

356



STATE OF NEW JERSEY

In the Matter of Juanito Chiluisa and
Carlos Del Valle, Manager 1,
Workforce New Jersey (PS6040N),
Department of Labor and Workforce
Development

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket Nos. 2014-3128 and
2014-3168

List Removal Appeal

ISSUED: **OCT 27 2014** (SLK)

Juanito Chiluisa and Carlos Del Valle appeal the attached determinations of the Division of Classification and Personnel Management (CPM) upholding the removal of their names from the eligible list for Manager 1, Workforce New Jersey (PS6040N), Department of Labor and Workforce Development, due to the discontinuance of their employment in the unit scope to which the examination was open. These appeals have been consolidated due to common issues presented.

By way of background, the appellants' names appeared on certification PS140174 that was issued to the appointing authority on February 18, 2014. The certification contained 7 names, including Mr. Chiluisa's and Mr. Del Valle's, and 4 applicants were appointed. The list expires on February 12, 2017. In disposing of the certification, the appointing authority requested the removal of the appellants' names, on the basis that they were no longer employed in the unit scope to which the examination was open.

On appeal, Mr. Chiluisa and Mr. Del Valle both state that on the subject announcement closing date, November 21, 2013, they were provisional managers in the subject title.¹ The appellants present that after they completed their on-line applications, they were informed that they were being "demoted" and that they were never informed of the ramifications as to whether or not they should accept the

¹ Mr. Chiluisa states that he was serving provisionally in the subject title at the Toms River One Stop and Mr. Del Valle states that he was serving provisionally in the subject title at the Paterson One Stop.

demotion. Mr. Chiluisa and Mr. Del Valle also claim that they would have been out of a job if they did not accept the demotion and therefore they were returned to their permanent titles.² The appellants argue that this was an involuntary transfer on their part and that their names should be retained on a promotional list or they should have been appointed from the list. Mr. Chiluisa and Mr. Del Valle also ask how a Senior Interviewer can get the promotion even though she was the fifth ranked candidate. Further, the appellants note that another employee who was a provisional manager was given the opportunity to continue to be a manager after she failed the test three times. Moreover, Mr. Chiluisa and Mr. Del Valle mention that they have never been demoted due to disciplinary or performance reasons and that there are five positions to be filled in the subject title by the appointing authority. Mr. Chiluisa also separately comments that he should be compensated as an Employment and Training Specialist 1 at salary range 26 and instead is being compensated at salary range 24.

In response, the Division of Appeals and Regulatory Affairs (DARA) sent the appellants letters dated August 12, 2014 stating that since their employment in the announced unit scope for the subject examination was discontinued, the appointing authority's requests to remove their names from the subject eligible list appeared appropriate. However, it advised that if Mr. Chiluisa or Mr. Del Valle were subsequently reassigned to the announced unit scope, they could request in writing to the Civil Service Commission (Commission) to have their names restored to the subject promotional list.

In reply, Mr. Chiluisa and Mr. Del Valle reiterated their arguments as stated in their initial appeals and asked that their cases be presented to the Commission for review.

CONCLUSION

N.J.A.C. 4A:4-4.7(a)8 provides that the name of an eligible may be removed from an eligible list for discontinuance of the eligible's employment in the unit scope to which a promotional examination was limited, except when the eligible has accepted a temporary or interim appointment in another unit scope. An employee who subsequently returns to the unit scope within current continuous service may request, in writing to an appropriate representative of the Commission, that his or her name be restored to the promotional list. *N.J.A.C. 4A:4-1.9* provides, in pertinent part, that an appointing authority may return a provisional employee to his or her permanent title in the same organizational unit. *N.J.A.C. 4A:4-7.2* provides that a reassignment is the in-title movement of an employee to a new job function, shift, location or supervisor within the organizational unit. Reassignments shall be made

² Mr. Chiluisa's permanent title is Employment and Training Specialist 1 and Mr. Del Valle's permanent title is Employment Supervisor 2.

at the discretion of the head of the organizational unit. *N.J.A.C. 4A:4-6.3(b)* provides that the appellant has the burden of proof in examination appeals.

As of the closing date of the subject examination, Mr. Chiluisa and Mr. Del Valle were assigned to unit scope N888 and were provisionally serving in the title under test. Accordingly, the appellants were properly admitted to the promotional examination for Manager 1, Workforce New Jersey (PS6040N). However, effective November 30, 2013, Mr. Chiluisa and Mr. Del Valle were returned to their permanent titles and reassigned to new unit scopes.⁸ In this regard, a provisional appointee can be removed at any time and does not have a vested property interest in the provisional title. In other words, a provisional employee has no automatic right or expectation of achieving permanent appointment to the position which he or she is occupying. See *O'Malley v. Department of Energy*, 109 N.J. 309 (1987) (Appointing authority was not equitably estopped from removing a provisional employee even when the provisional employee occupied the position longer than the statutory one-year limit). Therefore, the appellants were not demoted or involuntarily transferred as they suggest and it was appropriate for the appointing authority to return them to their permanent titles. Further, reassignments shall be made at the discretion of the head of the organizational unit. Reassignments do not require the consent of the employee, and Mr. Chiluisa's and Mr. Del Valle's assignments to different unit scopes within the organizational unit are considered reassignments, not involuntary transfers. In this regard, a transfer is the movement of a permanent employee between organizational units, and in State service, an organizational unit is the appointing authority. See *N.J.A.C. 4A:4-7.1(a)1*. Consequently, since the appellants' employment in the announced unit scope were discontinued, the appointing authority's requests to remove their names from the subject eligible list were appropriate. However, if Mr. Chiluisa or Mr. Del Valle subsequently get reassigned to the announced unit scope, they may request in writing to the Commission to have their names restored to the subject promotional list.

With regard to Mr. Chiluisa's and Mr. Del Valle's comments as to how can a person who was a Senior Interviewer who was ranked fifth be promoted, as long as this individual met all the eligibility requirements, passed a competitive examination, and was reachable on the certification, then it was within the appointing authority's discretion to appoint this individual to the subject title.

In relation to the appellants' comments regarding their job performance and that there are still five positions in the subject title to be filled, regardless of how well they perform their job or how many positions remain open, they cannot be considered for regular appointment to these positions if they are not employed in the announced unit scope. Further, even if another individual may have been given multiple

⁸ Mr. Chiluisa was reassigned to unit scope N877 and Mr. Del Valle was reassigned to until scope N866.

opportunities to continue in the position after failing the exam, this does not change the fact that it was within the appointing authority's discretion to return Mr. Chiluisa and Mr. Del Valle to their permanent titles and reassign them to a different unit scope; thereby making them ineligible to be retained on the list.

In reference to Mr. Chiluisa's comments regarding his salary, the Employment and Training Specialist 1 title is compensated at the P24 salary range. The fact that he was returned to his permanent title from a provisional appointment is not a basis for him to retain a higher salary.

Accordingly, the Mr. Chiluisa and Mr. Del Valle have not met their burdens of proof and a review of the record reveals that CPM correctly determined that the appellants were properly removed from the subject list because they were no longer employed in the unit scope to which the examination was open.

ORDER

Therefore, it is ordered that these appeals 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 22nd DAY OF OCTOBER, 2014



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Division of Appeals and
Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

Attachments

**c: Juanito Chiluisa
Carlos Del Valle
Thomas Healey
Kenneth Connolly
Joseph Gambino**



Chris Christie
Governor
Kim Guadagno
Lt. Governor

STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION
DIVISION OF CLASSIFICATION & PERSONNEL MANAGEMENT
P. O. Box 313
Trenton, New Jersey 08625-0313

Robert M. Czech
Chair/Chief Executive Officer

May 23, 2014

Carlos DelValle

Title: Manager 1-Work Force of NJ
Symbol: PS6040N
Jurisdiction: Department of Labor
Certification Number: OS140174
Certification Date: 02/18/2014

Initial Determination: Removal – Outside organizational/unit scope

This is in response to your correspondence contesting the removal of your name from the above-referenced eligible list.

The Appointing Authority requested removal of your name in accordance with *N.J.A.C. 4A:4-4.7(a)8*, which permits the removal of an eligible candidate's name from the eligible list when discontinuance of the eligible's employment in the unit scope to which a promotional examination was limited, except when the eligible has accepted a temporary or interim appointment in another unit scope. An employee who subsequently returns to the unit scope within current continuous service may request, in writing to the Civil Service Commission, that his or her name be restored to the promotional list.

After a thorough review of our records and all the relevant material submitted, we find that there is not a sufficient basis to restore your name to the eligible list. Therefore, the Appointing Authority's request to remove your name has been sustained and your appeal is denied.

Please be advised that in accordance with Civil Service Rules, the Appointing Authority may appeal this decision to the Division of Appeals & Regulatory Affairs (ARA) within 20 days of the receipt of this letter. You must submit all proofs, arguments and issues which you plan to use to substantiate the issues raised in your appeal. Please submit a copy of this determination with your appeal to MSPLR. You must put all parties of interest on notice of your appeal and provide them with copies of all documents submitted for consideration.

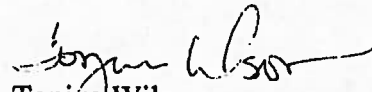
Please be advised that pursuant to P.L. 2010 c.26, effective July 1, 2010, there shall be a \$20 fee for appeals. Please include the required \$20 fee with your appeal. Payment must be made by check or money order only, payable to the NJ CSC. Persons receiving public assistance pursuant to P.L. 1947, c. 156 (C.44:8-107 et seq.), P.L. 1973, c.256 (C.44:7-85 et seq.), or P.L. 1997, c.38 (C.44:10-55 et seq.) and individuals with established veterans preference as defined by N.J.S.A. 11A:5-1 et seq. are exempt from these fees.

Carols DelValle
Page 2

Address all appeals to:

Henry Maurer, Director
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PO Box 312
Trenton, NJ 08625-0312

Sincerely,



Tonjua Wilson
Human Resource Consultant
State Certification Unit

For Joe M. Hill Jr. Assistant Director
Division of Classification & Personnel Management

c: Thomas Healy, Manager