



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Lashonda Burgess,  
Police Captain (PM1292T), Hillside

CSC Docket No. 2016-1599

Administrative Appeal

ISSUED: **OCT 25 2016** (RE)

Lashonda Burgess requests a retroactive regular appointment to the title of Police Lieutenant, effective September 1, 2014, when she received a provisional appointment in the title. She also appeals the decision of the Division of Agency Services (DAS) which found that she lacked the required amount of permanent status in a title to which the examination was open for Police Captain (PM1292T), Hillside.

By way of background, Lashonda Burgess was provisionally appointed to Police Lieutenant on September 1, 2014. Ms. Burgess ranked first on the eligible list for Police Lieutenant (PM5020P), which was promulgated on February 7, 2013, with a February 6, 2016 expiration date. This list was not certified. Subsequently, the appellant received a regular appointment to Police Lieutenant on September 1, 2015. Additionally, the examination announcement for Police Captain (PM1292T), Hillside was issued in July 2015, with a closing date of September 30, 2015. The appellant was found ineligible for a lack of required amount of permanent status in the title to which the examination was open. It is noted that the examination was open to employees in the competitive division currently serving as Police Lieutenant and having an aggregate of one year of continuous permanent service as of the closing date.

In her appeal postmarked October 27, 2015, the appellant appeals her ineligibility for the Police Captain examination. She explains that, prior to submitting her application in July 2015, she was "assured that my appointment would be effective from the date in which I was placed into the position of

Lieutenant.” The appellant does not explain who assured her of what type of appointment, but she was aware that she was provisionally appointed on September 1, 2014. She submits a letter from the Police Chief to the appointing authority, dated September 4, 2014, stating that he assigned the appellant the duties of Police Lieutenant on September 1, 2014, and requesting that the Police Lieutenant list be certified and the appellant be made permanent. The eligible list was certified (PL150749) on July 14, 2015, and the appellant was then appointed on September 1, 2015.

As a result of this appeal, the appointing authority was asked to provide an explanation as to the delay to July 2015 to request a certification for that appointment. In response, the Police Chief submitted a letter indicating that the appellant was promoted to fill a legitimate vacancy created by retirement and reassignment, in order to facilitate effective day to day operation and supervision. Also, the appointing authority, represented by Robert Varady, Esq., stated that Commission staff informed it that an appointment for Ms. Burgess could not be backdated, and that she was advised to file to take the examination for Police Lieutenant. The appellant then responded with additional documentation from the Police Chief and a Police Captain to the Business Administrator requesting a certification of the list.

*N.J.A.C.* 4A:4-3.3(b) provides, in pertinent part, that promotional lists shall be promulgated for three years from the date of their establishment. *N.J.A.C.* 4A:4-1.10(c) provides that when a regular appointment has been made, the Civil Service Commission may order a retroactive appointment date due to administrative error, administrative delay or other good cause, on notice to affected parties.

## CONCLUSION

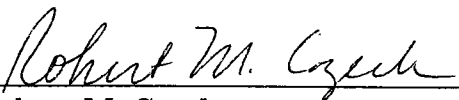
In the instant matter, the appellant was provisionally appointed to the title Police Lieutenant although there was a complete list in existence. For reasons unknown, DAS approved this appointment, when it should have been rejected and a certification issued. When asked about the delay, the appointing authority stated that it was informed by Commission staff that an appointment could not be backdated when it attempted to appoint her. This does not explain a delay in a request for a certification, but was only a reason why she did not receive a retroactive appointment. When the provisional appointment was submitted in the County and Municipal Personnel System (CAMPS), a certified list should have been issued, but was not, and the appointing authority has no explanation for the lack of request for a certification upon her provisional appointment. The appellant was first on the list and reachable for appointment. Based on these circumstances, the appellant should receive a retroactive regular appointment to September 1, 2014 from PL150749. With this correction, the appellant will have had one year of permanent service in the title Police Lieutenant, and should be admitted to the examination for Police Captain (PM1292T).

**ORDER**

Therefore, it is ordered that the request be granted and Lashonda Burgess be provided with a regular appointment as Police Lieutenant, effective September 1, 2014, and admitted to the examination for Police Captain (PM1292T). Should she pass, she should be added to the eligible list with retroactive appointment consideration. Ms. Burgess' personnel record should be amended in accordance with this decision.

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 19<sup>th</sup> DAY OF OCTOBER, 2016



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