



**STATE OF NEW JERSEY**

In the Matter of Corey Baskerville  
and Kuomar Fitzgerald, East Orange

**FINAL ADMINISTRATIVE ACTION  
OF THE CHAIR/  
CHIEF EXECUTIVE OFFICER,  
CIVIL SERVICE COMMISSION**

Classification Appeals

CSC Docket Nos. 2023-615 and 2023-  
650

**ISSUED: July 11, 2024 (ABR)**

Corey Baskerville and Kuomar Fitzgerald, represented by James Prusinowski, Esq., appeal the decisions of the Division of Agency Services (Agency Services), which found that their positions with East Orange were properly classified as Fire Fighter. They seek Fire Captain job classifications in this proceeding. Because these matters involve similar issues, they have been consolidated herein.

Baskerville and Fitzgerald were regularly appointed as Fire Fighters, effective November 20, 2000, and October 1, 2003, respectively. Baskerville and Fitzgerald requested classification reviews of their positions in March 2022 and February 2022,<sup>1</sup> respectively, as both believed they were working in the capacity of Fire Captain. After a classification review of their positions, in decisions dated August 26, 2022, Agency Services determined that the proper classification of their positions was Fire Fighter. Baskerville subsequently received a regular appointment to the title of Fire Captain, effective December 12, 2022. Baskerville was supervised by a Deputy Fire Chief at the time of his classification review. Fitzgerald was supervised by a Deputy Fire Chief until his transfer to the training unit in May 2022, when he was supervised by another Deputy Fire Chief.<sup>2</sup>

<sup>1</sup> Agency records indicate that Agency Services received both classification requests on March 17, 2022.

<sup>2</sup> Fitzgerald indicates that both this Deputy Chief and Baskerville are presently assigned to the training division. However, the record is unclear as to whether Fitzgerald still reports directly to a Deputy Chief or now reports to Baskerville, who is also assigned to the training division. Nevertheless,

In its determination, Agency Services found that Baskerville and Fitzgerald had responsibilities such as supervising personnel while on tour in the absence of a superior for each shift; performing daily roll calls; training fire fighters to meet performance objectives; overseeing Fire Fighters and taking other actions while on scene; giving orders and disciplining Fire Fighters, as necessary; following orders from their supervisors; and preparing reports and annual personnel evaluations. Agency Services indicated that Baskerville performed supervisory duties for 16 percent of the time and that Fitzgerald, while under the first Deputy Fire Chief, performed supervisory duties for 26 percent of the time, but that in the Training Unit, he performs primarily Fire Fighter duties.

On appeal, Baskerville argues that he has been regularly an “acting” Fire Captain since 2020 and Fitzgerald argues that he has been regularly an “acting” Fire Captain since 2018. Both indicate that this prompted them to file for classification reviews. Baskerville states that from January through August 2021 he served as an acting Fire Captain for 81.4 percent of his time. Fitzgerald states that in 2019 he did so for 74 percent of his time, in 2020 he did so for 85 percent of the time, and in 2021 he did so for 59 percent of the time. Baskerville maintains that Agency Services erred by focusing on the fact that he was not performing any Fire Captain duties at the time of its decision because he was out on medical leave and did not take into account the extent of his acting Fire Captain duties in previous years. Fitzgerald asserts that in May 2020, he was assigned to the Training Unit. Fitzgerald contends that Agency Services erred by focusing on his duties in the Training Unit and not taking into account the extent of his acting Fire Captain duties in previous years. Baskerville and Fitzgerald cite *In the Matter of Michael Randolph et al., Irvington* (CSC, decided June 29, 2022), wherein the Civil Service Commission stated:

Initially, Agency Services relied on the policy that generally, classification reviews are based on a current review of assigned duties and any remedy derived therefrom is prospective in nature. Usually, given the evolving nature of duty assignments, it is not possible to accurately review the duties an employee may have performed six months ago, or a year ago, or several years ago. However, it is noted that titles in the fire service are unlike most other civil service titles. As an organization in charge of preventing and fighting fires, it is a highly organized emergency service. As such, incumbents in the Fire Fighter title series work under a plethora of Standard Operating Guides and Procedures. The effectiveness of the fire service is based on teamwork, and each individual must be aware of who is in command or control. On this basis, there are no ambiguous or vague supervisory duties. If an individual is assigned supervisory duties, this is not uncertain or unclear. If it can be assumed that the work schedules provided are

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Fitzgerald states that he continues to maintain the training division due to Baskerville’s lack of training certifications.

accurate, then the appellants performed duties as listed therein, either as a Fire Fighter or as an acting Fire Lieutenant. Thus, for this title, it *is* possible to review the past duties that an individual has performed, given that the supervisory duties have remained relatively consistent over the past few years. It is unclear if Agency Services had access to the work schedules provided by the appellants. If it had not, the determinations were correct based on the information provided. However, to leave it at that given the new information would be inherently unfair to the appellants.

In that determination, each appellant provided a daily tally of the hours worked performing the duties of an acting supervisor or Fire Fighter. Here, Baskerville provided his percentages of time for each year that he performed out-of-title work as a Fire Captain. On his Personnel Classification Questionnaire (PCQ), Baskerville indicated that he performed out-of-title duties for 30 percent of the time, and that his supervisor at the time agreed with that percentage. He does not explain how he arrived at that percentage. On appeal, Baskerville claims that he worked for 581.2 of 714 hours or 81.4 percent of the time from January 2021 to August 2021 performing the duties of a Fire Captain. Fitzgerald provided his percentages of time for each year that he performed out-of-title work as a Fire Captain. On his PCQ, Fitzgerald indicated that he performed out-of-title duties for 76 percent of the time, and that his supervisor at the time agreed with that percentage. Fitzgerald does not explain how he arrived at that percentage. Baskerville and Fitzgerald argue that based on these percentages, their positions should have been reclassified to Fire Captain. Baskerville states that his time on leave should not have precluded this classification, and that his extended history of duties requires it. Fitzgerald avers that his reassignment to the Training Unit should not preclude a Fire Captain classification, and that his extended history of duties requires it. Fitzgerald further maintains that the Training Unit is typically staffed with a Fire Captain. Baskerville and Fitzgerald provide tables of total annual hours, actual hours worked, acting Fire Captain hours, and Fire Fighter hours.

Despite an opportunity to do so, the appointing authority did not submit any response to the appellants' appeals. It is noted that when responding to Agency Services in April 2022, the appointing authority indicated that pursuant to the applicable collective bargaining agreement, all Fire Fighters assigned to work in an "Acting Fire Captain" capacity are paid accordingly. The appointing authority acknowledged that Civil Service law and rules do not provide for the title of Acting Fire Captain. The appointing authority also presented that it only assigned Acting Fire Captains when an appointed Fire Captain was on vacation or on sick leave and that once a tour Captain returned, the Fire Fighter was returned to the line. Finally, the appointing authority averred that its table of organization did not support additional Fire Captain positions.

In May 2024, the Division of Appeals and Regulatory Affairs (DARA) requested that the parties provide a summary of the duties Fitzgerald had been assigned since May 2022.<sup>3</sup> In response, Fitzgerald indicated that from May 2022 through January 2023, he performed supervisory duties 76 percent of the time and that since January 2023, he has been performing training and supervisory duties 100 percent of the time. He indicates that he reported directly to a Deputy Chief and was primarily responsible for enhancing the training efficiency and preparedness of the department, with duties including scheduling training sessions; maintaining firefighters records; conducting meter inspections and calibrations; personal protective equipment (PPE) inspections which encompass self-contained breathing apparatus (SCBA) face piece evaluations; driver training; and providing comprehensive course training material both in the classroom and through hands-on exercises. Fitzgerald also states that he manages and supervises subordinate personnel, providing recommendations for disciplining subordinate firefighters. Fitzgerald presents that from November 4, 2022, to January 4, 2023, he led the training division and that while a Deputy Fire Chief and Baskerville, as a Fire Captain, have since been assigned to the training division, because both lack training certifications, he has retained his duties, including maintaining the training division. The appellant also submits an updated PCQ with a list of his current duties.

## CONCLUSION

*N.J.A.C.* 4A:3-3.9(e) states that in classification appeals the appellant shall provide copies of all materials submitted, the determination received from the lower level, statements as to which if portions of the determination are being disputed, and the basis for appeal. Information and/or argument which was not presented at the prior level of appeal shall not be considered.

*N.J.A.C.* 4A:4-1.7(a) states that the Chairperson or designee 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 Chairperson or designee to a position established as a result of a short-term grant. *See also N.J.S.A.* 11A:4-13(c).

*N.J.A.C.* 4A:4-1.7(d) states that consecutive temporary appointments in excess of the periods set forth in (a) are prohibited.

The definition section of the job specification for Fire Fighter states:

During an assigned tour of duty, extinguishes fires; performs rescue operations; aids in emergency situations involving hazardous or toxic

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<sup>3</sup> DARA did not make a similar request from Baskerville because he was permanently appointed to the title of Fire Captain, effective December 2, 2022.

materials; administers emergency medical treatment; maintains all related equipment, buildings and grounds; does related work.

The definition section of the job specification for Fire Captain states:

Under direction, has charge of a fire department company intended to assist in the extinguishing of fires; does other related duties.

As stated in *Randolph, supra*, titles in the fire service are unlike most other civil service titles, as the fire service is a highly organized emergency service, and incumbents in the Fire Fighter title series work under many Standard Operating Guides and Procedures. As each individual must be aware of who is in command or control, if an individual is assigned supervisory duties, this is not uncertain or unclear. If it can be assumed that the work schedules provided are accurate, then Baskerville worked as an acting Fire Captain 84 percent of the time in 2021 and 89 percent of the time between January 1, 2022, and July 31, 2022; while Fitzgerald worked as an acting Fire Captain 58 percent of the time in 2021 and 68 percent of the time between January 1, 2022, and July 31, 2022.

When responding to Agency Services, the appointing authority correctly noted that 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:4-1.1 et seq.* provide for regular, conditional, provisional, interim, temporary, and emergency appointments. See *In the Matter of Michael Shaffery* (MSB, decided September 20, 2006) and *In the Matter of Russell Davis* (MSB, decided August 10, 2005). As noted in *In the Matter of Randolph, et al., supra*, appointing authorities are entitled to make temporary appointments. Here, the appointing authority maintained it only assigned Acting Fire Captains when an appointed Fire Captain was on vacation or on sick leave and that once a tour Captain returned, the Fire Fighter was returned to the line. It is recognized that many appointing authorities find it necessary to designate an “acting” supervisory officer in a public safety department for one or more shifts, due to illness, injury, or vacation schedules of permanent supervisory officers. Nevertheless, the remedy the appointing authority is effectively seeking mandates the out-of-title work duties in violation of *N.J.A.C. 4A:3-3.4*. It would be improper for this agency to violate its own rules. As such, the appointing authority’s excessive assignment of out-of-title duties is inappropriate and it is ordered to limit such out-of-title duties to situations described above. Failure to do so may subject it to further penalties or fines pursuant to *N.J.A.C. 4A:10-2.1*.

Agency Services’ determinations that the appellants’ positions were properly classified as Fire Fighters were based on the premise that reviews are based on a current review of assigned duties and any remedy derived therefrom is prospective in nature. Thus, only assignments as of the submission of the classification review appeals in March 2022 were considered. However, pursuant to the work schedules,

the appellants were predominantly performing supervisory duties for more than 1.5 years, making it clear that they were performing in more than temporary appointments. Assigning such duties on a regular and recurring basis for more than 1.5 years appears to go beyond that of assigning “acting” duties on an intermittent or emergent basis, particularly when the appellants appeared on an eligible list. In this regard, the appointing authority continued to assign Baskerville out-of-title work for at least one year and seven months (January 2021 to July 2022) on a regular basis and continues to assign Fitzgerald out-of-title work, including training duties.<sup>4</sup> Accordingly, for equity purposes, the appellants are to be granted provisional appointment dates to Fire Captain as of March 17, 2022, the date that their appeals were received, pursuant to *N.J.A.C. 4A:3-3.9(e)3(ii)*, with Baskerville’s subsequent regular appointment effective date of December 12, 2022, remaining unchanged. However, if the appointing authority believes that Fitzgerald’s duties have changed, such that the primary focus of his assigned duties are now more consistent with the title of Fire Fighter, it may request a new classification review under *N.J.A.C. 4A:3-3.9*.

### ORDER

Therefore, it is ordered that the appeals of Corey Baskerville and Kuomar Fitzgerald be granted, and they receive retroactive provisional appointment dates to Fire Captain, effective March 17, 2022, with Baskerville’s regular appointment date to the title of Fire Captain, effective December 12, 2022, remaining unchanged.

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

DECISION RENDERED ON  
THE 10<sup>TH</sup> DAY OF JULY, 2024




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Allison Chris Myers  
Chairperson  
Civil Service Commission

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<sup>4</sup> The job specification for the title of Fire Captain includes “ability to provide periodic training programs” among the knowledge and abilities expected from incumbents in that title. The job specification for the title of Fire Fighter does not contain analogous training duties or abilities.

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