



STATE OF NEW JERSEY

In the Matter of Cristina Allen, *et al.*,
Department of Corrections

CSC Docket Nos. 2019-908 *et al.*

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

Administrative Appeals

ISSUED: DECEMBER 6, 2018

Cristina Allen, Jose Borrero, Isaac Carrero, Edward Drzewiecki, Jonathan Huang,¹ Stephen Indoe, Antonio Megaro, Jason Morozowski, Harmon Murphy Jr., William Searless, Alyce Serlick, Eddie Solis, Craig Sweetman, Brigham Tallmadge, Raquel Tirado, and Christopher Whitlock Senior, Correctional Police Officers or Correctional Police Sergeants with the Department of Corrections, requests reconsideration of the attached decision rendered on August 1, 2018, which dismissed their appeals of the determination of their salaries upon appointment to the title of Senior Correction Officer² as untimely.

The background of this matter is thoroughly discussed in the attached prior decision. Specifically, the appellants requested that the Civil Service Commission (Commission) adjust their salaries consistent to the pay scales included in a collective negotiations agreement in effect between July 1, 2007 and June 30, 2011, or until that agreement was replaced by a successor agreement (Agreement 1). On June 11, 2012, the appointing authority and the Policeman’s Benevolent Association (PBA) agreed to a successor agreement (Agreement 2). Specifically, that agreement indicated that individuals who become Correction Officer Recruits or Correction Officer Recruits, Juvenile Justice Commission, on or after July 1, 2012, would be subject to a different salary scale, that changed the pay scale upon appointment to Senior Correction Officer to a lower amount than provided for in Agreement 1.

¹ It is noted that Jonathan Huang is currently a Correctional Police Sergeant.

² In accordance with *P.L. 2017, c. 293*, Senior Correction Officer has been renamed Senior Correctional Police Officer effective May 1, 2018. *See also, N.J.S.A. 11A:2-11.1.*

Although appointed as Correction Officer Apprentices in July 2012, the appellants maintained that they were repeatedly advised during their recruitment process that their employment would be governed by the terms contained in Agreement 1. In the prior decision, the Commission found that the appellants were made aware of the change in the salary scales in October 2012 and that the appointing authority would not change their salaries in December 2016, yet they did not file an appeal of the decision until May 2018. As such, the Commission dismissed the appeals as untimely.

In their requests for reconsideration, the appellants reiterate the circumstances surrounding their pre-employment process. They also state that the case involving S.R.-T, who became a Correction Officer Recruit after July 1, 2012, but who received a salary consistent with Agreement 1, supports their assertion that they should have their salaries adjusted consistent with Agreement 1. In this regard, the appellants state that similar to S.R.-T. they should be considered to have been appointed, depending on the individual, on May 30, 2012, June 4, 2012, June 5, 2012, June 11, 2012, June 14, 2012, June 22, 2012, or June 25, 2012, the dates of their scheduled pre-employment psychological evaluations. As such, they maintain that their “first official date of employment” with the appointing authority was July 16, 2012, but they were actually appointed on either May 30, 2012, June 4, 2012, June 5, 2012, June 11, 2012, June 14, 2012, June 22, 2012, or June 25, 2012. Additionally, the appellants again argue that their reliance on the information provided by the appointing authority during the recruitment process, under principles of equity and fairness, warrant that they should be paid in accordance with the terms of Agreement 1. Further, the appellants maintain that the Commission adjusted the salary of an employee who had received confirmation of a higher salary when he accepted employment, only to be advised after he started working his salary would actually be lower. *See In the Matter of Gary Plescia* (CSC, decided June 21, 2017). With respect to timeliness, the appellants concede that they were made aware of the change in salary scales in October 2012, but since there has been no break in their service years, “whenever the service anniversary grants a new salary step increase it is a fresh violation.” Thus, the appellants maintain that the Commission cannot dismiss their appeals as being untimely because the “matter at hand becomes more severe and therefore more injuries each year.”

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.

In the present matter, the appellants have not met the standard for reconsideration. In the prior matter, the Commission dismissed these appeals solely on the grounds that they were untimely. Essentially, the appellants contest the date of their appointments to Correction Officer Apprentice as that would determine their salaries upon appointment to Senior Correction Officer. In this regard, they posit the dates of their scheduled pre-employment psychological examinations are their various dates of appointment, but their “official first date of employment” was July 16, 2012. Thus, since they were actually appointed prior to the expiration date of Agreement 1, their salaries should be consistent with the terms of that agreement. However, the appellants concede that they were made aware of the change in the salary scales in October 2012. Despite this knowledge, the appellants never filed an appeal with the Commission upon their appointments as either a Correction Officer Recruit in November 2012 or Senior Correction Officer in November 2013 contesting the date of their initial appointment date to Correction Officer Apprentice. There is no “fresh violation” on each anniversary date because the appellants premise much of their argument on a theory that their actual appointment date should be earlier than July 2012. Thus, if the appellants had a concern with their appointment date to Correction Officer Apprentice, they should have appealed that matter to the Commission over five years ago. As the appellants failed to do so, their appeals were properly dismissed as untimely.

Additionally, there is no good cause to relax the provisions of *N.J.A.C.* 4A:2-1.1(b) to permit the appellants to file an untimely appeal. As previously observed, most of the appellants’ arguments are premised on the position that they were actually appointed prior to July 2012, but that their first day of employment as a Correction Officer Apprentice was July 16, 2012. The Commission disagrees. Initially, the date an applicant for employment is subjected to a psychological or medical evaluation under Civil Service rules does not establish the appointment date. In accordance with *N.J.A.C.* 4A:1-1.3, “appointment” means the offer, acceptance and commencement of employment. The appellants clearly did not commence employment until July 16, 2012. Moreover, in those cases where an individual successfully appeals his or her removal from an eligible list based on a psychological disqualification, the retroactive date of appointment for salary and seniority step placement purposes only is not the date of an individual’s initial psychological examination. Rather, it is a date after the initial psychological examination when the other eligibles on the certification actually commenced employment. Therefore, as none of the appellants were appointed under Civil Service rules prior to July 2012, there is no basis on which to relax the controlling regulatory provision to accept their untimely appeals.

The appellants’ contention that *Plescia, supra.*, is a basis on which to provide them an equitable remedy is misplaced. Plescia’s appointment date was not at issue in that matter and his salary step was adjusted to a step contained in the negotiated pay scale in effect at the time of his appointment. The appellants in this

matter seek to be placed on the salary step at a compensation level that was no longer in effect at the time of their appointments. As noted in the prior decision, both the appointing authority and PBA counsel's letter to them of May 16, 2018 advised the appellants that they were being correctly paid consistent with the salary scales set for in Agreement 2. Thus, as the appellants were not appointed when Agreement 1 was in effect, the Commission does not have standing and cannot change the State compensation plan that was modified pursuant to a collective negotiations agreement. *See N.J.S.A. 11A:3-7(b)*. Accordingly, this does not provide a basis on which to accept their untimely appeals.

ORDER

Therefore, it is ordered that these requests 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
5TH DAY OF DECEMBER, 2018



Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

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and
Correspondence

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Attachment

c:	Cristina Allen	CSC Docket No. 2019-908
	Jose Borrero	CSC Docket No. 2019-911
	Isaac Carrero	CSC Docket No. 2019-906
	Edward Drzewiecki	CSC Docket No. 2019-907
	Jonathan Huang	CSC Docket No. 2019-869
	Stephen Indoe	CSC Docket No. 2019-874
	Antonio Megaro	CSC Docket No. 2019-909
	Jason Morozowski	CSC Docket No. 2019-871
	Harmon Murphy Jr.	CSC Docket No. 2019-868
	William Searless	CSC Docket No. 2019-870
	Alyce Serlick	CSC Docket No. 2019-910
	Eddie Solis	CSC Docket No. 2019-867
	Craig Sweetman	CSC Docket No. 2019-873
	Brigham Tallmadge	CSC Docket No. 2019-898
	Raquel Tirado	CSC Docket No. 2019-905
	Christopher Whitlock	CSC Docket No. 2019-872
	Elizabeth Whitlock	
	Kelly Glenn	
	Records Center	



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Cristina Allen, *et al.*,
Department of Corrections

CSC Docket Nos. 2018-3681 *et al.*

Administrative Appeals

ISSUED: AUGUST 3, 2018 (CSM)

Cristina Allen, Lakesha Amons, Joseph Bellavance, Jose Borrero, William Brady, Isaac Carrero, Jerry Coker, Kimberly Collins, Matthew Coogan, Michael Cook, Jasmin Copeland, Delilah Correa-Perrione, Richard DeHainaut, Edward Drzewiecki, Stephen Echevarria, Luis Estrada, Alexander Figueroa-Sanchez, Thomas Frizziola,¹ Todd Galganske, Shanice Gaskin, Delmar Glanton, James Gross, Jr., Samuel Hansen, Marquis Hill, Jonathan Huang,² Stephen Indoe, Anthony Jacobs, Keith Karrer, Thomas Kish, Daniel Klein, Kimeko Lancaster, John Latona, Alnetha Little, Hai Luong, George Mack, Michael Mann, Marcin Markowski, Anthony Martinez, John McCloskey, Gregory McCrary, Jr., Antonio Megaro, William Meringer, David Mollyk, Sr., Jason Morozowski, Harmon Murphy, Jr., Denisse Narvaez, Amir Nathari, Douglas Perrone, Szymon Popek, John Raebig, Victoria Reese, Ashley Riegel, Rafiel Rodriguez, Kevin Rodriguez, Jr., Santiago Roman, Joseph Sandomierski, William Searless, Alyce Serlick, Jamal Sloan El, Richard Smialowicz, David Smith, Jarron Smith, Eddie Solis, Kenny Solorzano, Tavon Spearman, Craig Sweetman, Brigham Tallmadge, Mark Thornton, Raquel Tirado, Dana Walker, Christopher Whitlock and Tamika Williams, Senior Correctional Police Officers or Correctional Police Sergeants with the Department of Corrections, appeal the determination of their salaries upon appointment to the

¹ It is noted that Thomas Frizziola, Antonio Megaro, Douglas Perrone, and Szymon Popek resigned effective May 20, 2016, October 28, 2016, July 10, 2017, and December 15, 2017 as Senior Correction Officers, respectively.

² It is noted that Jonathan Huang is currently a Correctional Police Sergeant.

title of Senior Correction Officer.³ These appeals have been consolidated due to common issues presented.

By way of background, the appellants present that they went through the four phases of the recruitment process for Correction Officer Apprentice between February 2012 and July 2012. During that time frame, they state that they were repeatedly advised by the appointing authority that the major terms and conditions of their employment would be governed by the collective negotiations agreement with the Policeman's Benevolent Association, Local 105 (PBA) in effect between July 1, 2007 and June 30, 2011, or until that agreement was replaced by a successor agreement (Agreement 1). At that time, Agreement 1 provided that a Correction Officer Recruit would have an annual salary of \$40,000.00 during the recruit phase and \$55,842.47 upon appointment as a Senior Correction Officer. On June 11, 2012, the appointing authority and the PBA agreed to a successor agreement (Agreement 2). Specifically, that agreement indicated that individuals who become Correction Officer Recruits or Correction Officer Recruits, Juvenile Justice Commission, on or after July 1, 2012, would be subject to a different salary scale, that changed the pay scale upon appointment to Senior Correction Officer to \$44,039.00. The appellants note that Agreement 2 was not published on the appointing authority's website until January 2013, the Compensation Compendium until July 13, 2013, or on the Public Employment Relations Commission's (PERC) website until June 3, 2013. However, the appellants indicated that Agreement 2 was presented to them in October 2012.

Although Agreement 2 reducing the salary scale upon appointment to Senior Correction Officer was reached on June 11, 2012, the appellants claim that the appointing authority never advised them of the change during the Human Resource Orientation and offer of employment on or about July 5, 2012. In this regard, they claim that the appointing authority did not disclose this information because it knew the successor pay scale was so significantly reduced that disclosing it would result in the majority of candidates not accepting an appointment of July 16, 2012. The appellants state that they relied "heavily and exclusively" on the salary scale in Agreement 1 when they were recruited and made a life changing decision by accepting an appointment and giving up their primary source of income in the private sector. Subsequently, after five months of employment, in October 2012, the appellants present that they were given a letter dated September 12, 2012 by Academy Instructors indicating that the revised salary scale contained in Agreement 2 applied to them. Upon their orientation with the PBA in October 2012, the appellants complained and were advised by the union that the matter was being handled by the appointing authority. However, no action was taken, and, on November 2, 2013, when they were moved to the title of Senior Correction Officer,

³ In accordance with P.L. 2017, c. 293, Senior Correction Officer has been renamed Senior Correctional Police Officer effective May 1, 2018. *See also*, N.J.S.A. 11A:2-11.1.

they were not paid in accordance with Agreement 1, but instead, at the significantly lower salary scale contained in Agreement 2.

The appellants maintain that they continued to complain to their union about the situation and was reassured by the PBA that the matter was being handled by the appointing authority. However, it was not until October 7, 2016, that the PBA's counsel contacted the appointing authority to have the salary issue corrected. In response, by letter dated December 6, 2016, the appointing authority advised the appellants that the signing of Agreement 2 predated the effective date they entered the academy. Further, it noted that the academy class was notified of the change in salary scale several weeks after their arrival at the academy. Therefore, the appointing authority indicated that it was limited in what actions it could take as it is obligated by the collective negotiations agreement. Although the appellants attempted to pursue a grievance in this matter, in a letter dated May 16, 2018, counsel for the PBA advised them that it could only file a grievance over an alleged breach of contract. Thus, since the appellants were being paid consistent with the contract, the PBA would not file a grievance on their behalf. However, the PBA advised that the appellant could file a "non-contractual" grievance directly with the appointing authority. Nevertheless, the appellants claim that past practice of the PBA was to represent both union members and non-members regarding non-contractual issues, and did so in October 2012, but now has changed its position and will not represent them on this issue.

In support of their appeals, the appellants state that their case is similar to that of S.R.-T. In that matter, they claim that S.R.-T. was offered a salary consistent with Agreement 1. Although S.R.-T. started her Academy in March 2012, she became disabled, was unable to complete the Academy, and was "recycled," starting an Academy in December 2012 and graduating on March 25, 2013. However, despite becoming a Correction Officer Recruit on or after July 1, 2012, upon her subsequent appointment as a Senior Correction Officer, S.R.-T. was provided a salary consistent with the salary scale contained in Agreement 1. Although not the same, the appellants maintain that their situation is analogous to S.R.-T.'s as they were led to believe when they accepted their appointments that their salaries would be based on Agreement 1. Given the fact that they attempted to pursue this matter with the PBA since 2012, that the PBA did initially pursue the matter, but advised in 2018 that it would not pursue the matter, the appellants maintain that the Civil Service Commission (Commission) should entertain their appeals as timely. The appellants seek the Commission to adjust their salaries consistent to the pay scales included in Agreement 1 and that they be awarded retroactive differential pay.

CONCLUSION

N.J.A.C. 4A:2-1.1(b) provides that an appeal shall be filed within 20 days of notice of the action, decision, or situation being appealed, and *N.J.A.C.* 4A:1-1.2(c) provides that a rule may be relaxed for good cause.

The purpose of time limitations is not to eliminate or curtail the rights of appellants, but to establish a threshold of finality. In the instant case, the delay in filing the appeals unreasonably exceeds that threshold of finality. Specifically, the appellants concede that they were made aware of the change in the salary scales in October 2012. Although they attempted to informally and/or through the PBA to address their concerns with the appointing authority, the appellants did not appeal the matter of their salaries to the Commission until May 2018.⁴ Indeed, the appellants were clearly advised in December 2016 by the appointing authority that it was limited in what actions it could take with respect to their salaries as it was obligated to comply with the collective negotiations agreement. As such, the appellants were aware of the situation being appealed in October 2012 and that the appointing authority would not change their salaries in December 2016, yet they did not file an appeal with the Commission until more than one year after that notification. The responsibility to file a timely appeal rests solely with the appellants. Further, the filing of an appeal in a different forum does not toll the time to file an appeal with the Commission. *See In the Matter of Sandra Alexander* (MSB, decided March 9, 2005); *In the Matter of Richard Vogel* (MSB, decided March 9, 1999); *In the Matter of Jose Gonzalez* (MSB, decided June 23, 1998). Additionally, the failure to recognize or to explore the legal basis for an appeal, without more, does not constitute good cause to extend or relax the time for appeal under the Commission's rules. *See Savage v. Old Bridge-Sayreville Med. Group*, 134 N.J. 241, 248 (1993) (Ignorance of the specific basis for legal liability did not operate to extend time to initiate legal action). As such, the Commission dismisses these appeals on the grounds that they are untimely.

Although the Commission has dismissed these appeals on the basis that they are untimely, even assuming *arguendo* that the appellants filed timely appeals, the appellants have not demonstrated that any Civil Service law or rule was violated. Essentially, the appellants maintain that they were offered a higher salary during the recruitment phase, that the appointing authority purposely failed to disclose that the collective negotiations agreement had changed prior to their actual appointment date which resulted in them receiving a lower salary, and that they accepted the appointment, possibly forgoing other career opportunities, based on the promise that they would receive the higher salary.⁵ It is unfortunate that the PBA and/or the appointing authority did not advise the appellants prior to them

⁴ The last appeal was filed in July 2018.

⁵ The appellants have not identified any specific forgone opportunities.

accepting their positions that the governing collective negotiations agreement had changed. However, *N.J.S.A.* 11A:3-7(b) provides:

Prior to adoption or implementation of an amendment, change or modification to the compensation plan for State employees which amendment, change or modification affects public employees represented by a majority representative or designated pursuant to *N.J.S.A.* 34:13A-5.3, the State shall negotiate with the majority representative for an agreement on the amendment, change or modification of the compensation plan. The State shall negotiate in good faith with the majority representative, a State employee compensation plan shall not be amended, changed or modified except pursuant to a written agreement between the State and the majority representative following negotiations.

As noted by both the appointing authority and PBA counsel's letter to them of May 16, 2018, the appellants are being correctly paid consistent with the salary scales set forth in Agreement 2. The appellants have not presented the misapplication of any Civil Service law or rule and the Commission does not have standing to change the State compensation plan that was modified pursuant to a collective negotiations agreement. In this regard, the Commission does not have jurisdiction to enforce or interpret grievance procedures or other items which are contained in a collective bargaining agreement negotiated between the employer and the majority representative. *See In the Matter of Jeffrey Sienkiewicz, Bobby Jenkins and Frank Jackson*, Docket No. A-1980-99T1 (App. Div., May 8, 2001). The proper forum to bring such concerns is at PERC. *See N.J.S.A.* 34:13A-5.3 and *N.J.S.A.* 34:13A-5.4(c).

With respect to S.R.-T., agency records indicate that she prevailed in an appeal of her removal from the Correction Officer Recruit (S9987M), Department of Corrections eligible list. The Commission ordered that she receive a retroactive appointment, for seniority and salary step placement, consistent with the date she would have been appointed from the list had she not been removed. Although S.R.-T. attended an academy subsequent to that of the appellants, her retroactive appointment was prior to the July 1, 2012 change in the contract. Therefore, she was properly placed at the salary scale consistent with Agreement 1 upon her appointment to Senior Correction Officer. Accordingly, her employment history differs from the appellants' situation and does not demonstrate persuasive proof to change their circumstances.

ORDER

Therefore, it is ordered that these appeals be dismissed as untimely.

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 1ST DAY OF AUGUST, 2018



Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

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and
Correspondence

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Attachment

- c: Appellants Listed on Attachment A
- The Honorable Troy Singleton
- Elizabeth Whitlock
- Kelly Glenn
- Records Center

ATTACHMENT A

Cristina	Allen	(2018-3681)	Marcin	Markowski	(2018-3455)
Lakesha	Amons	(2018-3519)	Anthony	Martinez	(2018-3587)
Joseph	Bellavance	(2018-3454)	John	McCloskey	(2018-3512)
Jose	Borrero	(2018-3447)	Gregory	McCrary, Jr.	(2018-3458)
William	Brady	(2018-3451)	Antonio	Megaro	(2018-3656)
Isaac	Carrero	(2018-3585)	William	Meringer	(2018-3514)
Jerry	Coker	(2018-3617)	David	Mollyk, Sr.	(2018-3716)
Kimberly	Collins	(2018-3569)	Jason	Morozowski	(2018-3584)
Matthew	Coogan	(2019-185)	Harmon	Murphy, Jr.	(2018-3515)
Michael	Cook	(2018-3598)	Denisse	Narvaez	(2018-3579)
Jasmin	Copeland	(2018-3566)	Amir	Nathari	(2018-3456)
Delilah	Correa-Perricone	(2018-3597)	Douglas	Perrone	(2018-3634)
Richard	DeHainaut	(2018-3452)	Szymon	Popek	(2018-3653)
Edward	Drzewiecki	(2018-3450)	John	Raebig	(2018-3801)
Stephen	Echevarria	(2018-3443)	Victoria	Reese	(2018-3575)
Luis	Estrada	(2018-3586)	Ashley	Riegel	(2018-3574)
Alexander	Figuroa-Sanchez	(2018-3445)	Rafiel	Rodriguez	(2018-3577)
Thomas	Frizziola	(2018-3453)	Kevin	Rodriguez, Jr.	(2018-3510)
Todd	Galganske	(2018-3564)	Santiago	Roman	(2018-3613)
Shanice	Gaskin	(2018-3511)	Joseph	Sandomierski	(2018-3618)
Delmar	Glanton	(2018-3726)	William	Searles	(2018-3588)
James	Gross, Jr.	(2018-3764)	Alyce	Serlick	(2018-3571)
Samuel	Hansen	(2018-3572)	Jamal	Sloan El	(2018-3655)
Marquis	Hill	(2018-3518)	Richard	Smialowicz	(2018-3578)
Jonathan	Huang	(2018-3628)	David	Smith	(2018-3513)
Stephen	Indoe	(2018-3457)	Jarron	Smith	(2018-3737)
Anthony	Jacobs	(2018-3448)	Eddie	Solis	(2018-3589)
Keith	Karrer	(2018-3449)	Kenny	Solorzano	(2018-3567)
Thomas	Kish	(2018-3565)	Tavon	Spearman	(2018-3446)
Daniel	Klein	(2018-3619)	Craig	Sweetman	(2018-3573)
Kimeko	Lancaster	(2018-3738)	Brigham	Tallmadge	(2018-3633)
John	Latona	(2018-3576)	Mark	Thornton	(2018-3570)
Alnetha	Little	(2018-3725)	Raquel	Tirado	(2019-2)
Hai	Luong	(2018-3563)	Dana	Walker	(2018-3568)
George	Mack	(2018-3591)	Christopher	Whitlock	(2018-3582)
Michael	Mann	(2018-3444)	Tamika	Williams	(2018-3657)