

B-103



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Kevin Brink,
Fire Captain (PM1127S), Lakewood
Fire District 1

CSC Docket No. 2015-1063

Examination Appeal

ISSUED: FEB -9 2015 (RE)

Kevin Brink appeals the decision of the Division of Selection Services which found that he lacked the required amount of permanent status in a title to which the examination was open for Fire Captain (PM1127S), Lakewood Fire District 1.

The subject examination was announced with a closing date of August 21, 2014 and was open to employees in the competitive division who had an aggregate of three years of *continuous* permanent service in the title of Firefighter as of the closing date. Consequently, three candidates have been admitted to examination, which was for first level supervisor, and the results are not yet available.

The appellant was made permanent in the title Firefighter on June 28, 2014, and thus, he was found to lack three years in grade as of August 21, 2014. On appeal of this issue, the appellant argued that he was advised to take the exam, and that he exceeded the requirements. He stated that the promotional announcement did not mention a seniority requirement, and he signed a waiver of his seniority rights, but this does not mean that he no longer had an aggregate of three years as a Firefighter. He provided a signed copy of his Intergovernmental Transfer Waiver of Rights which indicated that he waived retention of rights to all accumulated seniority. He also provided a copy of his resume, which indicated experience as a Fire Chief with Robbinsville Township Fire Department, a part-time Fire Official with the East Windsor Township Fire Prevention Bureau, and a volunteer Firefighter (no hours given) at East Windsor Volunteer Fire Company #1 from March 1982 to the closing date. Another resume in the file states that he was an Assistant Institution Fire Chief in the Department of Human Services from April

2013 to the closing date, a Fire Inspector at Rutgers University, a Sergeant at Rider University, a Fire Chief with Robbinsville Township Fire Department, a part-time Fire Official with the East Windsor Township Fire Prevention Bureau, a part-time Assistant Fire Marshal with Mercer County from January 2005 to the closing date, an Emergency Services Officer with Princeton University, a Volunteer/Firefighter with East Windsor Volunteer Fire Company #1 from March 1982 to the closing date, a member of New Jersey Task Force 1 (no hours given), and a Paratrooper/Combat Communicator with the U.S. Army.

Civil Service Commission staff responded that the appellant was determined to be ineligible for the examination as he did not possess the required amount of permanent status in the title to which the examination is open. It was explained that three years of continuous permanent service as a Firefighter did not mean certification as a Firefighter, but actual full-time employment as a Firefighter. He was told that permanent service is gained from a regular appointment in the title and the completion of a working test period. Further, it was explained that he submitted a waiver of rights which indicated that he waived rights to cumulative seniority, which in itself indicates that his regular appointment date of June 28, 2014 is the start date for his seniority in the title Firefighter. In addition, official records indicated that he was not in the title Firefighter in his prior appointment with Mercer County, but he was an Assistant Fire Marshal. Thus, he had three months and two days of permanent service in the title Fire Fighter as of the closing date.

In response, the appellant provided a copy of a letter dated August 29, 2008 from the Division of Classification and Compensation. This letter indicated that the Township of Robbinsville confirmed his appointment and layoff from the title Fire Fighter in the Robbinsville Township Division of Fire, and it indicated that he met the provisions necessary to place his name on the "Statewide Eligible List," also known as the "Rice Bill List."¹

N.J.A.C. 4A:4-2.6(a) (Eligibility for promotional examination) states, in pertinent part, that applicants for promotional examinations shall, by the application filing date, meet the criteria of having one year of *continuous permanent service for an aggregate of one year immediately preceding the closing date* in a title or titles to which the examination is open. Aggregate service shall be calculated in the same manner as seniority as set forth in *N.J.A.C. 4A:4-2.15*. That rule provides the following information regarding calculation of seniority:

N.J.A.C. 4A:4-2.15(d), In calculating seniority for promotional examinations,

¹ *N.J.S.A. 40A:14-9.9(d)*, known as the Rice Bill, provides that the seniority, seniority related privileges and rank a firefighter possessed with the employer who terminated the firefighter's employment for reasons of economy shall not be transferable to a new position when the firefighter is appointed to a firefighter position pursuant to the provisions of the section.

1. Continuous permanent service accumulated prior to an intergovernmental transfer pursuant to *N.J.A.C. 4A:4-7.1A* (except as provided in (d)3 below), voluntary furloughs and the following types of leaves shall not be deducted from seniority. i. All leaves with pay including sick leave injury; ii. Military, educational, gubernatorial appointment, personal sick, disability, family, furlough extension and voluntary alternative to layoff leaves of absence without pay; and iii. In local service, leave without pay to fill elective office.
2. A resignation/new appointment pursuant to *N.J.A.C. 4A:4-7.9* shall not be considered a break in continuous service.
3. Continuous permanent service accumulated prior to an intergovernmental transfer pursuant to *N.J.A.C. 4A:4-7.1A* shall be deducted from seniority for all firefighters, and for those law enforcement officers, including sheriff's officers and county correction officers, who have waived all accumulated seniority rights in agreeing to an intergovernmental transfer.

CONCLUSION

In the instant matter, the appellant was correctly found ineligible for the subject examination for failure to meet the announced time-in-grade requirements. Mr. Brink was not permanent in the announced title for three years as of the closing date in the title Firefighter. This is not calculated in the aggregate, but must be continuous. There are no official records with this agency of the appellant's employment with Robbinsville Township, since that is not a Civil Service jurisdiction, and on his resume, he listed his position as Fire Chief, not Firefighter. His remaining titles were not Firefighter, except for his volunteer time with the East Windsor Volunteer Fire Company #1. That position, however, is also not in Civil Service, and thus the appellant is not permanent in that position. Regardless of his title at Robbinsville Township when he was separated, he waived all accumulated seniority rights when he agreed to an intergovernmental transfer. See *N.J.A.C. 4A:4-2.15(d)3*. Clearly, Mr. Brink did not have one year of *continuous permanent* service as a Firefighter as of the August 21, 2014 closing date, and he was correctly found to be ineligible for the examination.

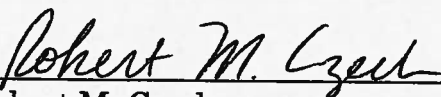
A thorough review of all material presented indicates that the decision of the Division of Selection Services, that appellant did not meet the announced requirements for eligibility by the examination closing date, is amply supported by the record and appellant provides no basis to disturb this decision. Thus, the appellant has failed to support his burden of proof in this matter.

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 4th DAY OF FEBRUARY, 2015



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Merit System Practices
and Labor Relations
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

c: Kevin Brink
Kelly Glenn
Joseph Gambino