



## STATE OF NEW JERSEY

 FINAL ADMINISTRATIVE ACTION  
 OF THE  
 CIVIL SERVICE COMMISSION

 In the Matters of Lawrence Marinari,  
*et. al.*
CSC Docket Nos. 2019-3216, *et. al.*

Administrative Appeals

ISSUED: JUNE 19, 2019 (EG)

Dudley Burdge, Senior Staff Representative with Communications Workers of America (CWA) Local 1032, requests the permanent retroactive appointments of Lawrence Marinari, Sandra Stevens, Melvin Arroyo, Joseph Diefenbach, Mike Coles, Norman Grieg, and Bob Neary.

By way of background, Governor Chris Christie's Executive Order 225 initiated the involuntary transfer of employees from their respective departments to the Office of Information Technology (OIT) effective November 25, 2017. Marinari was transferred from the Department of the Treasury (Treasury) to OIT on November 25, 2017. He had been serving provisionally pending promotional procedures, in the title Technical Support Specialist 1 at Treasury, and retained the title and appointment type when he transferred to OIT. The examination for Technical Support Specialist 1 (PS6048U), Treasury was announced with a closing date of October 23, 2017, due to the provisional appointment of Marinari. The eligible list promulgated on December 21, 2017, with Marinari ranking fourth. Treasury appointed the number one ranked eligible from the PS6048U eligible list effective December 21, 2017. Had Marinari not been subjected to the involuntary transfer to OIT, he would have been eligible and reachable for a permanent appointment effective on or after December 21, 2017.

Norman Greig was transferred from Treasury to OIT effective November 25, 2017. At the time of transfer, he was permanent in the title, Technical Support Specialist 2. Greig ranked first on the eligible list for Technical Support Specialist 1 (PS6048U), Treasury.

Stevens was transferred from the Office of Administrative Law (OAL) to OIT on November 25, 2017. She was serving provisionally pending promotional procedures, in the title Network Administrator 1 when she was transferred to OIT. The examination for Network Administrator 1 (PS5204Y), OAL was announced with a closing date of June 21, 2017, due to the Stevens' provisional appointment. The eligible list promulgated on December 28, 2017, with Stevens ranking first.

Arroyo was transferred from the Department of Human Services (DHS) to OIT on November 25, 2017. He was serving provisionally pending promotional procedures in the title Network Administrator 1 when he was transferred to OIT. The examination for Network Administrator 1 (PS3774K), DHS was announced with a closing date of October 23, 2017, due to several provisional appointments including Arroyo. The eligible list promulgated on May 10, 2018, with Arroyo ranked first with veteran's status.<sup>1</sup> It is noted that Arroyo's veteran's status has prevented the permanent appointment of a provisional employee who remained DHS. See *N.J.A.C. 4A:5-2.2(c)*.

Neary was transferred from the Department of Labor (DOL) to OIT on November 25, 2017. At the time of transfer, he was permanent in the title, Network Administrator 2. The examination for Network Administrator 1 (PS4385N), DOL promulgated prior to Neary's transfer on August 3, 2017. Neary ranked first on the eligible list. While he had been reachable for appointment at DOL, he was bypassed on the September 12, 2007 certification.

Diefenbach was transferred from Department of Law and Public Safety (LPS) to OIT on November 25, 2017. He was serving provisionally pending promotional procedures in the title Network Administrator 1 when he was transferred to OIT. The examination for Network Administrator 1 (PS5600P), LPS was announced with a closing date of August 21, 2017, due to a provisional appointment. The eligible list promulgated on December 14, 2017, with Diefenbach ranking of third. Diefenbach was removed the January 11, 2018, certification due to him working outside the announced unit scope.

Coles was transferred from LPS to OIT on November 25, 2017. He was serving provisionally pending promotional procedures in the title Network Administrator 1 when he was transferred to OIT. The examination for Network Administrator 1 (PS5600P) LPS, was announced with a closing of August 21, 2017, due to Coles' provisional appointment. The eligible list promulgated on December 14, 2017, with ranking second. Coles was removed from the January 11, 2018, certification due to him working outside the announced unit scope.

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<sup>1</sup> It is noted that Arroyo's veteran's status has prevented the permanent appointment of a provisional employee who remained DHS. See *N.J.A.C. 4A:5-2.2(c)*.

In the instant matter, Burge argues on behalf of the appellants that these individuals were in the process of a promotion when the transfers occurred, and due to the nature of the move, the individuals were not able to complete the promotion process prior to their involuntary transfers. He requests that the appellants receive retroactive appointments to an appropriate date in late 2017 or early 2018.

The Division of Agency Services (Agency Services) has reviewed the present request and made the following determinations and recommendations. It determined that the titles, Network Administrator 1 and Network Administrator 1, OIT are substantially similar with the only difference being that Network Administrator 1, OIT was created for banding purposes and to limit the use of the title to OIT.

Additionally, Agency Services recommends that Diefenbach and Coles be restored to the Network Administrator 1 (PS5600P), LPS, eligible list. Additionally, it recommends that certification records be amended to show that they were bypassed and not removed from the January 11, 2018 certification. It asserts that pursuant to *N.J.A.C.4A:4-4.7(a)9*, the removal of their names from the eligible list was not appropriate, since they had transferred out of the announced unit scope involuntarily, and had not yet been appointed from a list in their new unit scope.

Further, Agency Services recommends that permanent appointment be recorded for Marinari in the title Technical Support Specialist 1 effective December 21, 2017; Stevens to Network Administrator 1, OIT effective December 28, 2017; Arroyo to Network Administrator 1, OIT effective May 10, 2018; Diefenbach to Network Administrator 1, OIT effective December 14, 2017; and Coles to Network Administrator 1, OIT effective December 14, 2017.

Once the retroactive appointments are effectuated, Agency Services recommends that the appellants' names be removed from their respective eligible lists due to their permanent appointments into their respective titles in OIT.

Agency Services does not recommend the retroactive appointments of Grieg and Neary from the promotional lists in their prior unit scope since they transferred in their permanent titles, and there is no indication that they are currently performing the work of the higher-level titles.

It is noted that agency records reveal that except for Arroyo, none of the appellants possessed veteran status on their respective eligible lists.

### **CONCLUSION**

*N.J.A.C.4A:4-4.7(a)9* states that employees who are involuntarily transferred shall be retained on a promotional list until they have had an opportunity to take a

promotional examination in the new promotional unit scope or have been appointed from the list. Additionally, *N.J.A.C.4A:4-2.6 (a)2* provides that applicants for a promotional examination shall be currently serving in the announced unit scope in a title to which the examination is open and meet all other requirements contained in the announcement. Further, *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.

Initially, the Civil Service Commission (Commission) agrees that Diefenbach and Coles names should be restored to the Network Administrator 1 (PS5600P), LPS eligible list, and that the certification records be amended to show that they were bypassed and not removed from the January 11, 2018 certification. In this regard, pursuant to *N.J.A.C.4A:4-4.7(a)9*, the removal of their names from the eligible list was not appropriate, since they had transferred out of the unit involuntarily, and they had not yet been appointed from a list in their new unit scope.

Additionally, good cause exists, for the appellants recommended by Agency Services, to receive retroactive appointment dates of permanent appointment. Specifically, the following permanent appointment are to be recorded: Marinari to Technical Support Specialist 1, effective December 21, 2017; Stevens to Network Administrator 1, OIT, effective December 28, 2017; Arroyo to Network Administrator 1, OIT effective May 10, 2018; Diefenbach to Network Administrator 1, OIT, effective December 14, 2017; and Coles to Network Administrator 1, OIT effective December 14, 2017. As indicated above, had these appellants not been subject to an involuntary transfer to OIT, they would have been eligible and reachable for a permanent appointment. In this regard, it is preferable to make a permanent appointment from an eligible list instead of a provisional appointment. Accordingly, under these circumstances, Marinari, Stevens, Arroyo, Diefenbach and Coles should receive retroactive dates of appointments as listed above for their respective titles for salary step placement and seniority-based purposes upon the successful completion of a current working test period in their respective titles.

Further, Agency Services request that once the retroactive appointments are effectuated, that Marinari be removed from Technical Support Specialist 1 (PS6048U), Treasury eligible list; Stevens be removed from Network Administrator 1 (PS5204Y), OAL eligible list; Arroyo be removed from Network Administrator 1 (PS3774K), DHS eligible list; and that Diefenbach and Coles be removed from Network Administrator 1 (PS5600P), LPS eligible list due to their permanent appointment to their respective titles. The Commission finds that the above listed removals, from their respective eligible lists, after the retroactive appointments are effectuated, are appropriate in this matter.

Moreover, the Commission agrees with Agency Services' recommendation that retroactive appointments for Grieg and Neary from the promotional lists in their prior unit scope are not appropriate since they transferred in their permanent titles, and there is no indication that they are currently performing the work of the higher-level titles.

### **ORDER**

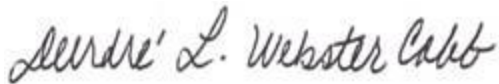
Therefore, it is ordered that Diefenbach and Coles be reinstated to the Network Administrator 1 (PS5600P), LPS eligible list, and certification records be amended to show that they were bypassed and not removed from Certification PS180052. It is further ordered that the following permanent retroactive appointments be recorded for salary step placement and seniority-based purposes upon the successful completion of current working test periods in their respective titles: Marinari to Technical Support Specialist 1, effective December 21, 2017; Stevens to Network Administrator 1, OIT, effective December 28, 2017; Arroyo to Network Administrator 1, OIT, effective May 10, 2018; and Diefenbach and Coles to Network Administrator 1, OIT, effective December 14, 2017.

It is also ordered that upon receiving their retroactive appointments dates, the names of the appellants be removed from their respective eligible list.

Further, it is ordered that the requests by Grieg and Neary 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 12TH DAY OF JUNE, 2019




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Sandra Stevens (2019-3217)  
Melvin Arroyo (2019-3218)  
Joseph Diefenbach (2019-3219)  
Mike Coles (2019-3220)  
Norman Grieg (2019-3221)  
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