



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Dawn Klarin,
Forensic Scientist 2, Department of
Law & Public Safety (PS2112P)

CSC Docket No. 2014-2301

Administrative Appeal

ISSUED: JUL 30 2014 (SLK)

Dawn Klarin appeals the determination of the Division of Selection Services (Selection Services) that she lacked the required amount of permanent status in a title to which the examination was open for the promotional examination for Forensic Scientist 2, Department of Law & Public Safety (PS2112P).

The examination at issue was announced with specific requirements that had to be met as of the September 21, 2013 closing date (see attached). There were 50 individuals who applied for, and 47 deemed eligible to compete in the subject examination that is scheduled to be conducted on August 14, 2014.

A review of personnel records indicates that the appellant was permanently appointed as a Forensic Scientist 1, Department of Law and Public Safety, effective December 15, 2012 and that she was provisionally appointed, pending open competitive examination procedures to the title on November 19, 2011. Previously, she had served permanently as a Forensic Scientist 1, Department of Law and Public Safety and Senior Forensic Scientist from December 1993 until she resigned in good standing effective April 26, 2002. Therefore, Selection Services determined that the appellant was not eligible for the subject examination since she lacked one year of continuous permanent service as of the closing date in a title to which the examination was open.

On appeal, the appellant acknowledges that she failed to meet the requirement of one year of continuous permanent status immediately preceding the closing date, but states that she now has well over 12 years of permanent status

when considering her service prior to her resignation in April 2002. Therefore, she requests that the Civil Service Commission (Commission) reduce the continuous permanent service requirement to the completion of the working test period. The appellant notes that she voluntarily resigned in April 2002, and she volunteered to help on a number of projects, including the World Trade Center disaster and the TWA crash in Queens. Additionally, the appellant explains that she returned to employment in November 2011, was permanently appointed in December 2012, and completed her working test period on April 15, 2013. Thus, she had nine months of permanent service as of the closing date. Further, she took the open competitive examination for Forensic Scientist 1 (S2465N), closing December 30, 2011, on April 2012, and was ranked 10th. However, she indicates that she was not made permanent until December 2012, which she believes to be an extended period of time. The appellant also states that she "purchased back all of her former service credit" and now has over 14 years of service. As such, she contends that she has more than one year of continuous permanent service as a Forensic Scientist 1, just not during the period "immediately preceding the closing date." Accordingly, she requests that the continuous permanent service requirement be relaxed to the completion of the working test period.

In a supplemental submission, the appellant states that the open competitive announcement for Forensic Scientist 1 (S2465N) indicated that that 13 positions were available to be filled and 13 employees were provisionally serving in the title. Further, the Forensic Scientist 1 examination was administered in April 2012 and her name was certified on May 29, 2012. In response to the certification, on June 4, 2012, she sent a letter confirming her interest in the Forensic Scientist 1 title. She submits an email showing that six other individuals who were already employed by the State were hired into the Forensic Scientist 1 position above the original 13 and that those six individuals that were hired in December 2012 received permanent status immediately on their date of hire. The appellant argues that the unusual length of time from her letter confirming her interest in the Forensic Scientist 1 title and the date of her permanent appointment has adversely affected her as she is now being denied the opportunity to take the subject examination. She maintains that she requested a formal explanation for the delay and was advised that management wanted all personnel to have the same permanent start date although no specific reason for this was given. Therefore, the appellant contends that if she had been permanently appointed within three months of her interest letter, she would be eligible for the subject examination. As such, the appellant maintains that this justifies reducing the time in grade requirement to completion of the working test period.

CONCLUSION

N.J.A.C. 4A:4-2.6(a)1 provides that applicants for promotional examinations shall have one year of continuous service for an aggregate of one year immediately preceding the closing date in a title or titles to which the examination is open.

N.J.A.C. 4A:4-2.6(g)3 provides that the time requirements specified in (a) above may be reduced to completion of the working test period if:

1. There is currently an incomplete promotional list and/or the number of employees eligible for examination will result in an incomplete list;
2. It appears that vacancies to be filled within the duration of the promotional list will exceed the maximum number of eligibles that could result from the examination; or
3. There are other valid reasons as determined by the Chairperson of the Commission.

N.J.A.C. 4A:4-6.3(b) provides that the appellant has the burden of proof in examination appeals.

In the instant matter, the promotional announcement for Forensic Scientist 2, Department of Law & Public Safety (PS2112P), was only open to employees who had one year of continuous permanent service in the Forensic Scientist 1 title **immediately** preceding the September 21, 2013 closing date. However, the appellant only had nine months of continuous permanent service in the Forensic Scientist 1 title immediately preceding the closing date and requests that the time in grade rule be relaxed on the basis that it was unreasonable for the appointing authority to wait six months before permanently appointing her to that title. In support of this contention, the appellant argues that the appointing authority waited until December 2012 to permanently appoint her to the Forensic Scientist 1 title because it desired to have all the employees who were being newly appointed to that title become permanent on the same day. A review of the certification record for Forensic Scientist 1 (S2465N) reveals that after the list promulgated, four certifications were issued on May 29, 2012 that resulted in 20 permanent appointments effective December 15, 2012.¹ The appellant was one of the 20 individuals who were permanently appointed effective December 15, 2012. No earlier certifications or permanent appointments were made from the (S2465N) list. Additionally, there were a number of other individuals who were provisionally appointed to Forensic Scientist 1 in November 2011 that were permanently appointed on December 15, 2012. Therefore, the fact that it took the appointing

¹ The Division of Classification and Personnel Management (CPM) granted extensions to the appointing authority permitting it to return all four certifications on December 15, 2012.

authority six months to permanently appoint the appellant to the Forensic Scientist 1 title is not a valid reason to relax *N.J.A.C.* 4A:4-2.6(a)1 as a provisional employee has no automatic right or expectation of achieving permanent appointment to the position to which he or she is occupying. *See O'Malley v. Department of Energy*, 109 *N.J.* 309 (1987).

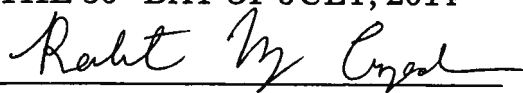
Additionally, to allow an individual who resigned to aggregate his or her prior service in order to be found eligible for a promotional examination would be unfair to all of the applicants who were deemed eligible to compete in the promotional examination who did not leave the organizational unit and served the required one year as a Forensic Scientist 1 without a break in service. *See In the Matter of Steven Hadley* (CSC, decided April 6, 2011), *See also In the Matter of Carmen L. Salas* (MSB, decided April 18, 2000) (Appellant who had more than 13 years of overall service with an appointing authority, but who left for six months and was rehired from a regular reemployment list, incurred a break in service and did not have one year of continuous permanent service as of the promotional examination closing date). Also, as there are currently 47 applicants who have been declared eligible for the subject examination, there is not a basis on which to relax the rule as it is unlikely that the resultant eligible list would be incomplete and there is no evidence that vacancies to be filled within the duration of the promotional list will exceed the maximum number of eligibles that could result from the examination. *See also, In the Matter of Police Lieutenant (PM2537H), City of Hoboken* (MSB, decided September 6, 2006). (Request to open promotional examination to employees who had completed their working test period denied where there were adequate eligibles with one year of permanent service). Moreover, the fact that the appellant bought pension time for her prior service with the appointing authority has no bearing on her continuous permanent service in an announced title. *See In the Matter of Keisha Boyd* (CSC, decided July 10, 2012). Consequently, there is not a valid reason to relax the requirements of *N.J.A.C.* 4A:4-2.6(a)1 and the appellant has not met her burden of proof in this matter.

ORDER

Therefore, it is ordered that the appeal 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 30th DAY OF JULY, 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

Attachment

c: Dawn Klarin
Colleen Gadsby
Dan Hill
Joseph Gambino

NEW JERSEY CIVIL SERVICE COMMISSION-STATE SERVICE
PROMOTIONAL ANNOUNCEMENT



\$25.00 PROCESSING FEE REQUIRED
 Make Check/Money Order Payable to NJCSC

SYMBOL: **PS2112P**

WEIGHT CODE: *

TITLE: **FORENSIC SCIENTIST 2 DEPARTMENT OF LAW AND PUBLIC SAFETY**

SALARY: **\$69,684.00 - \$99,302.00**

ISSUE DATE: **September 01, 2013**

CLOSING DATE: **September 21, 2013**

TITLE CODE: **01593/UJRXR7**

CLASS CODE: **28**

DEPARTMENT: **LPP/LAW & PUBLIC SAFETY**

UNIT SCOPE: **P630 State Police/Office of the Superintendent and Deputy Superintendent**

APPLICATIONS MAY BE OBTAINED
 FROM AND MUST BE RETURNED TO:

**ONLY ON LINE APPLICATIONS
 WILL BE ACCEPTED
 FOR THIS ANNOUNCEMENT**

Open to employees in the competitive division who are currently serving in a title to which the announcement is open and have an aggregate of one year of continuous permanent service as of the closing date in the following title(s):

Forensic Scientist 1 Department of Law & Public Safety

NOTE: Appointees will be required to possess various certifications to perform Forensic DNA testing and analysis, issued by the standards established by the Federal DNA Advisory Board, Scientific Working Group on DNA Analysis and Methods and the American Society of Crime Laboratory Directors for specifications and accreditation for various scientific sub-disciplines relevant to such testing procedures, practices and analysis to be considered as admissible in courts of law and other formal proceedings. Proof of the certification must be submitted to the appointing authority prior to appointment. Failure to do so will result in rejection from the examination process.

IMPORTANT INFORMATION

1. NJAC 4A:4-2.6 states that all requirements listed, including assignment to the department and unit scope, must be met as of the closing date.
2. **YOU MUST COMPLETE YOUR APPLICATION IN DETAIL.** Your score may be based on a comparison of your credentials with the job requirements. Failure to complete your application properly may lower your score or cause you to fail.
3. This examination is open to full- and part-time permanent employees. If an employment list results from this announcement, it may be certified to fill full-time and part-time positions. If 35- and 40-hour positions are used within the unit scope, the resulting list may be used to fill either work week position.
4. NJAC 4A:4-1.5 states that any employee who is serving on a provisional basis and who fails to file for and take an examination which has been announced for his/her title **SHALL BE SEPARATED FROM THE PROVISIONAL TITLE.**
5. In accordance with Public Law 2010 c. 26, **Veterans pay a reduced application fee of \$15.00** if they have previously established Veterans Preference with the DMAVA (as defined by N.J.S.A. 11A:5-1 et seq.), or your claim is approved by DMAVA at least 8 days prior to the issuance of this eligibility list. **PLEASE NOTE: THIS REDUCED FEE DOES NOT APPLY TO PUBLIC SAFETY TITLES.**
6. **SAVE ON POSTAGE! GO PAPERLESS! RECEIVE IMMEDIATE CONFIRMATION THAT YOUR APPLICATION HAS BEEN RECEIVED!** You can now file an application for this examination on-line. Visit the Civil Service Commission website at <http://info.csc.state.nj.us/epoa>. Select the promotional announcement and click on the link, "Click Here to file On-Line" at the top of the announcement. **You can now complete and submit your application and payment on-line to the Civil Service Commission and you will receive an immediate receipt confirmation!**
7. **SPECIAL NOTE TO ALL APPLICANTS** Please make sure you are assigned to the unit scope indicated above. If you do not know your unit scope assignment, please contact your Human Resource Office. If you file an application for this announcement and you are not assigned to the unit scope indicated above, **YOU WILL BE FOUND INELIGIBLE FOR THIS EXAM AND YOUR APPLICATION FEE WILL NOT BE REFUNDED.**

DPF-256A * Revised 03/09