

B-81



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matters of Carl Magby, *et al.*,
Motor Broom Driver (PM1882R),
Hackensack

Examination Appeals

CSC Docket Nos. 2014-1968, 2014-
1986, 2014-2055 and 2014-2087

ISSUED: **JUL 18 2014** (HS)

Carl Magby, Kurt Brown, Clarence Brown and Juan Meneses appeal the determinations of the Division of Selection Services (Selection Services), which found that they did not meet the experience requirement for the promotional examination for Motor Broom Driver (PM1882R), Hackensack. Since these appeals address similar issues, they have been consolidated herein.

The subject examination was announced with a closing date of October 21, 2013 and was open to employees in the non-competitive division who had an aggregate of one year of continuous permanent service as of the closing date, who were serving in the title of Sanitation Worker and who met the listed requirements. The examination was also open to all employees in the competitive division who had an aggregate of one year of continuous permanent service as of the closing date and who met the listed requirements. The requirements included one year of experience in driving a truck or in driving motorized lifting and moving, sweeping, excavating, grading, paving, earth moving or related construction vehicles. It is noted that the appellants were the only four applicants for the promotional examination, which was cancelled.

Magby indicated on his application that he served in the position of Supervisor with Hackensack from January 2011 to January 2012, but he did not

indicate any driving duties.¹ Selection Services did not credit any of Magby's experience.

Kurt Brown indicated on his application that he served in the position of Driver with Hackensack from August 1999 through the closing date. Selection Services did not credit any of Kurt Brown's experience, finding that any driving duties he performed would be out-of-title for his permanent title of Sanitation Worker.

Clarence Brown was credited with seven months of experience for his provisional service in the title of Motor Broom Driver from April 2013 through the closing date. Selection Services did not credit any of Clarence Brown's other experience.

Meneses was credited with seven months of experience for his provisional service in the title of Motor Broom Driver from April 2013 through the closing date. Meneses indicated on his application that he served as a Motor Broom Operator from June 1998 through the closing date. Selection Services did not credit any of Meneses's experience prior to April 2013, indicating that any applicable duties performed in that time frame would be out-of-title for his permanent title of Sanitation Worker.

On appeal, Magby submits that he has served as Supervisor for Sanitation. Magby also submits information clarifying that he served as Crew Leader of his truck route from January 2011 to January 2012, a role in which he operated and maintained the vehicle he drove.

Kurt Brown argues that he should be eligible given that he has had five months of training with a former Motor Broom Driver employed by Hackensack. He also states that he has 20 years of truck driving experience and 15 years of experience driving garbage trucks with the Hackensack Sanitation Department.

The appointing authority submits statements verifying the duties performed by Magby and Kurt Brown. The appointing authority advises generally that all employees in the Hackensack Sanitation Department hold the title of Sanitation Worker and that no one has been given the title of Driver. However, the appointing authority notes that approximately half of the Department's employees, including Magby and Kurt Brown, have Commercial Drivers Licenses and drive garbage routes on a regular basis. The appointing authority further indicates that Magby has been employed by Hackensack since 2006, Kurt Brown has been employed by Hackensack since 1999 and both have been a Crew Leader and truck driver throughout their employment with Hackensack.

¹ Agency records indicate that Magby's permanent title is Sanitation Worker.

Clarence Brown argues that he has been employed by the Hackensack Department of Sanitation since 1995 and has been driving garbage trucks for at least 16 years. He states that he has been operating and driving the street sweeper since June 2012, and he submits a list of his daily duties that, he asserts, compares favorably with the job specification for Motor Broom Driver.

Meneses argues that he has over seven years of experience driving sanitation trucks with a CDL license and over three years of experience driving a street sweeper daily, weather permitting.

CONCLUSION

N.J.A.C. 4A:4-2.6(a) provides that applicants shall meet all requirements specified in the promotional examination announcement by the closing date. *N.J.A.C.* 4A:4-2.6(c) provides that, except when permitted for good cause, applicants for promotional examinations may not use experience gained as a result of out-of-title work to satisfy eligibility requirements. *N.J.A.C.* 4A:1-1.2(c) provides that a rule may be relaxed for good cause shown in a particular situation.

In this matter, Selection Services correctly determined that the appellants were ineligible for the subject examination because they did not meet the experience requirement as of the October 21, 2013 closing date.

Magby provides clarification of his duties with Hackensack on appeal. Clarifying information is permitted pursuant to *N.J.A.C.* 4A:4-2.1(g). The clarifying information that Magby provides indicates that he served as a truck driver from January 2011 to January 2012. Kurt Brown argues that he has been serving as a truck driver since August 1999. Given that Magby and Kurt Brown have been serving in the title of Sanitation Worker, any applicable duties they performed during those time frames would be considered out-of-title. Ordinarily, the Civil Service Commission (Commission) looks to whether or not "good cause" has been established in determining whether to grant or deny appeals involving out-of-title work. Generally, the Commission finds good cause where the record evidences that the examination situation is not competitive, no third parties are adversely impacted, and the appointing authority wishes to effect a permanent appointment and verifies that the appellant has performed the relevant duties which otherwise satisfy the eligibility requirements. *See In the Matter of John Cipriano, et al.* (MSB, decided April 21, 2004). In this particular situation, the record evidences that the examination situation is not competitive as the examination was cancelled, and therefore no third parties are adversely impacted. Additionally, the appointing authority verifies the out-of-title work experience of Magby and Kurt Brown. As such, good cause exists to accept the out-of-title work experience of Magby and Kurt Brown, for eligibility purposes only, and admit them to the examination.

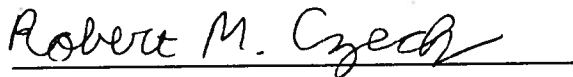
Clarence Brown and Meneses were provisionally appointed to the title under test effective April 2013 and continue to serve provisionally in that title. The Commission finds that, for examination eligibility purposes, Clarence Brown and Meneses have been performing the duties of the title under test since that date. Thus, Clarence Brown and Meneses now possess enough applicable experience based on this service. Additionally, as already noted, the examination situation is not competitive. Under these circumstances, good cause exists to relax the provisions of *N.J.A.C.* 4A:4-2.6(a)2 and accept the provisional experience of Clarence Brown and Meneses after the closing date, for eligibility purposes only, and admit them to the examination.

ORDER

Therefore, it is ordered that these appeals be granted, the cancellation of the examination be rescinded and the appellants' applications be processed.

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 16TH DAY OF JULY 2014



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