



B-25

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Gary Charyak,
Environmental Specialist 3
(PS5264G), Department of
Environmental Protection

Administrative Appeal

CSC Docket No. 2015-2793

ISSUED: **SEP 17 2015** (SLK)

Gary Charyak requests that he be appointed from the Environmental Specialist 3 (PS5264G), Department of Environmental Protection eligible list.

By way of background, the subject promotional examination was announced open to unit scope G863 (Brownsfields Remediation and Reuse Element) along with other specific requirements that had to be met as of the October 21, 2011 closing date (see attached). A total of nine employees, including the appellant, applied for the examination and were deemed eligible. The list promulgated on April 12, 2012 and was initially set to expire on April 11, 2015. The appellant was the first ranked eligible on the list. Certification PS120420 was issued containing the names of the appellant and Michael Deely, a provisional appointee and Deely was permanently appointed effective April 19, 2012. Thereafter, Environmental Specialist 2s, Christopher Blake, Michael Gaudio, Kimberly McEvoy, Steven Hoke and Atwood Davis, who were not on the (PS5264G) eligible list, were provisionally appointed to the subject title.¹ Subsequently, due to a reorganization, the appellant's unit scope changed to G868, Division of Remediation Management, effective December 28, 2013 and unit scope G863 was eliminated. A promotional examination for Environmental Specialist 3 (PS8545G) was announced open to unit scope G868 with a closing date of April 21, 2014 (see attached). A total of 23 employees applied for this examination and 21, including Blake, Gaudio, McEvoy, Hoke, Davis, and the appellant, resulting in a list of eligibles that expires on November 19, 2017.

¹ Personnel records indicate that the following provisional appointments to the subject title were made: 1. Blake on February 23, 2013, 2. Gaudio on February 23, 2013, 3. McEvoy on June 29, 2013, 4. Hoke on July 13, 2013, and 5. Davis on November 16, 2013.

Certification PS141587 was issued from this list containing the names of 15 employees, including Blake, Gaudio, McEvoy, Hoke, Davis, and the appellant. Five employees, including Blake, Gaudio, and McEvoy, were appointed and the appellant, Hoke, and Davis were interested in appointment, but not reachable on the list.

On appeal, the appellant indicates that he filed a grievance, dated March 19, 2015, with the appointing authority claiming that he should have been appointed from the promotional list Environmental Specialist 3 (PS5264G). Specifically, he maintains that prior to appointing eligibles from the Environmental Specialist 3 (PS8545G) list which was open to unit scope G868, the appointing authority should have appointed eligibles from the Environmental Specialist 3 (PS5264G) list that was open to unit scope G863 as employees in that unit scope were "transferred" to G868 and the (PS5264G) list had promulgated prior to the (PS8545G) list and had not yet expired. The appellant asserts that in accordance with *N.J.A.C. 4A:4-1.5(a)*, the appointing authority should have appointed an eligible from the (PS5264G) list before making provisional appointments of individuals who were not on that list. The appellant states that the appointing authority advised him that this agency determined that the (PS5264G) list was no longer available for use after the G863 unit scope was inactivated and that it notified impacted employees of these changes in January 2014. However, the appellant presents that he never received this notice and he does not have any verification that the Commission cancelled this list.

In response, the appointing authority indicates that it had advised the appellant that the Commission consolidated unit scopes which invalidated the (PS5264G) list and that the (PS8545G) list is now appropriate for use. It maintains that the appellant was aware that (PS8545G) is now the active list based on his applying for this examination. The appointing authority submits a letter dated November 12, 2013 with an attached spreadsheet from the Division of Selection Services² (Selection Services) which indicates that the (PS5264G) list was no longer available for future certifications. It also submits an internal document which shows that the G868 is the unit scope for the Division of Site Remediation after the unit scope consolidation was approved by this agency.

In reply, the appellant states that although Selection Services advised the appointing authority to notify all employees as outlined in *N.J.A.C. 4A:4-7.4(d)* who were impacted by the changes in unit scope and that the appointing authority provides an internal email dated January 13, 2014 that instructs its personnel to notify all employees impacted by the unit scope changes, neither he nor any of his colleagues in his office were notified. The appellant represents that his applying for the (PS8545G) examination does not in any way imply that he was indicating that he was aware that the (PS5264G) eligible list was no longer a valid list nor did the

² This function is now part of the Division of Agency Services.

announcement for the promotional examination (PS8545G) indicate that the (PS5264G) eligible list was no longer a valid list.

CONCLUSION

N.J.A.C. 4A:4-7.4(d) provides that an employee who is permanently transferred due to combining of functions or operations of two or more organizational units shall retain promotional rights in the prior promotional unit scope only for promotional examinations he or she has filed for or taken.

N.J.A.C. 4A:4-1.5(a) provides that a provisional appointment may be made in the competitive division of the career service when there is no complete list of eligibles, and no one remaining on an incomplete list will accept provisional appointments.

N.J.A.C. 4A:2-1.4 provides that the appellant has the burden of proof.

Initially, the consolidation of unit scopes did not result from employees being transferred due to a combining of functions. A transfer is the movement of a permanent employee between organizational units within the same governmental jurisdiction. In State service, an organizational unit shall mean an appointing authority. See *N.J.A.C.* 4A:4-7.1(a)1. Thus, since the consolidation of unit scopes occurred within a single organizational unit, *i.e.*, the Department of Environmental Protection, it is not considered a transfer. Therefore, *N.J.A.C.* 4A:4-7.4(d) does not apply in this matter.

In this matter, the record indicates that the appointing authority properly utilized the (PS8545G) eligible list in order to promote its employees to the subject title. Selection Services' November 12, 2013 letter indicated that it approved the appointing authority's plan to consolidate unit scopes and that 36 unit scopes were eliminated. Further, its attachment to that letter indicates that the (PS5264G) eligible list was no longer to be utilized for future certifications. Additionally, the appellant's personnel record also confirms this change as his unit scope changed from G863 to G868, effective December 28, 2013. Accordingly, a new promotional examination (PS8545G) was announced for the subject title and the old promotional examination (PS5264G) eligible list was no longer to be utilized. Once the unit scopes were consolidated and the appellant was assigned to unit scope G868, there were additional employees who would be eligible to compete for the Environmental Specialist 3 position in that unit scope. As such, if the Commission were to permit certification of the (PS5264G) eligible list, such action would be to the detriment of several employees in unit scope G868 because those employees who were not previously employed in the G863 would effectively be deprived of any opportunity to compete for an Environmental Specialist 3 position. In this regard, it must be emphasized that the dual purpose of Civil Service law is to ensure efficient public

service for State government and to provide appointment and advancement opportunities to Civil Service employees based on their knowledge, skill and abilities. These interests are best served when more, rather than fewer, individuals are presented with the employment opportunities that a promotional examination confers. See *Communications Workers of America v. New Jersey Department of Personnel*, 154 N.J. 121 (1998). Thus, the appropriate course of action was followed, as the PS8545G promotional announcement for unit G868 was promptly issued against the positions provisionally occupied on April 1, 2014. This enabled all eligibles within the new organizational unit scope to compete for the promotional opportunity.

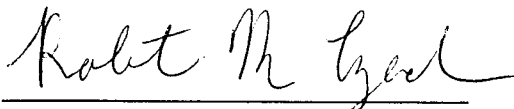
With respect to the appellant's argument that he should have been provisionally appointed prior to others being provisionally appointed, it is noted that all the individuals he mentions were provisionally appointed prior to the appellant's unit scope being consolidated but served in different unit scopes. Therefore, *N.J.S.A. 4A:4-1.5(a)* is not applicable since the (PS5264G) eligible list was not an active list in those individuals' respective unit scopes. In regard to the appellant's comments that he was not notified that the (PS5264G) eligible list was no longer active, while it is unfortunate that the appellant did not receive notice, this does not change the fact that this list was no longer active. Further, as the appellant did apply for promotional examination (PS8545G), he was not harmed by his lack of notice.

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 16th DAY OF SEPTEMBER, 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

Attachments

c: Gary Charyak
Deni Gaskill
Kenneth Connolly
Joseph Gambino

NEW JERSEY CIVIL SERVICE COMMISSION-STATE SERVICE

PROMOTIONAL ANNOUNCEMENT
\$25.00 PROCESSING FEE REQUIRED
 Make Check/Money Order Payable to NJCSC

SYMBOL: PS5264G

WEIGHT CODE: *

TITLE: ENVIRONMENTAL SPECIALIST 3

SALARY: \$60,120.00 - \$85,455.00

ISSUE DATE: October 01, 2011

CLOSING DATE: October 21, 2011

TITLE CODE: 15854/VSFXR2

CLASS CODE: 25

DEPARTMENT: EPA/ENVIRONMENTAL PROTECTION

UNIT SCOPE: G863 Brownsfields Remediation & Reuse Element

Environmental Protection / Human Resources

436 East State Street, 1st Floor

PO Box 408, Trenton New Jersey 08625

Open to employees in the competitive division who are currently serving in a title to which the announcement is open and have an aggregate of one year of continuous permanent service as of the closing date in the following title(s):

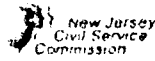
Environmental Specialist 2

IMPORTANT INFORMATION

1. NJAC 4A:4-2.6 states that all requirements listed, including assignment to the department and unit scope, must be met as of the closing date.
2. YOU MUST COMPLETE YOUR APPLICATION IN DETAIL. Your score may be based on a comparison of your background with the job requirements. Failure to complete your application properly may lower your score or cause you to fail. For scoring purposes, possession of Certified Public Manager certificates or equivalent managerial certificates may receive credit.
3. This examination is open to full- and part-time permanent employees. If an employment list results from this announcement, it may be certified to fill full-time and part-time positions. If 35- and 40-hour positions are used within the unit scope, the resulting list may be used to fill either work week position.
4. NJAC 4A:4-1.5 states that any employee who is serving on a provisional basis and who fails to file for and take an examination which has been announced for his/her title SHALL BE SEPARATED FROM THE PROVISIONAL TITLE.
5. IN ACCORDANCE WITH NJAC 4A:4-2.9 make-up requests must be submitted in writing within five(5)days of receipt of the exam notice. However, in situations involving illness, death or natural disasters, make-up requests must be made in writing within five (5) days after the test date. Requests for make-up examinations based on medical grounds must include written documentation from your physician. Mail all material to NJCSC, Selection Services, Attn: Make-up Unit, PO Box 310, Trenton, NJ 08625-0310 or fax it to (609) 984-1064.
6. If requested, college transcripts must be submitted to the attention of NJCSC Division of Selection Services, PO Box 310, Trenton NJ 08625, no later than six weeks from the announced closing date.
7. In accordance with Public Law 2010 c.26, Veterans pay a reduced application fee of \$15.00 if they have previously established Veterans Preference with the DMAVA (as defined by N.J.S.A. 11A:5-1 et seq.), or your claim is approved by DMAVA at least 8 days prior to the issuance of this eligibility list. PLEASE NOTE THIS REDUCED FEE DOES NOT APPLY TO PUBLIC SAFETY TITLES.

DPF-256A * Revised 03/09

NEW JERSEY CIVIL SERVICE COMMISSION-STATE SERVICE
PROMOTIONAL ANNOUNCEMENT



Click here to file Online Print
\$25.00 PROCESSING FEE REQUIRED
Make Check/Money Order Payable to NJCSC

SYMBOL: PS8545G	WEIGHT CODE: *
TITLE: ENVIRONMENTAL SPECIALIST 3	SALARY: \$60,722.00 - \$86,310.00
ISSUE DATE: April 01, 2014	CLOSING DATE: April 21, 2014
TITLE CODE: 15854/DSEXR2	CLASS CODE: 25
DEPARTMENT: EPA/ENVIRONMENTAL PROTECTION	
UNIT SCOPE: G868 Division of Remediation Management	

APPLICATIONS MAY BE OBTAINED FROM AND MUST BE RETURNED TO ONLY ON LINE APPLICATIONS WILL BE ACCEPTED FOR THIS ANNOUNCEMENT

Open to employees in the competitive division who are currently serving in a title to which the announcement is open and have an aggregate of one year of continuous permanent service as of the closing date in the following title(s):

Environmental Specialist 2

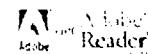
NOTE: As of December 1, 2013, applications must be completed and submitted by 4:00 pm on the closing date

IMPORTANT INFORMATION

1. N.J.A.C. 17:27 states that all requirements listed, including assignment to the department and unit scope, are to be met as of the closing date.
2. YOU MUST COMPLETE YOUR APPLICATION IN DETAIL. Your score may be based on a comparison of your credentials with the job requirements. Failure to complete your application properly may lower your score or cause you to fail.
3. This examination is open to full- and part-time permanent employees. If an employment test results from this announcement may be certified to fill full-time and part-time positions, 21.5% and 10% of our positions are used within the unit scope, the resulting list may be used to fill either work week position.
4. N.J.A.C. 17:27 states that any employee who is serving on a provisional basis and who fails to file for and take an examination which has been announced for his/her title SHALL BE SEPARATED FROM THE PROVISIONAL TITLE.
5. In accordance with Public Law 2010 c. 26, Veterans pay a reduced application fee of \$15.00 if they have previously established Veterans preference with the DMAS. Veterans defined by N.J.S.A. 17A:3-1 et seq. or your claim is approved by DMAS at least 8 days prior to the issuance of this eligibility list. PLEASANTVILLE DOES NOT APPLY TO PUBLIC SAFETY POSITIONS.
6. SAVE ON POSTAGE! GO PAPERLESS! RECEIVE IMMEDIATE CONFIRMATION THAT YOUR APPLICATION HAS BEEN RECEIVED: You can now file an application for this examination online. Visit the Civil Service Commission website at <http://info.esc.state.nj.us>. Select the examination of interest and click on the link "Click Here to file Online" at the top of the announcement. You can now complete and submit your application and payment online to the Civil Service Commission and you will receive an immediate receipt confirmation!
7. SPECIAL NOTE TO ALL APPLICANTS: Please make sure you are assigned to the unit scope indicated above. If you do not know your unit scope assignment, please contact your Human Resource Office. If you file an application for this announcement and you are not assigned to the unit scope indicated above, YOU WILL BE FOUND INELIGIBLE FOR THIS EXAM AND YOUR APPLICATION FEE WILL NOT BE REFUNDED.

DPE 150-A * Revised 07/06

In order to view or download the application you will need the latest version of the Adobe Acrobat Reader. Please ensure for viewing and printing purposes.



Back to Promotional Announcement

