

Chief title. He argues that he should have been appointed from a certification at that time.

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*. *N.J.A.C. 4A:4-1.10(c)*, (Approval of appointments) states that when a regular appointment has been made, a retroactive appointment date may be ordered due to an administrative error, administrative delay or other good cause, on notice to affected parties.

CONCLUSION

In the instant matter, the appellant was correctly found ineligible for the subject examination for failure to meet the announced title scope requirements. Mr. Berrios was not permanent in the announced title for one year, as of the closing date, but rather had only seven months and six days of service in this title. An "acting" capacity generally means the assignment of an employee to out-of-title duties without a formal personnel action to effect a change in title on a temporary basis or in anticipation of the completion of a formal personnel action. In this case, Mr. Berrios was serving in an acting capacity as Battalion Fire Chief from September 12, 2012 to his provisional appointment to that title on June 24, 2013. He was then regularly appointed from the eligible list for Battalion Fire Chief (PM3501L) on July 22, 2013. Although acting appointments are not recognized, it is not uncommon for jurisdictions to make acting appointments in public safety titles for various short-term situations. For example, some appointing authorities require approval from local boards to make appointments. Others may do so to cover positions where someone is absent for some months. In any event, had the appellant believed that he was primarily assigned inappropriate duties, he could have requested a classification review pursuant to *N.J.A.C. 4A:3-3.9*. Since he did not do so, it is not possible to determine if he was performing the out-of-title work as a Battalion Fire Chief from September 12, 2012 to June 24, 2013.

The eligible list for Battalion Fire Chief PM3501L was certified three times. Mr. Berrios ranked fourth on this list. The first certification resulted in two removals and the third ranking candidate was appointed on March 1, 2012. The second certification resulted in Mr. Berrios' appointment on July 22, 2013. In this case, Mr. Berrios' claim of out-of-title work is not supported, and there is no basis to consider claimed acting experience. Even if the appellant had requested a classification review and found to be doing the duties of a Battalion Fire Chief, he would have been provisionally appointed until the list was certified and his regular

appointment could be made. There is no explanation in the record as to why the list was not certified between September 2012 and July 2013; and it cannot be assumed that it would have been certified on or prior to February 2013, and the appellant appointed from the list, so that he would have had one year of permanent service by the closing date of the subject examination. The appellant was correctly determined to possess less than one year of permanent service as a Battalion Fire Chief.

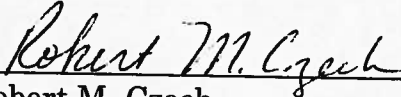
A thorough review of all material presented indicates that the decision of DSS, that appellant did not meet the announced requirements for eligibility by the examination closing date, is amply supported by the record and appellant provides no basis to disturb that decision. Thus, appellant has failed 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 1st DAY OF APRIL, 2015


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