



The Reporter

News from the Civil Service Commission

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Welcome!



Deirdre L. Webster Cobb, Esq.
Chair/Chief Executive Officer

Welcome to our first Reporter of 2019. We hope that you enjoyed the year end edition of The Reporter distributed in December 2018. We welcome those of you who are reading The Reporter for the first time. The Civil Service Commission looks forward to providing our constituents timely and noteworthy information about Commission activities throughout the year.

Last year, the Commission shared exciting news regarding significant achievements including passage of key legislation such as pay equity for women, gender equality, salary increases for confidential State employees and government efficiency—to mention a few accomplishments. This year, we expect to continue to address critical issues facing our State workforce.

It is my hope that 2019 will provide greater opportunities for us to strengthen our public workforce while helping to make this State a better place to live and work. The Commission looks forward to fulfilling our core mission, which is to advance New Jersey government with fair and efficient human resource services responsive to the needs of the Civil Service workforce.

Lastly, I would like to reiterate my open-door policy. If you have any issues or helpful suggestions that you would like to bring to my attention, please do not hesitate to contact my office directly.

Sincerely yours,

Deirdre L. Webster Cobb, Esq.
Chair/CEO, New Jersey Civil Service Commission

CIVIL SERVICE COMMISSION DECISIONS

List Bypass Appeals

N.J.S.A. 11A:4-8, *N.J.S.A.* 11A:5-7, and *N.J.A.C.* 4A:4-4.8(a)3 allow an appointing authority to select any of the top three interested eligibles (“Rule of Three”) on a promotional list, provided that no veteran heads the list. In bypass appeals, the appellant has the burden of proof. See *N.J.A.C.* 4A:2-1.4(c). Additionally, effective May 7, 2012, when bypassing a higher ranked eligible, *N.J.A.C.* 4A:4-4.8 no longer requires an appointing authority to provide a statement of the reasons why the appointee was selected instead of a higher ranked eligible or an eligible in the same rank due to a tie score when it disposes the certification. Nonetheless, in response to an appellant’s appeal, the appointing authority must justify the reason for the appellant’s bypass. However, when it is not possible to determine on the written record whether the reasons for an appointing authority’s bypass was proper, matters have been referred to the Office of the Administrative Law for a hearing. The following appeals illustrate these principles.

In the Matter of Marcello Errigo and James Weston **(CSC, decided September 20, 2018)**

The Commission referred the appeals of Sheriff’s Officers to the Office of Administrative Law for a hearing where the appellants argued that they were first bypassed on a certification of the Sheriff’s Officer Sergeant (PC1572S), Passaic County, promotional eligible list and then removed from the list on a subsequent certification for their support of another candidate for Sheriff. To read the full text, [click here](#).

In the Matter of Melissa Brown **(CSC, decided October 3, 2018)**

The Commission found that even if the appointing authority bypassed the appellant’s name on the State Park Police Lieutenant (PS2442G), Department of Environmental Protection, eligible list because she

refused to relinquish her K9 partner, a disagreement regarding the duties of a position is a legitimate reason to bypass an eligible on an eligible list. To read the full text, [click here](#).

In the Matter of Algenoria Simpson **(CSC, decided October 3, 2018)**

The Commission found no evidence that the bypass of the appellant for promotion on the Police Sergeant (PM4108N), East Orange, eligible list was improper. The appellant was unavailable to work due to a leave of absence at the time of the effective date of appointments and, due to public safety reasons, the appointing authority needed to make appointments. To read the full text, [click here](#).

In the Matter of Jerrold Jacobson **(CSC, decided October 31, 2018)**

The Commission found that the appellant’s mere statement that he was more qualified than the same ranked eligible who was appointed was insufficient to show that his bypass on the Supervisor, Employment and Training Programs (PS5725N), Department of Labor and Workforce Development, eligible list was improper. To read the full text, [click here](#).

In the Matter of Ryan Morgan **(CSC, decided November 21, 2018)**

The appointing authority initially argued that it did not need to supply a reason for its bypass of the appellant on the Police Sergeant (PM5170N), Winslow Township, eligible list based on the repeal of *N.J.A.C.* 4A:4-4.8(b). The Commission found that the repeal of this regulation only changed the timing as to when an appointing authority was required to submit a legitimate business reason when it bypassed a candidate. Thus, the appointing authority was still required to submit its reason for the bypass upon appeal of an eligible. To read the full text, [click here](#).



Legislative Update

A major plank of Governor Murphy's platform during his gubernatorial campaign was the "Fight for Fifteen," a national movement to increase the minimum wage to a more livable \$15 per hour. Since his election, he has fought to fulfill this campaign promise in a way that would allow businesses the time to adequately prepare for, and adjust to, the new policy. In January, the Governor and Legislative Leadership reached an agreement and moved forward with a bill sponsored by Assembly Speaker Coughlin and Senate President Sweeney, which would raise the hourly minimum wage in New Jersey to \$15 per hour. Governor Murphy signed the bill into law on February 4, 2019.

This legislation will not increase the minimum wage to \$15 per hour overnight. Rather, the law provides for an initial increase to \$10 per hour on July 1, 2019, followed by annual hikes on January 1st of each of the next 5 years until the \$15 level is reached on January 1st, 2024. It also stipulates that if the federal minimum wage ever exceeds the state minimum wage, the state minimum wage must be raised into parity with the federal standard. All told, over one million New Jersey workers will be impacted.

Seasonal employees and employees working for a business with 5 or fewer employees will reach \$15 per hour by January 1, 2026. By January 1, 2028, workers in these groups will receive the minimum wage inclusive of inflation adjustments that take place from 2024 to 2028, equalizing the minimum wage with the main cohort of New Jersey workers.

Agricultural workers will receive a minimum wage increase to \$12.50 per hour by January 1, 2024. No later than March 31, 2024, the New Jersey Labor Commissioner and Secretary of Agriculture will jointly decide whether to recommend that the minimum wage for agricultural workers increase to \$15 per hour by January 1, 2027. If they cannot come to an agreement, a third member, appointed by the Governor with the advice and consent of the Senate, will break the tie. If there is a recommendation to disapprove of the scheduled increases or suggest an alternative pathway, the Legislature will have the ability to implement that recommendation by passage of a concurrent resolution.

Finally, the law establishes the "Task Force on Wages and State Benefits," which would evaluate how changes in minimum wage levels may affect eligibility for various State services and benefits, along with living standards. The task force will produce annual reports detailing its findings and recommending appropriate adjustments to eligibility standards for state benefits.

CLASSIFICATION APPEALS

Deference is normally given to an appointing authority's choice in organizing its functions, considering its expertise, so long as the selection is responsive to the purpose and function of the agency. However, *N.J.A.C. 4A:3-3.4* provides that no person shall be appointed or employed under a title not appropriate to the duties to be performed nor assigned to perform duties other than those properly pertaining to the assigned title which the employee holds. In that regard, the Commission is charged with the responsibility to establish, administer, amend, and continuously review the classification plan governing positions in State and local service. See *N.J.S.A. 11A:3-1(a)*. In order to carry out this statutory mandate, *N.J.A.C. 4A:3-3.3* specifies, among other things, that positions in the career, unclassified, and senior executive service shall be subject to job audits by this agency to ensure accurate classification and compliance with Title 11A of the New Jersey Statutes and Title 4A of the New Jersey Administrative Code. Further, *N.J.A.C. 4A:3-3.5(a)* provides that when the duties and responsibilities of a position change to the extent that they are no longer similar to the duties and responsibilities set forth in the job specification and the title is no longer appropriate, the Commission shall after review: 1. reclassify the position to a more appropriate title if there is one; 2. establish a new title to which the position shall be reclassified; or 3. take other appropriate action based on the organizational structure of the appointing authority. The following appeals define primary and secondary supervisor duties based on an organizational structure; describe permissible duties within a job definition; and outline the responsibility of an appointing authority to assign and remove duties in order for a position to be properly classified.

In the Matter of Bradley Gilbert and Donald Huber, Jr. (CSC, decided October 31, 2018)

The appellants, who were in the primary supervisory title of Taxpayer Services Representative 1, were supervisors of other supervisors in the same title. After reviewing the organizational structure of the division, the Commission determined that the division warranted one second-level supervisory classification for each of its units. Therefore, the Commission indicated that the appointing authority should assign the subordinate supervisors at least three professional level subordinates in order to properly classify these primary supervisors. If or when this had been completed, the Commission concluded that the appellants' positions could then be reclassified as Supervisor Technical Services, Taxation. To read the full text, [click here](#).

In the Matter of Communications Operator, Secured Facilities, Department of Corrections, Hudson County (CSC, decided November 21, 2018)

The Division of Agency Services sought enforcement of its decision which precluded the routine assignment of inmate control to Communications Operators, Secured Facilities, following a complaint from PBA Local 109, alleging that civilian employees were inappropriately being assigned custodial duties. In response, Hudson County submitted a summary of the duties and Custody Post Orders demonstrating that custodial duties were not being assigned to civilian employees. Upon review, the Commission found that opening and closing of security doors and gates upon orders or supervision of a custodial supervisor are not inappropriately assigned to the Communications Operator job classification. Commission stated that the provisions of *N.J.A.C. 10A:3-3.1, et seq.*, did not preclude the opening and closing of security doors and gates by incumbents in the Communications Operator job classification. As such, the Commission was convinced that the established policies of Hudson County followed the job specification for subject title, and it ordered that Hudson County continue to strictly follow its policy. To read the full text, [click here](#).

In the Matter of Shimera Hunter (CSC, decided November 21, 2018)

After an employee's position was reclassified to a higher title, Camden County asked to know which duties it could remove so that it could return her to her prior title. The Commission responded that it does not dictate the specific duties that an appointing authority assigns its employees and it is the appointing authority's responsibility to determine which duties it believes it should remove, which would then be subject to the review of the Division of Agency Services, so the position could be properly classified. To read the full text, [click here](#).

COURT DECISION

Set forth below is a decision of the Superior Court of New Jersey, Appellate Division, on appeal from [In the Matter of Derek Slimmer \(CSC, decided October 4, 2017\)](#). As the Appellate Division opinion has not been approved for publication, its use is limited in accordance with *R. 1:36-3* of the New Jersey Court Rules.

In the Matter of Derek Slimmer, Correction Lieutenant (PS6072I), Department of Corrections, Docket No. A-3911-16T3 (App. Div. November 28, 2018)

Appellant was bypassed on the Correction Lieutenant (PS6072I), Department of Corrections (DOC), eligible list, which promulgated on September 6, 2012 and expired on September 5, 2015. DOC issued Appellant a 30-day suspension in August 2014, but the charges were subsequently withdrawn as part of a settlement between the parties in March 2016. As part of the settlement, DOC "agreed not to assert any position in respect of any appeal filed by Appellant pertaining to 'a promotions list.'" In October 2016, Appellant notified DOC that charges against him had been withdrawn and requested a promotion to the Correction Lieutenant position. DOC rejected his request in December 2016, noting that the eligible list had expired while the charges were still pending and denied his request. Appellant appealed to the Commission, which determined his appeal was untimely and that his bypass did not violate the "Rule of Three." On appeal to the Appellate Division, the court rejected Appellant's argument that his appeal was timely. It further rejected his argument that the disciplinary action was the only reason behind him

being bypassed, and confirmation of the settlement agreement rendered that reasoning moot, finding that the Commission properly considered the disciplinary charges and his bypass did not violate the “Rule of Three.”

CSC Welcomes New Statewide Workforce Diversity and Inclusion Manager

Sharperson Brings Over 20 years of Legal, Diversity & Inclusion Experience

(TRENTON, NJ) The New Jersey Civil Service Commission (CSC) is proud to welcome Denise Sharperson as its first Statewide Workforce Diversity and Inclusion Manager. Her responsibilities will include developing a strategy for improving diversity and inclusion throughout the state’s workforce and collaborating with state departments and agencies to strengthen diversity outreach efforts.

“Denise is an outstanding addition to the team and brings a wealth of knowledge and experience. We are more than excited to have her join the NJ Civil Service Commission team,” **said Chair/CEO Deirdré Webster Cobb, Esq.** “Denise’s diversity and inclusion experience, exceptional legal acumen, and deep professional commitment will help create a better working environment for our public employees.”

“I truly look forward to being part of the Civil Service Commission family and humbly serving public employees throughout the State,” Sharperson said.”

Most recently, Denise served as Assistant General Counsel and first Chief Diversity Officer for the New Jersey Bar Association. While there, Denise served as legal counsel and was committed to increasing and retaining a diverse pool of lawyers within the Bar Association. She ensured that attorneys with diverse backgrounds and experiences engaged in meaningful work and focused on strengthening the legal profession throughout the State of New Jersey.

Denise has over 20 years of professional legal experience. She has worked in both private and public legal environments and advocated for increased diversity in the legal profession throughout her career.

HELPFUL LINKS

Civil Service Commission

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Trenton, New Jersey 08609
<https://nj.gov/csc/about/about/>

Division of Appeals and Regulatory Affairs

P.O. Box 312
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