

B-461



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Jerry Burgos, Police
Sergeant (PM2590J), Township of
Hazlet

CSC Docket No. 2015-678

List Revival

ISSUED: OCT 01 2014 (DASV)

The Township of Hazlet requests that the eligible list for Police Sergeant (PM2590J) be revived in order to appoint Jerry Burgos effective May 1, 2012.

By way of background, the eligible list for Police Sergeant (PM2590J), Township of Hazlet, promulgated on March 7, 2008 with the names of 19 eligibles and expired on March 6, 2012.¹ The eligible list was certified on June 15, 2011 (PL110680) and February 7, 2012 (PL120145). Two appointments were made on the first certification, effective July 6, 2011, and one appointment was made on the second certification effective February 21, 2012.² The February 7, 2012 certification had a disposition due date of May 7, 2012. However, it was returned to this agency on February 27, 2012 and disposed of by March 29, 2012. The first ranked eligible on the certification was appointed. Burgos was listed in the second position³ and was not appointed. Burgos filed suit in the United States District Court, District of New Jersey, against the appointing authority and other individuals regarding his failure to be promoted. Thereafter, the parties entered into a settlement by way of the attached Consent Order issued on August 18, 2014, agreeing that the

¹ Although it was originally scheduled to expire on March 6, 2011, the subject eligible list was extended one year to March 6, 2012. See *In the Matter of Promotional Lists for Public Safety Titles* (MSB, decided April 7, 2004).

² The eligible list was previously revived and a certification was issued on April 30, 2012. The 10th ranked eligible on the second certification, who had been successful in an appeal of his removal, was considered for appointment. See *In the Matter of Scott Randolph* (CSC, decided February 22, 2012). However, he was not appointed.

³ Burgos ranked sixth on the eligible list.

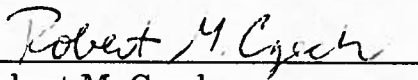
on the certification after the first candidate was appointed on February 21, 2012. Moreover, a Consent Order was issued in District Court to settle the litigation between the parties concerning Burgos' promotion. Based on the foregoing, good cause has been shown to revive the Police Sergeant (PM2590J), Township of Hazlet, eligible list and record Burgos' appointment from the February 7, 2012 certification effective May 1, 2012. *See also N.J.A.C. 4A:4-4.9.* Further, upon Burgos' successful completion of a three month current working test period pursuant to *N.J.A.C. 4A:4-5.2(b)1*, Burgos' appointment shall be recorded as permanent, for seniority purposes only. It is noted that applicants for examinations must have actually served in and performed the duties of the title during the requisite period in order to be eligible. *See In the Matters of David Barrett, Fire Captain (PM3511E) and Robert F. O'Neill and Anthony J. Verley, Deputy Fire Chief (PM3590D)* (MSB, decided November 19, 2003) (Individuals who had received retroactive appointment dates to the Fire Captain title, solely on equitable considerations, but who did not meet the time in grade requirements as of the closing date were not entitled to sit for the examination for Deputy Fire Chief). Accordingly, Burgos' retroactive date of appointment to Police Sergeant cannot be used for examination eligibility.

ORDER

Therefore, it is ordered that this request be granted. It is further ordered that the eligible list for Police Sergeant (PM2590J), Township of Hazlet, be revived and the appointment of Jerry Burgos be made in accordance with this decision.

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 1ST DAY OF OCTOBER, 2014


Robert M. Czech
Chairperson
Civil Service Commission

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and
Correspondence

Henry Maurer
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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JERRY BURGOS,

Plaintiff,

v.

TOWNSHIP OF HAZLET, HAZLET
POLICE DEPARTMENT, CHIEF
JAMES BRODERICK, MAYOR
DAVID TINKER, BRIAN VALENTINO
(BUSINESS ADMINISTRATOR), ABC
ENTITIES 1-5 (as yet unidentified
entities); and JOHN DOE CORPS. (1-4)
(as yet unidentified individuals

Defendants.

Civil Action No. 12-cv-05751-PGS-TJB

CONSENT ORDER

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AUG 19 2014

AT 8:30 _____ M
WILLIAM T. WALSH CLERK

Whereas, after conducting extensive discovery, including multiple depositions, the parties attended a settlement conference on July 25, 2014.

Whereas, Plaintiff is and at relevant times was a Detective in the Hazlet Police Department. One of Plaintiff's claims in this matter concerns a promotion to the position of Sergeant, in connection with New Jersey Civil Service Commission "Certification of Eligibles for Appointment" Certification No. PL120145. The Township intended to promote Plaintiff to the rank of Sergeant on May 1, 2012. This promotion did not occur on that date because Certification No. PL120145 had been returned to the Civil Service Commission and "disposed of," and therefore, there was no Certification from which Plaintiff could be promoted.

Whereas, on account of an administrative error, on February 23, 2012, Mr. Brian Valentino, the former Municipal Administrator and Civil Service Appointing Authority at the time, returned the completed Certification No. PL120145. This essentially disposed of this Certification of Eligibles.

Whereas, based upon the testimony of Mr. Valentino, Chief James Broderick, and other witnesses, it is clear to the Court that an administrative error occurred in connection with Mr. Valentino returning Certification No. PL120145. First, no instruction from the governing body was issued to Mr. Valentino to return the Certification, although such an instruction was required. Second, there was a misunderstanding as to whether the municipality intended to make additional promotions off of the Certification or whether the Certification should be returned. Neither the Hazlet Township Committee nor the Chief of Police intended that the Certification be returned to Civil Service and "disposed of." The Township clearly intended to promote off of the Certification to promote Detective Burgos to the rank of Sergeant on May 1, 2012 and was unaware that it had been "disposed" of or that the Township would otherwise not be able to

The undersigned hereby consent to the form of this Order

By: /s/ Bruce W. Padula
CLEARLY GIACCOBE ALFIERE & JACOBS, LLC
ATTORNEYS FOR DEFENDANTS

By: /s/ Adam J. Kleinfeldt
GINARTE O'DWYER GONZALEZ GALLARDO & WINOGRAD, LLP
ATTORNEYS FOR PLAINTIFF