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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Francis McHale,  
Department of Correction

CSC Docket No. 2014-1238

Administrative Appeal

ISSUED: FEB 06 2015 (EG)

Francis McHale, a Correction Sergeant with New Jersey State Prison, Department of Corrections (DOC), represented by William G. Blaney, Esq., requests a retroactive date of appointment.

The facts of this matter indicate the following: The appellant was removed from his position as a Senior Correction Officer on charges effective October 2, 2012. The appellant filed an appeal and the matter was transferred to the Office of Administrative Law for a hearing before an Administrative Law Judge (ALJ). The ALJ rendered an initial decision recommending reversing the removal and the Civil Service Commission (Commission) concurred. *See In the Matter of Francis McHale* (CSC, decided June 26, 2013). Thereafter, the appellant was appointed from the Correction Sergeant (PS6436I) eligible list with an effective date of November 2, 2013.

In the instant matter, the appellant contends that he should receive a retroactive date of appointment to Correction Sergeant of February 9, 2013. He asserts that other officers who had the same rank as him on the Sergeant's list were appointed on February 9, 2013. In this regard, the appellant argues that, but for his wrongful termination, he would have also been promoted on February 9, 2013.

The appointing authority, despite being provided the opportunity, did not submit any arguments or evidence for the Commission to review.

## CONCLUSION

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

Additionally, *N.J.S.A.* 11A:4-8, *N.J.S.A.* 11A:5-7, and *N.J.A.C.* 4A:4-4.8(a)3 allow an appointing authority to select any of the top three interested eligibles on a promotional list, provided that no veteran heads the list. Further, *N.J.A.C.* 4A:2-1.4(c) generally provides that the appellant has the burden of proof to show by a preponderance of the evidence that the appointing authority's decision to appoint another eligible on the eligible list before him was improper.

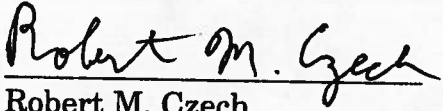
In the present matter, the appellant argues that based on his ranking on the subject eligible list, he would have been appointed on February 9, 2013, had he not been wrongfully terminated. However, the appellant provides no evidence that he would have been promoted at that time. It is noted that the appellant did not possess a vested property interest in the position at issue. 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). The mere fact that others at the same rank were appointed on February 9, 2013 does not conclusively demonstrate that the appellant would have been appointed at that time. In this regard, the appointing authority had the discretion to bypass the appellant's name for appointment at that time. Moreover, the appointing authority has not indicated that it would have appointed the appellant had he been eligible for appointment at that time. Accordingly, the appellant has not presented good cause to grant a retroactive date of appointment of February 9, 2013, and his request is denied.

## ORDER

Therefore, it is ordered that this request 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 4TH DAY OF FEBRUARY, 2015



Robert M. Czech  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Henry Maurer  
Director  
Division of Appeals and Regulatory Affairs  
Civil Service Commission  
Written Record Appeals Unit  
P.O. Box 312  
Trenton, New Jersey 08625-0312

c: William G. Blaney, Esq.  
Francis McHale  
James J. Mulholland  
Kenneth Connolly  
Joseph Gambino

