B-6

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Joseph Salanitro,
Department of Corrections

Administrative Appeal

CSC Docket No. 2015-297

ISSUED: FEB -9 2015

Joseph Salanitro, a Correction Sergeant with the Adult Diagnostic and Treatment Center (ADTC), Department of Corrections, requests enforcement of the attached May 7, 2014 Civil Service Commission's (Commission) decision, which granted him a retroactive date of appointment to the title of Correction Sergeant, effective January 7, 2006, and entitlement to all seniority based benefits.

The long history of this matter can be found in the attached decisions which are incorporated herein. The relevant facts are that the appellant, a veteran, had applied for the Correction Sergeant (PS5613I)[1] and (PS1818I)[2] examinations but was called to active military duty,[3] and thus unable to sit for either examination. Upon his return from leave, he was granted a make-up examination for both the PS5613I and PS1818I examinations, and appeared at rank A94 on the PS5613I eligible list. Ultimately, the Commission determined in *In the Matter of Joseph Salanitro, Correction Sergeant (PS5613I and PS1818I), Department of Corrections* (CSC, decided March 7, 2012), that based on equitable considerations it was appropriate to revive the Correction Sergeant (PS5613I) eligible list and certify the appellant's name at the time of the next certification for the title. As a result, the appellant received a regular appointment to the title of Correction Sergeant,

[1] The resultant eligible list for PS5613I was issued on September 10, 2003 and expired on September 17, 2006.
[2] The list for PS1818I was issued on October 7, 2009 and expired on October 14, 2012.
[3] The record indicates that the appellant was on military leave from May 31, 2002 to December 8, 2009.

effective June 16, 2012, and successfully completed his working test period on September 16, 2012.

Subsequently, the appellant appealed and requested, in part, a retroactive appointment date and "back pay, seniority, and other economic benefits he would have received had he actually been promoted" in 2006. In *In the Matter of Joseph Salanitro, Correction Sergeant (PS5613I and PS1818I), Department of Corrections* (CSC, decided May 7, 2014),[4] the Commission determined that since the appellant accepted an appointment at ADTC, the Commission reviewed the appointment dates of those individuals who accepted appointments at ADTC and appeared on the PS5613I eligible list. A review of the record found that the individual who appeared at rank 93 was appointed to the Correction Sergeant title effective January 7, 2006. The next individuals to accept appointments at ADTC, who appeared at rank 178, were appointed effective July 22, 2006. Accordingly, the Commission determined that it was appropriate that the appellant be assigned a retroactive appointment date of January 7, 2006.

However, the Commission denied the appellant's request for back pay, noting that the "for seniority purposes only" appointment designation establishes that an appellant has no claim for or entitlement to back pay. Therefore, such an award establishes that for seniority based programs, such as salary step placement, layoffs, and vacation leave time entitlement, seniority is predicated upon the retroactive appointment date. *See In the Matter of Joyce Dickens, et al.* (MSB, decided February 9, 2005); *In the Matter of Cliff Boyer and Dolores Roman* (Commissioner of Personnel, decided May 29, 1997); and *In the Matter of Wayne A. Robbins* (MSB, decided September 5, 1991).

In the instant matter, the appellant maintains that the appointing authority corrected his seniority, and placed him on step 10, effective March 18, 2014. However, he maintains that he should have been placed on step 10 prior to his appointment to Correction Sergeant on June 16, 2012, and thus, he is entitled to differential back pay from at least that date. The appellant also maintains that, pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), 38 *U.S.C.* § 4301 *et seq*, he is entitled to back pay since his retroactive appointment of January 7, 2006. In support, he submits an August 15, 2014 letter to the appointing authority from the United States Department of Labor (USDOL), in which it requested information concerning the appellant's pay progression if he had never been on active duty. Moreover, the USDOL reiterated

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[4] In that matter, the Commission mistakenly noted that the appellant had completed his working test period on August 16, 2012. The Commission had also denied the appellant's request for a make-up examination for the Correction Lieutenant (PS7819I) and (PS1419I) promotional examinations. The appellant has also requested reconsideration of the denial of his request for a make-up, which will be addressed by the Commission in a separate decision, which is pending.

that pursuant to USERRA, the appellant was entitled to seniority, status and rate of pay he would have obtained if he had not been called to active duty.

Agency records indicate that as a result of the Commission's May 7, 2014 decision, the appellant was placed on step 10 of salary range 2-21, effective May 17, 2014, the first pay period after the Commission's decision granting the retroactive appointment date. In order to determine the appropriate step placement at that time, the appellant's history was reconstructed as follows:

Date	Action	Salary Step & Range	Anniversary Date
1/7/06	Retroactive date of appointment	Step 4, salary range 2-21	13/06
6/10/06	Anniversary date increment	Step 5, salary range 2-21	13/07
6/9/07	Anniversary date increment	Step 6, salary range 2-21	13/08
6/7/08	Anniversary date increment	Step 7, salary range 2-21	13/09
6/6/09	Anniversary date increment	Step 8, salary range 2-21	26/10
12/4/10	Anniversary date increment	Step 9, salary range 2-21	26/12
12/1/12	Anniversary date increment	Step 10, salary range 2-21	26/12

*This chart only indicates the appellant's increments, and not any other changes, such as across-the-board increases.
*Advancement from step eight to step nine follows after completion of 39 pay periods. *See N.J.A.C.* 4A:3-4.5(a)3.
*Advancement from step nine to step 10 occurs after completion of 52 pay periods. *See* Salary Regulation, Attachment B-3(a).

CONCLUSION

N.J.A.C. 4A:4-1.10(c) states that an individual may receive a retroactive date of appointment "for seniority purposes" to correct an administrative error, for an administrative delay or for other good cause. The "for seniority purposes" appointment designation establishes that an appellant has no claim for or entitlement to back pay. However, such an award establishes that for seniority based programs, such as salary step placement, layoffs, and vacation leave time entitlement, seniority is predicated upon the retroactive appointment date. *See In the Matter of Joyce Dickens, et al.* (MSB, decided February 9, 2005); *In the Matter of Cliff Boyer and Dolores Roman* (Commissioner of Personnel, decided May 29, 1997).

In the instant matter, the appellant asserts that pursuant to the Commission's prior decision, he has not received any lost compensation and/or benefits related to his retroactive appointment date of January 7, 2006. In its prior decision, the Commission noted that the appellant would not be entitled to any back pay. In this regard, the Commission stated that the appellant was entitled to have his retroactive seniority date used for any seniority based programs, such as salary

step placement, layoffs, and vacation leave time entitlement. Therefore, although the appellant is not entitled to any back pay for any period of time he was not actually serving in the title of Correction Sergeant, *i.e.*, January 7, 2006 to June 16, 2012, upon his regular appointment to the title of Correction Sergeant on June 16, 2012, he was entitled to have his salary calculated based on the retroactive appointment date of January 7, 2006. *See e.g., In the Matter of Walter Sharon, Sheriff's Officer, Essex County,* Docket No. A-6663-01T5 (App. Div., decided November 7, 2003) (Appellate Division affirmed that an award of retroactive seniority status also entitles a petitioner, who was improperly denied an appointment after a medical examination, to placement at a salary step consistent with this date of retroactive appointment); *In the Matter of Lawrence P. Dillon* (MSB, decided August 10, 1999); *In the Matter of Wayne A. Robbins* (MSB, decided April 27, 1993). *See also,* 38 *U.S.C.* § 4316(a). Therefore, upon his regular appointment on June 16, 2012, the appellant should have been placed on step nine[5] of salary range 2-21. However, the appellant's salary was only changed to reflect the retroactive appointment date on May 17, 2014. Therefore, the appellant is entitled to differential pay from June 16, 2012, the date of his regular appointment to the title of Correction Sergeant, until May 17, 2014, the date he was placed on step 10 of salary range 2-21.[6]

Finally, the retroactive date of seniority shall be used in the event of a layoff.

ORDER

Therefore, it is ordered that the appellant receive differential back pay from June 16, 2012 until May 17, 2014.

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 4TH DAY OF FEBRUARY, 2015

Robert M. Czech
Chairperson
Civil Service Commission

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[5] Based on the reconstruction of the appellant's history, he would not have advanced to step 10 of salary range 2-21, until December 1, 2012, as he had to serve 52 pay periods on step nine prior to advancing to step 10.

[6] In this regard, on June 16, 2012, the appellant's salary was $86,577.54, step eight of salary range 2-21. As indicated above, he should have been placed on step nine on that date and then on step 10 on December 1, 2012.

Inquiries
and
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Attachments

c: Joseph Salanitro
Elizabeth Whitlock
James Mulholland
Kenneth Connolly
Joseph Gambino

B-10

STATE OF NEW JERSEY

In the Matter of Joseph Salanitro, Correction Sergeant (PS5613I and PS1818I), Department of Corrections

FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION

CSC Docket No. 2013-2951

Examination Appeal

ISSUED: MAY 09 2014 (JH)

Joseph Salanitro, represented by Frank M. Crivelli, Esq., requests that he be assigned a retroactive appointment date to the Correction Sergeant title for record purposes.

By way of background, as discussed in *In the Matter of Joseph Salanitro, Correction Sergeant (PS5613I and PS1818I), Department of Corrections* (Civil Service Commission, decided March 7, 2012), a copy of which is attached hereto and incorporated herein, the PS5613I examination was announced with a closing date of September 21, 2002 and was administered on May 17, 2003; and the PS1818I examination was announced with a closing date of January 21, 2009 and was administered on May 30, 2009.[1] Mr. Salanitro, a veteran, applied for the PS5613I examination but he was subsequently called for active military duty.[2] As a result, he was unable to sit for the PS5613I test. After he returned from leave, by letter dated January 25, 2010, the Department of Corrections indicated that Mr. Salanitro had submitted an application for PS1818I and requested that he be provided with a make-up for the PS1818I examination. By letter dated March 23, 2010, the Division of Selection Services requested that Mr. Salanitro submit the required application processing fee by April 6, 2010. *See N.J.A.C.* 4A:4-2.17. Subsequently,

[1] The resultant eligible list for PS5613I was issued on September 10, 2003 and expired on September 17, 2006. The list for PS1818I was issued on October 7, 2009 and expired on October 14, 2012.

[2] A review of the appellant's employment records found that he was placed on military leave between May 31, 2002 and December 8, 2009.

the Division of Selection Services determined that the appellant was ineligible for the PS1818I examination since he did not submit the required fee by the indicated due date. However, following further communications with Civil Service Commission staff, Mr. Salanitro submitted the fee for the PS1818I exam, and he was administered a make-up exam for both PS5613I and PS1818I on May 5, 2011. It is noted that Mr. Salanitro passed with a final average of 81.090 and appeared at rank A94 for PS5613I. Subsequently, it had to be determined whether Mr. Salanitro ranked high enough on the PS5613I eligible list to be reachable for appointment. Upon contacting the Department of Corrections, Commission staff was informed that complete information regarding the certifications issued from the PS5613I eligible list could not be located, but that the last individual appointed from the PS5613I list appeared at rank 206. Given that Mr. Salanitro may have been reachable for appointment, the Commission determined, based on equitable considerations, that it was appropriate to revive the Correction Sergeant (PS5613I), Department of Corrections, eligible list and certify Mr. Salanitro's name at the time of the next certification for the title.

It is noted that Mr. Salanitro received a regular appointment to the Correction Sergeant title effective June 16, 2012 at the Adult Treatment and Diagnostic Center (ADTC).[3] It is also noted that he successfully completed the working test period on August 16, 2012.

In his request, Mr. Salanitro argues that the determination of a retroactive appointment date "has been somewhat problematic because of the dearth of available records regarding the 2003 promotional list." He notes that his bargaining unit, the New Jersey Law Enforcement Supervisors Association (NJLESA), submitted an Open Public Records Act (OPRA) request[4] on his behalf, in which NJLESA requested "a copy of the 2003 Correction Sergeant promotional list." However, in a letter dated April 26, 2013, the Government Records Custodian explained that in accordance with the Commission records retention schedule, the examination packets containing eligible lists are destroyed five years after the promulgation of the list. As such, the Commission no longer had records responsive to the request. Subsequently, NJLESA "uncovered a copy of the 2003 list provided to the bargaining unit . . . While the list does not delineate all of the appointments made off of this list, it accurately reflects the ranking of the eligible candidates." The appellant indicates that he contacted "some of the individuals ranked near him to determine the appropriate retroactive appointment date he should receive." In

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[3] A review of the record finds that the appellant's name was placed on a certification of the PS1818I list and he received an appointment to Correction Sergeant effective June 16, 2012 at ADTC. However, given that the Commission ordered the revival of PS5613I list in its prior decision, Mr. Salanitro could have been certified and appointed from that list.

[4] It is noted that a review of the record finds that two identical requests, Request #W75804 and Request #W75806, regarding the PS5613I list were submitted.

this regard, he presents that Hector Smith, who appeared at rank 94, received a regular appointment to the Correction Sergeant title effective April 30, 2005. Alternatively, he maintains that "at a minimum" a September 17, 2005 appointment date would be appropriate as Lena Haskins, who appeared at rank 140, was promoted to the subject title at ADTC. He indicates that Ms. Haskins was the only person who ranked below him that he could determine was promoted at ADTC. He adds that he should be provided with "back pay, seniority, and other economic benefits he would have received had he actually been promoted on this date." Finally, Mr. Salanitro requests that he be admitted to the "2006 and/or 2009 Correction Lieutenant Examination" and be appointed to that title should he be granted a retroactive appointment date of April 30, 2005.

It is noted that the appointing authority was contacted regarding this matter and did not file an objection.

CONCLUSION

A retroactive appointment date "for seniority purposes only" may be approved when it is evidenced that an appellant could have been appointed on the subject date, but through error on the part of either the appointing authority or the Civil Service Commission, received a later appointment date, or for other good cause. *See N.J.A.C.* 4A:4-1.10(c).

Initially, as indicated in the prior decision, it is noted that since 1988, the responsibility for processing and disposing of open competitive certifications for the title of Correction Officer Recruit and promotional certifications for the titles of Correction Sergeant, Correction Lieutenant and Correction Captain has been delegated to the Department of Corrections. *See In the Matter of Department of Corrections Certifications* (CSC, decided April 14, 2010). It is also noted that the Department of Corrections certifies Correction Sergeant promotional lists based on location. Thus, in its prior decision, the Commission indicated:

> The Commission notes that if Mr. Salanitro receives an appointment to the Correction Sergeant title and successfully completes a working test period, he would then be entitled to receive a retroactive appointment date which would be calculated based on the appointment date of the next individual appointed after Mr. Salanitro's rank and be *dependent on the location* to which the appellant is assigned. (emphasis added).

As such, in order to provide an appropriate remedy in this matter, since Mr. Salanitro accepted an appointment at ADTC, the Commission reviewed the appointment dates of those individuals who accepted appointments at ADTC and appeared on the PS5613I eligible list. A review of the record finds that the individual who appeared at rank 93, Thomas Brisco, was appointed to the

Correction Sergeant title effective January 7, 2006. The next individuals to accept appointments at ADTC, Juan Alvarez and James Fitzgerald,[5] who appeared at rank 178, were appointed effective July 22, 2006. Accordingly, it is appropriate that Mr. Salanitro be assigned a retroactive appointment date of January 7, 2006.

With respect to the two dates presented by the appellant, he maintains that he is entitled to an appointment date of April 30, 2005, given that Hector Smith, who appeared at rank 94, received a regular appointment to the Correction Sergeant title on that date. However, a review of the record finds that Mr. Smith was neither assigned to nor promoted at ADTC. He also refers to Lena Haskins who was promoted to the subject title effective September 17, 2005. A review of the record finds that Ms. Haskins, while she was assigned as a Senior Correction Officer at ADTC, accepted a promotion to Correction Sergeant at a different facility.[6]

Regarding the appellant's request for back pay, the "for seniority purposes only" appointment designation establishes that an appellant has no claim for or entitlement to back pay. However, such an award establishes that for seniority based programs, such as salary step placement, layoffs, and vacation leave time entitlement, seniority is predicated upon the retroactive appointment date. *See In the Matter of Joyce Dickens, et al.* (MSB, decided February 9, 2005); *In the Matter of Cliff Boyer and Dolores Roman* (Commissioner of Personnel, decided May 29, 1997); and *In the Matter of Wayne A. Robbins* (MSB, decided September 5, 1991).

With regard to the appellant's eligibility for the "2006 and/or 2009 Correction Lieutenant Examination,"[7] *N.J.A.C.* 4A:4-2.6(a)1 provides that applicants for promotional examinations must have one year of continuous permanent service for an aggregate of one year preceding the closing date in a title or titles to which the examination is open. In this regard, Mr. Salanitro must have actually served in and performed the duties of the Correction Sergeant title during the requisite one-year period in order to be eligible. *See In the Matter of Daniel O. Errickson* (MSB, decided January 11, 2006) (The appellant, who received a retroactive appointment date to the Correction Sergeant title on the basis of administrative delay, was not eligible to sit for a Correction Lieutenant examination as there was no evidence that he performed the duties of a Correction Sergeant during the requisite year-in-grade); *In the Matter of Albert Giordano* (MSB, decided January 26, 2005)

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[5] It is noted that Mr. Alvarez retired in 2008 and Mr. Fitzgerald is no longer assigned to ADTC.

[6] It is noted that Ms. Haskins subsequently returned to ADTC.

[7] The appellant appears to be referring to the following examinations for Correction Lieutenant: PS7819I, which closed on October 21, 2005, and PS1419I, which closed on December 22, 2008. It is noted that the most recent announcement for Correction Lieutenant (PS6072I) closed on November 21, 2011.

(Employee must actually serve in and perform the duties of the title to which the examination is open during the requisite year-in-grade in order to establish eligibility); *In the Matters of David J. Barrett, et al.* (MSB, decided November 19, 2003) (Individuals who received retroactive appointment dates to the Fire Lieutenant and Fire Captain titles solely on equitable considerations but who did not meet the time-in-grade service requirements as of the closing date of the announcement were not entitled to sit for the examinations for Fire Captain and Deputy Fire Chief). Thus, Mr. Salanitro cannot use his retroactive date of appointment to the Correction Sergeant title for purposes of examination eligibility.

ORDER

Therefore, it is ordered that this request be granted in part and the appellant receive a date of permanent appointment to Correction Sergeant of January 7, 2006 and all of his seniority based benefits be adjusted accordingly. It is further ordered that the appellant's request to be admitted to the examinations for Correction Lieutenant (PS7819I and PS1419I) and his request for back pay 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 7TH DAY OF MAY, 2014

Robert M. Czech
Chairperson
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B.10

STATE OF NEW JERSEY

In the Matter of Joseph Salanitro, Correction Sergeant (PS5613I and PS1818I), Department of Corrections

CSC Docket No. 2011-4750

FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION

Examination Appeal

ISSUED: MAR 08 2012 (JH)

Joseph Salanitro requests that the eligible list for Correction Sergeant (PS5613I), Department of Corrections, be revived so that his name may be certified to the appointing authority. He also requests that he be provided with a retest for Correction Sergeant (PS5613I and PS1818I).

By way of background, the PS5613I examination was announced with a closing date of September 21, 2002 and was administered on May 17, 2003; and the PS1818I examination was announced with a closing date of January 21, 2009 and was administered on May 30, 2009.[1] Mr. Salanitro, a veteran, applied for the PS5613I examination but he was subsequently called for active military duty.[2] As a result, he was unable to sit for the PS5613I test. After he returned from leave, by letter dated January 25, 2010, the Department of Corrections indicated that Mr. Salanitro had submitted an application for PS1818I and requested that he be provided with a make-up for the PS1818I examination. By letter dated March 23, 2010, the Division of Selection Services requested that Mr. Salanitro submit the required application processing fee by April 6, 2010. *See N.J.A.C.* 4A:4-2.17. Subsequently, the Division of Selection Services determined that the appellant was

[1] The resultant eligible list for PS5613I was issued on September 10, 2003 and expired on September 17, 2006. The list for PS1818I was issued on October 7, 2009 and is set to expire on October 14, 2012.

[2] A review of the appellant's employment records finds that he was placed on military leave between May 31, 2002 and December 8, 2009.

ineligible for the PS1818I examination since he did not submit the required fee by the indicated due date. On appeal, Mr. Salanitro maintained that "under the [Uniformed Services Employment and Reemployment Rights Act of 1994, 38 *U.S.C.A.* §4301, *et seq.* (USERRA),] I feel I should not have to repay for the test when it is not my fault that I could not take the test." *N.J.A.C.* 4A:4-2.17 (Application processing fees) provides that the fee that is required for *each application* for an open competitive or promotional examination is a processing fee and that it does not guarantee that an applicant will be admitted to an examination, or, if admitted, appointed to the position. Thus, it is non-refundable, except in cases of the cancellation of the examination or untimely filing of an application. Moreover, USERRA does not exempt returning service members from application processing fees. As such, the application filing fee that Mr. Salanitro submitted with his application for PS5613I was applicable only to that exam. Following further communications with Civil Service Commission staff, Mr. Salanitro submitted the fee for the PS1818I exam, and he was administered a make-up exam for both PS5613I and PS1818I on May 5, 2011.[3]

By letter dated August 4, 2011, the Division of Selection Services informed Mr. Salanitro of his final average (80.500) and rank (A133) for the PS5613I exam.[4] With respect to the make-up examination, Mr. Salanitro presented that he "asked what material I needed books and references so that I could buy them to study for the test . . . I went to the web site numerous times up to the date of the test, looking for [S]tate [C]orrection [S]ergeant orientation guide so I could find the books I need and was unable to find them[.] I feel that questions 16 through 25 and 50 through 70, I was unable to answer correctly due to not being given this material to study. I took the test anyway but fe[e]l I should be given another chance to take the test again." As indicated in the test booklet, questions 16 through 25 measured candidates' knowledge of interpersonal relations; questions 46 through 55 measured candidates' report writing skills; and questions 56 through 70 measured candidates' knowledge of supervision techniques. A review of these items found that none, with the exception of question 65, required a particular source to answer correctly. Question 65 specifically referred to Scott D. Hutton, *Staff Supervision Made Easy* (1998). However, both Mr. Salanitro and the other make-up candidate were able to answer this question correctly. Accordingly, it was determined that corrective action was not necessary. It is noted that during the course of the review, it was found that question 60 had been miskeyed to option d rather than option c. Although this issue had not been raised on appeal by Mr. Salanitro, corrective action was necessary. Thus, the Division of Selection Services rekeyed this item to option c, which Mr. Salanitro had selected. As a result, the final averages for both

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[3] It is noted that one other make-up candidate for PS1818I took the test on that date.

[4] By separate notice, Mr. Salanitro was provided with his final average (80.500) and rank (583) for the PS1818I exam.

make-up candidates were recalculated. By letter dated February 3, 2011, Mr. Salanitro was provided with his recalculated final average (81.090) and rank (A94) for PS5613I.[5]

Subsequently, it had to be determined whether Mr. Salanitro ranked high enough on the PS5613I eligible list to be reachable for appointment.[6] It is noted that since 1988, the responsibility for processing and disposing of open competitive certifications for the title of Correction Officer Recruit and promotional certifications for the titles of Correction Sergeant, Correction Lieutenant and Correction Captain has been delegated to the Department of Corrections. *See In the Matter of Department of Corrections Certifications* (CSC, decided April 14, 2010). Upon contacting the Department of Corrections, MSPLR staff was informed that complete information regarding the certifications issued from the PS5613I eligible list could not be located, but that the last individual appointed from the PS5613I list appeared at rank 206. It is noted that the Department of Corrections certifies Correction Sergeant promotional lists based on location. Thus, without information regarding the certifications issued from the PS5613I eligible list, is not possible to determine at which rank appointments were made at the preferred locations indicated by Mr. Salanitro on his initial application for PS5613I.

In support of his requests, he submits additional information, including a letter dated January 20, 2012 from Senator Christopher J. Connors, Assemblyman Brian E. Rumpf and Assemblywoman DiAnne C. Gove indicating their support in this matter; and a Notification of Veterans Status dated October 7, 2011 indicating his status as disabled veteran.

CONCLUSION

N.J.A.C. 4A:4-3.4 provides that:

> (a) The [Civil Service Commission] may revive an expired eligible list under the following circumstances:
>
> 1. To implement a court order, in a suit filed prior to the expiration of the list;
> 2. To implement an order of the [Civil Service Commission] in an appeal or proceeding instituted during the life of the list;
> 3. To correct an administrative error;
> 4. To effect the appointment of an eligible whose working test period was terminated by a layoff; or

[5] He was also provided with his recalculated final average (80.930) and rank (479) for PS1818I.

[6] With respect to the PS1818I eligible list, the Department of Corrections indicates that, as of February 3, 2011, the most recent individual appointed from this list appeared at rank 149.

5. For other good cause.

See also, N.J.S.A. 11A:4-6.

Given that Mr. Salanitro may have been reachable for appointment, based on equitable considerations, it is appropriate to revive the Correction Sergeant (PS5613I), Department of Corrections, eligible list, and certify Mr. Salanitro's name at the time of the next certification for the title. It must be emphasized that the appellant does not possess a vested property interest in a position. The only interest that results from placement on an eligible list is that the candidate will be considered for an applicable position so long as the eligible list remains in force. *See Nunan v. Department of Personnel*, 244 *N.J. Super.* 494 (App. Div. 1990). In this regard, USERRA does not require that Mr. Salanitro receive a permanent appointment to the Correction Sergeant title. *See In the Matter of John Fasanella*, Docket No. A-4455-07T1 (App. Div. December 5, 2009) (USERRA is not designed to expand an appellant's employment rights on return from active military service, but only to preserve those rights he or she possessed at the time his or her active military service began, as well as those that would accrue during his or her absence).[7]

The Commission notes that if Mr. Salanitro receives an appointment to the Correction Sergeant title and successfully completes a working test period, he would then be entitled to receive a retroactive appointment date which would be calculated based on the appointment date of the next individual appointed after Mr. Salanitro's rank and be dependent on the location to which the appellant is assigned.[8] Accordingly, Mr. Salanitro or the appointing authority should petition the Commission upon the successful completion of his working test period for a retroactive appointment date.

With respect to the make-up examination, it is noted that the Division of Selection Services is not obligated to provide a listing of source material for examinations and examination questions are not limited to specific sources. Candidates who apply for a first-level supervisory position should anticipate that there will be items that will test their knowledge of interpersonal, report writing and supervisory skills. In this regard, the job specification for the subject title

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[7] Mr. Salanitro appears to be somewhat similarly situated to the appellant in *In the Matter of John Fasanella, supra*. The court in that matter indicated that the certification should be reissued with Mr. Fasanella's name and redisposed. Given that the Department of Corrections indicates that certification records are not available for the PS5613I list, reviving the list and certifying Mr. Salanitro's name will achieve the same result and thus, provide the means for making him whole under USERRA.

[8] It is noted that due to the lack of certification documentation, it is not possible for the Commission to calculate a retroactive appointment date without knowing the location where Mr. Salanitro would be appointed.

indicates that a Correction Sergeant: may supervise the work operations and has responsibility for employee evaluation, and for effectively recommending the hiring, firing, promoting, demoting, and/or disciplining employees; during a tour of duty, has a leading part in supervising the work of the institution, including the behavior of inmates and correction officers, civilian employees and visitors; is responsible for counseling Correction Officers under supervision in areas where assistance may be needed; investigates complaints made by inmates or Correction Officers and prepares reports thereof with recommendations for remedial action; and is responsible for filing reports on Correction Officers under supervision. As such, candidates for the Correction Sergeant title should prepare accordingly. As noted previously, of the items indicated by Mr. Salanitro, none, with the exception of question 65, required a specific text book to answer. Furthermore, given that the appellant has been exposed to the test content, if he were provided with a retest, he would have an unfair advantage over other candidates.

Regarding Mr. Salanitro's disabled veterans' status, *N.J.A.C.* 4A:5-1.3 (Filing for veterans or disabled veterans preference) provides:

> (a) Veterans' or disabled veterans' preference shall apply prospectively from the date of initial determination of the Adjutant General of the Department of Military and Veterans' Affairs or date of the Adjutant General's determination from an appeal, as the case may be. *See N.J.A.C.* 5A:9-1.4.
>
> (b) Veterans' or disabled veterans' preference is effective for all eligible lists for which an eligible has received a determination from the Adjutant General, as provided for in (a) above, no later than eight days prior to the list's issuance date.

It is noted that the Adjutant General's determination with respect to Mr. Salanitro's disabled veterans' status was made as of October 17, 2011. As noted previously, the list for PS5613I issued on September 10, 2003 and on October 7, 2009 for PS1818I. Thus, he cannot receive disabled veterans' status for PS5613I or PS1818I. *See In the Matter of John Fasanella, supra.* Furthermore, *N.J.A.C.* 4A:5-2.2 (Promotional examinations) provides, in pertinent part, that no distinction shall be made between disabled veterans and veterans in promotional examinations.

ORDER

Therefore, it is ordered that this request be granted in part and the Correction Sergeant (PS5613I), Department of Corrections, eligible list be revived in order for the appellant's name to be certified at the time of the next certification for Correction Sergeant, for prospective employment opportunities only. Should the appellant receive a permanent appointment to the subject title and successfully

complete a working test period, he or the appointing authority should further petition the Commission for a retroactive appointment date for seniority purposes.

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 7TH DAY OF MARCH, 2012

Robert M. Czech
Chairperson
Civil Service Commission

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