



STATE OF NEW JERSEY

In the Matter of Samuel Johnson III,
Trenton

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

CSC Docket No. 2024-559

Administrative Appeal

ISSUED: April 10, 2024 (HS)

Samuel Johnson III appeals his non-appointment to the title of Police Sergeant with Trenton.¹

The appellant and Stephen Szbanz appeared as the 31st and 32nd ranked non-veteran eligibles on the eligible list for Police Sergeant (PM0901V), Trenton, which promulgated on May 24, 2018 and expired on May 23, 2022.² A certification, consisting of the names of 10 non-veteran eligibles, was issued on April 11, 2022 (PL220494) with the appellant and Szbanz listed in the third and fourth positions, respectively. In disposing of the certification, Trenton appointed, effective May 11, 2022, the first two listed eligibles, who were respectively ranked 27th and 28th on the eligible list; retained the third through ninth listed eligibles; and removed the 10th listed eligible. The disposition of the certification was recorded on March 15, 2023.

Later, the appellant appeared as the 93rd ranked non-veteran eligible on the eligible list for Police Sergeant (PM4657C), Trenton, which promulgated on October 20, 2022 and expires on October 19, 2025. A certification, consisting of the names of 20 non-veteran eligibles, was issued on July 13, 2023 (PL231331). In disposing of the certification, the appointing authority appointed, effective August 14, 2023, the first eight listed eligibles, who were ranked first through eighth, and retained the

¹ This appeal was initially filed by counsel on behalf of the appellant. In February 2024, the appellant indicated that he was proceeding *pro se*.

² See *N.J.S.A. 11A:4-6* (setting statutory maximum duration of promotional eligible list at four years).

remaining eligibles. Subsequently, a certification, consisting of the names of eight non-veteran eligibles, was issued on January 25, 2024 (PL240131). Certification PL240131 remains outstanding.³ The appellant's name has yet to be certified from the Police Sergeant (PM4657C), Trenton, eligible list.

In his appeal to the Civil Service Commission (Commission), postmarked September 8, 2023, the appellant initially discusses individuals who were made "acting" Police Sergeants in 2021 and 2022 and that he "was never allowed an opportunity to fill any one of those position[s] and was simply passed over, pushed aside and denied rightful openings." Additionally, he alleges that Trenton deliberately and tactically chose not to make any additional appointments from the April 11, 2022 certification (PL220494) of the Police Sergeant (PM0901V), Trenton, eligible list. He claims that Trenton actually had authorization to make three appointments, and it failed to provide him with the reasons why he was not appointed. The appellant further argues that Trenton has made an "unbudgeted" provisional appointment to the title of Police Captain.⁴ He maintains that Trenton has shown no regard for Civil Service rules and policies and blatantly violated them. Thus, in his view, a position review⁵ needs to be conducted. In support, the appellant submits a number of exhibits including a certified statement where Szbanz relates that "[Police] Director [Steve] Wilson told me that he refused to promote [the appellant from certification PL220494] and would not be able to skip him to get to me."⁶ Therefore, the appellant seeks a "constructive" and retroactive appointment or "prospective preference" in appointment to Police Sergeant, revival of the expired eligible list (PM0901V), and penalties imposed against the appointing authority.

CONCLUSION

N.J.A.C. 4A:4-4.8(a)3 provides, in pertinent part, that upon receipt of a certification, an appointing authority shall, when a permanent appointment is to be made, appoint one of the top three interested eligibles ("Rule of Three") from a promotional list. Moreover, the appellant has the burden of proof in this matter. *See N.J.A.C.* 4A:2-1.4(c).

In disposing of certification PL220494, Trenton retained the appellant on the Police Sergeant (PM0901V), Trenton, eligible list. The disposition of certification PL220494 was recorded on March 15, 2023. As such, any appeal of that disposition is untimely at this juncture as the instant appeal was not filed until September 8, 2023, more than five months later. *See N.J.A.C.* 4A:2-1.1(b) (Unless a different time

³ The disposition due date of PL240131 is April 25, 2024

⁴ Based on a review of agency records, the Commission understands this to be a reference to the provisional appointment of Gaetano Ponticiello to the title of Police Captain, effective January 25, 2024.

⁵ The appellant uses the term "desk audit," which is commonly used to refer to a position review.

⁶ Within his appeal, the appellant notes his intent to file a lawsuit against the Policemen's Benevolent Association and Trenton.

period is stated, an appeal must be filed within 20 days after either the appellant has notice or should reasonably have known of the decision, situation, or action being appealed). But even if the appeal were timely, a review of the certification indicates that only higher-ranked eligibles received appointments from the certification. Trenton thus, strictly speaking, disposed of the certification in accordance with *N.J.A.C.* 4A:4-4.8(a)3. It also had no obligation to advise the appellant as to why he was not appointed since the appointees ranked higher than him. Moreover, the determination as to whether a vacancy exists and/or will be filled is generally left to the discretion of the appointing authority. *See In the Matter of Michael Shaffery* (MSB, decided September 20, 2006). *See also, In the Matter of Todd Sparks* (MSB, decided April 6, 2005); *In the Matter of Deputy Fire Chief (PM3654F), Borough of Roselle* (MSB, decided March 23, 2005); *In the Matter of Institutional Fire Chief* (MSB, decided January 12, 2005). Thus, the Commission lacks the authority to order Trenton to appoint the appellant from certification PL220494. To the extent that the appellant may have a remedy, he must seek it elsewhere.⁷

Regarding the appellant's allegation that Ponticiello's provisional appointment to the title of Police Captain is "unbudgeted," the appellant provides no substantive evidence to support this claim. In any event, *N.J.A.C.* 4A:4-1.5(a) provides an appointing authority with the discretion to make provisional appointments until a competitive examination and eligible list can be promulgated. This approach balances both the immediate needs of an appointing authority to staff critical positions with the underlying purpose of the Civil Service system to ensure that permanent appointments are made on the basis of merit and fitness. As such, the Commission does not have a sufficient basis to question the appointment here.

Moreover, the appellant argues that a position review must be conducted. A position review request is defined as "a petition for a review from the classification or reclassification of a position, or a complaint that the duties of a specific position do not conform to the approved job specification for the title assigned to that position." *See N.J.A.C.* 4A:3-3.9(a). The position review request and appeal procedure are set forth in *N.J.A.C.* 4A:3-3.9, and the appellant may avail himself of that process should he deem it necessary.

Finally, as to the appellant's initial claim that he was passed over for "acting" positions, the Commission notes that there is no such designation as an "acting" appointment under Civil Service rules. *N.J.S.A.* 11A:4-13 and *N.J.A.C.* 4A:4-1 *et seq.* provide for regular, conditional, provisional, interim, temporary, and emergency appointments. *See In the Matter of Russell Davis* (MSB, decided August 10, 2005); *In the Matter of Michael Shaffery* (MSB, decided September 20, 2006). However, the alleged appointments were from 2021 and 2022, and as such, an appeal regarding those allegations are untimely pursuant to *N.J.A.C.* 4A:2-1.1(b). Nonetheless, while it is permissible for an employee to act in a position to cover for a short-term leave of

⁷ As noted earlier, the appellant apparently intends to file suit.

absence, the Commission cautions the appointing authority not to use “acting” appointments on a full-time basis when an individual’s appointment can be recognized under any one of the above classifications. Further, as noted, should the appellant believe that a position review is necessary in this regard, he may present such a claim under *N.J.A.C. 4A:3-3.9*.

ORDER

Therefore, it is ordered that this appeal be denied.

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

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 10TH DAY OF APRIL, 2024



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