

B-44



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Dyllon Willhouse,
Police Sergeant (PM1193T), Delanco
Township

CSC Docket No. 2016-1457

Examination Appeal

ISSUED: DEC 21 2015 (RE)

Dyllon Willhouse appeals the decision of the Division of Agency Services (DAS) which found that he lacked the required amount of permanent status in a title to which the examination was open for Police Sergeant (PM1193T), Delanco Township.

The subject examination was announced with a closing date of September 30, 2015 and was open to employees in the competitive division who had an aggregate of three years of *continuous* permanent service in the title of Police Officer as of the closing date. As he was the sole applicant, the examination was cancelled on October 23, 2015.

The appellant was made permanent in the title Police Officer in Delanco Township on November 1, 2014, and thus, he was found to possess 11 months of permanent service in the title Police Officer as of the closing date, and thereby lacked two years, one month. On appeal of this issue, the appellant explained that he exceeded the requirements based on his prior appointment as a State Park Police Officer with the Department of Environmental Protection, and a prior appointment with Edgewater Park Township as a Police Officer. Thus, he argued that he has an aggregate of three years as a Police Officer.

Civil Service Commission staff supplied the appellant with a signed copy of his Intergovernmental Transfer Waiver of Rights which indicated that he waived retention of rights to all accumulated seniority. Also, following his layoff from Edgewater Park Township, he was hired by the Department of Environmental

Protection from the Statewide Eligible List for reemployment of displaced law enforcement officers (Rice Bill). *N.J.S.A.* 40A:14-180(d) provides that the seniority, seniority-related privileges and rank a law enforcement officer possessed with the employer who terminated the officer's employment for reasons of economy shall not be transferable to a new position when the officer is appointed to a law enforcement position pursuant to the provisions of this section. It was explained to him that, as a result, his seniority with Edgewater Park Township was lost when he was hired by the Department of Environmental Protection.

The appellant replied that he believed that the waiver of seniority involved not out-ranking any officers employed prior to his appointment. He states that it was not explained to him that his seniority would not be considered in promotional examinations. He states that he had to sign the waiver as a condition of employment, but he has all the applicable time in the position to rightfully test, and no break in continuous service. He relies on the fact that the waiver was not fully explained to him, and refers to his ineligibility determination as a "technicality."

N.J.A.C. 4A:4-2.6(a) (Eligibility for promotional examination) states, in pertinent part, that applicants for promotional examinations shall, by the application filing date, meet the criteria of having one year of *continuous permanent service for an aggregate of one year immediately preceding the closing date* in a title or titles to which the examination is open. Aggregate service shall be calculated in the same manner as seniority as set forth in *N.J.A.C.* 4A:4-2.15. That rule provides the following information regarding calculation of seniority:

N.J.A.C. 4A:4-2.15(d), In calculating seniority for promotional examinations,

1. Continuous permanent service accumulated prior to an intergovernmental transfer pursuant to *N.J.A.C.* 4A:4-7.1A (except as provided in (d)3 below), voluntary furloughs and the following types of leaves shall not be deducted from seniority. i. All leaves with pay including sick leave injury; ii. Military, educational, gubernatorial appointment, personal sick, disability, family, furlough extension and voluntary alternative to layoff leaves of absence without pay; and iii. In local service, leave without pay to fill elective office.
2. A resignation/new appointment pursuant to *N.J.A.C.* 4A:4-7.9 shall not be considered a break in continuous service.
3. Continuous permanent service accumulated prior to an intergovernmental transfer pursuant to *N.J.A.C.* 4A:4-7.1A shall be deducted from seniority for all firefighters, and for those law enforcement officers, including sheriff's officers and county correction officers, who have waived all accumulated seniority rights in agreeing to an intergovernmental transfer.

CONCLUSION

In the instant matter, the appellant was correctly found ineligible for the subject examination for failure to meet the announced time-in-grade requirements. Mr. Willhouse was not permanent in the announced title for three years as of the closing date in the title Police Officer, but lacked two years, one month. *N.J.S.A. 11A:2-28(a)* and (b) provide that law enforcement officers, including County Correction Officers and Sheriff's Officers, shall be granted all privileges under the intergovernmental transfer program, including the option to waive all accumulated sick leave and seniority rights, and that the waiver of accumulated sick leave and seniority rights shall require the consent in writing of the receiving jurisdiction, the affected employee, and the Civil Service Commission. *See also, N.J.A.C. 4A:4-7.1A(b)2.* The legislature's rationale in enacting the statute was to save local governments the time and cost of training new employees by permitting them to hire fully trained law enforcement officers.

The appellant is essentially arguing that he did not understand the terms of his intergovernmental transfer, or that he signed a waiver without realizing the terms. The Commission is not persuaded that the meaning and intent of the waiver was not explained to the appellant before he signed it, or that it was explained to him to mean only that he would not out-rank any officers employed prior to his appointment, which is presumably a reference to layoff purposes. It is the employee's responsibility to understand the terms of any agreement he signs, or to ask questions regarding the meaning of terms he does not understand. There are multiple uses for seniority, which is not restricted to layoffs. *N.J.A.C. 4A:4-7.4(c)* specifically provides that, in the case of an intergovernmental transfer of a law enforcement officer who has agreed to waive all accumulated seniority rights, the officer shall not retain seniority for the purposes of determining promotional, layoff, or demotional rights and sick and vacation leave entitlements. In other words, the rules only permit an individual to waive or retain all Civil Service related seniority rights if the parties agree to these terms. They do not permit the retention of some Civil Service related seniority rights, such as those governing promotional eligibility, but not others, such as seniority scoring for examination purposes or layoff rights determinations.

Mr. Willhouse did not have three years of continuous permanent service as a Police Officer as of the September 30, 2015 closing date, and he was correctly found to be ineligible for the examination.

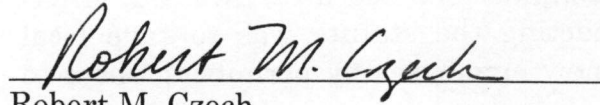
A thorough review of all material presented indicates that the decision of DAS, that appellant did not meet the announced requirements for eligibility by the examination closing date, is amply supported by the record and appellant provides no basis to disturb this decision. Thus, the appellant has failed to support his burden of proof in this matter.

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 16th DAY OF DECEMBER, 2015



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