

B-47



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Raquel  
Bourne-Solomon, Human Services  
Specialist 3 (PC0679S),  
Ocean County Board of Social  
Services

Examination Appeal

CSC Docket No. 2015-1208

ISSUED: JUN 05 2015 (DASV)

Raquel Bourne-Solomon appeals the determination of the Division of Selection Services that she lacked the required amount of permanent status in a title to which the promotional examination for Human Services Specialist 3 (PC0679S), Ocean County Board of Social Services, was open.

The subject examination was announced with a closing date of June 21, 2014 and open to employees who were currently serving in the following titles and possessed one year of continuous permanent service: Human Services Specialist 2 and Human Services Specialist 2, Bilingual in Spanish and English. Fifty employees were admitted to the subject examination, which was administered on October 18, 2014 as an assembled examination. The resulting eligible list promulgated on November 6, 2014 with 41 eligibles and does not expire until November 5, 2017. It is noted that the appellant was appointed provisionally pending promotional examination procedures as a Human Services Specialist 3 effective November 3, 2014. A certification of the subject eligible list was issued on November 12, 2014 against four provisional employees, which did not include the appellant. Fourteen individuals were appointed effective December 18, 2014, December 29, 2014, and February 5, 2015. Another certification of the subject eligible list was issued on April 1, 2015. The April 1, 2015 certification is still outstanding and not yet due until July 1, 2015. This certification was issued

against the appellant's provisional appointment, as well as five other provisional positions.<sup>1</sup> There remain 27 eligibles on the subject eligible list.

On her application, the appellant indicated that she served as a Human Services Specialist 2 from September 2011 to June 2014. However, agency records indicated that the appellant was provisionally appointed pending promotional examination procedures as a Human Services Specialist 2 effective September 29, 2011. She did not receive a permanent appointment to the title until June 27, 2013. Consequently, since the appellant lacked one year of continuous permanent service as a Human Services Specialist 2, the Division of Selection Services found her ineligible for the examination.

On appeal to the Civil Service Commission (Commission), the appellant sets forth the dates of her provisional and permanent appointments as a Human Services Specialist 2 and disagrees with the determination of the Division of Selection Services. The appointing authority supports the appellant's appeal, stating that it was not the appellant's fault that she was six days short of the one-year requirement. It explains that it took 21 months before the appellant was appointed from the Human Services Specialist 2 (PC0749P), Ocean County Board of Social Services, eligible list, which did not promulgate until December 20, 2012 and expires on December 19, 2015. It is noted that agency records reveal that certifications of the (PC0749P) eligible list were issued on December 26, 2012 and May 6, 2013. The appellant ranked 23<sup>rd</sup>, which was last on the eligible list. Her name was not certified until May 6, 2013. The appellant ranked fourth on the certification and was appointed, effective June 27, 2013, along with Brooke Nixon and Sebastian Balbuena, who ranked first and second on the certification, respectively, and are current employees. The third ranked eligible on the certification had resigned in 2014.

Moreover, the appointing authority indicates that the appellant has been performing very well in her provisional position as a Human Services Specialist 3. She is assigned to the Special Response Unit, one of the most challenging units in the Ocean County Board of Social Services which handles issues involving homelessness and domestic violence. Furthermore, the appointing authority presents that very few employees have the appellant's level of experience and knowledge.

In addition, the appointing authority requests that the Commission take into consideration that it could have appointed the appellant from the May 6, 2013

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<sup>1</sup> A total of six provisional positions were noted on the April 1, 2015 certification. However, two provisional employees were to be promoted to Human Services Specialist 4 and the third provisional employee was to be returned to her permanent title of Human Services Specialist 2 upon disposition of the November 12, 2014 certification. Agency records do not yet reflect this change.

certification earlier than June 27, 2013.<sup>2</sup> Additionally, it asserts that, in other cases, the Commission has waived the one-year requirement and allowed examinations to be open to individuals who have completed their working test period. The appointing authority also contends that the one-year requirement has been waived where an individual met the requirements by the last day of the month in which the promotional announcement occurred. It is noted that the appointing authority does not cite to specific cases. Nonetheless, it states that in the appellant's case, she would have the one year of permanent service as of June 27, 2014, which is before the last day of the month in which the subject examination closed. Thus, the appointing authority requests that the appellant be permitted to take the examination given that she met the one-year requirement prior to the end of the last day of June 2014 and due to the fact that the appointing authority has a "pressing need to retain this highly experienced and proficient worker as [a Human Services Specialist 3] in [its] very challenging Special Response Unit."

### CONCLUSION

*N.J.A.C.* 4A:4-2.6(a) provides in pertinent part that applicants for promotional examinations shall meet all of the following criteria by the announced closing date:

1. 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. Aggregate service shall be calculated in the same manner as seniority as set forth in *N.J.A.C.* 4A:4-2.15.
2. Be currently serving in the announced unit scope in a title to which the examination is open and meet all other requirements contained in the announcement. If an examination announcement is amended, all requirements must be met by the announced closing date whether or not the application filing date is changed.

Further, *N.J.A.C.* 4A:1-1.2(c) states that the Commission may relax a rule for good cause in order to effectuate the purposes of Title 11A, New Jersey Statutes.

In the instant matter, there is no dispute that the appellant lacked one year of continuous permanent service as of the closing date. The appointing authority supports the appellant's appeal and requests that the Commission consider several factors. It indicates that it took 21 months before the appellant was appointed as a Human Services Specialist 2. However, the appellant did not rank sufficiently high

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<sup>2</sup> The appointing authority has not requested that the appellant receive a retroactive date of permanent appointment although it was advised of this option by agency staff. However, if a request is made for the appellant, the appointing authority would need to show cause why the three eligibles ranked above the appellant on the certification should not receive a similar date.

enough to be certified earlier with the individuals on the December 26, 2012 certification. She ranked last on the Human Services Specialist 2 (PC0749P) eligible list. Moreover, the appointing authority contends that it could have appointed the appellant from the May 6, 2013 certification earlier than June 27, 2013. However, the fact remains that the appointing authority did not appoint the appellant prior to June 27, 2013, nor has it requested that the appellant receive a retroactive date of appointment. It is emphasized that the method by which an individual can achieve permanent appointment in the competitive division is if the individual applies for and passes an examination, *is appointed from an eligible list*, and satisfactorily completes a working test period. See *In the Matter of Joseph S. Herzberg* (MSB, decided June 25, 2003) (Intent of appointing authority to permanently appoint appellant to Fire Captain not sufficient to permanently appoint petitioner since he was never appointed from an eligible list). The Commission is also mindful that a provisional appointee can be removed at any time and does not have a vested property interest in the provisional title. In other words, a provisional employee has no automatic right or expectation of achieving permanent appointment to the position to which he or she is occupying. See *O'Malley v. Department of Energy*, 109 N.J. 309 (1987) (Appointing authority was not equitably estopped from removing a provisional employee even when the provisional employee occupied the position longer than the statutory one-year limit). 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 the appellant's case, she was considered and given a valid appointment by the appointing authority, albeit six days short of a subsequent promotion.

In addition, the appointing authority requests that the Commission take into consideration that, in other cases, the Commission has waived the one-year requirement and allowed examinations to be open to individuals who have completed their working test period. In that regard, *N.J.A.C. 4A:4-2.6(g)* provides that time requirements for promotional examinations 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 as determined by the Chairperson of the Commission or designee. In the present case, this standard clearly has not been met since there were 50 individuals admitted to the Human Services Specialist 3 (PC0679S) examination, which resulted in 41 eligibles on the list for at most six provisional positions. Additionally, the appointing authority indicates that the one-year requirement has been waived where an individual met the requirements by the last day of the month in which the promotional announcement occurred. Initially, the Commission does have such a blanket policy for time-in-grade

requirements. Moreover, the appointing authority does not cite to specific cases where the circumstances could arguably be similar to that of the appellant to allow her admittance to the subject examination.

Nevertheless, the Commission is cognizant of such an unfair result, where the appellant is *only* six days short of eligibility and may not have an opportunity for a promotion for possibly three years given that the eligible list promulgated in 2014 and does not expire until 2017. Moreover, the appointing authority has verified the appellant's qualifications for a position. In that regard, the appellant gained experience from her provisional position as a Human Services Specialist 3 and passed her working test period as a Human Services Specialist 2. The appointing authority also presents that there are very few employees who have the appellant's level of experience and knowledge. Additionally, the Commission is mindful that the principles of the Civil Service favor qualified candidates to be tested in a competitive situation. Therefore, under these circumstances and for equitable reasons, the Commission finds good cause, pursuant to *N.J.A.C. 4A:1-1.2(c)*, to relax the provisions of *N.J.A.C. 4A:4-2.6(a)2* and extend the closing date of the subject examination to June 27, 2014 and permit the appellant's admittance to the examination. Additionally, since Nixon and Balbuena are similarly situated, namely, they were appointed as Human Services Specialist 2s, effective June 27, 2013, they should also be deemed eligible for the subject examination which now has an extended closing date of June 27, 2014. The Division of Agency Services<sup>3</sup> is directed to send Nixon and Balbuena a written application upon receipt of this decision. If Nixon and Balbuena wish to be examined, they must complete the application and return it within 20 days of receipt of the application with the processing fee of \$25 to the New Jersey Civil Service Commission, P.O. Box 321, Trenton, New Jersey 08625-0321, along with a copy of this decision. Failure to file the application and processing fee within the time provided will result in rejection from the examination process.

It is noted that this decision does not affect the April 1, 2015 certification, as the remedy in this matter is prospective. Given the number of individuals remaining on the subject eligible list, the appointing authority must properly dispose of the April 1, 2015 certification on or before July 1, 2015, which may mean displacement of the appellant from her provisional position.<sup>4</sup> However, should the appellant pass the subject examination, she may be considered for a regular appointment on a later certification.

This determination is based on the specific facts and circumstances presented in this matter and shall not be used as precedent for any other matter.

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<sup>3</sup> The application function formerly performed by the Division of Selection Services is now performed by the Division of Agency Services.

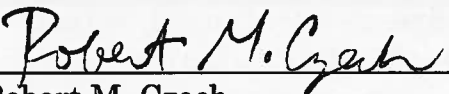
<sup>4</sup> Absent an appointment to another title, the appellant must be returned to her permanent title of Human Services Specialist 2.

**ORDER**

Therefore, it is ordered that this appeal be granted and Raquel Bourne-Solomon be granted a make-up examination for Human Services Specialist 3 (PC0679S), Ocean County Board of Social Services. It is further ordered that the examination applications of Brooke Nixon and Sebastian Balbuena be accepted for a make-up examination, contingent upon receipt of the completed application and processing fee within 20 days of receipt of the application. Should any of these individuals pass the make-up examination, their names are to be added to the subject eligible list for prospective employment opportunities only.

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 3<sup>RD</sup> DAY OF JUNE, 2015**



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