



STATE OF NEW JERSEY

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

In the Matter of Francis Montone,
Monroe Township

Reassignment Appeal

CSC Docket No. 2019-716

ISSUED: FEBRUARY 8, 2019 (SLK)

Francis Montone, a provisional Police Lieutenant with Monroe Township, represented by Michael T. Sweeney, Esq., appeals his reassignment.

By way of background, personnel records indicate that the appellant was hired as a Police Officer in August 1997, promoted to Police Sergeant in April 2013, and provisionally appointed as a Police Lieutenant, effective January 1, 2018.

On appeal, the appellant presents that around February 2000, he was assigned to the Detective Bureau, Special Operations Division and, in 2013, he was promoted to Police Sergeant and assigned to be the Detective Bureau Supervisor. Thereafter, on November 28, 2016, the appellant indicates that he was assigned the out-of-title duties of Acting Lieutenant and he continued to serve as the Detective Bureau Supervisor. In this position, he oversaw the Major Crimes Unit, the Special Investigation Unit, the DEA Investigator, and the Evidence and Property Custodian and directly reported to the Deputy Chief who, in turn, reported to the Chief. The appellant highlights his accolades and commendations he received from the police department and letters from citizens thanking him for his excellent service. He represents that in September 2017, the Chief and Deputy Chief advised him that effective January 1, 2018, they were reassigning him to the Patrol Division and he was being promoted to Police Lieutenant. The appellant states that the Deputy Chief advised him that the reassignment was due to repeated disciplinary issues and what was perceived as an abrasive supervising style. He presents that he had never previously been advised about these issues and there were no progressive

disciplinary steps that were taken despite the police department's "Early Warning System" and other departmental rules and regulations. The appellant indicates that even though he was promoted to Lieutenant, he is receiving less compensation, his duties are higher risk, he has a less favorable schedule, he has lost prestige, and he has been placed in a publicly demeaning position within the police department. The appellant argues that his reassignment was a disciplinary action, without disciplinary procedures, in violation of civil service rules. Accordingly, he requests compensation for lost income and to be reassigned back to his position as Detective Bureau Supervisor.

In response, the appointing authority, represented by Michael J. DiPiero, Esq., states that its actions were based on the needs of the department and not for disciplinary purposes. It presents that under the collective negotiations agreement, the Chief has the authority to determine the assignments, schedules and shifts for the police department. The appointing authority indicates that after the appellant was assigned the Acting Lieutenant's duties for the Detective Bureau, he was evaluated for performance like other officers and there were many performance deficiencies that were noted. However, the appointing authority contends that none of these deficiencies rose to the level warranting disciplinary action. It does, however, acknowledge that these deficiencies were a factor in making the reassignment. The appointing authority highlights that when the appellant was reassigned to the Patrol Division, he was appointed as Lieutenant, effective January 1, 2018¹. The appointing authority presents that the appellant's reassignment was one of many reassignments that were issued by the Chief that included changes in work-week shift schedules, shift assignments and hours. These reassignments included both patrol officers and supervisors. The appointing authority argues that the appellant's reassignment was not made for disciplinary reasons as he received a base salary increase and additional paid leave because of his promotion and reassignment. It contends that the appellant's reassignment to the Patrol Division was not a reduction in status and was based on the department's needs to deploy additional superior officers to manage work associated with the Bail Reform Act. It emphasizes that the Chief has the discretion to reassign supervisory officers and the appellant had documented performance deficiencies and was resistant to change in the Detective Unit and training programs for senior staff. The appointing authority asserts that if it were its intention to discipline the appellant, he would not have been promoted to Lieutenant. It presents that another officer was also promoted and reassigned from the Detective Bureau to the Patrol Division, even though this officer requested to remain in the Detective Bureau.

¹ The appointing authority indicates that the appellant was "permanently" promoted to Lieutenant via township resolution on November 28, 2017. However, personnel records indicate that the appellant was provisionally promoted to Lieutenant, effective January 1, 2018, as he was not promoted through Civil Service testing.

In reply, the appellant submits his performance evaluation reports from 2015 and 2016 where his performance was rated as either “Acceptable” or “Superior.” He also submits his performance evaluation, dated December 7, 2017, where, for the first time, he was informed that he had performance deficiencies. The appellant states that he was shocked to learn that he had received an “Unacceptable” rating in any area as he had never been given any warning or opportunity to correct these deficiencies. The appellant contends that his relationship with his superiors began to erode when he was asked to attend Command and Leadership Training. He describes this training to be like a college course and it would have been a hardship to attend due to his parenting responsibilities. Still, the appellant advised his superiors that he would consider taking the course in the future with proper planning. He indicates that the administration has been vocal in its desire for command staff to attend either a Certified Public Manager’s class or a Command and Leadership course although neither is required for advancement under Civil Service. The appellant maintains that officers senior to him have not been required to attend these trainings to advance, including the officer who is now scheduled to supervise the Detective Bureau. He argues that since he was not given a chance to correct any perceived performance issues prior to his 2017 performance evaluation, this is evidence that his reassignment was due to disciplinary reasons. The appellant requests that he either be restored as the Detective Bureau Supervisor or this matter be referred for a hearing.

Additionally, he claims that the appointing authority has been violating Civil Service laws by making provisional appointments for greater than one year, which is prohibited. In recognition of these violations, he states that the appointing authority replaced the Sergeant who had been previously promoted to serve as the Detective Bureau Supervisor for 12 months and was replaced by a Lieutenant who had no experience within the detective division. Further, he contends that the announcement for the Lieutenant examination in 2017 was initially announced in a way where no Sergeant was eligible. Thereafter, an amended announcement was made, but not posted in the usual spots. Instead, only two officers became aware of this announcement and they were the only two officers who applied. Moreover, the appellant believes that the next ranking member in the Patrol Division would have been the obvious officer to be assigned to his current position and, therefore, he contends that his reassignment was a conscious attempt to discipline him. Further, he states that a Sergeant was paid an out-of-title salary as a Lieutenant to fill the Detective Bureau Supervisor position so there was no cost savings by not appointing him supervisor, which he contends is further evidence that there was no legitimate reason to reassign him. The appellant asserts that he has lost status as the public holds the position of detective in higher esteem than uniformed officers and the fact that he was replaced by someone with the same compensation that he received gives off a perception that he was demoted and reduced in responsibilities. Further, he highlights his experience in the Detective Bureau since 2000, including his diversified assignments within the Bureau over the years, his prior stellar

performance reviews, his Bachelor's degree in Criminal Justice, and his higher score on the Sergeant's Civil Service exam to argue that he was more qualified and a better choice than the Sergeant who initially replaced him and the Lieutenant who has now been assigned as the Detective Bureau's Supervisor. He also indicates he lost his stipend as a member of the Detective Bureau and he has lost the opportunity for overtime.

CONCLUSION

N.J.A.C. 4A:2-1.1 provides except where a hearing is required by law, this chapter or *N.J.A.C.* 4A:8, or where the Civil Service Commission (Commission) finds that a material and controlling dispute of fact exists that can only be resolved by a hearing, an appeal will be reviewed on a written record. For the reasons set forth below, there is not material and controlling dispute of fact that cannot be resolved on the written record. Accordingly, there is no basis for a hearing in this matter.

N.J.A.C. 4A:4-7.2 provides that a reassignment is the in-title movement of an employee to a new job function, shift, location or supervisor within the organizational unit. Reassignments shall be made at the discretion of the head of the organizational unit.

N.J.A.C. 4A:4-7.7 provides that transfers, reassignments or lateral title changes shall not be utilized as part of a disciplinary action, except when disciplinary procedures have been utilized. When an employee challenges the good faith of a transfer, reassignment or lateral title change, the burden of proof shall be on the employee.

In this matter, the appellant claims that he was reassigned for disciplinary reasons, without disciplinary proceeding, in violation of Civil Service rules because he refused to participate in Command and Leadership training, which he could not attend due to family responsibilities, which also led to him receiving a poor performance evaluation. To support his claim, he presents that he received "Unacceptable" ratings in his performance evaluation for the first time in his career, which he did not have an opportunity correct; his belief that he is more qualified to be the Detective Bureau Supervisor than those who replaced him and that it would have made more sense to promote within the Patrol Division for his current position; his decrease in compensation due to the loss of a stipend and overtime opportunities; his perceived loss of status after the reassignment; and the higher-risk duties and worse schedule in the Patrol Division. However, the Commission finds that the appellant's arguments are unpersuasive as it was within the appointing authority's discretion to factor the appellant's noted performance deficiencies in its decision that its needs would be better served to have someone else as the Detective Bureau Supervisor, despite his claimed superior experience as

compared to his replacements. Moreover, under *N.J.A.C.* 4A:2-2.2 and *N.J.A.C.* 4A:2-3.1, discipline is a removal, a disciplinary demotion, a suspension, a fine, or a formal written reprimand. In this matter, not only was the appellant not disciplined, but he was provisionally promoted as part of his reassignment. A potential decrease of compensation due to a loss of stipend and overtime opportunities and perceived loss of status, higher-risk duties, and a less favorable schedule are not considered discipline under Civil Service laws and rules. The Commission notes that it does not control the compensation for local service. See *N.J.A.C.* 4A:3-4.1. Moreover, the fact that the appellant had previously been an “Acting” Lieutenant in the Detective Bureau does not afford him any rights as there is no such designation as an “acting” appointment under Civil Service rules. *N.J.S.A.* 11A:4-13 and *N.J.A.C.* 4A:4-1 *et seq.* provide for regular, conditional, provisional, interim, temporary, and emergency appointments. See *In the Matter of Russell Davis* (MSB, decided August 10, 2005); *In the Matter of Michael Shaffery* (MSB, decided September 20, 2006). Similarly, his prior designation as Detective Bureau Supervisor did not afford him any Civil Service rights as this was not a Civil Service title. Accordingly, the Commission finds that the appointing authority presented legitimate business reasons for the reassignment, and the appellant’s reassignment was not a violation of Civil Service rules.

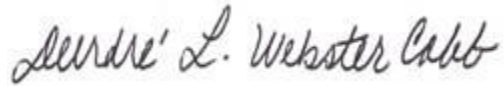
Some other issues need to be addressed. The appellant states that there are employees who have been provisionally serving for more than one year in certain titles in violation of *N.J.S.A.* 11A:4-13. In this regard, a provisional appointee can be removed at any time and does not have a vested property interest in the provisional title. In other words, a provisional employee has no automatic right or expectation of achieving permanent appointment to the position to which he or she is occupying. See *O’Malley v. Department of Energy*, 109 *N.J.* 309 (1987). Thus, even if such appointments span for more than one year, especially awaiting a Civil Service examination, no rights are afforded to those provisional appointees. Additionally, the appellant claims that a prior promotional examination for Police Lieutenant was not posted in a manner that was visible to all potential candidates. The Commission notes that a promotional examination for Police Lieutenant (PM2011W), Monroe Township has been announced, the appellant applied, and a test was administered. However, the list has not yet promulgated.

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 FEBRUARY, 2019



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