

B-126



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Armino Rodrigues,
Sheriff's Officer Captain (PC2104R)
and Jennifer Vernaglia, Sheriff's
Officer Lieutenant (PC2145R),
Hudson County

CSC Docket Nos. 2014-2199 and
2014-2260

Administrative Appeal

ISSUED: FEB - 6 2015 (WR)

Armino Rodrigues and Jennifer Vernaglia appeal the one year time-in-grade requirement for the promotional examinations for Sheriff's Officer Captain (PC2104R) and Sheriff's Officer Lieutenant (PC2145R), Hudson County, respectively. As these appeals concern similar issues, they have been consolidated herein.

By way of background, the examination for Sheriff's Officer Captain (PC2104R) was announced with a closing date of November 21, 2013 and was open to employees in the competitive division who possessed an aggregate of one year of continuous permanent service in the title of Sheriff's Officer Lieutenant. It is noted that eight individuals were determined to be eligible for the subject examination, which was held on May 8, 2014. Rodrigues, who received a regular appointment to the Sheriff's Officer Lieutenant title effective January 25, 2013, was found ineligible by the Division of Selection Services (Selection Services) as he lacked the required amount of permanent status in a title to which the examination was open. An eligible list containing the names of six individuals subsequently promulgated on November 20, 2014 and expires on November 19, 2017. No certifications have been issued.

The examination for Sheriff's Officer Lieutenant (PC2145R) was announced with a closing date of November 21, 2013 and was open to employees in the competitive division who possessed an aggregate of one year of continuous permanent service in the title of Sheriff's Officer Sergeant. Eleven individuals were determined to be eligible for the subject examination, which was held on May 8, 2014. Vernaglia, who received a regular appointment to the Sheriff's Officer

Sergeant title effective January 25, 2013, was found ineligible because she lacked the required amount of permanent status in a title to which the examination was open. An eligible list containing the names of 11 individuals subsequently promulgated on November 20, 2014 and expires on November 19, 2017. No certifications have been issued.

On appeal to the Civil Service Commission (Commission), Rodrigues and Vernaglia claim that they were made acting Sheriff's Officer Lieutenant and acting Sheriff's Officer Sergeant, respectively, on November 9, 2012. In support of their appeals, they cite *In the Matter of Sheriff's Officer Captain (PC3632J), Hudson County* (CSC, decided October 8, 2008), in which the Commission granted the appointing authority's appeal and reduced the scope of eligibility for that examination to the working test period. Additionally, Vernaglia contends that, by the date that the Sheriff's Officer Lieutenant examination is administered, she will have met the one year of permanent service requirement. She also states that no harm will be done to the appointing authority if her appeal is granted. Rodrigues also argues that as an acting Sheriff's Officer Lieutenant, he performed the duties of that position and should be deemed to have met the time-in-grade requirement.

CONCLUSION

N.J.A.C. 4A:4-2.6(a)1 provides that applicants for promotional examinations shall have 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. *N.J.A.C. 4A:4-2.6(g)* provides that:

The time requirements specified in (a) and (b) above may be reduced to completion of the working test period if:

1. There is currently an incomplete promotional list and/or the number of employees eligible for examination will result in an incomplete list;
2. It appears that vacancies to be filled within the duration of the promotional list will exceed the maximum number of eligibles that could result from examination; or
3. Other valid reasons.

The Commission is responsible for the review and determination of requests to reduce the one-year service requirement to the completion of the working test period. Such requests are at the discretion of the appointing authority. While an appointing authority may initiate a request, this request may be denied by the Commission if it does not meet the criteria pursuant to *N.J.A.C. 4A:4-2.6(g)*. In this regard, it is noted that the appointing authority did not request a waiver of the one-year time in grade requirement for either examination. Furthermore, even if the

appointing authority had made such a request, there would have been more than three eligible individuals if the examinations were announced requiring one year of service and thus, the criteria pursuant to *N.J.A.C. 4A:4-2.6(g)1* would not have been met.

Additionally, Rodrigues and Vernaglia assert that their service as an acting Sheriff's Officer Lieutenant and Sheriff's Officer Sergeant, respectively, should qualify them for the examination. However, as indicated above, only individuals with one year of continuous permanent service in those titles could be deemed eligible for the subject examinations. In this regard, for promotional examination purposes, experience acquired in an "acting" capacity is not recognizable, as this work is intermittent in nature and the duties performed are not the primary focus of the employee's permanent title. Moreover, individuals performing in an acting capacity do not perform all the duties of that position when their acting term is limited, such as when serving during a term of vacation or sick leave. See e.g., *In the Matter of Walter Furtney* (MSB, decided April 18, 2000), *aff'd, on reconsideration* (MSB, decided September 26, 2000). Furthermore, in *Watson v. Civil Service Commission*, 116 *N.J. Super.* 434 (App. Div. 1971), the court decided that it was not unreasonable to require Watson to complete a one-year period as a permanent Battalion Fire Chief in order to meet the announced time-in-grade, even though Watson, who possessed nine months of permanent service, also possessed six months acting or temporary service in the title of Battalion Fire Chief.

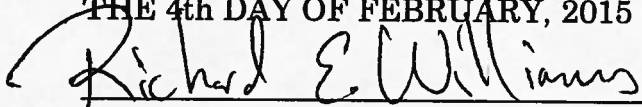
Finally, the appellants' reliance on *In the Matter of Sheriff's Officer Captain, supra*, is misplaced. Unlike the present matter, the eligible list in that matter contained only three individuals and the appointing authority indicated that it had current and anticipated vacancies. Thus, *N.J.A.C. 4A:4-2.6(g)1* and (g)2 were satisfied. Additionally, the appointing authority supported the reduction of the time-in-grade requirement in that matter whereas in the present matter the appointing authority was asked, but did not respond that it supported the appellants' requests.

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



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