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STATE OF NEW JERSEY

In the Matter of County Correction Captain (PC1189P) and County Correction Lieutenant (PC1202P), Hudson County	:	FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION
CSC Docket No. 2013-3078	:	Examination Appeal

ISSUED: DEC 08 2014 (JH)

Maria Gaines, Helen Ford, Robert Kalb and Luis Oyola challenge the eligibility of Michael Conrad, John Geoghegan and Christopher Yurecko for the promotional examination for County Correction Captain (PC1189P), Hudson County, and the eligibility of Christopher D'Andrea, Rene Felix, Timothea Gabriel, Miguel Matos, Paul Morales, Sharonda Murrell and Michael Ripp for the promotional examination for County Correction Lieutenant (PC1202P), Hudson County.

By way of background, the promotional examination for County Correction Captain (PC1189P), Hudson County was open to employees in the competitive division who had an aggregate of one year of continuous permanent service in the County Correction Lieutenant title as of the closing date of November 21, 2012. The promotional examination for County Correction Lieutenant (PC1202P), Hudson County was open to employees in the competitive division who had an aggregate of one year of continuous permanent service in the County Correction Sergeant title as of the closing date of November 21, 2012. It is noted that eight individuals applied for and were admitted to the PC1189P examination and 24 individuals applied for and were admitted to the PC1202P examination. A review of the record finds that the following eight names appear on the resultant eligible list for PC1189P, which promulgated on August 22, 2013, in rank order: John Geoghegan, Christopher Yurecko, Michael Conrad, Jason Dembowski, Luis Oyola, Thomas Monteleone, Ronald Edwards and Omar Ortiz. The following 17 names appear on the resultant eligible list for PC1202P, which promulgated on August 22, 2013, in rank order: Miguel Matos, Paul Morales, Christopher D'Andrea, Michael Ripp, Sharonda

Murrell, Stephen Lounsbury, Robert Kalb, Timothea Gabriel, Rene Felix, Maria Gaines, Kevin Orlik, Helen Ford, Tracey Bails, Lenore Levine, Samuel Moreno, Mark King and Kesziah Ford. It is further noted that certification activity has been stayed pending the outcome of this matter.

On appeal, Ms. Gaines maintains that that the following PC1202P candidates did not meet the time in grade requirement: Christopher D'Andrea, Timothea Gabriel, Rene Felix, Miguel Matos, Paul Morales, Sharonda Murrell and Michael Ripp. She also indicates that the following PC1189P candidates did not meet the requisite year in grade requirement: Michael Conrad, John Geoghegan and Christopher Yurecko. She argues that the appointing authority "felt compelled to compensate all [of the above named individuals] with seniority because they took the promotion [i]n 2012 without the salary for one year." In this regard, she refers to "Arbitrator Joel M. Weisblatt's decision and award which mentions the same date I am referring to in my appeal, March 2012. On said date[,] 7 officers were promoted to the rank of Sergeant and 3 Sergeants were promoted to the rank of Lieutenant." In support of her appeal, Ms. Gaines submits a copy of *In the Matter of the Arbitration between County of Hudson and PBA Local 109A,* PERC No. AR-2012-640 (July 15, 2013), in which it is noted that the County promoted seven Correction Officers to the rank of Sergeant and three Correction Sergeants to the rank of Lieutenant in March 2012.

Ms. Ford argues that "Miguel Matos, Paul Morales, Christopher D'Andrea, Michael Ripp, Sharonda Murrell, Timothea Gabriel, and Ren[e] Felix . . . should not have been afforded the opportunity to take the lieutenant's test PC1202P because they have not met the eligibility requirements for promotional examination [pursuant to *N.J.A.C.*] 4A:4-2.6." In support of her appeal, Ms. Ford also submits a copy of *In the Matter of the Arbitration between County of Hudson and PBA Local 109A, supra.*

Mr. Kalb presents that "Sgt. M. Matos, Sgt. P. Morales, Sgt. C. D'Andrea, Sgt. M. Ripp, Sgt. S. Murrell, Sgt. T. Gabriel, Sgt. R. Felix were given eight months credit in service to make them eligible to apply for this Lieutenants test. The County of Hudson gave these Sergeants credit from their original certification date and then did not promote them until eight months later . . . The list of Sergeants named above had approximately nine months in service at the time of filing for the Lieutenants test, but qualified because the [C]ounty back dated the[ir] time. According to Title 4A this does not make them eligible." He also argues that Michael Conrad, John Geoghegan and Christopher Yurecko were permitted to sit for the PC1189P exam as their "time [was] back dated as well an[d was] unjust to all the other candidates that had fulfilled the[ir] time in service." In support of his appeal, Mr. Kalb also submits a copy of *In the Matter of the Arbitration between County of Hudson and PBA Local 109A, supra.*

Mr. Oyola contends that certain individuals who took the subject promotional tests did not have the requisite year in grade by the announced closing date. Specifically, he asserts that at the test center, he "noticed that 11 of my co-workers were also there. They were[:] 1) Lt. Ronald Edwards, 2) Lt. John Geoghegan, 3) Lt. Christopher Yurecko, and 4) Lt. Michael Conrad for the County Correction Captain examination[, and] 5) Sgt. Paul Morales, 6) Sgt. Tracy Bails, 7) Sgt. Keisha Ford, 8) Sgt. Maria Gaines, 9) Sgt. Sharonda Murrell, 10) Sgt. Michael Matos and 11) Sgt. Lenore Levine for the County Correction Lieutenant examination." He claims that two of the candidates who sat for the PC1189P examination and three candidates who sat for the PC1202P examination did not meet the requisite year in grade requirement. In a subsequent submission, he adds that Messrs. Geoghegan, Yurecko and Conrad who took the PC1189P test, and Messrs. Moreales and Matos and Ms. Murrell who took the PC1202P test, did not possess the required year in grade. In support of his appeal, Mr. Oyola also submits a copy of *In the Matter of the Arbitration between County of Hudson and PBA Local 109A, supra.*

In response, the County indicates that on August 6, 2011, it determined to promote the following individuals to the County Correction Sergeant title from a list that was scheduled to expire on August 12, 2011: Christopher D'Andrea, Rene Felix, Timothea Gabriel, Miguel Matos, Paul Morales, Sharonda Murrell and Michael Ripp. The County explains:

> At the time the decision to promote was made[,] the County attempted to implement a policy it had adopted, which was driven by the economic downturn, that required any individuals promoted within its uniform departments (Sheriff and Corrections) to agree to waive any promotional salary increase for one (1) year as a condition for the promotion. The waiver was to be agreed to by the employees and their collective bargaining representative, in furtherance of that policy the County met with the employees to be promoted and representatives of PBA Local 109A, the collective bargaining representative of the Corrections Officers Superiors, and believed it had come to an agreement in the October-November, 2011 time period as to the waiver. Subsequently, Local 109A disputed that an agreement existed. On July 15, 2013 Arbitrator Joel M. Weisblatt sustained the position of Local 109A and it was determined that the promoted individuals were entitled to a salary increase and the waiver was not upheld. The individuals, . . . while appointed on August 6, 2011, did not actually begin serving until March 24, 2012.

Messrs. Conrad, D'Andrea, Geoghegan, Matos, Morales, Ripp and Yurecko and Mses. Gabriel and Murrell, represented by Michael L. Prigoff, Esq., argue that while *N.J.A.C.* 4A:4-2.6(a)1 requires a year of continuous permanent service as a prerequisite to sit for a promotional examination, "there are numerous exceptions."

In this regard, they refer to *N.J.A.C.* 4A:4-1.10(c)[1] and *N.J.A.C.* 4A:4-2.6(g)3.[2] They note that while they received appointment dates of August 6, 2011, they did not begin performing the duties of their respective titles until March 23, 2012. They claim that "on several occasions, they inquired of Civil Service about their eligibility to sit for the referenced promotional exams and advised Civil Service of those facts. On all occasions, they were told that they were eligible."[3] They maintain that "only now, after the lists have been promulgated and [they] have a chance of being appointed, do appellants seek another bite at the apple to undo what has already been reviewed and rejected." In support of their appeal, they provide a certification dated August 7, 2014 from Mr. Conrad and copies of their employment records indicating the appointment date to their respective titles effective August 6, 2011. In his certification, Mr. Conrad states that "following the examinations, the development of the lists was held up while appeals were reviewed alleging the same facts as these appeals. My understanding is that all of those appeals were denied, and the lists were promulgated with our names on them." He also presents that "had we been advised before taking the exam that we were not eligible, or had the appeals been granted before the lists were promulgated, that would be one thing. However, to have gone through this entire process only to have our eligibility challenged at this late date, after the lists have been promulgated, is not fair."

It is noted that the affected bargaining unit was notified of this matter and did not file a response.

CONCLUSION

A review of the employment records for Messrs. D'Andrea, Felix, Matos, Morales, Ripp and Yurecko and Mses. Gabriel and Murrell indicate that they received regular appointments to the County Correction Sergeant title from the certification issued on May 2, 2011 (Certification No. PL110443) for County Correction Sergeant (PC2783L) effective August 6, 2011; and the employment records for Messrs. Conrad, Geoghegan and Yurecko indicate that they received regular appointments to the County Correction Lieutenant title from the

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[1] *N.J.A.C.* 4A:4-1.10(c) provides that when a regular appointment has been made, the Civil Service Commission may order a retroactive appointment date due to administrative error, administrative delay, or other good cause, on notice to affected parties.

[2] *N.J.A.C.* 4A:4-2.6(g)3 provides that the time requirements specified in (a) and (b) above may be reduced to completion of the working test period for other valid reasons as determined by the Chairperson of the Civil Service Commission or designee.

[3] Although the appellants claim that they contacted Civil Service on several occasions, they provide neither the dates on which they made their inquiries nor names of Civil Service staff with whom they allegedly spoke.

certification issued on May 2, 2011 (Certification No. PL110444) for County Correction Lieutenant (PC2786L) effective August 6, 2011.[4] Thus, based on the information available in their respective employment records, the Division of Selection Services determined that they were eligible for the subject examinations.

However, as indicated by the appointing authority, Messrs. Conrad, D'Andrea, Felix, Geoghegan, Matos, Morales, Ripp and Yurecko and Mses. Gabriel and Murrell did not actually perform the duties of their respective titles until March 2012. *N.J.A.C.* 4A:4-2.6(a)1 provides that applicants for promotional examinations must have one year of continuous permanent service for an aggregate of one year preceding the closing date in a title or titles to which the examination is open. In this regard, Messrs. D'Andrea, Felix, Matos, Morales, Ripp and Yurecko and Mses. Gabriel and Murrell must have actually served in and performed the duties of the County Correction Sergeant title during the requisite one-year period in order to be eligible for the PC1202P exam. Similarly, Messrs. Conrad, Geoghegan and Yurecko must have actually served in and performed the duties of the County Correction Lieutenant title in order to be eligible for the PC1189P exam. *See In the Matter of Albert Giordano* (MSB, decided January 26, 2005) (an employee must actually serve in and perform the duties of the title to which the examination is open during the requisite year-in-grade in order to establish eligibility). Although Messrs. Conrad, D'Andrea, Geoghegan, Matos, Morales, Ripp and Yurecko and Mses. Gabriel and Murrell claim that a retroactive appointment date is an "exception" to the year in grade requirement, it is noted that in *In the Matter of Daniel O. Errickson* (MSB, decided January 11, 2006), the Merit System Board determined that the appellant, who received a retroactive appointment date to the Correction Sergeant title on the basis of administrative delay, was not eligible to sit for a Correction Lieutenant examination as there was no evidence that he performed the duties of a Correction Sergeant during the requisite year-in-grade. *See also In the Matters of David J. Barrett, et al.* (MSB, decided November 19, 2003) (Individuals who received retroactive appointment dates to the Fire Lieutenant and Fire Captain titles solely on equitable considerations but who did not meet the time-in-grade service requirements as of the closing date of the announcement were not entitled to sit for the examinations for Fire Captain and Deputy Fire Chief). Thus, Messrs. D'Andrea, Felix, Matos, Morales and Ripp and Mses. Gabriel and Murrell cannot use their August 6, 2011 appointment date to the Correction Sergeant title, and Messrs. Conrad, Geoghegan and Yurecko to the Correction Lieutenant title for purposes of examination eligibility.

With respect to the regular appointments of Messrs. Conrad, D'Andrea, Felix, Geoghegan, Matos, Morales, Ripp and Yurecko and Mses. Gabriel and Murrell, it is

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[4] It is noted that Certification Nos. PL110443 and PL110444 were recorded as being returned on April 3, 2012. *See also In the Matter of County Correction Sergeant (PC2783L), Hudson County* (CSC, decided April 4, 2012).

not clear from the record why the appointing authority returned Certification Nos. PL110443 and PL110444 indicating the August 6, 2011 appointment dates when it is undisputed that the affected individuals did not perform the duties of their respective titles until March 23, 2012. Thus, the appointing authority, in effect, provided these individuals with retroactive appointment dates. In this regard, pursuant to *N.J.A.C.* 4A:4-1.10(c), only the Commission may order a retroactive appointment date.[5] Generally, this unique remedy has been reserved in circumstances in which an employee was actually serving in and performing the duties of a title, but due to some error or other good cause, his attainment of permanent status was delayed or hindered. Thus, the August 6, 2011 appointment dates are not appropriate in the present matter. Accordingly, Messrs. D'Andrea, Felix, Matos, Morales, Ripp and Mses. Gabriel and Murrell should receive regular appointment dates of March 23, 2012 to the County Correction Sergeant title; and Messrs. Conrad, Geoghegan and Yurecko should receive regular appointments to the County Correction Lieutenant title effective March 23, 2012.

In the present matter, the Commission notes that the appointing authority could have requested that the year in grade requirement be reduced to the completion of the working test period, pursuant to *N.J.A.C.* 4A:4-2.6(g)3, at time of the subject announcements.[6] Furthermore, the affected individuals applied and sat for the subject examinations based on good faith understanding that they were eligible. Moreover, a basic tenet of the Civil Service Act and its implementing rules is that appointments and promotions are awarded based on merit and fitness which is measured by competitive examinations. Increasing the applicant pool by three eligibles for the PC1189P exam and by eight eligibles for the PC1202P exam does not negatively impact on those applicants who were originally eligible without waiving the time in-grade requirement. Thus, requiring the appellants to compete with more of their peers is consistent with civil service principles. Accordingly, based on equitable grounds, it is appropriate to reduce the one-year service requirement for the County Correction Captain (PC1189P), Hudson County, and County Correction Lieutenant (PC1202P), Hudson County, examinations to the completion of the working test period for County Correction Lieutenant and County Correction Sergeant, respectively.

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[5] *N.J.A.C.* 4A:4-1.10(c) provides that when a regular appointment has been made, the Civil Service Commission may order a retroactive appointment date due to administrative error, administrative delay, or other good cause, on notice to affected parties.

[6] In this regard, it is noted that the affected individuals presumably completed their respective working test periods, *see N.J.A.C.* 4A:4-5.2(b)1, and possessed eight months of experience as of the November 21, 2012 closing dates.

ORDER

Therefore, it is ordered that the announcements for County Correction Captain (PC1189P), Hudson County, and County Correction Lieutenant (PC1202P), Hudson County, be amended to completion of the working test period. It is further ordered that the records regarding Christopher D'Andrea, Rene Felix, Timothea Gabriel, Miguel Matos, Paul Morales, Sharonda Murrell and Michael Ripp be corrected to indicate regular appointments to the County Correction Sergeant title effective March 23, 2012; and the records regarding Michael Conrad, John Geoghegan and Christopher Yurecko be corrected to indicate regular appointments to the County Correction Lieutenant title effective March 23, 2012.

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 3RD DAY OF DECEMBER, 2014

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