experience for the open competitive examination for Senior Income Maintenance Technician as required by N.J.A.C. 4A:4-2.3(b)2. Although she did not list any experience on her application for the examination, the Division of Selection Services and Recruitment considered her experience as listed on another application, namely her experience in a "Logistics" position with a private corporation, and found that it clearly did not qualify as one year of experience examining, adjusting, determining, or authorizing eligibility or entitlement for cash awards or benefits in a public or private financial assistance program, or in the investigation of personal financial matters. In re Lori Ghayami, Senior Income Maintenance Technician (S0926P), CSC Dkt. No. 2013-2558, 2013 N.J. CSC LEXIS 973, Final Decision (October 3, 2013).

Candidate did not meet the minimum requirements in experience for the open competitive examination for Records Management Analyst as required by N.J.A.C. 4A:4-2.3(b)2. Although on appeal she presented that she had worked as a Budget Analyst, Analyst, Financial Analyst, and Financial Controller and had a "very strong" investment background, none of those positions involved job responsibilities in the

required areas. Therefore, the candidate was appropriately credited with no applicable experience. In re Lori Ghayami, Records Management Analyst (M0806P), East Orange, CSC Dkt. No. 2013-2425, 2013 N.J. CSC LEXIS 962, Final Decision (October 3, 2013).

Good cause existed to accept a candidate's application for the open competitive examination under N.J.A.C. 4A:4-2.3(b)2 and add her to the employment list for Violations Clerk. On her application she described her major duties with a private law firm as establishing payment plans between clients and defendants; serving as collections paralegal to over 20 attorneys; interacting with attorneys, defendants, paralegals and court officers; negotiating out of court settlements; initiating legal proceedings, liens, bank levies and wage garnishments. On appeal, the candidate submitted a more detailed description of her nearly five year employment with the law firm, which clearly involved the maintaining/keeping of records, and the Civil Service Commission accepted that clarifying information pursuant to N.J.A.C. 4A:4-2.1(g). In re Dana Parrello, Violations Clerk (M0256R), West Milford, CSC Dkt. No. 2014-144, 2013 N.J. CSC LEXIS 911, Final Decision (October 2, 2013).

Division of Selection Services and Recruitment properly determined that a candidate did not meet the experience requirements for the open competitive examination for Communications Systems Technician 1 as required by N.J.A.C. 4A:4-2.3(b). His Associate's degree was acceptable as completion of the specialized training program but could not be used to substitute for one year of experience because he failed to submit a copy of his transcript with his application. His experience as a Senior Building Maintenance Worker was clearly not applicable, and the descriptions of his other two jobs did not include data and voice communications network hardware, related peripheral devices, and associated wiring systems, as the primary focus. In re Kyle Fountain, Comm'n. Systems Technician 1 (S0152R), Statewide, CSC Dkt. No. 2013-3236, 2013 N.J. CSC LEXIS 784, Final Decision (September 23, 2013).

Candidate did not meet the experience requirement for the open competitive examination for Administrative Analyst 1, Fiscal Management, pursuant to N.J.A.C. 4A:4-2.3(b)2. She did not demonstrate that the primary duties of her former positions as a Mortgage Consultant, Operations Manager/Loan Originator, Branch Manager/Senior Loan Officer, Unit Leader/Agent, and Sergeant/Operations Manager/Mental Health Specialist involved the required duties of direct responsibility for the recommendation, planning, or implementation of fiscal management systems. In re Amy Marino, Admin. Analyst 1, Fiscal Mgmt. (S0931P), CSC Dkt. No. 2013-2505, 2013 N.J. CSC LEXIS 845, Final Decision (September 19, 2013).

There was no good cause to relax N.J.A.C. 4A:4-2.3(b)2 and accept a candidate's provisional experience after the closing date for the open competitive examination for Senior Income Maintenance Technician because the eligible list was complete with more than three eligibles. In re Joetta Belardo, Senior Income Maint. Technician (S0926P), CSC Dkt. No. 2013-2506, 2013 N.J. CSC LEXIS 838, Final Decision (September 19, 2013).

Candidate was entitled to be admitted to the promotional examination for Assistant Library Director because good cause existed to relax the provision of N.J.A.C. 4A:4-2.3(a)2 and accept her provisional supervisor experience after the closing date, for eligibility purposes only. Although the candidate's experience as a Library Associate and in the Library Assistant title series did not precisely mirror experience as a professional Librarian, given that the examination was cancelled due to a lack of applicants, in conjunction with more than two years of experience as a Librarian, the Civil Service Commission was satisfied that the totality of this experience satisfied the required general experience. In re Tonya Badillo, Assistant Library Dir. (PM1077P), Long Branch, CSC Dkt. No. 2013-2429, 2013 N.J. CSC LEXIS 825, Final Decision (September 18, 2013).

The Division of Selection Services and Recruitment (DSSR) correctly determined that an applicant seeking admission to the open competitive examination for Legal Secretary (C1017P), Sussex County because she was below the minimum requirements in experience by the deadline as N.J.A.C. 4A:4-2.3(b)2 required. Incumbents in the Legal Secretary title

perform legal clerical work involved in preparing legal papers such as summonses, complaints, motions and subpoenas which require a specialized knowledge of legal documents, terminology, processes and procedures and perform other related duties. By contrast, the applicant's day-to-day duties in her prior positions focused on purchasing agent work, not the performance of legal clerical work. Finally, though the applicant indicated that she had a Bachelor's degree in Communications, there was no indication that she possessed the required training or semester hour credits that could be substituted for one year of applicable experience. Accordingly, because an independent review of all material indicated that the decision of DSSR that the applicant did not meet the announced requirements was supported by the record, no relief was warranted. In re Ondris, Legal Secretary (C1017P), Sussex Cnty., CSC Docket Nos. 2013-2589, 2013 N.J. CSC LEXIS 958, Final Administrative Determination (September 4, 2013).

The Division of Selection Services and Recruitment (DSSR) correctly determined that an applicant seeking admission for the open competitive examination for the dual title of Code Enforcement Officer/Zoning Officer (M1014P), Lavallette Borough did not meet the experience requirements required for admission per N.J.A.C. 4A:4-2.3(b)2, which was one year of experience in conducting inspections or investigations to detect violations of and ensure compliance with laws, rules and regulations for the Code Enforcement Officer position. Candidates were required to possess three years of experience in the preparation and revision of building construction plans and specifications or in the full time inspection and enforcement of zoning and/or building construction laws and regulations for the Zoning Officer position. DSSR's determination that the applicant was ineligible for the subject examination because he lacked nine months of code enforcement experience and two years and eight months of zoning experience was correct because the remainder of the applicant's experience did not have as the primary focus code enforcement/zoning duties. Since that determination was supported by the record, the applicant was not entitled to relief. In re Royer, Code Enforcement Officer/Zoning Officer (M1014P), Lavallette Borough, CSC Docket No. 2013-3004, 2013 N.J. CSC LEXIS 767, Final Administrative Determination (September 4, 2013).

The Division of Selection Services and Recruitment correctly determined that an applicant seeking admission to open competitive examination for the position of Contract Administrator 2 (S0029R), Statewide did not possess the minimum experience required by the position per N.J.A.C. 4A:4-2.3(b). The applicant only listed his eight months of experience as a Contract Administrator 2 on his original application. Since the applicant did not demonstrate on his application that he possessed the three years of required experience and since the examination resulted in an eligible list of 41 candidates, there was no good cause to exercise its discretion under N.J.A.C. 4A:1-1.2(c) and N.J.A.C. 4A:4-2.6(a) to relax any of the foregoing provisions and admit the applicant to the exam. In re Krupa, Contract Adm'r 2 (PS4559T), Motor Vehicle Comm'n and (S0029R), Statewide, CSC Docket Nos. 2013-2904, 2013-2972, 2013 N.J. CSC LEXIS 757, Final Administrative Determination (September 4, 2013).

The Division of Selection Services and Recruitment (DSSR) did not err in concluding that an applicant who was seeking entry to the open competitive examination for Rehabilitation Counselor, Mental Health (S0805P) was below the minimum requirements in experience for that examination. The applicant, who was serving provisionally in the subject title, could not now rely on her experience as a licensed minister because she did not list that on her application and she was not permitted to add new positions after the closing date for the examination per N.J.A.C. 4A:4-2.1(f). Moreover, other employment experience that was listed on her application was not pertinent because in order for experience to be considered applicable, it was required to have as its primary focus the full-time duties and responsibilities in the areas required in the announcement. Because a thorough review of all of the materials indicated that DSSR's decision that the candidate did not meet the announced requirements for eligibility by the exam closing date as required by N.J.A.C. 4A:4-2.3(b) was supported by the record, the candidate failed to carry her burden to show otherwise. In re Blackmon, Rehab. Counselor, Mental Health (S0805P), CSC Docket No. 2013-2214, 2013 N.J. CSC LEXIS 851, Final Administrative Decision (August 16, 2013).

A finding by the Division of Selection Services and Recruitment that an applicant for the open competitive examination for Subcode Official (S0306R), Statewide was ineligible for the examination because he did not meet the residency requirement was approved by the Civil Service Commission. The fact that the applicant had received a hardship exemption from the residency requirements in N.J.A.C. 4A:4-2.3(b) of the New Jersey First Act for his current position had no effect on his eligibility for the subject examination. To relax the requirements would be unfair to the current list of eligible as well as other non-N.J. residents who did not apply because they, like the applicant, were not eligible to do so. In re Velardi, Subcode Official (S0306R), Statewide, CSC Docket No. 2013-3533, 2013 N.J. CSC LEXIS 792, Final Administrative Decision (August 16, 2013).

A finding by the Division of Selection Services and Recruitment (DSSR) that an applicant for the open competitive examination for Senior Engineer Civil (S0274R), Statewide was ineligible for the examination because he did not meet the residency requirement was approved by the Civil Service Commission. The fact that the applicant had received an exemption from the residency requirements in N.J.A.C. 4A:4-2.3(b) of the New Jersey First Act for his current position had no effect on his eligibility for the subject examination. To relax the requirements would be unfair to the current list of eligible as well as other non-N.J. residents who did not apply because they, like the applicant, were not eligible to do so. In re Szedlmayer, Senior Eng'r Civil (S0247R), Statewide, CSC Docket No. 2013-2840, 2013 N.J. CSC LEXIS 741, Final Administrative Decision (August 16, 2013).

Determination by the Division of Selection Services and Recruitment (DSSR) that four employees who were permanent in the non-competitive title of Truck Driver and worked in the Department of Public Works (DPW) were ineligible for the promotional examination for Assistant Supervisor of Public Works, (PM0089R), Marlboro Township because they were not permanent in the competitive division as of the closing date was overturned by the Civil Service Commission. Because all of the employees had achieved permanent status in the title before it was allocated to the noncompetitive division, they were within the class of employees who, per N.J.A.C. 4A:3-1.2(4), were entitled to claim permanent status in a competitive title for the purpose of eligibility for promotion notwithstanding the reclassification of their positions to the noncompetitive service. Moreover, because there was a logical nexus between the duties performed by each employee and those required to establish eligibility for the title under test, each met the experience requirements for the title under test as required by N.J.A.C. 4A:4-2.6(a). Though under normal circumstances, the DSSR would have been correct to determine that the employees were ineligible for the subject exam as applicable experience gained in the Truck Driver title would be considered out-of-title work, their experience should have been evaluated in the context of the environment in which the employees were working. That is, it would have been appropriate to consider the potential pool of candidates who could compete for the examination. Admission of these employees to the examination also served the valid public interest of filling positions through promotional examinations per N.J.A.C. 4A:4-2.3(a). In re Gann, et al., Ass't Supervisor of Pub. Works, (PM0089R), Marlboro Township, CSC Docket Nos. 2013-3175, 2013-3200, 2013-3254, 2013-3262 (Consolidated), 2013 N.J. CSC LEXIS 829, Final Administrative Determination (August 15, 2013).

Determination by the Division of Selection Services and Recruitment that two applicants did not meet the experience requirements for admission to an open competitive examination for the dual title of Maintenance Repairer/Mechanic (C0993P), Bergen County, as required by N.J.A.C. Cite 4A:4-2.3(b)2 was amply supported by the record, which reflected that neither of the applicants possessed the required three years of applicable experience. Though such experience must have as its primary focus full-time responsibilities in the areas required in the announcement, the applicants' duties in the subject title did not have as the primary focus the maintenance and repair of various types of motor vehicles and/or construction equipment. Incumbents in the dual title of Maintenance Repairer/Mechanic perform a variety of routine maintenance and repair tasks involving masonry, plastering, carpentry, painting, plumbing, steam fitting, sheet metal, electrical, glazing, mechanical and/or other types of maintenance work. However, incumbents are also required to perform varied mechanical work involved in the

repair, maintenance and servicing of motor vehicles and/or construction equipment working with various machines and hand tools common to the trade. However, neither of the applicants described such mechanical experience and both appeared to be primarily performing Maintenance Repairer duties in their current positions. However, though neither applicant was eligible for the examination given the deficit in experience, a review of their assigned duties and responsibilities was properly undertaken to determine the positions' appropriate classification in accordance with N.J.A.C. 4A:3-3.1. In re Marquez and Oddo, Maintenance Repairer/Mechanic (C0993P), Bergen County, CSC Docket Nos. 2013-2699, 2013-2698 (Consolidated), 2013 N.J. CSC LEXIS 890, Final Decision (August 14, 2013).

Determination by the Division of Selection Services and Recruitment that an applicant did not meet the experience requirements for the open competitive examination for Administrative Analyst 4, Data Processing (S0900P), Statewide, was supported by the record, which reflected that the applicant did not possess the required degree and thus was required to possess five years of applicable experience. Though the applicant stated that she provided technical support to staff; scheduled meetings; set up conferences; created reports; created, developed and maintained databases; attended meetings and webinars; processed financial and program data; and created spreadsheets and database applications, that experience was not applicable to the experience requirements set forth in the announcement. Thus, because the applicant did not meet all of the requirements specified in the announcement by the closing date as required by N.J.A.C. 4A:4-2.3(b)2, she was properly refused entry to the examination. In re Gregory, Administrative Analyst 4, Data Processing (S0900P), Statewide, CSC Docket No. 2013-2451, 2013 N.J. CSC LEXIS 849, Final Decision (August 14, 2013).

An applicant seeking admission to the open competitive examination for Superintendent Parks and Forestry 4 (S0859P) did not possess the minimum experience required for admission as required by N.J.A.C. 4A:4-2.3(b)2, including a bachelor's degree in one of several specified disciplines. Though the applicant possessed a Bachelor's degree in Civil Engineering and Master's degree in Environmental Policy and Management, she did not provide the documentation that was required if the Division of Selection Services and Recruitment (DSSR) was to permit substitution of bachelor's and master's degrees that she possessed for the required degree in Forestry, Landscape Architecture, Park Planning, Park Management, Park Administration, Parks and Recreation, or Natural Resources Management. Nor did the applicant establish that she possessed the relevant experience. Specifically, because the duties performed by the applicant in her prior position as a seasonal park specialist for the Northern Region Office of the State Park Service, duties which she sought to clarify on appeal as permitted by N.J.A.C. 4A:4-2.1(g), did not involve the overall operation, implementation, administration, maintenance or general supervision of the facility, the DSSR's refusal to credit the applicant with the required experience based on that employment was appropriate. In re Marie Raffay, Superintendent Parks & Forestry 4 (S0859P), CSC Dkt. No. 2013-2679, 2013 N.J. CSC LEXIS 398, Final Decision (August 1, 2013).

The Division of Selection Services and Recruitment (DSSR) correctly determined that an applicant seeking admission to the open competitive examination for Superintendent Parks and Forestry 4 (S0859P) did not possess the minimum experience required for admission as required by N.J.A.C. 4A:4-2.3(b)2. The candidate possessed a master's degree in Park and Resource Management, thereby satisfying the education component of eligibility, but because the duties performed by the applicant in his prior position as a Visitor Services Assistant with the Delaware and Raritan Canal State Park did not involve the overall operation, implementation, administration, maintenance or general supervision of the facility, the DSSR's refusal to credit the applicant with relevant experience based on that employment was appropriate. In re Timothy Minor, Superintendent Parks & Forestry 4 (S0859P), CSC Dkt. No. 2013-2654, 2013 N.J. CSC LEXIS 394, Final Decision (August 1, 2013).

The Division of Selection Services and Recruitment (DSSR) correctly determined that an applicant seeking admission to the open competitive examination for Superintendent Parks and Forestry 4 (S0859P) did not possess the minimum experience required for admission as required by

N.J.A.C. 4A:4-2.3(b)2, including a bachelor's degree in one of several specified disciplines. Moreover, though applicant possessed a bachelor's degree in Environmental Studies, she did not provide the documentation that was required if the DSSR was to permit substitution of her degree in environmental studies for the required degree. Nor did the applicant establish that she possessed the relevant experience. In re Dawn Eberhard, Superintendent Parks & Forestry 4 (S0859P), CSC Dkt. No. 2013-2609, 2013 N.J. CSC LEXIS 384, Final Decision (August 1, 2013).

Relief was denied on a librarian's claim that the Division of Selection Services and Recruitment (DSSR) acted improperly in determining that she did not meet the requirements for a promotional examination for Library Director, which requirements included that she have five years of required experience by the closing date for the examination in compliance with N.J.A.C. 4A:4-2.3(b). Moreover, the DSSR had credited her with provisional experience despite the fact that she had simply copied her duties directly from the job specification for Library Director, which was not a sufficient basis on which to determine if a candidate's specific duties met the requirements for an examination; it was a candidate's burden to demonstrate that the duties he or she actually perform qualify the candidate for admission to an examination. In re Kristin Nelson, Library Dir., (M0814P), North Arlington, CSC Docket No. 2013-1636, 2013 N.J. CSC LEXIS 332, Final Agency Action (April 19, 2013).

Division of Selection Services and Recruitment properly determined that an applicant was ineligible for the open competitive examination for Human Services Specialist 1 pursuant to N.J.A.C. 4A:4-2.3(b) because she lacked three semester credits as of the closing date and possessed no applicable experience for substitution in her work as a Youth Counselor, Facilitator, Program Associate, and Data Control Clerk, Typist. In re Anetra Riddick, Human Services Specialist 1 (C0770P), Burlington Cnty., CSC Dkt. No. 2013-1283, 2013 N.J. CSC LEXIS 310, Final Decision (April 17, 2013).

Relaxation of the experience requirements for an open, competitive examination for Recreation Therapist (C0672P), Union County that were otherwise required by N.J.A.C. 4A:4-2.3(b) to be met by the closing date was appropriate. Though the initial decision finding that applicant to be ineligible based on a lack of experience was correct, applicant had provided additional detail relating to her duties in positions including Social Worker and Social Work Director, was currently provisional in the title to which the examination related, had accrued another four months of experience in that position, and otherwise was entitled to relief. In re Deborah Littman, Recreation Therapist (C0672P), Union County, CSC Dkt. No. 2013-1550, 2013 N.J. CSC LEXIS 256, Final Agency Action (April 8, 2013).

Division of Selection Services and Recruitment properly found that an applicant was below the minimum requirements in experience for the open competitive examination for Executive Assistant as required by N.J.A.C. 4A:4-2.3(b). His prior positions, other than his provisional experience, were not applicable because their primary focus was not experience in program management with responsibility or planning, organizing, coordinating, staffing, reporting, and budgeting or in assisting an executive with program development and implementation. Although the job of Assistant Purchasing Agent might have some aspects of the requirements, it did not encompass the scope required for the subject title. In addition, the applicant could not receive credit for his Mini-MPA because it was not an accredited college program. In re Bryan Russell, Executive Assistant (M0416P), Roselle, CSC Dkt. No. 2013-1314, 2013 N.J. CSC LEXIS 262, Final Decision (April 4, 2013).

Good cause existed to relax the provisions of N.J.A.C. 4A:4-2.3(b) and accept an applicant's provisional experience after the closing date, for eligibility purposes only, and admit her to the promotional examination for Technical Assistant, Personnel. She was currently serving as a provisional Technical Assistant and possessed the required experience, and the examination had been cancelled because she was the only applicant. In re Charlotte Cooper, Technical Assistant, Personnel (PS7782K), Dep't. of Human Services, CSC Dkt. No. 2013-316, 2013 N.J. CSC LEXIS 251, Final Decision (April 4, 2013).

Applicant was correctly deemed ineligible for the open-competitive examination for Investigator Student Loans as required by N.J.A.C. 4A:4-2.3(b)2. As of the closing date, she did not possess any applicable experience. Although she indicated that she possessed a Bachelor's degree and two Associate's degrees, the subject title requirements did not allow for the substitution of education in lieu of the required experience. In re Norma R. Bennett, Investigator Student Loans (S0096P), CSC Dkt. No. 2012-2769, 2013 N.J. CSC LEXIS 249, Final Administrative Action (April 3, 2013).

Division of Selection Services and Recruitment was correct in determining that an applicant lacked sufficient applicable supervisory accounting experience as of the closing date of an examination for the open competitive examination for the position of Assistant Municipal Treasurer (M2524N), Lacey Township, which examination was later cancelled due to a lack of qualified candidates, because the applicant's submission did not indicate that she had supervised staff nor that she possessed supervisory accounting experience, good cause within the meaning of N.J.A.C. 4A:1-1.2 now existed to relax the provisions of N.J.A.C. 4A:4-2.3(b)2 and to accept the applicant's experience after the closing date for the examination, by reason of which the applicant now had four years of applicable supervisory accounting experience. Because the applicant now possessed the required experience, it was proper to rescind the cancellation of the examination and process the applicant's application for prospective employment opportunities. In re Linda Picaro-Covello, Assistant Municipal Treasurer (M2524N), Lacey Township, CSC Dkt. No. 2013-232, 2013 N.J. CSC LEXIS 85, Final Decision (February 20, 2013).

Applicant's submission of a sworn statement declaring that he had resided at an address in Clifton, NJ beginning in March 2011 afforded a sufficient basis for the Civil Service Commission to allow the applicant to amend his application for admission to an open competitive examination with a closing date of August 26, 2011. Because the position included a residency requirement, the examination was open only to residents of Passaic County, where Clifton was located. Because the application as originally filed gave a "mailing address" in a different county, if the applicant was deemed to be residing at the mailing address, N.J.A.C. 4A:4-2.3(b) would have rendered the applicant ineligible to take the examination. Though the Commission allowed the applicant to amend the application as requested, the Commission disclaimed any intention to determine the applicant's actual residency. In re Rahul Patel, Human Services Specialist 1 (C2150N), Passaic County, CSC Dkt. No. 2013-993 2013 N.J. CSC LEXIS 46, Final Decision (February 6, 2013).

Good cause existed under N.J.A.C. 4A:1-1.2(c) to relax the provisions of N.J.A.C. 4A:4-2.3(b)2 and to accept an applicant's experience after the closing date for the open competitive examination for Library Director (M0127P). Clarifying information provided by the applicant indicated that her duties in her library assistant positions included professional librarian responsibilities and supervisory duties. In re Mary Jo Jennings, Library Director (M0127P), Garfield, CSC Dkt. No. 2012-3555, 2013 N.J. CSC LEXIS 43, Final Decision (February 6, 2013).

Candidate's experience in two police officers positions did not meet the requirements for the open-competitive examination for Radio Dispatcher (CO335P), Ocean County as required by N.J.A.C. 4A:4-2.3(b). As a police officer, he was responsible for patrolling a designated area to provide assistance and protection for persons, to safeguard property, to assure observance of the law, and to apprehend law-breakers, which did not match the requirement of radio dispatching or work involved in the operation of radio and telephone equipment. In re Shawn Naiduk, Radio Dispatcher (CO335P), CSC Dkt. No. 2013-724, 2013 N.J. CSC LEXIS 16, Final Decision (January 25, 2013).

Candidate did not meet the announced experience requirements for eligibility to take the open-competitive examination for Behavior Support Technician (S0767M), Statewide as mandated by N.J.A.C. 4A:4-2.3(b). Her eight months of experience as a Behavior Support Technician Trainee was accepted, and a review of the remaining three positions on her application did not have the announced experience requirement as the primary focus. A holistic view of the candidate's description did not indicate that she was working in rehabilitation or

therapeutic treatment programs involving behavior support. In re Victoria Armstead, Behavior Support Technician (S0443P), CSC Dkt. No. 2013-1471, 2013 N.J. CSC LEXIS 10, Final Decision (January 25, 2013).

Applicant who was denied admittance to an open-competitive examination for a county public safety communicator position for which applications had to be received "on or before" the November 13 application filing date per N.J.A.C. 4A:4-2.3(b)3 because her application was postmarked and received on November 14 was granted admission to the examination because an affidavit certifying that she had mailed the application on November 12 provided good cause to accept the application despite the postmark or date or receipt. In re Linda Merse, Public Safety Telecommunicator (C0941P), Bergen County, CSC Dkt. No. 2013-1523, 2013 N.J. CSC LEXIS 6, Final Decision (January 25, 2013).

Patient care worker was properly removed from her position for cursing at and prodding patient. Richardson v. North Princeton Development Center, 96 N.J.A.R.2d (CSV) 507.

Testimony of mentally disturbed witness with history of lying was insufficient to support charges of employee misconduct. Dickerson v. North Princeton Development Center, 96 N.J.A.R.2d (CSV) 504.

Laborer's gambling activities did not "involve or touch on" his employment so as to require forfeiture of his position. Tudda v. Department of Public Works of the Borough of West Paterson, 96 N.J.A.R.2d (CSV) 499.

Alcoholic police officer's conduct warranted six-month suspension. Arose v. Township of Little Egg Harbor Police Department, 96 N.J.A.R.2d (CSV) 490.

Four-week suspension for sanitation worker's refusal to work second route on holiday was excessive. Carrico v. Woodbridge Township, Department of Public Works, 96 N.J.A.R.2d (CSV) 483.

4A:4-2.4 Promotional title scope: local service

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

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

(b) When the title which is the subject of the promotional examination is not part of a title series, the examination shall be open to all applicants having a total of one year of permanent service who meet the open competitive requirements.

(c) When a promotion is to be made from the non-competitive division of the career service to a related entry level title in the competitive division of the career service, the examination shall be open to all applicants who meet the complete open competitive requirements and who are either serving in:

1. The next lower in-series noncompetitive title used in the local jurisdiction;
2. The next two lower in-series noncompetitive titles used in the local jurisdiction;
3. All related noncompetitive titles; or
4. Any competitive title.

(d) The title scopes described in (a)2 and 3 and (c)2 through 4 above or any combination of such scopes may be used when a wider title scope is appropriate or the appointing authority provisionally promotes an employee who does not have permanent status in the next lower in-series title of the title series established by the Civil Service Commission.

(e) In extraordinary circumstances, the Chairperson of the Civil Service Commission may set another appropriate title scope.

(f) The local jurisdiction may be required to provide an appropriate representative of the Civil Service Commission with copies of ordinances, tables of organization, or other evidence of the jurisdiction's use of titles.

Amended by R.1990 d.554, effective November 19, 1990.
See: 22 N.J.R. 2628(a), 22 N.J.R. 3482(a).

Conforms the requirements for local with those in State service.

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

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

Revised (d)1 and 2.

Amended by R.2003 d.395, effective October 6, 2003.

See: 35 N.J.R. 2389(a), 35 N.J.R. 4711(c).

Rewrote the section.

Amended by R.2012 d.010, effective January 3, 2012.

See: 43 N.J.R. 2407(a), 44 N.J.R. 71(a).

In the introductory paragraph of (a), deleted "then" following "series," and inserted ", with or without all or part of the open competitive requirements, as appropriate,"; in (d), substituted "Civil Service Commission" for "Department of Personnel"; in (e), substituted "Chairperson of the Civil Service Commission" for "Commissioner"; and in (f), substituted "an appropriate representative of the Civil Service Commission" for "the Department of Personnel".

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

See: 45 N.J.R. 500(a), 46 N.J.R. 260(a), 46 N.J.R. 1331(c).

In (b), substituted "one year of" for "one-year"; in (d), substituted "and" for a comma following "(a)2"; and in (f), inserted a comma following "organization".

Law Review and Journal Commentaries

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

Case Notes

Merit Systems Board's approval of open competitive examination was violation of 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).

Good cause within the meaning of N.J.A.C. 4A:1-1.2(c) was shown to relax the provisions of N.J.A.C. 4A:4-2.4(c) to announce a promotional examination for Supervisor, Public Works open to employees in the entry level non-competitive titles of Truck Driver and Truck Driver, Heavy who met the open competitive requirements and applicants serving in any competitive title who met the complete open competitive requirements. Because public interests were best served when more rather than fewer individuals were presented with employment oppor-

tunities and because Civil Service rules generally favored the filling of vacancies by promotional examination unless it is deemed in the best interest of the career service to hold an open competitive examination per N.J.A.C. 4A:4-2.3(a). In re Supervisor, Public Works, Sayreville, CSC Docket No. 2014-1082, 2013 N.J. CSC LEXIS 1087, Final Administrative Action (December 5, 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).

Adopting Initial Decision's conclusion that county employer had reasonably accommodated an employee, who had hypertension, by assigning him to a position with a different title which did not require that he perform certain duties, notably driving trucks, even though the accommodation involved the employee's demotion from "Senior Recycling Operator" to the position of "Recycling Operator." Nonetheless, since the employee asserted that he would not have promotional opportunities to the Assistant Supervisor, Recycling Operations position if he remained in the Recycling Operator title, the Merit System Board recommended that future announcements for Assistant Supervisor, Recycling Operations, be open to employees holding the titles of Senior Recycling Operator and Recycling Operator, pursuant to N.J.A.C. 4A:4-2.4 (adopting 2006 N.J. AGEN LEXIS 890). Fischbach v. Ocean County, OAL Dkt. No. CSV 4180-06 (CSV 4698-05 On Remand), 2007 N.J. AGEN LEXIS 93, Final Decision (January 17, 2007).

4A:4-2.5 Promotional title scope: State service

(a) For the purpose of announcing promotional examinations, all titles will be divided into one of the following categories:

1. Professional, which requires a Bachelor's or higher level degree, with or without a clause to substitute experience for education;
2. Para-professional, which requires at least 60 general college credits or 12 or more specific college credits (but less than a full degree), with or without a clause to substitute experience for education; or
3. Non-professional, which requires less than 60 general college credits or less than 12 specific college credits.

(b) When a promotion is within the same category as listed in (a) above, the examination, with or without all or part of the open competitive requirements, as appropriate, shall be open to permanent competitive division employees serving in one of the following:

1. The next lower or next two lower in-series titles. See N.J.A.C. 4A:1-1.3 for definition of title series.
2. The next lower in-series title, if one exists, and all other competitive division titles at specified class code levels below the promotional title. See N.J.A.C. 4A:1-1.3 for definition of class code.
3. The next lower in-series title, if one exists, and all other permanent competitive division employees who meet the complete open competitive requirements.

4. To related titles, pursuant to an established plan approved by the Chairperson of the Civil Service Commission or designee.

5. When open to a job band, to the highest level within the band.

6. In extraordinary circumstances, the Chairperson or designee may set another appropriate title scope.

(c) When a promotion is between categories as listed in (a) above, the examination shall be open to permanent competitive division employees currently serving in the announced unit scope and who meet one of the following criteria:

1. All applicants who meet the complete open competitive requirements;

2. All applicants who are permanent in a bridge title or titles approved by the Chairperson or designee and who meet the complete open competitive requirements. A bridge title is one which is recognized by the Civil Service Commission as related to a higher category title in terms of work performed and knowledge, skills, and abilities required;

3. All titles that are in the same category as the announced title and that are in specified class codes below the announced title, including the next lower in-series title if one exists, with or without all or part of the open competitive requirements, as appropriate, and all applicants as described in (c)2 above;

4. When open to a job band, to the highest level within the band; or

5. In extraordinary circumstances, the Chairperson or designee may set another appropriate title scope.

(d) When a promotion is to be made from the noncompetitive division to a related title in the competitive division, the examination shall be open to all permanent employees who meet one of the following:

1. Serving in the next lower or next two lower in-series noncompetitive titles and possessing the complete open competitive requirements;

2. Serving in all related noncompetitive titles and possessing the complete open competitive requirements;

3. All competitive division titles at specified class code levels below the announced title, with or without all or part of the open competitive requirements, and all titles as described in (d)1 or 2 above;

4. Competitive division employees who meet complete open competitive requirements and all titles as described in (d)1 or 2 above; or

5. In extraordinary circumstances, the Chairperson or designee may set another appropriate title scope.

(e) The movement of a permanent employee in the noncompetitive division to a related title in the same category and with the same class code in the competitive division shall be considered a promotion for purposes of this subchapter. The title scope of the examination shall be established as set forth in (d) above.

Correction: Subsection (c) cross-reference should be (a) instead of (b). 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.2014 d.099, effective June 2, 2014.

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

In (b)4, substituted "Chairperson of the Civil Service Commission or designee" for "Commissioner"; added new (b)5; recodified former (b)5 as (b)6; in (b)6, (c)2, (c)5, and (d)5, substituted "Chairperson or designee" for "Commissioner"; in (c)2, substituted "Civil Service Commission" for "Department of Personnel", and inserted a comma following "skills"; in (c)3, deleted "or" from the end; added (c)4; and recodified former (c)4 as (c)5.

Case Notes

Division of Selection Services appropriately found that a candidate was below the experience requirements for the promotional examination for Personnel Officer as required by N.J.A.C. 4A:4-2.6(a). Because the Personnel Officer title required completion of a Bachelor's degree with a substitution clause, which permitted additional experience in lieu of the college credits, as well as two years of relevant experience, it was considered a professional title under N.J.A.C. 4A:4-2.5(a)1, and because there was no bridge title to the subject title, she was required to meet the open competitive requirements. As the candidate did not indicate that she was primarily performing work required of a Personnel Officer, if the appointing authority wanted her to remain in her current position, it had to provide a duties questionnaire to the Division of Classification and Personnel Management detailing the duties of the position, along with a completed examination application. Otherwise, since the candidate does not meet the minimum qualifications for the title, contrary to N.J.A.C. 4A:4-1.5(a)2, she should be returned to her regular prior-held title immediately upon receipt of the decision. In re Sonia Neira, Pers. Officer, Perth Amboy, CSC Dkt. No. 2014-433, 2013 N.J. CSC LEXIS 1036, Final Decision (November 8, 2013).

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 authorize an employee's provisional appointment, pending promotional examination procedures to Administrative Assistant 3. Although the position of Clerk Transcriber to which the employee was currently appointed and Administrative Assistant 3 were not related titles, she was assigned out-of-title duties as an Administrative Assistant 3 due to the needs of the appointing authority. Further, the Division of Selection Services and Recruitment determined that, based on experience she gained in the private sector, the employee met the open-competitive requirements for Administrative Assistant 3, and the Division of Classification and Personnel Management was in support of the appointing authority's request. In re Denise Farfalla, Dep't. of Law and Public Safety, CSC Dkt. No. 2014-656, 2013 N.J. CSC LEXIS 909, Final Decision (October 2, 2013).

Good cause within the meaning of N.J.A.C. 4A:1-1.2(c) was shown in connection with a request by the Director, Division of Classification and Personnel Management (CPM), acting on behalf of the Department of Law and Public Safety, seeking the relaxation of provisions of N.J.A.C. 4A:4-1.1(c) to permit three employees to be provisionally appointed, pending promotional examination procedures, to the competitive title of Fingerprint Processing Technician Apprentice, which employees had been performing the duties of the subject title since June 1, 2013 due to staffing needs of the appointing authority. However, since the permanent title of Clerk Typist currently held by all three employees was noncompetitive and unrelated to the Fingerprint Processing Technician Apprentice per N.J.A.C. 4A:4-1.1(c) and N.J.A.C. 4A:4-2.5(d), they would otherwise be subject to open competitive examination procedures. Moreover, all three had successfully completed the training program that

was required for advancement to the journeyman title upon completion of the two year training period. Nor were there any existing open-competitive or special re-employment lists that are currently available for the Fingerprint Processing Technician Apprentice title. Given these facts, it was appropriate to relax the relevant rules to authorize the provisional appointment of the three employees pending promotional exam procedures. In re Gosley, et al., Dep't of Law & Pub. Safety, CSC Docket Nos. 2014-204, 2014-464, 2014-466, 2013 N.J. CSC LEXIS 937, Final Administrative Determination (September 4, 2013).

An applicant's experience in prior-held titles including Technical Assistant 2, Insurance, and Senior Clerk Transcriber (all either para-professional or non-professional titles) was properly disregarded by the Division of Selection Services and Recruitment (DSSR) in determining that the applicant did not meet the experience requirements for the promotional examination for Standards and Procedures Technician 1 (PS4837P), Department of Law and Public Safety. Because that title was a professional one within the meaning of N.J.A.C. 4A:4-2.5(a) and because there was no "bridge title" to the subject title within the meaning of N.J.A.C. 4A:4-2.5(c)2, the applicant was required to meet the open competitive requirements. Moreover, even if the appellant had been doing work that was similar to the announced requirement, and her description of duties shows that she was not, this work was not at the level and scope of the professional experience required for the subject title. Finally, though the appointing authority strongly supported the applicant's appeal and though the appointing authority, by virtue of the discretion granted by N.J.S.A. 11A:4-8 and N.J.A.C. 4A:4-4.8(a)3, would not be precluded from considering such matters in the interview process, the appointing authority cannot make examination eligibility determinations such as the one at issue here. In re Tracy Tarantino, Standards & Procedures Technician 1 (PS4837P), Dep't of Law & Pub. Safety, CSC Dkt. No. 2013-2615, 2013 N.J. CSC LEXIS 453, Final Decision (July 19, 2013).

Good cause was established pursuant to N.J.A.C. 4A:4-2.6(c) to accept a candidate's applicable out-of-title experience to satisfy the experience requirement for Executive Assistant 1. The candidate had acquired the required experience, albeit out-of-title, while serving in the title of Research Scientist 2. Due to business necessity and a continued hiring freeze, it was difficult to fill the position and the candidate had been performing the duties of the title for six years. In addition, because the candidate had been in the competitive division before being in the title of Research Scientist 2, the Civil Service Commission concluded that, for equitable considerations, it was appropriate to relax the provision 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 the candidate pending promotional examination procedures. In re Lisa Asare, Dep't. of Health, CSC Dkt. No. 2013-2119, 2013 N.J. CSC LEXIS 660, Final Decision (July 18, 2013).

4A:4-2.6 Eligibility for promotional examination

(a) Applicants for promotional examinations shall meet all of the following criteria by the announced closing date:

1. Have one year of continuous permanent service for an aggregate of one year immediately preceding the closing date in a title or titles to which the examination is open. Aggregate service shall be calculated in the same manner as seniority as set forth in N.J.A.C. 4A:4-2.15;
2. Be currently serving in the announced unit scope in a title to which the examination is open and meet all other requirements contained in the announcement. If an examination announcement is amended, all requirements must be met by the announced closing date whether or not the application filing date is changed;
3. Have not received a Performance Assessment Review (PAR) final rating below the Commendable level (or equivalent in an approved local service evaluation pro-

gram) in each of the two rating periods immediately preceding the announced closing date; and

4. Submit an application on or before the announced application filing date.

(b) In local service, applicants for promotion from entry level law enforcement or firefighter titles shall have three years of continuous permanent service in a title to which the examination is open, except as otherwise provided by law.

(c) Except when permitted by the Civil Service Commission for good cause, such as a documented affirmative action basis, applicants for promotional examinations with open competitive requirements may not use experience gained as a result of out-of-title work to satisfy the requirements for admittance to the examination or for credit in the examination process. Civil Service Commission staff may recommend to the Commission good cause situations where out-of-title work should be accepted.

(d) Employees, with the exception of those serving in an entry level law enforcement or firefighter title, who have accepted a voluntary demotion to or are appointed from a special reemployment list to a title to which the examination is open, may, in order to satisfy the requirement of (a) above, include continuous permanent service in any higher related or comparable title. Employees serving in an entry level law enforcement or firefighter title who have accepted a voluntary demotion to or are appointed from a special reemployment list to a title to which the examination is open, may, in order to satisfy the requirement of (b) above, include continuous permanent service in any higher related or comparable uniformed title.

(e) An employee who has established eligibility for a promotional examination with a closing date earlier than the effective date of a layoff shall be permitted to take such examination.

(f) Employees who are separated or displaced as a result of layoff and who subsequently return to a title and unit scope to which a promotional examination is open between the filing deadline and the examination date, shall be allowed to file for the examination.

(g) The time requirements specified in (a) and (b) above may be reduced to completion of the working test period if:

1. There is currently an incomplete promotional list and/or the number of employees eligible for examination will result in an incomplete list;
2. It appears that vacancies to be filled within the duration of the promotional list will exceed the maximum number of eligibles that could result from examination; or
3. Other valid reasons as determined by the Chairperson of the Civil Service Commission or designee.

Amended by R.1993 d.45, effective January 19, 1993.
See: 24 N.J.R. 3589(a), 25 N.J.R. 291(a).

Redesignated existing (a)3 as (a)4; added new (a)3.
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)1 and 2; revised (f).
Petition for Rulemaking: Notice of Receipt of and Action on a Petition for Rulemaking.

See: 29 N.J.R. 810(a), 29 N.J.R. 1568(b).
Amended by R.2000 d.11, effective January 3, 2000.
See: 31 N.J.R. 2824(a), 32 N.J.R. 35(a).

In (a)3, substituted "below the Commendable level" for "of a Four, Marginally Below Standards or Five, Significantly Below Standards" following "rating".

Petition for Rulemaking.
See: 36 N.J.R. 3303(a), 4176(b).
Amended by R.2006 d.104, effective March 20, 2006.
See: 37 N.J.R. 4351(a), 38 N.J.R. 1425(a).

In (d), added ", with the exception of those serving in an entry level law enforcement or firefighter title," to the first sentence and added the last sentence.

Amended by R.2014 d.062, effective April 7, 2014.
See: 45 N.J.R. 783(a), 46 N.J.R. 617(a).

In (a)4, substituted "Submit" for "File", and inserted "announced"; in (c), substituted "Civil Service Commission" for "Merit System Board", and rewrote the last sentence; and in (g)3, substituted "Chairperson of the Civil Service Commission or designee" for "Commissioner".

Case Notes

In a fire captain's suit against a city challenging the failure to appoint him to deputy fire chief, a civil service appointing authority violated the Rule of Three, set forth in N.J.S.A. 11A:4-8, in guaranteeing a promotional candidate that he would receive the appointment of deputy fire chief if he attained the highest score on the examination, particularly because that individual guarantee was not contemporaneously disclosed to the other applicants who sat for the examination. In re Martinez, 403 N.J. Super. 58, 956 A.2d 386, 2008 N.J. Super. LEXIS 206, 28 I.E.R. Cas. (BNA) 760 (App.Div. 2008).

Consideration of prior service in determining continuous service requirements for examination. Makowitz v. Civil Service Dep't, 177 N.J. Super. 61, 424 A.2d 1190 (App.Div.1980) certification denied 87 N.J. 326, 434 A.2d 76.

Preemptive rights to new position based on special reemployment list (citing former N.J.A.C. 4:1-12.4). Cunningham v. Dep't of Civil Service, 69 N.J. 13, 350 A.2d 58 (1975).

Employee was not entitled to have her examination score for the Supervising Family Service Specialist 2, Department of Children and Families, open to unit scope CF52, be applied to Supervising Family Service Specialist 2, Department of Children and Families, open to unit scope CF60, if she was reassigned to unit scope CF60. Pursuant to N.J.A.C. 4A:4-2.6(a)2, the subject examination was only open employees in unit scope CF60 as of the February 2013 closing date, and the employee was employed in unit scope CF52 on the closing date. If she was able to apply for promotional opportunities in her old unit scope, or other unit scopes, she would have an unfair advantage as compared to other employees because she would be afforded greater promotional opportunities. In re Shanita Alvarez, Supervising Family Serv. Specialist 2 (PS6696K), Dep't. of Children and Families, CSC Dkt. No. 2014-1002, 2014 N.J. CSC LEXIS 2, Final Decision (February 28, 2014).

Civil Service Commission ordered that a candidate's application for the promotional examination for Senior Repairer be processed and the cancellation of the examination be rescinded. Good cause existed under N.J.A.C. 4A:1-1.2(c) to relax N.J.A.C. 4A:4-2.6(a)2 because the candidate's provisional service as a Senior Repairer after the closing date provided him with an additional six months of applicable experience. In addition, the examination situation was not competitive. In re Christopher Johnson, Senior Repairer (PS77951), Garden State Reception and Youth Facility, CSC Dkt. No. 2014-364, 2013 N.J. CSC LEXIS 1103, Final Decision (December 23, 2013).

Good cause existed under N.J.A.C. 4A:1-1.2(c) to relax N.J.A.C. 4A:4-2.6(a) and admit a candidate to the promotional examination for Supervisor of Patients Accounts. Although her experience did not precisely mirror the requirements contained in the announcement, the Civil Service Commission was satisfied that the totality of her varied levels of experience in investigation work involving the collection and/or accounting of funds since as far back as October 1992 warranted her admission to the subject examination. Additionally, the candidate continued to serve provisionally in the title under test. Moreover, the examination was cancelled due to a lack of qualified candidates. In re Sherry Brown, Supervisor of Patients Accounts 2 (PS5782K), Developmental Disabilities, CSC Dkt. No. 2013-2762, 2013 N.J. CSC LEXIS 1170, Final Decision (December 19, 2013).

Good cause existed to relax the provisions of N.J.A.C. 4A:4-2.6(a)2 and accept the totality of a candidate's education and experience, including his experience after the closing date, for eligibility purposes only, and admit him to the examination for Supervising Municipal Finance Auditor. Although his college transcript did not evidence completion of the required number of credits in accounting, it could not be ignored that he had over ten years of applicable general and supervisory experience. Moreover, he continued to serve provisionally in the title under test, and the examination was cancelled due to a lack of qualified applicants. In re Jorge Carmona, Supervising Mun. Fin. Auditor (S0608R), Statewide, CSC Dkt. No. 2014-853, 2013 N.J. CSC LEXIS 1208, Final Decision (December 18, 2013).

Civil Service Commission ordered that a candidate's application for the promotional examination for Equipment Operator be processed for future employment opportunities only. He met the experience requirement under N.J.A.C. 4A:4-2.6(a)2 of one year of experience in the operation and maintenance of construction and maintenance equipment while working in excess of six years as a Laborer 1. The candidate failed to indicate that he was serving as a Laborer 1 on his examination application, but a review of his official record along with the information he provided on appeal revealed that he met the requirement. In re Michael Gelesky, Equip. Operator (PC0677R), Middlesex Cnty., CSC Dkt. No. 2014-215, 2013 N.J. CSC LEXIS 1120, Final Decision (December 18, 2013).

Though the Division of Selection Services and Recruitment (DSSR) had correctly determined that two employees seeking prospective provisional appointment to the title of Information Technology Specialist, Department of Law and Public Safety, were below the minimum requirements in experience for that appointment, good cause within the meaning of N.J.A.C. 4A:4-2.6(c) was shown to consider their out-of-title experience and thus to find that they were eligible for the promotional examination for the title under test. The appointing authority advocated for acceptance of the out-of-title experience on the ground that due to business necessity, attrition, and the inability to fill vacancies that arose, the applicants had been assigned to and had been performing those duties. Burd and Rodriguez were assigned and have been performing relevant out-of-title duties. Therefore, based on the particular circumstances presented, good cause had been established to accept the applicants' out-of-title experience to satisfy the requirements for the promotional examination and also to allow them to be appointed provisionally pending that examination. In re Burd et al., Info. Tech. Specialist, Dep't of Law & Pub. Safety, CSC Docket Nos. 2014-1295, 2014-1297 (Consolidated), 2013 N.J. CSC LEXIS 1102, Final Administrative Action, December 18, 2013.

Pursuant to N.J.A.C. 4A:1-1.2(c), the Civil Service Commission relaxed the requirements of N.J.A.C. 4A:4-2.6(a) and ordered that an application for the promotional examination for Motor Broom Driver be processed and that the examination cancellation be rescinded. The applicant began performing the duties of a Motor Broom Driver in July 2011, albeit out-of-title, while serving as a Maintenance Worker 1, Grounds, and performed these duties through his provisional appointment to the subject title in September 2012. The applicant continued to successfully serve as a provisional in the position, the promotional examination had been cancelled due to a lack of qualified applicants and, therefore, this was not a competitive situation. In re John W. Hutchins, Motor Broom Driver (PM1112R), Plainfield, CSC DKT. No. 2014-366, 2013 N.J. CSC LEXIS 1099, Final Decision (December 16, 2013).

An applicant who was deemed to be ineligible for the promotional examination for Supervisor 1 MVC (PS3710T), Motor Vehicle Commission based on his failure to establish that he possessed the required experience per N.J.A.C. 4A:4-2.6(a) was not entitled to reconsideration of that ruling because he did not show, as required by N.J.A.C. 4A:2-1.6(b), the existence of new evidence or additional information not presented at the original proceeding that would change the outcome and the reasons that such evidence was not presented at the original proceeding; or that a clear material error had occurred. That is, the applicant's experience (or lack thereof) was addressed in the original decision and he did not demonstrate clear material error or that new information would change the outcome. In re Dioses, et al., Supervisor 1 MVC (PS3710T), Motor Vehicle Comm'n, CSC Docket No. 2014-936, Final Administrative Action (December 6, 2013).

Though the Division of Selection Services and Recruitment (DSSR) had correctly determined that two applicants seeking admission to the promotional examination for Senior Data Processing Programmer (PC1224R), Morris County, did not meet the minimum experience requirements for that exam, the applicants showed good cause within the meaning of N.J.A.C. 4A:4-2.6(c) and N.J.A.C. 4A:1-1.2(c) for an order relaxing those requirements and admitting them to the examination. However, on appeal, the applicants submitted more detailed descriptions as to how each had utilized their programming skills on various projects for more than two years. Such clarifying information was properly considered per N.J.A.C. 4A:4-2.1(g). Moreover, both of the applicants were presently serving provisionally in the title under test. Where, as here, the examination had been cancelled due to a lack of qualified candidates, there was good cause to relax the provisions of N.J.A.C. 4A:4-2.6(a) and admit the applicants to the subject examination. In re Cocco et al., Senior Data Processing Programmer (PC1224R), Morris Cnty., CSC Docket Nos. 2014-447, 2014-562 (Consolidated), 2013 N.J. CSC LEXIS 1186, Final Administrative Action (December 5, 2013).

Determination by the Division of Selection Services and Recruitment that three applicants were not eligible for admission to the promotional examination for Investigator 3, Child Protection (PS6385K), Department of Children and Families, was appropriate. While all three applicants were permanently serving in the title of Investigator 1 on the closing date and claimed to be performing the duties associated with the title of Investigator 2, under N.J.A.C. 4A:4-2.6(a), it was appropriate for the appointing authority to limit the scope of eligibility to only those applicants who were actually and currently serving in the Investigator 2 title. Further, since there were 18 applicants who were deemed eligible, the applicants had not provided any basis for the scope of eligibility to be widened. In re Butcher, et al., Investigator 3, Child Protection (PS6385K), Dep't of Children and Families, CSC Docket Nos. 2013-2994, 2013-2996 and 2013-2953 (Consolidated), 2013 N.J. CSC LEXIS 1138, Final Administrative Action (December 5, 2013).

Though the Division of Selection Services and Recruitment (DSSR) had correctly determined that an applicant seeking admission to the promotional examination for Section Supervisor, Environmental Compliance (PC1217R), Camden County, did not meet the minimum requirements in education and experience for that exam, the applicant had shown good cause within the meaning of N.J.A.C. 4A:4-2.6(c) and N.J.A.C. 4A:1-1.2(c) for an order relaxing those requirements and admitting her to the examination. Specifically, the applicant had taken undergraduate and graduate classes in environmental science and had obtained many certifications in environmental health. Additionally, the applicant was currently performing out-of-title work and supervising 4 staff members while serving in her current title. Given those facts, the applicant's undergraduate and graduate credits in environmental science and various certifications in environmental health were properly found to have satisfied the education requirement. Moreover, the applicant's varied levels of supervisory and lead worker environmental health experience, which dated as far back as May 1990, warranted her admission to the subject examination. Where, as here, the examination had been cancelled due to a lack of qualified candidates, there was good cause to relax the provisions of N.J.A.C. 4A:4-2.6(a) and admit the applicant to the subject examination. In re Wilson, Section Supervisor, Env't Compliance (PC1217R), Camden Cnty., CSC Docket Nos. 2014-414, 2013 N.J. CSC LEXIS 1106, Final Administrative Action (December 5, 2013).

Though the Division of Selection Services and Recruitment (DSSR) had correctly determined that two applicants seeking admission to the promotional examination for Comptroller (PC1256P), Atlantic County did not meet the minimum experience requirements, the applicants had shown good cause within the meaning of N.J.A.C. 4A:4-2.6(c) and N.J.A.C. 4A:1-1.2(c) for an order admitting them to that examination. Specifically, while one applicant's experience did not precisely mirror the requirements contained in the announcement, the totality of her varied levels of accounting and fiscal analyst experience since as far back as March 1993 warranted her admission to the subject examination. Additionally, that candidate continued to serve provisionally in the title under test. As for the second candidate, she had gained the additional experience to satisfy the experience requirement after the closing date. Where, as here, the examination was cancelled due to a lack of qualified candidates, there was good cause to relax the provisions of N.J.A.C. 4A:4-2.6(a) and admit them to the subject examination. In re Sharkey et al., Comptroller (PC1256P), Atlantic Cnty., CSC Docket Nos. 2014-353, 2014-378 (Consolidated), 2013 N.J. CSC LEXIS 1095, Final Administrative Action (December 5, 2013).

The Division of Selection Services and Recruitment (DSSR) correctly determined that an applicant did not meet the experience requirements for the promotional examination for Administrative Analyst 2, Accounting (PS6699K), Department of Human Services as required by N.J.A.C. 4A:4-2.6(a). Though the applicant had been provisionally appointed to the title under test for the period from October 2012 through July 2013, he was then appointed provisionally to a different title. Even so, DSSR had determined that none of the applicant's experience was applicable since he was not performing the duties required for an Administrative Analyst 2, Accounting even while in the position provisionally, since his other title was not focused on accounting, and since his other experience was not relevant. Because the applicant did not meet his burden of proof in this matter, he was not entitled to relief from the DSSR determination. In re Pennica, Admin. Analyst 2, Accounting (PS6699K), Dep't of Human Servs., CSC Docket No. 2014-62, 2013 N.J. CSC LEXIS 1088, Final Administrative Action (December 5, 2013).

Though the Division of Selection Services and Recruitment (DSSR) had correctly determined that an applicant seeking admission to the promotional examination for Section Supervisor, Environmental Compliance (PC1217R), Camden County, did not meet the minimum education and experience requirements for admission, the applicant, who was serving provisionally in that title, had shown good cause within the meaning of N.J.A.C. 4A:1-1.2(c) to relax the requirements and admit him to the examination. First, there was some overlap between the requirements for the degree he held and the required degree. Moreover, the applicant also possessed many certifications in environmental health and was currently supervising 15 staff members while provisionally serving in the title under test. The candidate's varied levels of supervisory and lead worker environmental health experience since as far back as December 1986 warranted his admission to the examination, which had been cancelled due to a lack of qualified candidates. Therefore, under these circumstances, good cause existed to relax the provisions of N.J.A.C. 4A:4-2.6(a) and accept the totality of the applicant's education and experience, including his experience after the closing date, and admit him to the subject examination. In re Smith Jr., Section Supervisor, Env'tl. Compliance (PC1217R), Camden Cnty., CSC Docket Nos. 2014-372, 2013 N.J. CSC LEXIS 1083, Final Administrative Action (December 5, 2013).

Civil Service Commission ordered that a candidate's application for the promotional examination for Administrative Secretary be processed and that the cancellation of that examination be rescinded. Good cause existed to relax the provisions of N.J.A.C. 4A:4-2.6(a) because the candidate performed applicable out-of-title duties from August 2008 forward, while in the titles Keyboarding Clerk 2 and Keyboarding Clerk 2 Bilingual in Spanish/English. Further, since the closing date, she accrued eight months of additional experience in her provisional position. In re Maria Rivera, Admin. Sec'y. (PM0405R), Perth Amboy, CSC DKT. No. 2014-432, 2013 N.J. CSC LEXIS 1024, Final Decision (November 21, 2013).

Good cause existed to relax the provisions of N.J.A.C. 4A:4-2.6(a) to accept a candidate's experience after the closing date and admit him to the promotional examination for Chief of Administrative Services. Because he was the sole applicant, the examination had been cancelled. Although his work as an Accounting Assistant, Accountant, and Senior Accountant was not performing work at the level and scope of the announced experience requirement, he accrued seven months of additional experience in the provisional position in which he continued to serve. In re Gary Okulewicz, Chief of Admin. Serv. (PC0523R), Middlesex Cnty., CSC Dkt. No. 2014-487, 2013 N.J. CSC LEXIS 1037, Final Decision (November 8, 2013).

Division of Selection Services appropriately found that a candidate was below the experience requirements for the promotional examination for Personnel Officer as required by N.J.A.C. 4A:4-2.6(a). Because the Personnel Officer title required completion of a Bachelor's degree with a substitution clause, which permitted additional experience in lieu of the college credits, as well as two years of relevant experience, it was considered a professional title under N.J.A.C. 4A:4-2.5(a)1, and because there was no bridge title to the subject title, she was required to meet the open competitive requirements. As the candidate did not indicate that she was primarily performing work required of a Personnel Officer, if the appointing authority wanted her to remain in her current position, it had to provide a duties questionnaire to the Division of Classification and Personnel Management detailing the duties of the position, along with a completed examination application. Otherwise, since the candidate does not meet the minimum qualifications for the title, contrary to N.J.A.C. 4A:4-1.5(a)2, she should be returned to her regular prior-held title immediately upon receipt of the decision. In re Sonia Neira, Pers. Officer, Perth Amboy, CSC Dkt. No. 2014-433, 2013 N.J. CSC LEXIS 1036, Final Decision (November 8, 2013).

Candidate was not eligible for the promotion examination for Supervising Engineer Utilities by the announced closing date as required by N.J.A.C. 4A:4-2.6(a)2. The significant amount of additional information submitted by the candidate was not considered clarifying, which could be allowed, but rather, amended information, which was not permitted after the closing date under N.J.A.C. 4A:4-2.1(f). Also, the positions listed did not have the announced experience as the primary focus and did not involve supervision. In re Rupal Patel, Supervising Eng'r. Util. (PS8139R), Bd. of Public Util., CSC Dkt. No. 2014-323, 2013 N.J. CSC LEXIS 1033, Final Decision (November 8, 2013).

Division of Selection Services properly determined that a candidate did not meet the experience requirements for the promotional examination for Senior Investigator, County Welfare Agency, as required by N.J.A.C. 4A:4-2.6(a). He did not possess one year of continuous permanent service as of the closing date in the title and, therefore, was required to meet the open competitive requirements. His positions as Security Guard Bilingual, Correctional Probation Officer, Transportation Security Officer, Senior Parole Officer, Parole Officer, and Infantry Mortar Man were not positions that had conducting investigations as a primary focus. In re William Rodriguez, Senior Investigator, Cnty. Welfare Agency (PC1227R), Middlesex Cnty., CSC Dkt. No. 2014-457, 2013 N.J. CSC LEXIS 1026, Final Decision (November 8, 2013).

Candidate did not meet the announced requirements for the promotional examination for Training Technician 2 as required by N.J.A.C. 4A:4-2.6(a). Experience gained as a Training Assistant Human Services and Senior Therapy Program Assistant was not at the professional level and scope required. In re Edna Rashad, Training Technician 2 (PS7113K), Woodbridge Developmental Ctr., CSC DKT. No. 2014-351, 2013 N.J. CSC LEXIS 1025, Final Decision (November 8, 2013).

Candidate did not meet the eligibility requirements for the promotional examination for Assistant Payroll Supervisor as required by N.J.A.C. 4A:4-2.6(a). Her experience as a Patient Funds Accounts Clerk did not involve the announced experience requirement, and preparing payrolls was not the primary focus of any of her other positions. With the acceptance of her duties as a Payroll Clerk and those of her provisional position, the candidate accrued one year, eleven months of experience, and lacked one year, one month of applicable experience. In re Anna Misseri, Assistant Payroll Supervisor (PC1077R), Union Cnty.,

CSC DKT. No. 2014-522, 2013 N.J. CSC LEXIS 1018, Final Decision (November 8, 2013).

Good cause existed, pursuant to N.J.A.C. 4A:4-2.6, to accept an applicant's out-of-title work experience and to admit him to the promotion examination for Manager 2, Division of Motor Vehicles (PS0083T), Motor Vehicles Comm'n, a position in which the applicant was serving provisionally, because the applicant had shown that his accumulated experience as a Supervisor 1, Motor Vehicles and the applicant's detailed description of the applicant's out-of-title experience, verified by the appointing authority, established that the applicant met the announced requirements for eligibility by the examination closing date. In re Giordano, Manager 2, Div. of Motor Vehicles (PS0083T), Motor Vehicle Comm'n., CSC Dkt. No. 2013-608, 2013 N.J. CSC LEXIS 1078, Final Administrative Action (November 7, 2013).

Good cause within the meaning of N.J.A.C. 4A:4-2.6(c) was shown to accept out of title experience gained by an employee who had been provisionally appointed to the title of Automotive Mechanic. The appointing authority sought the order on claims that due to business necessity, attrition, and the inability to fill vacancies that arose, the employee had been assigned to the title and had been performing relevant out-of-title duties for over two years. Given these circumstances, good cause per N.J.A.C. 4A:1-1.2(c) was shown to relax the rule barring the use of experience gained from out of title work to satisfy eligibility requirements and the appointing authority won approval of its request to provisionally appoint the employee pending promotional examinations. In re D'Errico, Buyer, Dep't of Transp., CSC Docket No. 2014-391, 2013 N.J. CSC LEXIS 1042, Final Administrative Determination (November 7, 2013).

Good cause was established under N.J.A.C. 4A:4-2.6(c) to accept a candidate's applicable out-of-title experience to satisfy the experience require for the promotional examination for Recreational Supervisor. She acquired the required applicable experience, albeit out-of-title, while serving in the titles of Coordinator Scheduling Recreational Activities and Clerk 2. She was the provisional appointee and continued to serve in the subject title. Further, the examination was cancelled. In re Jacqueline Neill, Recreation Supervisor (PC0778P), Middlesex Cnty., CSC Dkt. No. 2013-1196, 2013 N.J. CSC LEXIS 1012, Final Decision (November 7, 2013).

Good cause existed to relax the provisions of N.J.A.C. 4A:4-2.6(c) and accept a candidate's applicable out-of-title experience to satisfy the experience require for the promotional examination for Program Technician. She performed the required out-of-title duties as a Management and Operations Analyst 3 on her original application. The appointing authority verified that it assigned the candidate out-of-title duties due to business necessity, and she continued to serve provisionally in the subject title. The examination was cancelled due to a lack of qualified applicants. In re Donna Zalis, Program Technician (PS2882G), Dep't. of Envtl. Prot., CSC Dkt. No. 2013-2344, 2013 N.J. CSC LEXIS 1011, Final Decision (November 7, 2013).

Good cause was established under N.J.A.C. 4A:4-2.6(c) to accept a candidate's applicable out-of-title experience to satisfy the experience require for the promotional examination for Recreation Supervisor. Although the Division of Selection Services determined that her experience while serving in the titles of Recreation Program Coordinator, Recreation Leader, and Recreation Leader Sports was not at the level and scope needed for the subject title, the candidate and the appointing authority clarified her applicable out-of-title duties. Further, the examination was cancelled. In re Tracie Reed, Recreation Supervisor (PC0778P), Middlesex Cnty., CSC Dkt. No. 2013-1170, 2013 N.J. CSC LEXIS 1008, Final Decision (November 7, 2013).

Good cause existed under N.J.A.C. 4A:4-2.6(c) to accept a candidate's out-of-title experience for eligibility purposes only and to admit her to the promotional examination for Buyer. As of the closing date she satisfied the educational requirement and possessed one year and eight months of applicable experience. She was serving as a provisional in the subject position and continued to successfully serve in this capacity, giving her an additional one year and six months of applicable experience gained after the closing date. Additionally, the subject

promotional examination had been cancelled due to a lack of qualified applicants, and therefore, this was not a competitive situation. In re Carli B. Glanton, Buyer (PM0416P), East Orange, CSC Dkt. No. 2013-720, 2013 N.J. CSC LEXIS 1006, Final Decision (November 7, 2013).

Good cause existed under N.J.A.C. 4A:4-2.6(a)2 to accept a candidate's out-of-title experience for eligibility purposes only and to admit her to the promotional examination for Management Assistant. She performed applicable out-of-title work since September 2006 while serving in the Keyboarding Clerk 4 title, and she was provisionally appointed to the subject title on January 1, 2011 and continued to serve in that title. The examination situation was not competitive, and processing the candidate's application would enable the appointing authority to effect a permanent appointment. In re Lisa De Laura, Mgmt. Assistant, Monmouth Cnty., CSC Dkt. No. 2013-1062, 2013 N.J. CSC LEXIS 1004, Final Decision (November 7, 2013).

Cancellation of an examination for Assistant Municipal Treasurer was rescinded and a candidate's application was to be processed for employment opportunities only. Although the candidate was correctly returned to his permanent title of Accounting Assistant, relief from the requirements of N.J.A.C. 4A:4-2.6(a)2 was warranted under N.J.A.C. 4A:1-1.2(c). It could not be ignored that after he was deemed ineligible for two promotional examinations, the former Division of State and Local Operations determined that the candidate's position was properly classified as Assistant Municipal Treasurer. Additionally, the appointing authority verified that the candidate had competently performed the duties required to establish eligibility for the title under test for many years. Further, the examination situations for Assistant Municipal Treasurer had not been competitive since they were cancelled on two occasions. In re Robert Merlo, Assistant Mun. Treasurer (PM0016M), Phillipsburg, CSC Dkt. No. 2013-665, 2013 N.J. CSC LEXIS 1003, Final Decision (November 7, 2013).

Good cause existed to relax the provisions of N.J.A.C. 4A:4-2.6(a) and accept a candidate's provisional experience after the closing date, for eligibility purposes only, and admit him to the promotional examination for Data Processing Systems Programmer 2. Although the candidate did not provide verification of his out-of-title experience as a Geographic Information System Specialist from the Department of Environmental Protection's appointing authority, he was currently serving as a provisional Data Processing Systems Programmer 2, and he now possessed the required experience. In addition, official records revealed that the subject examination was cancelled because the candidate was the only applicant. In re Patrick Meola, Jr., Data Processing Sys. Programmer 2 (PS2592U), Office of Info. Tech., CSC Dkt. No. 2013-1873, 2013 N.J. CSC LEXIS 1002, Final Decision (November 7, 2013).

Determination of the Division of Selection Services that a candidate did not meet the announced education requirements for eligibility for the promotional examination for Entomologist, Mosquito Extermination by the examination closing date pursuant to N.J.A.C. 4A:4-2.6(a) was supported by the record. The candidate did not provide any documentation that his Bachelor's degree in Environmental Studies was equivalent to one of the required disciplines listed on the announcement. In re Patrick McGrath, Entomologist, Mosquito Extermination (PC0833P), Atlantic Cnty., CSC Dkt. No. 2013-1826, 2013 N.J. CSC LEXIS 1001, Final Decision (November 7, 2013).

Civil Service Commission ordered that the cancellation of a promotional examination for Assistant Payroll Supervisor be rescinded and that a candidate's application be processed for prospective employment opportunities only. Although the Division of Selection Services found that the candidate did not meet the experience requirements for the examination as required by N.J.A.C. 4A:4-2.6(a)2, the Commission was satisfied that the totality of her experience as a provisional Assistant Payroll Supervisor and as a Payroll Clerk warranted her admission to the examination. The candidate continued to serve provisionally in the title and the examination was cancelled due to lack of qualified applicants. Admitting her to the examination would provide her with the opportunity to obtain permanent status as well as to provide an eligible list to the appointing authority. In re Donna Garvin, Assistant Payroll

Supervisor (PM1083P), Jersey City, CSC Dkt. No. 2013-2433, 2013 N.J. CSC LEXIS 1000, Final Decision (November 7, 2013).

Candidate was ineligible for the promotional examination for Assistant Supervisor Public Works (PM0090R), Teaneck, pursuant to N.J.A.C. 4A:4-2.6(a) because the corrected decision of Division of Selection Services and Recruitment that he did not meet the announced requirements for eligibility by the closing date was amply supported by the record. While the candidate might have performed work similar to that of the announced experience requirement occasionally throughout the years, his position did not have construction, maintenance and repair of streets, sewer, water, sanitation or other public works facilities as the primary function. In re Henry Kendrick, Assistant Supervisor Pub. Works (PM0090R), CSC Dkt. No. 2013-3056, 2013 N.J. CSC LEXIS 750, Final Decision (October 17, 2013).

Good cause existed under N.J.A.C. 4A:4-2.6(c) to accept a candidate's out-of-title work experience, for eligibility purposes only, and to admit him to the promotional examination for Assistant Director of Consumer Protection (PC1369R), Ocean County. Despite the fact that all but one year of his experience was accrued via out-of-title work while in the title of Assistant Public Information Officer, the examination had been cancelled because the candidate was the only applicant. In re Edward McBride, Assistant Dir. of Consumer Prot. (PC1369R), Ocean Cnty., CSC Dkt. No. 2014-547, 2013 N.J. CSC LEXIS 735, Final Decision (October 17, 2013).

Good cause did not exist under N.J.A.C. 4A:4-2.6(c) to accept a candidate's experience as a provisional Administrative Analyst 4 to qualify her for the promotional examination for Administrative Analyst 4 (PS3423K), Department of Human Services. Her experience in reviewing, analyzing and interpreting active financial reports, assisting fiscal units with processing cash, reviewing cash receipt logs, reconciling daily lockbox reports, maintaining payment records, developing tracking system to follow up on cash receipts, analyzing projections for cash receipts, identifying disputed payments, and submitting invoices to vendors was not equivalent to the title's required experience in the review, analysis, and evaluation of budget, organization, administrative practices, operational methods, management operations, or data processing applications, or any combination thereof. In re Andrea Stumpf, Administrative Analyst 4 (PS3423K), Dep't. of Human Services, CSC Dkt. No. 2013-2526, 2013 N.J. CSC LEXIS 880, Final Decision (October 16, 2013).

Good cause was established under N.J.A.C. 4A:4-2.6(c) to accept a candidate's out-of-title experience for eligibility purposes only and to admit him to the promotional examination for Project Manager Data Processing. The appointing authority supported the candidate's claim that he performed applicable out-of-title experience while serving in the Data Base Analyst title, and he accrued additional applicable experience after the closing date after he was provisionally appointed to the subject title. In re Scott Loudon, Project Manager Data Processing (PS1440T), Motor Vehicle Comm'n., CSC Dkt. No. 2013-1501, 2013 N.J. CSC LEXIS 871, Final Decision (October 16, 2013).

Good cause existed to relax the provisions of N.J.A.C. 4A:4-2.6(a) and accept a candidate's provisional experience after the closing date, for eligibility purposes only, and admit him to a promotional examination for Senior Repairer. Although the Civil Service Commission did not permit him to add new positions on appeal that were not listed on his application, the candidate was currently serving as a provisional Senior Repairer, and he now possessed the required experience. In addition, official records revealed that the subject examination was cancelled because the candidate was the only applicant. In re Angelo Mastroliia, Senior Repairer (PS2458J), William Paterson Univ., CSC Dkt. No. 2013-1732, 2013 N.J. CSC LEXIS 862, Final Decision (October 16, 2013).

Civil Service Commission ordered the processing of a candidate's application for the promotional examination for Technical Support Specialist 2 (PS3992K), Department of Children and Families, because good cause existed under N.J.A.C. 4A:4-2.6(c) to accept his out-of-title work for eligibility purposes only. There were not a sufficient number of eligibles on the list to consider for the available positions, and the

candidate possessed four years and eight months of out-of-title experience in his position as Software Development Specialist Assistant. In addition, the candidate continued to serve in his provisional position of Technical Support Specialist 2. In re Matthew Cook, Technical Support Specialist 2 (PS3992K), Dep't. of Children and Families, CSC Dkt. No. 2013-3030, 2013 N.J. CSC LEXIS 748, Final Decision (October 16, 2013).

Candidate was not eligible for the promotional examination for Administrative Analyst 1, Fiscal Management (PS6373K), Department of Children and Families, pursuant to N.J.A.C. 4A:4-2.6(a)2. The Division of Selection Services correctly found that she lacked the 21 specific semester hour credits, and although she submitted clarifying information on appeal concerning her duties in an Administrative Analyst 2 position, she did not demonstrate that she possessed the necessary credits in the listed disciplines. In addition, the examination resulted in a complete list of four eligibles. In re Sandra Barker, Administrative Analyst 1, Fiscal Management (PS6373K), Dep't. of Children and Families, CSC Dkt. No. 2013-2917, 2013 N.J. CSC LEXIS 747, Final Decision (October 16, 2013).

Civil Service Commission ordered the processing of an application for the promotional examination for Regulatory Officer 3, Department of Human Services. Although the Division of Selection Services and Recruitment found that the candidate did not meet the experience requirements of two years as an attorney pursuant to N.J.A.C. 4A:4-2.6(a)2, a review of the description of her experience as a Family Development Consultant, a title which she held for over 24 years, indicated that she reported to the Assistant Commissioner of Legal, Regulatory and Guardianship Services. She assisted in handling liaison services for litigation referrals, performed general oversight of ADA, ethics, and HIPAA issues, and provided general guidance on policy and regulatory matters. This description was consistent with the work described in the job specification for the title, and these duties were acceptable for eligibility purposes for the subject examination. In re Eileen Costello, Regulatory Officer 3 (PS8099K), Dep't. of Human Serv., CSC Dkt. No. 2014-314, 2013 N.J. CSC LEXIS 904, Final Order (October 7, 2013).

Civil Service Commission granted the appeals of candidates, ordered the rescission of an examination cancellation, and ordered the admission of the candidates to the promotional examination for Assistant Coordinator of School Transportation. The candidates acquired the required applicable experience, albeit out-of-title, while serving in the titles of Senior Mechanic and Senior Stock Clerk, respectively. The appointing authority verified that they performed relevant out-of-title duties since September 1999 and supported their promotions. Further, the examination was cancelled due to a lack of candidates. Additionally, the candidates were the provisional appointees and continued to serve in the subject title. Thus, good cause was established under N.J.A.C. 4A:4-2.6(a) to accept the candidate's applicable out-of-title experience to satisfy the experience requirement. In re John Morris and Michael Hall, Assistant Coordinator of School Transp. Serv. (PM0728P), Vineland Sch. Dist., CSC Dkt. Nos. 2013-1203, 2013-1204 (Consolidated), 2013 N.J. CSC LEXIS 915, Final Decision (October 3, 2013).

Civil Service Commission granted the appeal of a candidate, ordered the rescission of an examination cancellation, and ordered the admission of the candidate to the examination for Assistant Public Information Officer. The candidate acquired the required applicable experience, albeit out-of-title, while serving in the title of Clerk 3. In addition, the appointing authority verified that she performed relevant out-of-title duties since May 2009 and supported her promotion. Further, the examination was cancelled due to a lack of candidates. Thus, good cause was established under N.J.A.C. 4A:4-2.6(a) to accept the candidate's applicable out-of-title experience to satisfy the experience requirement for the subject examination. In re Kelly Vence, Assistant Pub. Info. Officer (PM0954P), City of Elizabeth, CSC Dkt. No. 2013-2114, 2014 N.J. CSC LEXIS 910, Final Decision (October 3, 2013).

Division of Selection Services and Recruitment properly found that, per the substitution clause for education, a candidate was below the minimum requirements in experience for the promotional examination for Records Manager pursuant to N.J.A.C. 4A:4-2.6(a). His prior work experience was not relevant because the primary focus of his positions

was not experience in the planning and development of records management programs and procedures and/or the review, analysis and evaluation of recent maintenance systems and recommendation for improved methods of operation. In addition, any applicable duties that the candidate might have performed in his previous positions would be considered out-of-title experience and not accepted for a promotion examination under N.J.A.C. 4A:4-2.6(c). In re David Ghaul, Records Manager (PC0359P), Burlington Cnty., CSC Dkt. No. 2013-485, 2013 N.J. CSC LEXIS 902, Final Decision (October 3, 2013).

Good cause existed under N.J.A.C. 4A:4-2.6(c) to accept a candidate's out-of-title work experience and admit her to the promotional examination for Supervisor of Patient Accounts 1. She provided a detailed description of the applicable out-of-title experience gained while employed as an Administrative Analyst 2 and submitted appointing authority verification of her out-of-title work. Additionally, she was the only applicant for the examination, and she continued to serve provisionally in the subject title. In re Susan Hirshberg, Supervisor of Patient Accounts 1 (PS2531K), Dep't. of Human Serv., CSC Dkt. No. 2013-1521, 2013 N.J. CSC LEXIS 971, Final Decision (October 2, 2013).

Civil Service Commission found that a candidate was eligible for the promotional examination for Personnel Assistant 4 under N.J.A.C. 4A:4-2.6(a)2. A review of the candidate's application revealed that the description of her major duties in her titles of Principal Payroll Clerk and Technical Assistant 3 were essentially the same duties. Additionally, a review of the duties and responsibilities contained in both of the Division of Classification and Personnel Management's classification determinations revealed that she was performing substantially similar duties since her first classification determination. In re Jennifer Pineda, Personnel Assistant 4 (PS5847U), Dep't. of the Treasury, CSC Dkt. No. 2014-51, 2013 N.J. CSC LEXIS 905, Final Decision (October 2, 2013).

Candidate was not eligible to take the promotional examination for Principal Clerk Typist because she did not meet the experience requirements pursuant to N.J.A.C. 4A:4-2.6(c). As she listed only her provisional position on her application, no further experience could have been credited. Although she attended Software Sense, Totowa, for 35 hours per week from August 1996 to March 1997 and studied "computers," this education did not match the substitution clause, which asked for successful completion of a clerical training program with a minimum of 700 classroom training hours or 30 semester hour credits in secretarial science from an accredited college and university. In re Yolanda Martinez, Principal Clerk Typist (PS3855J), William Paterson Univ., CSC Dkt. No. 2013-2713, 2013 N.J. CSC LEXIS 892, Final Decision (September 23, 2013).

Decision of the Division of Selection Services and Recruitment that a candidate did not meet the experience requirements for the promotional examination for Administrative Analyst 2 Data Processing, as required by N.J.A.C. 4A:4-2.6(a), was amply supported by the record. Her out-of-title work while in the Information Technology Specialist title, which primarily included the provision of training, documents, information, and technical assistance, maintaining a web site and a tracking system, establishing an online grant process and ensuring that grants were processed and closed, did not match the announced experience requirement. In re Ann Lord, Administrative Analyst 2 Data Processing (PS4540N), Dep't. of Labor and Workforce Dev., CSC Dkt. No. 2013-2707, 2013 N.J. CSC LEXIS 891, Final Decision (September 23, 2013).

Candidate did not meet the experience requirements, per the substitution clause for education, for the promotional examination for Auditor 2 (PS4836P), Department of Law and Public Safety, pursuant to N.J.A.C. 4A:4-2.6(a). Her experience at the Department of Treasury as a Technical Assistant 1 and 2, Treasury, Technical Assistant 3, Head Clerk, Principal Clerk, and Senior Clerk was not at the level and scope of professional accounting and auditing experience. In re Sharon Kelley, Auditor 2 (PS4836P), Dep't. of Law and Public Safety, CSC Dkt. No. 2013-2585, 2013 N.J. CSC LEXIS 883, Final Decision (September 23, 2013).

Decision of the Division of Selection Services and Recruitment correctly determined that a candidate was not eligible for the promotional

examination for Technical Assistant 2 Treasury as he did not indicate that he possessed any of the required education or experience pursuant to N.J.A.C. 4A:4-2.6(a)2. The candidate did not list any experience on his application, and although he argued that he attached a resume to his application, he did not provide a copy with his appeal. In re Todd Jackson, Technical Assistant 2 Treasury (PS2132U), Dep't. of the Treasury, CSC Dkt. No. 2013-2576, 2013 N.J. CSC LEXIS 882, Final Decision (September 23, 2013).

Good cause existed to relax the provisions of N.J.A.C. 4A:4-2.6(a)4 and accept a candidate's experience for admittance to the promotional examination for Section Chief Health Care Facility after the closing date. He waited until the application filing period had almost expired before attempting to complete his application, and thus, his application was not received by the closing date as required by N.J.A.C. 4A:4-2.1(e). Nevertheless, the candidate was serving as a provisional in the subject title since October 1, 2005, and the eligible list was incomplete with only two applicants. This was the first time in his lengthy career that the candidate was required to complete an application online, and he and his supervisor admitted that he was not computer literate. In re Willis Parker, Section Chief Health Care Facility (PS2526K), Greystone Park Psychiatric Hospital, CSC Dkt. No. 2013-1675, 2013 N.J. CSC LEXIS 875, Final Decision (September 23, 2013).

Good cause existed to relax the provisions of N.J.A.C. 4A:4-2.6(a), accept a candidate's experience after the closing date, and admit him to the promotional examination for Custodian. Although he failed to indicate any experience with heating in his position as provisional Custodian, he indicated on appeal that his experience involved heating as well as the other aspects of the experience requirements. The examination was canceled and the candidate had accrued at least two years of experience in his provisional experience. In re Robert Squires, Jr., Custodian (PM1173n), Brick Twp. Sch. Dist., CSC Dkt. No. 2012-3443, 2013 N.J. CSC LEXIS 803, Final Decision (September 23, 2013).

Decision of the Division of Selection Services and Recruitment that a candidate did not meet the experience requirements for the open competitive examination for Clinical Laboratory Evaluator, as required by N.J.A.C. 4A:4-2.6(a), was amply supported by the record. The candidate did not indicate that he was responsible for training in his positions in Cytotechnology with Gen Path Lab and Cytotechnologist with Labcorp of America, which was a qualifying experience for the title. In re Jameel Ibrahim, Clinical Laboratory Evaluator 1 (S0213R), CSC Dkt. No. 2014-304, 2013 N.J. CSC LEXIS 799, Final Decision (September 23, 2013).

Decision of the Division of Selection Services and Recruitment that a candidate did not meet the announced requirements, per the substitution clause for education, for eligibility to take the promotional examination for Principal Technician, Management Information Systems, as required by N.J.A.C. 4A:4-2.6(a), was amply supported by the record. His work in the Technician, Management Information Systems title did not rise to the level of work at the Senior level of the title series. As such, this work was paraprofessional and not qualifying. This experience, as well as experience in his nonprofessional positions, was inapplicable. In re Thomas Key, Principal Technician, Mgmt. Info. Sys (PS6186J), Rowan Univ., CSC Dkt. No. 2014-80, 2013 N.J. CSC LEXIS 798, Final Decision (September 23, 2013).

Pursuant to N.J.A.C. 4A:4-2.6(a), a candidate was properly denied admittance to the promotional examination for Principal Audit Account Clerk because she lacked three years of experience. The description provided by the candidate of her provisional Principal Audit Account Clerk duties appeared to be below that of the title. While she was credited with work in her provisional position, it was not clear that she was preparing, reviewing, and verifying varied types of financial or statistical records for corrections, completeness and legality. In re Susan Langston, Principal Audit Account Clerk (PS6720K), Dep't. of Human Serv., CSC Dkt. No. 2014-231, 2013 N.J. CSC LEXIS 797, Final Decision (September 23, 2013).

Division of Selection Services and Recruitment properly determined that a candidate did not meet the experience requirements for the promotional examination for Classification Officer 1 as required by

N.J.A.C. 4A:4-2.6(a). While the candidate might have been performing some out-of-title work while in her Technical Assistant 3 title, it did not appear to be at the level and scope of the announced experience requirement. In re Jamie Morris, Classification Officer 1 (PS5033i), Dep't. of Corr., CSC Dkt. No. 2013-3176, 2013 N.J. CSC LEXIS 795, Final Decision (September 23, 2013).

As required by N.J.A.C. 4A:4-2.6(a), a candidate did not meet the education and experience requirements in order to qualify her for a prospective promotional examination for Information Technology Specialist. Her duties for her Technician, MIS title did not involve the design and preparation of programs and modification of systems software and multiprogramming technology; the development, maintenance, or installation of application programs; or technical support functions in resolution of online production and/or communications network problems, and/or code modification, testing, and debugging of program modules in an online environment, and/or space allocation and control of direct access storage devices. The majority of duties for her positions as a Manager/Hairdresser at a hair salon and as a restaurant Banquet Waitress/Manager was not programming or coding; thus, this experience was unacceptable. In re Christina Martel, Information Technology Specialist, Motor Vehicle Comm'n., CSC Dkt. No. 2013-3410, 2013 N.J. CSC LEXIS 791, Final Decision (September 23, 2013).

Decision of the Division of Selection Services and Recruitment that a candidate lacked the minimum experience for the promotional examination for Administrative Analyst 2 Date Processing as required by N.J.A.C. 4A:4-2.6(a) was amply supported by the record. Her prior-held titles of Technical Support Specialist 2 and Software Development Specialist Assistant did not require a Bachelor's degree and therefore were not professional titles. Her employment outside of State service did not match the announced experience requirements. In re Barbara Harris, Admin. Analyst 2 Date Processing (PS7549K), Dep't. of Children and Families, CSC Dkt. No. 2014-14, 2013 N.J. CSC LEXIS 787, Final Decision (September 23, 2013).

Division of Selection Services and Recruitment properly determined that a candidate did not meet the experience requirements for the promotional examination for Administrative Analyst 1 as required by N.J.A.C. 4A:4-2.6(a). While the candidate might have been working out-of-title while classified as a Principal Environmental Specialist, this work was not that of an Administrative Analyst. Her duties appeared to be that of grant administration rather than administrative analysis. In re Therese Bottini, Admin. Analyst 1 (PS6800G), Dep't. of Envtl. Prot., CSC Dkt. No. 2014-172, 2013 N.J. CSC LEXIS 786, Final Decision (September 23, 2013).

Division of Selection Services and Recruitment properly determined that a candidate did not meet the experience requirements for the promotional examination for Chief of Administrative Services as required by N.J.A.C. 4A:4-2.6(a). She did not receive credit for her experience in the titles Principal Fiscal Analyst and Senior Fiscal Analyst as a review of those job specifications indicated that incumbents were not required to analyze, evaluate and provide advice to management on such matters as work methods and procedures, communications, management information systems, organizational structure, human resource utilization, distribution of work assignments, delegation of authority, policy development, budget preparation, records management, or similar areas with the objective of improving managerial effectiveness. In addition, her experience could not be described as administrative experience in managing, administrating, or directing an organizational unit and its work program. In re Ferne Maronna, Chief of Admin. Serv. (PC0508R), Middlesex Cnty., CSC Dkt. No. 2014-308, 2013 N.J. CSC LEXIS 783, Final Decision (September 23, 2013).

Division of Selection Services and Recruitment properly determined that a candidate did not meet the experience requirements for the promotional examination for Supervisor 1 MVC as required by N.J.A.C. 4A:4-2.6(a). She could not get credit for her Customer Service Representative 4 and Customer Service Representative Trainee positions, as there were no separate lists of duties for them. In addition, her experience as a Technician MVC was not lead worker experience. In re Maria Pisapia, Supervisor 1 MVC (PS3710T), Motor Vehicle Comm'n.,

CSC Dkt. No. 2014-307, 2013 N.J. CSC LEXIS 782, Final Decision (September 23, 2013).

Candidates were properly not listed as having filed applications for the promotional examination for County Services Specialist pursuant to N.J.A.C. 4A:4-2.6(a)4 and 4A:4-2.1(e) because they did not prove that an error was made by the appointing authority nor that they submitted applications. Official records revealed that no applications were on file for them. The County Services Specialist promotional announcement was posted in their office in a locked glass cabinet pursuant to N.J.A.C. 4A:4-2.1(b) for the required time period, and the locked glass cabinets were conspicuously located. In addition, an e-mail was sent to all staff advising them of the on-line application system with detailed instructions on how to apply using the new on-line system. In re Juliana Ebewo et al., Cnty. Serv. Specialist (PS1394K), Dep't. of Children and Families, CSC Dkt. Nos. 2013-3293, 2013-3312 (Consolidated), 2013 N.J. CSC LEXIS 780, Final Decision (September 23, 2013).

Candidates did not meet the experience requirements for Administrative Analyst 2 Data Processing pursuant to N.J.A.C. 4A:4-2.6(a)2. One candidate was performing programming and database analysis rather than the review, analysis and evaluation of organization and administrative practices to determine the need for revision or implementation of data processing systems. The second candidate's background in programming analysis did not meet the experience requirements per the substitution clause for education. In re Suneet Gupta and Premial Ramachandran, Administrative Analyst 2 Data processing (PS2073N), dep't. of Labor and Workforce Dev., CSC Dkt. Nos. 2013-2916, 2013-2891 (Consolidated), 2013 N.J. CSC LEXIS 746, Final Decision (September 23, 2013).

Decision of that a candidate did not meet the announced experience requirements for eligibility for the promotional examination for the "dual title" Mechanic/Senior Public Works Repairer as required by N.J.A.C. 4A:4-2.6(a) was amply supported by the record. On appeal, the candidate provided a revised list of positions that did not include all requested information for each position, such as months of service, whether the positions were full or part time, duties, and supervisor contact information. In re Robert Jobst, Mechanic/Senior Public Works Repairer (PM0345P), Ewing Twp., CSC Dkt. No. 2013-319, 2013 N.J. CSC LEXIS 696, Final Decision (September 23, 2013).

Good cause existed under N.J.A.C. 4A:4-2.6(a) to accept a candidate's out-of-title work experience and admit her to the promotional examination for Assistant Municipal Clerk. She acquired the required applicable supervisory experience, albeit out-of-title, while serving in the title of Senior Computer Operator. In addition, she was provisional in the subject title and was the only candidate for the subject examination. In re Shawna Supel, Assistant Mun. Clerk (PM0952P), Irvington, CSC Dkt. No. 2013-2180, 2013 N.J. CSC LEXIS 835, Final Decision (September 19, 2013).

Candidate met the experience requirements for the promotional examination for Construction and Maintenance Technician 5, Department of Transportation because good cause existed under N.J.A.C. 4A:4-2.6(c) to accept his out-of-title experience. For six years he performed relevant, albeit out-of-title, duties in his mobility assignment while in the title of Maintenance Worker 1, Transportation, and he currently was provisionally performing the duties of Construction and Maintenance Technician 5. In addition, a certification processed against the candidate's position resulted in an incomplete list and he was retained in the position with no eligibles on the incomplete list interested in displacing him. In re Marvin Mack, Constr. And Maint. Technician 5 (PS8087T), Dep't. of Transp., CSC Dkt. No. 2013-500, 2013 N.J. CSC LEXIS 703, Final Decision (September 19, 2013).

The Division of Selection Services and Recruitment (DSSR) correctly determined that an applicant seeking admission to the promotional examination for Affirmative Action Officer 2 (PS3656K), Department of Human Services, was ineligible because she did not meet the applicable experience requirement and thus did not satisfy N.J.A.C. 4A:4-2.6(a). The applicant had argued that her experience as a provisional Affirmative Action Officer 2, an Investigator, and as a night audit manager at a hotel should be accepted to qualify her for the examination,

and she described her experience in the title under test as: Investigate allegations of discrimination from employees, prepare investigative reports containing findings of facts and conclusions, review policies and procedures of all divisions on affirmative actions and equal employment opportunity. However, this experience was deemed to not be equivalent to the required experience in the planning and/or operation of programs designed to further the training and employment opportunities for youth, minorities, women veterans, the handicapped, and/or older workers. Nor was the primary focus of her positions as an investigator similar to that which was required to establish eligibility for the title under test. Finally, because the applicant did not indicate her experience as a night audit manager in her original application, her submission of that information at this juncture was foreclosed by N.J.A.C. 4A:4-2.1(f), which required any amendments to applications to be made prior to the announced closing date. Thus, while the decision of the DSSR was correct, it was appropriate for the applicant's assigned duties and responsibilities to be reviewed to determine the position's appropriate classification. In re Eckard, Affirmative Action Officer 2 (PS3656K), Dep't of Human Servs., CSC Docket No. 2013-2391, 2013 N.J. CSC LEXIS 848, Final Administrative Decision (September 18, 2013).

Civil Service accepted a candidate's out-of-title work experience as a General Supervisor, Trades, for eligibility purposes only, which allowed him the opportunity to take the promotional examination for Supervisor of General Services, Monmouth County, pursuant to N.J.A.C. 4A:4-2.6(c). The candidate continued to successfully serve as a provisional in the subject position although he was serving as a General Supervisor, Trades and because the subject promotional examination had been cancelled due to a lack of qualified applicants, this was not a competitive situation. In re David Krzyzanowski, Supervisor of General Serv. (PC0596P), Monmouth Cnty., CSC Dkt. No. 2013-703, 2013 N.J. CSC LEXIS 712, Final Decision (September 18, 2013).

Though the Division of Selection Services and Recruitment (DSSR) had correctly determined that an applicant seeking admission to the promotional examination for promotional examination for Traffic Analyst (PM1062P), Atlantic City did not meet the minimum experience requirements, good cause within the meaning of N.J.A.C. 4A:4-2.6 was shown to accept the applicant's out-of-title work experience and admit her to the examination. Relevant factors included that the applicant was currently serving provisionally in the subject title; that the applicant's supervisor had confirmed that the applicant had been performing the duties of a Traffic Analyst since January 2006; and that the applicant was the only person seeking admission to the examination. In re Seif, Traffic Analyst (PM1062P), Atlantic City, CSC Docket No. 2013-2349, 2013 N.J. CSC LEXIS 961, Final Administrative Determination (September 4, 2013).

Determination by the Division of Selection Services and Recruitment (DSSR) that an employee who was permanent in the non-competitive title of Truck Driver Heavy and worked in the Department of Public Works (DPW) was ineligible for the promotional examination for Assistant Supervisor of Public Works, (PM0090R), Teaneck Township because he was not permanent in the competitive division as of the closing date was overturned by the Civil Service Commission. Because the employee had achieved permanent status in the title before it was allocated to the noncompetitive division, he was within the class of employees who, per N.J.A.C. 4A:3-1.2(4), were entitled to claim permanent status in a competitive title for the purpose of eligibility for promotion notwithstanding the reclassification of their positions to the noncompetitive service. However, he still had to demonstrate that he met the experience requirements for the subject title. Though out-of-title work was normally disregarded in determining whether an employee met the experience requirements for any particular examination, this employee's submission showed that he had been performing relevant duties since May 1999, and his claim was substantiated by the acting township manager. That meant that there was good cause pursuant to N.J.A.C. 4A:4-2.6(c) to accept the employee's out-of-title work experience and admit him to the examination. In re Merz, Assistant Supervisor of Pub. Works, (PM0090R), Teaneck Twp., CSC Docket No. 2014-0094, 2013 N.J. CSC LEXIS 933, Final Administrative Determination (September 4, 2013).

Though the Division of Selection Services and Recruitment (DSSR) had correctly determined that an applicant then serving as a provisional Road Repair Supervisor did not possess the minimum requirements in experience for the promotional examination for Road Repair Supervisor (PM0244P), Elizabeth because it calculated that he possessed only nine months of applicable lead worker experience, good cause within the meaning of N.J.A.C. 4A:4-2.6(c) and N.J.A.C. 4A:1-1.2(c) was shown for an order requiring DSSR to admit him to the promotional examination. Factors on which the Civil Service Commission relied in so ruling included that the applicant continued to successfully serve as a provisional Road Repair Supervisor and that the subject promotional examination was cancelled due to a lack of qualified applicants. Because accepting the applicant's experience as a provisional Road Repair Supervisor gained after the March 21, 2012 closing date would provide the applicant with sufficient experience to be admitted to the subject promotional examination. However, that additional provisional experience was to be credited for eligibility purposes only. In re Sacca, Road Repair Supervisor (PM0244P), Elizabeth, CSC Docket No. 2013-173, 2013 N.J. CSC LEXIS 920, Final Administrative Decision (September 4, 2013).

The Division of Selection Services and Recruitment (DSSR) correctly determined that none of the eight applicants who were seeking admission to the promotional examination for Supervisor 1 MVC (PS3710T), Motor Vehicle Commission met the minimum experience requirements for the position per N.J.A.C. 4A:4-2.6(a). One of the requirements was at least one year of lead worker experience. Noting that lead worker duties were akin to those of a supervisor in many respects, absent the responsibility for formal performance evaluations that can lead to the effective hiring, firing, or demotion of a subordinate and the rule in N.J.A.C. 4A:3-3.4 that presumes that employees are appointed to a title appropriate to the duties to be performed and are not assigned duties other than those properly pertaining to the assigned title which the employee holds, the Civil Service Commission concluded that the decision of DSSR that the applicants did not meet the announced requirements was supported by the record and that none of the applicants was entitled to relief. In re Dioses, et al., Supervisor 1 MVC (PS3710T), Motor Vehicle Comm'n, CSC Docket No. 2013-2791, 2013 N.J. CSC LEXIS 952, Final Administrative Determination (August 19, 2013).

The Division of Selection Services and Recruitment (DSSR) correctly determined that three applicants who were seeking admission to the promotional examination for Quality Assurance Specialist Health Services (PS4519K), Department of Human Services did not meet the experience requirements for the position per N.J.A.C. 4A:4-2.6(a). While one applicant met the licensing requirement but failed to meet the one-year experience requirement, the other two applicants did not meet the licensing requirement and though possessing bachelor's degrees, failed to meet the substitutional three year experience requirement. In order for experience to be acceptable, it must mirror the experience required in the examination announcement. In addition, it must have as its primary focus full-time responsibilities in the areas required in the announcement. None of the three applicants showed that they had experience in quality assurance, which involved performing program and/or facility evaluations of all aspects of clinical care, support, and administrative services provided by any departmental unit or facility. Because a review of all material indicated that the decision of DSSR that the applicants did not meet the announced requirements was supported by the record, no relief was warranted. In re Belcher, Jr., et al., Quality Assurance Specialist Health Servs. (PS4519K), Dep't of Human Servs., CSC Docket Nos. 2013-3581, 2013-3539, 2013-3579 (Consolidated), 2013 N.J. CSC LEXIS 710, Final Administrative Determination (August 19, 2013).

The Division of Selection Services and Recruitment (DSSR) correctly determined that an applicant who was provisional in the subject title and was seeking admission to the promotional examination for Section Supervisor, Fiscal Resources (PS7118K), Department of Human Services did not meet the experience requirements for the position per N.J.A.C. 4A:4-2.6(a), which requirements included five years of experience in work involving fiscal management, which shall have included public finance, auditing, budgeting, and accounting. A comparison of the applicant's duties to those of the subject title indicated that the applicant's position did not provide administrative support to units or

departments in managing fiscal resources in order to accomplish the unit objectives. And while the applicant's provisional position monitored fiscal management of provider agency funds with contracts, budgets, expenditures and policies, and made some organizational changes and improvements, there was no indication that the position had custody or control of fiscal resources which were received, spent and budgeted in a manner which achieved agency objectives. Because an independent review of all material indicated that the decision of DSSR that the applicant did not meet the announced requirements was supported by the record, no relief was warranted. In re Tarr, Section Supervisor, Fiscal Res. (PS7118K), Dep't of Human Servs., CSC Docket No. 2013-3337, 2013 N.J. CSC LEXIS 701, Final Administrative Determination (August 19, 2013).

The Division of Selection Services and Recruitment (DSSR) did not err in concluding that an applicant was below the minimum requirements in experience for the promotional examination for Supervisor, Public Works (PM0909P), Linden. Though the applicant, who was serving provisionally in the subject title, argued that his previous titles of Sanitation Inspector, Sanitation Truck Driver, Senior Tree Trimmer, and Laborer afforded him relevant experience, the primary focus of those titles did not meet the requirements of experience in the construction, maintenance, and repair of streets, sewer, water, sanitation, or other public works facilities or similar heavy construction. In addition, any experience that the applicant may have gained in previous titles of Sanitation Inspector, Sanitation Truck Driver, Senior Tree Trimmer, and Laborer would be considered out-of-title experience. Finally, even if he had gained applicable out-of-title experience, good cause did not exist to accept out-of-title experience for the subject examination since a complete eligible list existed with three eligibles on the employment roster. Because a thorough review of all of the materials indicated that DSSR's decision that the applicant did not meet the announced requirements for eligibility by the exam closing date as required by N.J.A.C. 4A:4-2.6 was supported by the record, the applicant failed to carry his burden to show otherwise. In re Caldwell, Supervisor, Pub. Works (PM0909P), Linden, CSC Docket No. 2013-1764, 2013 N.J. CSC LEXIS 878, Final Administrative Decision (August 16, 2013).

The Division of Selection Services and Recruitment (DSSR) did not err in concluding that an applicant who was seeking entry to the promotional examination for Director of Professional/Residential Services (PS3649K), Woodbridge Developmental Center was below the minimum educational requirements for that examination. Though the applicant, who was serving provisionally in the subject title, argued that she possessed a Master's degree in Urban Planning, this is not one of the required disciplines listed on the examination announcement for the subject examination. Therefore, inasmuch as N.J.A.C. 4A:4-2.6(a) required that applicants meet all requirements specified in the examination announcement by the closing date, DSSR appropriately determined that the applicant was ineligible for the examination. In re Hirya, Dir. of Prof'l/Residential Servs. (PS3649K), Woodbridge Dev. Ctr., CSC Docket No. 2013-1762, 2013 N.J. CSC LEXIS 858, Final Administrative Decision (August 16, 2013).

The Division of Selection Services and Recruitment correctly determined that an applicant seeking admission to the promotional examination for Supervisor of Accounts (PS5240K), Department of Children and Families did not meet a requirement for admission per N.J.A.C. 4A:4-2.6(a), which was that the applicant be a permanent employee in the specified title of Head Audit Account Clerk. Since the applicant was a permanent Head Clerk as of the closing date, he was correctly determined to be ineligible for the examination. In re Walker, Supervisor of Accounts (PS5240K), Dep't of Children and Families, CSC Docket No. 2013-2862, 2013 N.J. CSC LEXIS 743, Final Administrative Decision (August 16, 2013).

The Division of Selection Services and Recruitment (DSSR) correctly determined that an applicant seeking admission to the open competitive examination for Construction Official (S1035P) was ineligible because he did not meet the applicable experience requirement and thus did not satisfy N.J.A.C. 4A:4-2.6(a). His original application did not indicate that he possessed a Construction Official license nor did he list any entries in the "experience" section of the application. Though on appeal he argued that his experience as an electrical contract since 1978 met the

experience requirement, his failure to include such information in his original application meant that he could not provide additional clarifying detail per N.J.A.C. 4A:4-2.1 about that experience in connection with the instant appeal. In re Pentimone, Construction Official (S1035P), CSC Docket No. 2013-2641, 2013 N.J. CSC LEXIS 886, Final Administrative Decision (August 15, 2013).

Determination by the Division of Selection Services and Recruitment (DSSR) that four employees who were permanent in the non-competitive title of Truck Driver and worked in the Department of Public Works (DPW) were ineligible for the promotional examination for Assistant Supervisor of Public Works, (PM0089R), Marlboro Township because they were not permanent in the competitive division as of the closing date was overturned by the Civil Service Commission. Because all of the employees had achieved permanent status in the title before it was allocated to the noncompetitive division, they were within the class of employees who, per N.J.A.C. 4A:3-1.2(4), were entitled to claim permanent status in a competitive title for the purpose of eligibility for promotion notwithstanding the reclassification of their positions to the noncompetitive service. Moreover, because there was a logical nexus between the duties performed by each employee and those required to establish eligibility for the title under test, each met the experience requirements for the title under test as required by N.J.A.C. 4A:4-2.6(a). Though under normal circumstances, the DSSR would have been correct to determine that the employees were ineligible for the subject exam as applicable experience gained in the Truck Driver title would be considered out-of-title work, their experience should have been evaluated in the context of the environment in which the employees were working. That is, it would have been appropriate to consider the potential pool of candidates who could compete for the examination. Admission of these employees to the examination also served the valid public interest of filling positions through promotional examinations per N.J.A.C. 4A:4-2.3(a). In re Gann, et al., Ass't Supervisor of Pub. Works, (PM0089R), Marlboro Township, CSC Docket Nos. 2013-3175, 2013-3200, 2013-3254, 2013-3262 (Consolidated), 2013 N.J. CSC LEXIS 829, Final Administrative Determination (August 15, 2013).

The Division of Selection Services and Recruitment (DSSR) correctly determined that an applicant seeking admission to the promotional examination for Assistant Administrative Analyst (PC1074P), Atlantic County was ineligible for that exam because she lacked one year and seven months of applicable experience and thus did not satisfy N.J.A.C. 4A:4-2.6(a). The applicant's experience as an Office Services Manager and her duties in the Assistant Administrative Analyst position did not have as the primary focus the duties required for the subject title. Incumbents in the Assistant Administrative Analyst title assist in performing the work involved in the analysis and evaluation of administrative procedures, practices and organizational structure in order to provide information and recommendations to management on ways to improve administrative functions and managerial control of operational activities and perform other related duties. On the contrary, the applicant's experience primarily lies in administrative and clerical work and her day-to-day duties are administrative and clerical in nature. The applicant did not possess the required experience in analyzing, evaluating and providing advice to management with the objective of improving managerial effectiveness or managing, administering or directing an organizational unit and its work programs which entailed responsibility for planning, organizing, directing, staffing, coordinating and budgeting for the activities of the unit. That said, given the surrounding facts and circumstances, it was appropriate for the applicant's assigned duties and responsibilities to be reviewed to determine the position's appropriate classification per N.J.A.C. 4A:3-3.1. In re Perla, Assistant Admin. Analyst (PC1074P), Atlantic Cnty., CSC Docket No. 2013-2765, 2013 N.J. CSC LEXIS 737, Final Decision (August 15, 2013).

Though the Division of Selection Services and Recruitment (DSSR) had correctly determined that an applicant then permanently serving in the title of Senior Receptionist did not possess the minimum requirements in experience for the promotional examination for Senior Housing Assistance Technician (PC1298P), Hunterdon County because it was calculated that she lacked one year and seven months of applicable experience, good cause within the meaning of N.J.A.C. 4A:4-2.6(c) and N.J.A.C. 4A:1-1.2(c) was shown for an order requiring DSSR

to admit her to the promotional examination based on her out-of-title experience. While the applicant's experience did not precisely mirror the requirements in the announcement, the totality of the applicant's experience warranted her admission to the subject examination. Moreover, the applicant had been serving provisionally in the title under test since August 1, 2012, continued to serve provisionally in that title, and had shown that the County Administrator supported her appeal. Generally, good cause for such an order is shown where the record evidences that the examination situation was not competitive, no third parties were adversely impacted and the appointing authority verified that the applicant has performed the relevant duties which otherwise satisfy the eligibility requirements. As all of those elements were shown here, good cause existed to accept the applicant's out-of-title experience and her provisional experience in the subject title, for eligibility purposes only, and to admit her to the examination. In re Antiskay, Senior Housing Assistance Technician (PC1298P), Hunterdon County, CSC Docket No. 2013-2716, 2013 N.J. CSC LEXIS 893, Final Decision (August 14, 2013).

Determination by the Division of Selection Services and Recruitment that two applicants did not meet experience requirements for the promotional examination for Project Engineer, Maintenance (PS3712T), Department of Transportation (DOT), was amply supported by the record, which reflected that neither of the applicants possessed the required Bachelor's degree in civil or mechanical engineering or any appropriate substitution therefor. Nor was the title at issue one for which a 45 credit substitution clause applied. Finally, even if the clause was still included in the requirements for certain engineering titles, the qualifications for a promotion are determined by the job announcement, not the job specification for a particular title. Thus, because neither of the applicants met all requirements specified in the announcement by the closing date as required by N.J.A.C. 4A:4-2.6(a), they were properly refused entry to the examination. In re Greene and Paroya, Project Engineer, Maintenance (PS3712T), Department of Transportation, CSC Docket Nos. 2013-2102, 2013-2110 (consolidated), 2013 N.J. CSC LEXIS 832, August 14, 2013, Final Decision.

The Division of Selection Services (DSS) properly found that an applicant did not meet the experience requirement for the promotional examination for Program Development Specialist 1 Mental Health Services (PS3978K), Department of Human Services as per N.J.A.C. 4A:4-2.6(a)2 and thus could not be admitted to the examination. The fact that the applicant had been admitted to examinations for Program Development Specialist 1 Mental Health (PS9559K) with a closing date of October 21, 2010, and Program Development Specialist 1 Mental Health (PS1193K), with a closing date of November 21, 2008, was not probative of his eligibility for the examination at issue. That is, it was incumbent on an applicant to clearly demonstrate that his experience matched that identified in the announcement. Here, because the application and related materials did not show that the applicant's primary were commensurate with the duties of the title at issue, which duties involved mental health or social services planning or program development or contract administration, there was no basis to disturb the decision of DSS in concluding that he did not meet the experience requirements. In re Kayode Adeeko, Program Dev. Specialist 1 Mental Health Servs. (PS3978K), Dep't of Human Servs., CSC Docket No. 2012-2008, 2013 N.J. CSC LEXIS 395, Final Decision (August 2, 2013).

Though the Division of Selection Services and Recruitment (DSSR) had correctly determined that an applicant seeking admission to the promotional examination for Heavy Equipment Operator (PC0015Q), Atlantic County did not meet the minimum experience requirements, there was good cause within the meaning of N.J.A.C. 4A:4-2.6(c) and N.J.A.C. 4A:1-1.2(c) for an order admitting him to that examination. The applicant had submitted documentation establishing that the primary duties of the applicant's current position as Road Repairer 1 involved operating various types of heavy equipment in the maintenance of roads, bridges and drainage appurtenances as well as transporting the equipment to and from the job site, which equipment included but was not limited to wheel loaders, tracked excavators, backhoes, asphalt pavers, rollers, tractor trailers, rough terrain forklifts, skid steer loaders and tractors. Not only did the documentation establish that the applicant had met the requirements for admission to the examination, but the applicant

was serving provisionally in the title since October 15, 2012 and the examination had been cancelled for lack of eligibles. In re Kevin T. Williams, Heavy Equipment Operator (PC0015Q), Atlantic Cnty., CSC Dkt. No. 2013-2708, 2013 N.J. CSC LEXIS 413, Final Decision (August 1, 2013).

Despite the fact that an applicant who was seeking admission to the promotional examination for Human Services Specialist 3 (PC0019Q), Hunterdon County did not possess the minimum experience required for admission as required by N.J.A.C. 4A:4-2.6(a)2, there was good cause under these facts per N.J.A.C. 4A:1-1.2(c) to credit the applicant with sufficient experience to qualify the applicant for admission to the examination. While her experience did not precisely mirror the applicable requirements, the totality of her experience, including her service in her titles of Senior Clerk Transcriber and Supervising Clerk Transcriber since 2004, warranted her admission to the examination. Other relevant factors included that the applicant had been serving provisionally in the title under test since October 2012; was continuing to serve provisionally therein; had the support of the County Administrator for the appeal, who had verified that the applicant had performed duties that otherwise satisfied eligibility requirements. It was also noted that the examination had been cancelled for lack of eligibles. In re Kathryn Ragno, Human Servs. Specialist 3 (PC0019Q), Hunterdon Cnty., CSC Dkt. No. 2013-2695, 2013 N.J. CSC LEXIS 399, Final Decision (August 1, 2013).

Though the Division of Selection Services and Recruitment (DSSR) had correctly determined that an applicant seeking admission to the promotional examination for Purchasing Assistant (PS6379K), Department of Children and Families, did not meet the minimum experience requirements for admission to that exam, the applicant, who was serving provisionally in that title, had shown good cause within the meaning of N.J.A.C. 4A:4-2.6(c) and N.J.A.C. 4A:1-1.2(c) for an order admitting her to that examination. Factors cited by the Civil Service Commission in directing the DSSR to credit the applicant for her out-of-title experience and to admit the applicant to the examination included that the examination had been cancelled for lack of eligibles, that the applicant in fact had been capably performing the duty of the positions since June 2008, and that the appointing authority had verified the applicable out-of-title duties currently performed by the applicant. In re Natasha McNeil, Purchasing Assistant, (PS6379K), Dep't of Children & Families, CSC Docket No. 2013-3156, 2013 N.J. CSC LEXIS 392, Final Decision (August 1, 2013).

Though the Division of Selection Services and Recruitment (DSSR) had correctly determined that an applicant seeking admission to the promotional examination for Municipal Court Administrator (PM0863P), Hazlet did not meet the minimum experience requirements, the applicant had shown good cause within the meaning of N.J.A.C. 4A:4-2.6(c) and N.J.A.C. 4A:1-1.2(c) for an order admitting her to that examination. The applicant had submitted documentation establishing that she in fact had been performing the duties of a Deputy Municipal Court Administrator since at least 2000, including maintaining the court log, scheduling cases, and processing DUI cases, citizen complaints and warrants, and that her performance in that capacity had been rated by her superiors as outstanding. In re Carol LaManna, Mun. Ct. Admin. (PM0863P), Hazlet, CSC Dkt. No. 2013-2821, 2013 N.J. CSC LEXIS 390, Final Decision (August 1, 2013).

Though the Division of Selection Services and Recruitment (DSSR) had correctly determined that two applicants seeking admission to the promotional examination for Supervisor, Public Works (PM0041Q), Ocean City, because neither possessed the required four years of applicable experience by the closing date as required by N.J.A.C. 4A:4-2.6(a)2, the Civil Service Commission nonetheless concluded that they were appropriately admitted to the examination. Factors favoring that result included that both of the applicants were provisional appointees pending the examination, that they were the only applicants seeking admission to the exam, and that while the applicants' experience may not precisely mirror that required for the title under test, the experience was sufficiently similar to warrant their admission to the examination. In re Mark D. Kelly and James Toto, Supervisor, Pub. Works, (PM0041Q), Ocean City, CSC Dkt. No. 2013-2760 and 2013-2739 (Consolidated), 2013 N.J. CSC LEXIS 389, Final Decision (August 1, 2013).

Though the Division of Selection Services and Recruitment (DSSR) had correctly determined that an applicant then serving as a provisional appointee in the title of Assistant Business Manager 1 (PS6064K), Hunterdon Developmental Center did not possess the minimum requirements in experience for the promotional examination for that position, the applicant showed good cause within the meaning of N.J.A.C. 4A:4-2.6(c) and N.J.A.C. 4A:1-1.2(c) for an order requiring DSSR to admit her to the promotional examination based on her out-of-title and provisional experience. Factors considered by the Civil Service Commission included that the examination situation was not competitive, that no third parties were adversely impacted, and that the appointing authority had verified that the applicant had performed relevant duties that otherwise satisfied eligibility requirements. In re Melissa Clough, Assistant Bus. Manager 1 (PS6064K), Hunterdon Dev. Ctr., CSC Dkt. No. 2013-2942, 2013 N.J. CSC LEXIS 381, Final Decision (August 1, 2013).

Determination by the Division of Selection Services and Recruitment that three applicants did not meet experience requirements for the promotional examination for Assistant Supervisor Public Works (PM0090R), Teaneck, was amply supported by the record, which reflected that two of the applicants possessed only four months of applicable experience in their provisional positions and lacked two years, eight months of required experience and that the third applicant's experience as an electrician and as an operations manager did not cover the scope and have, as the primary focus, construction, maintenance and repair of public works facilities nor constitute experience in heavy construction similar to the announced requirement. Because none of the three applicants met all requirements specified in the announcement by the closing date as required by N.J.A.C. 4A:4-2.6(a), they were properly refused entry to the examination. In re Stephen Carrig et al., Assistant Supervisor Pub. Works (PM0090R), Teaneck, CSC Dkt. Nos. 2013-3090, 2013-3070, 2013-3112 (consolidated), 2013 N.J. CSC LEXIS 380, Final Decision (August 1, 2013).

Though the Division of Selection Services and Recruitment (DSSR) had correctly determined that an applicant was ineligible for the promotional examination for Program Technician (PS3687N), Department of Labor and Workforce Development since she lacked the minimum requirements in experience and her proffered out-of-title work was not properly accepted for a promotional examination, good cause within the meaning of N.J.A.C. 4A:4-2.6(c) existed to accept the applicant's out-of-title work experience to satisfy the experience requirements. Factors relied upon by the Civil Service Commission included that the appointing authority had certified that the applicant had performed out-of-title duties for at least an additional one year, eleven months; that the examination was not competitive, with two admitted candidates; and that the applicant remained in the provisional position. In re Ruth Rosado, Program Technician (PS3687N), Dep't of Labor and Workforce Dev., CSC Dkt. No. 2013-2590, 2013 N.J. CSC LEXIS 452, Final Decision (July 19, 2013).

Though the Division of Selection Services and Recruitment (DSSR) had correctly determined that an applicant then serving as a provisional appointee in the subject title did not meet the experience requirements for the promotional examination for Personnel Assistant 4 (PS3673N), Department of Labor and Workforce Development, which included a Bachelor's degree from an accredited college or university, and one year of technical experience in a personnel program of a public or private organization. Nonetheless, the applicant showed good cause within the meaning of N.J.A.C. 4A:4-2.6(c) for an order requiring DSSR to admit him to the promotional examination based on his provisional experience. Factors considered by the Civil Service Commission included that the applicant's request was supported by the appointing authority, which authority took the position that the applicant's job duties prior to the closing date were a mix of duties including those required for the title at issue. The Commission also pointed out that there was an incomplete list for the title, that the applicant was still serving therein provisionally and had gained an additional eight months of experience, and that the rules were properly relaxed to accept that post-closing experience in satisfaction of the experience requirement and to admit him to the examination. In re Frank Mattiacci, Personnel Assistant 4 (PS3673N), Dep't of Labor & Workforce Development, CSC Dkt. No. 2013-2711, 2013 N.J. CSC LEXIS 449, Final Decision (July 19, 2013).

When considering a challenge to a determination by the Division of Selection Services and Recruitment (DSSR) that several applicants seeking admission to the promotional examination for Supervisor of Claims (PS2583U), Department of the Treasury, lacked the required supervisory experience, the Civil Service Commission found that "good cause" within the meaning of N.J.A.C. 4A:4-2.6(c) to accept what was alleged to be out-of-title experience has not been established. Factors considered included that the examination situation was competitive, with four candidates having been admitted to the examination. Moreover, while each of the applicants claimed to have obtained supervisory experience on occasions when they "acted" as supervisors in the absence of those persons who supervised their activities, no supervisory credit was appropriately given for such occasional activities. In re Shelly Danese, et al., Supervisor of Claims (PS2583U), Dep't. of the Treasury, CSC Dkt. Nos. 2013-2602, 2013-2604, 2013-2595 (Consolidated), 2013 N.J. CSC LEXIS 447, Final Decision (July 19, 2013).

Good cause was established pursuant to N.J.A.C. 4A:4-2.6(c) to accept a candidate's applicable out-of-title experience to satisfy the experience requirement for Executive Assistant 1. The candidate had acquired the required experience, albeit out-of-title, while serving in the title of Research Scientist 2. Due to business necessity and a continued hiring freeze, it was difficult to fill the position and the candidate had been performing the duties of the title for six years. In addition, because the candidate had been in the competitive division before being in the title of Research Scientist 2, the Civil Service Commission concluded that, for equitable considerations, it was appropriate to relax the provision 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 the candidate pending promotional examination procedures. In re Lisa Asare, Dep't. of Health, CSC Dkt. No. 2013-2119, 2013 N.J. CSC LEXIS 660, Final Decision (July 18, 2013).

Application errors made by various employees that resulted in their applying for positions for which they were ineligible because only such persons who were already assigned to the indicated unit scope were permitted entry into the associated examinations, errors which rendered the employees ineligible under N.J.A.C. 4A:4-2.6(a)2, were disregarded by the Civil Service Commission in favor of an order admitting those employees to such examinations for which they were eligible notwithstanding their failure to apply for even if their applications related to positions that were beyond their unit scope because the interests of the civil service system were best served when more, rather than fewer, individuals were presented with employment opportunities. In re Supervising Family Serv. Specialist 2 (PS6691K) (PS6693K) (PS6696K) and Supervising Family Serv. Specialist 2 (Bilingual in Spanish and English) (PS6692K) (PS6694K) and (PS6697K), CSC Dkt. Nos. 2013-3433 et al., 2013 N.J. CSC LEXIS 456, Final Decision (July 18, 2013).

An applicant seeking a provisional appointment to the title of Environmental Specialist 2 won Civil Service Commission approval for the same despite the fact that she did not possess the minimum requirements for such an appointment because it was shown that the applicant had acquired the required applicable experience, albeit out-of-title, while serving in the titles of Standards and Procedures Technician 1 and Customer Service Representative 1. Factors taken into consideration by the Commission in ruling that there was good cause within the meaning of N.J.A.C. 4A:4-2.6(c) to accept the applicant's out-of-title experience to satisfy the experience requirement included the submission of the appointing authority which indicated that, due to business necessity, attrition, and its inability to fill vacancies that arose, the applicant had been assigned to and had been performing relevant out-of-title duties for 12 years. In re Amy Wells, Env't Specialist 2, Dep't of Env't Prot., CSC Dkt. No. 2013-1586, 2013 N.J. CSC LEXIS 454, Final Decision (July 18, 2013).

Applicant did not meet the requirements for the promotional examination for Supervising Program Support Specialist, Assistance Programs, as required by N.J.A.C. 4A:4-2.6(a). Although she satisfied the educational requirement and could substitute her Master's degree in Human Services for one year of the required non-supervisory experience, none of the positions listed on her application involved responsibilities in the required areas. She did not supervise employees engaged in analyzing, monitoring, maintaining or implementing social

service, economic assistance, community service, sustenance, or any other human support/assistance program as required. In re Marvina Jackson, Supervising Program Support Specialist, Assistance Programs (PS8064K), Dep't. of Human Servs., CSC Dkt. No. 2013-266, 2013 N.J. CSC LEXIS 459, Final Decision (July 17, 2013).

Applicant did not meet all the requirements listed on the promotional examination announcement for Senior Systems Analyst as required by N.J.A.C. 4A:4-2.6(a)2. His experience was in network administration and his day-to-day duties included technical support operation and maintenance. He did not possess experience in the design, installation and operation of programs for electronic data processing equipment and/or in the design and implementation of systems for electronic data processing application. In re Steven Riccio, Senior Sys. Analyst (PC1047P), Morris Cnty., CSC Dkt. No. 2013-2643, 2013 N.J. CSC LEXIS 451, Final Decision (July 17, 2013).

Good cause existed under N.J.A.C. 4A:4-2.6(c) to accept a candidate's out-of-title experience as a Computer Service Technician as qualifying experience after he submitted the appropriate supervisory documentation from the Supervisor of Technology that fully supported his claims that he assumed responsibilities, albeit, out-of-title, while serving as a Computer Service Technician. In re Christopher W. Cucciniello, Network Adm. 1 (PM0346P), Vineland Sch. Dist., CSC Dkt. No. 2013-3165, 2013 N.J. CSC LEXIS 446, Final Decision (July 17, 2013).

Good cause was established pursuant to N.J.A.C. 4A:4-2.6(c) to accept an applicant's applicable out-of-title experience to satisfy the experience requirement to take a prospective promotional examination for the title of Principal Transportation Analyst, Emergency Management Coordination. The appointing authority asserted that, due to business necessity, it was crucial for the applicant to assume those duties. He had been performing out-of-title duties since 2000 because there was a lack of staff, and he had specific knowledge that benefited the unit. In re David Bowlby, Principal Transp. Analyst, Emergency Mgmt. Coordination, Dep't. of Transp., CSC Dkt. No. 2013-2621, 2013 N.J. CSC LEXIS 548, Final Decision (June 28, 2013).

Candidate was entitled to admission to the promotional examination for Custodian when good cause was established under N.J.A.C. 4A:4-2.6(c) to use experience gained as a result of out-of-title work to satisfy eligibility requirements. He acquired the required applicable experience, albeit out-of-title, while serving in the title of Custodial Worker. The candidate possessed the Black Seal Operator's License, which was indicative of some basic knowledge of heating systems. Further, the examination cancelled due to a lack of candidates. In re John Kubiak, Custodian (PM0537P), Brick Twp. Bd. of Educ., CSC Dkt. No. 2013-792, 2013 N.J. CSC Lexis 477, Final Decision (June 28, 2013).

Good cause existed under N.J.A.C. 4A:4-2.6(c) to accept an applicant's out-of-title work experience and admit him to a promotional examination for Senior Management Assistant. Although the applicant was properly determined ineligible on the closing date by the Division of Selection Services and Recruitment because he lacked six years of applicable experience, the examination was cancelled and therefore no eligible list promulgated. In addition, a city business manager supported the appeal and verified the applicant's performance of applicable out-of-title duties while serving as a Complaint Investigator and Code Enforcement Officer. Finally, the applicant was serving provisionally in the subject title. In re Frank Specht, Senior Mgmt. Assistant (PM1041P), City of Elizabeth, CSC Dkt. No. 2013-2297, 2013 N.J. CSC LEXIS 443, Final Decision (June 26, 2013).

Good cause existed under N.J.A.C. 4A:4-2.6(c) to accept an applicant's out-of-title experience and admit him to the promotional examination for Supervising Sewage Plant Operator/Supervisor Sewers. The examination resulted in an incomplete list of only one eligible who had been permanently appointed from the list, and the applicant was provisionally serving in the subject title. Moreover, the appointing authority verified the applicable out-of-title duties performed by the applicant. In re Salvador Gioia, Supervising Sewage Plant Operator/Supervisor Sewers, (PM0393), Millville, CSC Dkt. No. 2013-2588, 2013 N.J. CSC LEXIS 429, Final Decision (June 26, 2013).

Division of Selection Services and Recruitment properly found that a candidate did not meet the experience requirement under N.J.A.C. 4A:4-2.6(a) for the promotional examination for Word Processing Specialist 1, Office of the Public Defender, because she lacked the required three years of comprehensive experience in the operation, technology, and application of varied word processing equipment. However, she was serving provisionally in that title, yet her described duties were not consistent with the job definition of Word Processing Specialist 1. Thus, the Civil Service Commission ordered that the matter of the classification of the position be referred to the Division of Classification and Personnel Management for further review. In re Angel Williams, Work Processing Specialist 1 (PS1418Q), Office of the Public Defender, CSC Dkt. No. 2013-996, 2013 N.J. CSC LEXIS 650, Final Decision (June 5, 2013).

Good cause was established to relax the provisions of N.J.A.C. 4A:4-2.6(a)2 and admit a candidate to the promotional examination for Administrator, Historic Preservation office, Department of Environmental Protection. The examination had been cancelled for lack of eligible applicants. Moreover, the candidate was apparently successfully performing the duties of the title for nearly two years, Division of Selection Services and Recruitment credited him with over three times the required five years of applicable experience, and he has been serving in Historic Preservation Specialist titles since 1988. Additionally, the candidate possessed 18 semester hour credits in coursework which had Architecture as its main focus and his Bachelor's Degree in Architectural History was not completely unrelated to the title under test. In re Daniel D. Saunders, Administrator, Historic Preservation Office (PS8531G), Dep't. of Envtl. Prot., CSC Dkt. No. 2013-577, 2013 N.J. CSC LEXIS 648, Final Decision (June 5, 2013).

Candidate was granted a make-up promotional examination for Administrative Analyst 2 because she satisfied the requirements pursuant to N.J.A.C. 4A:4-2.6(a). The Civil Service Commission accepted the clarification of her duties and noted that she continued to successfully serve as a provisional Administrative Analyst 2 and that the promotional examination had been cancelled due to a lack of qualified applicants. Allowing the candidate the opportunity to test would allow her to achieve permanency in the title she had served in provisionally since July 2010. In re Lynnette C. Hunt, Administrative Analyst 2 (PS5998K), Dep't of Human Services, CSC Dkt. No. 2012-3298, 2013 N.J. CSC LEXIS 643, Final Decision (June 5, 2013).

Civil Service Commission ordered that the application of a candidate for Senior Engineering Aide be processed because the candidate met the announced requirements for eligibility by the examination closing date. Good cause existed under N.J.A.C. 4A:4-2.6(c) to accept his out-of-title work and admit him to the examination because he provided a detailed description of the applicable out-of-title experience gained while employed as a Stock Clerk, he was the only applicant for the examination, and he continued to serve provisionally in the subject title. Lastly, budgetary constraints prevented the appointing authority from replacing Senior Engineering Aides since 2010. In re John Hornback, Jr. Senior Eng'g Aide (PC0782P), Camden Cnty., CSC Dkt. No. 2013-2181, 2013 N.J. CSC LEXIS 642, Final Decision (June 5, 2013).

Civil Service Commission found it appropriate to correct the records of employees who had been found to be lacking one year of experience for the promotional examination for fire captain under N.J.A.C. 4A:4-2.6(a) because they had been working for the required length of time. Although the request for certification was submitted, it was not received, resulting in appointment delays and the subsequent ineligibility of these employees for the examination. In re Glenn Curtin, et al., City of Linden, CSC Dkt. Nos. 2013-2784, 2013-2783, 2013-2785, 2013-2786, 2013 N.J. CSC LEXIS 627, Final Decision (May 21, 2013).

Applicant did not meet the minimum requirements in experience for the promotional examination for General Supervisor by the examination closing date as required by N.J.A.C. 4A:4-2.6(a). His work experience was not relevant supervisory experience since the primary focus of his positions was not supervisory experience. Even if the applicant had gained applicable out-of-title experience, good cause did not exist to accept out-of-title experience for the subject examination since a complete eligible list existed with five eligibles on the employment

roster. In re Luther Graham, General Supervisor, Trades (PC0741P), Monmouth Cnty., CSC Dkt. No. 2013-1325, 2013 N.J. CSC LEXIS 646, Final Decision (May 16, 2013).

Civil Service Commission ordered that a candidate's application for Program Development Specialist 1, Mental Health Services, be processed. Although her experience constituted out-of-title work under N.J.A.C. 4A:4-2.6(c), she provided a detailed description of the applicable out-of-title experience gained while employed as an Assistant Social Work Supervisor, Psychiatric. The eligible list for Program Development Specialist 1, Mental Health Services, was exhausted, and she continued to serve provisionally in that title. In re Josephine F. Moreland, Program Dev. Specialist 1, Mental Health Serv. (PS3662K0), CSC Dkt. No. 2013-2243, 2013 N.J. CSC LEXIS 530, Final Decision (May 15, 2013).

Good cause was shown by the Department of Children and Families for a rule relaxation to allow two employees to be added to the Family Service Specialist 1 (PS3417K) eligible list. The employees had been assigned to the Division of Child Protection and Permanency (CF60) unit scope (and their forfeiture of promotional rights to the CF60 unit scope per N.J.A.C. 4A:4-7.4(e)) and had applied for Family Service Specialist 1 (PS3420K). A subsequent grant of ADA accommodations, however, had resulted in their reassignment from the CF60 unit scope to the CF57 unit scope subsequent to the closing date of the Family Service Specialist 1 (PS3417K) examination applicable to the CF57 unit scope. Given these facts, relaxation of the requirement in N.J.A.C. 4A:4-2.6(a)2 that an applicant be currently serving in the announced unit scope in a title to which an examination was open was proper under N.J.A.C. 4A:1-1.2(c). In re Jaime Lennon and Jennifer Mischin, Family Service Specialist 1, Dep't of Children & Families, CSC Dkt. Nos. 2013-2920, 2013-2921, 2013 N.J. CSC LEXIS 493, Final Decision (May 15, 2013).

Applicant was properly denied admittance to the promotional examination for fire captain for failure to file an application in a timely fashion under N.J.A.C. 4A:4-2.6(a)4. Based on the information provided in the examination announcement, he should have been aware that his application had not been received online when he did not receive an immediate confirmation. His argument that he only had access to faulty computers was unpersuasive because he could have used those available at any public library, and he did not contact the Division of Selection Services and Recruitment to indicate that he had trouble filing the application until after the closing date. In re Edward Muller, Fire Captain (PM0178R), New Brunswick, CSC Dkt. No. 2013-2363, 2013 N.J. CSC LEXIS 230, Final Decision (May 3, 2013).

After the Division of Selection Services and Recruitment found that various applicants were not eligible for the promotional examinations for Family Service Specialist 1 (PS3070K), (PS3417K), (PS3420K) and Family Service Specialist 1 (Bilingual in Spanish and English) (PS3416K) under N.J.A.C. 4A:4-2.6(a)2 because they were not employed in the announced unit scopes, the Civil Service Commission found it appropriate to admit them for their assigned unit scopes. While the applicants should have been aware of their assigned unit scope before applying for a promotional examination, it could not be ignored that all of them had sufficient permanent service to otherwise qualify for their respective examinations. The interests of the Civil Service system were best served when more, rather than fewer, individuals were presented with employment opportunities. In re Family Service Specialist 1 (PS3070K), (PS3417K), (PS3420K) and Family Service Specialist 1 (Bilingual in Spanish and English) (PS3416K), CSC Dkt. No. 2013-1562, 2013 N.J. CSC LEXIS 296, Final Decision (May 2, 2013).

Applicant was entitled to a make-up promotional examination for Economic Development Representative and the addition of his name to the eligible list for prospective appointment consideration. The Civil Service Commission accepted his clarification of his experience as a Sales Representative 2, State Lottery, which gave him enough experience to qualify for the subject promotional examination pursuant to N.J.A.C. 4A:4-2.6(a). In re William J. Giegerich, Economic Dev. Representative 2 (PS2551S), Dep't. of State, CSC Dkt. No. 2013-2012, 2013 N.J. CSC LEXIS 291, Final Decision (May 1, 2013).

Good cause within the meaning of N.J.A.C. 4A:1-1.2(c) to relax the provisions of N.J.A.C. 4A:4-2.6(a)2 and to admit an applicant to the promotional examination for Assistant Superintendent Mosquito Extermination (PC1086P), Cape May County was shown. Though the Division of Selection Services and Recruitment did not err in concluding that the applicant was ineligible for the examination based on the fact that his bachelor's degree was not in a biological science as required but was in a natural science, other circumstances militated in favor of relief, including that the applicant had been satisfactorily performing the duties of the title for nearly five years, that Selection Services had credited him with more than double the required four years of applicable experience, that his transcript established that he possessed 23 semester hour credits in biological science coursework, and that his degree was not completely unrelated to the title under test. In re Matthew C. Diem, Assistant Superintendent Mosquito Extermination (PC1086P), Cape May Cnty., CSC Docket No. 2013-2210, 2013 N.J. CSC LEXIS 331, Final Agency Action (April 17, 2013).

Request for a reduction of the three-year service requirement in the title of Sheriff's Officer to the completion of the working test period for the promotional examination for Sheriff's Officer Sergeant (PC1228P), Bergen County, which action would allow 13 otherwise ineligible persons to take the subject examination, was denied on findings that the two criteria imposed by N.J.A.C. 4A:4-2.6(g) on such relief had been met. Here, given that the appointing authority did not indicate how many vacancies were anticipated, that 55 individuals had already been determined to be eligible for the exam, and that, historically in this county, none of the previous lists for the subject title had been exhausted prior to expiration, the conditions to relief had not been met. In re Sheriff's Officer Sergeant (PC1228P), Bergen Cnty., CSC Docket No. 2013-1393, 2013 N.J. CSC LEXIS 318, Final Agency Action (April 17, 2013).

Request for a reduction of the one-year service requirement in the title of Sheriff's Officer Sergeant to the completion of the working test period for the promotional examination for Sheriff's Officer Lieutenant (PC1221P), Bergen County, which action would allow three otherwise ineligible persons to take the subject examination, was denied on findings that the two criteria imposed by N.J.A.C. 4A:4-2.6(g) on such relief had been met. Here, given that the appointing authority did not indicate how many vacancies were anticipated, that 14 individuals had already been determined to be eligible for the exam, and that, historically in this county, none of the previous lists for the subject title had been exhausted prior to expiration, the conditions to relief had not been met. In re Sheriff's Officer Lieutenant (PC1221P), Bergen Cnty., CSC Docket No. 2013-1395, 2013 N.J. CSC LEXIS 317, Final Agency Action (April 17, 2013).

Good cause within the meaning of N.J.A.C. 4A:4-2.6(c) was shown to permit two applicants for promotional examinations for Management Specialist (PC0343P), Burlington County to use experience gained as a result of out-of-title work to satisfy eligibility requirements because the Director of Human Resources for the county verified their out-of-title work experience prior to the date of each applicant's appointment to his or her current title and that each was performing essential services in their current county positions and because the applicants were the only persons who had applied to take the examination. In re Gina Wheatley and Todd Wirth, Management Specialist (PC0343P), Burlington Cnty., CSC Docket Nos. 2013-475 and 2013-373, 2013 N.J. CSC LEXIS 264, Final Agency Action (April 17, 2013).

Relief from a decision of the Division of Selection Services and Recruitment (DSSR) that, per N.J.A.C. 4A:4-2.6(a), an individual was correctly deemed ineligible for the examination for Senior Clerk Typist (PS0649J), The Richard Stockton College of New Jersey, a title in which she was provisionally appointed after the closing date for the examination, by reason of a lack of required experience was proper. Though her application as originally submitted did not establish that she possessed the minimum requirements, documentation that had been submitted in connection with the appeal, taken with the fact that the examination was currently not competitive, afforded grounds to admit her for the examination. In re Rosius, Senior Clerk Typist (PS0649J), The Richard Stockton College of New Jersey, CSC Dkt. No. 2013-1309, 2013 N.J. CSC LEXIS 261, Final Agency Action (April 8, 2013).

Relief from a decision of the Division of Selection Services and Recruitment (DSSR) that an individual was correctly deemed to be ineligible for the examination for Senior Technician, Management Information Systems (PC0493P), Monmouth County, a title in which she was provisional, because she lacked the required five years experience and thus was ineligible per N.J.A.C. 4A:4-2.6(a) was appropriate because the appointing authority had advised that the individual had performed out-of-title duties since 2005. Given that out-of-title work, the individual in fact possessed the required experience as of the May 2012 closing date. Given that fact and the further fact that the examination was not competitive with no admitted candidates, the individual was properly permitted to take the examination. In re Rose, Senior Technician, Management Information Systems (PC0493P), Monmouth County, CSC Dkt. No. 2013-644, 2013 N.J. CSC LEXIS 260, Final Agency Action (April 8, 2013).

Relief from a decision of the Division of Selection Services and Recruitment (DSSR) that an individual who was a provisional in the title on the closing date did not meet the experience requirements by reason of her failure to properly complete her application and was thus ineligible per N.J.A.C. 4A:4-2.6(a)2 for a promotional examination for Technical Assistant 3, (PS6497J), the Richard Stockton College of New Jersey, was appropriate. Though the applicant's initial application was incomplete in that it did not set out specific duties for her current title and previous positions, her revised application contained sufficient data from which it could be determined that she possessed over two years of experience in the title and thus met the minimum experience requirement. Given that fact and the further fact that the examination was no longer competitive because the list had been exhausted, she was properly permitted to take the exam. In re Pavia, Technical Assistant 3 (PS6497J), The Richard Stockton College of New Jersey, CSC Dkt. No. 2013-1473, 2013 N.J. CSC LEXIS 258, Final Agency Action (April 8, 2013).

Relief from a decision of the Division of Selection Services and Recruitment that an applicant was ineligible per N.J.A.C. 4A:4-2.6(a) for the examination for Administrative Analyst (PC0297P), Mercer County, a title in which she had served provisionally from November 2006 until the closing date, because she lacked the required five years experience was appropriate because the Director of Housing and Community Development indicated that the applicant's duties since 2006 had included assessing and evaluating administrative procedures and organizational functions, reviewing administrative operations of the program/office and recommending improvements, and assisting with formulating the annual budget. Although that experience did not precisely mirror the requirements as stipulated in the examination announcement, the totality of the applicant's experience as a provisional Administrative Analyst since 2006 warranted her admission to the examination, especially since clarifying information provided by the Director as permitted by N.J.A.C. 4A:4-2.1(g) had confirmed that the applicant was qualified for the examination. Other supporting facts included that the applicant continued to serve provisionally in the title and that the examination had been cancelled due to lack of qualified applicants. In re Paoline, Administrative Analyst (PC0297P), Mercer County, CSC Dkt. No. 2013-344, 2013 N.J. CSC LEXIS 269, Final Agency Action (April 5, 2013).

Employee was entitled to take a promotional examination for the position of Environmental Compliance Inspector 1, Department of Transportation (DOT) based in part of his out-of-title work notwithstanding the fact that N.J.A.C. 4A:4-2.6(c) normally barred an employee from relying on such experience in qualifying for admission to a promotional exam because DOT had verified that the employee had been performing relevant duties for more than seven years and because the Division of Classification and Personnel Management (CPM) had ruled that the employee in fact was performing the duties of an Environmental Compliance Inspector 1 while serving in his permanent title of Crew Supervisor, Highway Maintenance. Those circumstances supporting the finding that good cause within the meaning of N.J.A.C. 4A:1-1.2(c) was shown for a ruling that the employee's out-of-title experience was properly considered in determining his eligibility for the examination. In re Carr, Department of Transportation, CSC Dkt. No. 2013-499, 2013 N.J. CSC LEXIS 268, Final Agency Action (April 5, 2013).

Relief from a decision of the Division of Selection Services and Recruitment that, per N.J.A.C. 4A:4-2.6(a), an individual was correctly deemed ineligible for the examination for Business Manager (PC0834N), Burlington County, a position in which she was provisionally serving, by reason of a lack of required experience was proper. Though her application as originally submitted did not establish that she possessed the minimum requirements because she was lacking five years and one month of applicable experience, documentation submitted in connection with the appeal establishing that she possessed more than seven years of relevant experience, taken with the facts that such claims had been verified by the Director of Human Resources, that the individual was currently provisional in that title, and that the examination had been cancelled for a lack of qualified eligibles, afforded grounds to admit her for the examination. In re Pattik, Business Manager (PC0834N), Burlington County, CSC Dkt. No. 2013-321, 2013 N.J. CSC LEXIS 257, Final Agency Action (April 5, 2013).

Examination cancellation was rescinded and the Civil Service Commission ordered that a candidate's application for a promotional examination for Senior Technician Management Information Systems be processed because good cause existed to relax the rule of N.J.A.C. 4A:4-2.6(c) and to credit her with the out-of-title work performed while serving in the title of Supervising Library Assistant. There were no eligible candidates for the title under examination, and the record revealed that no third parties would be adversely impacted. The candidate submitted verification that she had performed the relevant duties for 12 years and she continued to serve provisionally in the title under examination. In re Karen Jakubczak, Senior Technician Mgmt. Info. Sys. (PC0494P), Ocean Cnty. Library, CSC Dkt. No. 2013-1583, 2013 N.J. CSC LEXIS 360, Final Decision (April 4, 2013).

Examination cancellation was rescinded and the Civil Service Commission ordered that a candidate's application for a promotional examination for Senior Sewage Plant Operator be processed because good cause existed under N.J.A.C. 4A:1-1.2(c) to accept his out-of-title work experience as a Sewage Plant Attendant and relax the provisions of N.J.A.C. 4A:4-2.6(a). The Division of Classification and Personnel Management submitted a memorandum supporting the appointing authority's request and sanctioning the candidate's out-of-title work for eligibility purposes only. In re George Coolidge, Senior Sewage Plant Operator (PM0383P), Burlington Twp., CSC Dkt. No. 2013-1603, 2013 N.J. CSC LEXIS 350, Final Decision (April 4, 2013).

Clarifying information provided by an applicant seeking admission to the promotional examination for the position of Program Coordinator, Mental Health (PS9842K), Trenton Psychiatric Hospital was properly accepted by the Civil Service Commission per N.J.A.C. 4A:4-1.1(g) despite the fact that the deadline set by N.J.A.C. 4A:4-2.6(a) for satisfying all admission prerequisites had passed. That information established that even though the applicant did not possess one of the Bachelor's Degrees listed on the announcement, her Bachelor's Degree in Labor Studies was properly would be accepted as equivalent to a Bachelor's Degree in Social Science. The applicant was properly admitted to the exam based on appropriate confirmation from Rutgers University, which had awarded the applicant's degree, that it would accept credits in the Labor Studies area as satisfying the requirements for a Bachelor's Degree in Social Science. In re Fredisha Collins, Program Coordinator, Mental Health (PS9842K), Trenton Psychiatric Hospital, CSC Docket No. 2013-568, 2013 N.J. CSC LEXIS 358, Final Decision (April 3, 2013).

Applicants did not meet the requirements for the promotional examination for Construction and Maintenance Technician 5, Transportation, pursuant to N.J.A.C. 4A:4-2.6(a). Their experience in the position of Maintenance Work 1, in which they performed unskilled or semi-skilled manual work involved in State highway maintenance operations, did not rise to the level and scope of what was required of the subject position and was therefore not applicable. In re James E. Gould and Paul A. Scannella, Construction and Maintenance Technician 5 (PS8087T), Dep't of Transp., CSC Dkt. Nos. 2013-227 and 2013-203, 2013 N.J. CSC LEXIS 255, Final Decision (April 3, 2013).

Civil Service Commission accepted an applicant's out-of-title work experience for eligibility for the promotional examination for Network

Administrator 1 under N.J.A.C. 4A:4-2.6. Although he did not possess enough applicable experience, he continued to successfully serve as a provisional Network Administrator 1, the subject promotional examination had been cancelled due to a lack of qualified applicants, and this was not a competitive situation. Additionally, the duties he performed while serving as a Senior Computer Service Technician, although out-of-title, satisfied the subject requirements and were verified by the appointing authority. In re Jason Trzeciak, Network Adm'r 1 (PM0346P), Vineland School Dist., CSC Dkt. No. 2013-264, 2013 N.J. CSC LEXIS 248, Final Decision (April 3, 2013).

Civil Service Commission accepted an applicant's out-of-title work experience for eligibility for the promotional examination for the promotional examination for Administrative Analyst 2, Data Processing (PS7156C), Civil Service Commission under N.J.A.C. 4A:4-2.6. Although the appellant was correctly deemed to be ineligible for the subject examination since he lacked the minimum requirements in experience, but the human resources manager advised that the applicant performed out-of-title duties for at least an additional six years, three months, from early 2004 to the February 2012 closing date, while in the title Technical Support Specialist 1. With the acceptance of out-of-title work, the applicant possessed at least an additional six years, three months of experience. That fact, the fact that the examination was not competitive, and the fact that the applicant remained in his provisional position as an Administrative Analyst 2, Data Processing, taken together, provided good cause to accept the applicant's out-of-title work experience. In re Richard Thompson, Administrative Analyst 2, Data Processing (PS7156C), Civil Service Commission, CSC Docket No. 2013-621, 2013 N.J. CSC LEXIS 182, Final Decision (March 8, 2013).

Applicant was appropriately denied admission to the promotional examination for Senior Water Treatment Plant Operator/Senior Water Treatment Plant Repairer (PM0495P), Marlboro, on a finding that he lacked the minimum experience requirements imposed for the position based on a determination that he only possessed five months of each type of experience, well short of the two-year minimum experience requirement, and thus could not be admitted to the examination per N.J.A.C. 4A:4-2.6. Not only was some of the experience on which the applicant was relying associated with work that was "out of title" and thus could not be considered, but the applicant's submission apparently quoted from the duties contained in the job specification in lieu of describing his specific job duties, and the same did not provide a sufficient basis on which to determine whether he would meet the requirements for the examination. In re Wayne Smith, Senior Water Treatment Plant Operator/Senior Water Treatment Plant Repairer (PM0495P), Marlboro, CSC Dkt. 2013-641, 2013 N.J. CSC LEXIS 87, Final Decision (February 25, 2013).

Good cause existed under N.J.A.C. 4A:4-2.6(c) to accept a candidate's out-of-title work experience to satisfy the requirements for the Contract Administrator 1 examination. The appointing authority indicated that the candidate had performed out-of-title duties for at least an additional one year, four months, while in the titles Technical Assistant 1 and 2, Department of State. The examination was not competitive, with no admitted candidates, and the candidate remained in her provisional position. In re Colleen Karr, Contract Adm'r 1 (PS2111S), Dep't of State, CSC Dkt. No. 2013-1318, 2013 N.J. CSC LEXIS 84, Final Decision (February 25, 2013).

Request by Borough of Carteret that the Civil Service Commission relax N.J.A.C. 4A:4-2.6(a)2 so as to allow the closing date for a promotional examination for Police Sergeant (PM5103N), Carteret, to be extended was denied because there was no basis on which the date was properly extended. Since the purpose of the request was to accommodate the needs of a single individual who otherwise could not satisfy the three-year continuous permanent service requirement despite the fact that 20 other officers had been deemed to be eligible to take the examination could lead to charges of unfair manipulation and/or favoritism, especially in light of the other circumstances presented by the request, including that the officer who stood to benefit from the extension did not originally apply to take the examination. In re Police Sergeant (PM5103N), Borough of Carteret, CSC Dkt. Nos. 2013-581 and 2013-748, 2013 N.J. CSC LEXIS 97, Final Decision (February 21, 2013).

Though the Division of Selection Services and Recruitment appropriately concluded that an applicant was ineligible to take a promotional examination for the position of Senior Rehabilitation Counselor, Mental Health (PS7790K), Department of Human Services because she lacked the minimum experience and thus did not satisfy the requirements for the examination by the closing date as required by N.J.A.C. 4A:4-2.6(a), the applicant's submission on appeal, which documented that she had served in additional positions that she had not listed on her application, taken with the fact that she was currently serving as a provisional Senior Rehabilitation Counselor Senior Rehabilitation Counselor constituted "good cause" to relax the provisions of N.J.A.C. 4A:4-2.6(c) and accept her post-closing provisional experience for eligibility purposes only and to admit her to the subject examination. In re Kelli Bravo, Senior Rehabilitation Counselor, Mental Health (PS7790K), Department of Human Services, CSC Dkt. No. 2013-433, 2013 N.J. CSC LEXIS 91, Final Decision (February 21, 2013).

Though the Division of Selection Services and Recruitment appropriately concluded that an applicant was ineligible to take a promotional examination for the position of Assistant Administrative Analyst (PM0301P), Vineland Municipal Utilities because she lacked four years of applicable experience and thus did not meet the requirements for the examination by the closing date as required by N.J.A.C. 4A:4-2.6(a), the applicant's submission on appeal, which showed that applicant's out-of-title work as well as experience gained since the closing date for the original examination for which she was ruled ineligible, constituted "good cause" per N.J.A.C. 4A:1-1.2 and N.J.A.C. 4A:4-2.6(c) to accept the applicant's out-of-title work as well as her experience beyond the closing date for eligibility purposes only, and admit her to the subject examination. In re Kathleen Caignon, Assistant Administrative Analyst (PM0301P), Vineland Municipal Utilities, CSC Dkt. No. 2013-283, 2013 N.J. CSC LEXIS 82, Final Decision (February 21, 2013).

Applicants for promotional examinations who were provisionally appointed to relevant positions after the subject competitive examination was cancelled for lack of qualified applicants won an order permitting them to sit for the examination based on their post-closing experience though the same would be accepted for eligibility purposes only because the facts were such that good cause within the meaning of N.J.A.C. 4A:1-1.2(c) had been shown and an order relaxing the provisions of N.J.A.C. 4A:4-2.6(a) was appropriate. In re Noemi Jimenez and Elizabeth Merchant, Personnel Aide 1 (PS8059K), Department of Human Services, CSC Dkt. Nos. 2013-304 and 2013-331, 2013 N.J. CSC LEXIS 92, Final Decision (February 20, 2013).

Determination that a candidate did not meet the experience requirements for the promotional examination for Personnel Assistant 4 (PS9849K), Department of Human Services was not properly disturbed because the candidate's work experience did not satisfy the requirement that a candidate have at least one year of technical experience in a personnel program of a public or private organization. Nor did the candidate show how the Master's degree in Clinical Social Work that she expected to earn in the indeterminate future would be considered a related field for purposes of N.J.A.C. 4A:4-2.12(a)1, nor did her experience in the titles of Personnel Aide 2, Senior Clerk Typist and Clerk Typist comprehend skills of the level and scope necessary for the subject title, which specifically required *technical* experience in a personnel program, which could not be obtained in a non-professional title. That is, even if the candidate was performing the requisite duties in those titles, per N.J.A.C. 4A:4-2.6(c), it still would be considered out-of-title work for incumbents in Senior Clerk Typist and Clerk Typist titles. The candidate thus failed to carry her burden to establish a basis on which the determination that she did not meet the experience requirements was properly disturbed. In re Noemi Jimenez, Personnel Assistant 4 (PS9849K), Department of Human Services, CSC Dkt. No. 2013-303, 2013 N.J. CSC LEXIS 83, Final Decision (February 20, 2013).

Good cause existed under N.J.A.C. 4A:4-2.6(c) to accept an applicant's out-of-title work experience as a Supervisor of Patients Accounts 2 (PS7096K), Department of Human Services (DHS), and admit her to that promotional examination. Although DHS submitted a letter indicating that its position was to not support out-of-title work assignments, it did not dispute that the applicant performed the out-of-title duties. Additionally, the examination was cancelled because she was the only

applicant, and she continued to serve provisionally in the title under test. In re Diana Wheeler, Supervisor of Patients Accounts 2 (PS7096K), Dep't. of Human Services, CSC Dkt. No. 2013-74, 2013 N.J. CSC LEXIS 47, Final Decision (February 8, 2013).

Good cause existed under N.J.A.C. 4A:4-2.6(c) to accept an applicant's out-of-title work experience as a Senior Clerk typist prior to the closing date for the promotional examination for Purchasing Agent (PM0239P), Middletown Township, and provisional experience beyond the closing date, for eligibility purposes only. The examination was cancelled because she was the only applicant. She was appointed and was still serving in that title. Further, the Assistant Township Administrator supported the applicant and verified her out-of-title work experience. Although the applicant's out-of-title experience did not precisely mirror the requirements contained in the announcement, the Civil Service Commission was satisfied that the totality of her varied levels of purchasing experiences warranted her admission to the examination. In re Lynn Mattel, Purchasing Agent (PM0239P), Middletown Twp., CSC Dkt. No. 2013-206, 2013 N.J. CSC LEXIS 44, Final Decision (February 8, 2013).

Good cause existed under N.J.A.C. 4A:4-2.6(c) to accept an applicant's out-of-title work to satisfy the experience requirement for the promotional examination for Sign Maker 2 (PC0496P), Middlesex County. The applicant acquired the required applicable experience, albeit out-of-title, while serving in the title of Equipment Operator. The appointing authority verified that the applicant performed relevant out-of-title duties since December 2008 and supported his promotion. Further, the examination was cancelled due to a lack of candidates. Additionally, the applicant was the provisional appointee and continued to serve in the subject title. In re John Haley, Sign Maker 2 (PC0496P), CSC Dkt. No. 2013-569, 2013 N.J. CSC LEXIS 42, Final Decision (February 8, 2013).

Good cause existed under N.J.A.C. 4A:1-1.2(c) to accept an applicant's out-of-title work as well as her experience beyond the closing date, for eligibility purposes only, and to admit her to the promotional examination for Standards and Procedures Technician 2 (PS7585G), Department of Environmental Protection. Although she was initially appropriately determined ineligible for the subject examination by the Division of Selection Services pursuant to N.J.A.C. 4A:4-2.6(a) since she lacked one year and four months of applicable experience, departmental records revealed that the subject examination was cancelled because the applicant was the only applicant. In addition, she had been performing the duties of the Standards and Procedures Technician 2 title since August 2010, and her manager and the director of human resources supported the applicant and verified her out-of-title work experience. Therefore, she now met the experience requirement for the subject examination. In re Sarah Gentile, Standards and Procedures Technician 2 (PS7585G), Dep't of Env'tl. Prot., CSC Dkt. No. 2013-205, 2013 N.J. CSC LEXIS 41, Final Decision (February 8, 2013).

Good cause was established to relax the provisions of N.J.A.C. 4A:4-2.6(a)2 to accept out-of-title work experience gained by an applicant notwithstanding a determination by the Division of Selection Services and Recruitment that the applicant did not meet the experience requirements per the substitution clause for education for the promotional examination for Classification Officer 1 (PS0245I), Edna Mahan Correctional Facility. Underpinning the determination was the finding that the applicant had been working out of title as a Technical Assistant, Classification, a position to which her agency had requested, in March 2006, that she be promoted, that the promotion had been approved but had not yet been effectuated when, a few days later, a promotional freeze was imposed, and that the promotional freeze prevented her from being formally promoted until May 10, 2008. Thus, even though the applicant was not entitled to receive a retroactive appointment date, the period of time that she was shown to have been performing the duties of the Technical Assistant, Classification position, when added to her other experience, satisfied the experience requirements and that she was properly admitted to the examination. In re Paula Devlin, Classification Officer 1 (PS0245I), Edna Mahan Correctional Facility, CSC Docket No. 2013-978, 2013 N.J. CSC LEXIS 29, Final Decision (February 8, 2013).

Applicant was entitled to be admitted to a promotional examination for Secretarial Assistant 1 (Non-Stenographic), (PS0027J), Rowan University because a review of the duties she performed in a prior position as a head clerk, which experience was not accepted by the Division of Selection Services and Recruitment, revealed that they involved administrative clerical work and work that was very similar to secretarial duties, such as scheduling, planning for events, coordinating presentations, and maintaining records. Because such duties were acceptable for eligibility purposes for the examination at issue and because relief was proper under the circumstances, the applicant was properly found to have met the minimum requirements for the examination in accord with N.J.A.C. 4A:4-2.6(a)2. In re Carol Del Duke, Secretarial Assistant 1 (Non-Stenographic), (PS0027J), Rowan University, CSC Dkt. No. 2013-761, 2013 N.J. CSC LEXIS 141, Final Agency Action (January 25, 2013).

Relaxation of the experience requirements for an open, competitive examination for Supervising Program Development Specialist, Corrections (PS0626I), Department of Corrections that were otherwise required by N.J.A.C. 4A:4-2.6(a)2 to be met by the closing date was appropriate. Though the initial decision finding that applicant to be ineligible because she lacked one month of non-supervisory experience, and two years of applicable supervisory experience was correct, the applicant established that she had performed applicable out-of-title work from August 2003 to July 2012, while in the title Contract Administrator 2, which work had been verified by her supervisor. In addition, the applicant has substantiated that she performed at least two years of supervision, from June 2009 to July 2012 while in that title and in a provisional position. Because the examination was not competitive, with only one admitted candidate, and the applicant was still serving in her provisional position, good cause was established to relax the provisions of N.J.A.C. 4A:4-2.6(a)2 to accept her out-of-title work and admit her to the examination. In re Silva, Supervising Program Development Specialist, Corrections (PS0626I), Dep't of Corr., CSC Dkt. No. 2013-1199, 2013 N.J. CSC LEXIS 21, Final Agency Action (January 25, 2013).

Candidate did not meet the experience requirements for the promotional examination for Quality Assurance Coordinator (PS2323K) as required by N.J.A.C. 4A:4-2.6(a). None of his experience as an occupational therapist had monitoring and/or evaluation of clinical or human services records and/or programs as the primary focus. In re John Renfer, Quality Assurance Coordinator (PS2323K), CSC Dkt. No. 2013-1308, 2013 N.J. CSC LEXIS 17, Final Decision (January 25, 2013).

Candidate did not meet the experience requirements for the promotional examination for Assistant Superintendent Development Disabilities (PS1807K) as required by N.J.A.C. 4A:4-2.6(a). Some of her experience had a focus on human resources rather on programs or a unit for the developmentally disabled. Although her experience as in Habilitation Plan Coordinator, Behavior Modification Program Technician, Cottage Training Supervisor, and Cottage Training Technician were actually in the field of developmental disabilities, these titled did not involve direct administration of a major unit or program. In re Terri Mento, Assistant Superintendent Developmental Disabilities (PS1807K), CSC Dkt. No. 2013-1282, 2013 N.J. CSC LEXIS 15, Final Order (Jan. 25, 2013).

Candidate's application revealed that she did not meet the announced experience requirements in order to qualify her for a prospective promotional examination for Administrative Analyst 3 as mandated by N.J.A.C. 4A:4-2.6(a). A good portion of the work in her current position was not professional-level work; work in a prior position consisted largely of clerical work; and her experience as Principal Audit Account Clerk was far removed from the review, analysis, and evaluation of budget, organization, administrative practices, operational methods, management operations or data processing applications, including responsibility for recommendation, planning, and/or implementation of improvements. In re Lois Dixon, Administrative Analyst 3, Dep't of Env'tl. Prot., CSC Dkt. No. 2013-1141, 2013 N.J. CSC LEXIS 12, Final Decision (January 25, 2013).

Candidate did not meet the announced experience requirements for eligibility for the promotional examination for Technical Assistance Personnel (PS0229G), Department of Environmental Protection, as

mandated by N.J.A.C. 4A:4-2.6(a). The experience for which she was not given credit consisted of work that was out-of-title or of a general clerical nature. In re Melissa Burk-Pocino, Technical Assistance Personnel (PS0229G), Dep't of Env'tl. Prot., CSC Dkt. No. 2013-1317, 2013 N.J. CSC LEXIS 11, Final Decision (January 25, 2013).

Candidate did not meet the education and experience requirements for the promotional examination for Program Coordinator mental health (PS9830K) as required by N.J.A.C. 4A:4-2.6(a). His evaluation of foreign degree indicated that his coursework had the U.S. equivalency of a Bachelor's degree in Economics and a Master's degree in Public Administration, which were unacceptable degrees. Additional positions that were not listed on his original application could not be considered pursuant to N.J.A.C. 4A:4-2.1(f), and his experience as a Technical Assistant did not match the announced requirement of experience. Admittance to a prior examination for the same title had no bearing on this determination. In re Olayemi Arajuwa, Program Coordinator Mental health (PS9830K), Greystone Park Psychiatric Hospital, CSC Dkt. No. 2013-784, 2013 N.J. CSC LEXIS 9, Final Decision (January 25, 2013).

Civil Service Commission ordered that an applicant be admitted to the promotional examination for Technical Assistant Personnel. The record clearly indicated that she had performed applicable out-of-title duties, the examination was cancelled because she was the only applicant, and she continued to serve provisionally in the title under test. Accordingly, under these circumstances, good cause existed under N.J.A.C. 4A:4-2.6(c) to accept the applicant's out-of-title work experience as a Secretarial Assistant 3, Non-Stenographic. In re LaVonda Wright, Technical Assistant Personnel (PS7086K), Dep't. of Human Services, CSC Dkt. No. 2013-26, 2013 N.J. CSC LEXIS 137, Final Decision (January 24, 2013).

Two applicants were correctly deemed ineligible for the promotional examination for Assistant Supervisor of Recreation as required by N.J.A.C. 4A:4-2.6(a). Although one of the applicants satisfied the educational requirement and possessed eight months of experience as a provisional Assistant Supervisor of Recreation and Senior Therapy Program Assistant, none of his remaining positions involved responsibilities in the required areas. The other applicant satisfied neither the educational nor the experience requirements for the subject position. Had either applicant assumed responsibilities which rose to the level and scope of the subject position while serving as a Cottage Training Technician or Cottage Training Supervisor, such responsibilities would constitute out-of-title work which generally cannot be used to satisfy experience requirements for promotional examinations announced with open-competitive requirements pursuant to N.J.A.C. 4A:4-2.6(c). In re Donald I. Stambaugh, Jr. and Jacov I. Spadoni, Assistant Supervisor of Recreation (PS7793K), Dep't. of Human Services, CSC Dkt. Nos. 2013-162 and 2013-190, 2013 N.J. CSC LEXIS 135, Final Decision (January 24, 2013).

Good cause was presented under N.J.A.C. 4A:4-2.6(c) to credit an applicant with out-of-title work performed while serving in the title of Maintenance Repairer and admit him to the promotional examination for Heavy Equipment Operator. Of the seven eligible candidates, one was deceased and five appointments were made, leaving an incomplete list of one eligible. The record also revealed that no third parties would be adversely impacted. The applicant submitted verification that he had performed the relevant duties for approximately two and one-half years and that he continued to serve provisionally in the title under test. In re Jeffrey L. Jacobs, Heavy Equipment Operator (PM0858N), Twp. of Woodbridge, CSC Dkt. No. 2012-2815, 2013 N.J. CSC LEXIS 23, Final Decision (January 23, 2013).

Division of Selection Services and Recruitment (DSSR) correctly determined that applicants were not eligible for the promotional examination for Supervising Program Development Specialist. DSSR did not have the authority to accept out-of-title work for good cause as an exception to N.J.A.C. 4A:4-2.6(c). The titles Program Coordinator, Mental Health, Deaf Language Specialist, and Program Coordinator, Mental Health were responsible for assisting team leaders, and/or might act as team leaders, but these were not supervisory titles: thus, for eligibility purposes on a promotional examination, supervisory experience in these titles could not be awarded as it was out-of-title work. The

situation was competitive and the candidates on the list, who met the requirements as of the closing date, would be adversely affected. In re Elizabeth Dimitrios et al., Supervising Program Dev. Specialist, Mental Health Services (PS9836K) Greystone Park Psychiatric Hospital, CSC Dkt. Nos. 2013-592, 2013-578, 2013-566, 2013 N.J. CSC LEXIS 59, Final Decision (January 11, 2013).

Good cause existed under N.J.A.C. 4A:4-2.6(c) to grant candidate admission to a promotional examination for library director because she had acquired the required applicable supervisory experience, albeit out-of-title, while serving in the title of Senior Librarian Children's. In addition, she was the only applicant for the examination, which was cancelled, and she continued to service in the subject title as the provisional appointee. In re Linda Hansen, Library Director (PM0556P), South Plainfield, CSC Dkt. No. 2013-607, 2013 N.J. CSC LEXIS 60, Final Decision (January 10, 2013).

Applicant was not eligible for the promotional examination for Unemployment Insurance Clerk (PS8072N), Department of Labor and Workforce Development, because she did not possess an aggregate of one year of continuous permanent service as of the closing date. When she accepted the title of Intermittent Labor Clerk, she accepted the terms enumerated in N.J.A.C. 4A:3-3.8, including a potential two week annual furlough. Additionally, there was no basis on which to relax N.J.A.C. 4A:4-2.6(a)1 because 91 applicants were deemed eligible for the subject examination who possessed the one year of permanent service. In reCarolynn Thibault, Unemployment Insurance Clerk (PS8072N), Dep't. of Labor and Workforce Dev., CSC Dkt. No. 2013-257, 2013 N.J. CSC Lexis 67, Final Decision (January 9, 2013).

Good cause existed to relax the provisions of N.J.A.C. 4A:4-2.6(a) to accept an applicant's provisional experience after the closing date, for eligibility purposes only, and to admit her to the examination for the promotional examination for Senior Rehabilitation Counselor, Mental Health (PS7083K), Department of Human Services. She continued to serve provisionally in the title of Senior Rehabilitation Counselor, Mental Health and, as such, had enough applicable experience based on this service. Moreover, the situation was not competitive as there was only one applicant who was eligible for the examination and appeared on the resultant eligible list. In re Carol Pletnick, Senior Rehabilitation Counselor, Mental Health (PS7083K), Dep't. of Human Serv., CSC Dkt. No. 2013-47, 2013 N.J. CSC LEXIS 66, Final Decision (January 9, 2013).

4A:4-2.7 Promotion upon waiver of competitive examination

(a) Following the announcement of a promotional examination, the Commissioner may authorize the promotion of a qualified permanent employee in the career service by regular appointment without competitive examination and without the establishment of an eligible list if:

1. The employee has been successfully tested in the basic skills required for the promotional title;
2. The employee has not failed, within one year prior to the announced closing date, a promotional examination for that title. However, an employee who subsequently passed an examination for that title shall be eligible for promotion;
3. The number of interested eligibles for the promotional examination referred to in (a) above does not exceed the number of promotional appointments by more than two; and
4. Veterans preference rights are not a factor.

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)4.

Amended by R.1997 d.443, effective October 20, 1997.

See: 29 N.J.R. 2731(a), 29 N.J.R. 4456(b).

Substantially amended (a); and in (a)3, inserted "for the promotional examination referred to in (a) above".

Case Notes

Remedy for unlawful discrimination—employee should be promoted to positions earlier denied them as such positions become available (citing former N.J.A.C. 4:1-8.5). *Pilot v. Dep't of Health*, 7 N.J.A.R. 150 (1982) affirmed A-5858-81 (App.Div.1983).

4A:4-2.8 Scheduling of examinations

(a) Examinations may be scheduled for one or more sessions on a Statewide, regional or local basis.

(b) Candidates will be notified in an appropriate manner of the time and place of the examination, and of any postponement or cancellation.

(c) Candidates shall be at the examination site at the designated time. Candidates arriving late shall only be admitted as follows:

1. Unless the examination notice states otherwise, candidates for written examinations or examinations containing written and performance parts shall be admitted to the examination if they arrive at the test room within 15 minutes after the designated time.

2. Candidates for oral examinations or examinations containing oral and performance parts shall be admitted to the examination if they arrive at the test room within 30 minutes after the designated time, provided the last scheduled candidate has not started the examination.

(d) A candidate who arrives late and is admitted to the examination shall receive the full allotted time to complete the examination.

(e) Jurisdictions operating under Title 11A, New Jersey Statutes, shall furnish sufficient facilities for the conduct of examinations when requested by the Department of Personnel.

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).

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

Candidate was not entitled to a make-up examination for Fire Captain. He provided no explanation for his untimely submission of an appeal of a decision of the Division of Selection Services denying his request for a make-up examination pursuant to N.J.A.C. 4A:4-2.9(c). In re Gary Albanese, Fire Captain (PM5234N), Newark, CSC Dkt. No. 2014-1095, 2013 N.J. CSC LEXIS 1079, Final Decision (December 23, 2013).

Candidate was not entitled to a make-up examination for Deputy Fire Chief pursuant to N.J.A.C. 4A:4-2.9(c). Although a CT scan was ordered by his physician two days before the examination to make a diagnosis, it was clear that the candidate's condition did not require a period of disability necessitating his absence from work for 60 or more work days, nor could it be described as life-threatening or catastrophic. In re Alvin Spearman Jr., Deputy Fire Chief (PM1320P), CSC Dkt. No. 2014-1081, 2013 N.J. CSC LEXIS 1073, Final Decision (December 23, 2013).

Candidate was not entitled to a make-up examination the open-competitive examination for Supervisor Food Service Area Operations (S0848P), Statewide, pursuant to N.J.A.C. 4A:4-2.9(d). While it was unfortunate that the originally scheduled examination was postponed, Division of Selection Services and Recruitment (DSSR) had no way of knowing that the candidate intended to have her mail delivered elsewhere, and it sent a second notification to the same address. It was not the duty of DSSR to seek out a candidate's proper mailing address. In re Lourdes Reyes, Supervisor Food Service Area Operations (S0848P), Statewide, CSC Dkt. No. 2014-320, 2013 N.J. CSC LEXIS 731, Final Decision (October 17, 2013).

Applicants were entitled to make-up examinations for Cottage Training Supervisor (PS3431K), Department of Human Services, pursuant to N.J.A.C. 4A:4-2.9(a). Although they failed to provide prior documentation of prescheduled and prepaid vacations that would preclude them from the examination on the original test date, they provided that documentation on appeal. In re Jason Reinert and Jaclyn Sandorse, Cottage Training Supervisor (PS3431K), Dep't. of Human Services, CSC Dkt. Nos. 2014-570, 2014-571, 2013 N.J. CSC LEXIS 716, Final Decision (October 16, 2013).

Candidate was entitled to a make-up for the oral portion of the examination for Police Captain. Although the information he presented did not technically meet the criteria for a make-up pursuant to N.J.A.C. 4A:4-2.9, good cause existed to relax the controlling regulation given the unique circumstances presented. He was not just taking a non-refundable vacation, but his parents were renewing their wedding vows as part of their 60th wedding anniversary at Disney World. Furthermore, he was participating in his parents' ceremony as best man. In re John Votta, Police Captain (PM7528P), Margate, CSC Dkt. No. 2013-1450, 2013 N.J. CSC LEXIS 968, Final Decision (October 2, 2013).

Candidate was not entitled to a make-up examination for the Bilingual Communicative Ability Test portion of the promotional examination for Judiciary Clerk 2 Bilingual Spanish/English pursuant to N.J.A.C. 4A:4-2.9(a). Although he contended that his failure to appear for test was due to his wife's medical condition and his status as a primary child care provider and as a disabled veteran attending college, the Civil Service Commission found that his request for a make-up examination was untimely and his explanation unpersuasive. The candidate had no explanation for why he did not respond to the makeup information given in the initial letter sent to him by the Division of Selection Services and Recruitment (DSSR), and he did not indicate why he did not call the phone number listed in the DSSR's later letter to tell them why he did not appear for the BICAT examination. In re Steven Altamari, Judiciary Clerk 2 Bilingual Spanish/English (S06633P), Statewide, CSC Dkt. No. 2013-3525, 2013 N.J. CSC LEXIS 777, Final Decision (September 23, 2013).

The Division of Selection Services and Recruitment (DSSR) acted improperly in denying an applicant's request for a make-up examination for the October 25, 2012 promotional exam for open competitive examination for Judiciary Clerical Series (S0291P), Statewide, which request was based on the applicant's claim that her mother-in-law, for whom the applicant was the primary caregiver, was terminally ill and that the applicant understood that her mother-in-law had just days or maybe hours to live. That claim was made by the applicant on October 24, 2012. That the applicant's mother-in-law died on October 29, 2012 was corroborated by a death certificate submitted by the applicant in connection with her appeal from DSSR's denial of her make-up exam request. Because the applicant's mother-in-law was a member of the applicant's immediate family within the meaning of N.J.A.C. 4A:4-2.9(a)3, the facts and circumstances surrounding the request for a make-up examination were such that the applicant's request was properly granted. In re Burneo-Fernandez, Judiciary Clerical Series (S0291P), Statewide, CSC Docket No. 2013-1432, 2013 N.J. CSC LEXIS 863, Final Administrative Decision (September 18, 2013).

The Division of Selection Services and Recruitment (DSSR) acted improperly in denying an applicant's request for a make-up examination for the promotional exam for Administrative Secretary (PM0400N), Trenton, which request was based on a documented showing by the applicant that she was leaving for vacation in Florida on the day on which the exam was scheduled to be administered. Though DSSR had denied the request based on its finding that it did not meet the criteria in N.J.A.C. 4A:4-2.9, the facts and circumstances, which included that the applicant had provided documentation showing that she had left the state for vacation prior to the administration of the exam and that the exam had been cancelled for lack of applicants, the criteria in N.J.A.C. 4A:4-2.9 should have been relaxed. In re McRae-Richards, Admin. Sec'y (PM0400N), Trenton, CSC Docket No. 2013-1498, 2013 N.J. CSC LEXIS 856, Final Administrative Decision (September 18, 2013).

Candidate was not eligible under N.J.A.C. 4A:4-2.9 for a make-up examination for the open competitive examination for Security Guard. Although he indicated that he was not permitted to take time off from work to take the examination, this was essentially a scheduling conflict, which was not a valid reason for a make-up examination. In re Besnik Turka, Security Guard (C0065R), Passaic Cnty., CSC Dkt. No. 2014-429, 2013 N.J. CSC LEXIS 728, Final Decision (September 18, 2013).

Candidate was entitled to a make-up examination for the promotional examination for Secretarial Assistant 2. Although the fact that a young child to whom her family was related passed away did not technically meet the stringent criteria for make-up examinations, the Civil Service Commission concluded that it was appropriate to relax the provisions of N.J.A.C. 4A:4-2.9 on equitable grounds. The Commission noted that the examination situation was no longer competitive since the employment roster had been exhausted. In re Paula Kamrad, Secretarial Assistant 2 (Non-Stenographic) (PS3994K), Dep't. of Human Serv., CSC Dkt. No. 2014-430, 2013 N.J. CSC LEXIS 714, Final Decision (September 18, 2013).

The request of a candidate for the promotional examination for Assistant Administrative Supervisor of Income Maintenance (PC0935P), Camden County Board of Social Services for a make-up examination was properly granted. The candidate provided a notarized statement to the effect that he had never received notice of the examination and also provided other evidence tending to corroborate his claim that misdelivery of mail was a chronic problem in his community. Though there was a presumption that mail that was correctly addressed, stamped and mailed was generally received by the addressee, the Commission was willing to allow the presumption to be overcome where, as here, the purported addressee made a statement under oath declaring that it was not received. Under these facts, nonreceipt of a notice of the examination provided good cause for a make-up examination per N.J.A.C. 4A:4-2.9(a). However, achievement of a passing score on the exam would only result in the candidate's name being added to the subject eligible list for prospective employment opportunities only. In re Civitella, Ass't Admin. Supervisor of Income Maintenance (PC0935P), Camden Cnty. Bd. of Soc. Servs., CSC Docket No. 2014-119, 2013 N.J. CSC LEXIS 953, Final Administrative Decision (August 16, 2013).

The request of a candidate for the promotional examination for Keyboarding Clerk 4 (PC0762P), Camden County Board of Social Services for a make-up examination was properly granted. The candidate, who was serving provisionally in the subject title at the time the examination was announced and administered, provided a notarized statement to the effect that she had never received notice of the examination and only learned that the examination had occurred from a co-worker who had taken it. Though there was a presumption that mail that was correctly addressed, stamped and mailed was generally received by the addressee, the Commission was willing to allow the presumption to be overcome where, as here, the purported addressee made a statement under oath declaring that it was not received. Under these facts, nonreceipt of a notice of the examination provided good cause for a make-up examination per N.J.A.C. 4A:4-2.9(a). However, achievement of a passing score on the exam would only result in the candidate's name being added to the subject eligible list for prospective employment opportunities only. In re Hickman, Keyboarding Clerk 4 (PC0762P), Camden Cnty. Bd. of Soc. Servs., CSC Docket No. 2013-1801, 2013 N.J. CSC LEXIS 876, Final Administrative Decision (August 16, 2013).

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).

Candidate for the open competitive examination for Correction Officer Recruit was not entitled to a make-up examination under N.J.A.C. 4A:4-2.9(c). He was on notice of the month that the examination would be given before he made vacation plans for travel. In re Garrick Vermeal, Corr. Officer Recruit (S9988R), Statewide, CSC Dkt. No. 2013-2941, 2013 N.J. CSC LEXIS 668, Final Decision (July 17, 2013).

Candidate for the examination for Crew Supervisor, Electrician, was allowed to take a make-up examination pursuant to N.J.A.C. 4A:4-2.9(a)5 due to his vacation plans. Although he did not support his original request for a make-up examination with documentation, he indicated in a sworn statement and supporting documentation that he had prior travel plans that could not have reasonably been changed because his reservation was non-transferrable. Further, he explained that he had not been able to vacation with his family in the past few years due to his military obligations. In re Steven Gaskill, Crew Supervisor, Electrician, CSC Dkt. No. 2013-3130, 2013 N.J. CSC Lexis 667, Final Decision (July 17, 2013).

Applicant for correction officer recruit position was involved in a motor vehicle accident three days before the test administration date and was required to appear for additional medical testing on the date of the examination. While the circumstances did not technically moot the criteria for a make-up pursuant to N.J.A.C. 4A:4-2.9, good cause existed to relax the governing provision and provide him with a make-up examination. In re Mark Stevens, Correction Officer Recruit (S9988R), Statewide, CSC Dkt. No. 2013-2710, 2013 N.J. CSC LEXIS 685, Final Decision (June 26, 2013).

Applicant was permitted to take make-up professional level engineering promotional examinations pursuant to N.J.A.C. 4A:4-2.9(b) because he was out on leave for a serious medical condition, which required an extended convalescent period. In re Pankajkumar Patel, Project Eng'r. Constr. (PS3722T), Project Eng'r. Materials (PS3723T), Project Eng'r.

Structural Transp. (PS3725T), and Project Ing'r. Surface Design (PS3726T), Dep't. of Transp., CSC Dkt. Nos. 2013-2808, 2013-2810, 2013-2811, 2013-2812, 2013 N.J. CSC LEXIS 546, Final Decision (June 26, 2013).

Applicant was allowed to make-up the Bilingual Communicative Ability Test pursuant to N.J.A.C. 4A:4-2.9. After submitting medical documentation that she was too ill to attend work, it was reasonable to accept that she was too ill to take the examination on that date. In re Marie Lopez, Family Serv. Specialist 1, Bilingual in Spanish and English (PS3421K), Dep't. of Children and Families, CSC Dkt. No. 2013-3107, 2013 N.J. CSC LEXIS 545, Final Decision (June 26, 2013).

Applicant who failed to appear to take a promotional examination for Data Processing Programmer 1 (PS0257J), William Paterson College, which exam was administered February 28, 2013, established good cause within the meaning of N.J.A.C. 4A:4-2.9(a) for an order allowing her to take a makeup examination because she submitted an affidavit stating that she received her notification on March 1, 2013, which was the day after the examination was administered, and that the condition of the notification suggested that it might have been stuck in sorting or processing equipment. In re Noreen Chua-Kasak, Data Processing Programmer 1 (PS0257J), William Paterson College, CSC Dkt. No. 2013-2804, Final Decision (June 10, 2013).

Although the Civil Service Commission ordered the appointments of 10 individuals to be recorded as provisional Campus Police Officers, pending the certification of the Campus Police Officer eligible list, that list had expired due to technical complications in recording the appointments and subsequent certification issues. The Commission ordered that the certification of the current Campus Police Officer eligible list against the provisional appointments of the nine remaining individuals and granted candidates who had not already taken the Law Enforcement Examination a make-up examination under N.J.A.C. 4A:4-2.9(c) in order to provide the employees an opportunity to compete for their positions. In re Special Law Enforcement Officers, Newark Sch. Dist., CSC Dkt. No. 2013-790, 2013 N.J. CSC LEXIS 640, Final Decision (June 5, 2013).

Though the Division of Selection Services and Recruitment (DSR) had correctly denied a make-up examination to an applicant who had not appeared for the examination for Clerk 3, (C0753P), Bergen County despite the fact that she was scheduled to attend based on its finding that documentation submitted from the applicant's doctor did not provide information sufficient to justify her failure to attend, the applicant provided further documentation clarifying her medical condition in connection with her appeal of the DSR finding and thereby carried her burden of proof, per N.J.A.C. 4A:4-2.9(a), to establish valid grounds for her failure to attend. In re Donna Kaczor, Clerk 3 (C0753P), Bergen Cnty., CSC Dkt. No. 2013-2592, 2013 N.J. CSC LEXIS 624, Final Decision (May 16, 2013).

Candidate was scheduled for a make-up examination under N.J.A.C. 4A:4-2.9(a) after submitting a signed sworn statement that he did not receive a Notification to Appear for Examination for the open competitive examination for Correction Officer Recruit. The Civil Service Commission permitted the presumption of receipt to be overcome based on that statement. In re Mahmoud Hasan, Correction Officer Recruit (S9988R), Statewide, CSC Dkt. No. 2013-2434, Final Decision (May 15, 2013).

Division of Selection Services and Recruitment did not err in denying an applicant's request for a make-up examination for the promotional examination for Senior Unemployment Insurance Clerk. Although she submitted medical documentation in support of her request, that documentation was not sufficient to meet the criteria in N.J.A.C. 4A:4-2.9(a)2 because it did not contain a doctor's note specifying that the applicant could not take the examination on that particular date. In re Tina Toal Wolford, Senior Unemployment Ins. Clerk (PS8071N), Dep't of Labor and Workforce Dev., CSC Dkt. No. 2013-2178, 2013 N.J. CSC LEXIS 368, Final Decision (May 2, 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).

Applicant was entitled to a make-up examination for Compliance Officer Apprentice MVC (PS1443T), Motor Vehicle Commission pursuant to N.J.A.C. 4A:4-2.9 after she submitted a clarified doctor's note that on the day of the exam, she was being treated for severe neck and back pain and stiffness. The doctor's note stated that, due to her condition, she should not go to work or exams. In re Lauren Laurino, Compliance Officer Apprentice MVC (PS1443T), CSC Dkt. No. 2013-2177, 2013 N.J. CSC LEXIS 273, Final Decision (April 4, 2013).

Applicant was entitled to make-up the bilingual portion of the open competitive examination for Telephone Operator, Bilingual in Spanish and English, pursuant to N.J.A.C. 4A:4-2.9(a). Documentation provided by the appointing authority indicated that two different State Police Barracks reported multi-car accidents on the route the applicant would have taken to get to the examination. In addition, she continued to serve provisionally in the subject title. As such, permitting the applicant to participate in the bilingual portion of the examination would provide her with the opportunity to achieve permanent status. In re Isabel Iannuzelli, Telephone Operator, Bilingual in Spanish and English (C0718P), Atlantic Cnty., CSC Dkt. No. 2013-1979, 2013 N.J. CSC LEXIS 272, Final Decision (April 4, 2013).

Applicant who received a failing grade on the oral portion of the examination for Fire Captain (PM5229N), Kearny was properly deemed per N.J.A.C. 4A:4-2.15(b)2 to have failed the entire examination. Thus, even if N.J.A.C. 4A:4-2.9(c) might otherwise have authorized the applicant to take a make-up written examination, his failing grade on the oral portion rendered any make-up written examination was not warranted. In re Mark McDermott, Fire Captain (PM5229N), Kearny, CSC Docket No. 2013-1729, 2013 N.J. CSC LEXIS 187, Final Decision (March 8, 2013).

Applicant who had based her request for a make-up examination for Claims Adjudicator Trainee Disability Determinations (S2033N) on claims that her failure to appear for a July 26, 2012 examination was attributable to the fact that she never received the July 5, 2013 Notice to Appear relating to that examination did not carry her burden to show that the request met the make-up examination criteria in N.J.A.C. 4A:4-2.9. Bases for the Civil Service Commission's finding that the applicant was not properly afforded a make-up exam included that the applicant had claimed at one stage in the proceeding that she had only received the Notice to Appear on August 4, 2012 while she claimed at a different stage in the proceeding that she had received that Notice on July 28, 2012. Nor did the applicant ever submit a sworn statement that she did not receive the Notice until after the date on which the exam was administered. In re Katelyn Dilley, Claims Adjudicator Trainee Disability Determinations (S2033N), CSC Docket No. 2013-511, 2013 N.J. CSC LEXIS 103, Final Decision (February 20, 2013).

Though the matters contained in a correction sergeant's request that he be permitted to take a make-up examination for Correction Sergeant (PS6436I), Department of Corrections did not technically meet the criteria that were required under the make-up exam provisions in N.J.A.C. 4A:4-2.9, it was appropriate to relax those criteria on equitable grounds because the sergeant in fact substantiated his claim that he had missed the exam due to his father's sudden hospitalization on the evening prior to the exam by supplying a letter from his father's surgeon confirming that his father was in the cardiovascular critical care unit on the date of the exam. In re Stanley Kabrt, Correction Sergeant

(PS6436I), Department of Corrections, CSC Docket No. 2013-134, 2013 N.J. CSC LEXIS 102, Final Decision (February 20, 2013).

Civil Service Commission refused to reconsider its prior ruling finding that an employee who had failed to appear to take the oral portion of an examination for the position of Battalion Fire Chief (PM0146P), Newark, ostensibly because he was attending his daughter's high school graduation, was not entitled to be granted a make-up examination, which ruling was based on the Commission's finding that the circumstances presented by the employee did not meet the criteria in N.J.A.C. 4A:4-2.9(c) but was a schedule conflict that was not a valid reason for a make-up examination. Moreover, because the employee did not show that a clear material error occurred or present new evidence or additional information which would change the outcome of the case as well as valid reasons for his failure to present such evidence during the original proceeding, the employee had failed to meet the standards in N.J.A.C. 4A:2-1.6(b) upon which a request for reconsideration was properly granted. In re Dorian Herrill, Battalion Fire Chief (PM0146P), Newark, CSC Docket No. 2013-1447, 2013 N.J. CSC LEXIS 27, Final Decision (February 8, 2013).

Good cause existed for the Division of Selection Services and Recruitment to grant a make-up examination to an employee who had been scheduled to take a promotional examination for Deputy Fire Chief (PM1057M), Hackensack but did not do so due to an emergent medical condition of a family member because the employee made a timely request for such relief and provided appropriate medical documentation. Though the rules governing the Civil Service Commission's grant of a make-up examination, found in N.J.A.C. 4A:4-2.9(c), are more stringent for public safety titles than for all other titles, those rules can be relaxed for unique circumstances involving matters which are emergent or unavoidable. To maintain a strict adherence to the three conditions listed therein without compassion for the human condition in alarming or intractable circumstances would be draconian. In re John Niland, Deputy Fire Chief (PM1057M), Hackensack, CSC Docket No. 2013-1143, 2013 N.J. CSC LEXIS 64, Final Decision (January 10, 2013).

Applicant was not entitled to a make-up examination for Clerk Transcriber (S0108P), Statewide under N.J.A.C. 4A:4-2.9(a)5 after she did not show up. Although she indicated that she was out of State to attend work-related training at the time of the examination, she did not request a make-up examination until well after the notices to appear were mailed and the examination was administered. Therefore, no basis existed to grant a make-up examination. In re Janice Carter, Clerk Transcriber (S0108P), Statewide, CSC Dkt. No. 2013-913, 2013 N.J. CSC LEXIS 116, Final Decision (January 9, 2013).

Applicant was entitled to a make-up examination for Employment Services Trainee (S0347P) and Personnel Trainee (S0349P) under N.J.A.C. 4A:4-2.9(a)5. The Notification to Appear for Examination was mailed to her home address while she was out of the country, and she was not aware of it until she returned. The applicant promptly sent a request for a make-up examination as soon as she found the notice in her mail upon returning home, and she provided documentation that she had been out of the country. In re Griseliidys Almonte, Employee Services Trainee (S0347P) and Personnel Trainee (S0349P), Statewide, CSC Dkt. Nos. 2013-516 and 2013-514, 2013 N.J. CSC LEXIS 115, Final Decision (January 9, 2013).

Applicant was not eligible for a make-up examination for the open competitive examination for Child Care Quality Assurance Inspector 1 (S0194P). Although she stated that she was under stress which impacted her performance on the examination, she requested a make-up over one month after the examination was administered and after she received her score, which was clearly untimely under N.J.A.C. 4A:4-2.9(e). In fairness to other candidates, the applicant was precluded from taking the same examination again as she has already taken it and was provided with an opportunity for review of the examination and scoring key. In re Brendaly Mora-Pires, Child Care Quality Assurance Inspector 1 (S0194P), CSC Dkt. No. 2013-1186, 2013 N.J. CSC LEXIS 68, Final Decision (January 9, 2013).

Although an applicant submitted a letter indicating that he had been sent to the hospital and a copy of a prescription blank on which his

physician stated that he was currently on medication that adversely affected his ability to prepare to take the examination for Corrections Sergeant, he was not entitled to a make-up examination. He failed to provide any information to establish that this condition was life-threatening or that his illness required a convalescence period of 60 or more work days as required by N.J.A.C. 4A:4-2.9(c). In re John McKeown, Correction Sergeant (PS6436I), Dep't. of Corrections, CSC Dkt. No. 2013-105, 2013 N.J. CSC LEXIS 63 Final Decision (January 9, 2013).

When the Civil Service Commission on September 10, 2008 permitted two police sergeants to sit for the upcoming September 25, 2008 Police Lieutenant examination, the Commission did not find that there was error in the original decision to disqualify them based on their cheating during the 2005 exam, but only found that disqualifying them would have meant that neither could have been considered for promotion for a period of six years, which it found unduly harsh; therefore, because the officers could not demonstrate that there was error on the part of the appointing authority in disqualifying them, they failed to meet the criteria for granting a make-up examination in order to have time to study and prepare for the upcoming test. In re Gialanella, OAL Dkt. No. CSV 5772-07, 2008 N.J. AGEN LEXIS 1061, Final Decision (September 24, 2008).

4A:4-2.10 Conduct and security of examinations

(a) The Department shall insure that all applicants for an examination are given equal opportunity to demonstrate their relative merit and fitness.

(b) In the conduct or administration of an examination, the following shall be considered prohibited actions:

1. Securing, by unauthorized persons, of questions or materials, unless the same are available to all applicants;
2. Securing, by unauthorized persons, of information concerning the number or identity of applicants until all parts of the examination have been held and a resulting eligible list issued;
3. Identification of an applicant's examination papers or work before all examinations have been rated, where anonymity is required;
4. Impersonation of an applicant, either in person or by the improper exchange of applicant numbers or in any other manner;
5. Use or attempted use of any unauthorized aids, information or assistance, including copying or attempting to copy from, or helping or attempting to help another applicant in any part of an examination or performance of work assigned;
6. A candidate's participation in an examination if it would likely result in physical injury to the candidate or others, or damage to property; or

7. Copying, recording or transcribing any examination question or answer, and/or the removal from any examination room of any question sheet, answer sheet, scrap paper, notes or other papers or materials related to the content of an examination.

(c) Anyone participating in a prohibited action under (b) above shall be disqualified from the examination and may be rejected from future examinations and subject to punishment as provided by law.

(d) See N.J.A.C. 4A:4-2.16 on confidentiality of examination records.

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 (d).

Administrative correction.

See: 42 N.J.R. 1515(a).

Case Notes

Once the Department of Personnel (DOP) or Merit System Board discovered that breaches in exam security had occurred, such as fact that unknown individuals had typed out 65 or 71 questions that appeared on sergeant's exam and disseminated them with answers throughout police department prior to the administration of any make-up exams, the make-up civil service exams should have been cancelled and an appropriate remedy fashioned to ensure that all candidates had a fair and competitive exam. In the Matter of Police Sergeant (PM3776V) City of Paterson, 176 N.J. 49, 819 A.2d 1173.

Violations of spirit and purpose of Civil Service rules. *Rox v. Dept. of Civil Service*, 141 N.J. Super. 463, 358 A.2d 819 (App.Div.1976).

The assertion by an applicant who took a promotional examination for Fire Officer 1 (PM5205N), Jersey City, that he had spoken with more than "100 other firefighters" and that he had concluded from those discussions that the scoring on portions of his test was unfair afforded adequate grounds for his disqualification. The applicant had signed a security pledge in which he agreed, *inter alia*, not to discuss test content with anyone who had taken the test or with anyone who was a potential makeup candidate. Contrary to the applicant's argument, the terms of the pledge did not indicate that it was acceptable to discuss test content in the future once examination was scored. Under N.J.A.C. 4A:4-2.10, the applicant's violation of the security pledge afforded grounds for his disqualification by the Division of Selection Services and Recruitment, a disqualification that the Civil Service Commission considered appropriate. In re Anthony Giacona, Fire Officer 1 (PM5205N), Jersey City, CSC Dkt. No. 2014-116, 2013 N.J. CSC LEXIS 484, Final Decision (August 1, 2013).

Applicant was appropriately disqualified during the administration of the open competitive examination for Administrative Clerk (M0208P) when she violated N.J.A.C. 4A:4-2.10 by bringing a cell phone into the test center. She confirmed that she brought the cell phone into the test center, and it was clear that all the candidates for the examination were advised, on the notice to appear, in the orientation guide, via signs at the examination center, and by the staff on the night of the test, that possession of a cell phone was prohibited. Simply turning off the cell phone did not satisfy the spirit of the "no cell phone rule." In re Nicole M. Jackson, Admin. Clerk (M0208P), East Orange, CSC Dkt. No. 2013-659, 2013 N.J. CSC LEXIS 61, Final Decision (January 9, 2013).

When the Civil Service Commission on September 10, 2008 permitted two police sergeants to sit for the upcoming September 25, 2008 Police Lieutenant examination, the Commission did not find that there was error in the original decision to disqualify them based on their cheating during the 2005 exam, but only found that disqualifying them would have meant that neither could have been considered for promotion for a period of six years, which it found unduly harsh; therefore, because the officers could not demonstrate that there was error on the part of the appointing authority in disqualifying them, they failed to meet the criteria for granting a make-up examination in order to have time to study and prepare for the upcoming test. In re Gialanella, OAL Dkt. No. CSV 5772-07, 2008 N.J. AGEN LEXIS 1061, Final Decision (September 24, 2008).

4A:4-2.11 Residence standards

(a) All open competitive examination announcements and noncompetitive job postings or announcements for State and local service shall inform applicants of the requirements for New Jersey residency in accordance with P.L. 2011, c. 70.

(b) In local service, an appointing authority shall provide the Civil Service Commission with its residency ordinance or resolution, if any, on an annual basis or as requested by an appropriate representative of the Commission, and shall provide any subsequent modifications within 20 days after adoption.

1. If the appointing authority provides the Commission with such a subsequent modification following promulgation of an eligible list, the Commission may charge it for the cost of reordering the list.

(c) Where residence requirements have been established in local service in addition to the New Jersey State residency requirement, residence with regard to local service requirements means a single legal residence. The following standards shall be used in determining local legal residence:

1. Whether the locations in question are owned or rented;
2. Whether time actually spent in the claimed residence exceeds that of other locations;
3. Whether the relationship among those persons living in the claimed residence is closer than those with whom the individual lives elsewhere. If an individual claims a parent's residence because of separation from his or her spouse or domestic partner (see section 4 of P.L. 2003, c. 246), a court order or other evidence of separation may be requested;
4. Whether, if the residence requirement of the anticipated or actual appointment was eliminated, the individual would be likely to remain in the claimed residence;
5. Whether the residence recorded on a driver's license, motor vehicle registration, or voter registration card and other documents is the same as the claimed legal residence. Post office box numbers shall not be acceptable; and
6. Whether the school district attended by child(ren) living with the individual is the same as the claimed residence.

(d) To establish that an applicant has a principal residence in New Jersey, the following standards, set forth in P.L. 2011, c. 70, shall be used:

1. Whether the applicant spends most of his or her nonworking time at the residence;
2. Whether the residence is most clearly the center of the applicant's domestic life. In making this determination, the factors set forth in (c)3 and 6 above may be utilized; and
3. Whether the residence is designated as the applicant's legal address and legal residence for voting. In making this determination, the factors set forth in (c)5 above may be utilized. The fact that the applicant is domiciled in the State of New Jersey shall not by itself satisfy the New Jersey residency requirement.

(e) Unless otherwise specified, residency requirements shall be met by the announced closing date for the examination.

1. When an appointing authority requires residency as of the date of appointment, residency must be continuously maintained from the closing date up to and including the date of appointment. See N.J.A.C. 4A:4-4.7(a)7.

(f) The Commission will review residence requirements that apply to examination candidates. It is the responsibility of the appointing authority to review and enforce residence requirements relating to appointment and continued employment, including the New Jersey residency requirement set forth in P.L. 2011, c. 70.

(g) When there is a requirement that an employee reside within a specific distance of the work site, a written request must be submitted by the appointing authority to the Commission for approval of such a restriction.

1. A request must be received and approved prior to the announcement of the examination.

2. However, an appropriate representative of the Commission may, in appropriate circumstances, add special residency limitations after an eligible list is promulgated.

(h) An applicant seeking to appeal a residency determination shall utilize the procedures contained in N.J.A.C. 4A:4-6.6. The applicant shall have the burden of proving his or her residence.

(i) A break in public service for purposes of P.L. 2011, c. 70 shall mean an actual separation from employment for more than seven calendar days due to such causes as resignation, retirement, layoff, or disciplinary removal. A leave of absence or a resignation/new appointment pursuant to N.J.A.C. 4A:4-7.9 shall not be considered a break in public service.

Amended by R.1991 d.498, effective October 7, 1991.

See: 23 N.J.R. 1984(a), 23 N.J.R. 2999(a).

Authorized DOP to enforce residency requirements from examination closing date to the date of appointment.

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).

Administrative Correction.

See: 25 N.J.R. November 15, 1993.

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

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

Added a new (a) and recodified former (a) through (e) as (b) through (f).

Amended by R.2005 d.65, effective February 22, 2005.

See: 36 N.J.R. 4566(a), 37 N.J.R. 586(a).

In (b)3, inserted "or domestic partner" following "his or her spouse".

Amended by R.2012 d.056, effective March 5, 2012.

See: 43 N.J.R. 2691(a), 44 N.J.R. 576(a).

Rewrote the section.

Case Notes

Applicant's appeal from determination of Merit System Board that he was not entitled to resident's preference was moot. *Nunan v. New Jersey Dept. of Personnel*, 244 N.J.Super. 494, 582 A.2d 1266 (A.D.1990).

Appointing authority failed to present a sufficient basis to remove a candidate's name from the eligible list for Fire Fighter on the basis that he was outside the residency scope pursuant to N.J.A.C. 4A:4-2.11(c). While it appeared that the candidate was not diligent in his effort to change his address with various companies, government agencies, etc., there was no indication that he had lived anywhere but Newark from May 2006 to the present. In re John Tracy, Fire Fighter (M2377H), Newark, CSC DKT. No. 2013-2928, 2013 N.J. CSC LEXIS 1061, Final Decision (December 18, 2013).

The removal of an applicant's name from the eligible list for appointment to the title of Fire Fighter (M2377H), Newark, which removal occurred at the behest of the appointing authority per N.J.A.C. 4A:4-6.1(a)9 on the ground that the applicant did not reside in Newark on and after the closing date as required by N.J.A.C. 4A:4-2.11(c)1 was lawful. Though the applicant argued that he was living in an apartment in Newark that was rented to his brother, other evidence strongly inferred that he was residing in North Plainfield in a property that he and his sister owned. Moreover, he admitted to having used the North Plainfield address for the purpose of auto insurance, presumably because use of that address would yield lower premiums. The applicant thus failed to carry the burden of proof allocated to him by N.J.A.C. 4A:4-6(b), in conjunction with N.J.A.C. 4A:4-4.7(d), to show by a preponderance of the evidence that the appointing authority's decision to remove his name from the eligible list was in error. In re Cerchio, Fire Fighter (M2377H), City of Newark, CSC Docket No. 2013-1815, 2013 N.J. CSC LEXIS 860, Final Administrative Action (September 18, 2013).

Termination of identification officers due to violation of residency requirements affirmed. *Barr and Payne v. City of Newark Police Department*, 97 N.J.A.R.2d (CSV) 582.

Employee was properly ranked on non-resident portion of eligible list. *Rizzolo v. Newark School District*, 94 N.J.A.R.2d (CSV) 506.

Documentation confirmed residence in Burlington township. In the Matter of Stephen J. Wenger v. Burlington Township, 94 N.J.A.R.2d (CSV) 394.

Employee was not resident for purposes of placement on eligibility list. *Lightfoot v. City of Newark*, 93 N.J.A.R.2d (CSV) 109.

Officer was required to live in the state of New Jersey. *Glover v. Middlesex County Probation Department*, 92 N.J.A.R.2d (CSV) 777.

Resident of borough as of announced closing date and as of appointment date entitled to residency preference. *Grembowiec v. Lysiak*, 92 N.J.A.R.2d (CSV) 356.

4A:4-2.12 Professional qualifications substitution program

(a) Applicants for designated open competitive or promotional examinations for professional titles may be permitted to substitute appropriate work experience, on a year-for-year basis, for specified higher educational requirements.

1. For titles requiring specific coursework or major fields of study, the successful completion of the coursework or fields of study shall be required.

2. Examination announcements shall contain, when appropriate, general information on the eligibility requirements and use of this program.

3. Appointing authorities shall conspicuously post information about this program.

(b) The Department shall make the determination whether prior work experience may be substituted for specified education requirements.

Case Notes

Substitution of degrees to meet educational qualifications for testing. Gloucester Cty. Welfare v. N.J. Civ. Serv. Comm'n, 93 N.J. 384, 461 A.2d 575 (1983) (see dissenting opinion).

Determination that a candidate did not meet the experience requirements for the promotional examination for Personnel Assistant 4 (PS9849K), Department of Human Services was not properly disturbed because the candidate's work experience did not satisfy the requirement that a candidate have at least one year of technical experience in a personnel program of a public or private organization. Nor did the candidate show how the Master's degree in Clinical Social Work that she expected to earn in the indeterminate future would be considered a related field for purposes of N.J.A.C. 4A:4-2.12(a)1, nor did her experience in the titles of Personnel Aide 2, Senior Clerk Typist and Clerk Typist comprehend skills of the level and scope necessary for the subject title, which specifically required *technical* experience in a personnel program, which could not be obtained in a non-professional title. That is, even if the candidate was performing the requisite duties in those titles, per N.J.A.C. 4A:4-2.6(c), it still would be considered out-of-title work for incumbents in Senior Clerk Typist and Clerk Typist titles. The candidate thus failed to carry her burden to establish a basis on which the determination that she did not meet the experience requirements was properly disturbed. In re Noemi Jimenez, Personnel Assistant 4 (PS9849K), Department of Human Services, CSC Dkt. No. 2013-303, 2013 N.J. CSC LEXIS 83, Final Decision (February 20, 2013).

4A:4-2.13 College Level Examination Program (CLEP)

(a) College Level Examination Program (CLEP) scores are acceptable as a substitution for college credits required for open competitive or promotional examinations. Acceptable scores are those consistent with scores accepted for credit by Thomas A. Edison College as published annually in its catalog.

(b) The following standards shall be considered:

1. Applicants may be considered eligible to take open competitive and promotional examinations by substituting a combination of education, appropriate work experience and acceptable CLEP scores;

2. Acceptable scores on the CLEP General Examination and Subject Examinations will be considered the same as college undergraduate credits;

3. Acceptable scores on the five-part CLEP General Examination may be substituted for up to 30 undergraduate college credits;

4. Where specific course work and/or a major field of study are required in the job specification or examination announcement:

i. An acceptable score on an appropriate CLEP Subject Examination may be substituted for college credit hours;

ii. An acceptable subscore on an appropriate subsection of the CLEP General Examination may be substituted for undergraduate college credit hours for the course work requirement;

5. Acceptable scores achieved on any of the CLEP Subject Examinations shall be viewed to correspond to

those credits normally earned during the final two years of a four-year college curriculum;

6. Acceptable scaled scores or subscores on the CLEP General Examination shall be viewed to correspond to those credits normally earned during the first two years of a four-year college curriculum.

(c) Information about testing site locations and application procedures may be obtained from the CLEP Educational Testing Service (ETS), Princeton, New Jersey and Thomas A. Edison College, Trenton, New Jersey.

(d) Examination announcements shall contain general information on eligibility requirements and utilization of CLEP.

(e) Appointing authorities shall conspicuously post information about CLEP.

4A:4-2.14 Accommodation and waiver of examinations for persons with disabilities

(a) Otherwise qualified applicants with disabilities may request an accommodation in taking an examination by indicating their request for accommodation on the examination application.

1. Upon receipt of the request for accommodation, the Department shall make reasonable accommodation where appropriate and notify the candidate of the arrangements.

(b) The Commissioner may waive an examination for an otherwise qualified candidate or provisional with a physical, mental or emotional affliction, injury, dysfunction, impairment or disability which makes it physically or psychologically not practicable to undergo the testing procedure for a particular title, but does not prevent satisfactory performance of the title's responsibilities under conditions of actual service.

1. A request for waiver shall be in writing, filed with the Department and contain:

i. The examination's title and symbol number, or in the case of a provisional, his or her title and employer;

ii. A statement from an appointing authority utilizing the title that the individual can satisfactorily perform the duties of that title under actual conditions of service;

iii. A physician's statement with supporting medical documentation;

iv. Whether the individual has previously filed for or taken an examination for that title, the results, if any, and whether an accommodation has previously been made; and

v. Agreement to undergo any additional physical or psychological examinations that the Department deems appropriate.

(c) If reasonable accommodation can be made, the waiver request will be denied and arrangements made for such accommodation.

(d) If reasonable accommodation is not possible, the Commissioner will decide whether to grant a waiver, and if granted, whether the candidate will be employed or placed on an eligible list and in appropriate cases, granted seniority.

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

Revised heading and revised (a).

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

Candidate who was entitled to receive accommodations per the Americans With Disabilities Act and N.J.A.C. 4A:4-2.14(a) including additional time when he took the open competitive examination for Correction Officer Recruit (S9988R), Statewide but whose repeated efforts to notify test administrators of the needed accommodations were ignored won equitable relief in the form of an order authorizing him to take an alternate form of the test despite the fact that he did not technically file a timely administrative appeal. In re Jason Pursell, Corr. Officer Recruit (S9988R), Statewide, CSC Dkt. No. 2013-2492, 2013 N.J. CSC LEXIS 490, Final Decision (May 15, 2013).

Applicant contended that she was not provided with a special accommodation for her disability under N.J.A.C. 4A:4-2.14(a) for a promotional examination, but the Civil Service Commission disagreed. Although she did not indicate the type of accommodation she requested, she was provided with an American Sign Language interpreter based upon her medical diagnosis, but she did not indicate that she would require additional time to complete the examination. She did not raise the issue of her need for an additional accommodation at the test center on the day of the examination pursuant to N.J.A.C. 4A:4-6.4(c) although she was clearly cognizant of her needs prior to taking the examination and she was not precluded from raising the issue of her needs at the examination center. In re Maribel Sanchez, Human Services Technician (PS9823K), Greystone Park Psychiatric Hospital, CSC Dkt. No. 2013-1544, 2013 N.J. CSC LEXIS 300, Final Decision (April 17, 2013).

Employee who had been employed by the Board of Public Utilities (BPU) for 18 years and had been a provisional Administrative Analyst 2 for the BPU since October 2007 won a waiver of examination for the promotional examination because the employee satisfied all five conditions for such a waiver in N.J.A.C. 4A:4-2.14(b) including providing confirmation from her physician that she suffered from the claimed condition and that none of the ADA-type accommodations proposed by the Division of Selection Services (DSS) were appropriate. Relief was also favored by reason of the fact that the only other candidate for the examination had been appointed, resulting in the list being exhausted. Since the list was not competitive, there was no reason to ask the employee to undergo additional medical testing to confirm her physician's opinion. In re Woods, Administrative Analyst 2 (PS1240R), Board of Public Utilities, CSC Dkt. No. 2012-3353, 2013 N.J. CSC LEXIS 148, Final Agency Action (April 4, 2013).

4A:4-2.15 Rating of examinations

(a) Ratings may be computed by a valid statistical method based on the use of scoring formulas and/or conversion tables.

1. When education and experience are to be rated as part of an examination, they shall be graded through the use of scales prepared by the Chairperson of the Civil Service Commission or designee.

(b) Examinations consisting of more than one part may be rated independently.

1. Candidates failing to meet minimum standards on one part of the examination shall be ineligible for the remaining parts.

2. Candidates who do not receive a passing score on one part of an examination shall be deemed to have failed the entire examination.

3. Candidates who fail an entire examination shall not receive Performance Assessment Review (PAR) credit or credit for seniority. See (c) and (d) below.

(c) Candidates for State service promotional examination shall receive credit for the final PAR rating on file in the candidate's personnel office as of the announced closing date for the rating period immediately preceding the announced closing date.

1. When the PAR consists of a three-level rating scale, credit shall be awarded as follows:

- i. Three points for Exceptional; or
- ii. One point for Successful.

2. When the PAR consists of a five-level rating scale, credit shall be awarded as follows:

- i. Three points for a rating of Five – Exceptional Performance;
- ii. Two points for a rating of Four – Commendable Performance; and
- iii. One point for a rating of Three – Successful Performance.

3. When there is no final rating on file for a candidate as of the announced closing date, the rating for that period shall be deemed Successful in the case of both a three-level rating scale and a five-level rating scale, and credit shall be given for that rating.

4. Performance ratings shall not be used as a scoring factor in promotions when the supervisor who completes a performance rating for a subordinate or acts as a reviewer for a subordinate's rating competes in the same promotional examination as the subordinate.

(d) In calculating seniority for promotional examinations:

1. Continuous permanent service accumulated prior to an intergovernmental transfer pursuant to N.J.A.C. 4A:4-7.1A (except as provided in (d)3 below), voluntary furloughs and the following types of leaves shall not be deducted from seniority.

- i. All leaves with pay including sick leave injury (SLI);
- ii. Military, educational, gubernatorial appointment, personal sick, disability, family, furlough extension, and

voluntary alternative to layoff leaves of absence without pay; and

iii. In local service, leave without pay to fill elective office.

2. A resignation/new appointment pursuant to N.J.A.C. 4A:4-7.9 shall not be considered a break in continuous service.

3. Continuous permanent service accumulated prior to an intergovernmental transfer pursuant to N.J.A.C. 4A:4-7.1A shall be deducted from seniority for all firefighters, and for those law enforcement officers, including sheriff's officers and county correction officers, who have waived all accumulated seniority rights in agreeing to an intergovernmental transfer.

(e) Suspensions, other leaves of absence without pay not identified in (d) above, and any period an employee is laid off shall be deducted when calculating seniority.

1. In local service police and fire examinations, credit for record of service will be reduced by disciplinary suspensions received during the five-year period immediately preceding the announced closing date.

(f) Employees reappointed from a special reemployment list shall be considered as having continuous service for seniority purposes. However, the elapsed time between the layoff or demotion in lieu of layoff and reappointment shall be deducted from the employee's seniority.

(g) When a municipality has a volunteer fire company and paid positions are created, any volunteer firefighter who has actively served for at least two years as of the announced closing date is entitled to service credits in addition to his or her earned examination score. The highest possible score for examination performance shall be 100 percent, to which the service credit shall be added. Service credits shall be not less than three nor more than 10, and shall be added only to a passing score. The service credit shall be calculated by adding one point to the number of years of service: for example, add three points for two years of service, four points for three years of service, and so on. Any service time in excess of nine years shall be awarded the 10-point maximum.

(h) The score earned by a candidate on an examination announced for more than one title area at a time shall be used for all examinations in those title areas for which the candidate files and is found eligible.

(i) A candidate for an examination may be permitted to use an examination score for a period of time, or for more than one title or more than one test, as determined by the Chairperson of the Civil Service Commission or designee.

(j) Ties in final earned ratings shall not be broken.

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

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

(a)1 clarified; added new (d).

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

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

Added (c)1.

Amended by R.1993 d.45, effective January 19, 1993.

See: 24 N.J.R. 3589(a), 25 N.J.R. 291(a).

Revised (c); redesignated existing (d) as (e); added new (d).

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

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

Deleted (a)2; revised (d); added new (e) and (f); redesignated existing (e) to (g); added new (h).

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.1997 d.482, effective November 17, 1997.

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

Inserted new (h); and recodified (h) as (i).

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

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

Added a new (b)3.

Amended by R.2000 d.11, effective January 3, 2000.

See: 31 N.J.R. 2824(a), 32 N.J.R. 35(a).

In (c), rewrote 1, and substituted "Commendable" for "Meets Standards" following "deemed" in 2.

Amended by R.2001 d.420, effective November 19, 2001.

See: 33 N.J.R. 2567(a), 33 N.J.R. 3895(b).

Rewrote the introductory paragraph of (d).

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

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

In (g), added "as of the announced closing date" and increased highest possible score for examination performance from 90 percent to 100 percent; rewrote (h); added (i); recodified former (i) as (j).

Amended by R.2007 d.358, effective November 19, 2007.

See: 39 N.J.R. 2680(a), 39 N.J.R. 4923(b).

In (d), substituted "as provided in (e) below" for "in the case of an intergovernmental transfer of a police or a firefighter"; added new (e); and recodified former (e) through (j) as (f) through (k).

Amended by R.2009 d.95, effective March 16, 2009.

See: 40 N.J.R. 5891(a), 41 N.J.R. 1206(a).

Rewrote (d); recodified former (e) as (d)3; and recodified former (f) through (k) as (e) through (j).

Amended by R.2014 d.045, effective March 17, 2014.

See: 45 N.J.R. 525(a), 46 N.J.R. 497(a).

In (a)1 and (i), substituted "Chairperson of the Civil Service Commission or designee" for "Department of Personnel"; rewrote (c)1; added new (c)2; recodified former (c)2 and (c)3 as (c)3 and (c)4; in (c)3, substituted "Successful in the case of both a three-level rating scale and a five-level rating scale," for "Commendable"; in (d)1ii, inserted a comma following "extension"; and in (e)1, substituted "five-year" for "five year".

Case Notes

Validity of excluding performance evaluations (EPEIS) from the scoring of promotional examinations when evaluating supervisors and their subordinates are candidates for same position is proper (citing former N.J.A.C. 4:1-9.5). *Honachefsky v. N.J. Civil Service Comm'n*, 174 N.J.Super. 539, 417 A.2d 67 (App.Div.1980).

Evaluation of education and experience in excess of minimum requirements not violative of due process (citing former N.J.A.C. 4:1-9.14). *Brown v. State of New Jersey*, 115 N.J.Super. 348, 279 A.2d 872 (App.Div.1971) certification denied 59 N.J. 273, 281 A.2d 535.

Employee who failed the Bilingual Communication Abilities Test (BICAT) for English/Spanish for Human Services Specialist 1, Bilingual Spanish/English (C0056P), Morris County, did not show that the grade she earned on the examination was incorrect because the employee's inaccuracy in translations, problems with grammar and spelling, and omissions and improper additions in the Oral Communications section indicated performance at Level 1, which was insufficient given that the subject title required a Level 2 score. Given those results, N.J.A.C. 4A:4-2.15(b)2 required the conclusion that the employee was properly deemed to have failed the entire examination. In re *Marisol Heredia*, Human Services Specialist 1, Bilingual Spanish/English (C0056P), Morris Cnty., CSC Docket No. 2013-780, 2013 N.J. CSC LEXIS 326, Final Agency Action (April 17, 2013).

Applicant who received a failing grade on the oral portion of the examination for Fire Captain (PM5229N), Kearny was properly deemed per N.J.A.C. 4A:4-2.15(b)2 to have failed the entire examination. Thus, even if N.J.A.C. 4A:4-2.9(c) might otherwise have authorized the applicant to take a make-up written examination, his failing grade on the oral portion rendered any make-up written examination was not warranted. In re Mark McDermott, Fire Captain (PM5229N), Kearny, CSC Docket No. 2013-1729, 2013 N.J. CSC LEXIS 187, Final Decision (March 8, 2013).

Despite a candidate's submission of a letter from a Municipal Court Director that she was extremely qualified for the position of Assistant Municipal Court Director (PM1155N) and that the Management Test Battery was not relevant to the duties of the candidate's position, she did not have the prerogative to choose the type of testing administered. She was required, but failed, to pass all portions of the examination in order to receive a passing final score under N.J.A.C. 4A:4-2.15(b). In re Wendy Razzoli, Assistant Municipal Court Director (PM1155N), Jersey City, CSC Dkt. No. 2013-1525, 2013 N.J. CSC LEXIS 86, Final Decision (February 25, 2013).

4A:4-2.16 Retention and inspection of examination records

(a) The following examination records shall be retained until the expiration of the eligible list:

1. The public announcement;
2. All applications;
3. The examination papers and scoring keys;
4. A description of the examination, including the date held, rating system and minimum score required, if any;
5. The list of eligibles;
6. The failure roster; and
7. Any other pertinent information.

(b) All examination records listed in (a)1, 4 and 5 above shall be open to public inspection.

1. Examination records listed in (a)2 above shall not be open to public inspection but may be open to inspection by an appointing authority, on condition that the appointing authority not disclose the records to outside persons, where:

- i. An application was completed by an eligible;
- ii. The eligible's name has been certified to the appointing authority for appointment; and
- iii. The appointing authority requests inspection of the application due to a reasonable suspicion that the eligible has submitted inconsistent information regarding his or her qualifications for employment.

2. Examination records listed in (a)6 above shall not be open to public inspection but shall be open to inspection by the appointing authority to which the eligible list has been certified, upon request by the appointing authority and on condition that the appointing authority not disclose the records to outside persons.

3. Should an appointing authority, in violation of (b)1 or 2 above, disclose examination records with which it has been provided to outside persons, the appointing authority may be subject to sanctions in accordance with N.J.A.C. 4A:10-2.1.

4. The Commissioner shall determine which other records may be open to public inspection and the conditions for such inspection.

Amended by R.1992 d.41, effective January 21, 1992.

See: 23 N.J.R. 2906(b), 24 N.J.R. 229(b).

Revised (a)3 and 4.

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

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

Added (a)6, recodified former (a)6 as 7; rewrote (b).

4A:4-2.17 Application processing fees

(a) A \$25.00 processing fee shall be charged for each open competitive and promotional examination application, except as provided as follows:

1. Veterans shall be charged a processing fee of \$15.00 for each open competitive and promotional examination application, unless the examination falls under paragraphs (a)2 or 3 below.

2. The Civil Service Commission shall establish a fee for each application for an open competitive or promotional examination for a law enforcement officer or firefighter title. The fee shall not exceed the cost of developing, procuring, and administering the examination. Receipts derived from this application fee shall be appropriated to the Commission for use in developing, procuring, and administering law enforcement officer and firefighter examinations.

3. When announcements for an examination list more than one title area (such as police, sheriff, and corrections), a processing fee shall be charged for each title area selected by the applicant.

4. An application processing fee shall not be charged where the application is being filed for placement on a list in accordance with N.J.A.C. 4A:4-4.6A.

(b) For online applications, the fee may be paid by using a credit card or e-check, or by sending a check or money order, made payable to the NJCSC. If a paper application is submitted, only a check or money order made payable to the NJCSC shall be accepted and must be submitted with the application.

(c) Applications received without a fee shall not be processed unless the applicant submits, within the time required by written notice from the Civil Service Commission, the required fee or, for open competitive applications, proof of exemption as described in (d) below.

(d) An applicant for an open competitive examination will be granted a waiver of the fee if the applicant provides documentation showing that, as of the closing date, he or she is receiving General Assistance benefits, benefits under the Work First New Jersey Act or Supplemental Security Income. Proof must consist of one of the following:

1. General Assistance—a copy of the applicant's benefits identification card (if one was issued) or a letter from the applicant's local municipal welfare director.
2. Work First New Jersey Act—a copy of the applicant's Families First card.
3. Supplemental Security Income—a copy of the applicant's latest annual award letter or proof of the applicant's Medicaid identification number for S.S.I. benefits.

(e) The fee is for processing purposes only and does not guarantee admittance to an examination or appointment to a position. The fee shall not be refunded for any reason except untimely filing of the application or cancellation of the examination.

1. The fee shall not be refunded when the cancellation is due to the lack of eligible applicants ("no admits") or when no eligible applicant appears for testing ("no show").
2. When an examination is cancelled at the request of the appointing authority, the appointing authority shall reimburse the Civil Service Commission for fees refunded to applicants.

New Rule, R.1993 d.270, effective June 7, 1993.

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

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

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

Inserted (a)1.

Amended by R.1999 d.128, effective April 19, 1999.

See: 31 N.J.R. 199(a), 31 N.J.R. 1061(a).

In (a), added "except as provided as follows" at the end of the introductory paragraph, inserted a new introductory paragraph in 1, and recodified former 1 as i; and in (d), substituted "benefits under the Work First New Jersey Act" for "Aid to Families with Dependent Children" in the introductory paragraph, and rewrote 2.

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 (a), increased processing fee from \$5.00 to \$15.00; recodified (a)1i as (a)2 and rewrote the paragraph.

Amended by R.2011 d.173, effective June 20, 2011.

See: 43 N.J.R. 470(a), 43 N.J.R. 1419(b).

In the introductory paragraph of (a), substituted "\$25.00" for "\$15.00"; added new (a)1; recodified former (a)1 and (a)2 as (a)2 and (a)3; rewrote (a)2; in (a)3, deleted a comma following "sheriff"; in (b), substituted "NJCS" for "NJDP" and "and" for "which shall be"; in (c) and (e)2, substituted "Civil Service Commission" for "Department of Personnel"; and in the introductory paragraph of (d), deleted a comma following "work First New Jersey Act".

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

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

Added (a)4.

Amended by R.2014 d.062, effective April 7, 2014.

See: 45 N.J.R. 783(a), 46 N.J.R. 617(a).

Rewrote (b).

SUBCHAPTER 3. ELIGIBLE LISTS

Subchapter Historical Note

Petition for Rulemaking. See: 40 N.J.R. 6232(b).

4A:4-3.1 Types of eligible lists

(a) The Chair/CEO may establish the following types of eligible lists:

1. Open competitive, which shall include all qualified eligibles following examination procedures;
2. Promotional, which shall include permanent employees who meet qualification requirements;
3. Regular reemployment, which shall include former permanent employees who resigned in good standing, received a general resignation, retired or were voluntarily demoted, who timely request reemployment and whose reemployment is certified by the appointing authority as being in the best interests of the service;
4. Police or fire reemployment, which shall include former permanent uniformed members of a police or fire department who resigned in good standing and whose reemployment is certified by the appointing authority as being in the best interests of the service; and
5. Special reemployment, which shall include former and current permanent employees who were laid off, laterally displaced or demoted in lieu of layoff.

Amended by R.2010 d.222, effective October 18, 2010.

See: 42 N.J.R. 1277(a), 42 N.J.R. 2399(a).

In the introductory paragraph of (a), substituted "Chair/CEO" for "Commissioner"; in (a)1 and (a)2, substituted a semicolon for a period at the end; and in (a)3, inserted "received a general resignation," and deleted a comma following "retired".

4A:4-3.2 Order of names on eligible lists

(a) The order of names on an open competitive list shall be as follows:

1. When an announcement is open to more than one local jurisdiction, the resulting list of eligibles shall be separated into sub-lists by the residency requirements as provided by applicable law and ordinance.
2. Within each sub-list as provided in (a)1 above, the order of names shall be:
 - i. Eligibles entitled to disabled veterans preference in order of their scores;
 - ii. Eligibles entitled to veterans preference in order of their scores; and
 - iii. Non-veteran eligibles in order of their scores.

3. Eligibles who receive the same score shall have the same rank. See N.J.A.C. 4A:4-4.2(c).

4. See N.J.A.C. 4A:5-2.1 for examples on use of open competitive list.

(b) Eligibles on a promotional list shall appear in the order of their scores.

1. When scores are tied, veterans shall be listed first within each rank. See N.J.A.C. 4A:4-4.2(c).

2. See N.J.A.C. 4A:5-2.2 for examples on use of a promotional list.

(c) Eligibles on special reemployment lists shall be ranked in descending order of the class code or class level of the title from which the eligible was displaced. In the case of special reemployment lists containing the names of eligibles laid off from a job band, the eligibles shall be ranked in descending order of the class code or class level of the job band, as applicable. Within each class code or class level, eligibles shall be ranked in accordance with N.J.A.C. 4A:8-2.3(c)1.

EXAMPLE 1.: Emily is a State employee, and was displaced in the layoff process from her permanent title of Administrative Analyst 1, which has a class code of 29. She has a total of 10 years of seniority. George is also a State employee, and was displaced in the layoff process from his permanent title of Administrative Analyst 2, which has a class code of 26. He has a total of 15 years of seniority. The names of both Emily and George are placed on the special reemployment list for the title of Administrative Analyst 3, since it is a lower, related title. Emily's name will be listed first, because the class code of the title from which she was displaced is higher than the class code of the title from which George was displaced.

EXAMPLE 2.: Robert, a municipal employee, was displaced in the layoff process from his permanent title of Supervising Maintenance Repairer, the highest class level title in his title series. He has 15 years of service with the municipality. Angela, who was permanent in the title of Assistant Supervising Maintenance Repairer when she was displaced in the layoff process, has 16 and one-half years of service with the municipality. The names of both Robert and Angela will be placed at the head of special reemployment lists for Senior Maintenance Repairer and Maintenance Repairer. On both of these lists, Robert's name will appear first and Angela's second, since Robert was displaced from a higher class level title.

(d) Eligibles on regular or police and fire reemployment lists shall be ranked in the order of seniority in the permanent title from which they resigned, retired, or were voluntarily demoted, with the name of the person with the greatest seniority appearing first on the list.

(e) It shall be the responsibility of an eligible to keep a current address on file with the Civil Service Commission.

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.1997 d.71, effective February 18, 1997.
See: 28 N.J.R. 4979(a), 29 N.J.R. 549(b).

Substantially amended (c).

Amended by R.2000 d.12, effective January 3, 2000.
See: 31 N.J.R. 2827(a), 32 N.J.R. 39(a).

In (c), substituted "accordance with N.J.A.C. 4A:8-2.3(c)1" for "order of seniority. See N.J.A.C. 4A:8-2.4" at the end.

Administrative correction.

See: 44 N.J.R. 227(a).

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

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

In the introductory paragraph of (c), inserted the second sentence; in the first Example in (c), inserted "1."; in the second Example in (c), inserted "2."; in (d), inserted a comma following "retired"; and in (e), substituted "Civil Service Commission" for "Department of Personnel".

Case Notes

Credit towards service in other governmental entity. *Kloss v. Parsippany-Troy Hills*, 170 N.J.Super. 153, 406 A.2d 170 (App.Div. 1979).

Order of appointment. *State v. State Supervisory Employees Association*, 78 N.J. 54, 393 A.2d 233 (1978).

4A:4-3.3 Duration and cancellation of eligible lists

(a) An eligible list shall be considered issued on the date on which it is available for review by candidates, appointing authorities and members of the public. The list shall be considered promulgated on the date on which it is available to be certified to an appointing authority and from which appointments may be made.

(b) Open competitive and promotional lists shall be promulgated for three years from the date of their establishment, unless the Commissioner determines that, under the circumstances, a shorter time period is appropriate.

1. An eligible list may, for good cause, be extended by the Commissioner prior to its expiration date, except that no list shall have a duration of more than four years.

2. The name of any employee shall not remain on a regular reemployment list for more than three years from the date of resignation, except as provided in (b)1 above.

3. Special reemployment, police reemployment and fire reemployment lists shall have unlimited durations.

(c) The Commissioner may, in cases of fraud, illegality, test invalidity, error by the Department or other good cause, cancel an eligible list prior to its expiration date by issuing an order, which shall provide a means for the notification of eligibles. The Commissioner shall also provide a copy of this order to affected appointing authorities.

(d) See N.J.A.C. 4A:4-4.9 for appointments after the expiration date of the eligible list.

(e) When a promotional list for a law enforcement or firefighter title is extended until a new promotional list is available for certification and appointments, the extended list shall

expire when the new promotional list is issued, provided however, that certifications of and appointments from the new list shall not be made until the promulgation date of the new list.

Amended by R.1996 d.98, effective February 20, 1996.

See: 27 N.J.R. 4049(a), 28 N.J.R. 1201(b).

Added (c).

Amended by R.1997 d.410, effective October 6, 1997.

See: 29 N.J.R. 2732(a), 29 N.J.R. 4279(a).

In (b), substituted "an order, which ... affected appointing authorities" for "a public notice and entering such notice in the minutes of the Merit System Board".

Petition for Rulemaking.

See: 41 N.J.R. 4833(a).

Amended by R.2010 d.123, effective June 21, 2010.

See: 41 N.J.R. 4586(a), 42 N.J.R. 1164(a).

Added new (a); recodified former (a) through (c) as (b) through (d); in (b)2, substituted "(b)1" for "(a)1"; and added (e).

Case Notes

Employment applicants who were tested and appointed to hiring eligibility list for position of municipal fire fighter did not have protected property interest in their ranking. *Newark Branch, N.A.A.C.P. v. Town of Harrison, N.J., C.A.3 (N.J. 1991), 940 F.2d 792.*

Power of Commission to extend local eligibility list. *Malone v. Fender, 158 N.J.Super. 190, 385 A.2d 929 (App.Div.1978) supplemented 160 N.J.Super. 221, 389 A.2d 504, reversed 80 N.J. 129, 402 A.2d 240 (1979).*

Statutory 3 year limit upheld (local service). *Imbriacco v. State Civil Service Commission, 150 N.J.Super. 105, 374 A.2d 1251 (App.Div. 1977).*

Life of promotion list could not be extended beyond three-year limit (citing former N.J.A.C. 4:1-11.6). In the Matter of Newark Police Sergeant and Lieutenant List for Dep't of Civil Service, 149 N.J.Super. 121, 373 A.2d 422 (App.Div.1977).

Police officers who were appointed to their positions and took their oaths of office after the eligible list expired were not validly appointed, pursuant to former N.J.S.A. 11:22-32 (see now N.J.S.A. 11A:4-6, 11A:4-7) and former N.J.A.C. 4:1-12.16 (see now N.J.A.C. 4A:4-3.3); the Civil Service Commission was not estopped from denying them their positions. *Saletta v. Civil Service Comm'n, 148 N.J. Super. 451, 372 A.2d 1140, 1977 N.J. Super. LEXIS 811 (App.Div. 1977).*

Good cause within the meaning of N.J.A.C. 4A:4-3.3(b)1 existed to grant a request by the Director of Selection Services (DSS) to extend the Fire Fighter open-competitive lists generated from the Entry Level Fire Fighter Examination (M9999M) (M2500M consecutive through M2586M, excluding M2518M) for two years beyond their expiration dates or until new lists were issued, whichever first occurred. It was appropriate to do so because it would assist those appointing authorities that needed to fill vacancies in order to provide for fire safety. In re Open-Competitive Lists for Fire Fighter (M9999M), CSC Docket No. 2014-1252, 2013 N.J. CSC LEXIS 1092, Final Administrative Action (December 5, 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).

Civil Service Commission granted the Department of Labor and Workforce Development a six-month extension of the eligible list for Claims Adjudicator Supervisor (PS2364N) pursuant to N.J.S.A. and

N.J.A.C. 4A:4-3.3(b)1. There were 46 candidates who had already been tested and remained on the list. In the absence of such extension, vacancies would have been filled through provisional appointments, which was disfavored. Under these circumstances, good cause was shown to extend the subject list. In re Claims Adjudicator Supervisor (PS2364N), Dep't. of Labor and Workforce Dev., CSC Dkt. No. 2014-586, 2013 N.J. CSC LEXIS 690, Final Decision (October 16, 2013).

Eligible lists for Judiciary Clerk 1, Judiciary Clerk 1 (Bilingual), Judiciary Account Clerk 1, Judiciary Account Clerk 1 (Bilingual), Court Services Representative, and Court Services Representative (Bilingual) were extended under N.J.S.A. 11A:4-6 and N.J.A.C. 4A:4-3.3(b)1 in order to allow the appointing authority to make permanent appointments due to its staffing needs for the upcoming year. The Civil Service Commission noted that the filling of vacancies through permanent appointments from an active eligible list was preferable to making provisional appointments. In re Judiciary Clerk 1 et al., CSC Dkt. No. 2014-530, 2013 N.J. CSC LEXIS 725, Final Decision (September 18, 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).

Request that an eligibility list for the position of Director of Automotive Services (M0131R) be cancelled on the basis of administrative error was granted. The appointing authority had provisionally appointed an employee to the subject title pending open competitive examination requirements. Prior to his provisional appointment, the employee had been permanently serving in the title of Supervising Mechanic. The appointing authority erroneously submitted a request to provisionally appoint the employee pending open competitive examination procedures rather than promotional examination procedures, resulting in the issuance of an open competitive examination announcement. Since the same was an administrative error within the meaning of N.J.A.C. 4A:4-3.3(c), cancellation of the list was appropriate. In re Director of Automotive Services (M0131R), North Bergen Township, DOP Docket No. 2014-298, 2013 N.J. CSC LEXIS 723, Final Decision (August 14, 2013).

Good cause within the meaning of N.J.A.C. 4A:4-3.3(b)1 was shown to grant relief on a request by the Department of Labor and Workforce Development to extend eligible lists for Claims Adjudicator Trainee (S0346P) and Claims Adjudicator Trainee, Bilingual Spanish/English (S0431P) positions. The Department explained that it could not make permanent appointments that it had determined to be appropriate until it received approval from a funding agency to fill the positions. Because the filling of vacancies through permanent appointments from an active eligible list was preferable to the making of provisional appointments, "good cause" for extension was established. In re Claims Adjudicator Trainee (S0346P) and Claims Adjudicator Trainee, Bilingual Spanish/English (S0431P), CSC Dkt. No. 2014-46, 2013 N.J. CSC LEXIS 373, Final Decision (August 7, 2013).

Cause within the meaning of N.J.S.A. 11A:4-6 and N.J.A.C. 4A:4-3.3(b)1 was shown to extend the eligible lists for Employment Specialist Trainee (S0347P) and Auditor Accountant Trainee (S0344P), Department of Labor and Workforce Development. One such list had been the source of 71 appointments and the other had resulted in 17 appointments. Both lists still included a substantial number of eligible candidates. Because the filling of vacancies through permanent appointments from an active eligible list was preferable to making provisional appointments, good cause for the requested extensions was shown. In re Employment Specialist Trainee (S0347P) and Auditor Accountant Trainee (S0344P), Dep't of Labor & Workforce Dev., CSC Dkt. Nos. 2014-134 and 2014-135, 2013 N.J. CSC LEXIS 376, Final Action (July 31, 2013).

Good cause existed to extend the eligible list for Deputy Fire Chief under N.J.S.A. 11A:4-6 and N.J.A.C. 4A:4-3.3(b)1 so that the appointing authority could have an active list until such time as a new list could be generated. The filling of vacancies through permanent appointments from an active eligible list was preferable to making provisional appointments. In re Deputy Fire Chief (Pm3645L), Irvington Twp., CSC Dkt. No. 2013-3571, 2013 N.J. CSC LEXIS 677, Final Decision (July 17, 2013).

Appointing authority demonstrated good cause to extend the eligible list for Human Services Specialist for another year under N.J.S.A. 11A:4-6 and N.J.A.C. 4A:4-3.3(b)1. It anticipated hiring individuals in the title due to retirements of incumbents in the near future, and the Division of Selection Services and Recruitment supported the request. In re Human Services Specialist 4 (PC0941M), Mercer Cnty. Bd. of Social Serv., CSC Dkt. No. 2013-2931, 2013 N.J. CSC LEXIS 607, Final Decision (June 5, 2013).

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

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).

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).

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).

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).

Fire Officer 1 (PM2567J) eligible list was revived under N.J.S.A. 11A:4-6 and N.J.A.C. 4A:4-3.4(a) and the names of the next seven eligible were added to the certification. Good cause existed to revive the list when a series of administrative delays prevented the Fire Department from disposing of the certification in a timely manner. In re Fire Officer 1 (PM2567J), Jersey City, CSC Dkt. No. 2013-1584, 2013 N.J. CSC LEXIS 30, Final Decision (February 7, 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).

4A:4-3.5 Consolidation of eligible lists

(a) The Commissioner may consolidate successive eligible lists for a given title which result from successive open competitive or promotional examinations by one or more of the following methods:

1. Placing the first name on the later list after the last name of the prior list;
2. Supplementing an incomplete list with an eligible list for an appropriate title; or
3. Combining of names of eligibles by scores.

(b) When eligible lists are consolidated, the part of the eligible list which was promulgated first shall not continue beyond its expiration date.

Case Notes

The eligible list for Computer Service Technician (C1073P), Middlesex County was properly consolidated with a prior list for the same position that was extant per N.J.S.A. 11A:4-4c and N.J.A.C. 4A:4-3.5, with the eligibles who were listed on the earlier-issued list retaining their positions ahead of those who were listed on the later-issued list. In re Computer Serv. Technician (C0562M), Middlesex Cnty., CSC Docket No. 2013-2299, 2013 N.J. CSC LEXIS 854, Final Administrative Action (August 16, 2013).

4A:4-3.6 Additions to eligible lists

(a) The Chairperson of the Civil Service Commission or designee may add names to an eligible list at any time during the life of the list under the following circumstances:

1. A make-up examination has been given and a candidate has received a passing score;
2. To correct an error by the Civil Service Commission;
3. To implement an appeal decision;

4. Where a third party, such as a college or the Veterans Administration, has submitted documents to correct an administrative error; or

5. To place an eligible on a list in accordance with N.J.A.C. 4A:4-4.6A.

(b) When the name of an eligible is added to an existing list to correct an error made by the Civil Service Commission, an appropriate representative of the Commission shall determine the retroactive certification and/or appointment rights. When the name of an eligible is added to an existing list for any other reason, the Chairperson or designee shall determine the effect of the action on certifications and prior permanent appointments. See also N.J.A.C. 4A:4-1.4 for conditional regular appointments.

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

Improper deletion of applicant's name from list of persons eligible for resident's preference for appointment to city police department applicant would not warrant award of mandated appointment and back pay. *Nunan v. New Jersey Dept. of Personnel*, 244 N.J.Super. 494, 582 A.2d 1266 (A.D.1990).

4A:4-3.7 Priority of eligible lists

(a) When there is more than one current eligible list for a title, the priority of the lists shall be as follows:

1. Special reemployment, when the available position/title is in the department or autonomous agency from which the eligible was laid off, laterally displaced or demoted in lieu of layoff;
2. Promotional;
3. Special reemployment, when the available position/title is located in a department or autonomous agency other than that from which the eligible was laid off, laterally displaced or demoted in lieu of layoff;
4. Regular reemployment, police or fire reemployment; and
5. Open competitive.

(b) Reinstatement of a permanent employee following disability retirement shall have priority over appointment from any eligible list, except a special reemployment list. See N.J.A.C. 4A:4-7.12.

(c) The existence of an open competitive or promotional list in a jurisdiction receiving an employee in an intergovernmental transfer in accordance with N.J.A.C. 4A:4-7.1A shall not be a bar to such transfer.

(d) Reemployment of certain law enforcement officers and firefighters pursuant to the provisions of N.J.A.C. 4A:4-3.9 and 4A:4-3.10 shall have priority over appointment from any eligible list, except a special reemployment list.

(e) For purposes of this section, an autonomous agency in local service is one which, by statute, is a body corporate and has the powers of an appointing authority. In State service, an autonomous agency is one which, by law, is in but not under the supervision of a principal department.

Amended by R.1992 d.338, effective September 8, 1992.

See: 24 N.J.R. 2107(a), 24 N.J.R. 3091(b).

Added (b).

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)1 and 3; added new (c).

Amended by R.1996 d.471, effective October 7, 1996.

See: 28 N.J.R. 3208(a), 28 N.J.R. 4423(a).

Gave reemployment under 4A:4-3.9 and 3.10 priority over any eligible lists except special reemployment lists.

Amended by R.2001 d.420, effective November 19, 2001.

See: 33 N.J.R. 2567(a), 33 N.J.R. 3895(b).

Added (c); recodified former (c) and (d) as (d) and (e).

Case Notes

Police sergeant's right to cancel his retirement under pension regulations does not entitle him to immediate reemployment, which, instead, is controlled by priorities promulgated by civil service laws and regulations. Therefore, a trial court erred in granting the sergeant partial summary judgment in his suit asserting damages for a city's refusal to rehire him after he cancelled his retirement and sought reemployment in his former position, which had already been filled by the city. *Klawitter v. City of Trenton*, 395 N.J. Super. 302, 928 A.2d 900, 2007 N.J. Super. LEXIS 280 (App.Div. 2007).

County was not entitled to an order cancelling a certification for Computer Service Technician (C0562M), Middlesex County, that was issued in connection with a provisional appointment made to the subject title by the county's board of social services. Though the board of social services was an autonomous agency within the meaning of N.J.A.C. 4A:4-3.7(e), N.J.A.C. 4A:8-2.1(c)1i and N.J.A.C. 4A:1-1.3, an eligible list that was formulated in connection with a position within the board of social services applied to all positions in the county. The only exception to this rule involved special reemployment lists which were treated differently. Because the list at issue here was not a special reemployment list, the county was required to utilize the eligible list that was issued in connection with the board of social services. In re Computer Serv. Technician (C0562M), Middlesex Cnty., CSC Docket No. 2013-2299, 2013 N.J. CSC LEXIS 854, Final Administrative Action (August 16, 2013).

4A:4-3.8 Correction of errors

(a) The Department may correct an error at any time during the life of an eligible list.

(b) The Commissioner shall determine whether such correction shall affect any prior appointments or certifications.

(c) Corrections of errors may result in a change in ranking. See N.J.A.C. 4A:4-3.6.

Case Notes

Improper deletion of applicant's name from list of persons eligible for resident's preference for appointment to city police department applicant would warrant award of mandated appointment and back pay. *Nunan v. New Jersey Dept. of Personnel*, 244 N.J. Super. 494, 582 A.2d 1266 (A.D.1990).

4A:4-3.9 Reemployment program for certain law enforcement officers and firefighters

(a) A municipality or a county which has established a police department as described in N.J.S.A. 40A:14-180 may appoint any person to an entry level title in the police department who has:

1. Served as a law enforcement officer, other than a special law enforcement officer or seasonal law enforcement officer, in good standing in any State, county or municipal law enforcement department or agency;

2. In the case of service with the State, or a county or municipality operating under Title 11A, New Jersey Statutes, satisfactorily completed a working test period in a law enforcement title;

3. In the case of service with a county or municipality not operating under Title 11A, New Jersey Statutes, satisfactorily completed a comparable, documented probationary period in law enforcement title; and

4. For reasons of economy, efficiency or other related reasons, was laid off, or demoted from a law enforcement title to a non law enforcement title, within 60 months prior to the appointment permitted in (a) above.

(b) A municipality which has established a fire department as described in N.J.S.A. 40A:14-9.9, or a fire district established in accordance with N.J.S.A. 40A:14-70, may appoint any person to an entry level firefighter title who has:

1. Served as an officer or member, other than a temporary or seasonal officer or member, in good standing, in any fire department or fire district, or as a civilian Federal firefighter in good standing at any Federal military installation in New Jersey;

2. In the case of service with a fire department in a municipality or a fire district operating under Title 11A, New Jersey Statutes, satisfactorily completed a working test period;

3. In the case of service with a fire department in a municipality or a fire district not operating under Title 11A, New Jersey Statutes, satisfactorily completed a comparable, documented probationary period;

4. In the case of service as a civilian Federal firefighter, satisfactorily completed such firefighter training as is required for employment as a civilian Federal firefighter;

5. Except in the case of civilian Federal firefighters, for reasons of economy, efficiency or other related reasons, was laid off, or demoted from a firefighter title to a non-firefighter title, within 60 months prior to the appointment permitted in (b) above; and

6. As a consequence of the closure of a Federal military installation in New Jersey, been terminated as a civilian Federal firefighter within 60 months prior to the appointment permitted in (b) above.

New Rule, R.1996 d.471, effective October 7, 1996.

See: 28 N.J.R. 3208(a), 28 N.J.R. 4423(a).

Amended by R.1998 d.519, effective November 2, 1998.

See: 30 N.J.R. 2327(a), 30 N.J.R. 3938(a).

Rewrote (b).

Amended by R.2012 d.011, effective January 3, 2012.

See: 43 N.J.R. 2408(a), 44 N.J.R. 71(b).

In (b)5, substituted "60" for "36"; and in (b)6, substituted "60" for "48".

4A:4-3.10 Procedures for reemployment program for certain law enforcement officers and firefighters

(a) A municipality, county or fire district interested in making an appointment pursuant to N.J.A.C. 4A:4-3.9 (hereafter "program") may contact the Department of Personnel for a list of persons compiled as follows:

1. Those persons laid off or demoted as provided in the program from a law enforcement title to a non-law enforcement title in the case of service with a police department;

2. Those persons laid off or demoted as provided in the program from a firefighter title to a non-firefighter title in the case of service with a fire department in a municipality or a fire district; or

3. Those persons terminated as a civilian Federal firefighter as provided in the program.

(b) A person who would like to be placed on a list of persons as indicated in (a) above may contact the Department of Personnel to apply for inclusion on a list.

1. Placement on a list of persons terminated as a civilian Federal firefighter as provided in the program shall be determined based on the person's length of service as a civilian Federal firefighter.

(c) In selecting a person from the list, the municipality, county or fire district shall verify and certify to the Department of Personnel the eligibility of the person for appointment pursuant to this program.

1. A municipality or fire district interested in making an appointment under this program shall give first preference in making an appointment to residents of the municipality and second preference to residents of the county not residing in the municipality.

2. A county interested in making an appointment under N.J.A.C. 4A:4-3.9(a) shall give first preference in making an appointment to residents of the county.

(d) An appointment made under this program:

1. Shall be reported to the Department of Personnel;

2. Shall have priority over open competitive and promotional eligible lists and regular reemployment lists, but no such appointment shall be made if a special reemployment list exists for the title in the municipality, county or fire district interested in making the appointment;

3. Shall be made without regard to seniority, age, veteran's status or the municipality, county or fire district from which a person was laid off or demoted;

4. Shall not be subject to a working test period; and

5. Shall not be made to a title other than an entry level title without Department of Personnel approval.

(e) A person appointed under this program:

1. May not be appointed a second time under this program unless the person is again laid off or demoted for reasons of economy, efficiency or other related reasons;

2. Shall begin to accrue seniority as of the effective date of the new appointment;

3. Shall not retain any superior rank held in the municipality, county or fire district from which the person was laid off or demoted; and

4. Shall not be removed from the special reemployment list for the jurisdiction from which the person was laid off.

New Rule, R.1996 d.471, effective October 7, 1996.

See: 28 N.J.R. 3208(a), 28 N.J.R. 4423(a).

Amended by R.1998 d.519, effective November 2, 1998.

See: 30 N.J.R. 2327(a), 30 N.J.R. 3938(a).

Rewrote (a) and (b).

SUBCHAPTER 4. CERTIFICATION FROM ELIGIBLE LISTS

4A:4-4.1 Need for certification

(a) When a vacancy is to be filled in the competitive division of the career service from an eligible list, the appointing authority shall request a certification of names for regular appointment. Such request shall be submitted in advance under procedures set by the Department of Personnel to enable the Department to issue or authorize the necessary certification or advise that there is no appropriate eligible list.

(b) When a permanent competitive position has been filled on a nonpermanent basis, the Department of Personnel shall determine whether there is a need to issue a certification.

Case Notes

Applicant was not bypassed for appointment from the eligible list for Deputy Police Chief when the appointing authority decided to vacate the position and make no appointment. N.J.A.C. 4A:4-4.1(a) only required an appointing authority to request a certification upon its determination that an existing vacancy would be filled. In re Glen Camuso, Newark, CSC Dkt. No. 2013-1423, 2013 N.J. CSC LEXIS 140, Final Decision (January 24, 2013).

4A:4-4.2 Issuance of certification

(a) Upon determining that there is a need for a certification as provided in N.J.A.C. 4A:4-4.1, the Department of Personnel shall issue or authorize the issuance of a certification to the appointing authority containing the names and addresses of the eligibles with the highest rankings on the appropriate list.

1. When the Department of Personnel has accepted a single application for one or more title areas, pursuant to N.J.A.C. 4A:4-2.3(c), the certification shall be drawn from the pool of eligibles based on their title area and county preference and their residency.

(b) When a certification is issued, the Department shall notify or authorize the notification of the eligibles whose names appear on the list, at the last known address. See N.J.A.C. 4A:4-3.2(e) for address change notification.

(c) An appointing authority shall be entitled to a complete certification for consideration in making a permanent appointment, which means:

1. From special, regular and police and fire reemployment lists, the name of one interested eligible for each permanent appointment; or

2. From promotional and open competitive lists, the names of three interested eligibles for the first permanent appointment, and the name of one additional interested eligible for each additional permanent appointment. Eligibles who receive the same score shall have the same rank. If three or more eligibles can be certified as a result of this ranking without resorting to all three highest scores on the list, then only those eligibles will be certified.

i. When fewer than three interested eligibles are certified and no provisional currently serving in the title is listed on the certification, the appointing authority may either: make a permanent appointment; make a provisional appointment from the list; make a provisional appointment of another qualified person if no eligible on the list is interested; or vacate the position/title.

ii. When fewer than three interested eligibles are certified and a provisional who is currently serving in the title is listed on the certification, the appointing authority may either: make a permanent appointment; or vacate the position/title.

iii. When a certification is comprised of multiple lists and an eligible's name appears more than once, the eligible will only be counted once for purposes of making a complete certification.

(d) See N.J.A.C. 4A:10-2.2 for penalties for failure to appoint from a complete certification.

Amended by R.1997 d.482, effective November 17, 1997.
See: 29 N.J.R. 3385(a), 29 N.J.R. 4864(b).

Inserted (a)1.

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)2i, added "and no provisional currently serving in the title is listed on the certification"; added (c)2ii; recodified former (c)2ii as (c)2iii.

Case Notes

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 long 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).

4A:4-4.3 Certification from appropriate lists

(a) When an eligible list for a title is either unavailable or incomplete, the Department may authorize a certification from an eligible list for an appropriate title of the same or higher level, in the same or related series under the following conditions:

1. The education and experience requirements for both titles are substantially similar;

2. The necessary knowledge, skills and abilities were evaluated in the examination process;

3. The geographic scope of eligibility to which the announcement was limited is the same as or includes the geographic location of the original title; and

4. The appropriate eligible list may be used to supplement any existing list in order to establish a complete certification.

(b) The Department of Personnel may also authorize a certification from a common or similar State or local service eligible list under the following circumstances:

1. The appointing authority has requested the use of such list in writing;

2. The examination requirements of the titles for which the eligible lists may be certified shall be appropriate for the title in the requesting jurisdiction;

3. The State or local lists will be used to supplement the existing list in order to create a complete certification; and

4. Only those persons on the eligible list who have expressed an interest in working in the jurisdiction shall be certified.

(c) In local service, regular reemployment lists may be used to certify against vacancies in the same or comparable

titles in all appointing authorities in the respective jurisdiction, except school districts.

(d) See N.J.A.C. 4A:8-2.3 for uses of special reemployment lists in State and local service.

Case Notes

Civil Service Commission concluded that it was appropriate to relax the provisions of N.J.A.C. 4A:4-4.3(a) and certify the Human Services Specialist 1, Bilingual Spanish/English (C0056P), Morris County eligible list as appropriate for Human Services Specialist 1. The candidates at issue passed the Human Services Specialist 1 portion of the examination and they were assets to the County, successfully performing the duties of the Human Services Specialist 1 title. Utilization of the subject list would also expedite the appointment process and employ individuals who had already proven themselves as productive County employees. In re Human Servs. Specialist 1, Bilingual Spanish/English (C0056P), Morris Cnty., CSC Dkt. Nos. 2013-3104, 2013-3307, 2013-3308, 2013-3309, 2013 N.J. CSC LEXIS 678, Final Decision (July 17, 2013).

4A:4-4.4 Limitation on number of times eligible is certified

(a) A non-veteran eligible who has been certified to the same appointing authority from an open competitive list on three occasions and who has been passed over in favor of a lower ranked eligible on each occasion, shall have his or her name withheld from future certification to the same appointing authority. The appointing authority may request that such eligible be recertified, in which case only that eligible and any higher or equal ranking veteran eligible shall be certified.

(b) All eligibles on a promotional list shall be certified, in order of rank, as long as they remain on the list.

Petition for Rulemaking.
See: 32 N.J.R. 4016(b).
Petition for Rulemaking.
See: 33 N.J.R. 588(b).

4A:4-4.5 Certifications limited to persons of a particular sex, religion or national origin

(a) A certification may be issued limited to persons of a particular sex, religion or national origin of the eligibles, where such factors are bona fide occupational qualifications (BFOQ) that are essential to successful job performance and the normal operation of the appointing authority.

(b) The appointing authority shall determine those positions in State service and those specific titles in local service for which BFOQ designations are essential.

(c) A request for a BFOQ designation shall be signed by the agency or department head, or designee, and the affirmative action officer, and submitted by the appointing authority to the Department of Personnel, Division of Equal Employment Opportunity and Affirmative Action (EEO/AA) and shall include:

1. The purpose of the BFOQ being requested;
2. An accurate description of the employment for which the BFOQ is sought, including:

i. The position number in State service and the specific title in local service;

ii. The duties of the position and percentage of time required to perform those duties;

iii. The post location; and

iv. The shift designation.

3. A statement why a person without the specific BFOQ cannot perform the position's duties;

4. What accommodations were considered to permit persons without the BFOQ to perform the duties and why the accommodations were not adopted; and

5. Such other information as requested by the Division.

(d) The appointing authority shall have the burden of proof that a BFOQ designation is necessary.

(e) The Director, Division of EEO/AA shall review the request and advise the appointing authority in writing of his or her decision to either accept the BFOQ request or not accept the request based on insufficient justification.

(f) The Division of EEO/AA will audit BFOQ positions to eliminate artificial barriers that may exist to equal employment opportunity and particular BFOQ designations may be reconsidered or eliminated.

(g) Any person who has been denied an employment opportunity as a result of a BFOQ designation may contest the designation as a discrimination appeal in State service (N.J.A.C. 4A:7-3.2 et seq.) or a general appeal in local service (N.J.A.C. 4A:2-1.1).

4A:4-4.6 Eligibles on military leave

(a) Interested eligibles on military leave shall continue to be certified. The appointing authority may consider such eligibles immediately available for appointment even though reporting for work may be delayed.

(b) On return from military duty, an appointed eligible shall, after successful completion of the working test period, have the same rights, privileges and obligations as if the eligible had served continuously in the title from the original effective date of appointment.

4A:4-4.6A Certain persons returning from military service

(a) In accordance with P.L. 2012, c. 49, a member of the New Jersey National Guard or reserve component of the United States Armed Forces who is on an open competitive eligible list but is called to active Federal duty prior to the list's expiration date, and who does not return from active Federal duty until after the list's expiration, may apply for placement, within 12 months of expiration, on an active open competitive eligible list.

1. To be considered for placement on an active open competitive eligible list, the person shall:

- i. Complete an examination application;
- ii. Meet the eligibility requirements provided in the examination announcement for the active list, notwithstanding that the applicant has not filed the application by the announced closing date; and
- iii. Submit sufficient proof of active Federal duty. Submission by the individual of a completed Form DD214 shall be considered sufficient proof.

2. The applicant shall not be required to pay the examination application processing fee set forth in N.J.A.C. 4A:4-2.17.

3. If the applicant fails to meet the eligibility criteria enumerated in (a)1 above, the applicant shall be disqualified from placement on an active eligible list. See N.J.A.C. 4A:4-6.2 and 6.3 for actions against disqualified persons and disqualification appeals.

(b) The active eligible list for which the applicant applies shall be for the same title and jurisdiction, and result from the same test mode, as the expired list, except that:

1. In the case of entry level law enforcement testing, the local jurisdiction, if any, need not be the same, due to the fact that such testing is announced on a Statewide basis and all eligibles are placed in a single pool from which certifications are issued. See (d) below for procedures to follow when the test mode is not the same.

(c) In placing the name of the applicant on an active eligible list:

1. Except as provided in (d) and (e) below, the applicant shall retain the final average earned on the test that resulted in the expired list; and

2. The applicant's name shall be added to the active list, for prospective appointment only, immediately following the disabled veterans and veterans, if any.

i. If the applicant is awarded veterans or disabled veterans status in accordance with N.J.A.C. 4A:5-1.1 prior to the promulgation of the active list, the applicant's name shall be placed among the veterans or 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 perfor-

mance, 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 re-

moved 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).

Sufficient basis existed in the record to remove a candidate's name from the eligible list for Correction Officer Recruit for falsifying his application 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. A single public nuisance citation that resulted from a charge of underage consumption and possession of alcohol beverages was not sufficient under N.J.S.A. 11A:4-11, in conjunction with N.J.A.C. 4A:4-4.7(a)4 to remove his name, but it was a falsification of his application and indicative of his lack of integrity and questionable judgment. In re Vincenzo Tubito, Corr. Officer Recruit (S9987M), Dep't. of Corr., CSC Dkt. No. 2013-3470, 2013 N.J. CSC LEXIS 1150, Final Decision (December 18, 2013).

Sufficient cause existed to remove a candidate's name from the Police Officer 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)9, based on his unsatisfactory driving record. The record established that his driving history included five speeding violations with three of the violations occurring within a nine-month span and in close proximity to the date of the certification of the list. The candidate's driving history showed a pattern of disregard for the law and questionable judgment, which was unacceptable for an individual seeking a position as a Police Officer. In re Alex Davis, Jr., Police Officer (S9999M), East Orange, CSC DKT. No. 2013-3123, 2013 N.J. CSC LEXIS 1060, Final Decision (December 18, 2013).

Civil Service Commission ordered that a candidate's name be certified at the time of the next certification for Police Officer. The

appointing authority had removed his name pursuant to N.J.A.C. 4A:4-4.7(a)6 on the grounds that he failed to respond to the notice of certification. In submitting a copy of his military orders and a notarized statement under oath that he did not receive the Notice of Certification, the candidate demonstrated that, due to forces beyond his control, he was unable to comply with the instructions listed on the notice. Further, the appointing authority did not object to the restoration of the candidate's name on the subject eligible list. In re John Coy, Police Officer (S9999M), Fair Lawn, CSC Dkt. No. 2013-3576, 2013 N.J. CSC LEXIS 1050, Final Decision (December 18, 2013).

Sufficient basis existed in the record to remove a candidate's name from the eligible list for Police Officer 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. He was not truthful with the appointing authority's investigators on the subject of a child he claimed on his tax return. During an arrest that was less than four years prior to his consideration for appointment to the instant position, the candidate twice gave an arresting Police Officer a false date of birth so as to deceive the Police Officer into believing his was over 21 years old. In re Antonia J. Santos, Police Officer (S999M) City of Jersey City, CSC Dkt. No. 2013-3205, 2013 N.J. CSC LEXIS 1049, Final Decision (December 18, 2013).

Appointing authority presented a sufficient basis to remove a candidate's name from the Correction Officer Recruit eligible list on the basis of falsification of the employment application 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. He failed to list all of his previous residences or a charge of Making Communications in an Annoying/Alarming Manner. In re Juan Abreu, Corr. Officer Recruit (S9987M), Dep't. of Corr., CSC Dkt. No. 2013-2757, 2013 N.J. CSC LEXIS 1046, Final Decision (December 18, 2013).

Civil Service Commission ordered that the list for Correction Officer Recruit be revived for a candidate to be considered for appointment at the time of the next certification for prospective employment opportunities only. The candidate's removal was not warranted under N.J.A.C. 4A:4-4.7(a)1, in conjunction with N.J.A.C. 4A:4-6.1(a)6, and N.J.A.C. 4A:4-4.7(a)1, in conjunction with N.J.A.C. 4A:4-6.1(a)7. Taking into consideration that the candidate's arrest was an isolated incident that occurred 18 years before the closing date for the examination, the fact that he complied with the terms of his PTL, and the totality of the evidence in the record, including gainful employment from 1994 through the present, the appointing authority did not presented a sufficient basis to remove the candidate's name from the subject eligible list based on his criminal record. In addition, it was clear that the candidate disclosed the 1993 arrest and he did not omit and/or falsify any material information. He merely misunderstood one "yes" or "no" question. In re Miguel Vega, Corr. Officer Recruit (S9987M0), Dep't. of Corr., CSC Dkt. No. 2014-411, 2013 N.J. CSC LEXIS 1021, Final Decision (December 18, 2013).

Appointing authority presented a sufficient basis to remove a candidate's name from the Correction Officer Recruit eligible list due to the falsification of her pre-employment application 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, and an unsatisfactory employment history pursuant to N.J.A.C. 4A:4-4.7(a)1, in conjunction with N.J.A.C. 4A:4-6.1(a)7. She failed to account for her juvenile offense, and her prior employment terminations for lateness and disciplinary actions made her an unacceptable candidate. In re Crystal Johnson, Corr. Officer Recruit (S9987M), Dep't. of Corr., CSC Dkt. No. 2013-1262, 2013 N.J. CSC LEXIS 1009, Final Decision (December 18, 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).

Sufficient basis existed under N.J.A.C. 4A:4-4.7(a)1 in conjunction with N.J.A.C. 4A:4-6.1(a)9 to remove a candidate's name from the eligible list for Correction Officer Recruit (S9987M), Department of Corrections, due to an unsatisfactory driving record. Even though most of the points on the candidate's driver's license were received between 13 and 23 years prior to his consideration for appointment, his driving record within the last few years preceding his certification for appointment was still unsatisfactory, including speeding and nine suspension orders. In re Joel Stephens Corr. Officer Recruit (S9987M), Dep't. of Corrs., CSC Dkt. No. 2013-2726, 2013 N.J. CSC LEXIS 896, Final Decision (October 16, 2013).

Sufficient basis existed under N.J.A.C. 4A:4-4.7(a)1 in conjunction with N.J.A.C. 4A:4-6.1(a)6 to remove a candidate's name from the eligible list for Correction Officer Recruit (S9987M), Department of Corrections, on the basis that he falsified his employment application. He did not indicate on his employment application that he had been charged with DWI, refusal to submit to a breath test, and animal cruelty, and he did not explain the circumstances of those incidents on his application. In re David Soares, Corr. Officer Recruit (S9987M), Dep't. of Corrs., CSC Dkt. No. 2013-2645, 2013 N.J. CSC LEXIS 887, Final Decision (October 16, 2013).

Candidate's name was improperly removed from the certification list for Taxpayer Service Representative 1 pursuant to N.J.A.C. 4A:4-4.7(a)6. Although the appointing authority asserted that the candidate failed to respond to the Notice of Certification, she submitted a notarized statement under oath, attesting to the fact that she never received the certification notice. Moreover, the appointing authority did not submit an objection to the candidate's appeal. In re Anuradha Ramachandran, Taxpayer Service Representative 1 (PS4014U), Dep't. of the Treasury, CSC Dkt. No. 2013-1656, 2013 N.J. CSC LEXIS 990, Final Decision (October 8, 2013).

Candidate did not meet the announced experience requirements for eligibility to take the open competitive examination for Administrative Analyst 3 and therefore the determination of the Division of Selection Services and Recruitment was appropriate under N.J.A.C. 4A:4-2.3(b)2. Her "Mini-MBA" could not be substituted for one year of experience because it was not an accredited Master's program. Even with the candidate's clarifying description of her duties as serving in the acting supervisor's absence and planning, recommending, or implementing budgets for the City of Newark, none of her positions involved job responsibilities in the required areas. In re Lori Ghayami, Administrative Analyst 3 (S0708P), CSC Dkt. No. 2013-2187, 2013 N.J. CSC LEXIS 980, Final Decision (October 3, 2013).

Appointing authority presented a sufficient basis to remove a candidate's name from the eligible list for Police Officer pursuant to N.J.S.A. 11A:4-11 and N.J.A.C. 4A:4-4.7(a)4 due to the candidate's arrest record, driving record, and the nature of the underlying incidents. He did not dispute that he was arrested on three occasions or provide any explanations regarding his involvement in those incidents. Further, the candidate was an adult at the time of two arrests, and it was clear that they were not isolated incidents since he was arrested on three occasions since 2001. In re Marc Vero, Police Officer (S9999M), Boonton, CSC Dkt. No. 2013-2507, 2013 N.J. CSC LEXIS 963, Final Decision (October 2, 2013).

Candidate's name was properly removed from the eligible list for Aviation Mechanic pursuant to N.J.A.C. 4A:4-4.7(a)1, in conjunction with N.J.A.C. 4A:4-6.1(a)1 because he did not meet the eligibility requirements for the subject examination. Although he had many years of experience as a mechanic, he did not meet the recent experience

requirement for a valid FAA approved Airframe and Powerplant license. In re Richard Porbansky, Aviation Mech., CSC Dkt. No. 2013-2561, 2013 N.J. CSC LEXIS 957, Final Decision (October 2, 2013).

Appointing authority failed to show sufficient justification for removing a candidate's name from the eligible list for Social Worker 2 pursuant to N.J.A.C. 4A:4-4.7(a)1, in conjunction with N.J.A.C. 4A:4-6.1(a)1. Although the appointing authority maintained that the candidate did not have the necessary experience, a review of the record indicated that the candidate met the announced educational requirement of a Bachelor's degree and the experience requirement of one year of experience in social case work. A review of the job specification did not indicate that experience in working with adults with chronic and persistent mental illness was necessary to be eligible for the position. In re Maria Lostrangio, Social Worker 2 (S2041N), CSC Dkt. No. 2013-803, 2013 N.J. CSC LEXIS 717, Final Decision (September 19, 2013).

Appointing authority failed to show sufficient justification for removing a candidate's name from the eligible list for County Correction Officer, Morris County, 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 the appointing authority found that the candidate falsified his employment application, his consent to a vehicle search by police officers or his failure to list this incident on his application was not sufficient cause for removal. In re William Mauro, Cnty. Corr. officer (C9972M), Morris Cnty., CSC Dkt. No. 2013-606, 2013 N.J. CSC LEXIS 708, Final Decision (September 19, 2013).

The removal of an applicant's name from the eligible list for appointment to the title of Fire Fighter (M2377H), Newark, which removal occurred at the behest of the appointing authority per N.J.A.C. 4A:4-6.1(a)9 on the ground that the applicant did not reside in Newark on and after the closing date as required by N.J.A.C. 4A:4-2.11(c)1 was lawful. Though the applicant argued that he was living in an apartment in Newark that was rented to his brother, other evidence strongly inferred that he was residing in North Plainfield in a property that he and his sister owned. Moreover, he admitted to having used the North Plainfield address for the purpose of auto insurance, presumably because use of that address would yield lower premiums. The applicant thus failed to carry the burden of proof allocated to him by N.J.A.C. 4A:4-6(b), in conjunction with N.J.A.C. 4A:4-4.7(d), to show by a preponderance of the evidence that the appointing authority's decision to remove his name from the eligible list was in error. In re Cerchio, Fire Fighter (M2377H), City of Newark, CSC Docket No. 2013-1815, 2013 N.J. CSC LEXIS 860, Final Administrative Action (September 18, 2013).

An Administrative Law Judge (ALJ) concluded that it was lawful per N.J.A.C. 4A:4-4.7(a)1 for the Civil Service Commission to grant the request of a city that was the appointing authority for a position as a police officer that the Commission remove the name of a candidate for that position from the list of eligibles on the ground that his background was unsatisfactory per N.J.A.C. 4A:4-6.1(a)9 and foreclosed his appointment to the position. The candidate was removed for omitting answers to questions on the application and for not submitting copies of certain tax returns as required by the city. The city also cited the additional ground that the candidate had denied knowing or associating with any person convicted of a criminal offense/felony despite the fact that one of his online sources included a picture of him with his cousin, who was a known felon, at a family party celebrating the cousin's release from prison after serving 20 years in prison for drug distribution. In re Olivero, Police Officer (S9999M), Elizabeth, CSC Docket No. 2013-1866, 2013 N.J. CSC LEXIS 828, Final Administrative Action (September 18, 2013).

Appointing authority properly removed a candidate's name from the eligible list for Fire Fighter on the basis of having an unsatisfactory criminal record pursuant to N.J.S.A. 11A:4-11 in conjunction with N.J.A.C. 4A:4-4.7(a)4. Given that the candidate failed to explain the circumstances surrounding two of his arrests, his age at the time of the arrests, and the fact that he was arrested at least three times, the expungement of charges could not outweigh those factors. In re Yahsyn Ward, Firefighter (M2321H), Atlantic City, CSC Dkt. No. 2013-2912, 2013 N.J. CSC LEXIS 745, Final Decision (September 18, 2013).

A decision of the Division of Classification and Personnel Management upholding the removal of a candidate's name from the eligible list for Police Officer (S9999M), City of Elizabeth, on the ground that he did not complete preemployment processing was rejected by the Civil Service Commission, which declined to exercise its power per N.J.A.C. 4A:4-4.7(a)11 to remove an eligible's name from an eligible list, and the candidate's name was restored to the list. The appointing agency claimed to have sent him two letters notifying him to appear for preemployment processing at police headquarters. Though there was a presumption that mail that was correctly addressed, stamped and mailed was generally received by an addressee, the candidate had submitted a notarized statement of his grandfather establishing that the grandfather resided at the same address as the candidate and that no such correspondence had been received. That meant that the candidate had met his burden of proof per N.J.A.C. 4A:4-6.3(b), in conjunction with N.J.A.C. 4A:4-4.7(d), to show that his name had been removed by error. In re DeSouza, Police Officer (S9999M), City of Elizabeth, CSC Docket No. 2013-1263, 2013 N.J. CSC LEXIS 695, Final Administrative Determination (September 4, 2013).

Appointing authority for position of Police Officer (S9999K), City of Newark, was properly permitted to remove the name of a candidate from the eligible list for appointment on the basis of an unsatisfactory criminal record, as permitted by N.J.S.A. 11A:4-11 and N.J.A.C. 4A:4-4.7(a)4. The incidents in issue involved two separate domestic violence charges. Even though the charges were ultimately dismissed, they were serious and could not be ignored. Moreover, the candidate's earlier resignation from the position of Correction Officer Recruit, which resignation was not in good standing, demonstrated the candidate's questionable judgment. Nor could the candidate's claims that he had been employed by the city school district for 10 years be corroborated. On the totality of the evidence, the appointing authority presented a sufficient basis to remove the candidate's name from the eligible list. Because the candidate did not carry his burden to show by a preponderance of the evidence that the decision was in error, as required by N.J.A.C. 4A:4-6.3(b), the decision would not be disturbed by the Civil Service Commission. In re Jones, Police Officer (S9999K), City of Newark, CSC Docket No. 2012-3303, 2013 N.J. CSC LEXIS 817, Final Administrative Decision (August 16, 2013).

Appointing authority for position of Correction Officer Recruit (S9987M), Department of Corrections, was properly permitted to remove the name of a candidate from the eligible list for appointment on the basis of an unsatisfactory employment history as permitted by N.J.A.C. 4A:4-4.7(a)1, in conjunction with N.J.A.C. 4A:4-6.1(a)7. The candidate did not dispute the fact that he had been terminated from one position for excessive absenteeism, from a second position for fighting and from a third position for refusing to work at certain locations. The position at issue was reserved for employees who exhibited leadership skills, a positive work ethic and respect for rules and regulations, and a correction officer recruit was held to a higher standard than a civilian public employee. Because the candidate did not carry his burden of proof, per N.J.A.C. 4A:4-6.3(b) and N.J.A.C. 4A:4-4.7(d), to show by a preponderance of the evidence that the decision was in error, it was appropriate for the appointing authority to remove the candidate's name from the eligible list, and the candidate was not entitled to relief therefrom. In re Gallman, Corr. Officer Recruit (S9987M), Dep't of Corrs., CSC Docket No. 2013-1265, 2013 N.J. CSC LEXIS 874, Final Administrative Decision (August 15, 2013).

Order removing an applicant's name from the eligible list for Correction Officer Recruit (S9987M), Department of Corrections on the ground that she had falsified her employment application was sustained by the Civil Service Commission as appropriate under N.J.A.C. 4A:4-4.7(a)1 and N.J.A.C. 4A:4-6.1(a)6. The record established that the applicant had claimed that she was "let go" by a retailer because of economic setbacks when in reality she had been terminated for falsification of her time card. Moreover, her failure to disclose that she had received a "letter of instruction" from the U.S. Army Reserve on account of her failure to attend required drills and had been transferred from her unit due to unexcused absences because the same constituted "discipline" that was required to be disclosed. Her failure to accurately disclose these items constituted a failure to follow instructions and a failure to provide complete and accurate information and afforded just

cause for the removal of her name from the eligible list. In re Yvonne Crosby, Corr. Officer Recruit (S9987M), Dep't of Corrs., CSC Dkt. No. 2013-839, 2013 N.J. CSC LEXIS 487, Final Decision (August 2, 2013).

Appointing authority had a sufficient basis to remove a candidate's name from the eligible list for County Correction Officer (C9970M), Passaic County, on the ground that he was not a suitable candidate for appointment as a correction officer based on numerous negative items on his background report, including numerous traffic violations, the existence of a final restraining order against the candidate in connection with a domestic conflict, and an assault charge. Such items constituted "sufficient reason" within the meaning of N.J.A.C. 4A:4-4.7(a)1, in conjunction with N.J.A.C. 4A:4-6.1(a)9, for removal of the candidate's name from the eligible list, and the candidate had failed to show by a preponderance of evidence per N.J.A.C. 4A:4-6.3(b), in conjunction with N.J.A.C. 4A:4-4.7(d), that the appointing authority's decision was in error. In re John Falconi, Cnty. Corr. Officer (C9970M), Passaic Cnty., CSC Dkt. No. 2013-678, 2013 N.J. CSC LEXIS 485, Final Decision (July 31, 2013).

An applicant seeking appointment as a County Correction Officer was properly removed from the eligible list by the appointing authority on account of her failure to fully disclose her criminal record despite her claims that the application did not specifically request the information and that she merely "forgot" about the charges due to the lapse of time. Based on the number of occasions on which the applicant had been arrested and the seriousness of the charges, her claims challenging the alleged lack of specificity in the charges or that she merely forgot about them were unpersuasive. That is, the evidence that the applicant had made false statements of material fact amply supported the appointing authority's use of the authority granted by N.J.A.C. 4A:4-4.7(a)1 and N.J.A.C. 4A:4-6.1(a)6 to remove the applicant's name, and the applicant failed to carry her burden of proof per N.J.A.C. 4A:4-6.3(b) to show by a preponderance of the evidence that the decision was in error. In re Jennifer Picone, Cnty. Corr. Officer (C9972M), Morris Cnty., CSC Dkt. No. 2013-217, 2013 N.J. CSC LEXIS 670, Final Decision (July 19, 2013).

Sufficient basis existed in the record for an appointing authority 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)9 due to an unsatisfactory background report. He admitted that he smoked marijuana within six months of his certification from the eligible list. Thus, at the time of the incident, he knew that he was a candidate for a law enforcement position. In re Shaun Woodruff, Corr. Officer Recruit (S9987M), Dep't. of Corrs., CSC Dkt. No. 2013-1021, 2013 N.J. CSC LEXIS 673, Final Decision (July 17, 2013).

Sufficient basis existed in the record for an appointing authority 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)9 when he did not verify his employment. He did not follow the instructions provided by the appointing authority despite acknowledging his awareness that he was required to do so. In re Ubong Utuk, Corr. Officer Recruit (S9987M), Dep't. of Corrs., CSC Dkt. No. 2013-2498, 2013 N.J. CSC LEXIS 672, Final Decision (July 17, 2013).

It was appropriate for an appointing authority to remove a candidate's name from the eligible list for Police Lieutenant pursuant to N.J.A.C. 4A:4-4.7(a)1 in conjunction with N.J.A.C. 4A:4-6.1(a)7. The Civil Service Commission had serious concerns with the candidate's extensive minor disciplinary history, particularly given that the nature of the infractions evidenced his inclination for bad judgment and lack of discipline. Such qualities were unacceptable for individuals applying for the position of Police Lieutenant. In re James Schulkes, Police Lieutenant (PM2547K), Plainfield, CSC Dkt. No. 2013-19, 2013 N.J. CSC LEXIS 671, Final Decision (July 17, 2013).

Civil Service Commission found the serious nature of charges against an applicant, coupled with the recent nature of a disciplinary action, sufficient cause to remove an applicant's name from the Assistant Social Work Supervisor 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)9. The applicant's 10 day suspension for conduct unbecoming a public employee was properly

considered by the appointing authority when considering him for appointment. He was found to have engaged in an inappropriate e-mail relationship with a former patient, and he failed to report the relationship to his supervisor for more than a year, until the former patient indicated that he was suicidal. In re Jeffrey Glover, Assistant Social Work Supervisor, Psychiatric (PS7533K), Greystone Park Psychiatric Hosp., CSC Dkt. No. 2013-1221, 2013 N.J. CSC LEXIS 543, Final Decision (June 28, 2013).

Civil Service Commission ordered the revival of the eligible list for Emergency Medical Technician and the certification of an applicant's name at the time of the next certification. Although the appointing authority requested the removal of the applicant's name pursuant to N.J.A.C. 4A:4-4.7(a)6 when it did not receive his response to the Notice of Certification, the applicant demonstrated that he complied with the instructions in submitting a copy of his response and a notarized statement under oath that he did respond to the Notice of Certification. In re David Brown, Emergency Medical Technician (M1007L), CSC Dkt. No. 2013-1537, 2013 N.J. CSC LEXIS 542, Final Decision (June 28, 2013).

Applicant was properly removed from the Senior Quality Control Reviewer eligible list under N.J.A.C. 4A:4-4.7(a). After his response to the appointing authority was unclear as to whether or not he was interested in interviewing for the position, the fact that he refused to accept mail from the appointing authority effectively thwarted any opportunity for the appointing authority to provide any accommodation that the applicant might need for the interview process. In re Louis P. Toscano, Senior Quality Control Reviewer (S0369P), Dep't. of Human Servs., CSC Dkt. No. 2013-2722, 2013 N.J. CSC LEXIS 560, Final Decision (June 27, 2013).

Candidate did not provide a basis to disturb the determination of the Division of Selection Services and Recruitment that removed his name from the eligible list for Principal Engineer, Bridges, pursuant to N.J.A.C. 4A:4-4.7(a)1 in conjunction with N.J.A.C. 4A:4-6.1. The appointing authority contended that, when questioned in detail regarding some of the design experience on his resume, in several instances the candidate indicated that he did not actually perform the design work that was represented in his experience, and he failed to give specific information to dispute these assertions. In re Mohammed Ullah, Principal Engineer, Bridges (C2206N), Burlington Cnty., CSC Dkt. No. 2013-1224, 2013 N.J. CSC LEXIS 651, Final Decision (June 5, 2013).

Appointing authority was entitled to remove a candidate's name from the eligible list for Fire Fighter (M2508M), City of Bridgeton, on the finding that he had failed to disclose a negative employment history and the existence of a loan for which he was a cosigner because those omissions were material. Since the candidate's failure to disclose the information was indicative of a lack of integrity and poor judgment, N.J.A.C. 4A:4-4.7(a)1, in conjunction with N.J.A.C. 4A:4-6.1(a)6 provided authority for the removal of the candidate's name from the eligible list. In re Brett Busnardo, Fire Fighter (M2508M), City of Bridgeton, CSC Dkt. No. 2012-2959, 2013 N.J. CSC LEXIS 622, Final Decision (May 16, 2013).

Candidate who was certified to the Department of Military and Veterans Affairs and to the Department of Human Services from the same eligible list for the title of Head Cook 2 was properly removed from consideration for both positions on the basis that he had failed to properly complete his employment application. The candidate was required to list all convictions that had not been expunged but failed to disclose a conviction for possession of marijuana, thereby submitting a falsified application. Such conduct constituted grounds 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 removal of the candidate's name from the eligible list. In re John Bushman, Head Cook 2 (S0760M), Dep't of Military and Veterans Affairs and Head Cook 2 (S0760M), Dep't of Human Servs., CSC Dkt. Nos. 2012-2708, 2012-2476, 2013 N.J. CSC LEXIS 492, Final Decision (May 15, 2013).

Sufficient cause existed to remove an applicant's name from the Correction Officer Recruit eligible list based on the significant amount of negative information in his employment and criminal history and the lack of evidence of his rehabilitation efforts. His employment

terminations exhibited a lack of respect for the law and rules, which reflected adversely to the position sought pursuant to N.J.A.C. 4A:4-6.1(a)(7), and although his convictions either appeared not to be criminal in nature or were violations of township ordinances, which would not give rise to the disability under N.J.A.C. 4A:4-4.7(a)4, the fact that he was involved in such activity reflected upon his character and his ability to perform the duties of the position at issue. In re Michael c. Jakub, Jr., Correction Officer Recruit (S9987M), Dep't of Corrections, CSC Dkt. No. 2013-1319, 2013 N.J. CSC LEXIS 366, Final Decision (May 2, 2013).

Applicant's name was restored to the eligible list for Correction Officer Recruit but was reflected as bypassed. The existence of a conviction for operating a motor vehicle under the influence of drugs or alcohol under the age of 21 was insufficient to remove his name from the list pursuant to N.J.A.C. 4A:4-4.7(a)1 and N.J.A.C. 4A:4-6.1(a)9 because his offense was a one-time event that occurred over six years prior while the applicant was a minor, and the applicant had made efforts at mitigation. However, his driving record provided sufficient cause to bypass him under N.J.A.C. 4A:4-4.8. In re Kyle Camaraza, Correction Officer Recruit (S99887M), Dep't. of Corrections, CSC Dkt. No. 2013-175, 2013 N.J. CSC Lexis 281, Final Decision (May 1, 2013).

Applicant's name was removed from the eligible list for Fire Fighter on the basis of his age pursuant to N.J.A.C. 4A:4-4.7(a)1 and N.J.A.C. 4A:4-6.1(a)2. While the applicant's certification stated that he spent five years in sea service aboard a war vessel and was involved in three separate military actions, it did not state the total amount of time he actually spent in patrolling the Persian Gulf during Operation Desert Shield/Desert Storm and in the territorial waters of Somalia during Operation Restore Hope. Consequently his age could not be recalculated. In re Wilfredo Ruiz, Fire Fighter (M2561M), City of Paterson, CSC Dkt. No. 2013-519, 2013 N.J. CSC LEXIS 246, Final Decision (May 1, 2013).

Sufficient basis existed 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)1 and N.J.A.C. 4A:4-6.1(a)9 when the record reflected that he had one violation for driving after underage drinking and more than 12 other moving vehicle violations. In re Thomas Moore IV, Correction Officer Recruit (S9987M), Dep't of Corrections, CSC Dkt. No. 2012-3326, 2013 N.J. CSC LEXIS 265, Final Decision (May 1, 2013).

Appointing authority presented a sufficient basis 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)11 because she did not complete preemployment processing. She acknowledged that she was aware that she was required to follow the instructions provided by the appointing authority, but she neither listed having taken the General Education Development examination nor verified her employment with the three employers listed on her application. In re Atiya Whitten, Correction Officer Recruit (S9999K), Dep't of Corrections, CSC Dkt. No. 2012-3178, 2013 N.J. CSC LEXIS 232, Final Decision (May 1, 2013).

Department of Corrections presented a sufficient basis under N.J.A.C. 4A:4-4.7(a)1, in conjunction with N.J.A.C. 4A:4-6.1(a)6, to remove the name of an applicant from the Correction Officer Recruit eligible list on the basis that she falsified her employment application. She failed to list that she was charged with possession of a weapon. While the applicant did indicate on the application that she had been arrested, indicted, charged with, or convicted of a criminal offense, she did not provide an explanation. She answered "yes" that she had police contact or had been taken into custody; however, her explanation was incomplete and she wrote that she had "no charges" from the incident. In re Shadira Slater, Correction Officer Recruit (S9987M), Dep't. of Corrections, CSC Dkt. No. 2013-766, 2013 N.J. CSC LEXIS 303, Final Decision (April 17, 2013).

Appointing authority presented a sufficient basis under N.J.A.C. 4A:4-4.7(a)1, in conjunction with N.J.A.C. 4A:4-6.1(a)6, to remove the name of an applicant from the eligible list for County Correction Officer Recruit on the basis that she falsified her employment application. The record reflected that she did not disclose an Unlawful Conduct/Beach Recreation Area charge that was issued against her. While the applicant

maintained that she was never charged with the offense and was therefore unaware of it, she failed to submit any evidence to support her claim of stolen identity, and the Civil Service Commission is not persuaded by her assertions. In re Alicia Lomas, Correction Officer Recruit (S9987M), Dep't. of Corrections, CSC Dkt. No. 2013-874, 2013 N.J. CSC LEXIS 302, Final Decision (April 17, 2013).

Sufficient basis existed 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)11 because she did not complete preemployment processing. She was not admitted because she failed to follow the instructions to wear business attire to her processing appointment by wearing flip flop sandals, and she signed a statement that she arrived 20 minutes late. In re Joyce Sunkett, Correction Officer Recruit (S9987M), Dep't of Corrections, CSC Dkt. No. 2013-1585, 2013 N.J. CSC LEXIS 301, Final Decision (April 17, 2013).

Sufficient basis existed to remove an applicant's name from the eligible list for County Correction Officer due to an unsatisfactory background report. Even if his convictions had been expunged, he still could be rejected under N.J.S.A. 2C:52-27(c), N.J.S.A. 11A:4-11, and N.J.A.C. 4A:4-4.7(a)4 because he was seeking employment as a correction officer. As to his other arrests, the applicant did not explain the circumstances under which they occurred or provide any evidence of rehabilitation. In re Derek Kines, County Correction Officer (C9979M), Essex County, CSC Dkt. No. 2013-1022, 2013 N.J. CSC LEXIS 299, Final Decision (April 17, 2013).

Appointing authority presented sufficient cause to remove an applicant's name from the Automotive Mechanic 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)5 and 4A:4-6.1(a)6, and 4A:4-6.1(a)7. A background check revealed that the applicant had been removed from employment with the State of New Jersey and had an opportunity for a hearing. He failed to present this material information on his application. In re Douglas P. Craig, Automotive Mechanic (S0268L), CSC Dkt. No. 2013-642, 2013 N.J. CSC LEXIS 298, Final Decision (April 17, 2013).

Affidavit attesting that an applicant for the position of Human Services Specialist 1 (C0395K), Camden County Board of Social Services in fact had never received a notice of certification reflecting that she had achieved a passing score and was ranked on the eligible list afforded sufficient grounds for relief from a determination by the Division of Classification and Personnel Management that N.J.A.C. 4A:4-4.7(a)6 authorized the removal of her name from the list due to her failure to respond to the notice because the affidavit satisfied the applicant's burden of proof, imposed per N.J.A.C. 4A:4-6.3(b), that she show by a preponderance of the evidence that the decision to remove her name was in error. In re Dort-Hinds, Human Services Specialist 1 (C0395K), Camden County Board of Social Services, CSC Dkt. No. 2013-517, 2013 N.J. CSC LEXIS 210, Final Agency Action (April 4, 2013).

Appointing authority presented a sufficient basis to remove an applicant's name from the eligible list for Corrections Officer Recruit on the basis of an unsatisfactory criminal record pursuant to N.J.S.A. 11A:4-11 and N.J.A.C. 4A:4-4.7(a)4. While some time has passed since the issuance of restraining orders, the fact that the applicant had an active final restraining order and a temporary restraining issued against him could not be ignored. He also failed to disclose his arrests on his application, warranting removal from the 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. In re Hodges D. Horton, Jr., Correction Officer Recruit (S9987M), Dep't. of Corrections, CSC Dkt. No. 2012-3162, 2013 N.J. CSC LEXIS 204, Final Decision (March 6, 2013).

Removal, by the Department of Corrections (DOC), of a candidate's name from the Correction Officer Recruit (S9987M), DOC eligible list on the basis that she had falsified her employment application was authorized by N.J.A.C. 4A:4-4.7(a)1 and N.J.A.C. 4A:4-6.1(a)6, which together allowed a candidate's name to be removed from an employment list for making a false statement of any material fact or attempting any deception of fraud in any part of the selection or appointment process because the candidate failed to include, in the list of criminal charges

that had been filed against her, a charge that she had received stolen property, and then claimed both to have forgotten about the offense and to not have known that it was ever filed. Because the candidate withheld material information, thereby failing to present and complete and accurate picture of her background, the DOC had a sufficient basis for its decision to remove her name from the eligible list and her appeal was properly denied. In re Anrea Darby, Correction Officer Recruit (S9987M), Department of Corrections, CSC Dkt. No. 2013-948, Final Decision (February 21, 2013).

Finding by the Division of State and Local Operations (SLO) that the Department of Corrections had properly removed a candidate's name from the Correction Officer Recruit (S9987M) eligible list despite the fact that it had been certified based on the Department's finding, as authorized by N.J.A.C. 4A:4-4.7, that the candidate's background report contained items that rendered him unsuitable for the position was rejected on review by the Civil Service Commission. The candidate's submission, which included evidence that the candidate was a young adult when he committed the claimed offenses and that the items had been expunged, taken with substantial evidence of rehabilitation, supported the conclusion that the candidate had met his burden of proof per N.J.A.C. 4A:4-6.3(b) to demonstrate that his background did not warrant the removal of his name from the eligible list and that his name was properly reinstated therein. In re Daniel Esteves, Correction Officer Recruit (S9987M), Department of Corrections, CSC Dkt. No. 2012-1750, 2013 N.J. CSC LEXIS 113 (February 21, 2013).

Removal, by the Department of Corrections (DOC), of a candidate's name from the Correction Officer Recruit (S9999K), Department of Corrections (DOC) eligible list due to an unsatisfactory employment record was authorized by N.J.A.C. 4A:4-4.7(a)1 and N.J.A.C. 4A:4-6.1(a)7. That history included the candidate's termination from a security firm; and his poor record as an employee of a county correction center, a position he resigned while disciplinary charges were pending. Because a Correction Officer Recruit was a law enforcement employee holding a highly visible and sensitive position within the community, the candidate's employment history clearly indicated that he would not be suited for such a position, there thus was ample support for the DOC's removal of his name from the eligible list, and his appeal was properly denied. In re Steven Migliacci, Correction Officer Recruit (S9999K), Department of Corrections, CSC Dkt. No. 2011-5154, 2013 N.J. CSC LEXIS 90, Final Decision (February 20, 2013).

Applicant for employment as a correction department officer was properly removed from the recruit list after numerous photos surfaced in which he was in the company of persons who appeared to be gang members based on their display of "gang hand signs" and other indicia. Though there was some ambiguity as to whether the applicant actually was a gang member, in light of the department's zero-tolerance policy for employment of persons with such affiliations, evidence that he appeared to or actually associated with gang members and that he had misrepresented those affiliations on an employment-related questionnaire, the latter being conduct within the scope of N.J.A.C. 4A:4-6.1, established sufficient grounds within the meaning of N.J.A.C. 4A:4-4.7(a)1, for his removal from the recruit list. In re Earp, OAL Dkt. No. CSV 13383-12, 2013 N.J. AGEN LEXIS 35, Initial Decision (February 11, 2013).

Removal by a county of a candidate's name from the County Correction Officer Recruit (C9979M), Essex County eligible list on the basis that he had falsified his employment application was authorized by N.J.A.C. 4A:4-4.7(a)1 and N.J.A.C. 4A:4-6.1(a)6, which together allowed a candidate's name to be removed from an employment list for making a false statement of any material fact or attempting any deception of fraud in any part of the selection or appointment process. Here, the basis for that removal included the candidate's failure to list all of his traffic violations and the further fact that his driving record, which included a conviction for driving under the influence, showed a pattern of disregard for the law and questionable judgment, both of which were incompatible with the duties of a law enforcement officer. Because the candidate had withheld material information, thereby failing to present and complete and accurate picture of his background, the county had a sufficient basis for its decision to remove his name from the eligible list and his appeal was properly denied. In re Remi Laney, County Cor-

rection Officer (C9979M), Essex County, CSC Docket No. 2013-329, 2013 N.J. CSC LEXIS 38, Final Decision (February 8, 2013).

Former volunteer firefighter was not entitled to relief from the removal of his name from the eligible list for the Fire Fighter (M2383H), Passaic on based on his criminal record, which included a 2001 conviction of a felony for manufacture/distribution of a controlled dangerous substance (CDS) on school property because, per N.J.A.C. 4A:4-4.7(a)4, the conviction adversely related to the proposed employment. However, while an order expunging the firefighter's record issued after the removal of his name from the eligible list did not provide a basis for relief at this point, the firefighter's criminal record did not appear sufficient to remove him from future lists. In re Giaconia, Fire Fighter (M2383H), Passaic, CSC Docket No. 2010-3680, 2013 N.J. CSC LEXIS 72, Final Decision (January 24, 2013).

Department of Corrections, as appointing authority, demonstrated a sufficient basis within the meaning of N.J.A.C. 4A:4-4.7(a)1, in conjunction with N.J.A.C. 4A:4-6.1(a)9, for the removal of an applicant's name from the eligible list for appointment to the position of Correction Officer Recruit (S9987M) notwithstanding the fact that the applicant had achieved a passing score on the open competitive examination. His 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).

Upon reconsideration, the Civil Service Commission found insufficient reason to remove a candidate's name from the County Correction Officer, Essex County, eligible list pursuant to N.J.A.C. 4A:4-4.7(a) and restored his name to the certification. Although, contrary to the candidate's assertion, expunged arrests may be considered for a correction officer position, he showed evidence of rehabilitation. However, his background provided sufficient cause to record him as bypassed on the certification for a position as a County Correction Officer. His record of four arrests, a temporary restraining order filed against him, and an unexplained incarceration could be taken into account under N.J.A.C. 4A:4-4.8 in deciding whether to bypass him on an eligible list. In re Christopher Howland, CSC Dkt. No. 2012-3488, 2013 N.J. CSC LEXIS 2, Final Decision (January 2, 2013).

Removal of applicant's name from open competitive list was improper; inability to communicate effectively in English. In the Matter of Bangar, 94 N.J.A.R.2d (CSV) 500.

Disqualification; lack of job requirements. City of Trenton v. Porzilli, 94 N.J.A.R.2d (CSV) 172.

Inability to speak English warranted removal of name from eligible list. Patel v. Division of Youth and Family Services, 93 N.J.A.R.2d (CSV) 147.

Removal from eligibility list for position at college was justified by inability to communicate in English. Shah v. William Paterson College, 93 N.J.A.R.2d (CSV) 97.

4A:4-4.8 Disposition of a certification

(a) Upon receipt of a certification, an appointing authority shall take whichever of the following actions is appropriate when a permanent appointment is to be made:

1. Appoint the eligible whose name has been certified from the special reemployment list;
2. Appoint the eligible whose name has been certified from regular or police or fire reemployment lists; or
3. Appoint one of the top three interested eligibles (rule of three) from an open competitive or promotional list, provided that:
 - i. Disabled veterans and then veterans shall be appointed in their order of ranking from an open competitive list;
 - ii. If the eligible who ranks first on a promotional list is a veteran, then a non-veteran may not be appointed; and
 - iii. See N.J.A.C. 4A:4-2.15(i) for tie scores.

(b) The appointing authority shall notify the Civil Service Commission of the disposition of the certification by the disposition due date in the manner prescribed by the Chairperson of the Commission or the Chairperson's designee. The disposition due date may be extended beyond the expiration date of the eligible list to fill current vacancies. Under no circumstances shall a disposition due date be extended beyond the expiration date of the eligible list when vacancies do not exist. An anticipated vacancy shall not be considered the same as an existing vacancy. The report of disposition of the certification shall include:

1. Name of the eligibles to be permanently appointed;
2. The effective date of the requested permanent appointments;
3. In local service, the appointee's salary;
4. In situations where an appropriate list is used, the title and functions of the appointee's employment;
5. In the case of an appointment to the title of Municipal Court Administrator or Deputy Municipal Court Administrator, verification that the assignment judge of the vicinage has approved the appointment; and
6. Any other requested information.

(c) Failure to dispose by the due date may result in constructive appointment or other remedial action as set forth in N.J.A.C. 4A:10-2.

(d) If the certification will result in the displacement of a provisional employee who has permanent status, and it is necessary to institute layoff procedures, the Chairperson of the Commission or the Chairperson's designee may, upon written request from the appointing authority, extend the time for disposing of the certification for an additional 45 days. See N.J.A.C. 4A:8 for layoff procedures.

(e) See N.J.A.C. 4A:10-2.2 for penalties for failure to appoint from a complete certification.

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)3iii.

Amended by R.1994 d.507, effective October 3, 1994.

See: 26 N.J.R. 2697(b), 26 N.J.R. 3941(a).

Administrative correction.

See: 31 N.J.R. 1186(a).

Petition for Rulemaking.

See: 37 N.J.R. 1540(b), 2703(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 (b), added language regarding extension of disposition due date.

Amended by R.2012 d.087, effective May 7, 2012.

See: 44 N.J.R. 137(a), 44 N.J.R. 1333(b).

In the introductory paragraph of (b) and in (d), substituted "Chairperson of the Commission or the Chairperson's designee" for "Department"; in the introductory paragraph of (b), substituted "Civil Service Commission" for "Department of Personnel"; deleted former (b)4; recodified former (b)5 and (b)6 as (b)4 and (b)5; and in (d), deleted "-1.1 et seq." following "4A:8".

Amended by R.2012 d.116, effective June 18, 2012.

See: 44 N.J.R. 542(a), 44 N.J.R. 1779(a).

In (b)4, deleted "and" at the end; added new (b)5; and recodified former (b)5 as (b)6.

Law Review and Journal Commentaries

Civil Service. Judith Nallin, 133 N.J.L.J. No. 14, 65 (1993).

Case Notes

The Civil Service Act and its accompanying regulations did not require that preliminary notices of disciplinary action be signed by both police director and IAD Commander because the Act and its regulations did not require two signatures for the filing of a complaint. *Grill v. City of Newark*, 709 A.2d 333, 311 N.J.Super. 149 (N.J.Super.L. 1997).

Stating reasons for administrative actions limits arbitrary determinations, enhances judicial review of agency decisions, and discloses correctable deficiencies to aid in guiding future conduct. *Local 518, New Jersey State Motor Vehicle Employees Union, S.E.I.U., AFL-CIO v. Division of Motor Vehicles*, 262 N.J.Super. 598, 621 A.2d 549 (A.D.1993).

Law Division had jurisdiction over declaratory judgment action seeking statement of reasons why employees were not selected for promotion under the Civil Service Act. *Local 518, New Jersey State Motor Vehicle Employees Union, S.E.I.U., AFL-CIO v. Division of Motor Vehicles*, 262 N.J.Super. 598, 621 A.2d 549 (A.D.1993).

Appointing administrative authority was not required by Civil Service Act or regulations to apprise unsuccessful qualified candidate of reasons for promoting lower-scoring eligible employee. *Local 518, New Jersey State Motor Vehicle Employees Union, S.E.I.U., AFL-CIO v. Division of Motor Vehicles*, 262 N.J.Super. 598, 621 A.2d 549 (A.D.1993).

Minimal requirements for making a valid appointment: when appointment is final. *Thomas v. McGrath*, 145 N.J.Super. 288, 367 A.2d 898 (App.Div.1976), reversed per curiam 75 N.J. 372, 382 A.2d 1121 (1978).

When there was no regular appointment made from an open-competitive certification, a candidate's veteran preference under N.J.S.A. 11A:5-6, N.J.A.C. 4A:4-4.8(a)3 and N.J.A.C. 4A:5-2.1 was irrelevant in determining whether an appointment waiver should have been granted. In re Harry Tisch, Program Support Specialist 1, Assistance Programs (S2408N), Statewide, CSC Dkt. No. 2014-188, 2014-345, 2013 N.J. CSC LEXIS 729, Final Decision (October 17, 2013).

Candidate's name was properly bypassed on the certification of an eligible list for County Correction Lieutenant (PC26655K), Mercer County. It was within the appointing authority's discretion to select any of the top three candidates for appointment, and the appointing authority was not required to provide a reason for the bypass when disposing of the certification since the amendment to N.J.A.C. 4A:4-4.8 abolished such a requirement. The fact that the certification was issued before the rule was changed was unpersuasive as the certification was returned in a timely manner after the rule change. Further, despite the candidate's assertions to the contrary, the appointing authority did provide reasons for the bypass on appeal. In re Farah Floravanti, Cnty. Corr. Lieutenant (PC2665K), Mercer Cnty., CSC Dkt. No. 2013-507, 2013 N.J. CSC LEXIS 707, Final Decision (October 16, 2013).

Provisional employee was not entitled to a permanent appointment as a Legal Secretary 1 with the Department of Law and Public Safety. She had no automatic right or expectation of achieving permanent appointment to the position she was occupying, and in accordance with N.J.S.A. 11A-4.5 and N.J.A.C. 4A:4-4.8, the appointing authority was required to make an appointment from the eligible list if there were three more interested and eligible candidates. There was a complete eligible list and the appointing authority properly disposed of the subject certification by appointing the number one ranked eligible. In re Nancy Zecca, Dep't. of Law and Public Safety, CSC Dkt. No. 2013-90, 2013 N.J. CSC LEXIS 718, Final Decision (September 19, 2013).

Appointing authority that failed and refused to properly dispose of a certification issued by the appointment of a provisional employee to the title of Public Works Repairer (PM0185M), Point Pleasant Borough thereby violated N.J.A.C. 4A:4-4.8(b). Even though the appointing authority was advised several times as to the procedures to be following, it failed to respond. That being so, it was at risk for imposition of fines or other sanctions per N.J.A.C. 4A:10-2.1 in addition to \$1,000 in costs as had already been imposed on the authority in accord with N.J.S.A. 11A:10-3 and N.J.A.C. 4A:10-3.2(a)5. In re Pub. Works Repairer (PM0185M), Point Pleasant Borough, CSC Docket No. 2013-3449, 2013 N.J. CSC LEXIS 763, Final Administrative Decision (September 4, 2013).

A failure on the part of the appointing authority for position of Police Aide (M1372L), Irvington Township to comply with the requirement in N.J.A.C. 4A:4-4.8(b) that it notify the Division of Classification and Personnel Management (CPM) of the disposition of a certification of the eligible list for that title afforded grounds for an order requiring the authority to return the certification within 20 days along with documentation addressing various deficiencies in the authority's disposition of the certification, which documentation had been requested by CPM. Not only was the authority liable for certain enforcement costs per N.J.A.C. 4A:10-3.2(a)5 but any failure to comply with the deadlines set in the order would result in the imposition of fines as authorized by N.J.S.A. 11A:10-3 and N.J.A.C. 4A:10-2.1(a)2. In re Police Aide (M1372L), Irvington Twp., CSC Dkt. No. 2013-2899, 2013 N.J. CSC LEXIS 455, Final Decision (July 19, 2013).

An applicant's experience in prior-held titles including Technical Assistant 2, Insurance, and Senior Clerk Transcriber (all either para-professional or non-professional titles) was properly disregarded by the Division of Selection Services and Recruitment (DSSR) in determining that the applicant did not meet the experience requirements for the promotional examination for Standards and Procedures Technician 1 (PS4837P), Department of Law and Public Safety. Because that title was a professional one within the meaning of N.J.A.C. 4A:4-2.5(a)1 and because there was no "bridge title" to the subject title within the meaning of N.J.A.C. 4A:4-2.5(c)2, the applicant was required to meet the open competitive requirements. Moreover, even if the appellant had been doing work that was similar to the announced requirement, and her

description of duties shows that she was not, this work was not at the level and scope of the professional experience required for the subject title. Finally, though the appointing authority strongly supported the applicant's appeal and though the appointing authority, by virtue of the discretion granted by N.J.S.A. 11A:4-8 and N.J.A.C. 4A:4-4.8(a)3, would not be precluded from considering such matters in the interview process, the appointing authority cannot make examination eligibility determinations such as the one at issue here. In re Tracy Tarantino, Standards & Procedures Technician 1 (PS4837P), Dep't of Law & Pub. Safety, CSC Dkt. No. 2013-2615, 2013 N.J. CSC LEXIS 453, Final Decision (July 19, 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).

Non-selection of a candidate's name on the certification of a Police Sergeant eligible list was proper. Given that he ranked lower on the eligible list than the candidates who were appointed, the appointing authority was not obligated to consider him for appointment under the Rule of Three pursuant to N.J.S.A. 11A:4-8, N.J.S.A. 11A:5-7, and N.J.A.C. 4A:4-4.8(a)3i. The records did not indicate that he established veteran's preference with the Department of Military and Veteran's Affairs. Thus his prior military experience did not establish that he was veteran for promotional purposes. There was also no evidence that the candidate was retaliated against in regard to his non-selection for appointment in violation of N.J.A.C. 4A:2-5.1(a). In re William Cullen, Berkeley Twp., DOP Dkt. No. 2013-1663, 2013 N.J. CSC Lexis 664, Final Decision (July 17, 2013).

Appointing authority violated N.J.A.C. 4A:4-4.8(b) for almost a year when it failed to properly dispose of a certification issued to appoint one individual to the title of Senior Librarian. Because there was no longer a provisional serving in the title, the appointing authority presented adequate justification for granting an appointment waiver but as assessed the costs of the selection process under N.J.S.A. 11A:4-5 and N.J.A.C. 4A:10-2.2(a)2. The appointing authority was not permitted to benefit from its delay in returning the certification by keeping a provisional employed for over a year from the certification date and then realizing that it was experiencing financial difficulties and not appointing the provisional. In re Senior Librarian (M2413N), Orange Public Library, CSC Dkt. No. 2013-1445, 2013 N.J. CSC LEXIS 559, Final Decision (June 28, 2013).

When a county failed to return an overdue certification of an eligible list for County Correction Lieutenant for proper disposition as required by N.J.A.C. 4A:4-4.8(b), despite additional opportunities to do so, the Civil Service Commission assessed the costs incurred in the compliance process against the county pursuant to N.J.S.A. 11A:10-3 and N.J.A.C. 4A:10-3.2(a)5. In re Cnty. Corr. Lieutenant (PC2655K), Mercer Cnty., CSC Dkt. No. 2013-2431, 2013 N.J. CSC LEXIS 554, Final Administrative Action (June 28, 2013).

Civil Service Commission did not violate N.J.S.A. 11A:4-8, N.J.S.A. 11A:5-7, and N.J.A.C. 4A:4-4.8(a)3i when it bypassed the candidate listed in the first position on the certification of the Supervisor, Garage Services, eligible list and appointed the third listed eligible. The appointing authority provided evidence that the announcement was posted properly and submitted the appointee's resume in support of its contention that he had significantly more experience than that alluded to by the unsuccessful candidate. Since the appointee was the third listed eligible and the unsuccessful candidate, a non-veteran, headed the certification, the Rule of Three was appropriately applied. In re Mark Chaney, Supervisor, Garage Servs. (M2244N), City of Vineland, CSC Dkt. No. 2012-2723, 2013 N.J. CSC Lexis 538, Final Decision (June 27, 2013).

Civil Service Commission did not err in bypassing a candidate who was ranked first on the certification of the Police Captain eligible list.

Pursuant to N.J.A.C. 4A:4-4.8(b)4, the appointing authority submitted documentation supporting the appointment of the second ranked eligible. Apart from the candidate's unsubstantiated assertions, the Commission found that there was nothing in the record to indicate that the non-selection was based on an unlawful motive rather than an exercise of its selection discretion under the Rule of Three in N.J.S.A. 11A:4-8, N.J.S.A. 11A:5-7, and N.J.A.C. 4A:4-4.8(a)3i. In re Shena Grimes, Police Captain (PM7505M), City of Orange, CSC Dkt. No. 2012-3109, 2013 N.J. CSC LEXIS 537, Final Decision (June 27, 2013).

Appointing authority's bypass of an applicant's name on a certification of the Police Lieutenant eligible list was proper. It complied with N.J.A.C. 4A:4-4.8(b)4 and submitted a proper statement of reasons, including the demonstrated interview performance of the successful lower-ranked eligible. Because conducting interviews was discretionary, the lack of documentation or structure in the applicant's interview was not cause to find that his bypass was improper. In addition, the appointing authority disposed of the certification in accordance with the "Rule of Three," with no invidious reasons for bypassing the applicant. In re William Ippolito, Police Lieutenant (PM5053M), Borough of Point Pleasant Beach, CSC Dkt. No. 2012-3013, 2013 N.J. CSC LEXIS 547, Final Decision (June 26, 2013).

There was no merit to a corrections department employee's challenge to the appointing authority's action in bypassing him on a promotional list for Principal Investigator, Parole and Secured Facilities (PS4821I), Department of Corrections. The employee adduced no evidence tending to support his claim that the bypass was improper or an abuse of the appointing authority's discretion under the "Rule of Three" in N.J.A.C. 4A:4-4.8(a)3ii nor did the employee possess a vested property interest in the position. Moreover, the appointing authority presented legitimate non-discriminatory reasons for the bypass, which reasons were not persuasively refuted by the employee. In re Robert Trent, Principal Investigator, Parole & Secured Facilities (PS4821I), Dep't of Corrs., CSC Dkt. No. 2013-919, 2013 N.J. CSC LEXIS 602, Final Decision (June 10, 2013).

Appointing authority's bypass of a candidate's name on the Police Sergeant eligible list was proper under N.J.S.A. 11A:4-8, N.J.S.A. 11A:5-7, and N.J.A.C. 4A:4-4.8(a)3ii. The appointing authority, in response to the appeal, provided a specific reason for bypassing the candidate's name for appointment. Even assuming that the candidate was more qualified for the position, the appointing authority still had selection discretion under the Rule of Three to appoint a lower-ranked eligible, and there was nothing in the record to indicate unlawful motive. In re Scott Stein, Police Sergeant (PM2605K), Lawrence Twp., CSC Dkt. No. 2012-3613, 2013 N.J. CSC LEXIS 625, Final Decision (May 15, 2013).

Appointing authority's bypass of a police sergeant's name on the Police Lieutenant (PM2629L) promotional list was proper under N.J.S.A. 11A:4-8, N.J.S.A. 11A:5-7, and N.J.A.C. 4A:4-4.8(a)3ii. Although the appointing authority was not obligated to provide the sergeant with the reasons why a lower ranked candidate was chosen, it correctly noted that the chosen candidate did not possess a disciplinary record. Even assuming that the sergeant was more qualified for the position, the appointing authority still had selection discretion under the Rule of Three to appoint a lower-ranked eligible absent any unlawful motive, and the sergeant did not even allege that his non-selection was based on an unlawful motive. In re James Marnell, Police Lieutenant (PM2629L), Hoboken, CSC Dkt. No. 2012-2877, 2013 N.J. CSC LEXIS 292, Final Decision (May 2, 2013).

City as an appointing authority violated N.J.A.C. 4A:4-4.8(b) when it failed to notify the Division of Classification and Personnel Management of the disposition of a certification of the eligible list for Police Officer (Special) by the disposition due date. Despite several opportunities to do so, the city did not return the certification as requested nor did it submit any additional information. In re police Officer (Special), City of Newark, CSC Dkt. No. 2013-2432, 2013 N.J. CSC LEXIS 241, Final Decision (May 2, 2013).

Applicant's name was restored to the eligible list for Correction Officer Recruit but was reflected as bypassed. The existence of a

conviction for operating a motor vehicle under the influence of drugs or alcohol under the age of 21 was insufficient to remove his name from the list pursuant to N.J.A.C. 4A:4-4.7(a)1 and N.J.A.C. 4A:4-6.1(a)9 because his offense was a one-time event that occurred over six years prior while the applicant was a minor, and the applicant had made efforts at mitigation. However, his driving record provided sufficient cause to bypass him under N.J.A.C. 4A:4-4.8. In re Kyle Camaraza, Correction Officer Recruit (S99887M), Dep't. of Corrections, CSC Dkt. No. 2013-175, 2013 N.J. CSC Lexis 281, Final Decision (May 1, 2013).

Employee who was serving provisionally in the title of Boiler Operator on the date he was indefinitely suspended due to the filing of criminal charges against him was not entitled to be returned to the position of Boiler Operator but was properly returned to his permanent title of Building Maintenance Worker because, during the period of his suspension, the city had appointed another eligible employee to the Boiler Operator position. Because N.J.A.C. 4A:4-4.8(a)3ii allowed an appointing authority such as the city to select any of the top three interested eligibles on a promotional list, provided that no veteran heads the list, and the city had done so, the employee had no right to be returned to the position in which he was provisionally serving and was properly returned to his permanent title of Building Maintenance Worker. In re Taylor, CSC Docket No. 2012-3190, 2013 N.J. CSC LEXIS 297, Final Agency Action (April 18, 2013).

Good cause was shown for an order reviving eligible lists for Section Chief, Environmental Protection (PS2379G) and (PS2375G), Department of Environmental Protection to effectuate one-time certifications to permanently appoint two employees because classification requests relative to those employees were not timely processed due to administrative error, by reason of which the employees received provisional appointment dates only days before the eligible lists expired. Because the filling of vacancies through permanent appointments from an active eligible list is preferable to making provisional appointments and because a review of relevant records revealed that the two employees would have been reachable for appointment per N.J.A.C. 4A:4-4.8(b)3, revival was properly granted. In re Section Chief, Env'tl. Prot. (PS2379G) and (PS2375G), Dep't of Env't Prot., CSC Docket Nos. 2013-478 & 2013-407, 2013 N.J. CSC LEXIS 316, Final Agency Action (April 17, 2013).

Although an applicant for Fire Fighter was bypassed pursuant to N.J.A.C. 4A:4-4.8(a)3 because he had been deemed to be medically unfit, once he took and passed a second medical examination, at the request of the Fire Director, his appointment was mandated. The Personnel Director could not claim that the applicant was not provided by a bona fide offer of employment made by the Fire Director. She was present when the offer was made but did not object or withdraw the offer. However, the applicant was not entitled to counsel fees and back pay under N.J.A.C. 4A:2-1.5(b) because the failure to appoint was not done in bad faith or with invidious motivation. The appointing authority had legitimate concerns about the applicant's medical fitness and presented reasonable, yet unpersuasive arguments, for its actions. In re Joseph Piserchio, Fire Fighter (M2377H), Newark, CSC Dkt. No. 2013-573, 2013 N.J. CSC LEXIS 311, Final Decision (April 17, 2013).

Appointing authority's bypass of an applicant's name on the certification of a Fire Fighter eligible list was proper. As required by N.J.A.C. 4A:4-4.8(b)4, it provided a specific reason for bypassing the appointment; namely, that the appointed candidates interviewed well and the appointing authority had concerns regarding the applicant's level of commitment and performance as a volunteer Fire Fighter. The appointing authority disposed of the certification in accordance with the "Rule of Three" when the bypass was not due to invidious reasons. In re David Fiore, Fire Fighter (M2395H), Union Twp., CSC Dkt. No. 2012-893, 2013 N.J. CSC LEXIS 309, Final Decision (April 17, 2013).

Laid-off employee was not entitled to relief from his non-selection from an open competitive list for the position of Mechanic because he was one of four eligibles who were ranked first on the eligible list and N.J.A.C. 4A:4-4.8(a)3 authorized the appointing authority to select any of the top three eligibles, which it did. In re Harold Nugent, Brick Twp., CSC Docket No. 2013-251, 2013 N.J. CSC LEXIS 197, Final Agency Action (April 17, 2013).

Police officer who was the fourth ranked eligible on a certification for Police Lieutenant (PM2547K), Plainfield failed to establish that the action of the appointing authority in bypassing him was improper. The appointing authority, as required by N.J.A.C. 4A:4-4.8(b)4, had justified the bypass on the basis that disciplinary charges alleging that the officer had engaged in conduct unbecoming an employee, neglect of duty, failure to perform duties, providing records to unauthorized personnel and other misconduct were then pending. Given that the appointing authority's explanation for bypass was adequate, N.J.A.C. 4A:2-1.4(c) imposed on the officer the burden to show by a preponderance of the evidence that the appointing authority's decision was improper, a burden that the officer had failed to carry. In re Walz, Police Lieutenant (PM2547K), Plainfield, CSC Dkt. No. 2012-684, 2013 N.J. CSC LEXIS 213, Final Agency Action (April 5, 2013).

Persistent failure on the part of Essex County to notify the Division of Classification and Personnel Management of its disposition of a certification related to an open-competitive examination for Security Guard (C1207N), Essex County Sheriff's Office including the County's failure to provide documentation supporting its requests for removals from the list constituted a clear violation of N.J.A.C. 4A:4-4.8(b) and rendered it liable for costs per N.J.A.C. 4A:10-3.2(a)5. In the Matter of Security Guard (C1207N), Essex County Sheriff's Office, CSC Docket No. 2013-199, 2013 N.J. CSC LEXIS 188, Final Decision (March 8, 2013).

Appointing authority was not shown to have circumvented the "Rule of Three" in N.J.A.C. 4A:4-4.8(a)3i in bypassing an employee in favor of a provisional employee on the eligible list for the position of Principal Librarian (C0394L and C0150N) and in bypassing the employee on the eligible list for the position of Librarian (C0963L and C0095N) in favor of other eligibles, each of whom possessed specific work experience working with teens or with children, which experience was relevant to the particular positions. In both cases, in the absence of any unlawful motive or abuse of discretion, neither of which was shown by the employee, it was within the appointing authority's discretion under the "Rule of Three" to select them. In re April Albright, Principal Librarian (C0394L and C0150N) and Librarian (C0963L and C0095N), Ocean County, CSC Docket Nos. 2012-1646 and 2012-1647 (consolidated), 2013 N.J. CSC LEXIS 190, Final Decision (March 7, 2013).

City's persistent failure to return a certification issued by the Division of Classification and Personnel Management (CPM) in response to the city's request to fill vacancies for fire fighters despite CPM's issuance of two notices of violation constituted a clear violation of N.J.A.C. 4A:4-4.8(b), justified the imposition of a \$1,000 cost assessment and could result in the imposition of compliance costs and fines per N.J.A.C. 4A:10-2.1(a)2 and N.J.A.C. 4A:10-2.2(b). In the Matter of Fire Fighter (M2572M), Trenton, CSC Dkt. No. 2013-1273, 2013 N.J. CSC LEXIS 4, Final Decision (January 25, 2013).

Candidate who was one of seven persons tied for third place on the eligible list for State Budget Specialist 1 (S2413N), Department of the Treasury was not entitled to any relief from the decision of the appointing authority to bypass him in favor of other eligibles who were provisional in the title for which appointment was sought. Given that N.J.A.C. 4A:4-4.8(a)3 invests an appointing authority with selection discretion under the "Rule of Three" to appoint a lower ranked eligible absent any unlawful motive, it was reasonable on these facts that that if provisional appointees were reachable under the "Rule of Three," the appointing authority would want to permanently appoint such provisional employees. In re Johann, State Budget Specialist 1 (S2413N), Department of the Treasury, CSC Docket No. 2013-87, 2013 N.J. CSC LEXIS 76, Final Decision (January 24, 2013).

Police officer's claim that a township had abused its discretion under the "Rule of Three" in N.J.A.C. 4A:4-4.8(a) in bypassing him on the eligible list for a promotion was rejected by an ALJ. To the extent that the officer's claim rested on allegations that the township had discriminated against him for union activities and/or membership, the officer could not rely on that claim in arguing that the township's decision to promote someone else was actuated by anti-union animus given the finding of a federal court, in related proceedings, that there was insufficient evidence upon which a jury could find that the promotion decision was based on the officer's union involvement. In re

Gilleece, OAL Dkt. No. CSV 07839-08, 2013 N.J. AGEN LEXIS 1, Initial Decision (January 24, 2013).

Upon reconsideration, the Civil Service Commission found insufficient reason to remove a candidate's name from the County Correction Officer, Essex County, eligible list pursuant to N.J.A.C. 4A:4-4.7(a) and restored his name to the certification. Although, contrary to the candidate's assertion, expunged arrests may be considered for a correction officer position, he showed evidence of rehabilitation. However, his background provided sufficient cause to record him as bypassed on the certification for a position as a County Correction Officer. His record of four arrests, a temporary restraining order filed against him, and an unexplained incarceration could be taken into account under N.J.A.C. 4A:4-4.8 in deciding whether to bypass him on an eligible list. In re Christopher Howland, CSC Dkt. No. 2012-3488, 2013 N.J. CSC LEXIS 2, Final Decision (January 2, 2013).

Initial Decision (2007 N.J. AGEN LEXIS 59) adopted, which concluded that a police officer did not meet his burden of showing that the rationale stated for not promoting him to sergeant on two separate occasions was pre-textual; it was not the appointing authority's burden to be more specific in identifying the information, namely the individuals promoted did not have serious or sustained disciplinary records worse than the officer, but it was the officer who had the burden of showing specific irregularities in the reason given for the bypasses that would have made them pre-textual. In re Bradley, OAL Dkt. No. CSV 5837-02, 2007 N.J. AGEN LEXIS 354, Final Decision (March 14, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 160) adopted, which concluded that the evidence demonstrated that a police officer was the least qualified of all three individuals for the two available Police Sergeant positions; his non-appointment to both positions was based upon his lack of appropriate qualification as compared to the other two candidates and the non-appointment had nothing to do with any actions by the appointing authority, which may have nonetheless acted under any basic misunderstanding relative to the interpretations of veterans' preferences. In re Cresong, OAL Dkt. No. CSV 8214-04, 2006 N.J. AGEN LEXIS 217, Final Decision (February 22, 2006).

Police captain fails to establish he was impermissibly bypassed for selection of police chief. Shaffery v. Middletown Township, 97 N.J.A.R.2d (CSV) 299.

Fire captains properly bypassed; exercise of discretion provided under the "rule of three" and not political discrimination. Bulger v. Town of Harrison, 93 N.J.A.R.2d (CSV) 509.

4A:4-4.9 Date of appointment

(a) An eligible shall not be appointed and begin work after the expiration date of the eligible list except:

1. When the eligible is on military leave, or, in the case of promotional appointments, is on an approved leave of absence. Persons returning from military leave or an approved leave of absence may begin work upon their return to active service.
2. When there is limited revival or statutory extension of an employment list, except that no appointment shall be made beyond the statutory extension date; or
3. When the certification is made just prior to the expiration of the eligible list, in which case the date of appointment and the date the eligible begins work shall be no later than the disposition due date.

Amended by R.1996 d.98, effective February 20, 1996. See: 27 N.J.R. 4049(a), 28 N.J.R. 1201(b).

In (a)3 substituted "be no later than" for "coincide with".

4A:4-4.10 Certification of additional eligibles

If, after accepting employment, an eligible cannot begin work within three weeks or such other reasonable time as specified by the appointing authority, the appointing authority may consider the eligible unavailable and request that the Department certify additional names.

SUBCHAPTER 5. WORKING TEST PERIOD

4A:4-5.1 General provisions

(a) The working test period is part of the examination process designed to permit an appointing authority to determine whether an employee can satisfactorily perform the duties of the title.

(b) All regular appointments to a title in the career service shall be subject to a working test period, except:

1. Appointments from special, police and fire, and regular reemployment lists;
2. Appointments to a comparable or lower related title in lieu of layoff;
3. Appointments to titles previously held on a permanent basis within current permanent continuous service; or
4. For lateral title changes, see N.J.A.C. 4A:4-7.6(b).

(c) During the working test period, an employee shall perform the duties of the title for which appointment was made.

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

(e) Advancement appointments to a higher title level in a job band are subject to a developmental period. See N.J.A.C. 4A:3-3.2A.

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

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

In (b)1, inserted a comma following "fire"; in (b)2, deleted "or" from the end; in (b)3, substituted "; or" for a period at the end; and added (e).

Case Notes

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

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

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

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

An Administrative Law Judge concluded that an employee who failed to meet the standards for promotion to the position of Family Service Specialist 1 (FSS1) did not satisfy her burden to show that the evaluations of her working test period (WTP) were performed in bad faith within the meaning of N.J.A.C. 4A:2-4.3(b) because the employee did not show that the evaluators were motivated by bias, animosity or other sinister attitude. It was insufficient to merely argue that the evaluations, which were based on the agency's conclusion that the employee was behind in her work and was unable to catch up notwithstanding various accommodations, were not fair or properly decided. The purpose of the WTP as established by N.J.A.C. 4A:1-1.3 and N.J.A.C. 4A:4-5.1 was to enable the appointing authority to evaluate an employee's work performance and conduct in order to determine whether the employee merited permanent status. It had operated to do so in this case. *Lisa Brown v. Dep't of Children & Families*, OAL Dkt. No. CSV 2630-13, AGENCY Dkt. No. 2013-1984, 2014 N.J. AGEN LEXIS 175, Initial Decision (April 8, 2014).

Crew manager, mechanics, was properly removed from his position after the working test period required by N.J.A.C. 4A:4-5.1. The working test period was conducted in compliance with the civil service rules and regulations, and the crew manager did not establish by a preponderance of the evidence that there was any bad faith in the determination that his services were unsatisfactory. He was given a development plan at each of his evaluations and the opportunity to improve. The appoint authority even agreed to extend the duration of the working test period so as to afford the crew manager all possible opportunities to succeed. Although he argued that he was not given proper training, the administrative law judge stated that the working test period was not a time of further training. In re *Matthew Sailey*, N.J. Dep't. of Transp., OAL Dkt. No. CSV 1082-13, 2014 N.J. AGEN LEXIS 88, Initial Decision (March 7, 2014).

Administrative Law Judge concluded that the administrator of a public nursing and rehabilitation center did not act in bad faith when she declined to extend an offer of employment to a certified nursing assistant at the conclusion of the working test period established by N.J.A.C. 4A:1-1.3. This was consistent with N.J.A.C. 4A:4-5.1, which indicated that the purpose of the test period was to allow the appointing authority to determine whether an employee could satisfactorily perform the required duties. Here, since the administrator had shown that the assistant was not willing to discharge the duties of the position nor to accept constructive criticism intended to assist her in improving her performance, the assistant had the burden to show that the administrator had acted in bad faith, a burden that the assistant had failed to carry. In re *Perez*, Cnty. of Cape May, Dep't of Crest Haven, OAL Dkt. No. CSV 13678-13, 2013 N.J. AGEN LEXIS 236, Initial Decision (September 17, 2013).

An Administrative Law Judge (ALJ) concluded that a city police department had not shown that the termination of a probationary officer at the end of the 12-month working test period (WTP) as permitted by N.J.A.C. 4A:4-5.1 was in good faith as required by N.J.A.C. 4A:2-4.3(b) and that the officer was entitled to have a 6 month extension of the WTP. The officer had served only four months of the WTP when, in January 2004, he was called back to active duty by the U.S. Army and deployed to Iraq. The officer only returned to duty with the city in April 2005. Even though N.J.A.C. 4A:5.2(d) did not specify that a WTP was to consist on one uninterrupted year, the military-service based interruption in the officer's WTP lasted 17 months and placed the officer at a distinct disadvantage. It also put in doubt the validity of the performance evaluations on which the city had relied in terminating the officer. On these facts, it did not appear that the officer had been fairly evaluated, and his WTP was properly extended by six months so that a fair evaluation might be made. In re *Howe*, City of Clifton, OAL DKT. NO. CSV3601-06, AGENCY DKT. NO. 2006-2849-I, 2008 N.J. AGEN LEXIS 1545, Initial Decision (January 9, 2008).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4A:4-5.2 Duration

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

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

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

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

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

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

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

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

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

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

2. Appeals from failure to successfully complete the police training course shall be in accordance with procedures established by the Police Training Commission. See N.J.A.C. 13:1-9.

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

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

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

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

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

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

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

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

Revised (b)2.

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

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

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

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

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

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

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

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

Administrative change.

See: 46 N.J.R. 2109(b).

Case Notes

Employee did not complete his working test period as a Supervising Investigator, Law and Public Safety because N.J.A.C. 4A:4-5.2(a)

provides that the working test period shall not include any time served by an employee under provisional, temporary, interim or emergency appointment. That is, a working test period begins on the date of regular appointment, which is defined per N.J.A.C. 4A:1-1.3 in relevant part as employment of a person to a position in the noncompetitive division of the career service. Per N.J.A.C. 4A:4-5.2(b)2, the length of the working test period in State service is a period of four months of active service, which may be extended on request of an appointing authority for an additional two months. Thus, even though the employee was appointed to the title at issue on December 10, 2011, that appointment was as an "acting" Supervising Investigator, Law and Public Safety and did not trigger a working test period, which can only commence on the date of regular (that is, not "acting") appointment. 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).

Civil Service Commission permitted the intergovernmental transfer of a sheriff's officer to the position of a police officer although he had not completed his 12-month working test period as required by N.J.A.C. 4A:4-5.2(d) and a request could not have been processed under N.J.A.C. 4A:4-7.1A(a). Given the town's staffing needs for trained law enforcement personnel, good cause existed under N.J.A.C. 4A:1-1.2(c) to relax the controlling regulatory provisions in order to permit the transfer to the Police Department. In re Pawel Wcislo, Twp. of Marlboro, CSC Dkt. No. 2013-3253, 2013 N.J. CSC LEXIS 663, Final Decision (July 17, 2013).

Civil Service Commission granted a request made by a county that the Commission, per N.J.A.C. 4A:1-1.2(c), relax the rules governing intergovernmental transfers, including N.J.A.C. 4A:4-7.1A(a), and allow a police officer who had been laid off by a city before he could complete his working test period in compliance with N.J.A.C. 4A:4-5.2(d) and more than a year prior to the date on which the request was made to transfer to the county sheriff's office, where he would complete his working test period. Relief was proper given the circumstances of the city's layoff action, the county's need for trained law enforcement staff, and the willingness of the parties to provide for the officer's completion of his working test period. In re Hisham Sheikh, Bergen County Sheriff's Office, CSC Dkt. No. 2013-200, 2013 N.J. CSC LEXIS 100, Final Decision (February 21, 2013).

Police officer was granted an intergovernmental transfer under N.J.A.C. 4A:4-7.1A(a) despite the fact that he had not yet completed his 12-month working test period required by N.J.A.C. 4A:4-5.2(d). Given the Borough's critical need for trained law enforcement staff, good cause existed under N.J.A.C. 4A:1-1.2(c) to permit the transfer and to allow him to complete the remainder of his working test period with the Borough. In re Robert Scarborough, Borough of Woodlynn, CSC Dkt. No. 2013-1797, 2013 N.J. CSC LEXIS 24, Final Decision (February 7, 2013).

An Administrative Law Judge (ALJ) concluded that a city police department had not shown that the termination of a probationary officer at the end of the 12-month working test period (WTP) as permitted by N.J.A.C. 4A:4-5.1 was in good faith as required by N.J.A.C. 4A:2-4.3(b) and that the officer was entitled to have a 6 month extension of the WTP. The officer had served only four months of the WTP when, in January 2004, he was called back to active duty by the U.S. Army and deployed to Iraq. The officer only returned to duty with the city in April 2005. Even though N.J.A.C. 4A:5.2(d) did not specify that a WTP was to consist on one uninterrupted year, the military-service based interruption in the officer's WTP lasted 17 months and placed the officer at a distinct disadvantage. It also put in doubt the validity of the performance evaluations on which the city had relied in terminating the officer. On these facts, it did not appear that the officer had been fairly evaluated, and his WTP was properly extended by six months so that a fair evaluation might be made. In re Howe, City of Clifton, OAL DKT. NO. CSV3601-06, AGENCY DKT. NO. 2006-2849-I, 2008 N.J. AGEN LEXIS 1545, Initial Decision (January 9, 2008).

While the Civil Service Commission had the authority to address the validity of the Police Training Commission's internal policy that certifications for individuals who complete the Basic Course while employed as Special Law Enforcement Officers Class II are valid for only three

years, it declined to substitute its judgment for that of the PTC. Matters concerning the training of law enforcement officers are peculiarly within the expertise of PTC officials, and the Civil Service Commission gives significant weight to the PTC's appraisal of the certification and re-training requirements for law enforcement officers. In re Reid, OAL Dkt. No. CSR 7477-10 and CSR 7481-10, 2011 N.J. CSC LEXIS 754, Final Decision (April 20, 2011).

Extension of an employee's working test period was not limited to instances involving voluntary furlough or furlough extensions; rather, an employee's working test period could also be extended for periods of a leave of absence. A correction officer's job performance was not evaluated for a full 12 months as of June 27, 2008, as he was out of work without pay for 12 days during his evaluation period; therefore, it was appropriate for the appointing authority to extend his working test period for a period of 12 days. In re Salva, OAL Dkt. No. CSV 941-09, 2010 N.J. CSC LEXIS 616, Final Decision (January 13, 2010).

There was no regulatory requirement that an employee be notified of an extension of a working test period due to a leave of absence, as contrasted to extensions of working test periods for employees where the purpose of the extension was to provide the unsatisfactory employee additional time to correct deficiencies in job performance. In re Salva, OAL Dkt. No. CSV 941-09, 2010 N.J. CSC LEXIS 616, Final Decision (January 13, 2010).

There was no basis to uphold correction officer recruit's release at the end of his working test period where an injury from an automobile accident caused him to miss work during the working test period. The officer possessed medical documentation authorizing his absences on the dates in question and, notwithstanding that he sustained a relatively serious injury to his right foot and ankle, he did make a sustained attempt to report for duty as often as his injury permitted, missing work only when the pain and swelling in his foot became unbearable and would have prevented him from effectively performing his duties as a recruit. In re Salva, OAL Dkt. No. CSV 941-09, 2010 N.J. CSC LEXIS 616, Final Decision (January 13, 2010).

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

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

Employee with permanent title of Children's Supervisor who accepted a position as a Human Services Specialist I with the county appointing authority when the county privatized its Children's Shelter was never laid off; the county rescinded its planned layoff, as all affected employees had accepted alternate employment within the county, and the employee's new position was a provisional appointment, pending promotional examination procedures. In re Garcia, OAL Dkt. No. CSV 11932-07, 2008 N.J. AGEN LEXIS 595, Merit System Board Decision (May 7, 2008).

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

Initial Decision (2006 N.J. AGEN LEXIS 1035) adopted, which found that a conditional police officer recruit who had resigned from the

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

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

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

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

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

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

Release of police officer after his working test period was not justified. The officer had missed 95 working days during the last six months of his working test period, but his father, and then his mother, had died, and he had sustained an injury in the line of duty. A large portion of the officer's absences were approved leaves of absence due to his unfortunate circumstances, which should have automatically extended his working test period under N.J.A.C. 4A:4-5.2(e). In re Robinson, OAL Dkt. No. CSV 11727-03, 2006 N.J. AGEN LEXIS 128, Final Decision (December 21, 2005).

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

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

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

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

4A:4-5.3 Progress reports

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

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

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

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

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

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

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

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

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

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

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

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

Case Notes

Initial Decision (2009 N.J. AGEN LEXIS 554) adopted, which found that a Human Services Specialist-1 was properly dismissed at the end of her working test period; although she worked very hard and had a great deal of passion for the position, she was unable to demonstrate competency of the written materials or the important interpersonal and interview skills required to master the material. Other than her bare assertion that the trainers were deliberately confusing her and contradicting themselves, the specialist provided no substantiation of any claim that could have been construed as bad faith on the part of the County as her employer. In re Ajewole, OAL Dkt. No. CSV 01226-09, 2009 N.J. CSC LEXIS 1443, Final Decision (October 7, 2009).

Initial Decision (2008 N.J. AGEN LEXIS 316) adopted, which concluded that the absence of a justification letter along with the employee's fifth-month progress report did not constitute a showing of bad faith entitling the terminated employee to a new working test period; the employee was counseled numerous times about her deficiencies. In

re Villecca, OAL Dkt. No. CSV 2978-06, 2008 N.J. AGEN LEXIS 710, Final Decision (June 25, 2008).

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

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

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

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

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

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

4A:4-5.4 Working test period appeals

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

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

Case Notes

Evidence adduced by an employee in support of his challenge to a decision of the Department of Children and Families releasing him at the end of his working test period (WTP) for unsatisfactory performance within the meaning of N.J.A.C. 4A:2-4.1 and N.J.A.C. 4A:4-5.4(a) did not show that the decision was made in bad faith. To be sure, the employee complimented the efforts made by his supervisors. That being so, the employee did not carry his burden of proof per N.J.A.C. 4A:2-4.3(b) to show that the appointing authority had acted in bad faith, and the Administrative Law Judge's recommendation that the appeal be dismissed was approved and adopted. In re Jeremy Rodas, Dep't of Children & Families, CSC Dkt. No. 2012-3204, OAL Dkt. No. CSV 12410-12, 2013 N.J. CSC LEXIS 657, Final Decision (June 26, 2013).

In a proceeding to remove a police officer after his working test period, the appointing authority could not look to the officer's behavior during police academy training, but could only consider incidents that occurred during the officer's actual working test period. In re Kowalczyk, OAL Dkt. No. CSV 4443-05, 2006 N.J. AGEN LEXIS 866, Final Decision (September 6, 2006).

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

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

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

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

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

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

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

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

1. The Commissioner may consider:

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

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

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

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

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

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

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

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

Amended by R.1990 d.553, effective November 19, 1990.

See: 22 N.J.R. 2629(a), 22 N.J.R. 3482(b).

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

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).

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).

Sufficient basis existed in the record to remove a candidate's name from the eligible list for Correction Officer Recruit for falsifying his application 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. A single public nuisance citation that resulted from a charge of underage consumption and possession of alcohol beverages was not sufficient under N.J.S.A. 11A:4-11, in conjunction with N.J.A.C. 4A:4-4.7(a)4 to remove his name, but it was a falsification of his application and indicative of his lack of integrity and questionable judgment. In re Vincenzo Tubito, Corr. Officer Recruit (S9987M), Dep't. of Corrs., CSC Dkt. No. 2013-3470, 2013 N.J. CSC LEXIS 1150, Final Decision (December 18, 2013).

Sufficient cause existed to remove a candidate's name from the Police Officer 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)9, based on his unsatisfactory driving record. The record established that his driving history included five speeding violations with three of the violations occurring within a nine-month span and in close proximity to the date of the certification of the list. The candidate's driving history showed a pattern of disregard for the law and questionable judgment, which was unacceptable for an individual seeking a position as a Police Officer. In re Alex Davis, Jr., Police Officer (S9999M), East Orange, CSC DKT. No. 2013-3123, 2013 N.J. CSC LEXIS 1060, Final Decision (December 18, 2013).

Sufficient basis existed in the record to remove a candidate's name from the eligible list for Police Officer 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. He was not truthful with the appointing authority's investigators on the subject of a child he claimed on his tax return. During an arrest that was less than four years prior to his consideration for appointment to the instant position, the candidate twice gave an arresting Police Officer a false date of birth so as to deceive the Police Officer into believing his was over 21 years old. In re Antonia J. Santos, Police Officer (S999M) City of Jersey City, CSC Dkt. No. 2013-3205, 2013 N.J. CSC LEXIS 1049, Final Decision (December 18, 2013).

Appointing authority presented a sufficient basis to remove a candidate's name from the Correction Officer Recruit eligible list on the basis of falsification of the employment application 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. He failed to list all of his previous residences or a charge of Making Communications in an Annoying/Alarming Manner. In re Juan Abreu, Corr. Officer Recruit (S9987M), Dep't. of Corrs., CSC Dkt. No. 2013-2757, 2013 N.J. CSC LEXIS 1046, Final Decision (December 18, 2013).

Civil Service Commission ordered that the list for Correction Officer Recruit be revived for a candidate to be considered for appointment at the time of the next certification for prospective employment opportunities only. The candidate's removal was not warranted under N.J.A.C. 4A:4-4.7(a)1, in conjunction with N.J.A.C. 4A:4-6.1(a)6, and N.J.A.C. 4A:4-4.7(a)1, in conjunction with N.J.A.C. 4A:4-6.1(a)7. Taking into consideration that the candidate's arrest was an isolated incident that occurred 18 years before the closing date for the examination, the fact

that he complied with the terms of his PTI, and the totality of the evidence in the record, including gainful employment from 1994 through the present, the appointing authority did not present a sufficient basis to remove the candidate's name from the subject eligible list based on his criminal record. In addition, it was clear that the candidate disclosed the 1993 arrest and he did not omit and/or falsify any material information. He merely misunderstood one "yes" or "no" question. In re Miguel Vega, Corr. Officer Recruit (S9987M0, Dep't. of Corr., CSC Dkt. No. 2014-411, 2013 N.J. CSC LEXIS 1021, Final Decision (December 18, 2013).

Appointing authority presented a sufficient basis to remove a candidate's name from the Correction Officer Recruit eligible list due to the falsification of her pre-employment application 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, and an unsatisfactory employment history pursuant to N.J.A.C. 4A:4-4.7(a)1, in conjunction with N.J.A.C. 4A:4-6.1(a)7. She failed to account for her juvenile offense, and her prior employment terminations for lateness and disciplinary actions made her an unacceptable candidate. In re Crystal Johnson, Corr. Officer Recruit (S9987M), Dep't. of Corr., CSC Dkt. No. 2013-1262, 2013 N.J. CSC LEXIS 1009, Final Decision (December 18, 2013).

Sufficient basis existed under N.J.A.C. 4A:4-4.7(a)1 in conjunction with N.J.A.C. 4A:4-6.1(a)9 to remove a candidate's name from the eligible list for Correction Officer Recruit (S9987M), Department of Corrections, due to an unsatisfactory driving record. Even though most of the points on the candidate's driver's license were received between 13 and 23 years prior to his consideration for appointment, his driving record within the last few years preceding his certification for appointment was still unsatisfactory, including speeding and nine suspension orders. In re Joel Stephens Corr. Officer Recruit (S9987M), Dep't. of Corr., CSC Dkt. No. 2013-2726, 2013 N.J. CSC LEXIS 896, Final Decision (October 16, 2013).

Sufficient basis existed under N.J.A.C. 4A:4-4.7(a)1 in conjunction with N.J.A.C. 4A:4-6.1(a)6 to remove a candidate's name from the eligible list for Correction Officer Recruit (S9987M), Department of Corrections, on the basis that he falsified his employment application. He did not indicate on his employment application that he had been charged with DWI, refusal to submit to a breath test, and animal cruelty, and he did not explain the circumstances of those incidents on his application. In re David Soares, Corr. Officer Recruit (S9987M), Dep't. of Corr., CSC Dkt. No. 2013-2645, 2013 N.J. CSC LEXIS 887, Final Decision (October 16, 2013).

Candidate's name was properly removed from the eligible list for Aviation Mechanic pursuant to N.J.A.C. 4A:4-4.7(a)1, in conjunction with N.J.A.C. 4A:4-6.1(a)1 because he did not meet the eligibility requirements for the subject examination. Although he had many years of experience as a mechanic, he did not meet the recent experience requirement for a valid FAA approved Airframe and Powerplant license. In re Richard Porbansky, Aviation Mech., CSC Dkt. No. 2013-2561, 2013 N.J. CSC LEXIS 957, Final Decision (October 2, 2013).

Appointing authority failed to show sufficient justification for removing a candidate's name from the eligible list for Social Worker 2 pursuant to N.J.A.C. 4A:4-4.7(a)1, in conjunction with N.J.A.C. 4A:4-6.1(a)1. Although the appointing authority maintained that the candidate did not have the necessary experience, a review of the record indicated that the candidate met the announced educational requirement of a Bachelor's degree and the experience requirement of one year of experience in social case work. A review of the job specification did not indicate that experience in working with adults with chronic and persistent mental illness was necessary to be eligible for the position. In re Maria Lostrangio, Social Worker 2 (S2041N), CSC Dkt. No. 2013-803, 2013 N.J. CSC LEXIS 717, Final Decision (September 19, 2013).

Appointing authority failed to show sufficient justification for removing a candidate's name from the eligible list for County Correction Officer, Morris County, 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 the appointing authority found that the candidate falsified his employment application, his consent to a vehicle search by police officers or his failure to list this

incident on his application was not sufficient cause for removal. In re William Mauro, Cnty. Corr. officer (C9972M), Morris Cnty., CSC Dkt. No. 2013-606, 2013 N.J. CSC LEXIS 708, Final Decision (September 19, 2013).

The removal of an applicant's name from the eligible list for appointment to the title of Fire Fighter (M2377H), Newark, which removal occurred at the behest of the appointing authority per N.J.A.C. 4A:4-6.1(a)9 on the ground that the applicant did not reside in Newark on and after the closing date as required by N.J.A.C. 4A:4-2.11(c)1 was lawful. Though the applicant argued that he was living in an apartment in Newark that was rented to his brother, other evidence strongly inferred that he was residing in North Plainfield in a property that he and his sister owned. Moreover, he admitted to having used the North Plainfield address for the purpose of auto insurance, presumably because use of that address would yield lower premiums. The applicant thus failed to carry the burden of proof allocated to him by N.J.A.C. 4A:4-6(b), in conjunction with N.J.A.C. 4A:4-4.7(d), to show by a preponderance of the evidence that the appointing authority's decision to remove his name from the eligible list was in error. In re Cerchio, Fire Fighter (M2377H), City of Newark, CSC Docket No. 2013-1815, 2013 N.J. CSC LEXIS 860, Final Administrative Action (September 18, 2013).

An Administrative Law Judge (ALJ) concluded that it was lawful per N.J.A.C. 4A:4-4.7(a)1 for the Civil Service Commission to grant the request of a city that was the appointing authority for a position as a police officer that the Commission remove the name of a candidate for that position from the list of eligibles on the ground that his background was unsatisfactory per N.J.A.C. 4A:4-6.1(a)9 and foreclosed his appointment to the position. The candidate was removed for omitting answers to questions on the application and for not submitting copies of certain tax returns as required by the city. The city also cited the additional ground that the candidate had denied knowing or associating with any person convicted of a criminal offense/felony despite the fact that one of his online sources included a picture of him with his cousin, who was a known felon, at a family party celebrating the cousin's release from prison after serving 20 years in prison for drug distribution. In re Olivero, Police Officer (S9999M), Elizabeth, CSC Docket No. 2013-1866, 2013 N.J. CSC LEXIS 828, Final Administrative Action (September 18, 2013).

Appointing authority for position of Correction Officer Recruit (S9987M), Department of Corrections, was properly permitted to remove the name of a candidate from the eligible list for appointment on the basis of an unsatisfactory employment history as permitted by N.J.A.C. 4A:4-4.7(a)1, in conjunction with N.J.A.C. 4A:4-6.1(a)7. The candidate did not dispute the fact that he had been terminated from one position for excessive absenteeism, from a second position for fighting and from a third position for refusing to work at certain locations. The position at issue was reserved for employees who exhibited leadership skills, a positive work ethic and respect for rules and regulations, and a correction officer recruit was held to a higher standard than a civilian public employee. Because the candidate did not carry his burden of proof, per N.J.A.C. 4A:4-6.3(b) and N.J.A.C. 4A:4-4.7(d), to show by a preponderance of the evidence that the decision was in error, it was appropriate for the appointing authority to remove the candidate's name from the eligible list, and the candidate was not entitled to relief therefrom. In re Gallman, Corr. Officer Recruit (S9987M), Dep't of Corrs., CSC Docket No. 2013-1265, 2013 N.J. CSC LEXIS 874, Final Administrative Decision (August 15, 2013).

Order removing an applicant's name from the eligible list for Correction Officer Recruit (S9987M), Department of Corrections on the ground that she had falsified her employment application was sustained by the Civil Service Commission as appropriate under N.J.A.C. 4A:4-4.7(a)1 and N.J.A.C. 4A:4-6.1(a)6. The record established that the applicant had claimed that she was "let go" by a retailer because of economic setbacks when in reality she had been terminated for falsification of her time card. Moreover, her failure to disclose that she had received a "letter of instruction" from the U.S. Army Reserve on account of her failure to attend required drills and had been transferred from her unit due to unexcused absences because the same constituted "discipline" that was required to be disclosed. Her failure to accurately disclose these items

constituted a failure to follow instructions and a failure to provide complete and accurate information and afforded just cause for the removal of her name from the eligible list. In re Yvonne Crosby, Corr. Officer Recruit (S9987M), Dep't of Corr., CSC Dkt. No. 2013-839, 2013 N.J. CSC LEXIS 487, Final Decision (August 2, 2013).

Appointing authority had a sufficient basis to remove a candidate's name from the eligible list for County Correction Officer (C9970M), Passaic County, on the ground that he was not a suitable candidate for appointment as a correction officer based on numerous negative items on his background report, including numerous traffic violations, the existence of a final restraining order against the candidate in connection with a domestic conflict, and an assault charge. Such items constituted "sufficient reason" within the meaning of N.J.A.C. 4A:4-4.7(a)1, in conjunction with N.J.A.C. 4A:4-6.1(a)9, for removal of the candidate's name from the eligible list, and the candidate had failed to show by a preponderance of evidence per N.J.A.C. 4A:4-6.3(b), in conjunction with N.J.A.C. 4A:4-4.7(d), that the appointing authority's decision was in error. In re John Falconi, Cnty. Corr. Officer (C9970M), Passaic Cnty., CSC Dkt. No. 2013-678, 2013 N.J. CSC LEXIS 485, Final Decision (July 31, 2013).

An applicant seeking appointment as a County Correction Officer was properly removed from the eligible list by the appointing authority on account of her failure to fully disclose her criminal record despite her claims that the application did not specifically request the information and that she merely "forgot" about the charges due to the lapse of time. Based on the number of occasions on which the applicant had been arrested and the seriousness of the charges, her claims challenging the alleged lack of specificity in the charges or that she merely forgot about them were unpersuasive. That is, the evidence that the applicant had made false statements of material fact amply supported the appointing authority's use of the authority granted by N.J.A.C. 4A:4-4.7(a)1 and N.J.A.C. 4A:4-6.1(a)6 to remove the applicant's name, and the applicant failed to carry her burden of proof per N.J.A.C. 4A:4-6.3(b) to show by a preponderance of the evidence that the decision was in error. In re Jennifer Picone, Cnty. Corr. Officer (C9972M), Morris Cnty., CSC Dkt. No. 2013-217, 2013 N.J. CSC LEXIS 670, Final Decision (July 19, 2013).

Sufficient basis existed in the record for an appointing authority 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)9 due to an unsatisfactory background report. He admitted that he smoked marijuana within six months of his certification from the eligible list. Thus, at the time of the incident, he knew that he was a candidate for a law enforcement position. In re Shaun Woodruff, Corr. Officer Recruit (S9987M), Dep't. of Corr., CSC Dkt. No. 2013-1021, 2013 N.J. CSC LEXIS 673, Final Decision (July 17, 2013).

Sufficient basis existed in the record for an appointing authority 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)9 when he did not verify his employment. He did not follow the instructions provided by the appointing authority despite acknowledging his awareness that he was required to do so. In re Ubong Utuk, Corr. Officer Recruit (S9987M), Dep't. of Corr., CSC Dkt. No. 2013-2498, 2013 N.J. CSC LEXIS 672, Final Decision (July 17, 2013).

It was appropriate for an appointing authority to remove a candidate's name from the eligible list for Police Lieutenant pursuant to N.J.A.C. 4A:4-4.7(a)1 in conjunction with N.J.A.C. 4A:4-6.1(a)7. The Civil Service Commission had serious concerns with the candidate's extensive minor disciplinary history, particularly given that the nature of the infractions evidenced his inclination for bad judgment and lack of discipline. Such qualities were unacceptable for individuals applying for the position of Police Lieutenant. In re James Schulkes, Police Lieutenant (PM2547K), Plainfield, CSC Dkt. No. 2013-19, 2013 N.J. CSC LEXIS 671, Final Decision (July 17, 2013).

Civil Service Commission found the serious nature of charges against an applicant, coupled with the recent nature of a disciplinary action, sufficient cause to remove an applicant's name from the Assistant Social Work Supervisor 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)9. The applicant's 10 day suspension for conduct unbecoming a public employee was properly considered by the appointing authority when considering him for appointment. He was found to have engaged in an inappropriate e-mail relationship with a former patient, and he failed to report the relationship to his supervisor for more than a year, until the former patient indicated that he was suicidal. In re Jeffrey Glover, Assistant Social Work Supervisor, Psychiatric (PS7533K), Greystone Park Psychiatric Hosp., CSC Dkt. No. 2013-1221, 2013 N.J. CSC LEXIS 543, Final Decision (June 28, 2013).

Applicant's name was properly removed from the Correction Officer Recruit eligible list pursuant to N.J.A.C. 4A:4-6.1(a)6 when he did not disclose the fact that he had been charged with simple assault. Although the applicant claimed he did not remember being charged and the record revealed that the complaint and subsequent warrant did not contain his correct residential address, that information was irrelevant. The inquiry was not whether there was any intent to deceive, but rather whether he withheld information that was material to the position sought. In re Stanton Holder, Corr. Officer Recruit (S9987M), Dep't. of Corr., CSC Dkt. No. 2012-3035, 2013 N.J. CSC LEXIS 466, Final Decision (June 27, 2013).

Candidate did not provide a basis to disturb the determination of the Division of Selection Services and Recruitment that removed his name from the eligible list for Principal Engineer, Bridges, pursuant to N.J.A.C. 4A:4-4.7(a)1 in conjunction with N.J.A.C. 4A:4-6.1. The appointing authority contended that, when questioned in detail regarding some of the design experience on his resume, in several instances the candidate indicated that he did not actually perform the design work that was represented in his experience, and he failed to give specific information to dispute these assertions. In re Mohammed Ullah, Principal Engineer, Bridges (C2206N), Burlington Cnty., CSC Dkt. No. 2013-1224, 2013 N.J. CSC LEXIS 651, Final Decision (June 5, 2013).

Appointing authority was entitled to remove a candidate's name from the eligible list for Fire Fighter (M2508M), City of Bridgeton, on the finding that he had failed to disclose a negative employment history and the existence of a loan for which he was a cosigner because those omissions were material. Since the candidate's failure to disclose the information was indicative of a lack of integrity and poor judgment, N.J.A.C. 4A:4-4.7(a)1, in conjunction with N.J.A.C. 4A:4-6.1(a)6 provided authority for the removal of the candidate's name from the eligible list. In re Brett Busnardo, Fire Fighter (M2508M), City of Bridgeton, CSC Dkt. No. 2012-2959, 2013 N.J. CSC LEXIS 622, Final Decision (May 16, 2013).

Candidate who was certified to the Department of Military and Veterans Affairs and to the Department of Human Services from the same eligible list for the title of Head Cook 2 was properly removed from consideration for both positions on the basis that he had failed to properly complete his employment application. The candidate was required to list all convictions that had not been expunged but failed to disclose a conviction for possession of marijuana, thereby submitting a falsified application. Such conduct constituted grounds 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 removal of the candidate's name from the eligible list. In re John Bushman, Head Cook 2 (S0760M), Dep't of Military and Veterans Affairs and Head Cook 2 (S0760M), Dep't of Human Servs., CSC Dkt. Nos. 2012-2708, 2012-2476, 2013 N.J. CSC LEXIS 492, Final Decision (May 15, 2013).

Sufficient cause existed to remove an applicant's name from the Correction Officer Recruit eligible list based on the significant amount of negative information in his employment and criminal history and the lack of evidence of his rehabilitation efforts. His employment terminations exhibited a lack of respect for the law and rules, which reflected adversely to the position sought pursuant to N.J.A.C. 4A:4-6.1(a)7, and although his convictions either appeared not to be criminal in nature or were violations of township ordinances, which would not give rise to the disability under N.J.A.C. 4A:4-4.7(a)4, the fact that he was involved in such activity reflected upon his character and his ability to perform the duties of the position at issue. In re Michael c. Jakub, Jr., Correction Officer Recruit (S9987M), Dep't of Corrections, CSC Dkt. No. 2013-1319, 2013 N.J. CSC LEXIS 366, Final Decision (May 2, 2013).

Applicant's name was restored to the eligible list for Correction Officer Recruit but was reflected as bypassed. The existence of a conviction for operating a motor vehicle under the influence of drugs or alcohol under the age of 21 was insufficient to remove his name from the list pursuant to N.J.A.C. 4A:4-4.7(a)1 and N.J.A.C. 4A:4-6.1(a)9 because his offense was a one-time event that occurred over six years prior while the applicant was a minor, and the applicant had made efforts at mitigation. However, his driving record provided sufficient cause to bypass him under N.J.A.C. 4A:4-4.8. In re Kyle Camaraza, Correction Officer Recruit (S99887M), Dep't. of Corrections, CSC Dkt. No. 2013-175, 2013 N.J. CSC Lexis 281, Final Decision (May 1, 2013).

Sufficient basis existed 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)1 and N.J.A.C. 4A:4-6.1(a)9 when the record reflected that he had one violation for driving after underage drinking and more than 12 other moving vehicle violations. In re Thomas Moore IV, Correction Officer Recruit (S9987M), Dep't. of Corrections, CSC Dkt. No. 2012-3326, 2013 N.J. CSC LEXIS 265, Final Decision (May 1, 2013).

Applicant's name was removed from the eligible list for Fire Fighter on the basis of his age pursuant to N.J.A.C. 4A:4-4.7(a)1 and N.J.A.C. 4A:4-6.1(a)2. While the applicant's certification stated that he spent five years in sea service aboard a war vessel and was involved in three separate military actions, it did not state the total amount of time he actually spent in patrolling the Persian Gulf during Operation Desert Shield/Desert Storm and in the territorial waters of Somalia during Operation Restore Hope. Consequently his age could not be recalculated. In re Wilfredo Ruiz, Fire Fighter (M2561M), City of Paterson, CSC Dkt. No. 2013-519, 2013 N.J. CSC LEXIS 246, Final Decision (May 1, 2013).

Department of Corrections presented a sufficient basis under N.J.A.C. 4A:4-4.7(a)1, in conjunction with N.J.A.C. 4A:4-6.1(a)6, to remove the name of an applicant from the Correction Officer Recruit eligible list on the basis that she falsified her employment application. She failed to list that she was charged with possession of a weapon. While the applicant did indicate on the application that she had been arrested, indicted, charged with, or convicted of a criminal offense, she did not provide an explanation. She answered "yes" that she had police contact or had been taken into custody; however, her explanation was incomplete and she wrote that she had "no charges" from the incident. In re Shadira Slater, Correction Officer Recruit (S9987M), Dep't. of Corrections, CSC Dkt. No. 2013-766, 2013 N.J. CSC LEXIS 303, Final Decision (April 17, 2013).

Appointing authority presented a sufficient basis under N.J.A.C. 4A:4-4.7(a)1, in conjunction with N.J.A.C. 4A:4-6.1(a)6, to remove the name of an applicant from the eligible list for County Correction Officer Recruit on the basis that she falsified her employment application. The record reflected that she did not disclose an Unlawful Conduct/Beach Recreation Area charge that was issued against her. While the applicant maintained that she was never charged with the offense and was therefore unaware of it, she failed to submit any evidence to support her claim of stolen identity, and the Civil Service Commission is not persuaded by her assertions. In re Alicia Lomas, Correction Officer Recruit (S9987M), Dep't. of Corrections, CSC Dkt. No. 2013-874, 2013 N.J. CSC LEXIS 302, Final Decision (April 17, 2013).

Appointing authority presented sufficient cause to remove an applicant's name from the Automotive Mechanic 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)5 and 4A:4-6.1(a)6, and 4A:4-6.1(a)7. A background check revealed that the applicant had been removed from employment with the State of New Jersey and had an opportunity for a hearing. He failed to present this material information on his application. In re Douglas P. Craig, Automotive Mechanic (S0268L), CSC Dkt. No. 2013-642, 2013 N.J. CSC LEXIS 298, Final Decision (April 17, 2013).

Appointing authority improperly removed an applicant's name from the Property Clerk eligible list under N.J.A.C. 4A:4-6.1(a)9 based solely on the two Captain's Masts he received while in the Navy. The Property Clerk position, although it was in a Prosecutor's Office, was a civilian position and not considered a law enforcement or public safety position

for purposes of a list removal matter. Even if the Property Clerk title were held to a higher standard, the two Captain's Masts in the applicant's military history would still be insufficient to remove him from the subject eligible list because the discipline occurred over 45 years ago. In re Thomas McCool, Property Clerk (C0645M), Cape May Cnty., CSC Dkt. No. 2012-3287, 2013 N.J. CSC LEXIS 351, Final Decision (April 3, 2013).

Appointing authority presented a sufficient basis to remove an applicant's name from the eligible list for Corrections Officer Recruit on the basis of an unsatisfactory criminal record pursuant to N.J.S.A. 11A:4-11 and N.J.A.C. 4A:4-4.7(a)4. While some time has passed since the issuance of restraining orders, the fact that the applicant had an active final restraining order and a temporary restraining issued against him could not be ignored. He also failed to disclose his arrests on his application, warranting removal from the 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. In re Hodges D. Horton, Jr., Correction Officer Recruit (S9987M), Dep't. of Corrections, CSC Dkt. No. 2012-3162, 2013 N.J. CSC LEXIS 204, Final Decision (March 6, 2013).

Removal, by the Department of Corrections (DOC), of a candidate's name from the Correction Officer Recruit (S9987M), DOC eligible list on the basis that she had falsified her employment application was authorized by N.J.A.C. 4A:4-4.7(a)1 and N.J.A.C. 4A:4-6.1(a)6, which together allowed a candidate's name to be removed from an employment list for making a false statement of any material fact or attempting any deception of fraud in any part of the selection or appointment process because the candidate failed to include, in the list of criminal charges that had been filed against her, a charge that she had received stolen property, and then claimed both to have forgotten about the offense and to not have known that it was ever filed. Because the candidate withheld material information, thereby failing to present and complete and accurate picture of her background, the DOC had a sufficient basis for its decision to remove her name from the eligible list and her appeal was properly denied. In re Anrea Darby, Correction Officer Recruit (S9987M), Department of Corrections, CSC Dkt. No. 2013-948, Final Decision (February 21, 2013).

Removal, by the Department of Corrections (DOC), of a candidate's name from the Correction Officer Recruit (S9999K), Department of Corrections (DOC) eligible list due to an unsatisfactory employment record was authorized by N.J.A.C. 4A:4-4.7(a)1 and N.J.A.C. 4A:4-6.1(a)7. That history included the candidate's termination from a security firm; and his poor record as an employee of a county correction center, a position he resigned while disciplinary charges were pending. Because a Correction Officer Recruit was a law enforcement employee holding a highly visible and sensitive position within the community, the candidate's employment history clearly indicated that he would not be suited for such a position, there thus was ample support for the DOC's removal of his name from the eligible list, and his appeal was properly denied. In re Steven Migliacci, Correction Officer Recruit (S9999K), Department of Corrections, CSC Dkt. No. 2011-5154, 2013 N.J. CSC LEXIS 90, Final Decision (February 20, 2013).

Applicant for employment as a correction department officer was properly removed from the recruit list after numerous photos surfaced in which he was in the company of persons who appeared to be gang members based on their display of "gang hand signs" and other indicia. Though there was some ambiguity as to whether the applicant actually was a gang member, in light of the department's zero-tolerance policy for employment of persons with such affiliations, evidence that he appeared to or actually associated with gang members and that he had misrepresented those affiliations on an employment-related questionnaire, the latter being conduct within the scope of N.J.A.C. 4A:4-6.1, established sufficient grounds within the meaning of N.J.A.C. 4A:4-4.7(a)1, for his removal from the recruit list. In re Earp, OAL Dkt. No. CSV 13383-12, 2013 N.J. AGEN LEXIS 35, Initial Decision (February 11, 2013).

Removal by a county of a candidate's name from the County Correction Officer Recruit (C9979M), Essex County eligible list on the basis that he had falsified his employment application was authorized by N.J.A.C. 4A:4-4.7(a)1 and N.J.A.C. 4A:4-6.1(a)6, which together al-

lowed a candidate's name to be removed from an employment list for making a false statement of any material fact or attempting any deception of fraud in any part of the selection or appointment process. Here, the basis for that removal included the candidate's failure to list all of his traffic violations and the further fact that his driving record, which included a conviction for driving under the influence, showed a pattern of disregard for the law and questionable judgment, both of which were incompatible with the duties of a law enforcement officer. Because the candidate had withheld material information, thereby failing to present and complete and accurate picture of his background, the county had a sufficient basis for its decision to remove his name from the eligible list and his appeal was properly denied. In re Remi Laney, County Correction Officer (C9979M), Essex County, CSC Docket No. 2013-329, 2013 N.J. CSC LEXIS 38, Final Decision (February 8, 2013).

Department of Corrections, as appointing authority, demonstrated a sufficient basis within the meaning of N.J.A.C. 4A:4-4.7(a)1, in conjunction with N.J.A.C. 4A:4-6.1(a)9, for the removal of an applicant's name from the eligible list for appointment to the position of Correction Officer Recruit (S9987M) notwithstanding the fact that the applicant had achieved a passing score on the open competitive examination. His 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.

A decision of the Division of Classification and Personnel Management upholding the removal of a candidate's name from the eligible list for Police Officer (S9999M), City of Elizabeth, on the ground that he did not complete preemployment processing was rejected by the Civil Service Commission, which declined to exercise its power per N.J.A.C. 4A:4-4.7(a)11 to remove an eligible's name from an eligible list, and the candidate's name was restored to the list. The appointing agency claimed to have sent him two letters notifying him to appear for pre-employment processing at police headquarters. Though there was a presumption that mail that was correctly addressed, stamped and mailed was generally received by an addressee, the candidate had submitted a notarized statement of his grandfather establishing that the grandfather resided at the same address as the candidate and that no such correspondence had been received. That meant that the candidate had met his burden of proof per N.J.A.C. 4A:4-6.3(b), in conjunction with N.J.A.C. 4A:4-4.7(d), to show that his name had been removed by error. In re *DeSouza*, Police Officer (S9999M), City of Elizabeth, CSC Docket No. 2013-1263, 2013 N.J. CSC LEXIS 695, Final Administrative Determination (September 4, 2013).

Appointing authority for position of Police Officer (S9999K), City of Newark, was properly permitted to remove the name of a candidate from the eligible list for appointment on the basis of an unsatisfactory criminal record, as permitted by N.J.S.A. 11A:4-11 and N.J.A.C. 4A:4-4.7(a)4. The incidents in issue involved two separate domestic violence charges. Even though the charges were ultimately dismissed, they were serious and could not be ignored. Moreover, the candidate's earlier resignation from the position of Correction Officer Recruit, which resignation was not in good standing, demonstrated the candidate's questionable judgment. Nor could the candidate's claims that he had been employed by the city school district for 10 years be corroborated. On the totality of the evidence, the appointing authority presented a sufficient basis to remove the candidate's name from the eligible list. Because the candidate did not carry his burden to show by a preponderance of the evidence that the decision was in error, as required by N.J.A.C. 4A:4-6.3(b), the decision would not be disturbed by the Civil Service Commission. In re *Jones*, Police Officer (S9999K), City of Newark, CSC Docket No. 2012-3303, 2013 N.J. CSC LEXIS 817, Final Administrative Decision (August 16, 2013).

Appointing authority for position of Correction Officer Recruit (S9987M), Department of Corrections, was properly permitted to

remove the name of a candidate from the eligible list for appointment on the basis of an unsatisfactory employment history as permitted by N.J.A.C. 4A:4-4.7(a)1, in conjunction with N.J.A.C. 4A:4-6.1(a)7. The candidate did not dispute the fact that he had been terminated from one position for excessive absenteeism, from a second position for fighting and from a third position for refusing to work at certain locations. The position at issue was reserved for employees who exhibited leadership skills, a positive work ethic and respect for rules and regulations, and a correction officer recruit was held to a higher standard than a civilian public employee. Because the candidate did not carry his burden of proof, per N.J.A.C. 4A:4-6.3(b) and N.J.A.C. 4A:4-4.7(d), to show by a preponderance of the evidence that the decision was in error, it was appropriate for the appointing authority to remove the candidate's name from the eligible list, and the candidate was not entitled to relief therefrom. In re Gallman, Corr. Officer Recruit (S9987M), Dep't of Corrs., CSC Docket No. 2013-1265, 2013 N.J. CSC LEXIS 874, Final Administrative Decision (August 15, 2013).

Appointing authority had a sufficient basis to remove a candidate's name from the eligible list for County Correction Officer (C9970M), Passaic County, on the ground that he was not a suitable candidate for appointment as a correction officer based on numerous negative items on his background report, including numerous traffic violations, the existence of a final restraining order against the candidate in connection with a domestic conflict, and an assault charge. Such items constituted "sufficient reason" within the meaning of N.J.A.C. 4A:4-4.7(a)1, in conjunction with N.J.A.C. 4A:4-6.1(a)9, for removal of the candidate's name from the eligible list, and the candidate had failed to show by a preponderance of evidence per N.J.A.C. 4A:4-6.3(b), in conjunction with N.J.A.C. 4A:4-4.7(d), that the appointing authority's decision was in error. In re John Falconi, Cnty. Corr. Officer (C9970M), Passaic Cnty., CSC Dkt. No. 2013-678, 2013 N.J. CSC LEXIS 485, Final Decision (July 31, 2013).

An applicant seeking appointment as a County Correction Officer was properly removed from the eligible list by the appointing authority on account of her failure to fully disclose her criminal record despite her claims that the application did not specifically request the information and that she merely "forgot" about the charges due to the lapse of time. Based on the number of occasions on which the applicant had been arrested and the seriousness of the charges, her claims challenging the alleged lack of specificity in the charges or that she merely forgot about them were unpersuasive. That is, the evidence that the applicant had made false statements of material fact amply supported the appointing authority's use of the authority granted by N.J.A.C. 4A:4-4.7(a)1 and N.J.A.C. 4A:4-6.1(a)6 to remove the applicant's name, and the applicant failed to carry her burden of proof per N.J.A.C. 4A:4-6.3(b) to show by a preponderance of the evidence that the decision was in error. In re Jennifer Picone, Cnty. Corr. Officer (C9972M), Morris Cnty., CSC Dkt. No. 2013-217, 2013 N.J. CSC LEXIS 670, Final Decision (July 19, 2013).

Affidavit attesting that an applicant for the position of Human Services Specialist 1 (C0395K), Camden County Board of Social Services in fact had never received a notice of certification reflecting that she had achieved a passing score and was ranked on the eligible list afforded sufficient grounds for relief from a determination by the Division of Classification and Personnel Management that N.J.A.C. 4A:4-4.7(a)6 authorized the removal of her name from the list due to her failure to respond to the notice because the affidavit satisfied the applicant's burden of proof, imposed per N.J.A.C. 4A:4-6.3(b), that she show by a preponderance of the evidence that the decision to remove her name was in error. In re Dort-Hinds, Human Services Specialist 1 (C0395K), Camden County Board of Social Services, CSC Dkt. No. 2013-517, 2013 N.J. CSC LEXIS 210, Final Agency Action (April 4, 2013).

Applicant's request that the Civil Service Commission issue a stay pending his appeal, to the Superior Court, Appellate Division, of the Commission's decision that the applicant did not possess one year of required continuous permanent service as of the closing date for the examination for Sheriff's Officer Lieutenant (PC0993N), Essex County, and thus was ineligible for the examination was denied. Because the Commission's decision was amply supported by substantial evidence, the applicant failed to demonstrate that he had a clear likelihood of

success on the merits within the meaning of N.J.A.C. 4A:2-1.2(c). Moreover, even if he had so demonstrated, N.J.A.C. 4A:4-6.3(c) made it clear that the appeal did not provide a basis to hold up the appointment process. That was because there were other mechanisms for relief in the event that the applicant prevailed on appeal. In re Edward Esposito, CSC Dkt. No. 2013-1899, 2013 N.J. CSC LEXIS 89, Final Decision (February 25, 2013).

Finding by the Division of State and Local Operations (SLO) that the Department of Corrections had properly removed a candidate's name from the Correction Officer Recruit (S9987M) eligible list despite the fact that it had been certified based on the Department's finding, as authorized by N.J.A.C. 4A:4-4.7, that the candidate's background report contained items that rendered him unsuitable for the position was rejected on review by the Civil Service Commission. The candidate's submission, which included evidence that the candidate was a young adult when he committed the claimed offenses and that the items had been expunged, taken with substantial evidence of rehabilitation, supported the conclusion that the candidate had met his burden of proof per N.J.A.C. 4A:4-6.3(b) to demonstrate that his background did not warrant the removal of his name from the eligible list and that his name was properly reinstated therein. In re Daniel Esteves, Correction Officer Recruit (S9987M), Department of Corrections, CSC Dkt. No. 2012-1750, 2013 N.J. CSC LEXIS 113 (February 21, 2013).

When the Civil Service Commission on September 10, 2008 permitted two police sergeants to sit for the upcoming September 25, 2008 Police Lieutenant examination, the Commission did not find that there was error in the original decision to disqualify them based on their cheating during the 2005 exam, but only found that disqualifying them would have meant that neither could have been considered for promotion for a period of six years, which it found unduly harsh; therefore, because the officers could not demonstrate that there was error on the part of the appointing authority in disqualifying them, they failed to meet the criteria for granting a make-up examination in order to have time to study and prepare for the upcoming test. In re Gialanella, OAL Dkt. No. CSV 5772-07, 2008 N.J. AGEN LEXIS 1061, Final Decision (September 24, 2008).

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 may contact the Department of Personnel by telephone to make an appointment to review the keyed test booklet.

1. Within five business days after the date of review, in the case of candidates who have reviewed the keyed test booklet, or five business days from the date the multiple choice examination has been held, in the case of all other candidates, candidates may file an appeal in writing against the keyed response for a given item, or with respect to the job-relatedness or appropriateness of test content. The appeal shall specify the question(s) being challenged.

2. Candidates for multiple choice examinations may review their examination papers and the scoring key 20 days after the notice date of the examination results. However, such candidates may file appeals during this 20-day period only with respect to the scoring of their test papers.

(b) No later than five business days after the examination has been held, candidates for tests other than multiple choice may contact the Department of Personnel by telephone to make an appointment to review the test. These candidates

may file an appeal in writing of examination items and scoring 20 days after the candidate's date of review. Candidates for tests other than multiple choice who do not request a review of their examination papers may file an appeal of examination items and scoring within 20 days of the notice date of examination results.

(c) An examination candidate wishing to challenge the manner in which the examination was administered may file an appeal in writing at the examination site on the day of the examination.

(d) Candidates shall not be permitted to copy any of the questions and answers, but shall be allowed to make such limited notes as the Department of Personnel permits.

(e) In order to maintain the security of the examination process, the Commissioner may, on a particular examination, modify or eliminate the review of examination questions and answers. Candidates shall be notified of any such restrictions at the time that the examination is administered.

(f) The Merit System Board shall decide any appeal on the written record or such other proceeding as the Board deems appropriate.

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

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

Added "administration" to section title.

Added new (c) and relettered old (c)-(h) as (d)-(i) with no change in text.

Amended by R.1993 d.162, effective April 5, 1993.

See: 24 N.J.R. 4467(a), 25 N.J.R. 1511(b).

Revised (f); deleted existing (g); redesignated existing (h)-(i) to (g)-(h) and revised text.

Petition for Rulemaking: Notice of Receipt of and Action on Petition.

See: 29 N.J.R. 510(a).

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

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

Rewrote the section.

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

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

Rewrote (a) and (b).

Case Notes

Regulation governing civil service examinee's challenge to his examination score was not arbitrary, capricious, or unreasonable; procedures accommodated competing goals of security and fairness. *Brady v. Department of Personnel*, 149 N.J. 244, 693 A.2d 466 (1997).

Department of Personnel did not sufficiently disclose basis for its grading decision on police sergeant's civil service examination to satisfy due process or to provide for meaningful appellate review. *Brady v. Department of Personnel*, 289 N.J.Super. 557, 674 A.2d 616 (A.D.1996).

Finding that police officer candidate was mentally unfit to perform police duties was based on substantial evidence. *Matter of Vey*, 272 N.J.Super. 199, 639 A.2d 724 (A.D.1993), certification granted 133 N.J. 445, 627 A.2d 1149, affirmed 135 N.J. 306, 639 A.2d 718.

Police officer candidate was mentally unfit to effectively perform police duties. *Matter of Vey*, 272 N.J.Super. 199, 639 A.2d 724 (A.D.1993), certification granted 133 N.J. 445, 627 A.2d 1149, affirmed 135 N.J. 306, 639 A.2d 718.

Challenge to value of Minnesota Multiphasic Personality Inventory (MMPI) test in determining mental fitness of applicant for police work. *Matter of Vey*, 135 N.J. 306, 639 A.2d 718 (1994).

It was not arbitrary, capricious or unreasonable to find applicant unfit for police work. *Matter of Vey*, 135 N.J. 306, 639 A.2d 718 (1994).

Police department not required to test all of its current police officers and compare those psychological test results. *Matter of Vey*, 135 N.J. 306, 639 A.2d 718 (1994).

A visually-impaired employee who applied for the title Human Services Specialist 4 (PC0637P), Hudson County, was not entitled to a retest of the Supervisory Test Battery. To the extent that the employee was complaining about the manner in which the test was administered, N.J.A.C. 4A:4-6.4(c) required her to assert such objections on the day of the test, which the employee failed to do, and she therefore was not entitled to any relief. Moreover, even if she had made a timely objection, the employee's claim failed on the merits because she had been granted ADA accommodations including a reader/marker and extra time and had been permitted to take the test at her current place of employment in Hudson County. Inasmuch as the employee had had a fair opportunity to take the exam, her failure to achieve a passing grade did not entitle her to take it again. In re Johnson, Human Servs. Specialist 4 (PC0637P), Hudson Cnty., CSC Docket No. 2014-20, 2013 N.J. CSC LEXIS 1130, Final Administrative Action (December 6, 2013).

Challenge to the manner in which a promotional examination for Fire Lieutenant (PM5202N), Vineland, was administered should have been filed on the day of the examination as required by N.J.A.C. 4A:4-6.4, and a challenge filed more than a year after the date of the examination and after the applicant received the results was clearly untimely. Moreover, even if the appeal, which claimed that the applicant had only received four minutes and 51 seconds of preparation time for the "evolving scenario" part of the exam, or nine seconds less than the promised five minute period, lacked merit inasmuch as the digital recording of the applicant's presentation indicated that he had received exactly five minutes. In re John Hendershott, Fire Lieutenant (PM5202N), Vineland, CSC Dkt. No. 2013-2881, 2013 N.J. CSC LEXIS 417, Final Decision (August 1, 2013).

Even if an applicant's challenge to the manner in which the promotional examination for Fire Lieutenant (PM5195N), Plainfield was administered was asserted within the time limitations in N.J.A.C. 4A:4-6.4, which required the same to be asserted on the day of the examination, the applicant still would not be entitled to relief because the test monitor for the oral proportion of the examination properly refused to re-read the scenario because to do so would have had the improper effect of affording more preparation time to the applicant than others taking the examination had been allowed. In re Rodney Williams, Fire Lieutenant (PM5195N), Plainfield, CSC Dkt. No. 2013-3536, 2013 N.J. CSC LEXIS 414, Final Decision (August 1, 2013).

When a candidate for the promotional examination for Fire Captain appealed the test administration almost eight months after the examination was given, that appeal was clearly untimely pursuant to N.J.A.C. 4A:4-6.4(c), which required that filing at the examination site on the test date. In addition, he was not entitled to relief on the merits of the appeal. If he felt that muffled voices from the next room were distracting, he had the opportunity to inform the monitor both prior to and during his performance, or during his preparation time for the arriving scenario, so that immediate action could be taken to remedy the problem. In re Stephen Weierbach, Fire Captain (PM5208N), Atlantic City, CSC Dkt. No. 2013-1624, 2013 N.J. CSC LEXIS 444, Final Decision (June 28, 2013).

Challenge to the manner in which the promotional examination for Fire Captain (PM5238N), Paterson was administered was untimely because, contrary to the express terms of N.J.A.C. 4A:4-6.4(c), the applicant did not file such appeal at the test administrative site on the day of the examination. This was in spite of the fact that the monitors informed all test-takers of that requirement on the day of the examination and all applicants also received an informational flyer that specifically informed them of the need to appeal such issues, including how the examination was conducted, at the site itself. In re Jim Lucci, Fire Captain (PM5238N), Paterson, CSC Dkt. No. 2013-2118, 2013 N.J. CSC LEXIS 437, Final Decision (June 28, 2013).

Candidate's appeal pertaining to the administration of a promotional examination for Child Care Quality Assurance Inspector 2 was untimely under N.J.A.C. 4A:4-6.4(c) when it was filed four days after the examination. The Test Administration Form clearly provided that the test candidates had five business days to pay for the appeal but the appeal had to be filed on the day of the examination. In re Robbyn Woolridge, Child Care Quality Assurance Inspector 2 (PS9794K), Dep't. of Children and Families, CSC Dkt. No. 2013-716, 2013 N.J. CSC LEXIS 422, Final Decision (June 28, 2013).

Challenges to the manner in which the competitive examinations for Software Development Specialist 2 (PS0214U), (PS5812U) (PS6056U), (PS6425U), and (PS8147U) and Software Development Specialist 3 (PS6426U) were administered were untimely and would not be considered on the merits because N.J.A.C. 4A:4-6.4(c) required such challenges to be asserted in writing at the examination site on the day of the examination and these challenges had not been timely asserted. In re Sangeeta Akolkar, et al, Software Development Specialist 2 (PS0214U), (PS5812U)(PS6056U), (PS6425U), and (PS8147U) and Software Development Specialist 3 (PS6426U), Office of Info. Tech., CSC Dkt. Nos. 2013-1875, et al. (Consolidated), 2013 N.J. CSC LEXIS 495, Final Decision (May 15, 2013).

Applicant contended that she was not provided with a special accommodation for her disability under N.J.A.C. 4A:4-2.14(a) for a promotional examination, but the Civil Service Commission disagreed. Although she did not indicate the type of accommodation she requested, she was provided with an American Sign Language interpreter based upon her medical diagnosis, but she did not indicate that she would require additional time to complete the examination. She did not raise the issue of her need for an additional accommodation at the test center on the day of the examination pursuant to N.J.A.C. 4A:4-6.4(c) although she was clearly cognizant of her needs prior to taking the examination and she was not precluded from raising the issue of her needs at the examination center. In re Maribel Sanchez, Human Services Technician (PS9823K), Greystone Park Psychiatric Hospital, CSC Dkt. No. 2013-1544, 2013 N.J. CSC LEXIS 300, Final Decision (April 17, 2013).

Applicant's appeal pertaining to the administration of an open-competitive examination for Senior Quality Reviewer was not timely under N.J.A.C. 4A:4-6.4(c) because it was not filed on the day of the examination. However, given what appeared to be a misunderstanding based on what the applicant said she was told by the monitor, the Civil Service Commission reviewed the merits of the case, concluding that no remedy was warranted because all candidates were given the same passage, questions, and directions on the same pages. The applicant was removed from her interim appointment pursuant to N.J.A.C. 4A:4-1.6(h) because there were active eligibles on the list for the position. In re Carolina Ocampo, Senior Quality Control Reviewer (S0369P), CSC Dkt. No. 2013-719, 2013 N.J. CSC LEXIS 267, Final Decision (April 17, 2013).

Though an applicant did not comply with requirement in N.J.A.C. 4A:4-6.4(c) that claims concerning the administration of an examination be filed in writing at the examination site on the day of the examination, that rule was properly relaxed as permitted by N.J.A.C. 4A:1-1.2(c) because the applicant did raise her concerns with the test monitor and the test center supervisor on the day of the examination and filed her appeal on the day after the examination. In re Deidra Samuel, Senior Quality Control Reviewer (S0369P), CSC Docket No. 2013-673, 2013 N.J. CSC LEXIS 181, Final Decision (March 7, 2013).

Applicant's claim that she had been unfairly disqualified from taking the October 20, 2011 open-competitive examinations for Administrative Clerk (C2038N) and Secretarial Assistant 2 (S2073N), Office of the Public Defender by reason of her possession of a cell phone at the test center was rejected as untimely inasmuch as N.J.A.C. 4A:4-6.4(c) required such a claim to be made on the date of the examination at issue and the applicant did not raise it until nearly a year later. In re Janice Clark, Secretarial Assistant 2 (PS0072Q), Secretarial Assistant 2 (S2073N) and Administrative Clerk (C2038N), Office of the Public Defender, CSC Dkt. Nos. 2013-955, 2013-1553, 2013 N.J. CSC LEXIS 75, Final Agency Action (January 25, 2013).

Applicant was not entitled to retake an open competitive examination for Administrative Clerk (M0208P). Although she alleged that numerous announcements were made over the school intercom that created a disturbance in taking the examination, she failed to challenge the manner in which the examination was administered at the examination site as required by N.J.A.C. 4A:4-6.4(c). Because the appeal fee she paid was for processing only and was not submitted in error for an exempt appeal, she was not entitled to a refund of the appeal fee under N.J.A.C. 4A:2-1.8(f). In re Nicole M. Jackson, Admin. Clerk (M0208P), East Orange, CSC Dkt. No. 2013-659, 2013 N.J. CSC LEXIS 61, Final Decision (January 9, 2013).

Correction officer failed medical exam for the police academy and termination was warranted. Theodore v. Passaic County Sheriff's Department, 92 N.J.A.R.2d (CSV) 398.

Removal from eligible list; vision below minimum standard. Thomas v. State Department of Corrections, 92 N.J.A.R.2d (CSV) 218.

Position of correction officer; visual acuity standard; medically fit for the position. Garland v. Department of Corrections, 92 N.J.A.R.2d (CSV) 140.

Restoration to eligibility list; appointing authority rescinded charge of psychological unfitness. N.J.S.A. 4A:4-65. Ruth v. Department of Personnel and Borough of Keyport, 92 N.J.A.R.2d (CSV) 78.

Police captain restored to eligibility list for chief of police. Ruth v. Department of Personnel and Borough of Keyport, 92 N.J.A.R.2d (CSV) 78.

4A:4-6.5 Medical and/or psychological disqualification appeals

(a) An appointing authority may request that an eligible's name be removed from an eligible list due to disqualification for medical or psychological reasons which would preclude the eligible from effectively performing the duties of the title.

1. The appointing authority shall furnish to the Department of Personnel a copy of the certification and a report and recommendation supporting the removal request, prepared and signed by a physician, psychologist or psychiatrist who is licensed in New Jersey or qualified and employed by the appointing authority in the Clinical Psychologist title series.

2. The appointing authority submission shall include a finding that the eligible is not qualified due to medical or psychological reasons for the title. A removal request may be denied where such professional report and recommendation is not provided. See (f) below for report requirements.

3. All medical, psychiatric, and psychological examinations performed at the appointing authority's request shall be at the appointing authority's expense.

(b) In accordance with the Americans with Disabilities Act, 42 U.S.C. 12101 et seq., an appointing authority may only require a medical and/or psychological examination after an offer of employment has been made and prior to appointment, and may condition the offer of employment on the results of such examinations, if:

1. All eligibles for the title, to whom an offer of employment is made, are subjected to such examinations;

2. Information obtained pursuant to this section regarding the medical condition or history of an employee shall be collected and maintained on separate forms and in separate medical files and treated as a confidential medical record, except that:

i. Such information shall be available to appropriate appointing authority and Department of Personnel representatives in connection with inquiries into the ability of an applicant to perform essential job functions;

ii. Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;

iii. Authorized first aid and safety personnel may be informed, when appropriate, if the condition might require emergency treatment, or if any specific procedures are needed in the case of fire or other evacuation; and

iv. Government officials investigating compliance with the Americans with Disabilities Act, or any other Federal or State law prohibiting discrimination on the basis of disability or handicap, shall be provided relevant information on request; and

3. The results of such examinations are used only in accordance with the Americans with Disabilities Act.

(c) Upon receipt of satisfactory documentation, the Department of Personnel shall notify the eligible that:

1. He or she has been disqualified for appointment;

2. He or she may file an appeal with the Merit System Board within 20 days of such notification;

3. If no appeal is received within the specified time, his or her name will be removed from the eligible list; and

4. If the eligible does file an appeal, an opportunity will be provided to submit a report from a physician, psychologist or psychiatrist of his or her own choosing.

(d) Upon receipt of a notice of an eligible's appeal, the appointing authority shall submit to the Merit System Board, within 20 days, all background information, including any investigations and all complete medical, psychological and/or psychiatric reports which were the basis for the removal request.

1. The appointing authority shall also furnish to the appellant's attorney or to a New Jersey licensed psychologist or psychiatrist of the appellant's choice upon request all of the information supplied to the Merit System Board.

2. Any appointing authority failing to submit the required materials within the specified time may have its request for removal denied, and the eligible's name may be retained on the eligible list.

(e) The appellant may submit to the Merit System Board a report from a New Jersey licensed physician, psychologist or

psychiatrist of his or her own choosing. The appellant shall furnish the appointing authority with copies of all submissions to the Merit System Board. See (f) below for report requirements.

(f) The Merit System Board may extend the time period for filing the required reports for good cause. Professional reports submitted by either of the parties shall include the following:

1. The professional's signature, type of license (including the type of license or educational degree of any person contributing to the report), address, and the date;

2. The length of the examination or interview;

3. A specific diagnosis or statement of behavioral pattern or the specific reasons for a recommendation;

4. A finding as to the qualifications of the appellant for effective performance of the duties of the title; and

5. All tests that have been administered (for example, EKG, EEG, X-ray, M.M.P.I., Rorschach and T.A.T.) and all raw data, protocols, computer printouts and profiles from these tests.

(g) The Merit System Board shall either conduct a written record review of the appeal or submit psychological appeals to the New Jersey Personnel Medical Review Panel (Review Panel), and medical appeals to the New Jersey Personnel Medical Examiners Panel (Examiners Panel). The Panels are composed of professionals in the medical or psychological field. Either Panel may request additional psychological or medical reports, examinations or other materials.

1. When submitted to the Review Panel or Examiners Panel, the appellant or the appointing authority may request the opportunity to appear before the Panel. Such request must be made within 10 days from receipt of notice that the appeal has been submitted to a Panel.

2. If no appearance is requested, the appeal will be reviewed by the Panel upon the written record.

3. The Panel shall prepare a written report and recommendation for the Merit System Board.

i. The appellant and appointing authority shall be provided with copies of the report and recommendation.

ii. Both parties may file written exceptions with the Merit System Board within 10 days of receipt of the report and cross-exceptions within five days.

4. In appropriate cases, the Merit System Board may refer an appellant for an independent professional evaluation.

5. The Merit System Board may assess costs and penalties against a party when the inadequacy of a professional report necessitates an independent professional evaluation,

when a party causes unnecessary delay in the review process, or for other substantial violation of these rules.

(h) The Merit System Board shall review the appeal, including the written report and exceptions, if any, and render a written final decision.

Repeal and New Rule, R.1989 d.569, effective November 6, 1989.

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

Amended by R.1990 d.346, effective July 16, 1990.

See: 22 N.J.R. 1300(a), 22 N.J.R. 2143(a).

Changes made to accurately reflect N.J.S.A. 45:14B-1 et seq. concerning the licensing of psychologists.

Amended by R.1993 d.46, effective January 19, 1993.

See: 24 N.J.R. 3596(a), 25 N.J.R. 292(a).

Redesignated existing (b)-(g) as (c)-(h); added new (b).

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)2 and (e).

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

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

Rewrote (d)1; deleted former (d)2; recodified former (d)3 as (d)2.

Law Review and Journal Commentaries

Public Employment—Police. Steven P. Bann, 136 N.J.L.J. No. 14, 70 (1994).

Case Notes

Merit System Board in the Department of Personnel had not acted arbitrarily and capriciously in finding that an applicant for employment as a police officer was unfit for police work based on the results of the Minnesota Multiphasic Personality Inventory (MMPI) test which found that the applicant was, among other things, manipulative, irresponsible, and easily frustrated; the MMPI test is nationally used and officially recognized by the Board in N.J.A.C. 4A:4-6.5(f)5 and the applicant's own expert relied on the MMPI test when evaluating her. *In re Vey*, 135 N.J. 306, 639 A.2d 718, 1994 N.J. LEXIS 178, 10 I.E.R. Cas. (BNA) 951, 10 I.E.R. Cas. (BNA) 955 (1994).

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).

Applicant found to be psychologically unfit for real estate analyst position properly removed from certified list for such position. *Cooper v. Department of Community Affairs*, 96 N.J.A.R.2d (CSV) 255.

4A:4-6.6 Disqualification appeals

(a) Appeals other than scoring, item, and administration appeals (N.J.A.C. 4A:4-6.4) and medical and/or psychological disqualification appeals (N.J.A.C. 4A:4-6.5) shall follow the following procedures:

1. The appeal shall be filed within 20 days of notice of the action, decision, or situation being appealed.

2. An appeal must be filed with an appropriate representative of the Civil Service Commission as indicated on the notice advising of disqualification.

(b) The Civil Service Commission shall decide any appeal on the written record or such other proceeding as the Commission deems appropriate.

(c) 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): added "and administration" and replaced "unfitness" with "disqualification" describing types of appeals.

Amended by R.1993 d.162, effective April 5, 1993.

See: 24 N.J.R. 4467(a), 25 N.J.R. 1511(b).

Revised (a); deleted existing (b); redesignated existing (c)-(d) to (b)-(c) with revisions in text.

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

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

Deleted (a)3; deleted (b) and (c); and recodified former (b)2 as (b).

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

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

In the introductory paragraph of (a), inserted a comma following "item"; in (a)1, inserted a comma following "decision"; in (a)2, substituted "an appropriate representative of the Civil Service Commission" for "the Department of Personnel"; in (b), substituted "Civil Service Commission" for "Merit System Board" and "Commission" for "Board"; and added (c).

Case Notes

Department of Personnel did not sufficiently disclose basis for its grading decision on police sergeant's civil service examination to satisfy due process or to provide for meaningful appellate review. *Brady v. Department of Personnel*, 289 N.J. Super. 557, 674 A.2d 616 (A.D.1996).

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

SUBCHAPTER 7. OTHER APPOINTMENTS OR EMPLOYEE MOVEMENTS

4A:4-7.1 Transfers within the same governmental jurisdiction

(a) A permanent transfer is the movement of a permanent employee between organizational units within the same governmental jurisdiction.

1. In State service, an organizational unit shall mean an appointing authority. The Department of Human Services shall constitute a single appointing authority for purposes of this subchapter.

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

(b) If the transferred employee is concurrently appointed to a title or job band, as applicable, other than that held on a permanent basis at the time of transfer to accurately reflect new duties, the permanent transfer shall be made in combination with appropriate promotional, lateral title change, or voluntary demotion procedures. See N.J.A.C. 4A:4-2.4 through 2.7, 7.6, and 7.8, respectively.

1. The employee shall retain permanent status in the previously held permanent title or job band with the re-

recipient organizational unit until examination and working test period procedures are concluded.

2. If the employee does not successfully complete the examination or working test period procedures, the recipient organizational unit shall return the employee to his or her permanent title or job band within this organizational unit pursuant to N.J.A.C. 4A:4-1.9 unless the employee has been disqualified for further employment.

(c) In local service, a permanent transfer shall require the consent of both organizational units and the approval of the Chair/CEO of the Civil Service Commission. In State service, the consent of the affected employee shall also be required.

1. Consent may be withdrawn by any party prior to the effective date of the transfer.

2. In State service, the consent of the employee shall not be required when there is a transfer or combining of functions or operations across organizational unit lines.

(d) A temporary transfer may be voluntary or involuntary and is the movement of a permanent employee between organizational units within the same governmental jurisdiction for a maximum of six months to effect economies, make available a needed service for short periods, or for any other documented purpose, which is in the best interest of the public service. All temporary transfers must be approved by the Chair/CEO of the Civil Service Commission.

(e) An emergency transfer may be voluntary or involuntary and is the movement of a permanent employee between organizational units within the same governmental jurisdiction for a maximum of 30 days.

1. The Chair/CEO of the Civil Service Commission may authorize an emergency transfer when the appointing authority for the receiving unit certifies that the failure to make such transfer will result in harm to persons or property.

2. If there is a need to extend the emergency transfer beyond 30 days, the procedures governing temporary transfers must be followed.

(f) Any affected employee must be given at least 30 days' written notice of an involuntary transfer, except an involuntary emergency transfer, in which case reasonable notice must be given.

1. The notice shall contain the following:

- i. The organizational unit to which the transfer is being made;
- ii. The effective date of the transfer; and
- iii. The reason for the transfer.

2. Less than 30 days' notice may be given where the employee gives his or her consent for a shorter notice period or the Chair/CEO of the Civil Service Commission finds that

a more immediate transfer is required to provide a needed service.

Public Notice: Petition for amendment.

See: 27 N.J.R. 2805(a).

Amended by R.1996 d.426, effective September 16, 1996.

See: 28 N.J.R. 2106(b), 28 N.J.R. 4223(a).

Added provisions relating to emergency transfers.

Amended by R.1997 d.411, effective October 6, 1997.

See: 29 N.J.R. 2732(b), 29 N.J.R. 4279(b).

In (a)1, added second sentence.

Amended by R.2001 d.420, effective November 19, 2001.

See: 33 N.J.R. 2567(a), 33 N.J.R. 3895(b).

Amended by R.2010 d.220, effective October 18, 2010.

See: 42 N.J.R. 1114(a), 42 N.J.R. 2400(a).

In the introductory paragraph of (b), substituted "through 2.7, 7.6 and 7.8" for "et seq., 4A-47.6 and 4A:4-7.8"; rewrote the introductory paragraph of (c); in (c)2, substituted "In State service, the" for "The"; in (d), inserted a comma following "purpose"; in (d) and (f)2, substituted "Chair/CEO of the Civil Service Commission" for "Commissioner of the Department of Personnel"; and in (e)1, substituted "Chair/CEO of the Civil Service Commission" for "Commissioner".

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

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

In the introductory paragraph of (b), inserted "or job band, as applicable," and inserted a comma following "change" and following "7.6"; in (b)1 and (b)2, inserted "or job band"; and in (d), inserted a comma following "periods".

Case Notes

Status of attorney as private plan hearing officer throughout the period in question rendered assignment of new supervisor not "transfer." *Morley v. State*, Dept. of Labor, 276 N.J.Super. 223, 647 A.2d 1312 (A.D.1994).

Scope of negotiation: transfer and reassignment provisions. In re *IFPTE Local 195 v. State*, 88 N.J. 393, 443 A.2d 187 (1982).

Improper transfer. *State v. Richford*, 161 N.J.Super. 165, 391 A.2d 531 (App.Div.1978).

Transfer requires change from one position to another of the same class—petitioner's change in position was not a transfer even though position was substantially similar (citing former N.J.A.C. 4:1-15.1 and 15.4). *State Administrative Office of the Courts v. Richford*, 161 N.J.Super. 165, 391 A.2d 531 (App.Div.1978).

Intraclass transfers. In re *Appeal of Lembo*, 151 N.J.Super. 242, 376 A.2d 971 (App.Div.1977).

Rights of employee voluntarily transferred (statutory). *Widmer v. Township of Mahwah*, 151 N.J.Super. 79, 376 A.2d 567 (App.Div.1977).

Approval from Civil Service Comm'n required prior to county board of freeholders transferring employees from classified to unclassified positions (citing former N.J.A.C. 4:1-5.4). *Bergen Cty. v. New Jersey Dep't of Civil Service*, 115 N.J.Super. 90, 278 A.2d 232 (App.Div.1971).

Transfer from classified to unclassified positions. *Bergen County v. Dept. of Civil Service of N.J.*, 115 N.J.Super. 90, 278 A.2d 232 (App.Div.1971).

Relocation of the office of the New Jersey Division of Rate Counsel (DRC) is not a "permanent transfer" of the employees located therein within the meaning of N.J.A.C. 4A:4-7.1(c) and thus did not require the consent of each affected employee. That was because, per N.J.A.C. 4A:4-7.1(a), a "permanent transfer" is the movement of a permanent employee between organizational units within the same governmental jurisdiction, with "organizational unit" being defined as an "appointing authority." Therefore, since the DRC did not change organizational units, the relocation of its offices cannot be considered a transfer to which

employee consent was required. In re White, Div. of Rate Counsel, Dep't of the Treas., CSC Docket No. 2013-2286, 2013 N.J. CSC LEXIS 1175, Final Administrative Action (November 26, 2013).

4A:4-7.1A Intergovernmental transfers

(a) An intergovernmental transfer is the movement of a permanent employee between governmental jurisdictions operating under Title 11A, New Jersey Statutes, or the appointment of an employee, by a governmental jurisdiction operating under Title 11A, within one year of the effective date of a layoff for reasons of economy or efficiency in which the employee is separated from service from another governmental jurisdiction operating under Title 11A.

(b) An intergovernmental transfer shall require the consent in writing of the sending jurisdiction, if any, the receiving jurisdiction, and the affected employee, and the approval of the Chairperson of the Civil Service Commission or designee.

1. The receiving jurisdiction may waive its residency ordinance or resolution in consenting to receive a transferring employee, provided, however, transferring police officers and firefighters must maintain their New Jersey residency. See N.J.S.A. 40A:14-9.8 and 40A:14-122.8. A transferring employee, other than a police officer or firefighter, who is not a New Jersey resident and transfers to a receiving jurisdiction following a layoff of more than seven days, is subject to the New Jersey residency requirement at P.L. 2011, c. 70.

2. The optional waiver of accumulated sick leave and seniority rights by a law enforcement officer, including a sheriff's officer and a county correction officer, shall require the consent in writing of the receiving jurisdiction, the affected employee, and the Chairperson of the Civil Service Commission or designee.

(c) A transferred employee shall be moved to a title substantially at the same level.

1. The existence of an open competitive or promotional list in the receiving jurisdiction shall not be a bar to the transfer.

2. Where the title to which the employee is transferring is different from that held on a permanent basis in the sending jurisdiction, or from that held on a permanent basis prior to the effective date of a separation from service due to layoff, as the case may be, the receiving jurisdiction shall request that the Chairperson of the Civil Service Commission or designee approve the title, based on the following criteria:

- i. The title(s) shall have substantially similar duties and responsibilities;
- ii. The education and experience requirements for the title(s) are the same or similar and the mandatory requirements of the new title shall not exceed those of the former title;

iii. There shall be no special skills, licenses, certification, or registration requirements for the new title which are not also mandatory for the former title; and

iv. Any employee in the former title can, with minimal training and orientation, perform the duties of the new title by virtue of having qualified for the former title.

(d) Permanent employees serving in law enforcement and firefighter titles shall be eligible only for an intergovernmental transfer to the corresponding entry-level title in the receiving jurisdiction.

(e) For purposes of this section, in the case of a position within a job band in State service, "title" shall mean the entire job band. See N.J.A.C. 4A:3-3.2A.

(f) See N.J.A.C. 4A:4-2.15, Rating of examinations, for the calculation of seniority in a promotional examination situation when an employee has had an intergovernmental transfer; N.J.A.C. 4A:4-3.7, Priority of eligible lists, for the priority of an open competitive list with regard to an intergovernmental transfer; N.J.A.C. 4A:4-7.4, Retention of rights, for the retention of seniority following intergovernmental transfers; N.J.A.C. 4A:6-1.2, Vacation leave, 1.3, Sick leave, and 1.9, Administrative leave, for paid leave entitlements following an intergovernmental transfer; N.J.A.C. 4A:6-3.5, SCOR: Intergovernmental transfers, for SCOR entitlements following an intergovernmental transfer; N.J.A.C. 4A:8-2.3, Exercise of special reemployment rights, for intergovernmental transfers following a separation of service due to layoff; N.J.A.C. 4A:8-2.4, Seniority, for the affect of intergovernmental transfers on seniority for layoff purposes; and N.J.A.C. 4A:10-2.2, Failure to appoint from complete certification, for the consequences of a receiving jurisdiction's failure to appoint from an open competitive list when an intergovernmental transfer is effected.

New Rule, R.2001 d.420, effective November 19, 2001.

See: 33 N.J.R. 2567(a), 33 N.J.R. 3895(b).

Amended by R.2007 d.358, effective November 19, 2007.

See: 39 N.J.R. 2680(a), 39 N.J.R. 4923(b).

Added (b)2.

Amended by R.2012 d.089, effective May 7, 2012.

See: 44 N.J.R. 6(a), 44 N.J.R. 1335(a).

In (a), substituted "one year" for "90 days"; in the introductory paragraph of (b), and in (b)2 and (c)2, substituted "Chairperson of the Civil Service Commission or designee" for "Department of Personnel"; in the introductory paragraph of (b), inserted a comma following the second occurrence of "jurisdiction" and deleted a comma following "employee"; and in (b)1, inserted the last sentence.

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

See: 45 N.J.R. 500(a), 46 N.J.R. 260(a), 46 N.J.R. 1331(c).

In the introductory paragraph of (b), inserted a comma following "jurisdiction" and following "employee"; in (c)2iii, inserted a comma following "certification"; added new (e); recodified former (e) as (f); and in (f), deleted "4A:6-", preceding "1.3" and preceding "1.9".

Case Notes

Good cause within the meaning of N.J.A.C. 4A:1-1.2(c) existed to grant the request of a county sheriff's office to relax the provisions of N.J.A.C. 4A:4-7.1A(b) to permit the retroactive Intergovernmental Transfer of two correction officers in the Department of Corrections

(DOC) to the title of County Correction Officer. Both the DOC and the county delayed completion of the required paperwork due to the failure of a staff member to send the appropriate forms, but a review of the transfer agreement confirmed that both agencies had agreed to the transfer. Though the officers should not have accepted their transfer prior to approval, given the fact that both have been or were satisfactorily performing the duties with the county, good cause existed to permit their permanent transfer to the county as requested. In re Beale et al, Sussex County, CSC Docket Nos. 2014-399, 2014-400 (Consolidated), 2013 N.J. CSC LEXIS 1040, Final Administrative Action (November 7, 2013).

The provisions of N.J.A.C. 4A:4-7.1A(b) requiring the written consent of a sending jurisdiction, the receiving jurisdiction, the employee and the Civil Service Commission were properly relaxed as permitted by N.J.A.C. 4A:1-1.2(c) in connection with the intergovernmental transfer of an employee in the title of Deputy Municipal Court Administrator, Egg Harbor City, to the title of Deputy Municipal Court Administrator, Long Beach. Due to an error resulting from the lack of familiarity concerning intergovernmental transfer rules, Long Beach delayed its completion of the documentation supporting the intergovernmental transfer. However, a review of the intergovernmental transfer agreement confirms that both jurisdictions had agreed to the transfer. Although Long Beach should not have accepted the employee's transfer prior to receiving all required approvals, including that of the Commission, the fact was that the employee had been satisfactorily performing the duties with the appointing authority since July 1, 2013. Given the facts and circumstances, there was good cause to retroactively permit her permanent transfer to Long Beach effective as of that date. In re Daniels, Long Beach Township, CSC Docket No. 2014-128, 2013 N.J. CSC LEXIS 721, Final Decision (August 15, 2013).

County sheriff's officer was not entitled to an order authorizing an intergovernmental transfer to the title of county police officer in a different jurisdiction despite the officer's claim that he was being retaliated against for wanting to intergovernmentally transfer or to have a change in job assignment because N.J.A.C. 4A:4-7.1A(b) provides that an intergovernmental transfer shall require the consent in writing of an sending jurisdiction, the receiving jurisdiction and the affected employee, and the approval of the relevant agency. Not only was participation in the transfer program not an entitlement but the officer failed to substantiate in any respect his allegations to the effect that his current employing agency's denial of approval was in furtherance of a campaign of retaliation against him. In re Richard Calo, Essex Cnty. Sheriff's Office, CSC Dkt. No. 2013-3047, 2013 N.J. CSC LEXIS 611, Final Decision (August 1, 2013).

Civil Service Commission permitted the intergovernmental transfer of a sheriff's officer to the position of a police officer although he had not completed his 12-month working test period as required by N.J.A.C. 4A:4-5.2(d) and a request could not have been processed under N.J.A.C. 4A:4-7.1A(a). Given the town's staffing needs for trained law enforcement personnel, good cause existed under N.J.A.C. 4A:1-1.2(c) to relax the controlling regulatory provisions in order to permit the transfer to the Police Department. In re Pawel Wcislo, Twp. of Marlboro, CSC Dkt. No. 2013-3253, 2013 N.J. CSC LEXIS 663, Final Decision (July 17, 2013).

Civil Service Commission relaxed the provisions of N.J.A.C. 4A:4-7.1A(b) to permit the retroactive intergovernmental transfer of an employee from the title of Keyboarding Clerk 1, Municipal Court, City of Trenton to the title of Keyboarding Clerk 1, Mercer County Prosecutor's Office. Due to a former staff member not advising the employee properly and failing to complete appropriate forms and following through with the Intergovernmental Transfer, Mercer and Trenton delayed completing the paperwork in support of the Intergovernmental Transfer. Although Mercer should not have accepted her transfer prior to approval, given the fact that the employee was already satisfactorily performing the duties with Mercer, good cause existed to permit her permanent transfer to Mercer. In re Debra Torres, Mercer Cnty. Prosecutor's Office, CSC Dkt. No. 2013-2885, 2013 N.J. CSC LEXIS 570, Final Decision (June 28, 2013).

Civil Service Commission relaxed the provisions of N.J.A.C. 4A:4-7.1A(b) to permit the retroactive Intergovernmental Transfer of an employee from Sussex County to Morris County. Although, due to a series of misunderstandings, the employee was unable to be appointed as a Social Worker with Morris through the intergovernmental transfer program, it was clear that Morris had agreed to the transfer, and Sussex indicated that it did not object. Given the fact that the employee had been satisfactorily performing the duties with the appointing authority, good cause existed to permit her permanent transfer. In re Shawanna Bailey, Morris Cnty., CSC Dkt. No. 2013-2415, 2013 N.J. CSC LEXIS 467, Final Decision (June 27, 2013).

Civil Service Commission granted the intergovernmental transfers of two police officers under N.J.A.C. 4A:4-7.1A(a) despite the fact that they had not yet commenced their 12-month working test periods. Given the circumstances surrounding the transferor city's fiscal crisis, the transferee city's need for trained law enforcement staff and its staffing needs, good cause existed pursuant to N.J.A.C. 4A:1-1.2(c) to relax the controlling regulatory provisions in order to permit the transfers. In re Justyna Halat and Scott Maloney, Rahway, CSC Dkt. Nos. 2013-2984, 2013-2985, 2013 N.J. CSC LEXIS 597, Final Decision (June 6, 2013).

Provisions of N.J.A.C. 4A:4-7.1A(b) were relaxed under N.J.A.C. 4A:1-1.2(c) in order to permit the retroactive intergovernmental transfer of an employee from the title of Sheriffs Officer, Atlantic County Sheriffs Office, to the title of Police Officer, Egg Harbor. Although Egg Harbor should not have accepted his transfer prior to Division of Classification and Personnel Management approval, given the fact that the employee was satisfactorily performing the duties with the appointing authority, good cause existed to permit his permanent transfer to Egg Harbor. In re Christopher Hoffman Police Officer Egg Harbor city, CSC Dkt. No. 2013-2895, 2013 N.J. CSC LEXIS 637, Final Decision (June 5, 2013).

The issue of title comparability that is the subject of N.J.A.C. 4A:4-7.1A(c)2 is significant in the context of the intergovernmental transfer program given the substantial rights afforded to a participant in the program. For example, N.J.A.C. 4A:8-2.4(a) provides that an employee's continuous service accumulated prior to an intergovernmental transfer shall be considered as continuous permanent service in the jurisdiction for layoff purposes. Thus, if two different titles involved in an intergovernmental transfer are determined to be substantially similar, for layoff purposes, seniority for determining lateral, demotional and special reemployment rights would include all time in the previous jurisdiction. Therefore, to permit an intergovernmental transfer involving two titles that are not substantially similar could have the effect of inappropriately expanding the transferee's lateral and demotional title rights in the new jurisdiction. Indeed, the determination of lateral and demotional title rights under N.J.A.C. 4A:8-2.1 utilizes the exact same criteria listed in N.J.A.C. 4A:4-7.1A(c). Accordingly, the rules governing the determination whether titles involved in an intergovernmental transfer are substantially similar are strictly construed. In re Diane M. Cannatella, Dep't of Human Servs., CSC Dkt. No. 2013-2834, 2013 N.J. CSC LEXIS 623, Final Decision (May 16, 2013).

The title of Human Services Specialist 2 is not substantially similar to the title of Principal Income Maintenance Technician. Although the two titles may perform similar duties and responsibilities involving the determination of client eligibility for various programs and services, the Principal Income Maintenance Technician title requires a bachelor's degree and two years of experience while the Human Services Specialist 2 title only requires completion of 60 college credits and one year of experience. As such, and in accordance with N.J.A.C. 4A:4-7.1A(c)2ii, the education and experience requirements for the titles involved are not "substantially similar" and intergovernmental transfer of an employee holding the former position to the latter position was not authorized. In re Diane M. Cannatella, Dep't of Human Servs., CSC Dkt. No. 2013-2834, 2013 N.J. CSC LEXIS 623, Final Decision (May 16, 2013).

Removal of the names of certain employees from a special reemployment list upon acceptance of an intergovernmental transfer was proper under N.J.A.C. 4A:8-2.3(f) and N.J.A.C. 4A:4-7.1A where, as here, that transfer occurred within one year of the effective date of a layoff resulting in the employee's separation from service. Nor were the employees

entitled to be specifically advised of such removal by the transferee authority. In re Cincilla et al, Police Officer (Special), Trenton, CSC Docket Nos. 2013-1238, 2013-1239 and 2013- 1240 (Consolidated), 2013 N.J. CSC LEXIS 349, Final Decision (April 3, 2013).

There was no merit to a claim by employees who accepted intergovernmental transfers within one year of being laid off by a city and being placed on a special reemployment list that the transfers were not properly authorized due to the fact that the city from which they had been laid off did not "sign off" on the transfer documents. Since the status of the employees at the time of the transfer was that of layoff, the city from which they had been laid off was not a "sending jurisdiction," N.J.A.C. 4A:4-7.1A(b) did not require the city to consent to the transfer. In re Cincilla et al, Police Officer (Special), Trenton, CSC Docket Nos. 2013-1238, 2013-1239 and 2013- 1240 (Consolidated), 2013 N.J. CSC LEXIS 349, Final Decision (April 3, 2013).

Civil Service Commission granted a request made by a county that the Commission, per N.J.A.C. 4A:1-1.2(c), relax the rules governing intergovernmental transfers, including N.J.A.C. 4A:4-7.1A(a), and allow a police officer who had been laid off by a city before he could complete his working test period in compliance with N.J.A.C. 4A:4-5.2(d) and more than a year prior to the date on which the request was made to transfer to the county sheriff's office, where he would complete his working test period. Relief was proper given the circumstances of the city's layoff action, the county's need for trained law enforcement staff, and the willingness of the parties to provide for the officer's completion of his working test period. In re Hisham Sheikh, Bergen County Sheriff's Office, CSC Dkt. No. 2013-200, 2013 N.J. CSC LEXIS 100, Final Decision (February 21, 2013).

Police officer was granted an intergovernmental transfer under N.J.A.C. 4A:4-7.1A(a) despite the fact that he had not yet completed his 12-month working test period required by N.J.A.C. 4A:4-5.2(d). Given the Borough's critical need for trained law enforcement staff, good cause existed under N.J.A.C. 4A:1-1.2(c) to permit the transfer and to allow him to complete the remainder of his working test period with the Borough. In re Robert Scarborough, Borough of Woodlynn, CSC Dkt. No. 2013-1797, 2013 N.J. CSC LEXIS 24, Final Decision (February 7, 2013).

Civil Service Commission ordered the relaxation of N.J.A.C. 4A:4-7.1A(c) to permit the intergovernmental transfer of an employee from the title of Laborer 1, Township of Long Beach, to the title of Assistant Water Treatment Plant Operator, Hammonton. Documentation was submitted verifying that the duties of the two positions were similar and that only the employee possessed the required licenses and the necessary experience. In re Michael Ott, Town of Hammonton, CSC Dkt. No. 2013-1543, 2013 N.J. CSC LEXIS 146, Final Decision (January 24, 2013).

Provision in N.J.A.C. 4A:1-1.2(c) allowing for a rule to be relaxed on a showing of "good cause" was properly invoked to permit a retroactive intergovernmental transfer of an employee from the title of Librarian Reference, Irvington Public Library (Irvington), to the title of Librarian Reference, Clark on a showing that both appointing authorities had approved the employee's request for transfer with a start date of December 6, 2012 but that the documentation required to effectuate the transfer was not submitted to the Division of Classification and Personnel Management (CPM) for processing until December 10, 2012, which was after the start date, because of delays caused by the Thanksgiving holiday and by staffing issues and because the transferee authority could not move forward until the written consent required by N.J.A.C. 4A:4-7.1A(b) had been received. Although the transferee authority should not have accepted the employee's transfer prior to CPM's approval, given the fact that the employee has been satisfactorily performing the duties with that authority, good cause existed to permit the permanent transfer effective December 6, 2012 as requested. In re Reilly, Clark Public Library, CSC Dkt. No. 2013-1612, 2013 N.J. CSC LEXIS 122, Final Decision (January 24, 2013).

Provisions of N.J.A.C. 4A:4-7.1A(b) were relaxed to permit the retroactive intergovernmental transfer of an employee from the title of Assistant Purchasing Agent, Township of Irvington (Irvington) to the

title of Assistant Purchasing Agent, East Orange. Due to a clerical error, East Orange erroneously recorded the employee's appointment as provisional, pending open competitive examination procedures, to the title Purchasing Agent. However, a review of the intergovernmental transfer agreement confirmed that East Orange and Irvington agreed to the employee's transfer to the title of Assistant Purchasing Agent. In re Lisa Jackson, City of East Orange, CSC Dkt. No. 2012-3049, 2013 N.J. CSC LEXIS 134, Final Decision (January 11, 2013).

Provisions of N.J.A.C. 4A:4-7.1A(b) were relaxed to permit the retroactive intergovernmental transfer of an employee from the title of Public Safety Telecommunicator, State Police, Department of Law and Public Safety, Division of State Police (DLPS), to the title of Communications Officer, Rockaway. Due to a high turnover rate of staffing and the existing staffs lack of familiarity concerning intergovernmental transfer rules, Rockaway delayed completing the paperwork in support of the intergovernmental transfer. Although Rockaway should not have accepted his transfer prior to Division of Classification and Personnel Management's approval, given the fact that the employee had been satisfactorily performing the duties with the appointing authority, good cause existed to permit his permanent transfer. In re Joseph P. Keely, Rockaway Twp., CSC Dkt. No. 2013-275, 2013 N.J. CSC LEXIS 107, Final Decision (January 11, 2013).

4A:4-7.2 Reassignments

A reassignment is the in-title movement of an employee to a new job function, shift, location or supervisor within the organizational unit. Reassignments shall be made at the discretion of the head of the organizational unit. See N.J.A.C. 4A:4-7.7 for appeals.

Case Notes

Entire controversy doctrine should not have precluded supplementary arbitration as to salary under collective negotiation agreement of police investigators with less than seven years service. *Jersey City Police Officers Benev. Ass'n v. City of Jersey City*, 257 N.J. Super. 6, 607 A.2d 1314 (A.D.1992).

An employee of the New Jersey Division of Rate Counsel (DRC) who claimed that his reassignment, per N.J.A.C. 4A:4-7.2, to an office in Trenton was done in "bad faith" failed to carry his burden of proof per N.J.A.C. 4A:4-7.7 to show bad faith in that he did not establish in any way that the reasons given for the reassignment, which coincided with the relocation of the DRC office to Trenton, were illegitimate or pretextual nor that he was the "target" of such bad faith. In re White, Div. of Rate Counsel, Dep't of the Treas., CSC Docket No. 2013-2286, 2013 N.J. CSC LEXIS 1175, Final Administrative Action (November 26, 2013).

An employee holding the title Superintendent, Parks and Forestry 1, who was previously assigned to a position at a state park did not establish grounds for relief from a reassignment that moved him from that state park to a special project under the supervision of the assistant director of the park service because, per N.J.A.C. 4A:4-7.2, reassignments such as the one at issue herein were at the discretion of the head of the unit (here, the Department of Environmental Protection) and the employee failed to carry his burden, per N.J.A.C. 4A:4-7.7, to show that the assignment was made in bad faith. The employee's mere allegations that he was reassigned in retaliation for his having voiced his disagreement with privatizing state parks did not provide a sufficient basis for relief. In re Pitchell, Dep't of Env't Prot., CSC Docket No. 2013-649, 2013 N.J. CSC LEXIS 704, Final Administrative Decision (August 16, 2013).

Employee failed to establish an abuse by the appointing authority of its discretion in his reassignments pursuant to N.J.A.C. 4A:4-7.2. His duties were in accord with the job specification for his current title and there was no showing of bad faith or that his assigned duties were a part of a disciplinary action that would warrant disciplinary procedures. In re Angel Lierena, Dep't. of Labor and Workforce Dev., CSC Dkt. No. 2011-4279, 2013 N.J. CSC LEXIS 217, Final Decision (April 4, 2013).

Employee who was demoted and reassigned failed to establish bad faith. *Crooms v. Newark School District*, 94 N.J.A.R.2d (CSV) 73.

Pharmaceutical consultant established that appointing authority acted contrary to administrative rules regarding reassignment. *Frantz v. Department of Human Services*, 92 N.J.A.R.2d (CSV) 372.

4A:4-7.3 Relocation assistance: State service

(a) Subject to available appropriations, the Commissioner may allow relocations assistance for permanent employees who are transferred or reassigned on a permanent basis to a new work location due to a relocation of an office or unit, or a closing or phasedown in anticipation of closing of a State operation.

1. In order to be eligible to participate in the program, an employee's new job site must be at least 25 miles from the prior job site.

2. Relocation assistance will be requested, paid and verified by the receiving appointing authority.

(b) Such assistance may consist of all or part of the following:

1. A commutation allowance applied to the round trip mileage between an employee's domicile and new job site, reduced by the normal commutation mileage between the domicile and the previous job site.

i. The allowance shall be equal to the standard State Mileage Allowance for operating a personal motor vehicle, and shall be limited to a period of six months from the effective date of the transfer.

ii. An employee who is offered fully paid car, van pooling or mass transit options shall not be eligible for a commutation allowance.

2. A one-time moving expense allowance which is to be set by the Commissioner not to exceed \$1,000 for the shipment of household items from the employee's prior domicile to a domicile established as a result of the new work assignment.

i. The employee must demonstrate that the change in domicile was for the sole purpose of establishing a domicile closer to the job site.

ii. The move must be made within one year of the effective date of the transfer.

3. The relocation allowance which is to be set by the Commissioner not to exceed \$1,000 for costs involved in terminating a lease, in rental situations, or costs involved in the sale and purchase of a home, including but not limited to broker's fees and closing costs.

i. The employee must demonstrate that the change in domicile was for the sole purpose of establishing a domicile closer to the new job site.

ii. The move must be made within one year of the effective date of the transfer.

(c) Relocation assistance shall be limited at the employee's option to commutation allowance under (b)1 above or the moving expense allowance and the relocation allowance under (b)2 and 3 above.

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): deleted "permanent", which had defined employees.

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).

4A:4-7.4 Retention of rights

(a) An employee who is temporarily transferred shall retain promotional rights in the promotional unit scope from which he or she has transferred.

(b) An employee who is transferred in accordance with N.J.A.C. 4A:4-7.1, intergovernmentally transferred (except as provided in (c) below) in accordance with N.J.A.C. 4A:4-7.1A or is reassigned shall retain accumulated seniority or service for purposes of determining promotional, layoff or demotional rights and sick and vacation leave entitlements. In State service, an employee's rate of compensation, anniversary date and administrative leave entitlements shall be retained.

(c) In the case of an intergovernmental transfer in accordance with N.J.A.C. 4A:4-7.1A, those law enforcement officers, including sheriff's officers and county correction officers, who waive all accumulated seniority rights, and all firefighters, shall not retain such seniority for purposes of determining promotional, layoff or demotional rights and sick and vacation leave entitlements.

(d) An employee who is permanently transferred due to a combining of functions or operations of two or more organizational units shall retain promotional rights in the prior promotional unit scope only for promotional examinations he or she has filed for or taken.

(e) An employee who is reassigned from one promotional unit scope to another shall retain no promotional rights in the former unit.

Amended by R.2001 d.420, effective November 19, 2001.

See: 33 N.J.R. 2567(a), 33 N.J.R. 3895(b).

In (b), rewrote the first sentence.

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

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

In (b), substituted "(other than an employee transferring to police officer or transferring to firefighter)" for "(other than an employee in a police officer or firefighter title)."

Amended by R.2007 d.358, effective November 19, 2007.

See: 39 N.J.R. 2680(a), 39 N.J.R. 4923(b).

In (b), substituted "except as provided in (c) below" for "other than an employee transferring to police officer or transferring to firefighter"; added new (c); and recodified former (c) and (d) as (d) and (e).

Case Notes

Temporary transfers of classified personnel are subject to regulations promulgated by the Dep't of Civil Service (citing former N.J.A.C. 4:1-15.5). *Zamboni v. Stamler*, 199 N.J.Super. 378, 489 A.2d 1169 (App.Div.1985).

Pursuant to N.J.A.C. 4A:1-1.2(c), it was appropriate to relax the intergovernmental transfer requirements of N.J.A.C. 4A:4-7.4(c) and permit those employees who had been intergovernmentally transferred to the Department of Corrections to begin accruing seniority for the purposes of layoffs and promotional examinations on their first day of State service, given the impact of a layoff, which was the alternative. In re Gloucester Cnty., Corr. Officers, CSC Dkt. No. 2013-3421, 2013 N.J. CSC LEXIS 540, Final Decision (June 27, 2013).

Good cause was shown by the Department of Children and Families for a rule relaxation to allow two employees to be added to the Family Service Specialist 1 (PS3417K) eligible list. The employees had been assigned to the Division of Child Protection and Permanency (CF60) unit scope (and their forfeiture of promotional rights to the CF60 unit scope per N.J.A.C. 4A:4-7.4(e)) and had applied for Family Service Specialist 1 (PS3420K). A subsequent grant of ADA accommodations, however, had resulted in their reassignment from the CF60 unit scope to the CF57 unit scope subsequent to the closing date of the Family Service Specialist 1 (PS3417K) examination applicable to the CF57 unit scope. Given these facts, relaxation of the requirement in N.J.A.C. 4A:4-2.6(a)2 that an applicant be currently serving in the announced unit scope in a title to which an examination was open was proper under N.J.A.C. 4A:1-1.2(c). In re Jaime Lennon and Jennifer Mischin, Family Service Specialist 1, Dep't of Children & Families, CSC Dkt. Nos. 2013-2920, 2013-2921, 2013 N.J. CSC LEXIS 493, Final Decision (May 15, 2013).

4A:4-7.5 Transfer during a working test period

(a) An employee who is serving a working test period may only be transferred due to a transfer or combining of functions or operations, or the exercise of lateral displacement rights in the course of layoff procedures.

(b) An employee who is permanently transferred during the working test period due to a combining of functions or operations or the exercise of lateral displacement rights shall be permitted to complete working test period in the new organizational unit.

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.

4A:4-7.6 Lateral title change

(a) A lateral title change is the movement of a permanent employee from his or her permanent title to an equivalent title within the same organizational unit. Such procedures are also applicable to certain transfers under N.J.A.C. 4A:4-7.1.

1. In State service, a lateral title change may only be made if the titles are assigned the same class code.
2. Movement between variants of a title shall be considered a lateral title change.
3. In State service, a lateral title change from the noncompetitive to the competitive division is considered a promotion. See N.J.A.C. 4A:4-2.5(e).

(b) If the nature of the work, education, and experience requirements of both titles are substantially similar, the employee shall retain his or her permanent status.

1. The employee shall retain accumulated seniority or service for purposes of determining promotional, layoff, or demotional rights and sick and vacation entitlements.

2. In State service, the employee's anniversary date, administrative leave entitlement, and rate of compensation on direct movement as adjusted for workweek, work year, and the employee relations grouping, shall be retained.

(c) If the nature of the work, education, and experience qualifications of both titles are dissimilar, then the employee shall be appointed pending examination, if the new title is in the competitive division, and satisfactory completion of the working test period. An employee who fails the examination or is released at the end of the working test period shall be restored to his or her permanent title, unless disqualified for further employment.

1. Examination procedures shall be waived, permanent status retained, and aggregate seniority granted, if the employee has previously held the title on a permanent basis during current continuous service. See N.J.A.C. 4A:8-2.4(e).

2. The employee shall retain accumulated service for purposes of determining sick and vacation leave entitlements.

3. In State service, the employee's rate of compensation on direct movement as adjusted for workweek, work year, and employee relations grouping, anniversary date, and administrative leave entitlement shall be retained.

4. A lateral title change pending examination shall not be permitted when either a special reemployment or complete promotional list exists or when an appropriate representative of the Civil Service Commission has received a request to conduct a promotional examination.

(d) A lateral title change shall require the consent of the employee, the head of the organizational unit, and the approval of the Chairperson of the Civil Service Commission or designee, except when the title change results from changes in the Civil Service Commission Classification Plan, reclassification of the employee's position, or a pre-layoff action agreed to by affected negotiations representatives and approved by the Chairperson or designee.

(e) For purposes of this section, in the case of a position within a job band, "title" shall mean the entire job band. See N.J.A.C. 4A:3-3.2A.

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), (c) and (d).

Amended by R.2014 d.099, effective June 2, 2014.
See: 45 N.J.R. 500(a), 46 N.J.R. 1331(c).

In the introductory paragraph of (b) and of (c), inserted a comma following "education"; in (b)1, inserted a comma following "layoff"; rewrote (b)2 and (d); in (c)3, inserted a comma following "year" and following "date"; in (c)4, substituted "an appropriate representative of the Civil Service Commission" for "the Department of Personnel"; and added (e).

4A:4-7.7 Appeals

Transfers, reassignments or lateral title changes shall not be utilized as part of a disciplinary action, except when disciplinary procedures have been utilized. When an employee challenges the good faith of a transfer, reassignment or lateral title change, the burden of proof shall be on the employee.

Case Notes

An employee of the New Jersey Division of Rate Counsel (DRC) who claimed that his reassignment, per N.J.A.C. 4A:4-7.2, to an office in Trenton was done in "bad faith" failed to carry his burden of proof per N.J.A.C. 4A:4-7.7 to show bad faith in that he did not establish in any way that the reasons given for the reassignment, which coincided with the relocation of the DRC office to Trenton, were illegitimate or pretextual nor that he was the "target" of such bad faith. In re White, Div. of Rate Counsel, Dep't of the Treas., CSC Docket No. 2013-2286, 2013 N.J. CSC LEXIS 1175, Final Administrative Action (November 26, 2013).

An employee holding the title Superintendent, Parks and Forestry 1, who was previously assigned to a position at a state park did not establish grounds for relief from a reassignment that moved him from that state park to a special project under the supervision of the assistant director of the park service because, per N.J.A.C. 4A:4-7.2, reassignments such as the one at issue herein were at the discretion of the head of the unit (here, the Department of Environmental Protection) and the employee failed to carry his burden, per N.J.A.C. 4A:4-7.7, to show that the assignment was made in bad faith. The employee's mere allegations that he was reassigned in retaliation for his having voiced his disagreement with privatizing state parks did not provide a sufficient basis for relief. In re Pitchell, Dep't of Env't Prot., CSC Docket No. 2013-649, 2013 N.J. CSC LEXIS 704, Final Administrative Decision (August 16, 2013).

4A:4-7.8 Voluntary demotion

(a) A voluntary demotion is:

1. The voluntary movement of a permanent employee from his or her permanent title to a lower title in local service;

2. In State service, the voluntary movement to another title with a lower class code, within the same organizational unit; or

3. In the case of a job band, the voluntary movement to:

i. A lower title level within the same band; or

ii. Another job band with a lower level of duties, responsibilities, and qualifications and, where applicable, a lower class code.

(b) Permanent status and seniority shall be retained when the demotion is to a lower related title. See N.J.A.C. 4A:8-2.1(b) for criteria on determining related titles.

1. When the demotion is to any title previously held on a permanent basis during current continuous service, permanent status shall be retained. All permanent continuous service in the previously held title shall be aggregated for seniority purposes.

(c) If the criteria set forth in (b) above are not met, the employee shall be appointed pending examination and satisfactory completion of the working test period. An employee who fails the examination or is released at the end of the working test period shall be restored to his or her permanent title, unless disqualified for further employment.

1. An employee who seeks to return to his or her prior permanent title during or upon successful completion of the working test period in the lower title may request placement on a regular reemployment list.

2. An appointing authority may require an employee to execute a written waiver of layoff rights from the higher title during the working test period. If so waived, in the event of a layoff during the working test period, the employee's layoff rights shall be based only on the probationary title.

(d) The employee shall retain accumulated service for the purpose of determining sick and vacation leave entitlements, and in State service, administrative leave entitlement.

(e) With the approval of the Chairperson of the Civil Service Commission or designee, this section may also apply to employees with permanent status in titles in the non-competitive division who take a voluntary demotion to a title in the competitive division of the career service.

(f) When an employee is returned to his or her prior permanent title after a voluntary demotion, seniority in the prior permanent title shall be aggregated when:

1. The demotion was necessary due to the temporary loss of licensure required to perform the duties of the position;

2. The demotion was agreed to by both the employee and the appointing authority; and

3. The demotion was for a set period of time up to a maximum of one year.

(g) For purposes of this section, in the case of a position within a job band, "title" shall mean the entire job band. See N.J.A.C. 4A:3-3.2A.

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) and added (b)1; revised (c)1.

Amended by R.1994 d.74, effective February 7, 1994.

See: 25 N.J.R. 4823(b), 26 N.J.R. 795(a).

Amended by R.1996 d.259, effective June 3, 1996.

See: 28 N.J.R. 1334(a), 28 N.J.R. 2839(a).

Added (c)2.

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

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

Rewrote (a); in (e), deleted "Commissioner's" preceding "approval", and inserted "of the Chairperson of the Civil Service Commission or designee"; and added (g).

Case Notes

Position and salary reduced; bad faith. *Morello v. Township of Belleville*, 94 N.J.A.R.2d (CSV) 606.

Demotion of personnel for reasons of economy was warranted. *Mihlebach v. New Jersey Department of Human Services*, 92 N.J.A.R.2d (CSV) 443.

Rescission of voluntary demotion after the demotion had been effected. *Loatman v. Cumberland County*, 92 N.J.A.R.2d (CSV) 262.

4A:4-7.9 Resignation/new appointment

(a) A permanent employee who is appointed from an open competitive list to a title in a different organizational unit within the same governmental jurisdiction shall be considered to have resigned from the previous permanent title.

1. Accumulated service for purposes of promotional eligibility and scoring, determining sick and vacation leave entitlements and seniority in layoffs, and in State service only, administrative leave entitlements, shall be retained.

2. See N.J.A.C. 4A:3-4.4(b) for salary placement in State service.

(b) The employee may request placement on the regular reemployment list for the previous title.

(c) The new appointing authority shall inform the employee of his or her effective resignation of permanent status prior to the employee's new appointment.

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 (c).

Amended by R.2009 d.95, effective March 16, 2009.

See: 40 N.J.R. 5891(a), 41 N.J.R. 1206(a).

Rewrote (a)1.

4A:4-7.10 Regular reemployment

(a) A permanent employee who has resigned in good standing, received a general resignation, retired or voluntarily demoted, may request consideration for reemployment by indicating availability to his or her appointing authority.

(b) Upon recommendation of the appointing authority that such reemployment is in the best interest of the service, the Chair/CEO of the Civil Service Commission shall place the employee's name on a reemployment list. A regular reemployment list shall be subject to certification to all appointing authorities in a jurisdiction.

(c) Police and fire reemployment lists shall have unlimited durations. Regular reemployment lists for all other titles shall have durations of three years from the date of resignation, retirement or voluntary demotion, unless the list is extended pursuant to N.J.A.C. 4A:4-3.3(a)1.

1. Requests for reemployment must be submitted within the duration of the applicable list.

(d) Seniority commences as of the date of regular reemployment.

Amended by R.1992 d.338, effective September 8, 1992.

See: 24 N.J.R. 2107(a), 24 N.J.R. 3091(b).

Deleted (b); redesignated existing (c) as (b) without changes.

Petition for Rulemaking.

See: 26 N.J.R. 2148(a).

Amended by R.1995 d. 418, effective August 7, 1995.

See: 27 N.J.R. 1839(a), 27 N.J.R. 2885(b).

Redesignated former (a) as (a) and (b), in (b) substituted the Department of Personnel for the employee as the party responsible for adding the employee's name to a reemployment list, added (c), and redesignated former (b) as (d).

Amended by R.1997 d.195, effective May 19, 1997.

See: 28 N.J.R. 4980(a), 29 N.J.R. 2266(b).

In (b), added the last sentence.

Administrative correction.

See: 34 N.J.R. 2781(b).

Amended by R.2010 d.222, effective October 18, 2010.

See: 42 N.J.R. 1277(a), 42 N.J.R. 2399(a).

In (a), inserted "received a general resignation,"; and in (b), substituted "Chair/CEO of the Civil Service Commission" for "Department of Personnel".

Petition for Rulemaking.

See: 45 N.J.R. 223(a).

Law Review and Journal Commentaries

Civil Service—Disability Retirement—Police Seniority. *Judith Nallin*, 133 N.J.L.J. No. 13, 55 (1993).

Case Notes

Police sergeant's right to cancel his retirement under pension regulations does not entitle him to immediate reemployment, which, instead, is controlled by priorities promulgated by civil service laws and regulations. Therefore, a trial court erred in granting the sergeant partial summary judgment in his suit asserting damages for a city's refusal to rehire him after he cancelled his retirement and sought reemployment in his former position, which had already been filled by the city. *Klawitter v. City of Trenton*, 395 N.J. Super. 302, 928 A.2d 900, 2007 N.J. Super. LEXIS 280 (App.Div. 2007).

Aggregation of seniority complies with legislative mandate that disabled employees return to former position upon cessation of disability. *Matter of Allen*, 262 N.J. Super. 438, 621 A.2d 87 (A.D.1993).

Police officer who accepted lower position but sought former position after he overcame disability did not waive rights and was not barred by estoppel or laches. *Matter of Allen*, 262 N.J. Super. 438, 621 A.2d 87 (A.D.1993).

4A:4-7.11 Transfer or combining of functions

(a) When any of the functions of a department, agency or unit of a political subdivision operating under Title 11A, New Jersey Statutes, are transferred, consolidated, unified, absorbed or combined with those of the State or of a separate political subdivision operating under Title 11A, New Jersey Statutes, the Department of Personnel upon request of both appointing authorities shall approve the transfer of some or all affected employees to the receiving unit.

(b) Any employee so transferred who holds permanent or probationary status in a title in the career service shall continue to hold such status in the receiving unit.

(c) Seniority calculations and leave entitlements for transferred permanent or probationary employees shall be calculated as if the entire period of service was in the receiving unit.

(d) If positions are abolished because they are made no longer necessary by the consolidation of functions, affected employees shall be accorded all layoff and special reemployment rights in N.J.A.C. 4A:8.

New Rule, R.1992 d.419, effective October 19, 1992.
See: 24 N.J.R. 2494(a), 24 N.J.R. 3718(a).

4A:4-7.12 Reinstatement following disability retirement

(a) A permanent employee who has been placed on disability retirement may be reinstated following a determination from the Division of Pensions that the retiree is no longer disabled.

(b) The employee's reinstatement shall have priority over appointment from any eligible list, except a special reemployment list.

(c) Seniority for an employee who is reinstated following a period of disability retirement shall be the aggregate of permanent service in the employee's permanent title prior to retirement and following reinstatement. Seniority shall not be granted for the period of retirement.

New Rule, R.1992 d.338, effective September 8, 1992.
See: 24 N.J.R. 2107(a), 24 N.J.R. 3091(b).

Cross References

Priority of eligible lists, see N.J.A.C. 4A:4-3.7.

Case Notes

Former Fire Captain was entitled to reinstatement to his position under N.J.S.A 43:16A-8 and N.J.A.C. 4A:4-7.12 after a determination by the Police and Fireman's Retirement System that he was no longer disabled. Although a doctor refused to give him a scheduled psychological examination because he arrived late, his reinstatement was not contingent upon a medical or psychological examination. However, the Fire Captain was not entitled to back pay or counsel fees under N.J.A.C. 4A:2-10 because this was not a disciplinary matter. In re Stephen Phillips, Twp. of West Orange, CSC Dkt. No. 2012-1029, 2013 N.J. CSC LEXIS 304, Final Decision (April 17, 2013).