

B-15



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Anna Delaney,
Department of Law and Public Safety

Administrative Appeal

CSC Docket No. 2015-1255

ISSUED: **AUG 03 2015** (SLD)

Anna Delaney, an employee with the Department of Law and Public Safety (LPS), represented by Gaye Palmer, Executive Vice President, CWA Local 1033, appeals the calculation of her salary upon her appointment to the title of Forensic Scientist 1, LPS, effective March 23, 2013. She also requests a retroactive date of appointment to December 15, 2012.

By way of background, Delaney applied for and was admitted to the open-competitive examination for the title of Forensic Scientist 1, LPS (S2465N), which had a closing date of December 30, 2011. The resulting eligible list of 36 names, including Delaney who was tied at rank 19, promulgated on May 24, 2012 and expired on May 23, 2015. Delaney's name appeared on the three certifications (OS120332, OS120333 and OS120334) that were issued to the appointing authority for three locations on May 9, 2015. For all three certifications, the appointing authority indicated that Delaney was interested and reachable for appointment, but other eligibles were appointed. On the OS120332 and OS120334 certifications, the last appointments were made at rank 19 and on the OS120333 certification the last appointment was made at rank 17. It is noted that all of the individuals appointed from the three certifications received regular appointments, effective December 15, 2012.

On January 23, 2013, Delaney filed a grievance asserting that although her name appeared tied, as the 19th ranked eligible on the open competitive list for Forensic Scientist 1, LPS (S2465N), the appointing authority failed to appoint her. In this regard, she maintained that in the past, the appointing authority had

allowed other employees to resign from the old title and be appointed to the new title, without a break in service, to provide promotional opportunities (referred to as a "resignation/pickup"). See *N.J.A.C.* 4A:4-7.9. Moreover, Delaney asserted that although the appointing authority refused her this option, it allowed A.M., the 17th ranked eligible on the OS120333 certification, to resign from her former title and be appointed to the subject title as a resignation/pickup.¹

As part of her grievance, Delaney requested that she be promoted to the title of Forensic Scientist 1, LPS, effective November 19, 2012, the same date as the individuals appointed from the S2465N eligible list.² In an August 20, 2014 determination of Delaney's Second Step Grievance, it was noted that the parties had agreed that Delaney would be provisionally appointed, pending promotional procedures to the title of Forensic Scientist 1, LPS, effective March 23, 2013, and that she would receive a regular appointment to the title, effective April 3, 2014. However, the issues concerning the appointing authority's failure to appoint her from the S2465N eligible list and her request for a retroactive appointment to November 19, 2012, would be held, pending a determination from the Civil Service Commission. As a result of the forgoing, agency records indicate that Delaney was provisionally appointed, pending promotional examination procedures, to the title of Forensic Scientist 1, LPS (\$60,120.38, step one, salary range P25), effective March 23, 2013.³ Delaney had previously been serving in the title of Senior Laboratory Technician (\$50,470.91, step eight, salary range A15).

On appeal, Delaney reiterates that although she was originally encouraged to apply for the open competitive examination for Forensic Scientist 1, LPS (S2465N), the appointing authority subsequently stated that it would not allow her to do a resignation/pickup to be appointed from the S2465N eligible list. Delaney maintains that although it would not allow her to do so, it allowed A.M., the 17th ranked eligible to do a resignation/pickup to be appointed from the S2465N eligible list. Moreover, Delaney maintains that by not receiving the same appointment date of November 19, 2012 as the individuals appointed from the S2465N eligible list, she will be severely disadvantaged in title seniority and eligibility when the promotional examination for Forensic Scientist 2, LPS is announced.

¹ Agency records indicate that A.M. received a regular appointment from the OS120333 certification to the title of Forensic Scientist 1, LPS (\$60,120.38, step one, salary range P25), with LPS, effective December 15, 2012. A.M. had previously been serving in the title of Safety Officer, Developmental Disabilities (\$52,458.55, step two, salary range P22), with the Department of Human Services.

² Agency records indicate that although some of the individuals had been provisionally appointed, pending open-competitive examination procedures, to the subject title effective November 19, 2012, all of the individuals appointed from the certifications received regular appointments, effective December 15, 2012.

³ Agency records indicate that Delaney applied for and was admitted to the promotional examination for Forensic Scientist 1, LPS (PS2111P). As Delaney was the only eligible applicant, Delaney received a regular appointment to the title of Forensic Scientist 1, LPS, effective April 3, 2014, pursuant to *N.J.A.C.* 4A:4-2.7.

Additionally, Delaney asserts the individuals appointed from the S2465N eligible list were placed on either step one, step two or step three of salary range P25, depending on his or her experience.⁴ See *N.J.A.C.* 4A:3-4.4(a). However, upon her promotion, she was only placed on step 1 of salary range P25, despite being told that there was only one eligible appointed from the S2465N eligible list who possessed more experience than her. Delaney asserts that her placement on a lower step than most of the employees hired from the S2465N eligible list was unjust based on her nine years of loyal employment. Moreover, Delaney maintains that if she had been allowed to do a resignation/pickup, she would have been placed on a higher step of the salary range. Accordingly, she maintains that she should be placed on step three of salary range P25, with the same effective date of the individuals appointed from the S2465N eligible list.

In response, the appointing authority maintains that it did not violate any Civil Service law or regulations and that Delaney was appropriately placed on step one of salary range P25. Moreover, it maintains that Delaney was properly appointed from the promotional list for Forensic Scientist 1, LPS.

CONCLUSION

Initially, Delaney asserts that if the appointing authority had appointed her from the S2465N eligible list, thereby allowing a resignation/pickup, she would have been placed on a higher step than step one, pursuant to *N.J.A.C.* 4A:3-4.4(a). However, *N.J.A.C.* 4A:3-4.4(a) provides that an appointing authority may place a new employee at a salary step up to and including the fourth step of the salary range for the employee's title. A new employee, for purposes of this section, is one who has had no immediate prior State service with that appointing authority. Therefore, since Delaney was already employed by LPS, *N.J.A.C.* 4A:3-4.4(a) would not apply. Rather, *N.J.A.C.* 4A:4-7.9(a) would apply and it provides, in relevant part, that a permanent employee who is appointed from an open competitive list to a title in a different organizational unit within the same governmental jurisdiction shall be considered to have resigned from the previous permanent title. See *N.J.A.C.* 4A:3-4.4(b) for salary placement in State service. *N.J.A.C.* 4A:3-4.4(b), provides, in part, that when the employee has separated from another State appointing authority and has been hired without an interruption in service, the employee may be placed up to and including that step of the salary range that the employee would receive if the employee had been continuously employed in the new agency. *N.J.A.C.* 4A:3-4.9 provides in relevant part that:

- (a) Employees who are appointed to a title with a higher class code shall receive a salary increase equal to at least one increment in the salary range of the former title plus the amount necessary to

⁴ Agency records reveal that the individuals were placed on salary range P25, up to and including step four.

place them on the next higher step in the new range . . . This subsection shall apply when the following conditions are met:

1. Employees are appointed from their permanent title to a title with a higher class code following or subject to a promotional examination;

* * *

- (b) When an employee is advanced to a title with a salary schedule which is different (dollar value of ranges and steps do not coincide) from the employee's previous salary schedule, the steps described in (a) above are first performed in the previous schedule, and then the employee's salary is set at the lowest step in the new schedule and range that equals or exceeds that salary.

Accordingly, even if Delaney had been appointed from the S2465N eligible list, her salary would have been calculated the same, placing her on step one of salary range P25.

With regard to Delaney's request for a retroactive appointment, *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. Generally, this unique remedy has been reserved for two particular situations. First, the Commission has granted retroactive permanent appointment dates in circumstances in which an employee was actually serving in and performing the duties of a title, but due to some error or other good cause, his attainment of permanent status was delayed or hindered. The second situation in which an employee may be awarded a retroactive date of permanent appointment is where the name of an employee, whose appointment would have otherwise been mandated, was improperly removed from or bypassed on an eligible list, thereby preventing their appointment. When the Commission subsequently corrects the improper list removal or bypass, the Commission also orders the employee's appointment and a retroactive permanent appointment commensurate with the date on which others were appointed from the certification of the eligible list. See *In the Matter of Neil Layden* (MSB, decided March 23, 2005); *In the Matter of Ciri Castro, Jon Martin, and Luis Sanchez* (MSB, decided January 12, 2005). However, the instant matter does not fall within either of the two situations discussed above. In this regard, there is no evidence in the record that Delaney was performing the duties of the title of Forensic Scientist 1, LPS, prior to her provisional appointment date of March 23, 2013. Moreover, other than Delaney's mere statements that she was better qualified than other individuals who were appointed from the S2465N eligible list, she has not provided any documentation that her non-appointment from the OS120332, OS120333 and

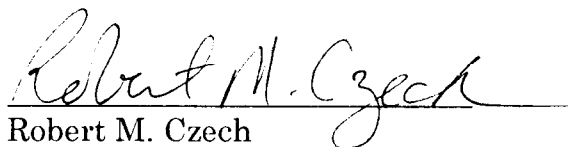
OS120334 certifications was improper. In this regard, *N.J.S.A.* 11A:4-8, *N.J.S.A.* 11A:5-7, and *N.J.A.C.* 4A:4-4.8(a)3ii allow an appointing authority to select any of the top three interested eligibles on a promotional list, provided that no veteran heads the list. At the time of disposition of the certification, *N.J.A.C.* 4A:4-4.8 no longer required that an appointing authority must, when bypassing a higher ranked eligible, give a statement of the reasons why the appointee was selected instead of a higher ranked eligible or an eligible in the same rank due to a tie score.⁵ *N.J.A.C.* 4A:2-1.4(c), in conjunction with *N.J.A.C.* 4A:4-4.8(b)4, provides that the appellant has the burden of proof to show by a preponderance of the evidence that an appointing authority's decision to bypass the appellant on an eligible list was improper. Furthermore, the appointing authority has indicated that Delaney's appointment date is correct. Accordingly, Delaney has failed to establish that her non-appointment from the S2465N eligible list for Forensic Scientist 1, LPS, was incorrect.

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 29TH DAY OF JULY, 2015



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⁵ The rule amendment became effective on May 7, 2012, upon publication in the *New Jersey Register*.

c: Anna Delaney
Gaye Palmer
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