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STATE OF NEW JERSEY

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

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2015-1746

Reconsideration

ISSUED: FEB 09 2015 (JH)

Joseph Salanitra requests reconsideration of the final administrative determination in *In the Matter of Joseph Salanitra, Correction Sergeant (PS5613I and PS1818I), Department of Corrections* (CSC, decided May 7, 2014). A copy of that decision is attached hereto and incorporated herein.

By way of background, as discussed in *In the Matter of Joseph Salanitra, Correction Sergeant (PS5613I and PS1818I), Department of Corrections* (CSC, 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. Salanitra, 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. Salanitra 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. Salanitra submit the required application processing

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.

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 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. Salanitra 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. Salanitra passed with a final average of 81.090. Ultimately, Mr. Salanitra received a regular appointment to the Correction Sergeant title effective June 16, 2012 at the Adult Treatment and Diagnostic Center (ADTC)³ and he successfully completed the working test period on August 16, 2012.

Subsequently, in *In the Matter of Joseph Salanitra, Correction Sergeant (PS5613I and PS1818I), Department of Corrections* (CSC, decided May 7, 2014), Mr. Salanitra requested that he be assigned a retroactive appointment date and be granted back pay. In addition, he requested 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. The Commission indicated that in order to provide an appropriate remedy in this matter, since Mr. Salanitra 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. The Commission noted 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 Mr. Salanitra, who was at rank 94, be assigned a retroactive appointment date of January 7, 2006.⁴ With regard to the appellant's eligibility for the "2006 and/or 2009 Correction Lieutenant Examination,"⁵ *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, the Civil Service Commission (Commission) has previously found that employees must have actually served in and performed the duties of the underlying public safety title during the requisite time in grade in order to be eligible for a higher level title. See

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. Salanitra could have been certified and appointed from that list.

⁴ To date, Mr. Salanitra has not challenged the January 7, 2006 retroactive appointment date.

⁵ 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 a subsequent announcement for Correction Lieutenant (PS6072I) closed on November 21, 2011.

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) (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). As such, the Commission determined that Mr. Salanitro could not use his retroactive date of appointment to the Correction Sergeant title for purposes of examination eligibility.

On reconsideration, Mr. Salanitro contends that he is entitled to a make-up for Correction Lieutenant pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), 38 U.S.C. §4301, *et seq.*⁶

CONCLUSION

N.J.A.C. 4A:2-1.6(b) sets forth the standards by which the Commission may reconsider a prior decision. This rule provides that a party must show that a clear material error occurred or present new evidence or additional information which would change the outcome of the case and the reasons that such evidence was not presented during the original proceeding.

In the present matter, the standard for reconsideration has been met. In this regard, the issue of whether, pursuant to USERRA, a returning service member may use a retroactive date of appointment to establish eligibility for subsequent promotional opportunities appears to be a matter of first impression for the

⁶ *N.J.A.C.* 4A:2-1.6 provides that within 45 days of receipt of a decision, a party to the appeal may petition the Commission for reconsideration. It is noted that within 45 days of *In the Matter of Joseph Salanitro, Correction Sergeant (PS5613I and PS1818I), Department of Corrections* (CSC, decided May 7, 2014), Mr. Salanitro initially requested enforcement regarding salary step placement. That issue is being addressed in a separate decision. Mr. Salanitro had also contacted the Veterans' Employment and Training Service section of the United States Department of Labor requesting assistance. In a letter dated August 15, 2014 from the Veterans' Employment and Training Service to the Department of Corrections, it inquired as to whether Mr. Salanitro's USERRA rights were taken into consideration when determining his eligibility for the "2006 and/or 2009 Correction Lieutenant Examination." Accordingly, although Mr. Salanitro did not submit a specific written request for reconsideration regarding his eligibility within the 45-day period, given that he timely submitted the issue of salary step placement and that he contacted the Veterans' Employment and Training Service for assistance regarding his rights, this matter is considered timely.

Commission. Specifically the issue of whether Mr. Salanitro may use his retroactive appointment date of January 7, 2006 to the Correction Sergeant title for purposes of eligibility for the Correction Lieutenant examination is now before the Commission.

USERRA seeks to protect job rights and benefits for returning service members. In this regard, under USERRA, returning service members are entitled to be reemployed in the job position that he or she would have attained had they not been absent for military service with the same pay, benefits, and seniority, including other rights and benefits determined by seniority, including opportunities for promotion. *See e.g.*, 38 U.S.C. §4316; 20 C.F.R. §1002.191 and 20 C.F.R. §1002.193. Furthermore, USERRA supersedes any State law that reduces, limits or eliminates any right or benefit provided by USERRA. *See* 20 C.F.R. §1002.7 and 20 C.F.R. §1002.193. In this regard, had Mr. Salanitro been present and serving in the Correction Sergeant title effective January 7, 2006, he presumably would have had the opportunity to file an application for Correction Lieutenant promotional examinations. Thus, under these specific circumstances, USERRA requires that Mr. Salanitro be provided with a make-up examination for Correction Lieutenant.

The examinations under consideration are PS7891I, PS1419I and PS6072I. It is noted that all three examinations were open to employees in the competitive division who had an aggregate of one year of continuous permanent service in the Correction Sergeant or Supervising Interstate Officer title as of their respective closing dates. As noted previously, the PS7819I exam closed October 21, 2005. Given that the closing date of this exam precedes Mr. Salanitro's retroactive appointment date of January 7, 2006, he cannot be found eligible for a make-up examination for that symbol. However, based on his retroactive date of appointment, Mr. Salanitro would have met the requirements for the PS1419I exam, which closed on December 22, 2008, and the PS6072I exam, which closed on November 21, 2011. As such, he should be granted make-ups for both PS1419I and PS6072I. Accordingly, the Division of Agency Services should send the appellant written applications for PS1419I and PS6072I upon receipt of this decision. The completed applications and the respective application processing fees should be forwarded within 20 days of receipt of the applications to: New Jersey Civil Service Commission, P.O. Box 322, Trenton, New Jersey 08625-0322. Failure to file the applications and processing fees within the time provided will result in rejection from the examination process.

The Commission notes that USERRA does not require that Mr. Salanitro receive a permanent appointment to the Correction Lieutenant 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

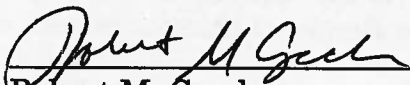
during his or her absence). However, if Mr. Salanitro ultimately receives an appointment as a Correction Lieutenant and successfully completes a working test period, he or the appointing authority may further petition the Commission for a retroactive appointment date. This determination is limited to the specific facts and circumstances presented in this matter and should not be used as precedent for any future matter.

ORDER

Therefore, it is ordered that this request be granted, the appellant's applications be accepted, contingent upon receipt of the completed applications and processing fees within the timeframe outlined in this decision, and the appellant be scheduled for a make-up examination.

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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STATE OF NEW JERSEY

In the Matter of Joseph Salanitra,
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 Salanitra, 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 Salanitra, 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. Salanitra, 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. Salanitra 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. Salanitra 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. Salanitra 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. Salanitra passed with a final average of 81.090 and appeared at rank A94 for PS5613I. Subsequently, it had to be determined whether Mr. Salanitra 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. Salanitra 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. Salanitra's name at the time of the next certification for the title.

It is noted that Mr. Salanitra 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. Salanitra 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) request⁴ 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

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. Salanitra 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)

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.

⁷The 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**


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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Joseph Salanitro,
Correction Sergeant (PS5618I and
PS1818I), Department of Corrections

CSC Docket No. 2011-4750

Examination Appeal

ISSUED: MAR 08 2012 (JH)

Joseph Salanitro requests that the eligible list for Correction Sergeant (PS5618I), 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 (PS5618I and PS1818I).

By way of background, the PS5618I 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 PS5618I examination but he was subsequently called for active military duty.² As a result, he was unable to sit for the PS5618I 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 PS5618I 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. §4801, *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, 2011.⁹

By letter dated August 4, 2011, the Division of Selection Services informed Mr. Salanitro of his final average (80.500) and rank (A183) 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

⁹ 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.⁷

Subsequently, it had to be determined whether Mr. Salanitro ranked high enough on the PS5613I eligible list to be reachable for appointment.⁸ 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

⁷ He was also provided with his recalculated final average (80.930) and rank (479) for PS1818I.

⁸With 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

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 redispensed. 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, 2009 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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