



**STATE OF NEW JERSEY**

In the Matter of Donnell Holland, *et al.* (PM4445C), Atlantic City

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

CSC Docket Nos. 2023-1536, *et al.*

Reconsideration

**ISSUED:** February 22, 2023 (RE)

Donnell Holland, Kevin Fair, and Henry White, III, represented by Lauren Sandy, Esq., petition the Civil Service Commission (Commission) for reconsideration<sup>1</sup> of *In the Matters of Donnell Holland, Kevin Fair, and Henry White III, Police Captain (PM4445C), Atlantic City* (CSC, decided June 15, 2022).

By way of background, Holland, Fair, and White were appointed as Police Lieutenants with Atlantic City on April 29, 2021. Atlantic City was under the jurisdiction of the Municipal Stabilization and Recovery Act until June 24, 2021 when the Civil Service Commission’s (Commission) jurisdiction was restored. On August 1, 2021, an announcement for a promotional examination for the position of Police Captain (PM4445C), Atlantic City with a closing date of September 30, 2021 was issued. While the petitioners were found ineligible for the announcement for Police Captain due to lacking a year in grade in the position of Police Lieutenant, they were conditionally permitted to take the examination in October 2021. However, based on their ineligibility, their exams were not scored. They appealed and requested admittance to the examination.

In their original appeal, the petitioners argued that their permanent appointment date should have been August 3, 2020, not the April 29, 2021 date assigned, since a prior Superior Court matter granted that earlier date to other similarly situated individuals. The Commission rejected the petitioners’ requests for

<sup>1</sup> This matter is not a traditional “reconsideration” pursuant to *N.J.A.C. 4A:2-1.6*, as it was returned to the Commission via an Appellate Division remand. Nevertheless, the standards for reconsideration may be applied.

retroactive permanent Police Lieutenant appointment dates. The Commission found that the Law Division's September 29, 2021, Order was controlling for issues that occurred prior to June 24, 2021, and since that Order did not award the petitioners the requested appointment date, the Commission could not grant that date.

In the current matter, the petitioners request that the Commission reconsider its June 15, 2022, determination. In this regard, they indicate that upon their appeal of the Commission's decision to the Appellate Division, the matter was remanded back to the Commission to allow it to consider any order from the Superior Court modifying their appointment date. Subsequently, the petitioners filed a Motion to Intervene and a Motion for Relief from Judgment in the Atlantic County Superior Court for a permanent appointment date of August 3, 2020. The Motion for Relief from Judgment was granted by Judge Michael Blee, A.J.S.C. on January 18, 2023. They also argue that the Commission erred in finding that the appointing authority did not request a waiver of the one-year requirement. As evidence, they provide a signed copy of the waiver request. Accordingly, they request that the Commission grant an August 3, 2020, appointment date, order that their examinations be scored, and should they pass, have their names placed on the list for Police Captain.

## CONCLUSION

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

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

Initially, the Commission rejects the argument that it made an error in its prior decision regarding the request to reduce the one-year requirement. First, this challenge is untimely. The only issue remanded to the Commission from the Appellate Division was whether the petitioners should be granted an earlier appointment date, dependent upon any order from the Superior Court. The issue of the request to reduce the one-year requirement was not remanded.<sup>2</sup> Accordingly, if the petitioners wanted to challenge that portion of the Commission's prior decision, they should have filed a request for reconsideration pursuant to *N.J.A.C.* 4A:2-1.6(a) within 45 days of that decision. Regardless, their argument is unpersuasive. While the Commission's original decision noted that the petitioners only had an unsigned copy of the request to reduce the one-year requirement, most importantly, the Commission stated that "Agency Services was contacted for its response to the request for a waiver, and it stated that no request from the appointing authority had

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<sup>2</sup> It is unclear whether that issue was even argued by the petitioners in the Appellate Division.

been received by its office.” As the petitioners have not demonstrated that Agency Services ever received that signed request, no error is evident.

Nevertheless, applying *N.J.A.C.* 4A:2-1.6(b), the petitioners have otherwise demonstrated that reconsideration should be granted. When applying for the subject examination, based on the record at that time, each petitioner was properly found to not meet the requirement of one year of continuous permanent service in the title Police Lieutenant in Atlantic City since each had, as of the announced closing date, five months, one day of permanent service, and thereby lacked six months, and 29 days. As such, there was no error in the Commission’s prior decision in that regard.

Nevertheless, on reconsideration, the petitioners present that the Superior Court, on January 18, 2023, has awarded them permanent appointment dates as Police Lieutenant, effective August 3, 2020. Given this new information, the petitioners should be granted a retroactive appointment date and concomitant seniority to August 3, 2020, for examination purposes only. As such, their examinations from the Police Captain (PM4445C), Atlantic City can be scored, and should they pass, their names shall be added to the eligible list for prospective employment opportunities. For all future examinations, the petitioners should include a copy of this decision with their applications as this seniority should be included as long as the petitioners remain employed by Atlantic City.

### ORDER

Therefore, it is ordered that these requests be granted, and the petitioners be granted retroactive permanent August 3, 2020, appointment dates to Police Lieutenant, for examination seniority purposes. It is further ordered that their Police Captain (PM4445C), Atlantic City examinations be scored, and should they pass, their names shall be added to the eligible list for prospective appointment opportunities only.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 22<sup>ND</sup> DAY OF FEBRUARY, 2023



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