

vacation, compensation hours, and holiday hours that needed to be exhausted before his retirement, and that the appellant bridged the gap.

N.J.A.C. 4A:4-2.3(b) provides that applicants shall meet all requirements specified in the open competitive examination announcement by the closing date. *N.J.A.C.* 4A:4-2.1(f) provides that an applicant may amend a previously submitted application prior to the closing date.

CONCLUSION

The appellant was denied admittance to the subject examination since he lacked two years, nine months of required experience. When an applicant indicates experience in titles established under the State Classification Plan for an open competitive examination, it is appropriate to utilize official records of employment. In this case, the appellant indicates that he worked for more than three years as a Manager Golf Facilities, but his record indicates that he was given a provisional appointment pending open-competitive examination on March 18, 2016. The Director of Golf Operations confirms the appellant's employment there from April 2013.

Absent a compelling emergent situation, such as public safety, accepting and employing interested applicants prior to formal approval by the Civil Service Commission seriously circumvents the merit system and frustrates the legislative goals of appointments based on merit and fitness as demonstrated in a competitive testing situation. There was no compelling reason for the appellant to be employed by Essex County without a formal appointment. The types of appointment which exist in a Civil Service jurisdiction are clearly delineated in *N.J.S.A.* 11A:4-13. *De facto* appointments are not discussed or recognized in Title 11A. See *In the Matter of Police Sergeant (PM3220S), Jersey City*, 360 *N.J. Super.* 367 (App. Div. 2003), *cert. denied*, 178 *N.J.* 33 (2003). If the prior incumbent was out for extended periods of time, the appellant should have been given a formal temporary or interim appointment.

Nevertheless, the Director states that the appellant has worked as a Manager Golf Facilities since April 2013. The Commission is concerned that Essex County employed the appellant at that time without approval, especially given that he did not meet the requirements at that time. In this regard, his positions as a Maintenance Supervisor with a law firm and Site Development Supervisor are clearly inapplicable. Had Essex County sent the proper paperwork to the Commission in 2013, an open-competitive examination would have been announced, and Mr. Mays would not have been qualified to take it. Nevertheless, the record now establishes, as verified by the Director, that the appellant has over three years of applicable experience. It would be inequitable to ignore this information under these circumstances, especially since the appellant continues to serve provisionally and the

examination was cancelled due to a lack of eligible candidates. Accordingly, the Commission accepts the appellant's clarifying information, for eligibility purposes, and admits him to the subject examination. However, the Commission cautions Essex County to strictly follow Civil Service selection and appointment rules in the future. Failure to do so may subject it fines or other penalties pursuant to *N.J.A.C.* 4A:10.

ORDER

Therefore, it is ordered that this appeal be granted, the cancellation of the examination be rescinded, and the appellant's application processed.

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 21st DAY OF DECEMBER, 2016



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

c: Jerry Mays
Robert Jackson
Kelly Glenn
Records Center

