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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Rodney Bacon,
Department of Corrections

CSC Docket No. 2015-2634

Request for Reconsideration

ISSUED: **MAY 21 2015** (WR)

Rodney Bacon, represented by Alonzo Howard, PBA Local 105, petitions the Civil Service Commission (Commission) for reconsideration of its attached final decision, rendered on March 4, 2015, which denied his request for a retroactive appointment date.

By way of background, the petitioner was removed from the Correction Officer Recruit (S9987M), Department of Corrections eligible list on May 2, 2012 for failing to disclose his criminal record. On appeal to the Division of Classification and Personnel Management (CPM)¹ the petitioner argued that except for the "Junior" and "Senior" suffixes, he shares the same name as his father, who did have a criminal record and therefore the appointing authority must have confused his father's record for his. CPM thereafter granted the appellant's appeal and restored his name to the S9987M eligible list for future certifications. The appellant was subsequently appointed to the title of Correction Officer Recruit, effective February 3, 2014. Subsequently, the petitioner petitioned the Commission for a retroactive appointment date, arguing that, but for the appointing authority's error, he would have been appointed earlier. The appointing authority argued that it made no error because the petitioner failed to use the "Junior" suffix throughout the selection process. The Commission denied the petitioner's request.

In support of his request for reconsideration, the petitioner argues that an individual that scored lower than him on the same examination was hired for Class

¹ CPM is currently named the Division of Agency Services.

226, whereas he was not hired until Class 230. He claims that because he did not have any problems with pre-employment processing, he should have been hired for Class 226 and therefore should be awarded a retroactive appointment date.

In response, the appointing authority reiterates that no administrative error occurred in the instant matter because the petitioner failed to use the "Junior" suffix of his name throughout the selection process. Additionally, the appointing authority contends that because the petitioner did not have vested right to an appointment solely by virtue of being on the subject eligible list, his request for a retroactive appointment date should be denied.

CONCLUSION

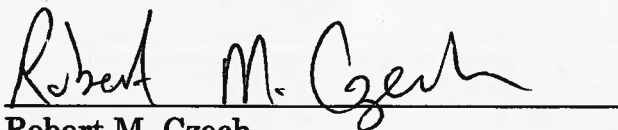
N.J.A.C. 4A:2-1.6(b) sets forth the standards by which the Civil Service Commission may reconsider a prior decision. This rule provides that a party must show that a clear material error has occurred or present new evidence or additional information not presented at the original proceeding which would change the outcome of the case and the reasons that such evidence was not presented at the original proceeding. A review of the record in this matter reveals that reconsideration is not justified. In this regard, the petitioner has failed to provide any documentation which establishes that the Commission's decision was contrary to the evidence presented. Rather, the petitioner merely states that he would have been appointed earlier based on his score on the subject eligible list, but for his improper removal from the eligible list. However, as described in the previous decision, the petitioner did not possess a vested property interest in the position at issue. 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). Moreover, the record indicates that the appointing authority could have bypassed the appellant and it has not indicated that, absent his initial removal from the list, it would have selected him for appointment with Class 226 or that it supports the petitioner's request for a retroactive appointment date. Accordingly, the petitioner has failed to present a sufficient basis for reconsideration of the Commission's prior decision.

ORDER

Therefore, it is ordered that this request for reconsideration 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 19th DAY OF MAY, 2015**



**Robert M. Czech
Chairperson
Civil Service Commission**

**Inquiries
and
Correspondence**

**Henry Maurer
Director
Division of Appeals
and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P. O. Box 312
Trenton, New Jersey 08625-0312**

Attachment

**c: Rodney Bacon
Alonzo Howard, PBA Local 105
James J. Mulholland
Kenneth Connolly
Joseph Gambino**



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Rodney Bacon,
Department of Corrections

CSC Docket No. 2014-3102

Administrative Appeal

ISSUED: **MAR - 9 2015** (WR)

Rodney Bacon, a Correction Officer Recruit, Department of Corrections (DOC), represented by Alonzo Howard, PBA Local 105, requests a retroactive date of appointment.

The facts of this matter indicate the following: The appellant was removed from the Correction Officer Recruit (S9987M), Department of Corrections eligible list on May 2, 2012 for falsifying his application. Specifically, the appointing authority alleged that the appellant failed to disclose a criminal charge on his application. The appellant appealed to the former Division of Classification and Personnel Management (CPM)¹ and asserted that he did not have a criminal record. However, he stated that except for the "Junior" and "Senior" suffixes, he shares the same name as his father, who did have a criminal record and therefore the appointing authority must have confused his father's record for his. On July 30, 2012, CPM granted the appellant's appeal and restored his name to the S9987M eligible list for future certifications. The appellant was subsequently appointed to the title of Correction Officer Recruit, effective February 3, 2014.

In the instant matter, the appellant contends that he should receive a retroactive date of appointment for seniority purposes only. In support of his contention, he relies upon *In the Matter of Wayne Robbins* (MSB, decided September 5, 1991) and *In the Matter of David Price* (MSB, decided October 4, 2002).

¹ CPM is currently named the Division of Agency Services.

In response, the appointing authority maintains that the appellant failed to use the Junior suffix to his name in his employment application and during pre-employment processing. Additionally, the appointing authority asserts that prior to removing the appellant's name from the subject eligible list, he was provided an opportunity to provide documentation to dispute the charges listed under the name "Rodney A. Bacon." Accordingly, the appointing authority contends that since it based the appellant's removal on the information it possessed, his appointment date should remain February 3, 2014.

CONCLUSION

N.J.A.C. 4A:4-1.10(c) provides that, when a regular appointment has been made, the Commission may order a retroactive appointment date due to administrative error, administrative delay or other good cause, on notice to affected parties. Additionally, *N.J.S.A.* 11A:4-8, *N.J.S.A.* 11A:5-7, and *N.J.A.C.* 4A:4-4.8(a)3 allow an appointing authority to select any of the top three interested eligibles on a promotional list, provided that no veteran heads the list. Further, *N.J.A.C.* 4A:2-1.4(c) generally provides that the appellant has the burden of proof to show by a preponderance of the evidence that the appointing authority's decision to appoint another eligible on the eligible list before him was improper.

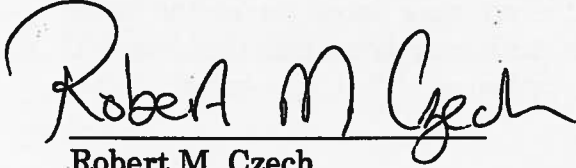
In the present matter, the appellant requests a retroactive appointment date. However, the appellant provides no evidence that he would have been appointed before February 3, 2014. It is noted that the appellant did not possess a vested property interest in the position at issue. The only interest that 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). Additionally, the appointing authority had the discretion to bypass the appellant's name for appointment at that time. Moreover, unlike *In the Matter of Wayne Robbins, supra*, and *In the Matter of David Price, supra*, the appointing authority has not indicated that it would have appointed the appellant had he been eligible for appointment at that time nor does it support his request. Accordingly, the appellant has not presented good cause to grant a retroactive date of appointment, and his request is denied.

ORDER

Therefore, it is ordered that this request 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 MARCH, 2015**



**Robert M. Czech
Chairperson
Civil Service Commission**

**Inquiries
and
Correspondence**

**Henry Maurer
Director
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