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ACCOMMODATIONS, EXAMINATION

-Not Offered

Board grants make-up examination to candidate for Police Sergeant examination who was not offered an accommodation that would have enabled him to take the original examination. [In the Matter of Timothy Copeland](#).

-Process

Where requested ADA accommodation was unavailable on test date, Board grants request from candidate to re-take examination utilizing a different set of test questions. [In the Matter of Richard Hopkins](#).

-Sufficiency (Visually Impaired Candidate)

Board orders rescoring of examination of a blind candidate who was unable to answer 10 of the test questions with the reasonable accommodations provided. [In the Matter of Lauren Casey](#).

ADMINISTRATION

-Candidate Behavior (Cell Phones)

Commission upholds disqualification of candidate who participated in the promotional examination for Fire Captain who possessed a cell phone at the examination center. [In the Matter of Michael McKenzie](#)

-Distractions (Computer Problems)

Noting that computer malfunctions prevented candidate from completing the examination, Board grants request for a make-up examination but directs that only the last 20 test items be rescored. [In the Matter of Anthony Davis](#).

-Photo Identification

Commission denies appeal of candidate for law enforcement examination who failed to present photo identification at the test site. [In the Matter of Salvatore Leonardi](#).

ANNOUNCEMENT
OPEN COMPETITIVE

-Actual Notice Not Required

Board finds that the failure of the appointing authority to notify provisional employee of an examination for his title did not entitle him to permanent status. [In the Matter of William Stanford.](#)

-Relaxation of Residency Requirements

Board relaxes the provisions of *N.J.A.C.* 4A:4-3.2(a) to permit the City of Clifton to open the Plumbing Inspector examination to residents of the State of New Jersey with equal preference. [In the Matter of Plumbing Inspector, City of Clifton.](#)

PROMOTIONAL

-Appointing Authority Challenges Necessity

Board denies appeal of the Borough of Roselle challenging the announcement of the Deputy Fire Chief (PM3654F) promotional examination. [In the Matter of Deputy Fire Chief \(PM3654F\), Roselle Park.](#)

-Bilingual Variant Not Included

Board admits employee in bilingual variant of Senior Library Assistant title to promotional examination despite the omission of bilingual variant from promotional announcement. [In the Matter of Dolores Cordero.](#)

-Candidate Serving Suspension

Board accepts late application from a candidate who was not notified of a promotional announcement while serving a suspension. [In the Matter of Elvis Lugardo.](#)

-Error in Listed Requirements

Board finds applicant ineligible for promotional examination based on regulatory requirements, despite an error in the requirements listed in the promotional announcement. [In the Matter of Robert Flora.](#)

-Led to Believe Existing List Would be Extended

Board upholds decision to proceed with examination, despite the appointing authority's rescission of its request to hold an examination based on an alleged decrease in candidates' preparation time. [In the Matter of Police Sergeant \(PM2616F\), Moorestown.](#)

-Posting Requirements

Board finds good cause to accept late application from a candidate where there was no evidence that the promotional announcement was sent to or posted at his location. [In the Matter of Wayne Warrick.](#)

-Retroactive Closing Date

Board orders the issuance of a promotional announcement for Deputy Police Chief with a retroactive closing date to remedy an unreported appointment to that title. [In the Matter of William Makowitz.](#)

APPEAL RIGHTS

-Jurisdiction (Minor Disciplinary Fines)

Board dismisses the appeals of two Final Notices of Disciplinary Action that imposed a fine of \$25 per day for 10 and 15 days for lack of jurisdiction. [In the Matter of William McGinnis.](#)

-Moot

Commission dismisses as moot the appeal of an eligible who challenged his score on the Fire Chief (PM3613J), Clifton, oral examination, as he was the only eligible on the list. [In the Matter of Kevin McCarthy.](#)

-Provisional Employees (Removal)

Board denies provisional employee's request for a hearing regarding his removal and finds that it lacks jurisdiction to interpret Title 26 of the New Jersey Statutes in the absence of an appeal properly before it. [In the Matter of Wilfred Gray.](#)

-Timeliness (Defective Final Notice)

Based on defective Final Notice of Disciplinary Action, Board grants a hearing on employee's untimely appeal of his removal. [In the Matter of Timothy Maynor.](#)

-Timeliness (Filed in Wrong Forum)

Board finds that pursuit of working test period appeal in a different forum did not justify granting a hearing on untimely appeal to the Board. [In the Matter of Michael Vidal.](#)

-Unclassified Employees (Appointment Disapproved)

Following issuance of initial decision by the Administrative Law Judge, Board finds it lacks jurisdiction to hear major disciplinary appeal of employee whose unclassified appointment was disapproved by the Department of Personnel. [In the Matter of Gary Thacker.](#)

APPOINTMENTS

-Acting Appointments

Commission denies requests from 15 Police Officers with Camden to be promoted to Police Sergeant due to their "Acting" service. [In the Matter of Police Sergeant \(PM2650G\), Camden.](#)

-Appointing Authority

Commission finds that Borough Council is the appointing authority for the Borough of Roselle. [In the Matter of Borough of Roselle Appointing Authority.](#)

-Conditional Appointments (General)

Board denies request for reconsideration of a prior examination item appeal from two conditional appointees whose ranks were lowered as a result of rescoring. [In the Matters of Tracy Medwin and Philip DiGavero.](#)

-Conditioned Upon DOP Approval

Board finds that an appointment is not valid until the certification disposition is approved in its entirety by the Department of Personnel. [In the Matter of Donald O. Gates.](#)

-Corrected List (Veteran Heads List)

Upon correction of an administrative error regarding an eligible's entitlement to veterans' preference, Board orders eligible's appointment. [In the Matter of Brian Hammarstrom.](#)

-Disability Retirement (Reinstatement)

Commission denies request to delay reemployment of previously disabled Police Officer in order to hire additional Police Officer with grant funds. [In the Matter of Community Oriented Policing Services Hiring Program, City of Long Branch.](#)

-Interim Appointments (Return to Permanent Title)

Commission finds that employee was properly returned to his permanent title of Police Officer after serving an interim appointment but permits him to file for the Police Sergeant examination. [In the Matter of Leon Daniels.](#)

-Interim Appointments (Return to Permanent Title Not Removal)

Commission upholds discontinuation of interim appointment, finding it was within appointing authority's discretion to do so and consent of the Mayor was not required. [In the Matter of Timothy O'Neil.](#)

-Interim Appointments (Rice Bill List)

Board found that a Police Officer's interim appointment was inconsistent with the purpose of the Rice Bill. [In the Matter of Darian Vitello.](#)

-Interim Appointments (Special Reemployment List)

Commission finds eligible on special reemployment list not entitled to permanent appointment from that list when he was filling a position on an interim basis. [In the Matter of Paul Messina.](#)

-Jersey City Redevelopment Agency

Commission denies request to grant eight employees of the Jersey City Redevelopment Agency permanent status in their respective titles. [In the Matter of Jersey City Redevelopment Agency \(JCRA\).](#)

-Non-Competitive Appointments (Veterans Preference)

Commission denies appeal of veteran applicant for non-competitive title but finds that the rights of three other veteran applicants were violated. [In the Matter of Alan Gatto.](#)

Board finds that appointing authority's treatment of veterans in the selection process for a non-competitive title complied with Merit System law and rules. [In the Matter of Robert Farrell.](#)

-Temporary Appointment (Promotional List in Existence)

Commission orders appointing authority to fill a permanent vacancy in the title of Police Lieutenant via a complete eligible list rather than through a temporary appointment. [In the Matter of George Johnson.](#)

PROVISIONAL

-Long Term Provisional Employee

Board grants retroactive permanent status to a Chief Fire Alarm Operator with the City of Newark who relied on his superior's representation that he had been permanently appointed. [In the Matter of Glenn Crane](#), *aff'd*, *In the Matter of Glenn Crane, City of Newark*, unpublished, Docket No. A-0413-04T3 (App. Div. February 17, 2006).

Board grants retroactive permanent status to a long-term employee, who was reasonably unaware of his provisional status. [In the Matter of William Malayter](#).

Board grants retroactive permanent status to provisional employee who passed examination, was reachable on a certification, and was led to believe she was permanent in her title. [In the Matter of Christine Zayas](#).

APPOINTMENT WAIVER

-Circumvention

Board denies request for an appointment waiver and assesses \$500 in compliance costs for appointing authority's attempted circumvention of Merit System rules. [In the Matter of Administrative Clerk \(M1203H\), City of Orange Township.](#)

-Provisional Appointed to Higher Title

Board denies appointing authority's request for an appointment waiver, finding that the assertion of fiscal constraints was disingenuous. [In the Matter of Data Processing Analyst 2 \(S0402G\), Department of Health and Senior Services.](#)

-Repeatedly Circumvented Appointment Requirements

Board denies appointment waiver and imposes fine where Department of Health and Senior Services repeatedly circumvented Merit System appointment requirements. [In the Matter of Technical Assistant 2, Community Affairs \(S6655E\), Department of Health and Senior Services.](#)

BYPASS

-Provisional Service

Commission upholds eligible's bypass for appointment, finding it appropriate to consider appointee's provisional service in title when making a permanent appointment. [In the Matter of Donald Fillinger.](#)

-Statement of Reasons

On remand from the New Jersey Supreme Court, Commission upholds bypass of eligible's name on a certification for Fire Fighter (M2246D). [In the Matter of Nicholas R. Foglio.](#)

-Veteran Eligible

Commission reverses bypass of veteran eligible from Fire Captain (PM3542L), Village of Ridgewood list, and orders the eligible's appointment to Fire Captain. [In the Matter of John Albano.](#)

BACK PAY

-Criminal Charges Dismissed

Commission finds good cause to deny request for back pay during period of employee's indefinite suspension following dismissal of the criminal charges. [In the Matter of Dumis Barreau](#). *Reconsideration Pending*.

-Criminal Charges Pending at Time of Death

Commission denies request for back pay from employee's estate where criminal charges against employee remained pending at the time of his death. [In the Matter of Peter Riva](#).

-CWA Employee

Commission finds that it lacks jurisdiction to entertain a request for back pay from an employee represented by CWA. [In the Matter of Carmela Thompson](#).

-Discrimination Appeals

Board reverses the determination that appellant violated the State Policy Prohibiting Discrimination in the Workplace but denies request for back pay and counsel fees. [In the Matter of Anthony Hearn](#).

-Fitness for Duty

Commission awards back pay for the time period employee was kept out of work without a finding that she was medically unable to perform her duties. [In the Matter of Karen Grier](#).

-Health Benefits

N.J.A.C. 4A:2-2.10(d) provides for reimbursement of payments made to *maintain* health insurance coverage. The appellant's entitlement to reimbursement for maintaining health insurance coverage does not apply to any medical expenses and/or prescription drug expenses incurred during the period of their separation from employment from the appointing authority. *See e.g., In the Matter of Shannon Stoneham -Gaetano and Maria Ciufu (MSB, decided April 24, 2001)*.

-Leave (Administrative/Vacation Leave)

As to administrative leave, the Board finds that appellant is not entitled to any administrative leave time since such leave may not be carried over from one year to the next. *See N.J.S.A. 11A:6-6 and N.J.A.C. 4A:6-1.9(e)*. Also, vacation leave not taken in a given year can only be carried over to the following year. *See N.J.S.A. 11A:6-3(e)* [use *N.J.S.A. 11A:6-3(f)* for State employees] and *N.J.A.C. 4A:6-1.2(f)*; *See also, In the Matter of Donald H. Nelsen, Jr.*, Docket No. A-2878-03T3 (App. Div. February 4, 2005); *In the Matter of John Raube, Senior Correction Officer, Department of Corrections*, Docket No. A-2208-02T1 (App. Div. March 30, 2004).

-Mitigation (Increase in Hours at Second Job)

Board finds that an increase in employee's post-termination hours and income at second job constituted sufficient mitigation of his back pay award. [In the Matter of Carmine Russo](#).

-Mitigation (Insufficient)

Board ordered a Police Officer to reimburse \$94,933.33 of the \$170,160.14 he had received in back pay. [In the Matter of Donald Hicks](#).

-Mitigation (No Duty to Mitigate)

Board finds that employee had no duty to mitigate her back pay award during the period of her unwarranted immediate suspension. [In the Matter of Debora Brown](#).

-Mitigation (Not Sufficient)

Where Police Officer failed to demonstrate sufficient mitigation efforts during certain periods of his separation from employment, Board declines to order an award of back pay for those periods. [In the Matter of Peter Kristensen](#).

-Mitigation (Settlements)

Board finds that back pay awarded via a settlement agreement should be mitigated only by the amount of money the employee actually earned during the period for which he received back pay. [In the Matter of Ernest J. Long, Jr.](#)

-Overtime Pay from Second Job

Board finds that delays in holding departmental hearing caused by an appellant and increase in overtime pay from second job result in reduction of back pay award. [In the Matter of Sheldon Norwood.](#)

-Period Spent in School

Board finds appellant not entitled to back pay during period of time he attended school on a full-time basis. [In the Matter of Darryl Martin.](#)

-Procedural Delays

Commission upholds removal of employee charged with sexually assaulting a co-worker but awards partial back pay for procedural delays. [In the Matter of Stanford Harris.](#)

-Tax Deductible Business Expenses

Board finds that tax-deductible business expenses related to self-employment should be included in employee's alternate income in calculating back pay award. [In the Matter of Mark Hingston.](#)

-Unable to Work due to Revoked Nurse's Aide Certification

Board modifies employee's removal to a three-month suspension and denies back pay for period of time she did not possess required Nurse's Aide Certification. [In the Matter of Crystal Snyder.](#)

-Unemployment Insurance (Mitigation Presumption Rebutted)

Commission denies request for back pay, finding presumption that the appellant actively searched for employment while receiving Unemployment Insurance benefits had been rebutted. [In the Matter of Paul Scaife.](#)

Board finds that employee who collected unemployment benefits during his separation from employment was not entitled to an award of back pay because of his admitted failure to diligently seek employment. [In the Matter of Philip Martone.](#)

CERTIFICATION

-Addition to Existing Certification

Where a candidate was successful on a make-up examination, Board finds that, absent evidence of an error, there is no entitlement to add his name to an outstanding certification. [In the Matter of Dirk Dority.](#)

-Addition to Existing Certification (No Basis)

Board denies request for placement on outstanding certification of eligible list, where candidate error caused initial determination of ineligibility. [In the Matter of Richard Snyder.](#)

-Addition to Existing Certification (Prospective Relief for Provisional Appointees)

Board ordered the discontinuation of the practice of adding the names of provisional employees to outstanding certifications in the absence of an administrative error. [In the Matter of Vincent Hutcheson.](#)

-Appoint or Remove Duties

Board orders the City of Trenton to properly dispose of a Fire Captain certification by either permanently appointing seven eligibles, who were determined to be performing the duties of a Fire Captain, or removing the duties from the employees. [In the Matter of Fire Captain \(PM3517F\), City of Trenton.](#)

-Enforcement To Dispose Certification

Board orders appointing authority to re-dispose of a certification affected by the addition of an eligible who was administered a make-up examination as a result of Department of Personnel error. [In the Matter of Senior Training Technician \(PC2241C\), Passaic County Board of Social Service](#), *aff'd*, *In the Matter of Senior Training Technician (PC2241C), Passaic County Board of Social Services*, unpublished, Docket No. A-1344-04T1 (App. Div. December 20, 2005).

-Need for Current Vacancy (Budgetary Constraints)

Board invalidates three Police Captain appointments, finding that the certification due date was improperly extended to fill anticipated vacancies. [In the Matter of Mark Competello.](#)

-Used as Appropriate for a Different Title

Board orders that certification of Administrative Analyst 2, Fiscal Management eligible list be used as appropriate to fill vacancy in the Administrative Analyst 3, Fiscal Management title. [In the Matter of Administrative Analyst 2, Fiscal Management \(S6757F\)](#).

CLASSIFICATION

-Circumstantial Circumvention of Merit System Rules

Finding that employee's multiple title changes were aimed at circumventing Merit System rules, Board revives expired eligible list to be certified against employee's provisional appointment. [In the Matter of Donald Leone.](#)

-Compliance with Review

Board orders local appointing authority to allow the Division of Human Resource Management to perform a classification review of an employee's position and fines appointing authority \$1,000 for its refusal to comply. [In the Matter of Thomas McNaughton.](#)

-Effective Date

Commission grants employee's request for an earlier reclassification effective date, finding the appointing authority unduly delayed forwarding his request to the Department of Personnel. [In the Matter of Josh Osowski.](#)

Board denies employee's request for an earlier reclassification effective date, finding no evidence of bad faith in the appointing authority's brief delay in forwarding his request to the Department of Personnel. [In the Matter of Parag Shah.](#)

-Enforcement of Reclassification (Budgetary Concerns)

Despite appointing authority's budgetary constraints, Board orders compliance with decision of the Department of Personnel, which reclassified the appellants' positions to the title of Senior Clerk Typist. [In the Matters of Doris Chakeras and Valerie Marrone.](#)

-Out-of-Title Work (Correction Officers)

Commissioner finds that mandatory performance of CPR on inmates by certified custodial staff was not outside the scope of their duties. [In the Matter of Correction Lieutenant, Department of Corrections.](#)

Commissioner determines that heating and serving food to inmates did not constitute out-of-title work for a Senior Correction Officer. [In the Matter of Anthony Cross.](#)

-Prosecutor's Agents

Board orders the review of the duties performed by Prosecutor's Agents employed by counties in excess of the numerical limitations established by the Board in 1989. [In the Matter of Prosecutor's Agents.](#)

Reclassification (Retroactive Effective Dates due to Delay)

Commissioner grants requests of 12 employees for retroactive effective dates for the upward reclassification of their positions where the appointing authority inexplicably delayed forwarding reclassification requests to the Department of Personnel. [In the Matter of Susan Akers, et al.](#)

-Reporting Relationships

Commission orders classification reviews of positions encumbered by appellants' supervisors to determine if appellants' positions warranted reclassification. [In the Matter of John McGuire and Raymond Szpond.](#)

Commission denies classification appeal of Police Sergeant who assumed duties previously performed by a Police Lieutenant. [In the Matter of Arthur Mills.](#)

-Secretarial Assistant Title Series

Commission denies request to classify employee's position as a Secretarial Assistant 2 (Non-Stenographic), where it would result in the misclassification of the position, but provides equitable remedy. [In the Matter of Sheila Bogda.](#)

-Sheriff's Officers

Commission grants classification appeals and determines that three superior level Sheriff's Officer positions should not be classified by civilian titles. [In the Matter of Lori Apicelli, et al.](#)

-Title Reallocation (Chief Clerk, Surrogates)

After a public hearing, Board reallocates the title of Chief Clerk, Surrogates to the unclassified service. [In the Matter of Chief Clerk, Surrogates.](#)

-Title Reallocation (Palisades Interstate Park Police Officer)

Board denies request to reallocate the title of Police Officer, Palisades Interstate Park from the career to the unclassified service. [In the Matter of Police Officer, Palisades Interstate Park.](#)

-Title Reallocation (Supervising School Traffic Guard)

After a public hearing, the Board authorizes the reallocation of the title of Supervising School Traffic Guard from the career to unclassified service but emphasizes that incumbents would retain all career service rights. [In the Matter of Supervising School Traffic Guard.](#)

-Unclassified Title Created (Deputy County Administrator)

Board authorizes creation of the unclassified title of Deputy County Administrator pursuant to *N.J.A.C. 4A:3-1.3(a)5*. [In the Matter of Deputy County Administrator, Passaic County.](#)

-Unilateral Reclassification

Board finds that appointing authority lacked the authority to reclassify the positions of three permanent employees, resulting in their demotions. [In the Matter of Leon Finch, et al.](#)

COMPENSATION

-Appointment from Special Reemployment List

Board finds that employee was appropriately placed at step eight of salary range P28 upon appointment from special reemployment list in accordance with *N.J.A.C. 4A:3-4.17*. [In the Matter of Shantha Shashidhara](#).

-Differential Pay (Acting Capacity)

Commission grants differential pay to employee who was appointed to a Management Assistant position in an "acting" capacity when she sought a provisional appointment pursuant to *N.J.A.C. 4A:4-4.2(c)2i*. [In the Matter of Cassandra Lewis](#).

-Essential Employees (State Shutdown)

Commission finds that Judiciary employees, who had not previously been deemed essential and were required to work during the July 2006 State government shutdown, were not entitled to additional compensation. [In the Matter of Essential Employees, Judiciary](#).

-Out-of-Title Work (Differential Back Pay)

Board grants appropriate compensation to an employee who performed out-of-title work as an Assistant Director, Facilities Management. [In the Matter of Thomas Sposato](#).

-Permanent Part-Time or Hourly Employees (*De Facto* Separation from Part-Time)

Board finds that involuntary elimination of hours worked by permanent part-time employees constituted a de facto immediate suspension. [In the Matter of Robert S. Chester and Daniel L. Kerr](#).

-“Red Circle” Salary

Board denies request to relax Merit System rules to permit the permanent appointment of an employee at a salary outside the salary range for his title. [In the Matter of Donald Strizki](#).

-State Teachers, Military Service Credit

Board determines that there is no legislative intent to confer a military service salary credit upon teachers employed by the State. [In the Matter of Military Service Credit for State Teachers](#), *aff'd*, *In the Matter of Military Service Credit for State Teachers*, 378 N.J. Super. 277 (App. Div. 2005).

COUNSEL FEES

-Amended Final Notice of Disciplinary Action

Counsel fees denied to a Newark Police Officer who was removed on charges of inability to perform duties after the appointing authority amended the Final Notice of Disciplinary Action (FNDA) to reflect that he had been approved for an accidental disability retirement. [In the Matter of Christopher Bowles.](#)

-General

Since the appellant has not prevailed on all or substantially all of the primary issues on appeal, he/she is not entitled to an award of counsel fees. *See N.J.A.C. 4A:2-2.12.* The primary issue in any disciplinary appeal is the merits of the charges, not whether the penalty imposed was appropriate. *See Johnny Walcott v. City of Plainfield*, 282 N.J. Super. 121, 128 (App. Div. 1995); *James L. Smith v. Department of Personnel*, Docket No. A-1489-02T2 (App. Div. March 18, 2004).

-Failure to Submit Required Information

Commission denies request for counsel fees due to attorney's failure to submit required information despite repeated requests. [In the Matter of Gary MacDonald.](#)

-Legal Protection Plan

Commission awards \$7,000 in counsel fees to County Correction Officers who had their suspensions reversed, but limits hourly rate based on fee agreement. [In the Matter of Francesco Grupico and Roy McLeod.](#)

-Partial Fees

It is also noted that a reduction in penalty may lead to an award of partial counsel fees, but only under circumstances where an appellant has prevailed on the most serious charge leaving only incidental charges, which give rise to a significantly reduced penalty, such as a minor discipline. *See Thomas Grill and James Walsh v. City of Newark*, Docket No. A-6224-98T3 (App. Div., January 30, 2001); [In the Matter of Diane Murphy \(MSB, decided June 8, 1999\).](#)

-Other Forums

Any time expended litigating related matters in other forums, including departmental level proceedings, is not reimbursable by the Board. *See N.J.S.A. 11A:2-22; N.J.A.C. 4A:2-2.12(f). See also, In the Matter of Rachel Ann Burris*, 338 *N.J. Super.* 493 (App. Div. 2001); *Tooker v. Hartford Accident and Indemnity Co.*, 136 *N.J. Super.* 572, 578 (App. Div. 1975), *cert. denied*, 70 *N.J.* 137 (1976).

DISCIPLINE

IMMEDIATE SUSPENSION

-Attendance-Related Infractions

Board finds that attendance-related infractions did not form a valid basis for an immediate suspension. [In the Matter of Vikia Benton](#).

Board upholds immediate suspension of County Correction Officer on attendance-related disciplinary charges but awards back pay for procedural violations until he waived his departmental hearing. [In the Matter of Joseph W. Scott](#).

-Delay in Departmental Proceedings

Board upholds immediate suspension of Senior Parole Officer but awards back pay for the period of delay in holding departmental hearing occasioned by simultaneous criminal investigations. [In the Matter of Francis Salensky, Sr.](#)

-Delay in Service of PNDA

Procedural deficiencies, such as failure to serve a PNDA within five days of imposition of an immediate suspension, do not warrant dismissal of the charges. However, it is appropriate to grant the petitioner an award of back pay from the last date as provided by rule for serving the PNDA to the date he was served with the PNDA. See [In the Matter of Joseph Scott \(MSB, decided July 19, 2006\)](#)

-Fitness for Duty (Failure to Reinstate When Medically Cleared)

Board finds that failure to reinstate Senior Correction Officer upon presentation of medical documentation declaring her fit for duty constituted an improper immediate suspension without sufficient cause. [In the Matter of Angela Williams](#).

-No Basis

Board reverses immediate suspension and awards mitigated back pay and reasonable counsel fees to a Police Officer, finding that incident involving City Councilman did not warrant an immediate suspension. [In the Matter of Alexis Ortiz](#).

Board grants petition for interim relief, finding that the petitioner's alleged conduct did not meet the standard for imposing an immediate suspension. [In the Matter of Thomas G. Pappas.](#)

Board finds that alleged misrepresentation in Workers' Compensation proceeding and pending investigation into potential criminal violations did not form a valid basis for an immediate suspension. [In the Matter of Kenneth Poole.](#)

-Notice (Not Afforded)

Board grants back pay to employee who was not afforded proper notice and an opportunity to respond to charges prior to her immediate suspension. [In the Matter of Pamela Sitek.](#)

INDEFINITE SUSPENSION

-Administrative Charges (Entry into Pre-Trial Intervention [PTI])

Board finds that appointing authority is not precluded from proceeding with administrative disciplinary charges upon employee's entry into the Pre-Trial Intervention program. [In the Matter of Vicki Sutton.](#)

-Delay in Bringing Administrative Charges when Criminal Charges Dismissed

Upon dismissal of the criminal charges, an employee is entitled to immediate reinstatement to employment following an indefinite suspension or prompt service of any remaining administrative charges upon which the appointing authority wishes to base disciplinary action. Even when an employee is ultimately removed on administrative disciplinary charges, he or she is entitled to an award of back pay for the period between dismissal of the criminal charges and service of a PNDA setting forth any remaining administrative charges. See [In the Matter of James Shanks \(MSB, decided May 7, 2003\).](#)

-Guilty Plea to Lesser Offense

An employee who is indefinitely suspended pending the outcome of criminal charges and ultimately pleads guilty to a lesser offense is not entitled to back pay for the period of the indefinite suspension pursuant to *N.J.A.C. 4A:2-2.10(c)*. *In the Matter of Edward Anderson*, Docket No. A-2324-04T2 (App. Div. February 2, 2006), *cert. denied*, 186 N.J. 604 (2006); *In the Matter of Frank Slaney*, Docket No. A-5352-03T2 (App. Div. June 14, 2005); [In the Matter of Zachary Odumes \(MSB, decided March 13, 2003\)](#)

-No Basis

Commission orders the reinstatement with back pay and counsel fees of a Sewage Plant Attendant, finding that there was no basis upon which to indefinitely or immediately suspend him. [In the Matter of Dennis Mulligan.](#)

-Pre-Trial Intervention

Commission upholds indefinite suspension of employee until completion of the Pre-Trial Intervention Program. [In the Matter of Jackie Seton.](#)

-Sufficient Basis

Board upholds the indefinite suspension of a Fire Fighter pending criminal charges related to income tax evasion. [In the Matter of Matthew J. Fox.](#)

MINOR DISCIPLINE

-Board Review

Board declines to hear employee's minor disciplinary appeal, finding that disciplinary demotion in the same calendar year did not render his five-day suspension major discipline pursuant to *N.J.A.C. 4A:2-2.2(a)4*. [In the Matter of Craig Rogers](#).

County and Municipal Employees

Appeals of minor disciplinary actions taken against county or municipal government employees are not reviewable by the Board since the Legislature has limited such reviews to employees of State service. *See N.J.S.A. 11A:2-16*. Therefore, if there is no mechanism available to the appellant to pursue a minor disciplinary action under standards and procedures established by the jurisdiction or by a negotiated labor agreement, the appellant may seek relief through the Law Division of the Superior Court of New Jersey. *See Romanowski v. Brick Township*, 185 *N.J. Super.* 197 (Law Div. Ocean County 1982).

-Mandatory Overtime

Commission denies grievance of a Crew Supervisor, Electricians, who challenged the requirement that he participate in mandatory overtime for snow removal duties. [In the Matter of Timothy Clymer](#).

-Sick on Snow Days

Commission denies appeals of 102 employees of the Department of Corrections, who received minor disciplinary fines when they called out sick on dates on which there was significant snowfall. [In the Matter of Christopher Allen, et al.](#) and [In the Matter of Dorothy Nuttall](#).

-Written Reprimand (Reversed)

Board reverses attendance-related official written reprimand where employee was granted an emergency compensatory day for his absence. [In the Matter of Joseph Muniz](#).

PENALTY

Demotion to Non-Supervisory Position

Commission modifies removal of a Supervisor Sewers/Supervisor Streets to a six-month suspension and orders that the appellant be demoted to a non-supervisory position. [In the Matter of Dan Junior Hines.](#)

Disability Did Not Justify Drug Use

Board upholds removal of Senior Correction Officer, who tested positive for cocaine use, finding that his disability did not justify his drug use. [In the Matter of Alfred Harris.](#)

-Falsification of Employment Application

In *In the Matter of Anthony Carter*, Docket No. A-2599-03T2 (App. Div. March 14, 2005), the Appellate Division upheld the Board's determination that a Senior Correction Officer, who intentionally falsified material information on his employment application when he indicated that he was unemployed during a period of time when he was actually terminated from his position with a county detention center in Maryland, should be removed rather than suspended. The court also affirmed the Board's determination that the concept of progressive discipline was outweighed by the seriousness of appellant's conduct and concluded that removal was the appropriate sanction.

-Fines (When Appropriate)

Where no threat to public health, safety or welfare is established, Board finds that appointing authority may not impose a fine as a form of disciplinary action. [In the Matter of Township of Bloomfield Maintenance Workers Association.](#)

Commission modifies 15-day suspension to a fine equivalent to three days' pay, where employee's negligence resulted in damages of \$1,700. [In the Matter of Jennifer McCrary.](#)

-Higher Standard of Conduct (Juvenile Detention Officers)

Board finds that Juvenile Detention Officers are appropriately subjected to a higher standard of conduct when determining the proper penalty for disciplinary infractions. [In the Matter of Victor Murphy.](#)

-Increased Penalty (Behavior Toward Co-Worker)

Board increases penalty imposed on a Senior Correction Officer who exhibited inappropriate and harassing behavior towards a co-worker. [In the Matter of Richard A. Sheppard.](#)

-Increased Penalty (Failure to Perform Duties)

Board increases 60 working day suspension to a 90 working day suspension of a Personnel Assistant whose failure to process paperwork resulted in discipline of another employee. [In the Matter of Lucy Alonso.](#)

-Increased Penalty (False Representation)

Board increases penalty imposed upon a civilian employee who falsely represented himself as a Fire Fighter during a traffic stop. [In the Matter of General McFadden.](#)

-Increased Penalty (False Statements)

Board increases penalty imposed on a Police Officer who provided false statements in a deposition in a civil matter from a 30-working day suspension to a 60-working day suspension. [In the Matter of Steven Hubbs.](#)

-Increased Penalty (False Time Sheets)

Commission upholds removal of employee who was observed working at a restaurant she owned while she reported working for the appointing authority. [In the Matter of Judy Jiles, aff'd on reconsideration \(CSC, decided May 13, 2009\).](#)

-Increased Penalty (Lost Firearm)

Board increases penalty imposed on Police Officer based on the egregiousness of his offense and his short-term employment. [In the Matter of Francisco Ortiz.](#)

-Increased Penalty (Not Warranted)

Board finds Building Inspector's conduct was not so egregious, given his lack of a major disciplinary history, to warrant an increase in the penalty. [In the Matter of Michael Imperato.](#)

-Increased Penalty (Off Duty Conduct)

Board increases 60-working day suspension to a 120-working day suspension imposed upon a Police Officer based on his egregious off-duty conduct. [In the Matter of James Joyce.](#)

-Increased Penalty (Police Sergeant Striking Distraught Woman)

Board increases the penalty imposed upon a Police Sergeant charged with striking a distraught woman. [In the Matter of Keith Ricciardi.](#)

-Increased Penalty (Sexual Comments)

Board increases 15-day suspension to a six-month suspension based on the egregiousness of the appellant's misconduct. [In the Matter of Sonny Washington.](#)

-Increased Penalty (Sleeping on Duty)

Board increases penalty imposed on Senior Youth Worker who was observed sleeping while on duty. [In the Matter of Carlos Barnes.](#)

-Increased Penalty (Untruthful Statements)

Despite ALJ's recommendation of lesser penalty, Board upholds removal of a Police Officer who failed to comply with requests for a blood sample and provided untruthful statements in an investigation. [In the Matter of Wayne Truex](#), *aff'd*, *In the Matter of Wayne Truex, Lakewood Township*, unpublished, Docket No. A-3720-03T1 (App. Div. June 20, 2005), *cert denied*, 185 N.J. 267 (2005).

-Leaving Post

Commission imposes a removal and two six-month suspensions on a Correction Sergeant who left his post to attend to the duties of his elective office, of which the appointing authority had no knowledge. [In the Matter of John LaPierre.](#)

-Modified (Positive Drug Test, Civilian)

Board modifies removal of a Truck Driver, who tested positive for cocaine use, to a four-month suspension and enhanced drug testing. [In the Matter of John Simpson.](#)

-Modified (Profane Language)

Board finds County Correction Officer's use of profane language violated appointing authority's policies but modifies penalty to an official written reprimand. [In the Matter of Kassiem Robinson](#).

-Penalty Schedule

The Board notes that it is not bound by the appointing authority's penalty schedule in determining the proper penalty. *See In the Matter of Gregory McDaniel*, Docket No. A-5583-02T2 (App. Div. May 24, 2004); [In the Matter of Leonard Wilson \(MSB, decided April 6, 2005\)](#); [In the Matter of Patricia Everingham \(MSB, decided March 13, 2003\)](#); [In the Matter of George Roskilly \(MSB, decided November 20, 2002\)](#).

-Positive Drug Test

Board upholds removal of County Correction Officer on charges of marijuana use, finding that documentary evidence of the positive drug test was sufficient to support the charges. [In the Matter of Michael Brown](#).

-Previously Disciplined for Most of Charges

Board reverses employee's removal, finding that he had previously been disciplined for most of the charged incidents. [In the Matter of Victor Onwuzuruike](#).

-Progressive Discipline (Distinction Between Major and Minor)

On remand from the Supreme Court, Commission explains distinctions between major and minor disciplinary actions for purposes of progressive discipline and modifies removal of a Pumping Station Operator to a four month suspension. [In the Matter of Anthony Stallworth](#).

-Progressive Discipline (Settlement)

Board finds that prior 35-day suspension that was imposed via a settlement agreement was appropriately considered part of the appellant's disciplinary history for purposes of progressive discipline. [In the Matter of John Robertson](#).

-Progressive Discipline Outweighed by Conduct (Altercation In Uniform)

Board imposed 60-day suspension on County Correction Officer after weighing the egregious nature of the conduct against the circumstances to which he was reacting. [In the Matter of Leo Bende.](#)

-Progressive Discipline Outweighed by Conduct (Shoved and Used Profanity Toward Resident)

Board upholds employee's removal for inappropriate language and shoving a member of the public, emphasizing short record of service and prior suspension on similar charges. [In the Matter of Kambui Hannibal.](#)

-Removal (Failure to Report Threat)

Commission declines to modify removal to a six-month suspension and orders removal of a Newark Police Officer who failed to report to his superiors that a threat was made against a fellow Police Officer. [In the Matter of Eugene Collins.](#)

-Training (Anger Management)

Appointing authority has authority to order anger management counseling and reassignment as part of a disciplinary action. [In the Matter of Michael Guarino.](#)

PROCEDURE

-45-Day Rule (Commencement)

Board dismisses disciplinary charges against a Police Captain as violative of the 45-day rule set forth in *N.J.S.A. 40A:14-147*. [In the Matter of Joseph Richardson](#).

-180-Day Rule (Calculation of Date to Receive Base Pay)

Commission modifies removal of law enforcement officer and orders that he commence receipt of his base salary on March 31, 2010, if not reinstated by that time. [In the Matter of Michael Wolff](#).

-Additional Charges

It is well established that the ALJ and the Board only have jurisdiction to adjudicate disciplinary charges and specifications which were sustained at the departmental level hearing. *See Hammond v. Monmouth County Sheriff's Department*, 317 *N.J. Super.* 199 (App. Div. 1999); *Lamont Walker v. Burlington County*, Docket No. A-3485-00T3 (App. Div. October 9, 2002); [In the Matter of Charles Motley \(MSB, decided February 25, 2004\)](#).

-Aggregate of 15 or More Days (Minor Discipline)

Commission finds County Correction Officer is not entitled to a hearing regarding minor discipline, where notice regarding five-day suspension was served more than one year after he received a Final Notice of Disciplinary Action imposing a 15-day suspension. [In the Matter of John Burd](#).

-Appellant as Witness

Board finds that the appointing authority is permitted to call the appellant as a witness at a hearing at the Office of Administrative Law. [In the Matter of Jose DaSilva](#).

-Attorney General Guidelines, Internal Affairs (Right to Counsel)

Board dismisses disciplinary charges based on failure to cooperate in investigation where the appellant's request to consult with his attorney was not honored. [In the Matter of Thomas Ricchiuti](#).

-Authority To Discipline

Board finds that Deputy Director of City's Department of Public Works had the authority to discipline employees. [In the Matter of Justo Delgado.](#)

-Board's Jurisdiction to Reinstate Dismissed Judiciary Employee

Board finds that it possesses the authority to reinstate employees to the title of Deputy Municipal Court Administrator upon their successful appeals of their removals on disciplinary charges. [In the Matter of Michelle Thurber and In the Matter of Carmella Varga.](#) *See also, Michelle Thurber v. City of Burlington*, 387 N.J. Super. 279 (App. Div. 2006), *cert. granted*, 188 N.J. 579 (2006).

-Conduct After Termination

Board reverses removal of former employee based on conduct that occurred after the termination of his employment. [In the Matter of Rashonn Drayton.](#)

-Departmental Hearing (Biased Hearing Officer)

Although the appellant argued that the entire disciplinary proceeding was void *ab initio* because the hearing officer at the departmental hearing was biased against him and should have recused himself, the hearing before the OAL is *de novo*. Thus, there is no reason to believe that any prejudice which might have existed at the local level affected the proceedings before the ALJ. *See In the Matter of Morrison*, 216 N.J. Super. 143 (App. Div. 1987).

-Drug Testing (AG Guidelines)

Board finds that the presence of two co-workers in area where urine specimen was provided for drug testing did not mandate nullification of positive test result. [In the Matter of Darnell Stith.](#)

-Drug Testing (Chain of Custody)

It does not follow that any technical deviation from the AG Guidelines warrants the nullification of the results of a drug test. *See In the Matter of Mario Lalama*, 343 N.J. Super. 560 (App. Div. 2001) (Despite flaws in the chain of custody, a drug test was still valid where the record showed a "reasonable probability" that the integrity of the sample was maintained).

Commission upholds removal of County Correction Sergeant who tested positive for the use of cocaine, finding that the competent and credible evidence supported the validity of the drug test. [In the Matter of Michael Picariello.](#)

-Drug Testing (Differing Cutoff Levels Between Laboratories)

Board finds that use of different cutoff levels in drug testing by State Toxicology Laboratory and independent laboratory does not warrant dismissal of charges where both tests prove positive. [In the Matter of Eric Woods.](#)

-Drug Testing (Failure to Comply)

Board upholds removal of County Correction Officer for his failure to obey a lawful order to submit to a drug test while off duty. [In the Matter of Anthony Bailey.](#)

-Drug Testing (Individualized Reasonable Suspicion)

Board upholds removal of a County Correction Officer, finding that the appointing authority had reasonable suspicion to order him to submit to a drug test and upholding the results of that test, despite procedural deficiencies. [In the Matter of John W. Kelly.](#)

-Drug Testing (Poppy Seeds)

Board reverses removal of a Correction Lieutenant, finding that expert testimony demonstrated that his positive drug test for opiates resulted from his ingestion of poppy seeds. [In the Matter of Philip Bennett.](#)

-Drug Testing (Refusal)

Board upholds removal of employee on charges related to refusing a reasonable order to submit to alcohol testing and finds that prior six-month suspension appropriately considered. [In the Matter of Myra Darius.](#)

-Drug Testing (Split Testing)

Commission upholds removal of Senior Correction Officer who tested positive for drug use, finding that misplacement of his split sample by an independent laboratory did not render initial positive test invalid. [In the Matter of Gregory Pettey.](#)

On remand from the Superior Court, Appellate Division, Commission upholds removal of Police Sergeant, finding that the evidence supported the reliability of his positive drug test, notwithstanding issues surrounding the testing of his split sample. [In the Matter of Kevin George.](#)

-Drug Use (Coca Tea Allegedly Resulted in Positive Drug Test)

Board upholds removal of a Campus Police Officer, finding that his claimed ingestion of “coca tea” as an explanation for a positive drug test result lacked credibility. [In the Matter of Donald Kennedy](#).

-Drug Use (Herbal Tea Allegedly Resulted in Positive Drug Test)

Board finds that appointing authority’s failure to timely issue a Final Notice of Disciplinary Action did not warrant dismissal of disciplinary charges. [In the Matter of Wayne Roesch](#), *aff’d*, *In the Matter of Wayne Roesch*, unpublished, Docket No. A-1436-05T5 (App. Div. August 14, 2006).

-Drug Use (Last Chance Agreement Not Required)

Commission upholds removal of Fire Fighter who tested positive for drug use, finding that appointing authority was not mandated to provide him with a “Last Chance Agreement.” [In the Matter of Michael Larino](#).

-Drug Use (Marijuana)

Board reverses ALJ’s factual findings and upholds the removal of a Senior Correction Officer based on his testing positive for marijuana use. [In the Matter of Michael Gonsalves](#).

-Drug Use (Police Aide)

Board modifies removal of a Police Aide who failed a drug test, to a six-month suspension, emphasizing the public safety functions of the appellant’s non-law enforcement position. [In the Matter of Richard Wilkins, Jr.](#)

-Entire Controversy Doctrine

Where record reveals no evidence that the appointing authority possessed sufficient information to bring disciplinary charges simultaneously, Board determines that entire controversy doctrine does not support dismissal. [In the Matter of Brian Anderson](#).

-Failure to Sign Preliminary Notice of Disciplinary Action

Commission upholds six-day suspension, finding that the failure of the Police Chief to sign the Preliminary Notice of Disciplinary Action did not invalidate the discipline. [In the Matter of Ciro Mangione](#).

Five-Day Standard (Suspension for more than 40 hours)

Board grants hearing on Fire Fighter's five-day suspension finding that his unusual work schedule made the suspension major disciplinary action. [In the Matter of Michael Larino.](#)

-Hearsay (Residuum Rule)

Board finds that investigator's independent confirmation of information provided by a client supplied legally competent evidence to permit the admission of the client's hearsay statements. [In the Matter of Eric Blair.](#)

-Medical Leave of Absence Not Discipline

Board found that Police Officer's removal from the payroll during her medical leave of absence did not constitute disciplinary action and therefore it lacked jurisdiction to review dispute over her sick leave entitlement. [In the Matter of Debra Cummins-Curry.](#)

-Procedural Errors Cured at Hearing

Procedural deficiencies at the departmental level which are not significantly prejudicial to an appellant are deemed cured through the *de novo* hearing received at the OAL. *See Ensslin v. Township of North Bergen, 275 N.J. Super. 352, 361 (App. Div. 1994), cert. denied, 142 N.J. 446 (1995); In re Darcy, 114 N.J. Super. 454 (App. Div. 1971).*

-Remand (Board Orders Additional Testimony)

Board remands matter to the Office of Administrative Law and instructs that the testimony of two additional witnesses be presented. [In the Matter of Carmen Colon.](#)

-Right to Counsel at a Disciplinary Hearing

Commission reverses 60-day suspension of Police Lieutenant, finding that his refusal to answer questions in an Internal Affairs interview before consulting with his attorney was justified. [In the Matter of Walter Young.](#)

-Suspension for More than 40 hours

The Board has interpreted the five-day standard to refer to five working days of not more than 40 hours of pay. In [In the Matter of Michael Larino \(MSB,](#)

[decided June 21, 2006](#)), the Board granted a hearing to a Fire Fighter who was suspended for five 24-hour days totaling 120 hours, noting that it has interpreted the five-day standard as meaning five working days of not more than 40 hours of pay.

-Terminated without Notice

Board grants appeal of permanent employee who was terminated without notice or the opportunity for a hearing. [In the Matter of Janet Armand](#).

-Union Activity (Penalty)

Commission upholds 10-day suspension of a Painter, finding that direct and personal attacks were outside the boundaries permitted of a union representative when interacting with management and constituted conduct unbecoming a public employee. [In the Matter of Jose Santana](#).

-Untimely Departmental Hearing

Board grants back pay and benefits to a Police Officer to remedy the appointing authority's failure to conduct a timely departmental hearing but remands merits of disciplinary charges to the Office of Administrative Law for a hearing. [In the Matter of Raquel Morton](#).

-Weingarten Rights

Any allegations concerning purported violations of the United States Supreme Court's decision in *N.L.R.B. v. Weingarten, Inc.*, 420 U.S. 251 (1975) must be pursued before the agency with the appropriate jurisdiction, *i.e.*, the Public Employment Relations Commission. *See N.J.S.A. 34:13A-5.3 and N.J.S.A. 34:13A-5.4(c)*. [See also, In the Matter of Nicholas Norton \(MSB, decided January 25, 2006\)](#).

-Withdrawal of Appeal (After ALJ Initial Decision)

Board acknowledges appellant's withdrawal of his appeal with prejudice, which was submitted while the ALJ's initial decision was pending before the Board. [In the Matter of Konstanti Xirouchakis](#).

-Withdrawal of Appeal (ALJ Initial Decision)

Commission adopts ALJ's recommendation to deny Police Officer's request to withdraw his appeal and orders that the matter be remanded to the Office of Administrative Law for further proceedings. [In the Matter of Rolan Carter](#).

REASONS FOR DISCIPLINE

-Absent Without Leave (Incarceration)

Board upholds resignation not in good standing of employee with the Motor Vehicle Commission based on his absences from work during his incarceration. [In the Matter of Mario Hidalgo.](#)

-Absent Without Leave (Medically Excused)

Board reverses removal of Custodial Worker, finding his medically excused absences should have been recorded as an approved leave. [In the Matter of Alonzo Rice.](#)

-Altered Answer Sheet During Review

Commission affirms disqualification of candidate for County Correction Sergeant examination and his removal from employment, based on the finding that he altered his answer sheet during the examination review. [In the Matter of Americo Arzola.](#)

-Cell Phone Use

Board upholds major disciplinary action against a Police Officer based on her excessive cellular telephone usage while on duty. [In the Matter of Suzanne Butler.](#)

-Chain of Command (Correctional Facility)

Board increases penalty imposed upon County Correction Officer who effectuated an unauthorized transfer of a prisoner from one cell to another and emphasizes the importance of the chain of command in a paramilitary setting. [In the Matter of Noeling H. Miller.](#)

-Conduct Unbecoming (Disrespectful Letter Regarding Superior)

Commission upholds 30-day suspension of employee who authored a disrespectful letter to a superior concerning a back pay dispute. [In the Matter of Jody Pittman.](#)

-Conduct Unbecoming (Prior to Employment).

Board upholds removal of employee charged with conduct unbecoming a public employee based on an arrest that occurred prior to the commencement of his public employment. [In the Matter of Richard Holland.](#)

-Conduct Unbecoming (Providing Sandwich to Inmate)

Board modifies the removal of a County Correction Officer charged with providing a sandwich to an inmate to a one-day suspension, and awards partial counsel fees. [In the Matter of Alphonso Hunt.](#)

-Conduct Unbecoming (Racial Remark)

Commission upholds removal of employee who used racial slurs in the workplace and physically threatened the co-worker who reported him. [In the Matter of Raymond Smith.](#)

-Conduct Unbecoming (Relationship to Employment)

Citing mitigating factors, Board modifies removal of an employee, who pled guilty to weapons possession, to a six-month suspension. [In the Matter of Matthew Green.](#)

-Credibility Determinations (Patient Abuse)

Following a review of the testimony, Board reverses ALJ's credibility determinations and upholds employee's removal for patient abuse. [In the Matter of Omar Thompson.](#)

-Credibility Determinations (Prior Unsubstantiated Allegations)

Board upholds removal of Police Officer, finding that ALJ's consideration of prior unsubstantiated allegations against the appellant was appropriate in assessing his credibility. [In the Matter of David Nichols.](#)

-Credibility Determinations (Uncharged Misconduct)

Board finds that evidence presented regarding uncharged misconduct of Police Officer was appropriately considered as lending credibility to the allegation that he committed the charged offense. [In the Matter of David Moran.](#)

-Degrading Comments

Commission upholds removal of an Electrical Inspector for insulting or degrading comment about a racial, ethnic or religious group which was an endorsement of genocide. [In the Matter of Elmer Stocks.](#)

-Discrimination

Commission upholds demotion of County Correction Lieutenant to County Correction Sergeant based on disparaging sexual remarks he made to a subordinate officer based on her sexual preference. [In the Matter of Pedro Delgado.](#)

-Drug Testing (Reliance on Confidential Medical Records)

Board found that the authorized release of appellant's medical records appropriately formed the basis to order a drug test. [In the Matter of Pedro Gonzalez.](#)

-DWI (Jail Sentence)

Appellate Division upholds removal of Senior Correction Officer based on his DWI conviction and absences from work to serve a resulting jail sentence. *In the Matter of Vincent Greenfield*, Docket No. A-0713-07T1 (App. Div. February 19, 2009).

-E-mail Policy Violations

In [In the Matter of Shauyn Copeland \(MSB, decided September 7, 2005\)](#), the appellant had been removed on charges related to her forwarding sexually explicit photos via e-mail to another employee in violation of the appointing authority's policy. The Board modified the removal to a four-month suspension, noting that, while the e-mail was highly offensive, the appellant had no prior violations of the e-mail policy, and forwarding the offensive e-mail to a single fellow employee was not egregious enough, in and of itself, especially in light of the appellant's 12 years of employment were marked by only one minor attendance-related disciplinary action.

Ethical Violations (Conflict of Interest)

Board upheld employee's 10-day suspension and found that his involvement with a community organization constituted a violation of the Local Government Ethics Law. [In the Matter of James Reid.](#)

-Extend Vacation

Commission upholds removal of employee based on evidence that he intended to extend his vacation prior to experiencing unforeseen circumstances that necessitated a further extension. [In the Matter of Emanuel Amadi.](#)

-Failure to Complete Work

After a review of the testimony presented, Board rejects initial decision by ALJ and upholds removal of employee charged with repeated failure to complete assigned work in a timely manner. [In the Matter of Harry Lucas.](#)

-Failure to Follow Established Procedures

Commission modifies removal of Hospital Attendant with Essex County to a three-month suspension, finding that her actions violated established procedures but did not rise to the level of patient abuse. [In the Matter of Annatta Wade.](#)

-Failure to Report (Criminal Record)

Board upholds removal of employee who failed to disclose a prior criminal conviction during the hiring process. [In the Matter of Wayne Brown.](#)

-Failure to Report (Positive Drug Test)

See [In the Matter of Ronald Stuiso \(MSB, decided August 23, 2006\)](#) (Board upheld the removal of an employee, who was designated to receive employees' drug test results and neglected to report or discipline a subordinate's repeated positive tests for marijuana use).

-Failure to Report (Spouse's Criminal Activities)

Board upholds removal of a Police Officer based on her knowledge of and failure to report her husband's criminal activities. [In the Matter of Raquel Morton.](#)

-Failure to Renew Immigration Employment Authorization Card

Board upheld removal of employee who repeatedly failed to timely renew his immigration employment authorization card. [In the Matter of Harley Vargas.](#)

-False Charges Against Co-Worker

Commission upholds 30-day suspension of a Fire Alarm Operator who lodged false charges of racial harassment against a co-worker. [In the Matter of General McFadden.](#)

-Falsification

Board upholds removal of Senior Investigator, Secured Facilities, due to his inappropriate actions in apprehending an escaped inmate. [In the Matter of Stephen Cesare.](#)

-Falsification (Medical Documentation)

Commission upholds removal of a Laborer who submitted fraudulent medical documentation to justify his use of sick leave. [In the Matter of Eddie Jimenez.](#)

Commission upholds removal of County Correction Officer charged with forging a note from her physician to justify her absence from duty. [In the Matter of Joyce Moss.](#)

Commission upholds removal of employee charged with submitting false medical documentation to justify her absences. [In the Matter of Yvonne Bundy.](#)

-Improper Client Meeting Outside Work

Commission upholds removal of Human Services Specialist 2 charged with improperly meeting a client outside of work. [In the Matter of Roger Caldwell, Jr.](#)

-Improper Influence

Commission upholds removal of Judiciary employee who attempted to use her position to influence the dismissal of a parking ticket. [In the Matter of Martina Kotur.](#)

-Improper Motives

Commission upholds removal of Police Officer who detained a citizen overnight based on improper motives. [In the Matter of Michael Sharin.](#)

-Inadvertent Breach of Confidentiality

Board imposed 20-day suspension on a Hospital Attendant who inadvertently revealed to a family member that an individual was a patient at a psychiatric hospital. [In the Matter of Phyllis Williams.](#)

-Inadvertent Misallocation of Public Funds

Board modified removal to a five-day suspension for Clerk who inadvertently took a small amount of public funds home. [In the Matter of Deborah Payton.](#)

-Inappropriate Access to Records

Board upholds 10-day suspensions for employees of Department of the Treasury charged with accessing tax accounts for personal use. [In the Matter of Patricia Babij, et al.](#)

-Inappropriate Remarks to Subordinate

Board upholds 10-day suspension of Correction Sergeant charged with making inappropriate remarks to a female subordinate. [In the Matter of Raymond LaPoint.](#)

-Inattention to Duty

Board upholds 35-day suspension of County Correction Officer whose inattention resulted in an inmate's attempt to sexually assault a nurse. [In the Matter of Darlene George.](#)

-Insubordination (Lawfulness of Order)

Commission upholds 15-day suspension, finding that employee was insubordinate when he disrespected and cursed at a superior officer. [In the Matter of Joseph Moreno.](#)

Board reverses the removal of an employee, finding that his disregard of an order of his superior was justified by legitimate concerns for the safety of his clients. [In the Matter of Vernon Allen.](#)

-Internet Usage

Board modifies removal of a long-term employee charged with violations of Internet usage policy to a six-month suspension. [In the Matter of Thomas Lyles, Jr.](#)

-Intimidating Conduct

Commission upholds removal of short-term employee based on her intimidating conduct towards a resident. [In the Matter of Bettye Griffin-Staples.](#)

-Internet Usage (Postings on Message Board)

Commission finds that disparaging comments about members of the Police Department posted on an internet message board by a Police Officer were not constitutionally protected speech. [In the Matter of Darious Smith.](#)

-Job Performance

Board upholds removal of an Investigator Public Defender, despite absence of prior discipline, where she had ample notice of her substandard job performance and made no effort to improve her work. [In the Matter of Sheila Hughes.](#)

-Off-Duty Conduct

Commission upheld 20-day suspension of Police Captain who disregarded traffic laws while off duty and exhibited disrespect toward a subordinate officer in public. [In the Matter of Paul Messina.](#)

Board reverses removal of a County Correction Officer, finding that his off duty actions did not rise to the level of conduct unbecoming a public employee and did not violate a subsequently executed settlement. [In the Matter of James Keegan.](#)

-Physical Abuse, Defined

Commission grants reconsideration but affirms prior decision modifying removal of direct care worker to a six-month suspension, finding that the improper contact with patient was not malicious. [In the Matter of Isaiah Knowlden.](#)

Commission upholds removal of Human Services Assistant, finding that the videotape of the incident established that he was guilty of patient abuse. [In the Matter of Daniel Wilkinson.](#)

-Prescription Drug Use

Commission upholds removal of Police Officer who possessed and took Xanax without a valid prescription. [In the Matter of Arnaldo Lopez.](#)

-Prohibited From Carrying Firearm

Commission upholds removal of Senior Correction Officer who was prohibited by law from carrying a firearm. [In the Matter of Freddie B. Frazier, Sr.](#)

-Prohibited From Working in Human Services

Commission upholds removal of employee with Vineland Developmental Center and his disqualification from employment with the Department of Human Services pursuant to the Codey Bill. [In the Matter of Larry Taylor, aff'd on reconsideration \(CSC, decided February 11, 2009\).](#)

-Qualify with Service Weapon

Board upholds removal of Sheriff's Officer who was unable to qualify with her service weapon. [In the Matter of Joan Ivan.](#)

Reports (Duty to Report Accurately)

Commission upholds 120 working day suspension of County Correction Officer, finding that he punched an inmate without provocation and filed a purposely misleading report regarding the incident. [In the Matter of Jermane Carter.](#)

-Residency

Board reverses the removal of a Laborer with the City of Newark and finds the fact that he voted in Irvington did not, in and of itself, establish that he did not reside in the City of Newark. [In the Matter of Charles Motley, aff'd, In the Matter of Charles Motley, unpublished, Docket No. A-6027-03T2 \(App. Div. June 20, 2005\).](#)

-Resignation Not in Good Standing (Reversed)

Commission reverses employee's resignation not in good standing, finding that the appointing authority unreasonably failed to seek additional information prior to issuing disciplinary charges. [In the Matter of Joel Smith.](#)

-Sexually Explicit Note

Commission removes Sheriff's Officer, who, while on duty and in uniform, gave a note to a female employee containing sexually explicit and suggestive language. [In the Matter of Nicolas Castillo.](#)

-Sexual Misconduct (Off-Duty)

Board upholds removal of Police Officer charged with off-duty sexual misconduct. [In the Matter of Christian Cofone.](#)

-Sick Leave (Outside Employment)

Commission grants partial summary decision and upholds Fire Fighter's removal based on his engaging in outside employment while on sick leave. [In the Matter of Steven J. Winters.](#)

-Sleeping on Duty

Following a review of the testimony presented, Board upheld removal of Human Services Assistant on charges of sleeping on duty. [In the Matter of D. Zeogar Wilson.](#)

-Steroid Use

Commission upholds removal of a Sergeant Campus Police who admittedly had himself injected with anabolic steroids. [In the Matter of Steven Fleming.](#)

-Subordinates Actions

Board upholds removal of a Construction Official charged with permitting his subordinates to keep inaccurate records of their work hours. [In the Matter of Anthony D'Altrui.](#)

-Theft

Commission upholds removal of a Senior Correction Officer with 23 years of service who took a cellular telephone that did not belong to him and who did not intend to return it to the rightful owner. [In the Matter of William Johnson.](#)

-Third Party Sexual Harassment

Board upholds removal of Correction Officer Recruit based on sexually offensive conduct in the Correction Staff Training Academy. [In the Matter of Sandra Williams.](#)

-Threat of Physical Harm

Commission upholds 20 working day suspension imposed on a County Correction Sergeant who used oleoresin capsicum (OC) spray on an inmate who posed no immediate threat of physical harm. [In the Matter of Joshua Feldman.](#)

-Threatening Remarks by High Level Employee

Board upholds removal of an Employee Relations Coordinator based on his use of inappropriate and threatening language in the workplace. [In the Matter of Carl Natter.](#)

-Transmitted Crime Scene Photographs

Board upholds 30-day suspension of a Police Officer who transmitted a crime scene photograph to an acquaintance without authorization. [In the Matter of Keith Curry.](#)

-Transporting Alcohol

Board upheld 15-day suspension of employee charged with purchasing alcohol and transporting it in a Township vehicle. [In the Matter of Vincent A. Stefani.](#)

-Unauthorized Motor Vehicle Pursuit

Commission upholds removal of Police Officer based on his unauthorized involvement in a motor vehicle pursuit. [In the Matter of Michael Jasiocki.](#) *Pending in Appellate Division.*

-Undue Familiarity (Civilian Employees)

Board upholds removal of civilian employee of South Woods State Prison charged with receiving a neck massage from an inmate. [In the Matter of Richard Bodine.](#)

Board upholds removal of civilian employee of South Woods State Prison who disclosed personal information and delivered contraband to an inmate. [In the Matter of Artella Richardson.](#)

-Undue Familiarity (Correction Officer)

Commission upholds removal of Senior Correction Officer who discussed personal information about himself and another officer with an inmate. [In the Matter of Christopher Hendershot.](#)

Commission upholds removal of Senior Correction Officer, finding sufficient evidence that she communicated with an inmate via cellular telephone. [In the Matter of Estelle Smith.](#)

-Undue Familiarity (Parolee)

Commission upholds removal of a Senior Correction Officer charged with undue familiarity. [In the Matter of Pedro Pardo.](#)

Board upholds removal of Correction Officer Recruit who intentionally failed to disclose her cohabitation and relationship with a parolee. [In the Matter of Hester Ridgeway.](#)

-Union Representative

On reconsideration, Commission upholds its reversal of a 59-day suspension of a Police Officer, finding that his conduct while acting as a union representative for a co-worker was protected conduct. [In the Matter of Willie Rowe.](#)

-Verbal Abuse of Inmate (Use of Similar Language)

Board finds employee's use of inappropriate language directed towards an inmate was not mitigated by inmate's use of similar language or suggestion that inmate did not find language offensive. [In the Matter of Hector Fuentes.](#)

DISCRIMINATION

-Agent Contract

Board finds that employee of Motor Vehicle Commission, who violated the State Policy Prohibiting Discrimination, Harassment and Hostile Environments in the Workplace (State Policy) while that agency was privatized, could be disciplined for those violations. [In the Matter of Ruth Spae.](#)

-Conduct Did Not Recur

Board finds a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace notwithstanding that the offending conduct did not recur. [In the Matter of Mary Garrison.](#)

-Co-Worker's Disability (Provided Information)

Board finds that employee did not violate State Policy when she provided solicited information related to a co-worker's disability. [In the Matter of Joanne Cole.](#)

-Excluded from Meeting

Board upholds finding that employee violated the New Jersey State Policy Prohibiting Discrimination in the Workplace when he excluded an Hispanic female from a meeting. [In the Matter of Henry Vance Davis.](#)

-Intent Irrelevant (Penalty)

Board finds supervisor's intent irrelevant in determining the proper penalty for making a racially insensitive remark to a subordinate employee. [In the Matter of Heather Griffith.](#)

-Jurisdiction

Commission dismisses for lack of jurisdiction the appeal of a Supervisor of Postal Services who was found to have violated the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy) and who was served with a PNDA recommending discipline for lack of jurisdiction. [In the Matter of Joseph Jackson.](#)

-Letter of Reprimand and Order to Attend Courses Appropriate Remedy

Board finds employee was subjected to a violation of the State Policy but finds that appropriate administrative action was already taken by the appointing authority. [In the Matter of Nicolas Lamboy.](#)

-Penalty

Board finds evidence of a violation of the State Policy and suggests that a more severe penalty could have been imposed. [In the Matter of Debra Johnson.](#)

-Reassignment

Board finds that Trooper's reassignment was not undertaken in violation of the State Policy. [In the Matter of Salvatore Maggio.](#)

-Reasonable Accommodation, Workplace (Driving)

Board denies appeal of a Family Service Specialist 1 who had not established the necessity of his requested accommodations. [In the Matter of James O'Donnell.](#)

-Reasonable Accommodation, Workplace (Jurisdiction)

Board lacks jurisdiction over Judiciary employee's request for a reasonable accommodation. [In the Matter of Sybil Finney.](#)

-Reasonable Accommodation, Workplace (Parking)

Board denies employee's request to be accommodated under the ADA with a free parking space in an adjacent parking lot, finding that her parking concerns were unrelated to the performance of her job duties. [In the Matter of N.R.](#)

-Reasonable Accommodation, Workplace (Pregnancy)

Board grants appeal of employee who demonstrated that similarly situated employees had been given different options in response to their inability to carry a weapon. [In the Matter of Sheila Bruno.](#)

DONATED LEAVE

-Catastrophic Health Condition

Board finds that medically necessary absence for 60 or more days constitutes catastrophic health condition and finds good cause to relax rule prohibiting retroactive participation in donated leave program. [In the Matter of Carrie D. Lewis.](#)

ELIGIBILITY
APPLICATION

-Application, Late (Detrimental Reliance)

Board denies the appeal of a candidate for Police Sergeant who incorrectly relied on his union representative's statement regarding the closing date of an examination. [In the Matter of Scott DeLussa](#).

CONTINUOUS PERMANENT SERVICE

-Working Test Period

Board denies the appeal of a candidate for a Principal Clerk Typist promotional examination who had not completed his working test period as of the closing date. [In the Matter of Lennox Devlugt.](#)

EDUCATION

-Degree (105 Maximum Credits Not Arbitrary)

[In the Matter of Mary Hoffman \(MSB, decided September 25, 2002\)](#)
(Incomplete Bachelor's degrees are only awarded eligibility and scoring credit for up to a maximum of 105 completed college credits, regardless of the level of the coursework).

-Desk Audit (Does Not Equate to Degree)

See [In the Matter of Joseph M. Macchi \(MSB, decided April 24, 2002\)](#) (A position audit determines the correct classification for the duties an employee performs. It does not equate to, or address the issue of, whether the employee meets the education and experience requirements for the title).

-Engineering (Engineering Technology can Substitute for Engineering Degree)

Commission admits employees to engineering promotional examinations based on revision of educational requirement permitting utilization of Bachelor's degree in Engineering Technology for professional level engineering titles. [In the Matters of James Lepri and Henry Nguyen.](#)

-Engineering Titles

Board finds that applicant's Ocean Engineering Bachelor's degree satisfies educational requirement for engineering title and grants his appeal of his pre-appointment evaluation. [In the Matter of Brett Bailey.](#)

-High School Diploma (On-Line Program)

Board restores the name of an eligible to the Sheriff's Officer and Police Officer eligible lists, finding that a high school diploma earned through an on-line program satisfied the educational requirement. [In the Matter of Annette C. Jones.](#)

-Major

Assemblage of semester hour credits in a specific discipline does not constitute a major in that discipline unless they were attained while in pursuit of a degree in the required discipline. See [In the Matter of Philip Beesely, et al. \(MSB, decided March 27, 2001\)](#). Compare, [In the Matter of Jason Tesauro \(MSB, decided February 27, 2002\)](#) (Evaluation by Academic

Department Head determined that appellant's credits would be considered "related fields" as required for the title under test).

-Master's Degree (Coursework Toward Doctorate)

Board finds that Master's degree, coursework towards Doctorate degree, and extensive experience justified relaxing requirement that candidates for Clinical Psychologist 1 possess a Doctorate degree. [In the Matter of Barbara Finnegan.](#)

-Master's Degree (Related Discipline as Substitute for Experience)

Board accepts applicants' Master's degrees in Library and Information Studies as a substitute for required experience for the title of Records Analyst 3. [In the Matters of Torey King and Anna Shifton.](#)

-Paralegal Certificate

Board grants eligibility appeal and clarifies education requirements for Paralegal Technician 2 title. [In the Matter of Diane Giordano \(S0165E\).](#)

-Requirements Changed in Job Specification

Board relaxes educational requirements for eligibility based on equitable grounds. [In the Matter of Marie Rowan and Emma Williams \(C0408E\), Monmouth County.](#)

EXPERIENCE

-Abbreviated Description of Duties/Experience

In *In the Matter of William A. Bailey, Assistant Supervisor, Sewers/ Assistant Supervisor, Water*, Docket No. A-5283-02T2 (App. Div. December 30, 2004), the Appellate Division of the Superior Court reviewed the matter of an applicant who submitted an abbreviated application. The court noted that the appellant did not explain his duties which could have rendered him eligible. More importantly, it noted that “the onus was not on [Selection Services] or the Board to flesh out the scope of Bailey’s prior experience.”

-Bridge Titles (General)

A bridge title is one that is recognized by the DOP as related to a higher category title in terms of work performed and knowledge, skills, and abilities required. It is noted that “bridge titles” were established in order to allow individuals with experience in a given job category (e.g., clerical or paraprofessional) the opportunity to compete in promotional examinations involving a higher level job category (e.g., paraprofessional or professional). See [*In the Matter of Irma Camilo* \(MSB, decided February 9, 2005\)](#).

-Clarifying Experience (Defined vs. Amending Application)

Under *N.J.A.C.* 4A:4-2.1(g), the Board can and does accept clarifying information in eligibility appeals. However, *N.J.A.C.* 4A:4-2.1(f) provides that an application may only be amended prior to the announced closing date. For example, information submitted on appeal pertaining to duties in a given title that expands or enlarges information previously submitted is considered clarifying and is accepted. However, any documentation indicating work in a setting that was not previously listed on an application or resume cannot be considered after the closing date. See [*In the Matter of Diana Begley* \(MSB, decided November 17, 2004\)](#).

-Externships (Internships)

[*In the Matter of Luisa Mena* \(MSB, decided February 14, 2001\)](#) (Internship completed as part of a college curriculum would be considered part of education or training, not professional work experience).

-Others Admitted Based on Same Experience

The mere fact that candidates who held the same titles as the appellants were admitted to previous examinations for Management Assistant, without

more, did not establish the appellants' eligibility for Management Assistant examination. Such reasoning is flawed, since there are a multitude of reasons why other applicants are admitted to examinations. *See In the Matter of Cynthia Bucchi, Maria D'Angelo, Rosalind R. James, Carla M. Lewis, and Rhonda McLaren, Management Assistant (PS5831F), Department of Education, Docket No. A-1266-04T2 (App. Div. February 27, 2006).*

-Out-of-Title Work Experience (Good Cause)

Ordinarily, the Board looks to whether or not "good cause" has been established in determining whether to grant or deny appeals involving out-of-title work. Generally, the Board finds good cause where the record evidences that the examination situation is not competitive, no third parties are adversely impacted, and the appointing authority wishes to effect permanent appointments and verifies that the appellants have performed the relevant duties which otherwise satisfy the eligibility requirements. [*See In the Matter of John Cipriano, et al. \(MSB, decided April 21, 2004\).*](#)

-Primary Focus (Determination)

Qualifying experience has the announced experience as the primary focus. The amount of time, and the importance of the duty, determines if it is the primary focus. An experience requirement that lists a number of duties which define the primary experience, requires that the applicants demonstrate that they primarily performed all of those duties for the required length of time. Performance of only one or some of the duties listed is not indicative of comprehensive experience. *See [In the Matter of Jeffrey Davis \(MSB, decided March 14, 2007\).](#)*

-Secretarial Work

Secretarial work involves working for an executive, including scheduling appointments, giving information to callers, reading and routing incoming mail, locating files, typing, filing, greeting visitors and conducting them to the executive or appropriate person, arranging travel schedules, placing outgoing calls, recording minutes of staff meetings, making copies of printed matter, and preparing outgoing mail. *See [In the Matter of Rosemarie Baylies \(MSB, decided April 6, 2005\).](#)*

EXPERIENCE, SUPERVISORY

-Description

Supervisory experience includes responsibility for seeing that tasks assigned to subordinates are efficiently accomplished. It involves independent assignment and distribution of work to employees, with oral or written task instructions, and maintenance of the flow and quality of work within a unit in order to ensure timely and effective fulfillment of objectives. Supervisors are responsible for making available or obtaining materials, supplies, equipment, and/or plans necessary for particular tasks. They provide on-the-job training to subordinates when needed, and make employee evaluations based on their own judgment. They have the authority to recommend hiring, firing, and disciplining employees. See [*In the Matter of Julie Petix \(MSB, decided January 12, 2005\)*](#).

-Program Supervision

Supervising, training, and monitoring a program would not be considered supervisory experience unless the applicant had both performance evaluation responsibility for subordinate staff and supervised subordinate staff on a daily basis. See [*In the Matter of Patricia Cluelow \(MSB, decided February 6, 2006\)*](#).

-Supervision of Clients

See [*In the Matter of Gloria Burnett-Harrison, et al. \(MSB, decided February 22, 2006\)*](#) (Supervision of clients or projects is not the same as supervision of staff).

GENERAL

-Challenge Eligibility of Another Candidate

Board denies the appeals of two Deputy Police Chiefs with Atlantic City who challenged the eligibility of another candidate for Police Chief, but orders a competitive examination be held. [In the Matters of Ernest Jubilee and Henry M. White, Jr.](#)

-Citizenship Requirement (Law Enforcement)

Board denies appeals of applicants for the Entry Level Law Enforcement Examination who did not meet the citizenship requirement by the closing date. [In the Matter of Juan Ortega-Hernandez, et al.](#)

-Disqualification (Disciplinary Demotion)

Board upholds Deputy Police Chief's disqualification from Police Chief promotional examination based on his recent disciplinary demotion. [In the Matter of Steven Palamara, aff'd, Palamara v. Twp. of Irvington](#), unpublished, Docket No. A-6877-02T1 (App. Div. May 30, 2005).

-Eligibility Determined by Announcement not Job Specification

Board denies appeal of another candidate's eligibility. [In the Matter of Joseph Freitas, III and Maria Todaro, Superintendent of Weights and Measures \(PC1814D\) Union County](#), *aff'd, In the Matter of Joseph Freitas, III and Maria Todaro, Superintendent of Weights and Measures (PC1814D), Union County*, unpublished, Docket No. A-5216-03T1 (App. Div. June 17, 2005).

-Lateral Title Change (Local Service)

Board finds that employee's title change constitutes a lateral title change and accepts out-of-title work to qualify her for the new title. [In the Matter of Jennifer Hunter](#).

-Veterans Preference (Residency Has Priority)

Residency is the initial factor used to determine eligibility and is also statutorily mandated. See [In the Matter of Kevin Kelly \(Commissioner of Personnel, decided May 8, 1998\)](#).

-Veterans Preference (Does Not Automatically Confer Eligibility)

In [*In the Matter of Joseph Busco and Steven Stankovitis*](#) (MSB, decided [March 23, 2005](#)), the Board determined that veteran's status does not automatically confer eligibility upon an applicant for a promotional or open competitive examination. The Board explained that applicants must first meet all eligibility requirements before veteran's preference can be applied to examination scores and ranks.

-Volunteer Points (Fire Fighter)

Commission finds a Fire Fighter eligible was erroneously awarded volunteer points and orders that the Fire Fighter application be revised to avoid future confusion. [*In the Matter of John Garton and Douglas Inferrera, Jr.*](#)

-Working Test Period (Performed Duties of Title)

Board grants retroactive permanent appointment date but upholds candidate's ineligibility for promotional examination, since he had not actually served his working test period as of the closing date. [*In the Matter of Jason Stowe.*](#)

UNIT SCOPE

-Defined

The unit scope is a defined part of a governmental agency used as a factor in determining eligibility for promotional examinations. The unit scope is the organizational unit where the position for the title being announced exists; employees have promotional rights in the unit scope where they are permanently located. An employee's permanent location is determined by his or her physical location and reporting relationship within the organization, with reporting relationship being the final determining factor. *See e.g., [In the Matter of Stephen Pieczynski \(MSB, decided March 21, 2000\)](#)*

-Incumbent in Proper Unit Scope

Board finds no evidence that appointing authority abused its discretion in announcing examination open only to employees in the same unit scope of the vacancy to be filled. [In the Matter of William E. Bate.](#)

-Reassigned to New Unit Scope

On remand from the Superior Court, Appellate Division, Board upholds its decision to remove the name of an eligible from a promotional list, based on his failure to remain in the announced unit scope. [In the Matter of Michael Kanc.](#)

Board finds non-appointment of two eligibles was appropriate where they were no longer employed in the appropriate unit scope. [In the Matters of David Baldasari and David Remboski.](#)

-Restricts Competitive Process

Board denies appeals of employees who were not employed in a unit scope to which a promotional examination was open and finds that appointing authority's choice of the announced unit scope was reasonable. [In the Matter of Beth Kelly, et al.](#)

-Unit Scope Changed to Reflect Organizational Transfer

Board orders that the unit scope for the examination be changed to reflect the incumbents organizational transfer to the Department of Human Services. [In the Matters of JoAnn T. De Lay and Rita L. Edwards.](#)

-Widened

Board orders that announced unit scope for promotional examination be expanded in order to ensure a fair and competitive promotional process. [In the Matter of Deputy Administrator of Investigations and Field Operations \(PS7032Q\), Office of the Public Defender.](#)

EMPLOYEE MOVEMENTS

-Involuntary Transfer

Board orders the Township of Marlboro to return an employee who had been involuntarily transferred. [In the Matter of Danielle Cipriani.](#)

-Lateral Title Change for Dissimilar Titles

Board relaxed applicable rules to effectuate the lateral title change of employees in the County Police Officer title series to the Sheriff's Officer title series. [In the Matter of County Police Officers, Essex County.](#)

-Reassignment (Part of Discipline)

Board denies employee's appeal of her reassignment but warns appointing authority to follow disciplinary procedures when it utilizes a reassignment as part of a disciplinary action. [In the Matter of Marcia Burton.](#)

Commission finds reassignment of a Senior Investigator, Parole and Secured Facilities, was a form of discipline and remanded the matter to appointing authority to either initiate disciplinary procedures or return him to his original assignment. [In the Matter of Robert Trent](#)

Commission remands the matter concerning the reassignment of a Secretarial Assistant 1 (Non-Stenographic) to either initiate disciplinary procedures or to return the appellant to her position in the Assistant Chief Administrator's Office. [In the Matter of Tameshia Russell.](#)

-Reassignment (Should Be In-Title Movement)

Board finds several employee movements in management titles to be in violation of Merit System law and regulations and orders appropriate corrective action. [In the Matter of Kathleen Ross, et al.](#)

-Transfer Without Consent

Board found that employee was improperly transferred without her consent and ordered Newark to immediately restore her to her position in the Mayor's Office. [In the Matter of Lucy Gracia-Brown.](#)

EXAMINATION

GENERAL

-Address (Undeliverable Notice to Appear for Examination)

Board denies candidate's request to re-take examination, finding that his failure to update his address led to the inadequate notice of the test date. [In the Matter of Farouk Afrasiabi](#).

-Appeal Results in Lower Ranking

Board denies request for reconsideration of a prior examination item appeal from two conditional appointees whose ranks were lowered as a result of rescoring. [In the Matters of Tracy Medwin and Philip DiGavero](#).

-Correction Officer Video Test

Board upholds validity of Correction Officer Video Test. [In the Matter of Kimberly Adams, et al.](#)

-Delay in Promotional Test Development (Provisional Appointees)

In [In the Matter of Joshua Lazarus \(MSB, January 12, 2005\)](#), the Board determined that the failure to give a timely civil service examination did not vest a provisional appointee with the right to retain the provisional appointment or the right to a permanent appointment absent a showing of negligence or intentional misconduct.

-Erroneous Examination Result Notifications

Board finds that administrative errors related to notices received by candidates for Fire Fighter examination did not warrant any relief. [In the Matter of Jayson Blaine, et al.](#)

-Fire Fighter (Physical Performance Not Discriminatory)

Commission denies appeal of a challenge to physical performance portion of Fire Fighter examination as discriminatory against women. [In the Matter of Melanie Kemery](#).

-Just Passing the Test is Not Enough to Warrant Promotion

See [In the Matter of Jennifer Napoli \(MSB, decided February 25, 2004\)](#) (All prospective candidates for State employment are required to pass a

competitive examination and be certified in order to be considered for permanent employment in the competitive division of the career service). Employment decisions are not solely based on an individual's score on a promotional examination. Merit System rules and procedures contemplate appointing authority discretion in the selection process through the "rule of three." See *N.J.S.A. 11A:4-8* and *N.J.A.C. 4A:4-4.8(a)3*. Additionally, appointing authorities are not precluded by Merit System rule or law from considering additional experience and education in the interview process in order to select the most qualified candidate. See [*In the Matter of Araceli Cabral* \(MSB, decided August 11, 2004\)](#).

-Security (SME Participated in Test)

Board finds that administration of alternate form of examination was an adequate remedy for a candidate who had participated in the development of the examination. [*In the Matter of Anna Maria Proctor*](#).

-Standardization of Scores

Board denies Hillside Township's challenge to the validity of the Fire Chief (PM3588E) oral examination, finding its allegation of bias on the part of an assessor without merit. [*In the Matter of Fire Chief \(PM3588E\), Hillside Township*](#).

-Validity (Teamwork Portion of Fire Fighter Examination)

Board finds candidates did not overcome overwhelming evidence of the validity of the teamwork portion of Fire Fighter examination. [*In the Matter of Richard Branco, et al.*](#); [*In the Matter of Edward Brownlee, et al.*](#); and [*In the Matter of Frank Aguanno, Jr., et al.*](#)

MAKE-UP

-Death in Candidate's Immediate Family (Documentation, Buried Prior to Test)

Board relaxes regulatory provisions and grants a make-up examination to a candidate for Fire Captain, whose father passed away one week prior to the examination date. [In the Matter of Michael Martin.](#)

-Evidence of Cheating

Board voids results of a make-up examination and affords candidate an opportunity to take another make-up examination where there was evidence that test content had been disseminated prior to make-up examination. [In the Matter of Francis Gallagher, et al.](#)

-Family Caregiver Needs

Board grants make-up request due to family care needs. [In the Matter of D. David Shu, Supervising Program Development Specialist, DEP \(PS4945G\), Department of Environmental Protection.](#)

-Medical Emergency

Board relaxes rules and grants make-up examination to candidate for supervisory law enforcement examination where traffic and family medical emergency prevented his appearing for the test on time. [In the Matter of Joseph Greco.](#)

-Public Safety (Long Term Illness)

Board grants make-up examination to candidate whose extended period of disability and prescribed pain medication precluded his participation in the examination. [In the Matter of Robert Romano.](#)

-Public Safety (Military Drill)

Commission grants make-up examinations to Entry Level Law Enforcement Examination candidates who were required to attend military drill sessions on the dates of their examinations. [In the Matter of John Campanile, et al.](#)

-Public Safety (Short Term Illness)

Board finds that short term illness and disability from work did not constitute a catastrophic illness pursuant to the make-up examination pilot program now codified in *N.J.A.C.* 4A:4-9. [In the Matter of Tracy Marguglio](#).

MANAGEMENT SITUATION TEST

-Duration of Eligible List

Any eligible list that is generated as a result of the MST has a duration of two years. During this two-year period, the test score will be banked for possible future use. See [*In the Matter of Management Situations Test Lists*](#) (MSB, decided October 9, 2002).

MULTIPLE CHOICE

-Answer Sheet (Answer Stub)

See [In the Matter of Clarivel Colon, et al. \(MSB, decided August 11, 2004\)](#) (Answer stub informing candidates to “Answer these Questions” provided unambiguous notice to candidates to answer specified questions and mark them on the corresponding space on the answer sheet provided given an examination of multiple titles).

-Answer Stub (Inconsistent with Cover of Test Booklet)

Board awards credit for seven examination questions due to discrepancy between the questions to be answered on the stub portion of the candidate’s answer sheet and the cover of his test booklet. [In the Matter of Robert Marcus.](#)

-Appeal Rights (Basis Required)

N.J.A.C. 4A:4-6.3 specifies that for examination and selection appeals, the action being appealed, the specific objections and requested relief must be presented. Thus, since appellant did not provide bases for his challenges to eight keyed questions, or suggest alternate keyed answers, there was no basis for appeal. See [In the Matter of Susan Grossman \(MSB, decided January 26, 2005\)](#).

-Cheating (Disqualification)

Commission upholds the disqualification of two candidates from the Police Lieutenant (PM2622G) examination for a period of three years due to cheating. [In the Matter of Christopher Gialanella and Fiore Purcell.](#)

Finding evidence of cheating, Board disqualifies two candidates from four examinations they took, precludes them from taking all examinations for three years, and recommends disciplinary action. [In the Matters of Hemaben Bhavsar and Yogeshkumar Bhavsar.](#)

-English Language (Advantage to Native English Speakers)

Board denies challenge to written examination by appellants for whom English is their second language. [In the Matter of Nilesh Bhavsar, et al., \(PS7024T\) and \(PS7007T\).](#)

DOP examinations are written at a level of English consistent with the title under test. In this regard, all titles tested in State service list as a requirement the ability to read, write, speak, understand, and communicate in English sufficiently to perform the duties of the position. See [*In the Matter of Araceli Cabral* \(MSB, decided August 11, 2004\)](#).

-Postponement of Examination Request (Fire)

Noting that provisional appointee had been serving since April 2004, Board denies union's request to postpone promotional examination due to potential violation of *N.J.S.A. 11A:4-13(b)*. [*In the Matter of Fire Chief \(PM3608F\), City of Asbury Park*](#).

SENIORITY

-Awarding (Local)

Board upholds longstanding policy to award seniority credit only for permanent service in titles to which a promotional examination is open. [In the Matter of Christine Wilson](#).

-Correction Officer Training Program Time Not Applicable

Board finds that the 14-week Correction Officer training program is considered temporary service and, thus, not included in seniority calculations for Merit System purposes. [In the Matter of John Hogan](#).

-Disability Leave Improperly Deducted

Board grants scoring appeal where disability leave was improperly deducted from seniority score. [In the Matter of Donald Tonachio, County Correction Sergeant \(PC2598C\), Ocean County](#).

SUPERVISORY TEST BATTERY

-Battery Type of Testing Appropriate

In *In the Matter of Richard Delaney* (MSB decided, January 12, 2005) *aff'd on reconsideration* ([MSB, decided May 10, 2006](#)), the Board explained the use of “battery” types of examinations that evaluate relevant skill sets clearly maximizes testing and candidate resources given that these examinations evaluate common skills applicable to multiple titles.

UNASSEMBLED EXAMINATION
TRADITIONAL RANKED

-Change in Test Mode Warranted

Board cancels eligible list and orders multiple-choice examination due to discrepancies in candidates' self-reported experience which rendered unassembled examination inappropriate test mode. [In the Matter of Joseph Bukofsky, et al.](#)

-Flat 70 Rule Set Aside For Specific Situation

Board remands unassembled portion of Forensic Scientist 3 examination to the Division of Selection Services in order that candidates who met non-supervisory open-competitive requirements could have their experience evaluated for credit on the examination. [In the Matter of Philip Beesley, et al.](#)

-Ten-Year Rule

Pursuant to long standing policy utilized by the DOP, only relevant experience gained within the 10-year period immediately preceding the closing date is acceptable for examination purposes since rapid changes in certain fields make recent experience a more valid indicator of knowledge of current trends and the state of the art than experience gained many years ago. See *In the Matter of Debra Cavallo* (Commissioner of Personnel, decided August 11, 1997), citing *In the Matter of Peter A. Smith* (Civil Service Commission, decided April 17, 1984).

-Ten-Year Rule (Changes in Field Documented)

In [In the Matter of Isaac DeBotton \(MSB, decided April 18, 2000\)](#), the Board documented the extensive changes in the field of engineering, bridge engineering, design, and software development that documented that the way engineers perform their work now is not the same as it was 10 years ago and supported the application of the 10 year rule in scoring a candidate's experience in the unassembled examination process.

FITNESS FOR DUTY

-Evaluation (Local Employees)

Where Omnibus Operator did not dispute her medical inability to safely perform her duties, Board finds that the appointing authority appropriately precluded her from her position. [In the Matter of Karol Hennessey.](#)

-Involuntary Retirement

Board upholds the involuntary retirement of a Fire Captain, finding that he was physically incapable of performing his duties and was offered the appropriate accommodations. [In the Matter of Robert Czarnecki.](#)

-Necessity of Medical Opinion

Board finds immediate suspension without pay of Senior Accountant was improper where reinstatement to employment was contingent upon unscheduled medical evaluations. [In the Matter of Anil Thomas.](#)

FOREVER BARRED

-Jurisdiction

The Merit System Board is authorized to determine whether an individual's conviction touches and concerns his public employment and is forever disqualified from future public employment. *See N.J.S.A. 2C:51-2; Cedenov. Montclair State University*, 319 *N.J. Super.* 148 (App. Div. 1999), *aff'd*, 163 *N.J.* 473 (2000); *In the Matter of Patrick Russo*, Docket No. A-1431-02T3 (App. Div. June 18, 2004), *cert. denied*, 181 *N.J.* 548 (2004).

HEARINGS

-Forfeiture Order Vacated

Following decision to vacate order of forfeiture of public employment, Board reinstates previously withdrawn appeal of a removal on administrative charges. [In the Matter of Thomas Pavlik.](#)

-Has Not Adopted Title 11A

Board finds employee of the Mercer County Park Commission not entitled to a hearing regarding his removal since Park Commission had not adopted Title 11A. [In the Matter of Jay Andreyco.](#)

-Resignation Contingent Upon Appeal

Board grants a hearing to a Police Officer regarding his removal from employment, finding that his resignation, contingent upon an appeal to the Police Training Commission, was not valid. [In the Matter of Michael Khan.](#)

-Timeliness (Amended Final Notice)

Board grants reconsideration and a hearing to an employee, finding that the holding of a second departmental hearing rendered the filing of her appeal timely. [In the Matter of Dina Fancher, Monmouth County.](#)

INTERGOVERNMENTAL TRANSFER

-Civilian Federal Firefighters Erroneously Placed on Special Reemployment List Not Eligible for Intergovernmental Transfer

Board finds that former federal Firefighters were properly removed from the Statewide Firefighter Eligibility Listing where their separation from federal service was due to a reduction in force, not the closure of a federal military installation. [In the Matters of David Spera and Michael Cook.](#)

-Functional Dissimilarity Between Job Titles (Transfer Permitted)

Board grants request to process Intergovernmental Transfer of Senior Public Works Inspector to the title of Assistant Public Works Superintendent, despite the functional dissimilarity between job titles. [In the Matter of Dino Colarocco.](#)

-Functional Similarity Between Job Titles (Campus Police Officer)

Board finds that Intergovernmental Transfers of Campus Police Officers to the title of Police Officer could be effectuated without the necessity of a rule relaxation. [In the Matter of Christopher Arciniegas](#) and [In the Matter of Edward Garcia.](#)

-No Agreement

Board denies request of a Practical Nurse to retroactively record her change in employment as an Intergovernmental Transfer. [In the Matter of Lauren Baer.](#)

-Participation at the Discretion of Parties Involved in Transfer

Board denies employee's request for an Intergovernmental Transfer where receiving agency declined to consent to the proposed transaction. [In the Matter of Kindred Brunson.](#)

Where there was no evidence of abuse of discretion, Board declines to order the Intergovernmental Transfer of a Police Officer in the absence of the consent of the sending and/or receiving agencies. [In the Matter of Barry T. Hunter.](#)

Where there was no evidence of abuse of discretion, Board declines to order the Intergovernmental Transfer of a Police Officer in the absence of the consent of the sending agency. [In the Matter of Robert Vesci.](#)

-Request for No Consent

Commission denies request to relax rules governing the Intergovernmental Transfer Program for five years to permit African-American Police Officers to transfer without the consent of the sending jurisdiction. [In the Matter of the Intergovernmental Transfer Program.](#)

-Rice Bill (Sheriff's Investigators)

Commission denies requests of former Sheriff's Investigators to place their names on the Rice Bill List. [In the Matter of Elvis Jimenez, et al.](#)

-Seniority (Corrections Officers, Alternative to Layoff)

Board finds good cause to permit several County Correction Officers to retain seniority from their initial date of hire and through two intergovernmental transfers. [In the Matter of Chuvonda Covington-Leach, et al.](#)

-Sheriff's Officer to Police Officer

Commission determines that intergovernmental transfer from Sheriff's Officer to Police Officer no longer needs relaxation of rule. [In the Matter of Jason Mangano, Police Officer, Vernon.](#)

-Working Test Period

Board relaxed applicable rules to permit the Intergovernmental Transfer of a Campus Police Officer to the title of Police Officer during his working test period. [In the Matter of Anthony DaCunza.](#)

JURISDICTION

-CEPA (Conscientious Employee Protection Act *N.J.S.A. 34:19-1 et seq.*)

Board finds that petitioner's filing of a complaint in Superior Court under CEPA constituted a waiver of further pursuit of his reprisal appeal. [In the Matter of George Ayad.](#)

-Municipal Utility Authorities (Exempt from 11A)

Board finds that employees of the Edgewater Municipal Utilities Authority were not entitled to career service status in their positions, where their employer never adopted the provisions of Title 11A. [In the Matter of Gary Price, et al.](#)

-One Stop Career Center

Board dismisses appeal of an employee of the Camden County One Stop Career Center, finding that his employment was not governed by Title 11A of the New Jersey Statutes. [In the Matter of Robert Barham.](#)

-Redevelopment Agencies

Board orders City of Camden Redevelopment Agency to comply with the Civil Service Act and fines it \$1000 for its non-compliance to date. [In the Matter of City of Camden Redevelopment Agency.](#)

-Withdrawing From Merit System (Housing Authority)

Board denies petition of Housing Authority employees seeking to prevent Housing Authority's withdrawal from the Merit System. [In the Matter of Atlantic City Housing Authority.](#)

LAYOFF

-45-Day Notice (Not Provided)

Board grants a hearing at the Office of Administrative Law and 45 days of back pay to employee who was laid off without proper notice. [In the Matter of Robert W. Hartley.](#)

-Alternative to Layoff (Involuntary Furlough)

Since not all employees of Jersey City's Recreation Department were temporarily laid off on June 20, 2011, Commission ordered that those employees who did not work be awarded their base pay for that date. [In the Matter of Temporary Layoffs, Jersey City.](#)

-Assign Appropriate Duties

Commission orders Trenton to assign employees demoted in lieu of layoff, appropriate job duties. [In the Matter of City of Trenton Layoffs.](#)

-Board of Health

Commission denies layoff rights appeal, finding that employee of Holmdel's Board of Health had no right to transfer to superseding agency. [In the Matter of Michelle Aspis.](#)

-Break in Service (Settlement to Leave of Absence)

Based on reasonable interpretation of settlement, Board finds no break in service after appellant's removal settled to a suspension and leave of absence. [In the Matter of Elbert Walker.](#)

-Constructive Layoff (Reduction in Workweek, no Notice)

Board awards differential back pay to two employees whose workweeks and salaries were involuntarily reduced for a period of seven weeks. [In the Matter of Diane Attanasio and Essam Hanani.](#)

-Did Not Separate Non-Permanent Employees

Commission upholds the layoffs of two Social Workers with Mercer County Board of Social Services, finding no evidence of bad faith. [In the Matter of Sheryl Maneice and Terrence Gilliam.](#)

-Elimination of Position (Mayoral Candidate)

Board found that an employee's intention to challenge incumbent Mayor in the 2006 election did not motivate the abolishment of his position. [In the Matter of Tony Mack.](#)

-Essex County Correction Officers 2004 Layoff

Board finds that employees on special reemployment list were entitled to retroactive permanent appointments, rendering the termination of their employment without a hearing violative of Merit System law. [In the Matter of Kelly McKenith, et al.](#)

-Good Faith Layoff (Standard of Review)

Board finds that claims of mismanagement and the availability of alternate sources of funding did not amount to bad faith in the effectuation of appellant's layoff. [In the Matter of Gerardina LoCascio.](#)

-Layoff Plan

Board orders Vineland School District to submit detailed layoff plan regarding its layoff of five Teacher Aides in July 2003, which had not been in compliance with Department of Personnel rules. [In the Matter of Teacher Aides, Vineland School District.](#)

-Layoff Reversed

Commission reverses layoffs of four employees of the Newark Housing Authority, finding that the layoffs were aimed at stripping the employees of their Civil Service protections. [In the Matter of Anna Marie Clark, et al.](#)

-Layoff Unit

Commission upholds layoff of two Laborers, finding that it was correctly determined that they were employed by one of the affected layoff units. [In the Matter of Paul Zimmerman and Jack Bowen.](#)

-Prior Held Title Right

Commission grants employee a demotional title right to her prior held title of Police Records Clerk. [In the Matter of Beverly Schnegelsberger.](#)

-Procedural Challenge

Commission denies procedural challenge to layoffs of Juvenile Detention Officers and Senior Juvenile Detention Officers in Passaic County. [In the Matter of Layoff of Juvenile Detention Officers and Senior Juvenile Detention Officers, Passaic County.](#)

-Seniority (Tie Breaker)

Commission determines leaves of absences that were properly not deducted from seniority was a proper tie-breaker since all other layoff tie breakers were equal between targeted Building Maintenance Workers. [In the Matter of Pasquale Angelastro.](#)

-Special Reemployment (Essential Functions of Job)

Board restores name of disabled eligible to special reemployment list, finding that previous permanent service in the title demonstrated his ability to perform the essential functions of the job. [In the Matter of Alan Frontera, Jr.](#)

-Special Reemployment (Journeyman List to be Exhausted)

Board finds that a special reemployment list for a journeyman title must be exhausted before an appointing authority makes appointments at the trainee level. [In the Matter of James Newdeck.](#)

-Stay of Proposed Layoff

Commission denies request to stay layoff of employees in Harrison, finding that the passage of a resolution by the Town Council, who is the appointing authority, ratified the layoff plan submitted by the Mayor. [In the Matter of Town of Harrison Layoff.](#)

Commission denies request to stay layoff of employees in Atlantic City, finding that unions had not demonstrated a clear likelihood of success on future good faith layoff appeals. [In the Matter of Atlantic City Layoff.](#)

-Commissioner grants a temporary stay of a proposed layoff of public safety personnel to allow consultations with affected collective bargaining units. [In the Matter of City of Perth Amboy Layoffs.](#)

-Temporary Layoffs

Commission finds that temporary layoff of Municipal Clerk in the City of Camden did not violate *N.J.S.A. 40A:9-165*. [In the Matter of Luis Pastoriza.](#)

Commission denies appeal of temporary layoffs in the City of Newark. [In the Matter of Temporary Layoffs, City of Newark.](#)

Commission upholds temporary layoffs of employees of the City of Newark and the Newark Public Library. [In the Matter of Temporary Layoffs, City of Newark and the Newark Public Library.](#)

Commission upholds temporary layoffs of Tax Assessor and Tax Collector of the City of Newark. [In the Matter of Evelyn Laccitiello and Michelle Jones.](#)

-Temporary Layoff (Back Pay)

Commission awards back pay to employees who did not work on two days of temporary layoff in Atlantic City's Department of Public Works, where evidence demonstrated several employees in same Department worked on those dates. [In the Matter of Atlantic City 2010 Temporary Layoffs.](#)

LEAVE TIME

-Disaster Relief

Board determines that employee is not entitled to paid leave for emergency civilian duty where he was not ordered to duty by the President or the Governor. [In the Matter of Steven R. Levine.](#)

-Education Leave

Commission upholds the Department of Human Services' denial of employee's request for an education leave of absence. [In the Matter of Nidia Zuercher.](#)

-Legislative Branch to Executive Branch Employees

Commissioner denies DYFS employee's request for leave credit based on her prior service in a legislative district office. [In the Matter of Nancy Caruso.](#)

-Local Entitlements (Calculation)

Board finds that local appointing authorities are prohibited from withholding vacation leave until the end of the year in which it is earned. [In the Matter of Vineland City School District Vacation Leave Entitlements.](#)

-Local Entitlements (Merit System Law Sets Minimums, Not Negotiable)

Board adjusts vacation and sick leave entitlements of local employees to reflect that a 35-hour workweek constitutes full-time employment. [In the Matter of Vacation and Sick Leave Entitlement, Rockaway Township Library.](#)

-Local Entitlements (Part-Time Employees)

Commission grants appropriate retroactive vacation leave to part-time career service employee but denies retroactive sick and vacation leave for part-time unclassified employee. [In the Matter of Kerri Armstrong and Laura Martin.](#)

-Military Leave

Commission determines that a Public Safety Telecommunicator should have received 90 working days of paid military leave during the period of his Active Duty for Training. [In the Matter of Mario Gray.](#)

-Paid Leave Bank Days

Commission concludes that it had no statutory authority to support the creation of a Paid Leave Bank program but ordered no recoupment of Paid Leave Bank time used or paid during Fiscal Years 2011 and 2012 and up to December 31, 2012. [In the Matter of Paid Leave Bank Days.](#)

-Sick Leave (Personal Business)

Commission finds that provision in collective negotiations agreement between Woodbridge Fire District #1 and union, which allows use of sick leave for personal business, violates Civil Service rules. [In the Matter of Woodbridge Fire District #1.](#)

-Unilateral Rescheduling of Work Time Due to Military Active Duty for Training

Board finds that, pursuant to federal law and recently adopted amendments to Title 4A, appointing authorities may not unilaterally reschedule an employee's work time to avoid conflict with active military duty. [In the Matter of Louis Bainbridge.](#)

LIST
AGE REDUCTION

-Denial

Board denies request of a Fire Fighter to waive the age requirements for the position. [In the Matter of Jonathan Gutierrez.](#)

-Grant

Board grants the appeal of a Fire Fighter who was removed from employment based on his failure to meet the age requirement for the position. [In the Matter of Daniel Cruz.](#)

-Veterans (Only Entitled to Deduct Time Served in an Area of Conflict)

Board found that a veteran was only entitled to deduct the time he served in an area of conflict during the Lebanon Peacekeeping Mission for purposes of meeting the maximum age requirement. [In the Matter of Daniel M. Kimmel.](#)

-Volunteer Fire Fighter (Different Jurisdiction)

Board found that a Fire Fighter applicant could not use volunteer experience in a different jurisdiction in order to meet the age requirements for the position. [In the Matter of Michael Storck.](#)

GENERAL

-Added to List (Make-Up)

Board affirms addition of a make-up examination candidate's name to an eligible list for prospective consideration only and the determination that he was not entitled to veterans preference. [In the Matter of John Fasanella.](#)

-Cancelled (Multiple Errors in Examination Process)

Board cancels subsequent eligible list and grants make-up examination to provisional appointee where multiple administrative errors occurred throughout examination process. [In the Matter of Supervisor of Accounts \(M4002C and M0084D\), Township of Monroe.](#)

-Inability to Perform Duties of Position (Medical)

Board upholds removal of eligible from the Forensic Scientist 1 eligible list, finding her inability to handle certain materials for medical reasons rendered her unqualified for the position under the ADA. [In the Matter of Anita Bose.](#)

Board finds appellant's monocular vision rendered candidate medically unable to perform the duties of a Sheriff's Officer. [In the Matter of Kenneth Krycicki.](#)

-Issue and Promulgation Dates (General)

Board finds that public safety promotional list did not expire until the promulgation date of a new list and grants prospective relief to an eligible whose name was not certified prior to the expiration of his list. [In the Matter of Richard Davis.](#)

-List Extension (Open Competitive Examination for Fire Fighter)

Commission revives and extends open-competitive lists for Fire Fighter for certain jurisdictions. [In the Matter of Open-Competitive Lists for Fire Fighter.](#)

-List Extension (State Promotional Lists Expiring After October 1, 2007)

Commission grants request to discontinue automatic extension of State promotional lists. [In the Matter of State Promotional Lists.](#)

Board grants request to revive, where necessary, and extend all State promotional lists expiring on or after October 1, 2007. [In the Matter of State Promotional Lists.](#)

-List Extension (Stay of Appointments Not Basis to Extend All Lists)

Board finds that a court-ordered stay of promotional appointments in Union City was not a sufficient basis to extend all police promotional lists. [In the Matter of Police Promotional Lists, Union City.](#)

-Modify List Expiration Date (Shorten Duration)

Commissioner grants appointing authority's request to shorten the duration of Fire Captain (PM3515E) eligible list from three years to one year. [In the Matter of Fire Captain \(PM3515E\), Woodbridge Fire District #1.](#)

-Promotional Lists for Public Safety Titles

The Board grants request to automatically extend promotional lists for certain public safety titles. [In the Matter of Promotional Lists for Public Safety Titles.](#)

MEDICAL

-Amputee Restored to Fire Fighter List

Following the review of the Medical Examiners Panel, Board restored the name of an eligible, whose lower left leg had been amputated, to the Fire Fighter list. [In the Matter of Isaac Feliciano.](#)

MISCELLANEOUS

-Currently Employed In Another Jurisdiction

Board denied the request of Pleasantville to remove the names of eligibles for Fire Fighter, Atlantic City, who were currently employed by Pleasantville. [In the Matter of Fire Fighters, City of Pleasantville.](#)

-Participation in Another Candidate's Scheme to Defraud

Board upheld the removal of an eligible on the Fire Fighter list based on his participation in an arrangement whereby another eligible fraudulently used his address to establish residency. [In the Matter of Mark Campbell.](#)

-Physical Endurance Test after Subjected to Medical and Psychological Exams

Commission disapproves of Mercer County's use of a "physical endurance" test for law enforcement candidates and orders retroactive appointments of eligibles subjected to such a test who passed medical and psychological examinations. [In the Matter of Gerald Brown, et al.](#)

-Special Reemployment List (Declined Position Based on Salary)

Board restores the name of an eligible to a local special reemployment list, finding that his declining a position based on its salary did not mandate the removal of his name. [In the Matter of Robert Corke.](#)

REGULAR REEMPLOYMENT

-Constructive Appointment

Board reinstated one employee, whose employment was erroneously classified as provisional, finding that he should have been appointed from a regular reemployment list. [In the Matter of Carlos Dominguez, et al.](#)

-Use of Outside Contractor

Board finds that filling a vacancy with an outside contractor violated employee's regular reemployment rights to the title. [In the Matter of Winifred Allen.](#)

-Vacant Position Unfilled

Board finds that former employee's placement on a regular reemployment list did not entitle her to appointment where new appointing authority did not wish to fill a vacancy. [In the Matter of Lillian Washington.](#)

REVIVAL

-Extended Military Leave

Commission grants request to revive promotional list to give eligible, who had been on an extended military leave, an opportunity to be considered for appointment. [In the Matter of Joseph Salanitro.](#)

-Failure to Request Certification

Based on the inadvertent failure to submit a written request for certification to fill vacancies prior to the expiration of eligible list, Board revives Police Sergeant list to permit the certification of the names of six eligibles. [In the Matter of Police Sergeant \(PM2547C and PM2505G\), City of Atlantic City.](#)

-Regular Reemployment List

Board finds good cause to revive eligible list, where appointing authority rehired a Police Officer with the erroneous expectation that he would be appointed from a regular reemployment list. [In the Matter of Patrick LaGuerre.](#)

LIST REMOVAL
ADVERSE EMPLOYMENT HISTORY

-Basis Carries Forward to Subsequent Lists

The New Jersey Superior Court, Appellate Division, determined that Merit System law and rules provide that certain disqualifications, including an eligible's adverse employment history, carry forward onto subsequent eligible lists. See *In the Matter of Bryon Pugh*, Docket No. A-6267-00T5 (App. Div. October 22, 2002); [In the Matter of Lillian Foster \(MSB, decided March 23, 2005\)](#).

-Disciplinary Record (Pending Discipline Valid Reason for Bypass)

The Board notes that pending disciplinary action could also be considered by the appointing authority in its disposition of the certification and it constitutes a valid reason to bypass the appellant's name on the subject certification. See [In the Matter of Michael Boylan \(MSB, decided October 22, 2003\)](#); [In the Matter of Gary R. Kern, Antonio C. Campos, Larry W. Cole and Robert M. Rupp \(MSB, decided October 11, 2000\)](#).

-Discontinuance of State Employment for Ethical Violations

Commission upholds removal of veteran eligible's name from list based on the discontinuance of his previous State employment for ethical violations. [In the Matter of Paul Birkenstamm](#).

-Fraudulent Activities

Board finds that the Motor Vehicle Commission did not present sufficient evidence that eligibles were guilty of fraudulent activities so as to warrant the removal of their names from special reemployment lists. [In the Matter of Gloria Guevara](#).

-Gang Membership

Following a hearing, Commission affirms the removal of an eligible from the Police Officer (S9999H), Newark, eligible list, finding sufficient evidence of affiliation with gang members. [In the Matter of Corey Grimes](#).

-Promotion Despite Adverse Employment History

In *In the Matter of Lloyd Vessels, Correction Lieutenant, Department of Corrections (PS6320I)*, Docket No. A-944-01T3 (App. Div., January 31, 2003),

the Court upheld the removal from a Correction Lieutenant promotional list of an eligible with 10 disciplinary actions, which were received prior to his promotion to Correction Sergeant.

-Settlement Agreement for Suspension

In [*In the Matter of Charles Stillitano* \(MSB, decided November 4, 2004\), *aff'd on reconsideration* \(MSB, decided June 8, 2005\)](#), the Board noted that the settlement agreement indicated that the 30-day suspension would be reflected in his personnel file and nothing in the agreement stated that the disciplinary penalty would be excluded from consideration in future promotional situations. Thus, could be used in determining suitability for future promotional opportunities.

CRIMINAL RECORD

-Access to Sensitive Information

On remand from the Appellate Division, Commission relies on State Parole Board determination that the position of Safety Specialist, MVC, had access to sensitive information, to remove appellant from list. [In the Matter of Martin Carluccio.](#)

-Gang Affiliation

Board upholds removal of eligible's name from a Police Officer list based on indications of gang affiliation. [In the Matter of Marvin L. Campbell, Jr.](#)

-Inability to Carry Firearm (Restraining Order)

See [In the Matter of Teresa Meyers \(MSB, decided June 8, 2005\)](#) (Proper to remove appellant from Sheriff's Officer list since final restraining order issued against her prohibited her from carrying or purchasing a firearm).

-Isolated Arrest

Commission denies appointing authority's appeal of the restoration of an eligible's name to the list and grants retroactive appointment date, since eligible had passed medical and psychological examinations. [In the Matter of Ronald Riggins.](#)

Board finds that an isolated arrest at a young age did not constitute a sufficient basis to remove an eligible's name from the Correction Officer Recruit eligible list. [In the Matter of David Arce.](#)

-Juvenile Arrests

It is well established that municipal police departments may maintain records pertaining to juvenile arrests, provided that they are available only to other law enforcement and related agencies, because such records are necessary to the proper and effective functioning of a police department. See *In the Matter of Tracey Shimonis*, Docket No. A-3963-01T3 (App. Div. October 9, 2003); *Dugan v. Police Department, City of Camden*, 112 N.J. Super. 482 (App. Div. 1970), cert. denied, 58 N.J. 436 (1971).

-Uncharged Criminal Conduct

In [*In the Matter of Richard Orne, Jr. \(MSB, decided February 28, 2007\)*](#), the Board restored the name of an eligible for Police Officer, finding that his association with individuals under surveillance by law enforcement authorities, the appointing authority's concerns with incidents that indicated "physical aggressiveness, and the appellant's admissions that he participated in minor illegal activities for which he was not charged did not provide a sufficient basis to remove his name from the list.

DRIVING RECORD

-Appointing Authority Pre-Selection Criteria

In [*In the Matter of Victor Rodriguez* \(MSB, decided July 27, 2005\)](#), the Board noted that it was not bound by criteria utilized by the appointing authority and must decide each list removal on the basis of the record presented.

FAILURE TO RESPOND/PROCESSING

-Failure to Respond (Active Military Service)

Commission upholds restoration of veteran's name to certification for County Correction Officer (S9999K), finding that proof of active military service excused his failure to respond to Notice of Certification. [In the Matter of Daniel Kim.](#)

-Failure to Respond (Failure to Update Mailing Address)

See [In the Matter of Charles Anderson \(MSB, decided November 20, 2001\)](#), (Appellant removed for failure to update his mailing address).

FALSIFICATION

-Accuracy of Application (Accountability)

See [*In the Matter of Harry Hunter* \(MSB, decided December 1, 2004\)](#) (Police Officer candidate required to list all disciplinary actions he was subjected to during military service, regardless of whether he agreed with the action, and he was held accountable for the accuracy of the information submitted and any failure to include information was at his peril).

-Accuracy of Application (Different Position with Same Appointing Authority)

In [*In the Matter of David Seybert* \(MSB, decided May 18, 2005\)](#), the Board stated that the appellant cannot shift this burden by merely claiming that he filled out an application for another position with the same appointing authority three years earlier when he was a resident in the jurisdiction.

-Accuracy of Application (Failed to Report Prescription Medications)

Board upholds removal of an eligible for Police Officer, who failed to accurately report prescription medications prior to a pre-employment drug screening. [*In the Matter of Melissa Puryear-McDuffie*](#).

-Intent

The Appellate Division of the New Jersey Superior Court, in *In the Matter of Nicholas D'Alessio*, Docket No. A-3901-01T3 (App. Div. September 2, 2003), affirmed the removal of a candidate's name based on his falsification of his employment application and noted that the primary inquiry in such a case is whether the candidate withheld information that was material to the position sought, not whether there was any intent to deceive on the part of the applicant.

-Local Ordinances

Commission finds eligible on Correction Officer Recruit (S9999K) list who noted violation of local ordinance did not falsify his application and restores his name to the eligible list. [*In the Matter of Bryan Kopsic*](#)

-Material Facts

The information omitted from the appellant's application, in and of itself, would not constitute sufficient cause to remove his name from the subject

eligible list. Thus, the omission of this information did not amount to the falsification of a material fact from his application and did not support the removal of his name from the eligible list. See [*In the Matter of Marlon Chiles* \(MSB, decided September 6, 2006\)](#); [*In the Matter of Julio Rivera* \(MSB, decided February 11, 2004\)](#); [*In the Matter of Daniel Labazzo* \(MSB, decided September 25, 2002\)](#).

INABILITY TO SPEAK ENGLISH

-Not Essential to Position

Finding that communication skills beyond a basic level are not an essential element of the job, the Board restores an eligible to the list for Delivery Worker, whose name had been removed based on his inability to communicate effectively in English. [In the Matter of Jose Rivera](#).

MEDICAL

-Inability to Possess Driver's License

Board removes eligible from Family Service Worker eligible list, finding that the eligible's visual impairment and inability to possess a driver's license precluded her from performing field work, an essential function of the position. [In the Matter of Patricia Hipkins Carr.](#)

-Share Cost of Independent Evaluation

See [In the Matter of Juliemarie Forte \(MSB, decided December 21, 2005\)](#) (Board ordered that it was appropriate to divide the cost of the evaluation between the appellant and the appointing authority).

-Urinalysis

Commission upholds removal of eligible's name from eligible list due to invalid urinalysis drug test. [In the Matter of Carlos Olivencia.](#)

MISCELLANEOUS

-Appointing Authority Actions (Failed to Provide Eligible with Information Regarding Reasons for Removal)

Even though the appointing authority had not submitted the requested documentation to the appellant previously, the matter is now before the Board with complete documentation. [*In the Matter of Irving Frederick Grevious* \(MSB, decided May 19, 2004\); *In the Matter of Frankie James, Correction Lieutenant \(PS6320I\), Department of Corrections* \(MSB, decided May 5, 2004\).](#)

-Break in Service (Name Reinstated)

Board relaxes applicable rules to reinstate the name of an eligible to the Human Services Specialist 2 promotional list, despite a break in service. [*In the Matter of Kristine Tabor*.](#)

-Fire Fighter Lists, Removal Based on Regular Appointment

See In the Matter of Fire Fighters, City of Pleasantville (MSB, decided March 14, 2007), *stay denied*, [\(MSB, decided April 25, 2007\)](#) (Board determined that Fire Fighter eligible lists should be treated similarly to the LEE, and names of eligibles who accept regular appointment through certification to one jurisdiction should be removed from the lists for all other jurisdictions in accordance with *N.J.A.C. 4A:4-4.7(h)*).

-Interview Performance

Board upholds the removal of an eligible's name from the Advocate, Victim Witness Program list based on her interview performance. [*In the Matter of Carol Baldino*.](#)

-Lacks Job Requirements, Determined Eligible and Passed Examination

*See [*In the Matter of Jeannetta Davis* \(MSB, decided May 19, 2004\)](#)* (Appropriate to remove candidate from eligible list even though she was determined eligible to take and passed competitive examination based on subsequent appointing authority discovery, and DOP verification, that she did not possess required experience or college credits from an accredited college or university).

-Oral Examination Interview

Board upholds validity of oral examination administered by DYFS to candidates for Family Service Specialist 2 and the removal of eligibles who did not pass the oral examination from the eligible list. [In the Matter of Kamal Abdelazime](#), [In the Matter of John Griffiths](#), and [In the Matter of Sebastian Ike](#).

-Prior Appointment From Same Eligible List (Termination of Prior Appointment)

Board upholds removal of an eligible's name from a Police Officer eligible list based on his prior appointment from the same eligible list, despite the subsequent termination of that appointment. [In the Matter of Andrew Cockerham](#).

-Special Reemployment List (Unable to Accept Salary)

See [In the Matter of Robert Corke \(MSB, decided May 23, 2007\)](#) (Board determined that there was no Merit System law or regulation which mandates the removal of an eligible's name from a local government special reemployment list where the position is declined based on the level of salary offered).

-Refusal to Sign Pre-Employment Forms

Board upholds removal of an eligible's name from Juvenile Detention Officer eligible list based on his refusal to sign a routine pre-employment processing form. [In the Matter of Afolabi Babalola](#).

-Unavailability (Restraining Order Against Law Enforcement Applicant)

In [In the Matter of Richard Roszkowski \(MSB, decided April 20, 2005\)](#), the Board upheld the removal of an eligible for Sheriff's Officer, who was deemed unavailable for appointment since an outstanding restraining order rendered him unable to carry a firearm.

PSYCHOLOGICAL

-Appointing Authority Challenge to Findings

Board denies the appeal of the City of Jersey City, which sought to remove the names of 11 eligibles from the Police Officer (S9999D) eligible list based on psychologist's finding that they were qualified for the position with moderate risk. [In the Matter of P. F., et al.](#)

-Appointing Authority Failure to Provide Medical Documentation

Commissioner of Personnel finds that Gloucester County's refusal to provide the Department of Personnel with medical documentation to support removal of eligibles' names for failed urinalysis and psychological examinations was not warranted under HIPAA. [In the Matter of County Correction Officer Certification OL042077, Gloucester County.](#)

-Not Cause for Removal from Entire Pool

Board determines that the removal of the name of an eligible for Correction Officer Recruit, Juvenile Justice based on a failed psychological evaluation warranted the removal of his name only from the pool of eligibles for the correction officer title area. [In the Matter of Milton P. Hill, Jr.](#)

-Unrelated Psychological Evaluations

In [In the Matter of Wayne Hundemann \(MSB, decided May 10, 2006\)](#), the Board determined that the psychological evaluations could not be considered, since they were not administered to determine the appellant's suitability for the Police Sergeant title.

RESIDENCY

-Address of Convenience

In *In the Matter of Chad Batiuk* (MSB, decided February 22, 2006), *aff'd* [*In the Matter of Chad Batiuk* \(MSB, decided June 21, 2006\)](#), the Board determined that appellant's convoluted residency saga was less than plausible and that the appellant used the claimed township address to deceive the appointing authority.

PERFORMANCE REVIEW

-Adverse Impact

Board finds no evidence that use of PARs in promotional examination had any adverse impact on minority candidates. [In the Matter of Auditor 1, Taxation \(PS3295U\)](#).

-Appropriate in Scoring Examinations

Board upholds scoring of Correction Lieutenant examination and the use of Performance Assessment Review credit in calculating final averages. [In the Matter of the New Jersey Law Enforcement Supervisors Association, et al.](#)

-Erroneous Credit Received

Board finds administrative error resulted in eligible's lower score on a promotional examination and orders that previous certification be reissued to correct the error. [In the Matter of Kevin Nasatka](#).

-Unclassified Service (Appeal Rights)

Board found that it did not have jurisdiction to review performance evaluations of unclassified employees with the Casino Control Commission. [In the Matter of Lewis Springer, Jr.](#)

REEVALUATED TITLE (SALARY REEVALUATION)

-Shift in Focus of Duties

Shift in focus of duties of Institution Fire Chiefs did not provide a sufficient basis for a title reevaluation or salary upgrade, where the primary focus and level of duties did not change. [In the Matter of Institution Fire Chief, Department of Human Services.](#)

RESIDENCY

-Residency Ordinances (DOP can Independently Open Eligible List to Non-Residents)

Where previous resident eligible list was incomplete, Board finds that a subsequent examination could have been announced open to non-residents and upholds the appointment of a non-resident. [In the Matter of Patricia Conrad](#).

-Residency Ordinances (Prevention of Removal of Current Non-Resident Employees)

Board denies eligibility appeal and clarifies residency requirements for non-resident current employees who apply for open competitive examinations. [In the Matter of Stacy Fysz \(M6863D\), \(M6295B\), \(M6625C\), and \(M6758D\)](#).

RESIGNATION

-Involuntary Resignation in Good Standing

Board grants hearing for employee who was involuntarily resigned in good standing on disciplinary charges indicating that an appointing authority cannot involuntarily resign an employee in good standing. [In the Matter of John Hawthorne.](#)

-Resignation Pick Up

Board extends employee's leave of absence to avoid break in service and preserve her entitlement to leave time based on her accumulated State service time. [In the Matter of Dolly Key.](#)

-Rescission (Attempt to Accept Previously Rejected Resignation)

Board found that an appointing authority could not accept an employee's resignation in good standing nine months after it had rejected it. [In the Matter of Walter Isaac.](#)

-Rescission (Retirement)

Board upholds the City of East Orange's refusal to accept employee's attempted rescission of her retirement. [In the Matter of Geraldine Bryant.](#)

RETROACTIVE APPOINTMENT DATE

-Examination Eligibility

Board finds good cause to award retroactive permanent appointment date to a Police Captain, but finds that the time actually served in Police Captain title governs his eligibility for promotional examinations. [In the Matter of Carmine Russo.](#)

-No Basis

Board denies request for retroactive appointment date where employee's examination appeal was granted based on additional information submitted on appeal. [In the Matter of Karen Alfred.](#)

SETTLEMENTS

-Agreed Not to Appeal (Specific Terms)

Commission grants request to enforce settlement agreement wherein the appellant agreed not to appeal his removal on certain charges within one year. [In the Matter of Arthur Rice](#). (Pending in Appellate Division).

-Not Acknowledged (No Meeting of the Minds)

Board determines that no settlement was reached between the parties and upholds the removal of a Correction Sergeant. [In the Matter of Frank Hoffman](#), *aff'd*, *In the Matter of Frank Hoffman*, unpublished, Docket No. A-6443-03T1 (App. Div. July 1, 2005).

-Precluded Reinstatement from Ordinary Disability

Board found that terms of a settlement agreement precluded the reinstatement of a former Police Officer from an ordinary disability retirement. [In the Matter of Jerry Fisher](#).

-Revocations

Commission rejects appellant's attempted revocation of a settlement agreement on the basis that he was not afforded the required review period under 29 U.S.C. §262(f)(2). [In the Matter of Jorge Guerrero](#).

SICK LEAVE INJURY
COMMUTING

-Incidental Duties During Commute

Board denies request for sick leave injury (SLI) benefits from an Inspector 3, Multiple Dwellings, finding that the incidental performance of work duties during commute did not make her injury work related. [In the Matter of Marlo Carroll.](#)

GENERAL

-Authorization Off Duty

The appellant has failed to submit any medical documentation indicating that she was authorized out of work by a physician as a result of the injuries sustained. *See e.g., [In the Matter of Kathleen Tursi \(MSB, decided July 21, 1998\)](#).*

-Intermittent SLI (Reasonable Amount of Time)

Board grants SLI benefits to compensate Administrative Analyst 2 for time spent at prescribed physical therapy sessions during work hours. [In the Matter of Andrew Gross](#).

-Maximum Medical Improvement

Board finds that reaching “maximum medical improvement” does not necessarily warrant the discontinuation of SLI benefits. [In the Matter of Keith Kucinski](#).

“Maximum medical improvement” is a term used in Workers’ Compensation cases for determining when temporary workers’ compensation benefits should cease being paid to an employee. This term does not necessarily correlate to SLI benefits. *See [In the Matter of Todd Murray \(MSB, decided January 12, 2005\)](#).*

-Medical Examiners Panel (Chicken Pox)

Upon the recommendation of the Medical Examiners Panel, Board finds that employee’s chickenpox resulted from a workplace exposure. [In the Matter of Kim R. Myers](#).

-Non-Compliance with Recommended Medical Treatment

Board denies request for SLI benefits based on employee’s non-compliance with recommended medical treatment plan. [In the Matter of Bobbie Hodges](#).

-State-Authorized Physician

Board finds that appointing authority reasonably required employee’s examination by a State-authorized physician to determine whether her condition placed other employees at risk. [In the Matter of Lucy Alonso](#).

GROSS NEGLIGENCE

-Accidentally Shot Self

Board denies SLI benefits to a Senior Parole Officer for injuries caused by accidentally shooting himself in the hand. [In the Matter of Thomas Thompson.](#)

-Close Window with Broom Stick

Commission denies SLI benefits, finding that employee was grossly negligent when she attempted to close a window with a broom stick. [In the Matter of Sandra Gelder.](#)

-Disciplined for Conduct that Caused Injury

Board denies sick leave injury (SLI) benefits to a Senior Correction Officer who was disciplined for the conduct which caused his injury. [In the Matter of Victor Klima.](#)

-Display of Warning Signs

See [In the Matter of Elizabeth Cantwell \(MSB, decided December 20, 2006\)](#) (Appellant who slipped and fell on wet floor did not place herself at a substantial risk of harm when there was no evidence that a “wet floor” sign was prominently displayed in order for the appellant to be properly warned).

Driving (Motor Vehicle Citation)

Commission finds employee involved in a car collision grossly negligent and not entitled to SLI benefits even though he was not issued a traffic citation. [In the Matter of Donnell Alexander.](#)

See [In the Matter of Dawn Radanovitz-Minnitti \(MSB, decided December 20, 2006\)](#) (Board denied SLI benefits, finding that the appellant was grossly negligent as evidenced by her receipt of a citation for failure to yield at a stop sign in the accident that caused her injury).

-Exposed Open Wound

Commission denies request for SLI benefits, finding that Senior Correction Officer was grossly negligent when he exposed an open wound on his left thumb to the blood of an inmate. [In the Matter of Jeremy Dusenbery.](#)

-Failure to Follow Instructions

See [*In the Matter of Diana Talbert* \(MSB, decided May 10, 2006\)](#) (Board denied SLI benefits to employee who was injured carrying a cake box down stairs despite being instructed not to do so as the box was too heavy for her).

-Hard Hat

Commission upholds denial of SLI benefits, finding that appellant's failure to wear a required hard hat constituted gross negligence. [*In the Matter of Phil Cason*](#).

-Policy Violations (Contributed to Injury)

Board found that direct care employee's violation of a policy contributed to her injury and constituted gross negligence. [*In the Matter of Marcia Dawkins*](#).

-Policy Violations (Did Not Cause Injury)

See [*In the Matter of Sarah Phillips* \(MSB, decided March 28, 2007\)](#) (Board granted SLI benefits to employee who violated policy regarding the type of gloves to be worn while cleaning, finding that the use of the incorrect gloves did not contribute to her injury).

-Pushed Nail with Thumb

Commission upholds denial of SLI benefits, finding that appellant's pushing in a nail with his thumb constituted gross negligence. [*In the Matter of Thomas Shappell*](#).

-Stepped off Sidewalk onto Brick Edging

Board finds Senior Correction Officer grossly negligent in stepping off sidewalk and onto brick edging and upholds the denial of SLI benefits. [*In the Matter of Marva Robinson*](#).

-Unauthorized Activity While Receiving SLI Benefits

Board finds that employee's participation in unauthorized activity while receiving SLI benefits did not result in further injury so as to warrant discontinuation of benefits. [*In the Matter of Wayne H. Sanderson*](#).

LUNCH OR BREAK PERIODS

-Off-Site Lunch Meeting Not Authorized

Board denied SLI benefits where the appointing authority did not authorize an off-site lunch meeting. [In the Matter of Evelyn Eggert.](#)

-Required to Remain in Facility on Break

[In the Matter of Marcus Marcano \(MSB, decided July 13, 2005\), aff'd on reconsideration \(MSB, decided April 5, 2006\)](#) (Board determined that since the appointing authority required correction officers to remain in the facility during meal breaks, appellant was entitled to SLI benefits).

-Restroom

See [In the Matter of Sheila Walker \(MSB, decided March 28, 2007\)](#)) *aff'd on reconsideration* ([MSB, decided December 5, 2007](#)) (Board denied SLI benefits to an employee who was in the restroom at the time of injury, finding that the appellant was on a break and not engaged in any work activities at the time).

NORMAL WORK HOURS

-Overtime

Board grants SLI benefits to a DYFS employee who was injured during an assignment as a member of the Special Response Team. [In the Matter of Adeyanju M. Nurudeen.](#)

En-route (From Parking Lot)

See e.g., [In the Matter of Anna Fells \(MSB, decided June 12, 2001\).](#)

-En-route (Sidewalk to Parking Lot)

See [In the Matter of Geraldine Olender \(MSB, decided February 11, 2004\)](#) (Appellant who fell on the sidewalk on her way to the parking lot where she was required to park was not entitled to SLI benefits as she was no longer on duty, not in a State-provided parking lot, or on the work premises).

-Twenty (20) Minutes Reasonable Time Before Work

See [In the Matter of Albert R. Lewis \(MSB, decided October 18, 2006\)](#) (Senior Correction Officer who injured his hip and back while en route to his post 20 minutes prior to the start of his shift granted SLI benefits).

ONE YEAR PERIOD

-Hiatus in Treatment

See, In the Matter of Angela M. Ellis, Department of Corrections, Docket No. A-2077-02T1 (App. Div. March 8, 2004) (Good cause to relax the provisions of N.J.A.C. 4A:6-1.6(b)3 not found where there was a nine-month lapse in the appellant's treatment, and there was no evidence that this hiatus in treatment was occasioned by medical necessity or the appointing authority's failure to refer her to a doctor in a timely manner).

PREEXISTING CONDITION

-Aggravation of Preexisting Work-Related Injury Compensable Up to One Year After Occurrence

Even if the appellant's present injury was an aggravation of a preexisting condition that was reasonably foreseeable, the Board recognizes that the aggravation of a work-related injury is compensable for up to one year after its occurrence. [See *In the Matter of Robert Bossert* \(MSB, decided January 11, 2006\).](#)

-Aggravation Occurred Off Work Premises

The fact that the appellant's injury constituted an aggravation of a prior work-related injury does not make the injury compensable where the aggravating event is not work related. [See *In the Matter of Genise McMillan* \(MSB, decided September 6, 2006\).](#)

-Evacuation Drill

Board finds that re-injury during an evacuation drill was reasonably foreseeable and denies request for SLI benefits. [In the Matter of Amruta More.](#)

-Firearms Qualifications

[See *In the Matter of Paul J. Lambert* \(MSB, decided December 6, 2006\)](#) (Board found it reasonably foreseeable for a Correction Lieutenant to aggravate a preexisting injury while participating in firearms qualification at the practice range).

-Inmate Assault

The Board has held that it is reasonably foreseeable for a Correction Officer to aggravate a preexisting medical condition while attempting to physically subdue a violent inmate. [See *In the Matter of Jack Balmer* \(MSB, decided May 8, 2001\).](#)

-Patient Assault

Since the appellant is employed in a position which requires significant client contact, it is clearly reasonably foreseeable that such an assault could have occurred and aggravated her preexisting medical condition. [See *In the Matter of Clinton Fallwell* \(MSB, decided May 18, 2005\)](#)

-Restraining a Co-Worker

Board finds that it is not reasonably foreseeable for a Senior Field Representative, Housing, to aggravate preexisting injuries while restraining a co-worker. [In the Matter of Mercedes Caesar.](#)

-Trailer Disengaging from Truck

Board finds aggravation of preexisting injuries was not reasonably foreseeable, where a Truck Driver, Single Axle, was thrown to the ground after a trailer became disengaged. [In the Matter of Darrel Forte.](#)

-Unaware of Preexisting Condition

See [In the Matter of Michael Scates \(MSB, decided April 25, 2007\)](#) (Board granted SLI benefits where the appellant aggravated a preexisting condition of which he was not aware).

PSYCHOLOGICAL

-Altercations (Between Co-Workers)

See [In the Matter of Troy Muse \(October 5, 2005\)](#) (Altercation between two co-workers and appellant's reaction to his co-worker's vile language and crude behavior was a personal reaction to a work situation and not an objectively traumatizing event that warranted SLI benefits). Compare, *In the Matter of Karen Schmides* (MSB, decided March 23, 2005).

-Beating

See [In the Matter of Susan Pierson \(MSB, decided June 9, 2004\)](#) (Magnitude of beating appellant sustained, notwithstanding the fact that direct care staff were sometimes attacked by clients, determined to be sufficiently traumatizing and beyond anything that could be considered reasonable foreseeable).

-Day to Day Stress

It is clear that the appellant's reaction to the memorandum was merely a personal reaction to work stress which is not compensable. Moreover, an illness caused by the day-to-day stress of the job is generally not a sufficient ground for making a valid claim for SLI benefits. See e.g., *In the Matter of Trent Davis*, Docket No. A-5523-97T1 (App. Div. November 29, 1999).

-Death/Murdered Body

Board grants SLI benefits to two Senior Correction Officers who witnessed the violent beating of an inmate and its immediate aftermath but denies SLI benefits to a Senior Correction Officer who briefly viewed the injured inmate being wheeled out of the building. [In the Matters of Linda Boswell, Cassandra Holmes and Ronald Williams.](#)

-Human Immunodeficiency Virus (HIV)

Board finds exposure to HIV was sufficiently traumatizing to warrant receipt of SLI benefits until such time as employee receives medical confirmation that he did not contract the virus. [In the Matter of James Gardner, Jr.](#)

-Investigation (Allegations)

See [In the Matter of Kathy Dixon \(MSB, decided May 5, 2004\)](#) (Accusation of improper conduct with an inmate by a co-worker not considered sufficiently traumatizing for SLI purposes).

-Workers' Compensation and SLI Distinction

In *Morreale v. State of New Jersey, Civil Service Commission*, 166 N.J. Super. 536 (App. Div. 1979), *cert. denied*, 81 N.J. 275 (1979), the Court held that the Workers' Compensation and SLI statutes have wholly different ends and purposes and the differences warrant different rules of construction in their application. While the petitioner's psychiatric condition was deemed work related for Workers' Compensation purposes, in order for the petitioner's condition to be compensable under the SLI program, it must not fall under any of the exceptions found in N.J.A.C. 4A:6-1.6 and N.J.A.C. 4A:6-1.7. Thus, a determination that a psychological illness is "work related" under the Workers' Compensation statute does not mandate a finding that the illness is work related for SLI purposes, since N.J.A.C. 4A:6-1.6(c)5 states that a psychological or psychiatric illness is not compensable, except when such illness can be traced to a specific work-related accident or occurrence which traumatized the employee thereby causing the illness, and the claim is supported by medical documentation. See [In the Matter of Manuel Jose DeCastro \(MSB, decided January 7, 2004\)](#) (Board relied on report of Medical Examiner's Panel that the appellant's condition was one of anger, rather than panic attacks or depression and denied SLI benefits, despite receipt of Workers' Compensation benefits for same illness).

WORK PREMISES

-Sidewalk

See [*In the Matter of Paul Poggioli* \(MSB, decided November 4, 2004\)](#) (SLI benefits denied to appellant who was injured when he fell on the sidewalk on his way to Café Ole while he awaited start of a training conference as he was not on the work premises).

WORK RELATED

-Infectious Illness

Board finds sufficient evidence of contagious disease at prison and grants SLI benefits to employee who contracted it. [In the Matter of Fred Harrington](#).

-Not Medically Authorized Off-Work

The Board has consistently determined that when there are no longer any restrictions on an employee's job duties, the employee is expected to return to work and is no longer entitled to SLI benefits. This is true even when employees are not discharged from medical care. See [In the Matter of Althea Hylton-Lindsay \(MSB, decided January 12, 2005\)](#).

-State Parking Lot

Board finds that employee who blacked out while driving and was injured in a motor vehicle accident in a State-provided parking lot is not entitled to sick leave injury benefits. [In the Matter of Kathleen Larason](#).

-Workers' Compensation (Granted)

The appointing authority acknowledged that the injury was work related in granting the appellant's Workers' Compensation claim. See *Ada White v. Merit System Board*, Docket No. A-3982-94T2 (App. Div. May 6, 1999) (SLI benefits granted where appointing authority conceded a work-related injury in appellant's Workers' Compensation proceeding).

-Workers' Compensation Preliminarily Denied

Board found preliminary denial of Workers' Compensation benefits by the Bureau of Risk Management not binding upon it for Sick Leave Injury (SLI) purposes. [In the Matter of Jeffrey Shortencarrier](#).

-Work-Related Event, But Not Actual "Accident"

The Board notes that injuries which occur as a result of a specific work-related event during the normal course of duties are compensable notwithstanding that they may not have involved an actual accident. See [In the Matter of Willard Breckon \(MSB, decided September 29, 1998\)](#).

SUPPLEMENTAL COMPENSATION ON RETIREMENT (SCOR)

-Resigned in Lieu of Discipline

Board denies request for Supplemental Compensation on Retirement where employee resigned in lieu of discipline. [In the Matter of Leo F. Kozlowski.](#)

TITLE HISTORY

-Correction Major

Commission approves the creation of the title of Correction Major to consolidate the functions performed by incumbents in the Director of Custody Operations and Correction Captain titles. [In the Matter of Correction Major.](#)

-Deputy County Emergency Management Coordinator

Commission finds that the title of Deputy County Emergency Management Coordinator is properly allocated to the career service. [In the Matter of Deputy County Emergency Management Coordinator.](#)

-Fire District Administrator

Commission establishes new unclassified title of Fire District Administrator. [In the Matter of Fire District Administrator.](#)

-Judiciary Support Staff Band

Commission denies appeal concerning amendments to the job specification for the Judiciary Support Staff Band but remands matter for further amendments to clarify that certain duties would only be applicable to designated positions. [In the Matter of Judiciary Support Staff Band.](#)

-Reallocation from Competitive to Non-Competitive Division

Commission reallocates 41 additional titles from the competitive division to the non-competitive division of the career service. [In the Matter of Reallocation of State, Local and Common Titles from the Competitive to the Non-Competitive Division of the Career Service, Phase 2.](#)

Commission approves reallocation of titles from competitive to non-competitive division of the career service. [In the Matter of Reallocation of State, Local and Common Titles from the Competitive to the Non-Competitive Division of the Career Service.](#)

-Sheriff's Investigators

Commission finds that N.J.S.A. 40A:9-117a permits the appointment of unclassified Sheriff's Investigators up to 15% of the total number of Sheriff's Officers employed in the jurisdiction, regardless of rank. [In the Matter of Sheriff's Investigator, Passaic County Sheriff's Office.](#)

-Title Reallocation to Unclassified Service (County Critical Infrastructure Coordinator)

After a public hearing, Board reallocated the title of County Critical Infrastructure Coordinator to the unclassified service. [In the Matter of County Critical Infrastructure Coordinator.](#)

VETERANS PREFERENCE

-Establishment (Rationale for Eight Days Prior to Issuance of List)

Commission denies appeal concerning disabled veterans' preference for lists issued prior to establishing disabled veterans' status. [In the Matter of Daniel Donnerstag.](#)

-Entitlement

Board upholds applicant's designation as a non-veteran for the Law Enforcement Examination, where he had not established veterans preference prior to the closing date. [In the Matter of David A. Smithson.](#)

Board finds that eligible established his entitlement to veterans preference prior to the closing date for the open-competitive examination. [In the Matter of Mark Stewart.](#)

WAIVER OF EXAMINATION

-Consecutive Appointments Based on Waiver of Examination

Board upholds consecutive promotions to Deputy Police Chief and Police Chief via waiver of promotional examination but notes recent change in DOP policy to prohibit consecutive waivers in the future. [In the Matter of Mark Leonard](#).

-Request to Waive Police Chief Examination

Board finds that success on examination for Police Lieutenant does not constitute testing in the basic skills for Police Chief and denies request to waive Police Chief examination. [In the Matter of Police Chief \(PM3512G\), City of Bordentown](#).

WORKING TEST PERIOD

-Appointment Dates

Board grants employee new four-month working test period and directs the Department of Personnel to reevaluate its practice of approving regular appointment dates that are not consistent with the commencement of working test periods. [In the Matter of JoAnn Bellini](#).

-Early Service of Notice

The service of notice of an employee's release at the end of his working test period more than five days prior to the end of his working test period, in and of itself, did not justify relief. Where the employee was not prejudiced based on the early service of the notice, since he was informed of his deficiencies on numerous occasions and was provided ample opportunity to correct his actions, but failed to do so, no remedy is available. *In the Matter of Andre Soltes*, Docket No. A-0699-03T2 (App. Div. March 17, 2005); [In the Matter of Elaine Watson \(MSB, decided September 10, 2002\)](#); *See also, Township of Millburn v. John C. Esposito*, Docket No. A-6477-97T5 (App. Div. Nov. 18, 1999)

-Failure to Timely Request Extension

Commission upholds employee's return to his permanent title at the end of his working test period, finding that supervisor's failure to timely request an extension of the working test period did not establish bad faith. [In the Matter of Charles Greenberg](#).

-New Working Test Period (Different Supervisor)

Commission finds release of a Chief Operating Engineer 1 was not justified and orders the appellant be afforded a new four-month working test period under the evaluation of a different supervisor. [In the Matter of Samuel Williams](#).

-No Evidence of Unsatisfactory Performance

Board reverses release of a Police Officer at the end of his working test period and grants permanent status in his title, where there was no evidence of unsatisfactory work performance besides one minor disciplinary action. [In the Matter of Frank DeBartola](#).

-Procedural Defects (New Working Test Period Not Warranted)

Commission upholds employee's return to his former permanent title at the end of his working test period, notwithstanding the appointing authority's failure to provide him with a written narrative of his shortcomings with his progress reports. [In the Matter of Michael Davino.](#)

-Procedural Defects (New Working Test Period)

Board finds that procedural defects in conduct of employee's working test period warranted the granting of a new four-month working test period. [In the Matter of Martha Washington.](#)

-Residency

Commission upholds employee's return to his former permanent title at the end of his working test period, based on his failure to bring himself into compliance with residency policy associated with promotional title. [In the Matter of Robert W. Gill, Jr.](#)

-Should Have Been Automatically Extended (Approved Leaves of Absences)

Board orders Police Officer's reinstatement and four-month extension of working test period, where his working test period was not extended in conjunction with approved leaves of absence. [In the Matter of Melvin Robinson.](#)

-Single Incident (No Discipline)

Board grants employee new three-month working test period, finding that single incident, for which she was not disciplined, did not warrant her return to her permanent title. [In the Matter of Michele Williams-Kline.](#)

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