



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Michael Bleicher,  
Section Chief Environmental  
Protection (PS7764G) and (PS0827G),  
Department of Environmental  
Protection

Examination Appeal

CSC Docket No. 2016-2144

ISSUED: **DEC 14 2016** (SLK)

Michael Bleicher appeals the determination of the Division of Agency Services (Agency Services) that he was not permanent in a title to which the examination is open for the promotional examination for Section Chief Environmental Protection (PS0827G). Mr. Bleicher also requests that the Section Chief Environmental Protection (PS7764G) eligible list be revived and extended and that he be provisionally appointed to the subject title.

By way of background, the promotional examination for (PS7764G) was announced with specific requirements that had to be met as of the May 21, 2013 closing date (see attached). Specifically, the examination was open to employees serving in the non-competitive title of Research Scientist 2 or in any competitive title and who met the announced open competitive requirements. There were eight employees who applied for the (PS7764G) examination that resulted in a list of six eligibles. Certification PS141400 was issued containing the names of six eligibles. The disposition was due January 28, 2015 and the appointing authority returned it on December 12, 2014. The appointing authority disposed it by appointing the first, second, and fifth ranked eligibles effective October 28, 2014 and removed the fourth ranked eligible because he was now employed outside the unit scope. Therefore, the appellant, who was the third ranked eligible, and the sixth ranked eligible, were retained on the certification as it was incomplete and a provisional appointee, who was not on the list, continued to serve in the title. It is noted that due to administrative error by Agency Services, the disposition was not recorded until February 25, 2016. The (PS7764G) eligible list expired on March 26, 2016.

The promotional examination (PS0827G) was announced with specific requirements that had to be met as of the June 22, 2015 closing date (see attached). Specifically, the examination was only open to employees who held specific titles in the competitive and non-competitive division who also met other announced requirements. However, the appellant's permanent title, Environmental Specialist 3,<sup>1</sup> was not one of the titles to which the examination was open. There were 18 employees who applied for the (PS0827G) examination including the appellant. Agency Services determined that the appellant was ineligible as he was not permanent in a title to which the examination was open. The test was administered on January 12, 2016 which resulted in a list of 13 eligibles and expires on February 3, 2018. Certification PS160285 was issued on February 25, 2016 containing the names of 12 eligibles. The appellant's name was placed in the first position on the certification because his name was on the incomplete (PS7764G) eligible list which had not expired at the time the certification was issued on February 25, 2016 and the other remaining names on the certification are from the (PS0827G) eligible list. The disposition is due May 25, 2016.

On appeal, in support of Mr. Bleicher's assertion that he should be eligible for the (PS0827G) promotional examination and his request that the (PS7764G) eligible list be revived and extended to the same date that the (PS0827G) list expires, he submits multiple Performance Evaluation Systems (PESs) and Performance Assessment Reviews (PARs) which indicate that he has satisfactorily performed supervisory duties. The appellant presents that the unit scope, education, and experience requirements for the promotional announcements for (PS7764G) and (PS0827G) are the same. Further, he indicates that (PS7764G) is incomplete as there are only two remaining eligibles on that list and he is currently the first ranked eligible. Additionally, he provides that the (PS0827G) examination was announced in order to give the appointing authority a complete list for a position for the subject title. As such, the appellant argues that since he believes he is qualified for the subject title as demonstrated by his past PARs and PESs and eligible for the (PS7764G) examination, he should be determined eligible for the (PS0827G) examination. He contends that he is being harmed by the determination that he is ineligible for (PS0827G). Moreover, he argues since he is the first ranked eligible on certification PS160285, which is a complete certification, that he should be provisionally appointed and then permanently appointed to the subject title. He also maintains that his name should have been placed at the top of the (PS0827G) eligible list, but it was not.

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<sup>1</sup> Personnel records indicate that the appellant was an Environmental Specialist 3 from January 2011 to the May 21, 2013 closing date for (PS7764G) and the June 22, 2015 closing date for (PS0827G), a Principal Environmental Specialist, Water Resource from October 1989 to January 2011, a Senior Environmental Specialist from September 1988 to October 1989, an Environmental Specialist from December 1987 to September 1988, and an Environmental Specialist Trainee from November 1986 to December 1987.

## CONCLUSION

*N.J.A.C.* 4A:4-2.6(a)1 provides, in pertinent part, that applicants for promotional examinations shall have one year of continuous permanent service for an aggregate of one year immediately preceding the closing date in a title to which the examination is open.

*N.J.A.C.* 4A:4-1.5(a)1 provides, among other conditions, that a provisional appointment may be made only when there is no complete list of eligibles.

*N.J.A.C.* 4A:4-4.2(c)2 provides, in pertinent part, that an appointing authority shall be entitled to a complete certification for consideration when making a permanent appointment. For promotional appointments, a complete list consists of the names of three interested eligibles for the first permanent appointment, and the name of one additional interested eligible for each additional appointment.

*N.J.A.C.* 4A:4-2.5(d) provides that 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 Commissioner may set another appropriate title scope.

*N.J.A.C.* 4A:4-2.5(b)2 provides that a promotion shall be open to permanent competitive division employees serving in the next lower in-series title, if one exists, and all other competitive division titles at specified class code levels below the promotional title.

*N.J.S.A.* 11A:4-6 provides that the duration of an eligible list shall not be more than three years from the date of its establishment, except that it may be extended for good cause, and such an extended list shall not have a duration of more than four years. Notwithstanding the duration of a list, the Commission may revive a list to implement a court order or decision of the Commission in the event of a successful appeal instituted during the life of the list or to correct an administrative error. The Commission may also revive a list to effect the appointment of an eligible whose working test period was terminated by a layoff. *N.J.A.C.* 4A:4-3.3(a)1 and *N.J.A.C.* 4A:4-3.4(a)5 provide that an eligible list may, for good cause, be revived and extended, except that no list shall have a duration of more than four years.

*N.J.A.C.* 4A:4-4.8(a) provides that upon receipt of a certification, an appointing authority shall appoint one of the top three interested eligibles (rule of three) from a promotional list when a permanent appointment is made.

*N.J.A.C.* 4A:4-6.3(b) provides that the appellant has the burden of proof in examination appeals.

In the instant matter, Agency Services correctly determined that the appellant was not eligible for the promotional examination for (PS0827G). Generally, the title scope for a promotional examination is determined by the appointing authority or by the title scope of the provisional incumbent in the title and the appointing authority is vested with the discretion to choose the appropriate title scope from the options set forth in *N.J.A.C.* 4A:4-2.5. See *In the Matter of Mitchell Dinnerstein*, Docket No. A-1680-05T5 (App. Div. September 29, 2006), *cert. denied*, 189 *N.J.* 647 (2007). Initially, under *N.J.A.C.* 4A:4-2.5(d)4, the promotional examination for (PS7764G) was open to the noncompetitive title Research Scientist 2 because there was a provisional serving with permanent status in that title and other employees serving in the competitive division who met the open competitive requirements. As such, the appellant, who was serving in the competitive title of Environmental Specialist 3 and met the open competitive requirements, could apply for and compete in the (PS7764G) examination. Thereafter, under the Rule of Three, the appellant, the third ranked eligible, was bypassed, and the sixth ranked eligible was not appointed from certification PS141400. Since the (PS7764G) eligible list was incomplete and a provisional appointee continued to serve in the title, in accordance with *N.J.A.C.* 4A:4-2.5(b)2, (PS0827G) was announced only open to employees in competitive titles at specified class code levels below the promotional title. The subject title has a class code of 30 and the class code of the provisional appointee's title, Software Development Specialist 3, is 28. Accordingly, (PS0827G) was announced open to employees in competitive titles between class codes 28 and 30. As the appellant's permanent title, Environmental Specialist 3, has a class code of 25, in accordance with *N.J.A.C.* 4A:4-2.5(d)3, his title was appropriately excluded from the examination.

Although the appellant asserts that his experience and performance rating should qualify him for the (PS0827G) examination, this agency's rules set forth that *all* requirements for a promotional examination must be satisfied by the examination closing date. See *N.J.A.C. 4A:4-2.6*. See also *In the Matter of Robert Gaffin and Ronald A. Maruca, Supervising Engineer, Construction (PS3342T)*, Docket No. A-4827-87T1 (App. Div. June 5, 1989). As such, a candidate's education, experience, or performance rating are irrelevant if he or she does not have permanent service in any title listed on the promotional announcement in the promotional unit. See e.g., *In the Matter of Glenn Pascrell* (Commissioner of Personnel, decided February 24, 1998). Additionally, although Mr. Bleicher comments that he is being harmed by the determination that he is ineligible for (PS0827G), it is noted that promotional opportunities are not entitlements, but are based on factors such as the needs of the appointing authority to fill a vacancy. The promotional examination process is strictly regulated by Title 11A of the New Jersey Statutes and Title 4A of the New Jersey Administrative Code. The Commission notes that no civil service rules have been violated with regard to the posting and processing of the subject promotional examination. See *In the Matter of Gerard Tarino* (CSC, decided September 24, 2008).

With respect to the appellant's request to revive and extend the (PS7764G) eligible list, the appellant has not established good cause under *N.J.A.C. 4A:4-3.3(a)1* and *N.J.A.C. 4A:4-3.4(a)5*. As (PS0827G) is an active eligible list for the subject title, the appointing authority has a complete list to make a permanent appointment. The mere fact that the appellant was eligible for a prior examination for the same title does not establish good cause as each examination is unique and has its own separate requirements. Further, the fact that the appellant has prior PESs and PARs where he was a supervisor and received satisfactory evaluations does not mean that he meets the qualifications for (PS0827G).

In reference to Mr. Bleicher's request to have his name placed at the top of the (PS0827G) eligible list since the (PS7764G) eligible list is incomplete under *N.J.A.C. 4A:4-3*, he has not provided a specific administrative rule that would support his request. Further, as he is ineligible for (PS0827G) and there has not been any administrative error nor has any good cause been established, there are no grounds to place the appellant on the (PS0827G) eligible list. However, since the (PS7764G) list is incomplete and had not expired at the time certification PS160285 was issued on February 25, 2016, the appellant's name is in the first position on certification PS160285.

With regard to the appellant's request to be provisionally appointed to the subject title, under *N.J.A.C. 4A:4-1.5(a)1*, a provisional appointment can only be made when there is no complete list among other conditions. However, since the (PS0827G) eligible list is complete, he cannot receive a provisional appointment.

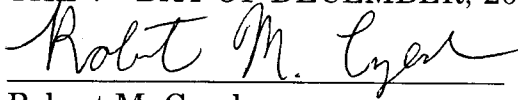
Accordingly, the appellant has not met his burden of proof in this matter.

ORDER

Therefore, it is ordered that the appeal 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 7<sup>th</sup> DAY OF DECEMBER, 2016





Robert M. Czech  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Director  
Division of Appeals  
and Regulatory Affairs  
Civil Service Commission  
Written Record Appeals Unit  
P.O. Box 312  
Trenton, New Jersey 08625-0312

Attachment

c: Michael Bleicher  
Kelly Glenn  
Records Center

NEW JERSEY CIVIL SERVICE COMMISSION-STATE SERVICE PROMOTIONAL ANNOUNCEMENT		<a href="#">Click here to file Online</a>  Print <b>\$25.00 PROCESSING FEE REQUIRED</b> Make Check/Money Order Payable to NJCSC
SYMBOL: PS7764G TITLE: SECTION CHIEF ENVIRONMENTAL PROTECTION ISSUE DATE: May 01, 2013 TITLE CODE: 59985/Q6RXR9 DEPARTMENT: EPA/ENVIRONMENTAL PROTECTION UNIT SCOPE: G160 Division of Water Supply (Division-Wide)	WEIGHT CODE: * SALARY: \$75,673.00 - \$107,991.00 CLOSING DATE: May 21, 2013 CLASS CODE: 30	
Environmental Protection / Human Resources 436 East State Street, 1st Floor PO Box 408, Trenton New Jersey 08625		
<p>Open to employees in the non-competitive division who are currently serving in a title to which the announcement is open and have an aggregate of one year of continuous permanent service as of the closing date in the following title(s), and meet the requirements listed below:</p> <p style="text-align: center;"><b>Research Scientist 2</b></p> <p>Or to employees in the competitive division who have an aggregate of one year of continuous permanent service as of the closing date in any competitive title and who meet the requirements listed:</p> <p>Education: A Bachelor's degree in one of the physical, environmental, chemical or biological sciences, geography or environmental planning, or civil, chemical, environmental, mechanical, sanitary, agricultural, mining, industrial or bio-resource engineering. You must indicate the details of your degree on your application. (Foreign degrees/ transcripts must be evaluated by a recognized evaluation service.) Failure to do so will result in rejection from the examination process.</p> <p>Experience: Five (5) years of experience in the investigation, inspection or enforcement of technical, scientific or engineering environmental activities, or, five (5) years of project management experience in the design, planning, coordination, monitoring and completion of environmental projects.</p> <p>Two (2) years of either experience must have been in a supervisory capacity, and included responsibility for conducting employee performance evaluations.</p> <p>Note: A Master's degree in any of the disciplines outlined above may be substituted for one (1) year of the non-supervisory experience as indicated. (This is inclusive to the Master's degree and not in addition to.)</p> <p>You <b>must</b> specify the type of degree you have on your application. If you expect to complete additional credits within four months of the closing date, you must also indicate the number of credits and expected completion date on your application. (Foreign degrees/ transcripts must be evaluated by a recognized evaluation service.) Failure to do so will result in rejection from the examination process.</p> <p>Note: A valid Professional Engineer's license issued by the New Jersey Board of Professional Engineers and Land Surveyors may be substituted for the Bachelor's degree in Engineering: If you have the license, you must indicate this on your application, failure to do so will result in rejection from the examination process. Proof of the license must be submitted to the employing agency prior to appointment.</p> <p>License: Appointees will be required to possess a driver's license valid in New Jersey only if the operation of a vehicle rather than employee mobility, is necessary to perform the essential duties of the position. The responsibility for ensuring that employees possess the required motor vehicle license, commensurate with the class and type of vehicles they operate, rests with the Appointing Authority.</p> <p><b>Note: This announcement may be tested via the Supervisory Test Battery, a computer-administered exam. For information regarding the Supervisory Test Battery, please refer to our website <a href="http://www.state.nj.us/csc/seekers/about/steps/step7.html">http://www.state.nj.us/csc/seekers/about/steps/step7.html</a>.</b></p>		
<p style="text-align: center;"><b>IMPORTANT INFORMATION</b></p> <ol style="list-style-type: none"> <li>NJAC 4A:4-2.6 states that all requirements listed, including assignment to the department and unit scope, must be met as of the closing date.</li> <li><b>YOU MUST COMPLETE YOUR APPLICATION IN DETAIL.</b> Your score may be based on a comparison of your credentials with the job requirements. Failure to complete your application properly may lower your score or cause you to fail.</li> <li>This examination is open to full- and part-time permanent employees. If an employment list results from this announcement, it may be certified to fill full-time and part-time positions. If 35- and 40-hour positions are used within the unit scope, the resulting list may be used to fill either work week position.</li> <li>NJAC 4A:4-1.5 states that 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/her title <b>SHALL BE SEPARATED FROM THE PROVISIONAL TITLE.</b></li> <li>In accordance with Public Law 2010 c.26, <b>Veterans pay a reduced application fee of \$15.00</b> if they have previously established Veterans Preference with the DMAVA (as defined by N.J.S.A. 11A:5-1 et seq.), or your claim is approved by DMAVA at least 8 days prior to the issuance of this eligibility list. <b>PLEASE NOTE THIS REDUCED FEE DOES NOT APPLY TO PUBLIC SAFETY TITLES</b></li> <li><b>SAVE ON POSTAGE! GO PAPERLESS! RECEIVE IMMEDIATE CONFIRMATION THAT YOUR APPLICATION HAS BEEN RECEIVED!</b> You can now file an application for this examination on-line. Visit the Civil Service Commission website at <a href="http://info.csc.state.nj.us/epoa">http://info.csc.state.nj.us/epoa</a>. Select the promotional announcement and click on the link, "Click Here to file On-Line" at the top of the announcement. <b>You can now complete and submit your application and payment on-line to the Civil Service Commission and you will receive an immediate receipt confirmation!</b></li> <li><b>SPECIAL NOTE TO ALL APPLICANTS Please make sure you are assigned to the unit scope indicated above. If you do not know your unit scope assignment, please contact your Human Resource Office. If you file an application for this announcement and you are not assigned to the unit scope indicated above, YOU WILL BE FOUND INELIGIBLE FOR THIS EXAM AND YOUR APPLICATION FEE WILL NOT BE REFUNDED.</b></li> </ol>		

DPF-256A \* Revised 03/09

SYMBOL: PS0827G

WEIGHT CODE: \*

TITLE: SECTION CHIEF ENVIRONMENTAL PROTECTION

SALARY: \$77,767.00 - \$110,979.00

ISSUE DATE: June 01, 2015

CLOSING DATE: June 22, 2015

TITLE CODE: 59985/R6RXR9

CLASS CODE: 30

DEPARTMENT: EPA/ENVIRONMENTAL PROTECTION

UNIT SCOPE: G160 Division of Water Supply and Geosciences

Visit [www.state.nj.us/csc](http://www.state.nj.us/csc)  
And select "Job Announcements"  
to view this announcement and to file an application

Open to employees in the competitive division who are currently serving in a title to which the announcement is open and have one year of continuous permanent service as of the announced closing date in the following title(s) and meet the education requirements listed below:

Administrative Analyst 1 Data Processing  
Environmental Engineer 4  
Environmental Scientist 2  
Environmental Specialist 4  
Software Development Specialist 3  
Supervising Geologist Department of Environmental Protection

Or to employees in the non-competitive division who are currently serving in a title to which the announcement is open and have an aggregate of one year of continuous permanent service as of the closing date in the following title(s), and meet the requirements listed below:

Research Scientist 2  
Research Scientist 2 Chemistry

Education: A Bachelor's degree in one of the physical, environmental, chemical or biological sciences, geography or environmental planning, or civil, chemical, environmental, mechanical, sanitary, agricultural, mining, industrial or bio-resource engineering. You must indicate the details of your degree on your application. (Foreign degrees/ transcripts must be evaluated by a recognized evaluation service.) Failure to do so will result in rejection from the examination process.

Experience: Five (5) years of experience in the investigation, inspection or enforcement of technical, scientific or engineering environmental activities, or, five (5) years of project management experience in the design, planning, coordination, monitoring and completion of environmental projects.

Two (2) years of either experience must have been in a supervisory capacity, and included responsibility for conducting employee performance evaluations.

Note: A Master's degree in any of the disciplines outlined above may be substituted for one (1) year of the non-supervisory experience as indicated. (This is inclusive to the Master's degree and not in addition to.)

You must specify the type of degree you have on your application. (Foreign degrees/ transcripts must be evaluated by a recognized evaluation service.) Failure to do so will result in rejection from the examination process.

Note: A valid Professional Engineer's license issued by the New Jersey Board of Professional Engineers and Land Surveyors may be substituted for the Bachelor's degree in Engineering. If you have the license, you must indicate this on your application, failure to do so will result in rejection from the examination process. Proof of the license must be submitted to the employing agency prior to appointment.

License: Appointees will be required to possess a driver's license valid in New Jersey only if the operation of a vehicle rather than employee mobility, is necessary to perform the essential duties of the position. The responsibility for ensuring that employees possess the required motor vehicle license, commensurate with the class and type of vehicles they operate, rests with the Appointing Authority.

Note: This announcement may be tested via the Supervisory Test Battery, a computer-administered exam. For information regarding the Supervisory Test Battery, please refer to our website <http://www.state.nj.us/csc/seekers/about/steps/step7.html>.

Revised 6/22/15

#### IMPORTANT INFORMATION

1. NJAC 4A:4-2.6 states that all requirements listed, including assignment to the department and unit scope, must be met as of the closing date.
2. YOU MUST COMPLETE YOUR APPLICATION IN DETAIL. Your score may be based on a comparison of your credentials with the job requirements. Failure to complete your application properly may lower your score or cause you to fail.
3. This examination is open to full- and part-time permanent employees. If an employment list results from this announcement, it may be certified to fill full-time and part-time positions. If 35- and 40-hour positions are used within the unit scope, the resulting list may be used to fill either work week position.
4. NJAC 4A:4-1.5 states that 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/her title SHALL BE SEPARATED FROM THE PROVISIONAL TITLE.
5. In accordance with Public Law 2010 c.26, Veterans pay a reduced application fee of \$15.00 if they have previously established Veterans Preference with the DMAVA (as defined by N.J.S.A. 11A:5-1 et seq.), or your claim is approved by DMAVA at least 8 days prior to the issuance of this eligibility list. PLEASE NOTE THIS REDUCED FEE DOES NOT APPLY TO PUBLIC SAFETY TITLES.
6. SPECIAL NOTE TO ALL APPLICANTS Please make sure you are assigned to the unit scope indicated above. If you do not know your unit scope assignment, please contact your Human Resource Office. If you file an application for this announcement and you are not assigned to the unit scope indicated above, YOU WILL BE FOUND INELIGIBLE FOR THIS EXAM AND YOUR APPLICATION FEE WILL NOT BE REFUNDED.
7. If you are having difficulty submitting your application online, technical support and customer care are available during regular business hours, 8:00 a.m. to 4:00 p.m. EST, Monday - Friday, excluding holidays and emergency closings. Please Email: [OAS.support@csc.state.nj.us](mailto:OAS.support@csc.state.nj.us) or call (609) 292-4144. Please note that application support requests received outside regular business hours on the closing date will not change the application filing deadline so PLEASE FILE EARLY.