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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Fitzroy Simpson,
Atlantic City

CSC Docket No. 2015-933

Administrative Appeal

ISSUED: JUN - 8 2015 (RE)

Fitzroy Simpson, a Police Officer with Atlantic City, requests a retroactive appointment date based on a correction of his eligibility status for the examination for Police Officer (S9999F), Atlantic City.

By way of background, the petitioner took the open competitive examination for Police Officer (S9999F), achieved a passing score, and was ranked on the subsequent eligible list. The list was certified and, in disposing of the list, the appointing authority requested the removal of the petitioner's name based on failure to maintain a residence in Atlantic City. Thereafter, the petitioner appealed, arguing that he maintained an [REDACTED] residence. He submitted an affidavit indicating that he maintained mortgage payments on his residence in [REDACTED] Township in lieu of child support. In *In the Matter of Fitzroy Simpson, Police Officer (S9999F), Atlantic City* (Civil Service Commission, April 29, 2009), the Commission granted his appeal and revived the list to provide the petitioner with a prospective appointment opportunity at the time of the next certification. In doing so, it was noted that a resident of [REDACTED] Township, Elder Samuel Jerkins, incorrectly indicated to the appointing authority's investigator that the petitioner lived in [REDACTED] Township.

In a letter dated July 18, 2013, the petitioner requested a retroactive appointment date based on the fact that the Commission resolved the matter in his favor. He had stated that his actual hire date was August 2012, but it should be adjusted retroactively to coincide with the entry of the February 2007 class of officers. Commission staff responded that *N.J.A.C. 4A:4-1.10(c)* states that an

individual may receive a retroactive date of appointment to correct an administrative error, for an administrative delay or for other good cause. Additionally, *N.J.A.C.* 4A:4-3.4 provides that an eligible list may be revived to implement a Commission order or for other good cause. Specifically, the Commission has granted retroactive permanent appointment dates in circumstances where an employee was actually serving in and performing the duties of a title, but, due to some error or other good cause, the employee's attainment of permanent status was delayed or hindered. Also, staff indicated that the Commission has ordered a retroactive date for permanent employees when their appointment would have otherwise been mandated or when their name was improperly removed from or bypassed on an eligible list. When the Commission subsequently corrects the improper list removal or bypass on appeal, the Commission also orders the employee's appointment and a retroactive date of permanent appointment commensurate with the date of which other candidates were appointed from the certification of the eligible list. See *In the Matter of Neil Layden* (MSB, decided March 23, 2005); *In the Matter of Ciri Castro, Jon Martin, and Luis Sanchez* (MSB, decided January 12, 2005). For example, when a veteran eligible is improperly removed from an open competitive list, he or she is entitled to the remedy of a retroactive permanent appointment date because *N.J.A.C.* 4A:4-4.8(a)3i requires the appointment of veterans in the order of ranking, absent any reason for disqualification.

The petitioner was informed that neither of the above situations is present. Further, the petitioner was not a permanent employee or a veteran, and his restoration to the eligible list was for "prospective appointment opportunities only." In addition, he provided no evidence on appeal that he would have been hired in 2007. The petitioner did not possess a vested property interest in the position at issue. The only interest that results from placement on an eligible list is that the candidate will be considered for an applicable position so long as the eligible list remains in force. See *Nunan v. Department of Personnel*, 244 *N.J. Super.* 494 (App. Div. 1990). Further, a review of the Commission's April 29, 2009 decision indicated that the petitioner was granted prospective relief only. Therefore, since the petitioner provided no proof that he had met the standard for a retroactive date of appointment, his request was not granted. See *In the Matter of Nytasha Sheffield* (MSB, decided December 1, 2004).

Although not addressed at that time, that request was also untimely. *N.J.A.C.* 4A:2-1.1(b) states that, unless a different time period is stated, an appeal must be filed within 20 days after either the appellant has notice or should reasonably have known of the decision, situation or action being appealed. Additionally, *N.J.A.C.* 4A:2-1.6(a) states that within 45 days of receipt of a decision, a party to the appeal may petition the Commissioner or Board for reconsideration. The appellant's request was received over four years after the Commission's decision.

In the current matter, the appellant has once again requested retroactive seniority in correspondence dated September 2, 2014 and January 29, 2015. Commission staff responded that this matter had already been addressed, and it was currently almost six years after the original decision, and therefore, the request was untimely. The reason for his initial removal from the list was not an error made by the agency, but was based on the fact that an individual mistakenly identified him as a non-resident. As such, he was not improperly removed. The petitioner subsequently provided a basis to establish his residency in [REDACTED] and was admitted for prospective appointment only.

On appeal, the petitioner maintains that he believed that he would be awarded retroactive seniority after he finished the academy. He also accuses the appointing authority's investigator of purposely falsifying the record or making a mistake, since he provided enough proof of residency and had graduated from an [REDACTED] high school. He states that he has maintained a residency in [REDACTED] from 1989 to the present and has been a registered voter there since the mid-1990's. He claims that the investigator submitted a false report of residency which was unfair to him. The petitioner maintains that an individual was granted retroactive seniority as a result of a successful psychological appeal, and he questions if the Federal law grants only retroactive appointments in these cases. The petitioner states that he would have been hired in 2009 if Atlantic City was not experiencing a layoff at the time. He stated that he started to pursue his retroactive appointment in 2013 when he graduated from the academy. The appellant maintains and that timeliness should not stop the Commission from doing the right thing and correcting a wrong on good cause.

CONCLUSION

In the instant matter, the Commission decided the matter on April 29, 2009 and granted his appeal, stating that the petitioner had met the burden of proof to show that the decision to remove his name from the list was in error. At the time, the petitioner did not appeal the integrity of the investigator, but provided additional proof of residency, such as his driver's license, voter's registration, and the statements of other neighbors. There were factors that made it appear as though he resided in [REDACTED] Township, and one individual identified him as such. The petitioner was successful in proving that this individual was in error and he provided plausible responses to the other factors. For the petitioner to argue at this late juncture that the investigator was purposely falsifying the record is disingenuous. The Commission must note its disturbance that the appellant, a sworn law enforcement officer, has made idle accusations of criminal activity on the part of the appointing authority investigator, without a scintilla of evidence, six years after the fact.

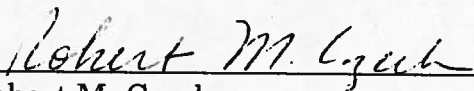
The only method by which an individual can achieve permanent appointment is if the individual applies for and passes an examination, is appointed from an eligible list, and satisfactorily completes a working test period. The steps necessary to perfect a regular appointment include, but are not limited to, this agency's review and approval of a certification disposition proposed by an appointing authority and the employee's completion of a mandatory working test period. *See In the Matter of Joseph S. Herzberg* (MSB, decided June 25, 2003). The petitioner was appropriately removed from the list, and then proved his residency in the administrative appeal process and was added back and subsequently appointed. As mentioned above, the petitioner did not possess a vested property interest in the position at issue, and good cause does not exist to warrant a retroactive appointment date based on the circumstances. This request is clearly untimely, and without merit.

ORDER

Therefore, it is ordered that the request be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 3rd DAY OF JUNE, 2015


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