

be exhausted. She states that she could have been appointed in the face of an incomplete list, and she requests to be returned to the Technical Assistant 3 title and made permanent.

CONCLUSION

In an appeal of this nature, it must be determined whether CPM properly applied the uniform regulatory criteria found in *N.J.A.C. 4A:8-2.1 et seq.*, in determining layoff rights. It is an appellant's burden to provide evidence of misapplication of these regulatory criteria in determining layoff rights and the appellant must specify a remedy.

At the heart of the title rights determination is the underlying policy to ensure that employees are afforded fair, uniform, and objective title rights without resulting in harm to the public. *See Malone v. Fender*, 80 N.J. 129 (1979). In this case, as in every case, individual situations are not relevant to title rights as defined in the administrative code. Matters related to position classification and examination issues are not germane to the issue of displacement rights, and are not generally reviewable in the context of a layoff title rights appeal. The Division of Selection Services received the appellant's Application for Qualifying Examination dated March 14, 2012. Originally, in September 2012, it was determined that the appellant's application could not be processed as there was a current pending promotional announcement (PS1794K) and a special reemployment list in existence. A list was issued on January 30, 2013 with two names. Subsequently, the request was resubmitted, and on April 29, 2013, the Division of Selection Services processed a qualifying examination for the appellant for the Technical Assistant 3 title, but a special reemployment list existed. Pursuant to *N.J.A.C. 4A:4-4.2 et. seq.*, special reemployment lists take precedence over promotional and open competitive lists. Since there was a special reemployment list in existence at the time, the appellant's qualifying examination could not be completed.

Lastly, permanency in a title is a result of certification from an eligible list and completion of a working test period. No individual can be retroactively made permanent in a position, as an individual's successful completion of a working test period cannot be established if it is not undergone. With respect to the appellant's claim that she was told not to file for the PS1794K promotional examination, had the appellant filed an appeal of that issue when she first became aware of it, the Commission would have likely granted her the opportunity to file a late application and take a make-up examination. It is noted that the appellant was not copied on the memorandum to the Department of Human Services in April 2013 regarding the qualifying examination. But she did not raise the issue until May 2014, more than a year after the Department of Human Services was told that the list had to be exhausted before Ms. Anil could be appointed permanently with a qualifying examination. All candidates are responsible for filing for and taking examinations

for promotions for which they are interested. If the appellant was interested in taking the PS1794K promotional examination, she should have filed for it regardless of any advice she had received. If she had, she would have been found eligible or, in the event that she had been successful in the qualifying examination, it would have not constituted a promotion at that time and the issue would be moot. However, as long as the qualifying examination had not been processed, the appellant could have filed for the promotional test. Moreover, the appellant has not provided any proof that she was advised not to file for PS1794K. Even if she had taken the promotional examination for PS1794K, there is no guarantee that she would have been appointed and passed her working test period prior to the layoff. No error or evidence of misapplication of the pertinent uniform regulatory criteria in determining layoff rights has been established.

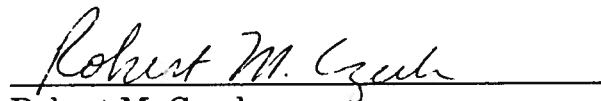
Thus, a review of the record fails to establish an error in the layoff process and the appellant has not met her burden of proof in this matter.

ORDER

Therefore, it is ordered that this 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 3rd DAY OF SEPTEMBER, 2014



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