

B-10



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Samuel Agee, *et al.*,
Greystone Park Psychiatric Hospital

Classification Appeal

CSC Docket No. 2014-3110
2014-3111
2014-3112
2014-3113
2014-3114
2014-3115

ISSUED: **JUL 16 2014** (RE)

Samuel Agee, Letitia Brantley, Torriell Green, Mario Gomez, Sharon Simms and James Walker, represented by Arnold Shep Cohen, Esq., request retroactive regular appointment dates as Motor Vehicle Operators 1 to July 27, 2013 with Greystone Park Psychiatric Hospital in order to have more seniority in the current layoff.

The petitioners submitted Position Classification Questionnaires (PCQs) dated June 5, 2013 to their appointing authority. According to the appellants, they received provisional appointments pending promotional examination to the title Motor Vehicle Operator 1 on July 27, 2013. They subsequently filed for the examination for Motor Vehicle Operator 1, (PS6825K) which had a closing date of January 21, 2014. They each appear on the eligible list, which was promulgated on May 22, 2014. They have not received regular appointments.

On appeal, the petitioners argue that, had they been reclassified on July 27, 2013 into regular appointments rather than provisional appointments, they would have begun their four month working test period at that time and would be permanent on November 27, 2013. They argue that this would give them bumping rights in the current layoff to the title Motor Vehicle Operator 1. It is noted that on March 28, 2014, this agency approved a layoff plan for the Department of Human Services involving 986 positions, with an effective date of June 27, 2014. They state that because they were permanent in the title Truck Driver Single Axle, they could not bump into the Motor Vehicle Operator 1 title. They argue that there is no

requirement that an appointment after a reclassification be provisional pending an examination and request regular appointments on July 27, 2013.

N.J.A.C. 4A:3-3.9(e)3i states that the effective date of a reclassification action in State service should be the pay period immediately after 14 days from the date the Commission received the appeal or reclassification request, or at such earlier date as directed by the Commission.

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

CONCLUSION

In the matter at hand, there is no basis to grant the petitioners an earlier effective date or to change their provisional appointments to regular appointments. The Commission has held that while the controlling rule provides that an earlier effective date may be set, this procedure is judiciously applied only to cognizable claims. *See In the Matter of Stephen Mroczki* (Commissioner of Personnel, decided February 13, 1996). In this case, the petitioners have not provided any indication that there was any delay by the appointing authority in its handling of this matter. As such, the effective date of July 27, 2013 reflects the proper application of *N.J.A.C. 4A:3-3.9(e)3i*. In addition, it is well settled that upon reclassification of a position to a higher title, the incumbent is considered serving provisionally in the new title. Further, positions are reclassified, not employees. The only method by which an individual can achieve permanent appointment is if the individual applies for and passes an examination, is appointed from an eligible list, *see N.J.A.C. 4A:4-1.1*, and satisfactorily completes a working test period. *See N.J.A.C. 4A:4-5.1*. *See also, In the Matter of Joseph S. Herzberg* (MSB, decided June 25, 2003) (Intent of the appointing authority to permanently appoint appellant to Fire Captain not sufficient to permanently appoint petitioner since he was never appointed from an eligible list). Therefore, the petitioners were properly considered to be serving as Motor Vehicle Operators 1 provisionally pending promotional examination procedures as a result of a reclassification of their positions.

The petitioners' provisional appointments triggered the certification of a special reemployment list containing two names. One individual was subsequently appointed on August 24, 2013, and the other was not interested in the location. No other lists were in existence and, therefore, the Division of Selection Services announced an examination. As a result, the petitioners' names appear on the eligible list for PS6825K, which was only recently promulgated, in May 2014. There is no evidence of an administrative error or irregularity in appointment procedures in the instant matter. The petitioners have presented no evidence of bad faith,

intentional misconduct, or negligent handling on the appointing authority's part. In fact, they have not even presented such a circumstance as an argument, but merely make a general allegation that the appointing authority "violated their rights."

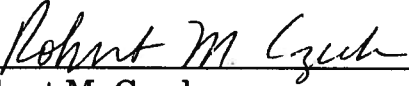
Lastly, matters relating to examination and appointment procedures are not reviewable in the context of a layoff appeal. *See In the Matter of Leonard A. Grilletto* (Commissioner of Personnel, decided April 20, 1994) (Matters related to salary issues, classification, examination, certification and appointment process are not reviewable in the context of a layoff appeal). Layoff rights must be determined within a limited time period. Consequently, the employment status of an employee at the time of the layoff is considered.

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
THE 16th DAY OF JULY, 2014



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