



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Robert J. Young
Landscape Technician (PS6062T),
Department of Transportation

CSC Docket No. 2014-2606

Examination Appeal

ISSUED: JUL 18 2014 (DASV)

Robert J. Young appeals the determination of the Division of Selection Services that he did not meet the experience requirement for the promotional examination for Landscape Technician (PS6062T), Department of Transportation.

The subject examination was announced with a closing date of November 21, 2013 and requirements pursuant to the attached announcement. In relevant part, the examination was open to employees currently serving in the listed noncompetitive titles who possessed an aggregate of one year of continuous permanent service and two years of experience in the construction and maintenance of landscape areas, including the use of pesticides. Applicants were also required to possess a valid Commercial Driver's License (CDL) and a Registered Commercial Pesticide Applicator Certification. It is noted that 14 individuals were found eligible for the examination, which has not yet been held. It is further noted that the appointing authority requested the examination be open to titles with class codes 9 through 13, as the three provisional employees, including Mr. Young, have underlying permanent status in the noncompetitive title of Maintenance Worker 1, Transportation (class code 9).

A review of Mr. Young's application and personnel records indicates that he has been serving provisionally pending promotional examination procedures in the subject title since August 2013. Prior to that position, he served permanently in the noncompetitive title of Maintenance Worker 1, Transportation from February 2012 to August 2013, and in the noncompetitive title of Maintenance Worker 2,

Transportation from September 2011 to February 2012.¹ Regarding his experience, Mr. Young stated on his application, among other things, that since September 2011 he has performed specialized pesticide mixing and applications; completed required specialized reports; operated, maintained, and repaired various landscape equipment; and pruned and removed trees. Additionally, he indicated possession of a CDL, issued on January 20, 2012, and a pesticide applicator license issued on August 14, 2013. The Division of Selection Services credited Mr. Young with four months of experience (August 2013 to November 2013) for his provisional service as a Landscape Technician and one year and six months of experience as a Maintenance Worker 1, Transportation (February 2012 to August 2013). It did not consider Mr. Young's work as a Maintenance Worker 2, Transportation. Therefore, the Division of Selection Services determined that Mr. Young lacked two months of the required experience and was ineligible for the subject examination.

On appeal, Mr. Young asserts that he has been doing the job for over two years and he meets all the requirements for the subject title. He presents another application for the subject examination, which includes employment as a Laborer with Tree Fellas from April 2009 to June 2011. In that position, he trimmed, cut, and removed trees and tree stumps.

In support of Mr. Young's appeal, the appointing authority submits a letter explaining that Mr. Young was appointed on September 24, 2011 as a Maintenance Worker 2, Transportation. He was then promoted to Maintenance Worker 1, Transportation, effective February 11, 2012, after he received the required CDL endorsement. Furthermore, the appointing authority verifies that due to business necessity, it "typically uses both MW2 and MW1 titles interchangeably" until employees obtain the appropriate CDL endorsement to be appointed to the Maintenance Worker 1, Transportation title. Thus, it states that the duties performed by Mr. Young as a Maintenance Worker 2, Transportation for the period between September 24, 2011 through February 10, 2012 included construction and maintenance of landscape areas, including the application of pesticides under the direct supervision of a Licensed Pesticide Applicator.

The job specifications for Maintenance Worker 1, Transportation and Maintenance Worker 2, Transportation state that an incumbent performs unskilled and/or semi-skilled work in State highway construction and maintenance operations. Examples of work for both titles include mowing grass, cutting weeds, clearing brush, and maintaining slopes and roadsides. The Maintenance Worker 1, Transportation may also "be required to apply pesticides under the direct supervision of a Licensed Pesticide Applicator." This responsibility is not included

¹ Although Mr. Young indicated that he began working with the Department of Transportation in September 2011, he did not specify his employment as a Maintenance Worker 1, Transportation or Maintenance Worker 2, Transportation on his application. However, the Division of Selection Services reviewed his personnel records.

in the examples of work for a Maintenance Worker 2, Transportation. Thus, application of pesticides would be considered out-of-title work for a Maintenance Worker 2, Transportation.

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. Additionally, under *N.J.A.C.* 4A:4-2.1(g), the Civil Service Commission (Commission) can accept clarifying information in eligibility appeals. However, *N.J.A.C.* 4A:4-2.1(f) provides that an application may only be amended prior to the announced closing date. For example, information submitted on appeal pertaining to duties in a given position that expands or enlarges information previously submitted is considered clarifying and is accepted. However, any documentation indicating work in a setting that was not previously listed on an application or resume cannot be considered after the closing date. Thus, the Commission can only consider information provided on appeal regarding the positions listed on the appellant's original application. See *In the Matter of Diana Begley* (MSB, decided November 17, 2004). In addition, *N.J.A.C.* 4A:4-2.6(c) provides that, except when permitted for good cause, applicants for promotional examinations with open-competitive requirements may not use experience gained as a result of out-of-title work to satisfy eligibility requirements or for credit in the examination process. Furthermore, *N.J.A.C.* 4A:4-6.3(b) provides that the appellant has the burden of proof in examination and selection disqualification appeals.

In the instant matter, Mr. Young was permanent in the noncompetitive title of Maintenance Worker 1, Transportation. Thus, per the examination announcement, he was required to possess two years of experience in the construction and maintenance of landscape areas, including the use of pesticides.

Initially, on appeal Mr. Young adds employment as a Laborer. The indication of this position is not considered clarifying information, which may be allowed, but rather, amended information, which is not permitted after the closing date of an examination under *N.J.A.C.* 4A:4-2.1(f). See *In the Matter of Annemarie Brahan and Dick Norris* (MSB, decided September 22, 2004). Nonetheless, Mr. Young's duties as a Laborer would not be considered applicable, as he did not indicate the use of pesticides. In this regard, qualifying experience has the announced experience as the primary focus. The amount of time, and the importance of the duty, determines if it is the primary focus. An experience requirement that lists a number of duties, which define the primary experience, requires that the applicants demonstrate that they primarily performed all of those duties for the required length of time. Performance of only one or some of the duties listed is not indicative of comprehensive experience. See *In the Matter of Jeffrey Davis* (MSB, decided

March 14, 2007); *see also*, *In the Matter of Bashkim Vlashi* (MSB, decided June 9, 2004).

Regarding his experience as a Maintenance Worker 1, Transportation and Maintenance Worker 2, Transportation, Mr. Young did not specify these titles on his application but only listed his provisional title of Landscape Technician. However, Mr. Young commenced employment with the Department of Transportation in September 2011, which he indicated. Additionally, the appointing authority verifies the titles and the dates in which he served. Under these circumstances, the Commission finds that this information clarifies Mr. Young's initial application and may be considered. *See N.J.A.C. 4A:4-2.1(g)*. In fact, the Division of Selection Services had already reviewed Mr. Young's personnel records and correctly credited him with a total of one year and 10 months of experience for his work as a provisional Landscape Technician (August 2013 to November 2013) and Maintenance Worker 1, Transportation (February 2012 to August 2013). However, the Division of Selection Services did not credit Mr. Young's work as a Maintenance Worker 2, Transportation.

Nonetheless, the appointing authority verifies that Mr. Young has performed work involving the construction and maintenance of landscape areas, including the use of pesticides since September 2011. As indicated above, Mr. Young was a Maintenance Worker 2, Transportation from September 2011 to February 2012. Using pesticides would be considered out-of-title work for a Maintenance Worker 2, Transportation. The Commission looks to whether or not "good cause" has been established in determining whether to grant or deny appeals involving out-of-title work. *See N.J.A.C. 4A:4-2.6(c)*. 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 permanent appointments 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 the present matter, there were 14 eligibles admitted to the subject examination. While it certainly appears that there may be a sufficient number of eligibles for three provisional positions, the examination has not yet been held. In other words, it is premature to determine whether the examination situation is actually competitive in this case. This is especially true considering that the examination was open to clerical titles and other seemingly unrelated titles. Furthermore, Mr. Young has been serving provisionally in the title since August 2013 and was found to have lacked only two months of the required experience. The appointing authority has verified that Mr. Young performed all the required duties for the examination since September 2011. As such, he actually had over two years of the required experience as of the examination closing date. He also met the license requirements. Therefore, for equitable reasons under these circumstances, the Commission finds good cause to

accept Mr. Young's out-of-title work experience and admit him to the subject examination. Accordingly, Mr. Young has met his burden of proof in this matter.

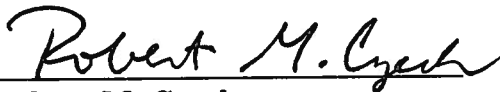
As a final comment, the Commission is concerned that the appointing authority "typically uses both MW2 and MW1 titles interchangeably." While there may be situations where assigning out-of-title work is necessary, the appointing authority is advised that it cannot regularly assign out-of-title duties to employees. This is because constant, repeated or lengthy out-of-title work assignments of career service employees is damaging to the system, creates salary inequities and undermines the integrity of the classification plan. *See In the Matter of Suzanne M. F. Buriani-DeSantis* (CSC, decided July 30, 1985); *See also, In the Matter of Joyce Mutak* (MSB, decided February 24, 1987). Accordingly, the appointing authority should review its business practices in order to avoid a similar situation in the future.

ORDER

Therefore, it is ordered that this appeal be granted and Robert J. Young's application be processed.

This is the final administrative determination in these matters. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 16TH DAY OF JULY, 2014



Robert M. Czech
Chairperson
Civil Service Commission

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and
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Attachment

c: **Robert J. Young**
Michele A. Shapiro
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: PS6062T	WEIGHT CODE: *
TITLE: LANDSCAPE TECHNICIAN	SALARY: \$38,352.00 - \$53,859.00
ISSUE DATE: November 01, 2013	CLOSING DATE: November 21, 2013
TITLE CODE: 42133/W3R XR2	CLASS CODE: 14
DEPARTMENT: TPA/TRANSPORTATION	
UNIT SCOPE: T222 Maintenance & Operations	

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 announced closing date in the following title(s):

Bridge Operator Trainee
Construction and Maintenance Technician 5
Engineering Technician 5
Equipment Operator
Highway Construction and Bridge Repairer 2
Principal Clerk Typist
Senior Clerk
Senior Clerk Typist
Senior Repairer
Sign Technician 2
Sign Technician 3
Supply Support Technician 2
Supply Support Technician 3

Or to employees in the non-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), and meet the requirements listed below:

Bridge Operator
Highway Marker
Maintenance Worker 1 Transportation
Truck Driver Single Axle

Experience: Two (2) years of experience in the construction and maintenance of landscape areas, including the use of pesticides.

License: Appointees must possess a valid Commercial Driver's License (CDL) and applicable endorsements for the class and type of vehicle being operated. Proof of the license must be submitted to the appointing authority prior to appointment. Failure to do so will result in rejection from the examination process.

Appointees will be required to possess a Registered Commercial Pesticide Applicator Certification issued by the Department Environmental Protection and valid in New Jersey. Proof of the license must be submitted to the employing agency prior to appointment. Failure to do so will result in rejection from the examination process.

The responsibility for ensuring that employees possess the required license(s) rests with the appointing authority.

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

