

B-23



STATE OF NEW JERSEY

In the Matter of Ralph Bitter,
Manager 4 Environmental
Protection, Technical, Scientific,
Engineering (PS6834G), Department
of Environmental Protection

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

Request for Reconsideration

CSC Docket No. 2015-2270

ISSUED: **MAY 11 2015** (LDH)

Ralph Bitter requests reconsideration of the attached decision rendered on December 17, 2014, which found that he did not meet the experience requirements for the promotional examination for Manager 4 Environmental Protection, Technical, Scientific, Engineering (PS6834G), Department of Environmental Protection (DEP).

By way of background, the petitioner's credentials were reviewed by the Division of Selection Services (Selection Services) to determine if he met the requirements for the promotional announcement. Selection Services determined that the petitioner did not meet the requirements to establish eligibility for the subject title. The petitioner appealed the matter to the Civil Service Commission (Commission), which found that he lacked sufficient experience to establish eligibility for the promotional examination. The Commission based its determination on the petitioner's failure to demonstrate good cause to permit consideration of his out-of-title work. Specifically, he did not submit any verification from the appointing authority to show that he performed applicable out-of-title duties.

On reconsideration, the petitioner points to the procedural history of his case and argues that the Commission should accept his out-of-title experience. In this regard, he states that the appointing authority and the Commission have acknowledged that he has performed such duties. In support, he submits, *inter alia*, his Performance Assessment Review (PAR) dated October 2014, and an e-mail from DEP's Human Resources dated January 2015. He states that this material was not

presented at the original proceeding because he had no notice that this documentation was needed for the Commission's review. Although he contends that the appointing authority confirms that he is performing relevant out-of-title duties, the e-mail from DEP's Human Resources states that it is "at a loss as to what CSC [Civil Service Commission] may have determined qualified" as out-of-title work; that it believes his duties are appropriate for his permanent title; and that it "will not be able to submit a request to CSC to support an out-of-title waiver."

CONCLUSION

N.J.A.C. 4A:2-1.6(b) sets forth the standards by which a prior decision may be reconsidered. 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. The instant request for reconsideration appears based on the assertion that the petitioner has submitted new evidence that was not presented at the original proceeding which would change the outcome of the case. However, a review of the record in the instant matter reveals that reconsideration is not justified.

In this regard, the petitioner presents his PAR dated October 2014 and an e-mail correspondence from the appointing authority's Human Resources department. However, this information does not establish good cause to accept the petitioner's out-of-title experience. Ordinarily, the Commission looks to whether or not "good cause" has been established in determining whether to grant or deny appeals involving out-of-title work. Generally, the Commission finds good cause 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 appellants have performed the relevant duties which otherwise satisfy the eligibility requirements. *See In the Matter of John Cipriano, et al.* (MSB, decided April 21, 2004). Here, the petitioner has not provided a supervisor's specific verification as to the duties, the need to perform the out-of-title duties, and the time period such duties were performed. Moreover, the subject eligible list is complete as it contains the names of three eligibles. Finally, the documentation from the appointing authority's Human Resources department specifically indicates that it would not support his claim of out-of-title work.

One final comment is warranted. In eligibility appeals, it is petitioner's burden of proof to demonstrate that he or she is eligible for a particular examination. It is not the Commission's role to advise or guide appellants on how to best present their arguments. Moreover as noted above, the performance of out-of-title work, without good cause, is not acceptable for admittance to promotional examinations with open competitive requirements. This is because constant, repeated or lengthy out-of-title work assignments of career service employees is

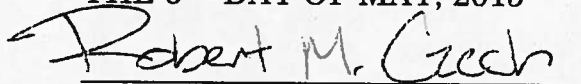
damaging to the system, creates salary inequities and undermines the integrity of the classification plan. Accordingly, the petitioner has failed to present a sufficient basis for reconsideration of the Commission's prior decision.

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 6TH DAY OF MAY, 2015



Robert M. Czech
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Attachment

c: Ralph Bitter III
Deni Gaskill
Kelly Glenn
Joseph Gambino

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Ralph Bitter III,
Manager 4 Environmental
Protection, Technical, Scientific,
Engineering (PS684G), Department
of Environmental Protection

Examination Appeal

CSC Docket No. 2015-296

ISSUED: **DEC 17 2014** (LDH)

Ralph Bitter III appeals the determination of the Division of Selection Services (Selection Services), which found that he did not meet the experience requirements for the promotional examination for Manager 4 Environmental Protection, Technical, Scientific, Engineering (PS6834G), Department of Environmental Protection.

The subject promotional announcement was announced with a closing date of February 21, 2014. The examination was open to individuals who possessed a Bachelor's degree in Environmental, Chemical, Physical or Biological Science, or Engineering and five years of full-time experience in the scientific/technical aspects of environmentally related activities, three years of which shall have been in program management. It is noted that three applicants were admitted to the written examination which was held on November 18, 2014.

On his application, the appellant indicated that he possessed a Bachelor's degree in Geology. He also indicated that he had served as a Supervisor-Diesel Enforcement from November 2008 to February 2013 and as a Supervisor-Diesel Inspection from April 2000 to November 2008.¹ The appellant indicated, in part, that as a Supervisor-Diesel Enforcement, his duties included: managing program development and field operations of enforcement activities; analyzing program

¹ Agency records indicate that he received a regular appointment to the title of Environmental Specialist, effective April 25, 1998; was provisionally appointed to the title of Senior Environmental Specialist (Air Pollution), effective October 21, 2000 and received a regular appointment to that title effective April 21, 2001; and was provisionally appointed to the title of Principal Environmental Specialist (Air Pollution) effective March 22, 2003 and received a regular appointment to that title effective August 29, 2003. It is noted that the title of Principal Environmental Specialist (Air Pollution) was consolidated into the title of Environmental Specialist 3, effective December 9, 2011.

performance and implementing modifications to enhance program and staff performance and efficiency; and developing control strategies and plans. The appellant indicated, in part, that as a Supervisor-Diesel Inspection from March 2003 to November 2008, his duties included: managing and directing the daily operations and long term objectives of the unit; providing oversight for affiliated programs within and external to NJDEP; and planning and implementing air pollution research and field testing projects. He also indicated, in part, that as a Supervisor-Diesel Inspection from April 2000 to March 2003, his duties included: supervising the Diesel Inspection and Maintenance Program and operations; directing the selection and use of suitable testing equipment; and preparing policy directives and procedural manuals. Based on the foregoing, Selection Services credited the appellant with sufficient general experience in the scientific/technical aspects of environmentally related activities. However, it did not credit the appellant with any experience in program management, as it determined the performance of those duties would constitute out-of-title work.

On appeal to the Civil Service Commission, the appellant essentially states that he meets the minimum experience requirements. The appellant also questions how he would have obtained the required experience without performing out-of-title duties and why he was required to perform the out-of-title duties.

CONCLUSION

N.J.A.C. 4A:4-2.6(a) provides that applicants shall meet all requirements specified in the promotional announcement by the closing date. *N.J.A.C.* 4A:4-2.6(c) provides that, except when permitted for good cause, 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. *N.J.A.C.* 4A:4-6.3(b) provides that the appellant has the burden of proof in examination appeals.

A review of the record indicates that Selection Services correctly determined that the appellant was not eligible for the subject examination since the applicable program management duties constituted out-of-title work and therefore could not satisfy the announcement requirements. Out-of-title work is generally not acceptable for admittance to promotional examinations with open competitive requirements. This is because constant, repeated or lengthy out-of-title work assignments of career service employees is damaging to the system, creates salary inequities and undermines the integrity of the classification plan. *See In the Matter of Suzanne M. F. Buriani-DeSantis* (CSC, decided July 30, 1985). Although the appellant indicates he performed relevant out-of-title duties, he submits no documentation in support. Moreover, the appellant has failed to demonstrate good cause to permit the consideration of such out-of-title work. Specifically, he has not submitted any verification from the appointing authority to show that he performed

out-of-title duties while serving in any of his listed titles, and the record contains no evidence reflecting the necessity of the performance of the out-of-title work. Accordingly, the record reflects that the appellant did not meet the requirements for the title under test, and there is no basis to disturb the decision of Selection Services.

ORDER

Therefore, it is ordered that the 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 17th DAY OF DECEMBER 2014

Robert M. Czech

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