



STATE OF NEW JERSEY

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

In the Matter of Richard Dressler,
Matthew Kelleher, Theodore
Kwiatkowski and Michael Somma,
Fire Officer 1 (PM5205N), Jersey
City

Administrative Appeal

CSC Docket Nos. 2018-249, 2018-250,
2018-251 and
2018-252

ISSUED: August 6, 2018 (WR)

Richard Dressler, Matthew Kelleher, Theodore Kwiatkowski and Michael Somma appeal their non-appointment from the Fire Officer 1 (PM5205N), Jersey City eligible list.

By way of background, the Fire Officer 1 (PM5205N), Jersey City eligible list promulgated on December 20, 2012 and expired on January 1, 2016. One hundred and thirty-four names appeared on the list, including the appellants at rank 38, 37, 36 and 42, respectively. Three certifications were issued, from which 23 individuals were appointed. It is noted that none of the appellants' names appeared on these certifications. In this regard, no eligible ranked lower than 33 on the eligible list was certified at any time to the appointing authority.

Subsequently, on February 16, 2017, the appellants filed suit in New Jersey Superior Court alleging, in pertinent part, that they were denied appointments from the subject eligible list in retaliation for a lawsuit they filed against Jersey City. On June 23, 2017, several counts of the appellant's lawsuit were dismissed for failure to exhaust administrative remedies. Thereafter, on July 5, 2017 the appellants filed the instant appeal.¹

On appeal to the Civil Service Commission (Commission), the appellants rely on the allegations in their February 16, 2017 civil complaint. Specifically, the appellants allege that in November 2012, seven firefighters' names were added to

¹ Agency records indicate that none of the appellants filed an appeal with this agency related to this matter before the instant appeal.

the Fire Officer 1 (PM2567J) list “without being certified” and that those individuals then received promotions.² They alleged that this agency thereafter “threatened to roll back those persons who were uncertified when promoted” but the appointing authority requested a hearing “in order to be granted special permission” to appoint those individuals. In *In the Matter of Fire Officer 1 (PM2567J), Jersey City* (CSC decided, February 6, 2016), the Commission revived the PM2567J eligible list to certify seven individuals whose appointments were necessary to fill vacancies caused by retirements. It is noted that the seven eligibles were ranked 35 through 41 on the PM2567J eligible list. Agency records indicate that none of the appellants appealed their non-appointment from the PM2567J eligible list. Subsequently, the PM5205N eligible list promulgated and the appellants claim that they all ranked higher on the PM5205N eligible list than the seven individuals that were certified from the PM2567J eligible list in *In the Matter of Fire Officer 1 (PM2567J), Jersey City, supra*. Furthermore, the appellants claim that unnamed city council members promised them promotions throughout the life of the PM5205N eligible list. They also assert that James Shea,³ the Director of the Jersey City Fire Department since September 2013, threatened to retaliate against them for filing a lawsuit against Jersey City.

In response, the appointing authority, represented by Jeremy Farrell, Assistant Corporation Counsel, argues that the Commission’s decision in *In the Matter of Fire Officer 1 (PM2567J), Jersey City supra*, has already decided the issue the appellants raise in this matter. The appointing authority contends that the appellants’ complaint in the instant matter does not “contain anything new of evidential value.” Accordingly, the appointing authority requests that the appellants appeal be dismissed under the doctrine of collateral estoppel.

CONCLUSION

N.J.A.C. 4A:2-1.1(b) provides that an appeal must be filed within 20 days of notice of the action, decision or situation being appealed. Although the appellants present substantive arguments concerning their non-appointment due to retaliation for filing a lawsuit against Jersey City, the controlling issue in this matter is whether the appellants’ appeal was timely filed. As noted above, the subject eligible list expired on January 1, 2016 and *In the Matter of Fire Officer 1 (PM2567J), supra.*, was decided on February 6, 2013. Using the filing date of their civil suit in Superior Court, the appellants’ appeal is dated over 13 months after the subject eligible list expired. The purpose of time limitations is not to eliminate or curtail

² Agency records indicate that the PM2567J eligible list containing the names of 149 eligibles, promulgated on June 16, 2009 and expired on December 20, 2012. Dressler ranked 130, Kwiatkowski ranked 84 and Somma ranked 103. Kelleher’s name did not appear on the eligible list. Two certifications were issued; PL111392 contained the names of the first through 16th ranked eligibles and PL121035 contained the names of the 16th through 34th ranked eligibles.

³ Agency records indicate that Shea received an unclassified appointment to the title of Municipal Department Head, effective August 5, 2013.

the rights of appellants, but to establish a threshold of finality. In the instant case, the 13 month delay in filing the instant appeal unreasonably exceeds that threshold of finality. Thus, it is clear that the appellants' appeal is untimely.

Nor is there any basis in this particular case to extend or to relax the time for an appeal. See *N.J.A.C.* 4A:1-1.2(c) (the Commission has the discretionary authority to relax rules for good cause). In this regard, it is appropriate to consider whether the delay in asserting his right to appeal was reasonable and excusable. *Appeal of Syby*, 66 *N.J. Super.* 460, 464 (App. Div. 1961) (construing "good cause" in appellate court rules governing the time for appeal); *Atlantic City v. Civil Service Com'n*, 3 *N.J. Super.* 57, 60 (App. Div. 1949) (describing the circumstances under which delay in asserting rights may be excusable). Among the factors to be considered are the length of delay and the reasons for the delay. *Lavin v. Hackensack Bd. of Educ.*, 90 *N.J.* 145 (1982). See e.g., *Matter of Allen*, 262 *N.J. Super.* 438 (App. Div. 1993) (allowing relaxation of the Commission's appeal rules where police officer repeatedly, but unsuccessfully, sought clarification of his employment status). In this case, the appellants have not presented any reason that would excuse the 13 month delay in filing their appeal. The Commission notes that 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 does not operate to extend time to initiate legal action).

Notwithstanding the untimeliness of the instant appeal, the Commission notes that the appellants were never certified from the PM5205N eligible list. Therefore, they were not reachable for appointment on the PM5205N eligible list and their claim that unnamed city council members promised them promotions is irrelevant. Additionally, the appellants' claims regarding the PM2567J eligible list are barred by the doctrine of collateral estoppel because the Commission already decided the issue of the appropriateness of reviving the PM2567J eligible list to allow for a certification of the next eligibles as there were actual vacancies that needed to be filled. See, *In the Matter of Fire Officer 1 (PM2567J), Jersey City, supra*. Accordingly, the appellants' appeal of their non-appointment to Fire Officer is untimely and they have failed to show good cause to justify relaxing the requirements of *N.J.A.C.* 4A:2-1.1(b).

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 1st DAY OF AUGUST, 2018



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