



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Herbert Dinger, *et al.*, Road Repairer 3 (PC1209U)

Examination Appeal

CSC Docket Nos. 2017-1482, *et al.*

ISSUED: FEB 10 2017 (ABR)

Herbert Dinger, Dante Yacono, and Frederick Zimmer, Jr. appeal the determinations of the Division of Agency Services (Agency Services), which found that they did not meet the experience requirement for the promotional examination for Road Repairer 3 (PC1209U), Burlington County. Since these appeals address similar issues, they have been consolidated herein.

The subject examination announcement was issued with a closing date of May 23, 2016. The examination was open to employees who possessed three years of experience in the construction, repair and maintenance of roads or streets which may have included work involving the installation and/or maintenance of traffic lines or signs. The subject eligible list, containing three names, promulgated on October 27, 2016 and expires on October 26, 2019. The subject eligible list was exhausted after all three eligibles were appointed from the subject eligible list, effective November 9, 2016.

Dinger stated on his application, in relevant part, that he served provisionally as a Road Repairer 3 from December 2014 to the closing date for the subject examination (May 2016) and as a Truck Driver from August 2006 to December 2014. Agency records indicate that Dinger served in the title of Truck Driver from August 2006 to the closing date of the subject examination. Agency Services did not credit any of Dinger's experience as applicable experience because relevant duties for the subject examination would be considered out-of-title work for the title of Truck Driver.

Yacono stated on his application that he served provisionally as a Road Repairer 3 from September 2009 to the closing date for the subject examination (May 2016). Agency records indicate that Yacono served provisionally as a Road Repairer 3 from January 2016 to the closing date for the subject examination; as an Equipment Operator from December 2013 to January 2016; and as a Truck Driver from March 2006 to December 2013. Agency Services credited Yacono with two years and six months of applicable experience based upon his service as a provisional Road Repairer 3 and as an Equipment Operator. However, Agency Services did not credit Yacono's experience in the title of Truck Driver as applicable experience because relevant duties for the subject examination would be considered out-of-title work for that title. Therefore, Yacono was deemed ineligible for the subject examination because he lacked an additional six months of applicable experience.

Zimmer stated on his application that he served provisionally as a Road Repairer 3 from October 2015 to the closing date for the subject examination (May 2016); as a Road Repair Supervisor from June 2015 to October 2015; and as a Truck Driver from June 2002 to June 2015. Agency records indicate that Zimmer served in the title of Truck Driver from June 2002 to the closing date for the subject examination (May 2016). Agency Services did not credit any of Dinger's experience as applicable experience because relevant duties for the subject examination would be considered out-of-title work for the title of Truck Driver. Therefore, Zimmer was deemed ineligible for the subject examination because he lacked three years of applicable experience.

On appeal, Dinger contends, in relevant part, that he was assigned duties related to the construction and maintenance of roads while serving as a Truck Driver and Yacono describes the duties he has been performing as a provisional Road Repairer 3. Additionally, the appointing authority submits statements verifying that, in addition to driving trucks while serving in the title of Truck Driver, Dinger, Yacono and Zimmer performed labor duties in the construction, repair and maintenance of roads. Specifically, the appointing authority explains that each appellant positioned work zones, read blueprints, milled and paved roads, installed pipes and storm water systems, mowed along shoulders and trimmed trees. The appointing authority also claims that prior to the consolidation of the title of Assistant Supervisor, Roads into the title of Road Repairer 3, this agency deemed experience earned in the Truck Driver title as applicable experience for the examination for the Assistant Supervisor, Roads title.

Agency records indicate that Yacono continues to serve provisionally in the subject title.

## CONCLUSION

*N.J.A.C.* 4A:4-2.6(a) provides that applicants must meet all requirements specified in a promotional examination announcement by the closing date. *N.J.A.C.* 4A:4-2.6(c) provides that, except when permitted for good cause, applicants for promotional examinations may not use experience gained as a result of out-of-title work to satisfy eligibility requirements.

At the outset, it is noted that the mere fact that candidates who held the title of Truck Driver were admitted to previous examinations for the title of Assistant Supervisor, Roads, without more, does not establish the appellants' eligibility for the subject examination. Such reasoning is flawed, since there are a multitude of reasons why other applicants are admitted to examinations, *i.e.*, applicable private sector experience, erroneous evaluation of experience by this agency, different open-competitive requirements, or a more adequate description of experience gained in the titles. *See In the Matter of Cynthia Bucchi, Maria D'Angelo, Rosalind R. James, Carla M. Lewis, and Rhonda McLaren, Management Assistant (PS5831F), Department of Education, Docket No. A-1266-04T2 (App. Div. February 27, 2006).* As such, the Civil Service Commission's (Commission) determination in the instant matter is based upon a review of the individual experience of each appellant.

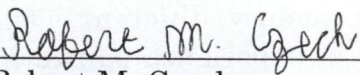
In this matter, Agency Services correctly determined that the appellants were ineligible for the subject examination because they did not meet the experience requirement as of the May 23, 2016 closing date. On appeal, the appointing authority provides clarifying information regarding the duties that Dinger, Yacono and Zimmer performed while serving in the title of Truck Driver. However, any applicable duties the appellants performed while serving in the title of Truck Driver would be considered out-of-title work. Ordinarily, the Commission looks to whether or not "good cause" has been established in determining whether to grant or deny appeals involving out-of-title work. Generally, the Commission finds good cause where the record evidences that the examination situation is not competitive, no third parties are adversely impacted, and the appointing authority wishes to effect a permanent appointment and verifies that the appellant has performed the relevant duties which otherwise satisfy the eligibility requirements. *See In the Matter of John Cipriano, et al. (MSB, decided April 21, 2004).* In the instant matter, the record demonstrates that the examination situation is not competitive, as the subject eligible list has been exhausted following the appointment of all three eligibles on the subject eligible list. Consequently, no third parties would be adversely impacted. Moreover, the appointing authority verifies the out-of-title work experience of Dinger, Yacono and Zimmer. Therefore, good cause exists to accept the out-of-title work experience for Dinger, Yacono and Zimmer, for eligibility purposes only, and admit them to the subject examination.

**ORDER**

Therefore, it is ordered that these appeals be granted and the appellants' applications be processed.

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 8<sup>TH</sup> DAY OF FEBRUARY, 2017

  
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