



STATE OF NEW JERSEY

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

In the Matter of Nicholas DeFalco
and Dorian Minond, City of New
Brunswick

Administrative Appeals

CSC Docket Nos. 2022-656 and 2022-
657

ISSUED: FEBRUARY 7, 2022 (ABR)

Nicholas DeFalco and Dorian Minond, Police Sergeants with the City of New Brunswick (New Brunswick), represented by Brian J. Manetta, Esq., request retroactive appointment dates to September 16, 2020, based on administrative error. DeFalco and Minond also request that they be admitted to the promotional examination for Police Lieutenant (PM4147C), New Brunswick. Because these matters address similar issues, they have been consolidated herein.

By way of background, DeFalco intergovernmentally transferred to New Brunswick from the City of Hackensack in the title of Police Officer, effective February 1, 2011. Minond was appointed to the title of Police Officer by New Brunswick, effective August 25, 2014. Minond and DeFalco appeared respectively as the fifth and sixth ranked eligibles on the Police Sergeant (PM0840V), New Brunswick eligible list, which promulgated on May 24, 2018 and expires on May 23, 2022. The top four ranked eligibles were appointed following the disposition of the May 30, 2018 (PL180750) and October 15, 2019 (PL191478) certifications. Subsequently, the appointing authority requested an additional certification from the PM0840V list from the Division of Agency Services (Agency Services), which was issued on October 15, 2020 (PL200901). In disposing of the October 15, 2020 certification, the appointing authority appointed Minond and DeFalco, the eligibles listed in the first and second positions, respectively, to the title of Police Sergeant, effective October 22, 2020.

Subsequently, an examination (PM4147C) for Police Lieutenant, New Brunswick was announced, which was open to applicants who possessed one year of permanent service as a Police Sergeant as of the September 30, 2021 closing date.

DeFalco and Minond applied for the PM4147C examination, but were deemed ineligible, as they did not possess one year of continuous permanent service in the title of Police Sergeant title as of the September 30, 2021 closing date. It is noted that the appellants have been conditionally admitted to the subject examination, which was administered on October 23, 2021.

In the instant request, DeFalco and Minond argue that they did possess one year of continuous permanent service in the title of Police Sergeant as of the September 30, 2021 closing date for the PM4147C examination. Specifically, they contend that the actual effective date of their appointments to the title of Police Sergeant was September 16, 2020. In support, they submit copies of a Special Order from the Director of the New Brunswick Police Department which states that both would be promoted to the title of Police Sergeant, effective September 16, 2020, and signed oaths of allegiance for their Police Sergeant appointments dated September 16, 2020. They also submit email correspondences between the appointing authority and Agency Services between September 4, 2020 and October 16, 2020 regarding the appointing authority's request for the PL200901 certification. These correspondences indicate that the appointing authority sent a form requesting the PL200901 to an Agency Services representative via email on September 4, 2020. The Agency Services representative advised the appointing authority on September 8, 2020 that the request had been forwarded to Agency Services' Local Certifications Unit. On October 15, 2020, the appointing authority contacted the Local Certifications Unit to check on the status of its certification request. The Local Certifications Unit responded on the same date, advising that it was unable to locate the request that the appointing authority had sent on September 4, 2020. The appointing authority immediately replied with a copy of the certification request that it had sent on September 4, 2020.

The appointing authority states that it supports the petitioners' contentions that they met the continuous permanent service requirement as of the closing date for the subject examination and should be permitted to participate in the PM4147C examination. In this regard, it confirms that it requested a certification from Agency Services on September 8, 2020 and swore in both DeFalco and Minond as Police Sergeants on September 16, 2020. It proffers that it followed up with Agency Services on October 15, 2020 because it still had not received the certification it had requested from the PM0840V list, at which time Agency Services immediately issued the certification. The appointing authority advises that it attempted to return the October 15, 2020 certification with September 16, 2020 appointment dates for both DeFalco and Minond, but was informed by Agency Services that the appointment date could not be earlier than the issuance date of the certification. Accordingly, it returned the certification with October 22, 2020 appointment dates recorded for both, based on the certification notice date. The appointing authority also submits documentation related to DeFalco's and Minond's appointments to the title of Police Sergeant.

CONCLUSION

N.J.A.C. 4A:4-1.10(c) states that an individual may receive a retroactive date of appointment to correct an administrative error, for an administrative delay or for other good cause, on notice to affected parties. Generally, the award of a retroactive appointment date is for seniority purposes only and is limited to situations in which an appellant could have been appointed on the requested retroactive date, but as a result of an administrative error, he or she received a later appointment date.

In the instant matter, the record establishes that the appointing authority intended to promote DeFalco and Minond to the title of Police Sergeant, effective September 16, 2020, as evidenced by a Special Order and signed oaths signed by both petitioners. The appointing authority submitted a request for a certification to Agency Services on September 4, 2020 which was acknowledged by an Agency Services representative on September 8, 2020. However, Agency Services' Local Certifications Unit did not issue a certification until October 15, 2020. Therefore, based on the foregoing, ample cause exists to grant DeFalco and Minond retroactive dates of appointment to the title of Police Sergeant. As DeFalco and Minond have completed their working test period as Police Sergeants, their permanent appointments should be recorded as September 16, 2020.

Finally, as DeFalco and Minond are deemed to have been permanent in the Police Sergeant title since September 16, 2020, the Commission finds that they should be admitted to the Police Lieutenant (PM4147C), New Brunswick examination.

ORDER

Therefore, it is ordered that Nicholas DeFalco's and Dorian Minond's requests be granted and the October 15, 2020 certification of the Police Sergeant (PM0840V), City of New Brunswick eligible list be amended to reflect the permanent appointments of Nicholas DeFalco and Dorian Minond, effective September 16, 2020. Additionally, it is ordered that Dorian Minond and Nicholas DeFalco be admitted to the promotional examination for Police Lieutenant (PM4147C), City of New Brunswick and that their examinations be scored.

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 2ND DAY OF FEBRUARY 2022

Deirdre' L. Webster Cobb

Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Allison Chris Myers
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

c: Nicholas DeFalco (2022-656)
Dorian Minond (2022-657)
Brian J. Manetta, Esq.
Michael K. Drulis
Division of Agency Services
Division of Test Development and Analytics
Records Center