



positions effective August 10, 2013. The appointing authority indicated that the appellant's name was "retained" since he was not reachable on the certification. Since the appellant was not reachable for appointment, the appointing authority discontinued his provisional appointment effective August 14, 2013.

On appeal, the appellant asserts that the appointing authority did not present him with notice of his provisional status until after he had quit his previous job and accepted employment in the subject position. The appellant adds that he quit his job and moved 50 miles away with the expectation that he would be permanently appointed. In addition, the appellant states that although he applied for and passed the subject examination, he was not selected for appointment and his provisional position was eliminated. The appellant maintains that the appointing authority should not have provisionally appointed him if it planned to later remove him from the position. Further, the appellant questions why he was required to take the open competitive examination for the subject title since his Director indicated that at some point permanent appointments would be made based on an evaluation of education and experience. After serving provisionally in the trainee title for almost a year prior to the administration of an examination, the appellant contends that he should have been administered an examination for Realty Specialist 1, Department of Transportation instead of Realty Specialist Trainee, Transportation. Moreover, the appellant avers that a District Manager stated that appointments would automatically be made after completion of the training period. Additionally, the appellant questions the benefit of terminating his employment after taxpayer money was spent on training him for a specific skill set that would be hard to utilize elsewhere. Thus, the appellant asserts that since he had already completed one year of training as a provisional Realty Specialist Trainee, Transportation, he should be appointed as a Realty Specialist 1, Transportation.

In response, the appointing authority states that the appellant was interviewed in March 2012 and he was verbally offered employment and was notified that his appointment was provisional, pending open competitive examination procedures, by way of a letter dated April 26, 2012. It also states that the appellant further acknowledged his provisional status when he signed the "Notice Employees Serving Provisionally" on May 21, 2012, which also indicates that provisional employees are not provided with underlying permanent status and would be required to take and pass an examination in order to be considered for a permanent appointment. Additionally, the appointing authority explains that although the appellant applied for and passed the subject examination, it was not able to permanently appoint him because he was not reachable on the list. Moreover, the appointing authority maintains that the appellant was properly appointed as a provisional Realty Specialist Trainee, Transportation, in order to address a critical need that existed in the work unit where he was assigned.

## CONCLUSION

*N.J.A.C.* 4A:4-1.5(a) provides, in pertinent part, that a provisional appointment may be made only in the competitive division of the career service when there is no complete list of eligibles, an appointee meets the minimum qualifications for the title, and the appointing authority certifies that failure to make the provisional appointment will seriously impair its work. *N.J.A.C.* 4A:4-1.5(b) 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 or her title shall be separated from the provisional title.

*N.J.A.C.* 4A:3-3.7(b) provides that positions in competitive trainee titles may only be filled by regular appointments from open competitive, promotional, regular or special reemployment lists, or, in the absence of such lists, by provisional appointments.

In the instant matter, the record clearly indicates that the appellant was notified that he was provisionally appointed, pending open competitive examination procedures, to Realty Specialist Trainee, Department of Transportation. The record reflects that the appointing authority confirmed by way of a letter dated April 26, 2012 that the appellant was selected for employment as a Realty Specialist Trainee, Transportation, effective May 19, 2012, and that his status was provisional appointment pending an open-competitive examination. Further, the appellant acknowledged his provisional status when he signed the Notice Employees Serving Provisionally on May 21, 2012. Therefore, it is clear that the appointing authority properly notified the appellant of his provisional status on two occasions. Although it is unfortunate that the appellant may have quit his previous job and moved prior to understanding that he was being offered a provisional appointment, it is clear that the appointing authority properly notified him of the provisional nature of his appointment.

Additionally, the appointing authority was authorized to provisionally appoint the appellant as it had obtained a hiring freeze exemption in order to appoint five employees to the title of Realty Specialist Trainee, Transportation and there was no open competitive list from which to make appointments. The rules provide for provisional appointments until a competitive examination and employment roster can be promulgated because it has been found that this approach balances both the immediate needs of an appointing authority to staff critical positions with the underlying purpose of Civil Service law and rules to ensure that permanent appointments are made on the basis of merit and fitness. *See In the Matter of Doris Dingle* (MSB, decided October 6, 2004).

With respect to the appellant's argument that his Director misled him to believe that he was not required to take an assembled examination for the subject

title as the test would be conducted as an evaluation of education and experience, *N.J.A.C.* 4A:4-2.2 indicates that the Commission has the authority to determine the most appropriate selection instrument to use in assessing candidates in a given competitive title. With regard to the subject announcement, Selection Services determined that the appropriate test mode for this examination was a written test. The appointing authority does not select the test mode, and any misinformation that he may have received about the test mode does not entitle him to a permanent appointment to the subject title. Additionally, while the appellant passed the subject examination, he was not reachable for appointment.

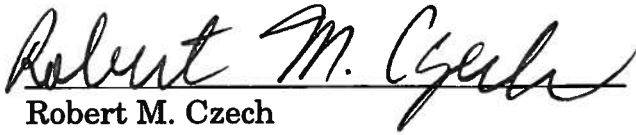
*N.J.S.A.* 11A:4-8, *N.J.S.A.* 11A:5-6, and *N.J.A.C.* 4A:4-4.8(a)3i allow an appointing authority to select any of the top three interested eligibles on an open competitive list, but that disabled veterans and then veterans shall be appointed in their order of ranking. In this case, the appointing authority appointed the highest ranked candidates in the 1<sup>st</sup>, 2<sup>nd</sup>, and 7<sup>th</sup> positions in accordance with the Rule of Three. Since the appellant's name appeared in the 15<sup>th</sup> position on the eligible list, he was unreachable for appointment and his name was properly retained on the eligible list. As a result, the appointing authority discontinued the appellant's provisional appointment since he could not be permanently appointed to the subject title. Although the appellant argues that the appointing authority should not have appointed him to a provisional position if it planned to remove him and he quit his job with the expectation of a permanent position, it is noted that 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).

### 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 16<sup>th</sup> DAY OF JULY, 2014



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