



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Frank Rossi, City of Newark

CSC Docket No. 2018-3180

Reconsideration

ISSUED: August 3, 2018 (RE)

Frank Rossi, represented by Bette Grayson, Esq., petitions the Civil Service Commission (Commission) for a reconsideration of *In the Matter of Frank Rossi, City of Newark* (CSC, decided April 4, 2018). A copy of that decision is attached hereto and incorporated herein.

By way of background, Rossi was permanently appointed to Police Sergeant on January 22, 2002, and he maintained continuous employment from that date to the present, except for a leave of absence (military leave with pay) from January 1, 2016 to June 15, 2016. On the eligible list for Police Lieutenant (PM2539K), Newark, Rossi ranked fifth, and only the first ranking candidate was appointed. Rossi filed for, but did not take, the next examination, Police Lieutenant (PM5035P). The appointing authority requested retroactive seniority for Rossi on the basis that he was serving in the military and unavailable for an appointment. Rossi was asked to provide his status of service, and he indicated 14 circumstances where he was training or mobilized on active duty. In 2011, he indicated he was absent from January 13 to 16, 2011, from February 4 to 12, 2011, and May 15 to June 11, 2011. Thus, he was not absent or unavailable for appointment on December 26, 2011, the date of the certification of (PM2539K) when one appointment was made. Rossi was not included in *In the Matter of Sean Gaven, et al., City of Newark* (CSC, decided May 17, 2017), as he was not a petitioner in that matter, and he was not included in the settlement agreement. That settlement agreement was executed prior to authorization by the Department of Community Affairs (DCA), and the waiver for the approval of the promotions was not signed. However, the promotions were not barred unless there is a negative impact on the

City's financial budget. Newark identified that it did not have a DCA waiver for Rossi as he was not part of the original settlement. Additionally, Rossi was working in-title, and had not been performing the work of a Police Lieutenant. Rossi argued that he was not part of the settlement as he was deployed at the time it was litigated. However, Rossi was on active duty from September 3 to 29, 2012, and June 15 to July 6, 2013. He was not on active duty when the plaintiffs filed the Civil Action, and he did not file a similar Civil Action. While the settlement agreements were signed in April 2016, when Rossi was deployed, the initial Actions were underway years before. Rossi did not pursue a Civil Action at the same time as the petitioners' in *Gaven*, did not perform out-of-title work as a Police Lieutenant for a significant period of time, and the City of Newark (Newark) did not indicate that DCA approved the promotion. Accordingly, the Commission found no basis to provide Rossi with retroactive seniority.

In request for reconsideration, Rossi argues that Newark did not request a another certification of the eligible list (PM2539K) due to litigation regarding the *Gaven, supra*, matter. He maintains he was on duty in the "spring of 2016" when *Gaven et al.* received their appointments. He maintains that Newark assured him he would be promoted with the others who had filed the lawsuit, and stated that several of the litigants could not be promoted unless he was promoted also. He states that there is precedent for him not be bypassed in a prior settlement. See *In the Matter of Edward G. Borger et al., Police Lieutenant (PM2622G) Newark* (CSC, decided March 7, 2012) and *In the Matter of Edward G. Borger et al., Newark* (CSC, decided June 23, 2010). In those matters, the Commission noted that DCA approved five appointments to Police Lieutenant, but Newark requested and received cancellation of an eligible list and stated that it did not need additional Police Lieutenants. As a result of a settlement agreement, the list was revived to certify through rank 43 so appointments could be made. The Commission acknowledged that, should the petitioners be appointed ahead of interested higher ranking eligibles, the appointing authority should provide the reason for the selections. Very shortly after the March 7, 2012 decision, the appellants were appointed from a subsequent certification, and provided retroactive seniority based on that decision.

Rossi argues that Newark completed the negotiations for the *Gaven* settlement but before DCA signed off over one year later, Rossi was inadvertently omitted from the settlement as he was on active military duty. He states that he served the country in extremely dangerous locations in very challenging positions, and that DCA approval is no longer a requirement for promotions. He states that how long he performed the duties of a Police Lieutenant was never supplied by Newark, but such failure and the lack of need of DCA approval should not be used to keep him from being promoted. He states that he has the support of the Safety Director and that he was not intentionally bypassed.

## CONCLUSION

*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 no veteran heads the list.

*N.J.A.C.* 4A:2-1.6(b) provides that a petition for reconsideration must show the following:

1. New evidence or additional information not presented at the original proceeding which would change the outcome and the reasons that such evidence was not presented at the original proceeding; or
2. That a clear material error has occurred.

Applying this standard to the instant matter, the petitioner has not demonstrated that reconsideration should be granted. In the present matter, the Commission's decision is amply supported by substantial evidence. There is nothing in the record to demonstrate that the Commission's decision was arbitrary, capricious or unreasonable or against the weight of the credible evidence. Rossi has not stated that he Newark had the necessary DCA waiver at the time, nor that he was working out-of-title as a Police Lieutenant. He has not demonstrated that he was on active duty when the plaintiffs filed the Civil Action, or explain why he did not file a similar Civil Action at the time. Interested higher-ranking candidates, such as Rossi, can be bypassed pursuant to *N.J.A.C.* 4A:4-4.8(a)3ii, and no precedent was set in *Borger et al., supra*.

The petitioner has failed to present a basis for reconsideration of this matter since he failed to establish that a clear material error occurred in the original determination or that new evidence presented would change the outcome of the appeal.

## ORDER

Therefore, it is ordered that this request 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 1<sup>st</sup> DAY OF AUGUST, 2018



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