



B-121

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE
ACTION OF THE
CIVIL SERVICE COMMISSION

In the Matter of David Lawson, *et al.*,
Road Repair Supervisor (PC0535S),
Mercer County

CSC Docket Nos. 2015-652
2015-699
2015-694

Examination Appeals

ISSUED: FEB + 9 2015

(RE)

David Lawson, Melvin Moreland, and Richard Vitella appeal the determinations of the Division of Selection Services (DSS) which found that they did not meet the experience requirements for the promotional examination for Road Repair Supervisor (PC0535S), Mercer County. These appeals have been consolidated due to common issues.

The subject examination announcement was issued with a closing date of April 21, 2014, and was open to employees in the competitive division who had an aggregate of one year of continuous permanent service as of the closing date and who were serving in the title Road Repairer OR who were serving in any competitive title and met the announced requirements. These requirements included four years of experience in the construction, repair, and maintenance of roads or streets which may have included work involving installation and maintenance of traffic lines and traffic signs, one year of which shall have been in a lead worker capacity. The appellants were found to be below the minimum requirements in experience. Two¹ candidates appear on the eligible list, which has been certified once (PL141119), but no appointments have yet been made.

Mr. Lawson listed four positions on his application: Heavy-Heavy Equipment Operator; Heavy Equipment Operator; Light Equipment Operator; and Asphalt Raker. Official records indicate that the titles Heavy-Heavy Equipment Operator

¹ One candidate, Michael Estok, was originally found to be ineligible, but was admitted after DSS re-reviewed his application.

and Light Equipment Operator are not official titles, and the appellant held the titles Heavy Equipment Operator and Equipment Operator. Also, Mr. Lawson was a Laborer 1 for a period of time that he indicated that he was an Asphalt Raker. He was credited with over 10 years of general experience and found to be lacking 1 year of lead worker experience. On appeal, Mr. Lawson states that he has seniority over all other candidates. He states that he performs the duties of supervisors when they are out of work, and performs specialty jobs as requested. He states that he has trained many coworkers on running and operating equipment effectively, and motivates them. He states that he is an exemplary employee who has worked his way up to Heavy-Heavy Equipment Operator, and questions how he was "qualified before."

Mr. Moreland listed five positions on his application; Super Heavy Equipment Operator; Heavy Equipment Operator; Light Equipment Operator; Laborer Heavy; and Laborer. Again, there is no Super Heavy Equipment Operator title in civil service, and the appellant held the title Heavy Equipment Operator. He was also an Equipment Operator. Further, Mr. Moreland did not list three months of experience as a provisional in the subject title. He was credited with more than 10 years of general experience, and 3 months of lead worker experience in his provisional position. Thus, he was found to be lacking nine months of lead worker experience. On appeal, Mr. Moreland states that he is qualified as he has worked in the department over 27 years in all positions. He states that he has set up crews and talked to others about how to operate equipment. He states that he understands the responsibilities and has assisted other supervisors.

Mr. Vitella listed three positions on his application: Heavy Equipment Operator and Laborer 1, and Mason Foreman with Cattani Masons. He was credited with over 10 years of general experience and found to be lacking 1 year of lead worker experience. On appeal, Mr. Vitella indicates that he has over 16 years of experience, 12 of which was as a Heavy Equipment Operator. He requests to be admitted to the examination.

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 in pertinent part that applicants for promotional examinations with open competitive requirements may not use experience gained as a result of out-of-title work to satisfy the requirements for admittance to the examination or for credit in the examination process, unless good cause is shown for an exception.

CONCLUSION

The appellants were correctly deemed to be ineligible for the subject examination since they lacked the minimum requirements in lead worker

experience. In order for experience to be considered applicable, it must have as its primary focus full-time responsibilities in the areas required in the announcement. *See In the Matter of Bashkim Vlashi* (MSB, decided June 9, 2004). To that effect, Mr. Vitella's experience as a Mason Foreman is inapplicable, so whether or not he was a lead worker in that position is irrelevant.

In this case, Mr. Lawson indicated that he supervised six support staff in his Heavy Equipment Operator title, while Mr. Vitella indicated supervision over professional and support staff while in his Heavy Equipment Operator and Laborer titles, as well as in his Mason Foreman position in private industry. If the appellants performed lead worker or supervisory duties while in these titles, it is considered out-of-title work and cannot be used to satisfy eligibility requirements. To that end, generally, the Commission finds good cause to accept out-of-title work 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). The eligible list for this examination was complete, with three eligible candidates. Nevertheless, the certification was issued before one candidate, Michael Estok, was found eligible. As such, the Division of Agency Services should correct the record by reissuing the certification (PL141119) with his name.

Nevertheless, the appointing authority wishes to make multiple appointments and therefore there is a basis for accepting out-of-title experience. Further, the appointing authority supports these appeals. It indicates that Mr. Lawson has at least four years of lead worker experience, and Mr. Moreland has at least ten years of lead worker experience. To that end, the appointing authority explains that it uses the in-house title "Asphalt Heavy Equipment Operator" as a step above Heavy Equipment Operator, and makes the distinction of lead worker on all milling and paving projects performed about 9 to 10 months a year. Messrs. Lawson and Moreland have been performing those duties since 2010 and 2004, respectively. While the appointing authority supports Mr. Vitella's appeal, it indicates that he was promoted to "Asphalt Heavy Equipment Operator" in February 2014, and prior to that was a Heavy Equipment Operator for 12 years. As the closing date was April 2014, he had three months of lead worker experience working out of title, and thereby lacks nine months of applicable out of title duties. However, since the closing date, Mr. Vitella has accrued nine months of additional experience in out-of-title work as a lead worker. As such, good cause exists to relax the provisions of *N.J.A.C. 4A:4-2.6(a)*, and accept his experience after the closing date and admit him to the examination.

At this point, it should also be recognized that Claudio Camacho and Joseph Solack (who did not file appeals) also listed out of title lead worker duties on their

applications which were not accepted. The appointing authority was asked to comment on their duties as well. It replied that Mr. Solack works as a Road Inspector, and his position is very independent in nature and he is the lead worker regarding making decisions concerning private contractors performing work on the road system. It states that he supervises all contractors on a daily basis. In this respect, contractors are not employees. An employee who is working independently is not taking the lead over other employees, as the definition of lead worker does not include being the sole individual responsible for a task. Taking the lead is the distinguishing characteristic, as a leadership role refers to those persons whose titles are non-supervisory in nature, but are required to act as a leader of a group of employees in titles at the same or a lower level than themselves and perform the same kind of work as that performed by the group being led. See *In the Matter of Catherine Santangelo* (Commissioner of Personnel, decided December 5, 2005). Duties and responsibilities would include training, assigning and reviewing work of other employees on a regular and recurring basis. However, such duties are considered non-supervisory since they do not include the responsibility for the preparation of performance evaluations. It is not apparent that Mr. Solack's position involves leadership over other Road Inspectors on a consistent, daily basis.

The appointing authority indicated that Mr. Camacho does not have lead worker duties as an Equipment Operator.

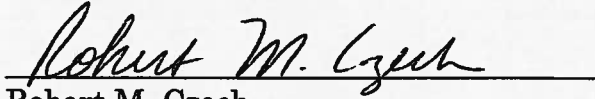
Finally, pursuant to *N.J.A.C. 4A:4-2.15(b)3*, seniority is added only to the scores of candidates who are admitted to and pass the examination. It is unclear what Mr. Lawson meant by his being "qualified before." Nevertheless, as to admittance to a prior examination for this title, it is noted that each examination is separate. The fact that a candidate was accepted for a prior examination with the same requirements does not preclude the Civil Service Commission from performing its function of evaluating an applicant's experience for a subsequent examination and to do otherwise might give an undeserved preference, possibly ousting a fully-qualified applicant from consideration for the position. As such, Mr. Lawson's eligibility for prior examinations has no bearing on his eligibility for the subject examination. Eligibility is established based on information on the application. See *In the Matter of Charles Klingberg* (Merit System Board, decided March 28, 2001).

ORDER

Therefore, it is ordered that these appeals be granted, and Messrs. Lawson, Moreland and Vitella be admitted to the examination for prospective appointment only.

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



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