



STATE OF NEW JERSEY

In the Matter of Jonathan Jenkins,
Police Sergeant (PM0812V),
Irvington

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2023-2688

Administrative Appeal

ISSUED: May 22, 2024 (JH)

Jonathan Jenkins, represented by Lori A. Dvorak, Esq., requests that the eligible list for Police Sergeant (PM0812V), Irvington, be revived so that his name may be certified to the appointing authority. He also seeks additional relief.

By way of background, as discussed in *In the Matter of Jonathan Jenkins* (CSC, decided April 17, 2019), on November 30, 2010, the petitioner was laid off by Newark as a Police Officer before he had completed his 12-month working test period and his name was placed on the “Probationary Rice Bill List,” pursuant to *N.J.S.A.* 40A:14-180.1. Subsequently, Irvington erroneously hired the petitioner from the “Probationary Rice Bill List”¹ effective July 9, 2012 and did not record this appointment in the County and Municipal Personnel System (CAMPS). As a result, after applying for the subject examination,² the petitioner was found ineligible as the available record did not show that he was employed in the announced unit scope. In *In the Matter of Jonathan Jenkins, supra*, the Civil Service Commission (Commission) determined that although the petitioner’s appointment was inappropriate given that his name did not appear on a valid eligible list and that he would have been ineligible for an intergovernmental transfer at that time, given the unique circumstances presented, good cause existed to relax the provisions of *N.J.A.C.* 4A:4-7.1A(b) and

¹ As noted in *In the Matter of Jonathan Jenkins, supra*, the “Probationary Rice Bill List” can only be used by the appointing authority that laid off the individual, which in this instance was Newark.

² It is noted that the subject examination was announced on July 1, 2017 and was open to employees in the competitive division who had an aggregate of three years of continuous permanent service in the Police Officer title in Irvington as of the September 30, 2017 closing date.

permit his retroactive participation in the intergovernmental transfer program to effectuate his appointment as a Police Officer in Irvington effective July 9, 2012, without retaining seniority from Newark. The Commission further determined that the petitioner should be admitted to the subject test and granted a make-up.³ It is noted that in *In the Matter of Police Sergeant (PM3776V), City of Paterson, 176 N.J. 49 (2003)*, the New Jersey Supreme Court ordered the Commission for future examinations, to “administer make-up exams that contain substantially different or entirely different questions from those used in the original examination.” *Id.* at 66. As a result, public safety candidates are given a make-up examination when the next regularly scheduled examination for their particular title is administered. In this regard, the 2019 Police Sergeant examination had been administered on February 23, 2019 and the next regularly scheduled Police Sergeant examination was anticipated to be held in February 2020. However, in 2020, due to the Covid pandemic, all New Jersey Civil Service examinations were postponed. Subsequently, as indicated in the 2021 Police Promotional Schedule (Examination Information Alert), which was published on the Commission’s website in February 2021, the next announcement for Police Sergeant would be issued on October 1, 2021, and the examination was tentatively scheduled to be administered in February 2022.⁴ It is noted that the announcement for Police Sergeant (PM4566C), Irvington was issued on October 1, 2021 with a December 31, 2021 closing date. The petitioner applied for and was admitted to the PM4566C examination which was administered on February 26, 2022. By letter dated February 3, 2022, the Make-Up Unit informed the petitioner that this examination also served as a make-up for PM0812V. In a scoring notice dated October 19, 2022, the petitioner was informed of his final average (87.530) and rank (five) for the PM4566C examination.⁵ By separate notice dated October 31, 2022, the petitioner was provided with his final average for PM0812V (86.670) which placed him at rank A23 (just above rank 23).⁶

The petitioner presents that Irvington promoted over 30 officers from the Police Sergeant (PM0812V) eligible list, in rank order, and he “would be first on the PM0812V examination list had it not expired prior to issuance of his score.” He notes that Irvington promoted three officers from the PM4566C list in May 2023 and he “was never contacted about being promoted from the list of PM0812V as a result of his make-up examination, score and first place ranking.” He requests “immediate promotion to the position of [Police] Sergeant, with seniority retroactive to May 3,

³ The Commission further noted that if the petitioner passed the make-up examination, his name should be placed on the eligible list for prospective employment opportunities only.

⁴ This information was also available in the Law Enforcement Status Report (February 2021), which was published to the Commission’s website.

⁵ The PM4566C list promulgated on October 20, 2022 and is set to expire on October 19, 2025.

⁶ As noted in both the 2017 and 2022 Police Sergeant Orientation Guides “the make-up exam will measure, in equal proportion, the same knowledge and/or abilities that were measured by the original exam. It will also be administered and scored in the same manner as the original exam.”

2019 when the first 25 officers were promoted on the list PM0812V. [The petitioner] seeks all benefits and emoluments attendant to same. Further [the petitioner] seeks that the three officers promoted on May 12, 2023 be deemed conditional appointees pursuant to *N.J.A.C.* 4A:4-1.4, until a resolution of the within appeal.” He further requests that should his request be granted he be admitted to the promotional examination for Police Lieutenant (PM4770D), Irvington as he will have “satisfied the one year of continuous permanent service as o[f] the September 30, 2022 closing date . . . and his scores be released and he be added to the list of eligibles should he have attained a passing score.”

In a subsequent submission dated April 17, 2024, the petitioner indicates that he “was promoted to sergeant by Personnel Order #2024-17 by the Director of Public Safety of the Township of Irvington, Tracy Bowers, effective March 14, 2024.” He presents, “assuming, arguendo, [his] retroactive seniority is granted, he has therefore satisfied his one year in grade of continuous service as of the September 30, 2022 closing date for the Irvington examination for Police *Lieutenant* (PM4770D). As such, his *Lieutenant* scores should be released and he should be added to the list of eligibles, should he have achieved a passing score, as well as upon promotion to the rank of same. His in grade seniority should be the date he would have been promoted had Irvington not failed to record all required information.” In support, the petitioner provides a copy of the Township of Irvington, Department of Public Safety Personnel Classification Order #2024-17 which indicates, in part, that the petitioner has been promoted to Police Sergeant effective March 14, 2024.

CONCLUSION

N.J.A.C. 4A:4-3.4 provides that the Commission may revive an expired eligible list under the following circumstances: 1. To implement a court order, in a suit filed prior to the expiration of the list; 2. To implement an order of the Commission in an appeal or proceeding instituted during the life of the list; 3. To correct an administrative error; 4. To effect the appointment of an eligible whose working test period was terminated by a layoff; or 5. For other good cause. *See also, N.J.S.A.* 11A:4-6.

Initially, it is noted that the Police Sergeant (PM0812V) eligible list promulgated on May 24, 2018 and expired on May 23, 2022.⁷ On March 25, 2019, the first certification of the PM0812V list was issued (Certification No. PL190380) which contained the names of the eligibles appearing at ranks one through 63. In disposing of PL190380, the appointing authority appointed the eligibles appearing at ranks one

⁷ *N.J.A.C.* 4A:4-3.3 provides, in pertinent part, that open competitive and promotional lists shall be promulgated for three years from the date of their establishment, unless the Chairperson or designee determines that, under the circumstances, a shorter time period is appropriate. However, an eligible list may, for good cause, be extended prior to its expiration date, except that no list shall have a duration of more than four years. *See also, N.J.S.A.* 11A:4-6.

through 27 effective May 1, 2019.⁸ On October 17, 2019, the second, and last certification, was issued from the PM0812V list (Certification No. PL191485) which contained the names of the eligibles appearing at ranks 13, and 28 through 63. In disposing of PL191485, the appointing authority appointed the eligibles appearing at ranks 28 through 37 effective October 25, 2019.

Given that the PM0812V list expired prior to the petitioner receiving his score and rank from the make-up examination and that the petitioner would have been reachable for appointment, it is appropriate, based on equitable considerations, to revive the Police Sergeant (PM0812V), Irvington, eligible list, and certify the petitioner's name at the time of the next certification for the title. It must be emphasized that the petitioner does not possess a vested property interest in a position. The only interest that results from placement on an eligible list is that the candidate will be considered for an applicable position so long as the eligible list remains in force. *See Nunan v. Department of Personnel*, 244 N.J. Super. 494 (App. Div. 1990). In this regard, as a non-veteran, he was not entitled under any regulation to an appointment and a review of each of the certifications of the PM0812V list indicates that his name could have been bypassed for appointment pursuant to the "Rule of Three." *See N.J.A.C. 4A:4-4.8(a)3*. Thus, his argument that he should receive a retroactive appointment date to the Police Sergeant title is premature at present since he has not yet received a permanent appointment to the Police Sergeant title. In other words, should Irvington appoint him as a Police Sergeant from the revival of the PM0812V list, he and/or the appointing authority may petition the Commission at that time for a retroactive appointment date and request that he be admitted to the Police Lieutenant (PM4770D) examination.

Although the appellant indicates that he has been promoted to Police Sergeant, effective March 14, 2024, *N.J.A.C. 4A:4-1.10(a)* provides that all appointments, promotions, and related personnel actions in the career, unclassified or senior executive service are subject to the review and approval by this agency. It is settled that an appointment is not valid or final until it is approved by this agency. *See Thomas v. McGrath*, 145 N.J. Super. 288 (App. Div. 1976) (Morgan, J.A.D. dissenting), *rev'd based on dissent*, 75 N.J. 372 (1978); *Adams v. Goldner*, 79 N.J. 78 (1979). The steps necessary to perfect a regular appointment, include, but are not limited to, this agency's review and approval of a certification disposition proposed by an appointing authority and the employee's completion of a mandatory working test period. *See e.g., In the Matter of Joseph S. Herzberg* (MSB, decided June 25, 2003); *In the Matter of Asa Paris* (MSB, decided February 13, 2008); and *In the Matter of Scott Clark, et al.*, (CSC, decided November 17, 2021). In this regard, it is noted that a certification from the PM4566C list was issued on March 8, 2024 (Certification

⁸ It is noted that the eligible appearing at rank 13 was bypassed, and the eligible appearing at rank 21 was removed due to separation from employment. As such, had a third certification from the PM0812V list been issued, the eligible appearing at rank 13 would have appeared in first certification position. Accordingly, the petitioner's claim that he "would be first on the PM0812V examination list had it not expired prior to issuance of his score" is incorrect.


No. PL240413) and the proposed certification disposition is due to be returned to this agency for review by June 10, 2024. PL240413 contains the names of the eligibles appearing at ranks four through 17, with the petitioner appearing at certification position two. As such, the petitioner is reachable for appointment. Should the petitioner be appointed from PL240413, then the revival of the subject Police Sergeant (PM0812V) eligible list for appointment consideration would be rendered moot, as he would have achieved the same result, *i.e.*, his appointment to the Police Sergeant title. However, as discussed above, he and/or the appointing authority may petition the Commission for any additional relief to be considered at that time.

ORDER

Therefore, it is ordered that this request be granted in part and the Police Sergeant (PM0812V), Irvington, eligible list be revived in order for the petitioner's name to be certified at the time of the next certification for Police Sergeant for prospective employment opportunities only. Should the petitioner receive a permanent appointment to the subject title and successfully complete a working test period, he or the appointing authority may petition the Commission at that time for any additional relief, including a retroactive appointment date for seniority purposes.

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 22ND DAY OF MAY, 2024



Allison Chris Myers
Chairperson
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