



STATE OF NEW JERSEY

In the Matter of Steven Fielding,
Police Officer, Phillipsburg

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

CSC Docket No. 2024-1646

Request for Reconsideration

ISSUED: September 25, 2024

Steven Fielding requests reconsideration of the final administrative determination in *In the Matter of Steven Fielding, Police Officer (S9999F), Phillipsburg* (CSC, decided January 17, 2024).

As discussed in the original matter, Fielding appeared as a non-veteran eligible on the Entry Level Law Enforcement Examination (S9999F) list which promulgated on December 24, 2004 and expired on December 23, 2006. A certification for Police Officer, Phillipsburg from the S9999F list was issued on September 18, 2006 (Certification No. OL062000). In disposing of OL062000, Phillipsburg indicated the appellant's appointment, effective December 11, 2006, which was recorded in the County and Municipal Personnel System (CAMPS). However, the appellant did not begin working in Phillipsburg at that time. Subsequently, the appellant appeared as a veteran on the S9999R list which promulgated on May 2, 2014 and expired on March 22, 2017. A certification for Police Officer, Phillipsburg from the S9999R list was issued on December 4, 2014 (Certification No. OL141583). In disposing of OL141583, Phillipsburg appointed the appellant effective March 9, 2015. Subsequently, Fielding applied for and sat for the Police Sergeant (PM4624C), Phillipsburg examination and the resultant eligible list promulgated on November 24, 2022 and is set to expire on November 23, 2025. Around the time that the PM4624C list was issued, concerns arose regarding the seniority scores of certain eligibles, including Fielding. In this regard, Phillipsburg provided to the Division of Agency Services (Agency Services) a copy of a memorandum dated December 2, 2022 from Police Chief Robert Stettner to Matthew Hall, Business Administrator, in which Stettner indicates that he "spoke with Officer Fielding in reference to the 12/11/06 date that was located in CAMPS. Officer Fielding advised that he went through the background process during that time but was told that the department was not hiring due to the budget. This appears to be the only explanation of why he was entered

into CAMPS in 2006. The person responsible for this Michelle Broubalow unfortunately she passed in 2012.” As a result, the appellant’s CAMPS record was corrected to record his appointment date as March 9, 2015.

On initial appeal, Fielding explained that in 2006, he had been interviewed and was told verbally that he was hired “for the position of police officer in the Town of Phillipsburg, NJ. There was a change in police chiefs during this year” and when he “called and spoke to the new police chief regarding my start date[. h]e stated that the [S]tate had froze the budget and that they could not hire anyone.” Fielding also asserted that he “requested OPRA documents from my town from that period regarding any personnel records and budgetary information during that time period. I was advised no personnel record exists for me for that period, and they have not provided any financial documents regarding the town budget for this period.” Fielding argued that “there was violation in the hiring process during this period. This information only became available to me after the scoring issue with the present sergeant’s exam.”

In denying his appeal, the Commission noted that Fielding filed his appeal approximately **16 years** after the S9999F list expired and after his discussion with “the new police chief.” The Commission also noted that although Fielding was appointed as a Police Officer on March 9, 2015, and began actually serving in the title at that time, there was no evidence in the record indicating that he raised the issue of the December 11, 2006 non-appointment at that time. The Commission further noted that Fielding waited over seven months both after the promulgation of the PM4624C list and after the December 2, 2022 memorandum from Chief Stettner, as noted above; and approximately six months after receiving his corrected scoring notice in January 2023, to raise the issue of his appointment date. The Commission stated that the approximately 16-year delay in filing the instant appeal unreasonably exceeded that threshold of finality. Thus, the Commission found his appeal untimely. The Commission further determined that there was no basis to extend or to relax the time for appeal. The Commission indicated that the failure to recognize or to explore the legal basis for an appeal, without more, did not constitute good cause to extend to relax the time for appeal under the Commission’s rules. Thus, the Commission determined that the petitioner’s appeal of his non-appointment as a Police Officer in December 2006 was untimely and he failed to show good cause to justify relaxing the requirements of *N.J.A.C. 4A:2-1.1(b)*.

In his current request, the petitioner maintains that his appeal was “denied because it was not filed ‘timely’ although documents only became available to me at a later time. I am therefore appealing a separate matter regarding the same hiring process, as the [Commission’s initial decision] did not address other Civil Service

violations that had occurred. Specifically, [N.J.A.C.] 4A:10-2.2,¹ [N.J.S.A.] 11A:4-8,² [N.J.A.C.] 4A:4-4.8.³ These requirements indicate that once a list has been called for

¹ N.J.A.C. 4A:10-2.2 (Failure to appoint from complete certification) provides:

- (a) When the examination process has been initiated due to the appointment of a provisional or at an appointing authority's request, the appointing authority shall make an appointment from a resulting complete certification.
 - 1. When an appointing authority has notified the Chairperson or designee, either by the date of the examination or within 30 days after the initial date of the examination announcement, whichever date is earlier, that it has vacated the position and terminated the provisional appointee, the Chairperson or designee may cancel the examination, permit the appointing authority not to make a permanent appointment, or take other appropriate action.
 - 2. Following the period set forth in (a)1 above, an appointing authority may, for valid reasons such as fiscal constraints, petition the Commission for permission not to make a permanent appointment. The Commission may grant such petition, but may order the appointing authority to reimburse the Commission for the costs of the selection process, provided, however, that when the jurisdiction in which the appointing authority is situated has agreed to the intergovernmental transfer pursuant to N.J.A.C. 4A:4-7.1A of an employee into a title for which an open competitive or promotional list exists, the appointing authority may petition the Commission for a waiver of the costs of the selection process. The Commission shall notify the appointing authority of the amount of the reimbursement and provide an opportunity to respond to the assessment within 20 days of such notice.
- (b) In addition to the actions which the Commission may take in (a) above, the Commission may take any action set forth in N.J.A.C. 4A:10-2.1. Prior to any such action being taken, the appointing authority shall be given notice and an opportunity to respond.

² N.J.S.A. 11A:4-8 (Certification and appointment) provides:

The commission shall certify the three eligibles who have received the highest ranking on an open competitive or promotional list against the first provisional or vacancy. For each additional provisional or vacancy against whom a certification is issued at that time, the commission shall certify the next ranked eligible. If more than one eligible has the same score, the tie shall not be broken and they shall have the same rank. If three or more eligibles can be certified as the result of the ranking without resorting to all three highest scores, only those eligibles shall be so certified.

A certification that contains the names of at least three interested eligibles shall be complete and a regular appointment shall be made from among those eligibles. An eligible on an incomplete list shall be entitled to a provisional appointment if a permanent appointment is not made.

Eligibles on any type of reemployment list shall be certified and appointed in the order of their ranking and the certification shall not be considered incomplete.

³ N.J.A.C. 4A:4-4.8 (Disposition of a certification) provides:

- (a) Upon receipt of a certification, an appointing authority shall take whichever of the following actions is appropriate when a permanent appointment is to be made:

an certified, the appointing authority must hire from the list short of a financial reason/constraint which the appointing authority must bring to the Civil Service[Commission's] attention." He maintains that "the Town had two vacancies for police officer per town council meeting minutes . . . I had been interviewed for the position, and verbally told I was hired but never started. A certification was created, but no one was hired off the list." He asserts that "financial reasons are grounds for not appointing, but no records either from the Town of Phillipsburg or Civil Service shows that the Town of Phillipsburg had chosen not to hire due to financial constraints. Two OPRA requests were made to [the] Civil Service [Commission:] Confirmation number W211607 (December 28, 2023) and W212687 (January 23, 2024). Information was requested related to any requests made by the Town of Phillipsburg to not appoint

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1. Appoint the eligible whose name has been certified from the special reemployment list;
 2. Appoint the eligible whose name has been certified from regular or police, sheriff's officer, or fire reemployment lists; or
 3. Appoint one of the top three interested eligibles (rule of three) from an open competitive or promotional list, provided that:
 - i. Disabled veterans and then veterans shall be appointed in their order of ranking from an open competitive list;
 - ii. If the eligible who ranks first on a promotional list is a veteran, then a non-veteran may not be appointed; and
 - iii. *See N.J.A.C. 4A:4-2.15(i)* for tie scores.
 - (b) The appointing authority shall notify the Civil Service Commission of the disposition of the certification by the disposition due date in the manner prescribed by the Chairperson or designee. The disposition due date may be extended beyond the expiration date of the eligible list to fill current vacancies. Under no circumstances shall a disposition due date be extended beyond the expiration date of the eligible list when vacancies do not exist. An anticipated vacancy shall not be considered the same as an existing vacancy. The report of disposition of the certification shall include:
 1. Name of the eligibles to be permanently appointed;
 2. The effective date of the requested permanent appointments;
 3. In local service, the appointee's salary;
 4. In situations where an appropriate list is used, the title and functions of the appointee's employment;
 5. In the case of an appointment to the title of Municipal Court Administrator or Deputy Municipal Court Administrator, verification that the assignment judge of the vicinage has approved the appointment; and
 6. Any other requested information.
 - (c) Failure to dispose by the due date may result in constructive appointment or other remedial action as set forth in N.J.A.C. 4A:10-2.
 - (d) If the certification will result in the displacement of a provisional employee who has permanent status, and it is necessary to institute layoff procedures, the Chairperson or designee may, upon written request from the appointing authority, extend the time for disposing of the certification for an additional 45 days. *See N.J.A.C. 4A:8* for layoff procedures.
 - (e) *See N.J.A.C. 4A:10-2.2* for penalties for failure to appoint from a complete certification.

off the list due to financial reasons as well as information related to me specifically. At the time of this letter, I have not received the requested documentation.”⁴

In a subsequent submission filed on August 6, 2024, the petitioner presents:

I was told I was hired by the previous police Chief Robert Mirabelli.⁵ I had even come into the department to be fitted for a police vest during this time. While waiting to start, I had talked to [members] of the public at my current employer at the time regarding my hiring. Upon hearing I was hired, several people had told me that the [new] Chief was corrupt . . . I had mentioned this concern in general conversation with someone at the gym one day. I later found out that individual was a friend of the new Chief Edward Mirenda. Prior to the expiration of the list, I was called into the office of Chief Mirenda and was questioned by him . . . regarding the statements of him being corrupt. He interrogated me for the names of the people who told me . . . Shortly before that list [expired], he called to tell me the state froze the budget and couldn’t hire me. At the time, I believed he had found a way to legitimately not hire me due to a personal vendetta against me. If it were not for the appointment letter that came to light during the last promotional exam, I still would have never known that I had been definitively hired on paper, other th[a]n the verbal confirmation I received.

He claims that in “April 2024, I was at a PBA event in which retiree Chief Mirabelli confirmed to me I was hired. He stated that after he left though, there was nothing more that could be done.” He presents that “once [C]ivil [S]ervice received the appointment paperwork, they did not follow-up with the appointee (me) to confirm the hiring. This is not a current process of Civil Service, but should be considered as part of the process going forward.” He argues that “the current process allows an appointing authority to lie or mislead [C]ivil [S]ervice, and as long as they can hide it for twenty days (appeal time) they can continue to bypass the standard of hiring on fitness and merit and continue to select who they want.” He adds that “I do understand that my reason cannot be proven, although many in the police department are aware of what happened. It is simply so . . . the Commission can have some context as to why something like this would have occurred in the first place.”

⁴ A review of the available record finds that the petitioner submitted three OPRA requests: W211607 (December 28, 2023), W212687 (January 23, 2024) and W217201 (April 30, 2024). The record indicates that responses were provided to the petitioner for each of these requests.

⁵ A review of available employment records finds that Mirabelli served as provisional Police Chief in Phillipsburg from November 28, 2005 until November 1, 2006, when he retired. Subsequently, Mirenda was provisionally appointed as Police Chief effective January 16, 2007, regularly appointed effective March 1, 2007 and retired effective December 1, 2011. *See also* <https://www.mcall.com/2006/10/27/phillipsburgs-police-chief-to-retire-leaving-post-open-yet-again-mirabelli-did-not-pass-state-exam-says-he-had-planned-to-step-down/>.

CONCLUSION

N.J.A.C. 4A:2-1.6(b) sets forth the standards by which the Commission may reconsider a prior decision. This rule provides that a party must show that a clear material error occurred or present new evidence or additional information which would change the outcome of the case and the reasons that such evidence was not presented during the original proceeding.

In the present matter, the petitioner has failed to meet the standard for reconsideration. The petitioner does not present new evidence or additional information which was not presented at the original proceeding which would change the outcome of the original decision, nor has he proven that a clear material error has occurred in the original decision. Accordingly, based on the record presented, the petitioner has failed to support his burden of proof in this matter.

At the outset, the Commission emphasizes again that the petitioner's original appeal of this matter was clearly untimely for the reasons thoroughly discussed in the initial decision. The petitioner relies on the assertion that he did not become aware until recently that the December 11, 2006 date had been recorded in CAMPS to explain why he brought this matter forward at this time. However, his awareness of the recording of the December 11, 2006 date is of no moment. Rather, as noted in the initial decision, he was clearly aware of the underlying issue, *i.e.*, his non-appointment to the Police Officer title, no later than sometime in 2007. Accordingly, it was incumbent upon him to raise the issue of his non-appointment at the time he was allegedly told by Chief Mirenda that he was not being hired due to budget issues. Again, the petitioner provides no explanation as to why he did not contact the Commission at that time regarding his hiring status, especially when he claims that Chief Mirenda had a "personal vendetta" against him. Thus, essentially, the December 11, 2006 date recorded in CAMPS was an administrative error which has been corrected and does not afford the petitioner any rights or entitle him to any type of remedy.

In his current request, the petitioner now posits that violations of Civil Service rules regarding certifications have occurred. However, the petitioner does not provide any explanation as to why he did not present this argument in his initial appeal. *See N.J.A.C.* 4A:2-1.6(b). Nevertheless, it is noted that Certification No. OL062000 was issued on September 8, 2006, and was due for disposition by March 18, 2007. Phillipsburg returned OL062000 for disposition on December 1, 2006, indicating the petitioner's appointment effective December 11, 2006. Thus, at the time that the certification was disposed, there were no apparent violations of Civil Services laws and rules. Although the petitioner asserts that the Commission should have contacted him to confirm his appointment, there is no mechanism that requires the Commission to contact appointees to verify that they have reported to the workplace and have begun their employment. Again, the burden was on the petitioner to raise the issue of his non-appointment when he was informed by Chief Mirenda that he was not being hired. Moreover, the Commission emphasizes, as noted previously in

the initial decision, the records relating to the 2006 appointment date and the individuals involved in the hiring process at that time are no longer available to inform this matter. As such, the petitioner essentially relies on an “absence of evidence” argument to support his claims, *i.e.*, since currently there is no existing documentation to show that Phillipsburg was experiencing budget constraints in 2006, this supports his argument that violations of *N.J.A.C.* 4A:10-2.2, *N.J.S.A.* 11A:4-8, and *N.J.A.C.* 4A:4-4.8. occurred. However, based on the existing record, it could reasonably be argued that Phillipsburg had budgetary constraints or other valid reason for not making an appointment at that time. In this regard, there were two other individuals who appeared on the OL062000 certification along with Fielding.⁶ Had there been any available vacancy for Police Officer, Phillipsburg could have appointed the other individual on that certification.⁷ However, no actual appointments were made from OL062000. Subsequently, it is further noted that no appointments to the Police Officer title were made from the first certification of the S9999H list.⁸

Regardless, the only apparent violation in this matter is an administrative one in that the appointing authority did not request waiver of appointment requirement for OL062000. *See N.J.A.C.* 4A:10-2.2(a)2. Nevertheless, given the above explanation, had one been timely requested, there appears to have been valid basis to grant the waiver. Regardless, no vested or other rights are accorded by an administrative error. *See Cipriano v. Department of Civil Service*, 151 *N.J. Super.* 86 (App. Div. 1977); *O'Malley v. Department of Energy*, 109 *N.J.* 309 (1987); *HIP of New Jersey v. New Jersey Department of Banking and Insurance*, 309 *N.J. Super.* 538 (App. Div. 1998).⁹

⁶ It is noted that the individual in the second certification position was removed for failure to respond to the certification notice.

⁷ In this regard, *N.J.S.A.* 11A:4-8, *N.J.S.A.* 11A:5-7, and *N.J.A.C.* 4A:4-4.8(a)3ii allow an appointing authority to select any of the top three interested eligibles on a promotional list, provided that no veteran heads the list. Moreover, the “Rule of Three” allows an appointing authority to use discretion in making appointments. *See N.J.S.A.* 11A:4-8 and *N.J.A.C.* 4A:4-4.8(a)3ii. In the instant matter, the petitioner’s appointment was not mandated and his name could have been bypassed for appointment.

⁸ As noted in the initial decision, the S9999F list expired on December 23, 2006 and the next Entry Level Law Enforcement (S9999H) list promulgated on December 24, 2006. The first certification for Police Officer, Phillipsburg from the S9999H list was issued on March 6, 2007 (Certification No. OL070593). By letter dated September 7, 2007 to the Commission, Michele Broubalow, the “Clerk/Administrator” for Phillipsburg, indicated that “it was the intention of the Town to hire at least 1 or possibly 2 individuals since it was indicated there were going to be resignation(s) and/or retirement(s) in the near future . . . The resignation(s) and/or retirement(s) did not occur [and] therefore[,] the Town was never in a position to appoint any of these individuals.”

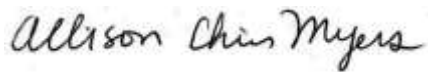
⁹ It is noted that the petitioner still does not indicate the relief or any proposed remedies that he is seeking. *See N.J.A.C.* 4A:2-1.1(a)

ORDER

Therefore, it is ordered that this request 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 25TH DAY OF SEPTEMBER, 2024



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