



**STATE OF NEW JERSEY**

In the Matter of Christopher  
Benevento, Police Sergeant  
(PM0619N), Paterson

**FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION**

CSC Docket No. 2017-1688

Administrative Appeal

**ISSUED: APRIL 2, 2018 (JH)**

Christopher Benevento, represented by Joseph S. Murphy, Esq., requests that the July 8, 2016 certification of the eligible list for Police Sergeant (PM0619N), Paterson, be amended to include his name and effectuate his appointment effective December 12, 2016.

By way of background, the announcement for the subject examination was initially issued on September 1, 2011 with an application filing deadline of September 21, 2011. The subject examination was open to employees in the competitive division who had an aggregate of three years of continuous permanent service in the Police Officer title as of the closing date of September 30, 2011. However, in *In the Matter of Police Sergeant Promotional Lists* (CSC, decided September 19, 2012), the Division of Selection Services<sup>1</sup> requested that *N.J.A.C. 4A:4-2.6(a)2* be relaxed to allow it to amend the closing date of the 2010 and 2011 announcements for Police Sergeant to September 30, 2012, the same closing date as the announcements in 2012 for the title of Police Sergeant.<sup>2</sup> As a result, the 2010<sup>3</sup>

<sup>1</sup> Now the Division of Agency Services.

<sup>2</sup> It is noted that in January 2010, the United States Department of Justice (USDOJ) filed a complaint against the State of New Jersey and the Civil Service Commission (Commission), alleging that the selection process utilized by the State to test and appoint candidates to the Police Sergeant title between 2000 and 2008 had a disparate impact on African-American and Hispanic candidates in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e *et seq.*, as amended. During the pendency of this litigation, the parties agreed to the terms of a settlement which was formulated into a Consent Decree which the Court approved and entered as final on June 12, 2012. The terms of

and 2011 announcements were reissued, on August 1, 2012, with a September 30, 2012 closing date. It is noted that the Police Sergeant examination for the 2010, 2011 and 2012 announcements was administered on June 1, 2013. Benevento was admitted to and scheduled to take the subject test on June 1, 2013 but he requested and was granted a make-up examination, which was administered on January 16, 2016. By notice dated November 10, 2016, the Division of Agency Services informed Benevento of his final average (84.050) and rank (13A) for the PM0619N exam.

It is noted that the PM0619N eligible list, containing 120 names, was promulgated on November 12, 2015 and is set to expire on November 11, 2018.<sup>4</sup> The first certification of the PM0619N list, which issued on July 8, 2016 (Certification No. PL160843), contained the names of the eligibles who appeared at ranks 1 through 24. In disposing of PL160843, Paterson appointed the eligibles appearing at ranks 1, 2 and 4 effective July 28, 2016 and the eligibles appearing at ranks 4 through 8, 10 through 17, and 20 through 22 effective December 12, 2016.<sup>5</sup>

In his request, the appellant presents that while “the general policy often stated is where a certification takes place after an examination that a person such as [he] would simply be put on the eligibility list and not on the certification list, as it would be considered retroactive,” he “is a candidate for . . . equitable relief.” In this regard, he contends that although he timely requested a make-up in 2013, “it was not his fault that he was not given a makeup examination for over two years.” He asserts that he was informed that “the results of the examination would be made known in 12 weeks” but “it took 21 weeks before he was informed of the results.” He argues that had he been given a make-up “at a reasonable time much earlier or even gave him the results of the examination within 12 weeks he would

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the Consent Decree provided, in pertinent part, that the State, in consultation with USDOJ, develop a new Police Sergeant examination and scoring process.

<sup>3</sup> Due to the above noted litigation with the USDOJ, in *In the Matter of Police Sergeant Promotional Lists* (CSC, decided August 17, 2011), the closing date for the 2010 Police Sergeant announcements was amended to November 30, 2011.

<sup>4</sup> As indicated in the New Jersey Civil Service Commission Public Safety Testing Law Enforcement Status Report (January/February 2015), which was available on the Commission’s website, “for the 11 jurisdictions with priority promotion lists (Atlantic City, East Orange, Elizabeth, Hoboken, Jersey City, New Brunswick, Newark, Passaic, Paterson, Teaneck and Trenton), regular eligible lists will not be issued until all required priority promotions have been made . . . Test scores were issued to all candidates, but only priority promotion candidates received individual rankings. Rankings for the non-priority promotion candidates will not be made available until regular eligible lists are issued.”

<sup>5</sup> It is noted that a second certification of the PM0619N list was issued on October 4, 2017 (Certification No. PL171211), which contained the names of five eligibles, including Benevento. In disposing of PL171211, Paterson appointed Benevento and two other eligibles effective November 29, 2017.

not only have been put on the eligible list but would be on the current certification list, which was certified in July[,] five [sic] months after the makeup was administered.” He refers to *In the Matter of Ellen Steffanelli* (CSC, decided February 18, 2011) and argues that Steffanelli “was unable to take the promotion examination on its originally scheduled date because she had a previously scheduled vacation, whereas Officer Benevento couldn’t take it because he had been injured. He, like Ellen Steffanelli[,] was granted a makeup. Unlike like [sic] her[,] she only had to wait a few months for the makeup . . . Her name was not included on the certification because she took the makeup examination after the certification was issued. In Officer Benevento’s case, he took the makeup examination five months or 21 weeks before the list was certified. The opinion notes that . . . the unfortunate timing of the issuance of the certification and the scheduling of her makeup examination gave the Commission ample cause to grant the equitable relief.”

## CONCLUSION

*N.J.A.C.* 4A:4-2.9(h) provides that the name of any candidate passing a make-up examination will be added to the eligible list and that, except for error by the Civil Service Commission or the appointing authority, prior appointments from an eligible list will not be affected by the addition of a name to a list. *N.J.A.C.* 4A:4-3.6(b) provides that 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.

At the outset, it is noted that in *In the Matter of Police Sergeant (PM3776V), City of Paterson*, 176 N.J. 49 (2003),<sup>6</sup> the New Jersey Supreme Court ordered the Civil Service Commission, for future exams, to “administer make-up exams that contain substantially different or entirely different questions from those used in the original examination.” *Id.* at 66. As a result, public safety candidates are given a make-up exam when the next regularly scheduled exam for their particular title is administered. In this regard, the make-up test is typically the same as that to be taken by candidates who apply for the next cycle of announcements. The 2014 Police Sergeant announcements were initially issued on January 1, 2014 with a closing date of March 30, 2014. As noted previously, the State of New Jersey and this agency were in litigation with USDOJ which resulted in the formulation of a Consent Decree. Furthermore, this agency was involved in ongoing discussions with representatives of USDOJ regarding test content and format. These ongoing discussions delayed the administration of the 2014 Police Sergeant examination and the 2014 announcements were reissued, on August 1, 2015, with a September 30, 2015 closing date. See *In the Matter of Police Sergeant Promotional Lists* (CSC,

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<sup>6</sup> The Commission notes that Benevento’s attorney represented the appellants in that matter.

decided June 3, 2015). It is noted that the Police Sergeant examination for the 2014 and 2015 announcements was administered on January 16, 2016 and the resultant eligible lists were promulgated on November 17, 2016.

With respect to the appellant's claim that "the results of the examination would be made known in 12 weeks," the 2015/2016 Police Sergeant Orientation Guide indicated that "the results from this exam will be available after the receipt, review, and disposition of all exam appeals and review by the United States Department of Justice. This process takes a *minimum* of 12 weeks following the last test review date" (emphasis added). Thus, candidates were not informed that they would be notified in 12 weeks but rather, the process takes a *minimum* of 12 weeks.

The appellant relies on *In the Matter of Ellen Steffanelli, supra*, in which Steffanelli had been provisionally appointed to the Principal Library Assistant title pending promotional examination procedures. Steffanelli was granted a make-up which was administered seven weeks after the original exam administration date and three weeks after a certification containing the names of all of the eligibles on the subject eligible list was issued. It is noted that the appointing authority provided additional information and indicated its concern that Steffanelli would be displaced from her provisional position if her name were not added to the outstanding certification. Furthermore, the Commission emphasized that "the appellant is now in danger of displacement from her provisional position . . ." in making its determination. It is noted that the Principal Library Assistant title is not a public safety title. In addition, the appellant was not a provisional appointee performing the duties of the Police Sergeant title prior to the subject examination announcement. As such, the appellant is not similarly situated.

Regarding to the appellant's assertion that had his name been included on PL160843, he would have received an appointment effective December 12, 2016, it is noted that individuals whose names merely appear on a list do not have a vested right to appointment. See *In re Crowley*, 193 N.J. Super. 197 (App. Div. 1984), *Schroeder v. Kiss*, 74 N.J. Super. 229 (App. Div. 1962). 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). In this regard, even if the appellant's name had been included on PL160843, it would have been within the discretion of the appointing authority not to appoint the appellant.

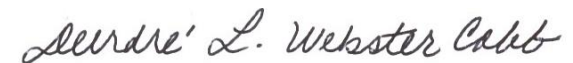
Moreover, given that there is no evidence of Commission or appointing authority error, there is no basis to grant the appellant's request.

**ORDER**

Therefore, it is ordered that this 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 27TH DAY OF MARCH, 2018



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