



STATE OF NEW JERSEY

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

In the Matter of Thomas Gillen, Jr.,
Sheriff's Officer Sergeant (PC2608V),
Hudson County Sheriff

Examination Appeal

CSC Docket No. 2018-1894

ISSUED: JUNE 8, 2018 (HS)

Thomas Gillen, Jr., represented by Catherine M. Elston, Esq., appeals the determination of the Division of Agency Services (Agency Services), which found that he lacked the required amount of permanent status in a title to which the examination was open for Sheriff's Officer Sergeant (PC2608V), Hudson County Sheriff.

The subject examination was announced with a closing date of November 21, 2017 and was open to employees in the competitive division who had an aggregate of three years of continuous permanent service in the title of Sheriff's Officer as of the closing date. Sixty-five candidates have been admitted to the examination, which has not yet been scheduled.

The appellant was made permanent in the title of Sheriff's Officer in Hudson County on March 30, 2015, and thus, he was found to possess two years, seven months, and 22 days of permanent service in the title of Sheriff's Officer as of the closing date, and thereby lacked four months and eight days.

On appeal to the Civil Service Commission (Commission), the appellant recounts that he previously served permanently in the title of Sheriff's Officer with the Hudson County Sheriff's Office (HCSO) from February 3, 1997 until his resignation in good standing on July 14, 2002. Thereafter, he became a police officer for the New Jersey Transit Police Department, where he remained until 2011. On February 14, 2011, he received an unclassified appointment to the title of Sheriff's Investigator with the HCSO. In or about 2010, just prior to the

aforementioned unclassified appointment, he filed a request that his name be placed on a regular reemployment list for the title of Sheriff's Officer, which was denied. *See In the Matter of Thomas Gillen* (CSC, decided November 2, 2011). On or about March 4, 2015, the appellant requested that his name be placed on a reemployment list for the title of Sheriff's Officer pursuant to a February 2015 amendment to *N.J.S.A. 11A:4-9* providing for sheriff's officer reemployment lists, *P.L. 2015, c. 17*. The appointing authority certified that it was in the best interest of the service to provide the appellant with reemployment status in the title of Sheriff's Officer as well as retroactive seniority in that title from 2007, when he first requested reemployment. In or about March 2015, this agency approved the request in part, and the appellant received a permanent appointment from the reemployment list for the title of Sheriff's Officer, effective March 30, 2015 as noted earlier.¹

The appellant notes that the Legislature made the 2015 amendment to *N.J.S.A. 11A:4-9*² retroactive to January 1, 2002, *P.L. 2015, c. 17, sec. 2*, and provided for prior permanent members of a sheriff's office to become reemployed in the same title from which they resigned. The appellant argues that had the 2011 version of *N.J.S.A. 11A:4-9* also provided for Sheriff's Officer reemployment lists of unlimited duration, he would have been appointed to his prior title of Sheriff's Officer in 2011, when he returned to the HCSO. The appellant contends that the 2015 amendment provided retroactivity to 2002, which would also require that his reemployment in the title of Sheriff's Officer be retroactive to 2011, when he returned to the HCSO as a Sheriff's Investigator. The appellant maintains that this is the only proper reading of *N.J.S.A. 11A:4-9* and the 2015 amendment.

CONCLUSION

N.J.A.C. 4A:4-2.6(a) provides, in pertinent part, that applicants for promotional examinations shall 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*. *N.J.A.C. 4A:4-2.6(b)* provides, in pertinent part, that in local service, applicants for promotion from entry level law enforcement titles shall have three years of continuous permanent service in a title to which the examination is open, except as otherwise provided by law.

N.J.S.A. 11A:4-9(d), as amended by *P.L. 2015, c. 17*, provides, in pertinent part, that this agency may establish sheriff's officer reemployment lists, which shall include former permanent uniformed members of a sheriff's office who have

¹ The appellant's unclassified appointment to the title of Sheriff's Investigator was discontinued, effective March 27, 2015.

² Prior to the amendment, *N.J.S.A. 11A:4-9*, together with *N.J.S.A. 11A:4-7*, provided for police and fire reemployment lists of unlimited duration.

resigned in good standing and whose reemployment is certified by the appointing authority as in the best interest of the service. *P.L. 2015, c. 17* was retroactive to January 1, 2002. *See P.L. 2015, c. 17, sec. 2. N.J.A.C. 4A:4-3.1(b)* provides:

In accordance with *P.L. 2015, c. 17*, any permanent sheriff's officer who resigned in good standing on or after January 1, 2002, may request that his or her name be placed on a sheriff's officer reemployment list. However, any person appointed as a sheriff's officer prior to the [February 2015] effective date of *P.L. 2015, c. 17*, shall not be displaced by a person appointed from a sheriff's officer reemployment list.

N.J.A.C. 4A:4-3.3(b)3 provides, in pertinent part, that a Sheriff's Officer reemployment list shall have unlimited duration.

N.J.A.C. 4A:4-7.10(d) provides that seniority commences as of the date of regular reemployment.

In this matter, the appellant contends that because *P.L. 2015, c. 17* was retroactive to January 1, 2002 and he was reemployed by the HCSO in the unclassified title of Sheriff's Investigator in 2011, he is to be provided with permanent status retroactive to 2011. The Commission is not persuaded. Notwithstanding the retroactivity of *P.L. 2015, c. 17*, *N.J.S.A. 11A:4-9(d)* as amended speaks only to this agency's discretion to *establish* sheriff's officer reemployment lists and who may be included on such lists. *N.J.A.C. 4A:4-3.1(b)* provides that any permanent sheriff's officer who resigned in good standing on or after January 1, 2002 may request that his or her name be *placed on* a sheriff's officer reemployment list but that any person appointed as a sheriff's officer prior to the February 2015 effective date of *P.L. 2015, c. 17* would not be displaced by a person appointed from a sheriff's officer reemployment list. Notably, the foregoing provisions do not provide for the appellant's requested relief, *i.e.*, an award of permanent status made retroactive to any date. Furthermore, it must be noted that the subject examination was open to employees with three years of *continuous permanent service* as of the closing date in the Sheriff's Officer title. This means that the appellant must have actually served in and performed the duties of the Sheriff's Officer title during the requisite time in grade in order to be eligible. *See In the Matters of David J. Barrett, Fire Captain (PM3511E) and Robert F. O'Neill and Anthony J. Verley, Deputy Fire Chief (PM3590D)* (MSB, decided November 19, 2003) (Individuals who had received retroactive appointment dates to the Fire Lieutenant and Fire Captain titles solely on equitable considerations but who did not meet the time-in-grade service requirements as of the closing date of the announcement were not entitled to sit for the examinations for Fire Captain and Deputy Fire Chief.) A review of the record reveals that the appellant resigned from the HCSO in good standing in 2002. The appellant later received an *unclassified* appointment to the title of Sheriff's Investigator with the HCSO on February 14,

2011, and this appointment was discontinued on March 27, 2015.³ The appellant received a permanent appointment from the Sheriff's Officer reemployment list on March 30, 2015, and in accordance with *N.J.A.C.* 4A:4-7.10(d), his seniority commenced as of that date. Therefore, Agency Services properly determined that he did not possess the required three years of continuous permanent status in the title of Sheriff's Officer as of the November 21, 2017 closing date. Accordingly, the record reflects that the appellant did not meet the announced eligibility requirements.

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 6TH DAY OF JUNE, 2018



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³ The *permanent* appointment rights of the Civil Service Act are inapplicable to unclassified appointments. See *N.J.A.C.* 4A:4-1.3(b).