

In its request, the appointing authority states that due to an administrative oversight, it did not request another promotional certification from the eligible list for Fire Captain (PM1099S), Asbury Park, or the request for a certification was misplaced by the former City Manager's office. In either event, the appointing authority indicates that on Blackmon's commencement of duties as a Fire Captain, a request for a certification was not sent. In its request, the Personnel Officer for In this regard, Asbury Park confirms that Blackmon was sworn in as a Fire Captain on October 1, 2018 to replace a retiring Fire Captain. It also noted that Blackmon took an Oath of Office to Fire Captain on November 2, 2018. He was not provisionally appointed or regularly appointed to the Fire Captain title in the County and Municipal Personnel System (CAMPS) still reflects that he is in the title Fire Fighter. The appointing authority explains that at the time Asbury Park was under a Memorandum of Understanding (MOU) with the Department of Community Affairs, and a Request for Approval for Senior Level Employees or Confidential Employees was completed which allowed for funding Blackmon's position at the Fire Captain level. The appointing authority also provided a copy of Blackmon's valid Incident Management Level 1 certification. Therefore, it requests that Blackmon be retroactively appointed to the title of Fire Captain and that he be admitted to the subject promotional examination for Battalion Fire Chief.

CONCLUSION

N.J.A.C. 4A:4-3.4(a) provides that the Civil Service Commission may revive an expired eligible list to implement a court order in a suit filed prior to the expiration of the list; to implement an order of the Civil Service Commission in an appeal or proceeding instituted during the life of the list; to correct an administrative error; to effect the appointment of an eligible whose working test period was terminated by a layoff; or other good cause.

N.J.A.C. 4A:4-1.10(c) provides that when a regular appointment is made, the Civil Service Commission may order a retroactive appointment date due to administrative error, administrative delay or other good cause. Generally, this unique remedy has been reserved for two particular situations. First, and germane to this matter, the Civil Service Commission has granted retroactive permanent appointment dates in circumstances in which an employee was actually serving in and performing the duties of a title, but, due to some error or other good cause, his attainment of permanent status was delayed or hindered. The second situation in which an employee may be awarded a retroactive date of permanent appointment is where the name of an employee, whose appointment would have otherwise been mandated, was improperly removed from or bypassed on an eligible list, thereby preventing the appointment.

N.J.A.C. 4A:4-3.3 states, in pertinent part, that promotional lists shall be promulgated for three years from the date of their establishment. *N.J.A.C.* 4A:4-3.3(b)1 states that an eligible list may, for good cause, be extended by the Chairperson or designee prior to its expiration date, except that no list shall have a duration of more than four years.

In the instant matter, there is no basic factual dispute but, rather, the central issue involves an administrative error wherein the appointing authority failed to request a certification to properly effectuate this appointment at the time. The record establishes that Blackmon has been performing the duties of Fire Captain since October 1, 2018 and Blackmon was reachable at that time pursuant to the rule of three. He was on an unexpired eligible list as the first ranking candidate after the first list was certified, began the duties of a Fire Captain on October 1, 2018, was not provided a provisional appointment, and a certification was not requested in order to appoint Blackmon to the title which properly classified his duties. However, the appointing authority explains that this was an error on its part, and it is willing to give him a permanent appointment to Fire Captain. As such, good cause exists to revive the eligible list for Fire Captain (PM1099S), Asbury Park on a one-time basis to provide Blackmon a regular appointment retroactive to October 1, 2018. Moreover, since the appointing authority has indicated that Blackmon has been performing the duties of Fire Captain since October 1, 2018, he should be considered to have successfully completed his working test period. Lastly, the appointing authority is cautioned to request a certification of eligibles for every appointment, and is reminded to provisionally appoint individuals to titles which are appropriate for their duties.

Lastly, based on these unique circumstances, Blackmon meets the requirements for the examination for Battalion Fire Chief (PM3373C), Asbury Park and should be admitted to the examination.

ORDER

Therefore, it is ordered that Marcus Blackmon, Sr. be provided with a regular appointment to Fire Captain effective October 1, 2018 and that he be admitted to the promotional examination for Battalion Fire Chief (PM3373C), Asbury Park.

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 16TH DAY OF FEBRUARY, 2022

Deirdre L. Webster Cobb

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