

signed by the Police Director, which indicates her regular appointment to Deputy Police Chief effective April 2, 2014. She also submits a copy of a Newark Police Department Personnel Order No: 2014-135 and an Oath of Office certificate dated April 1, 2014, that indicate her appointment to the Deputy Police Chief title. Additionally, the appellant submits a news release from the Newark Mayor's Office which indicates her appointment to Deputy Police Chief.

Further, the appellant contends that on the same day of her appointment to Deputy Police Chief she was granted a leave of absence and was appointed to the unclassified title of "Chief of Police." The appellant states that upon her return from her leave of absence, she was returned to the title of Police Captain despite her permanent appointment to the Deputy Police Chief title. She provides copies of Newark Police Department Personnel Order No: 2014-229, which indicates that she returned from a leave of absence on July 1, 2014 to the title of Deputy Chief. The appellant also submits Newark Police Department Personnel Order No: 2014-229 dated August 29, 2014, which indicates a "status change" for the appellant from Deputy Chief to Captain, and a Request for Personnel Action form dated August 29, 2014 and signed by the Police Director, which indicates her return from Acting Deputy Police Chief to her permanent title of Police Captain. The appellant contends that the appointing authority's attempt to demote her to Police Captain is improper and blatantly inconsistent with the facts of this case and contrary to Civil Service rules and regulations.

In response, the appointing authority, represented by Kenyatta K. Stewart, Esq., Corporation Counsel, states that on March 13, 2014, then Mayor Luis A. Quintana appointed the appellant to the unclassified title of Police Chief. The Mayor then sought to swear the appellant in as a Deputy Police Chief while she was simultaneously carrying out the duties of Police Chief. The Mayor received correspondence from this agency and his advisors advising of the conflict of interest in swearing in the appellant as a Deputy Police Chief while serving as a Police Chief. In support of this contention, it submits a March 31, 2014 letter to the Division of Classification and Personnel Management² (DC&PM) requesting a rule relaxation to permit the appellant to serve her working test period for Deputy Police Chief at the same time that she was serving as a Police Chief. It also submits an email from DC&PM dated April 1, 2014, which indicates that the working test period of a classified title could not run concurrent during an appointment to an unclassified title and as such, its request would not be considered. The appointing authority indicates that the March 10, 2014 (PL140258) certification for Deputy Police Chief was returned on July 1, 2014 indicating that thereafter, the appellant was retained but not appointed.

In addition, the appointing authority argues that the appellant's appeal must be denied because although she was sworn in as a Deputy Police Chief, she failed to

² Now the Division of Agency Services.

serve her working test period. It argues that this matter is similar to *Leonard Cipriano v. Department of Civil Service*, 151 N.J. Super 85 (App. Div. 1977), in which the Commission vacated Cipriano's permanent appointment status as he never completed a working test period while performing the duties of another title. The legitimacy of Cipriano's permanent appointment was questioned by the Commission during a layoff action. In this regard, the appointing authority argues that the appellant never completed a working test period and thus was never permanent in the title of Deputy Police Chief.

In reply, the appellant initially argues that the appointing authority's argument on appeal are untimely and should not be considered. She also contends that the appointing authority violated Civil Service rules regarding working test periods as it never notified her that she was being returned to her former permanent title due to unsatisfactory performance as required by *N.J.A.C.* 4A:4-2-4.1. In this regard, she contends that the failure of the appointing authority to timely advise her that she had not successfully completed her working test period would result in her permanent appointment pursuant to *N.J.A.C.* 4A:2-4.1(c). The appellant also argues that none of the required progress reports were issued by the appointing authority. Additionally, the appellant argues that she did complete a working test period during her service as a Police Chief from April 2, 2014 through June 30, 2014 and her service as a Deputy Police Chief from July 1, 2014 through August 28, 2014. Further, the appellant argues that the present matter is distinguishable from *Cipriano, supra*, because Cipriano was appointed in "paper only" and never performed the duties of his alleged permanent title whereas she did serve as a Deputy Police Chief from July 1, 2014 through August 28, 2014. Therefore, the appellant requests a finding that she received a regular appointment to the title of Deputy Police Chief effective April 2, 2014, back pay, seniority, and counsel fees.

CONCLUSION

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, it is noted that the appellant has the burden of proof in this matter. *See N.J.A.C.* 4A:2-1.4(c).

Initially, the appellant objects to the consideration of the appointing authority's response to her appeal. However, the time frame for filing a response to an appeal is not statutory. The Commission can expand the time period to respond to a case or limit it depending on the case. In this case, the Commission finds that the appellant was not prejudiced by the delay in the appointing authority's submission and the Commission now has a complete record to review this matter.

A thorough review of the record in the instant matter reveals that the appellant has failed to establish that she should be considered to have been permanently appointed to the title of Deputy Police Chief or that she was improperly returned to her permanent title of Police Captain. It is noted that, with limited exception, the only method by which an individual can achieve permanent appointment is if the individual applies for and passes an examination, is appointed from an eligible list, and satisfactorily completes a working test period. The steps necessary to perfect a regular appointment, include, but are not limited to, this agency's review and approval of a certification disposition proposed by an appointing authority and the employee's completion of a mandatory working test period. See *In the Matter of Joseph S. Herzberg* (MSB, decided June 25, 2003) (Intent of appointing authority to permanently appoint appellant to Fire Captain not sufficient to permanently appoint appellant since he was never appointed from an eligible list). Indeed, *N.J.A.C.* 4A:4-1.10(a) provides that all appointments, promotions, and related personnel actions in the career, unclassified or senior executive service are subject to the review and approval of the Commission. It is settled that an appointment is not valid or final until it is approved by the Commission. See *Thomas v. McGrath*, 145 *N.J. Super.* 288 (App. Div. 1976) (Morgan, J.A.D. dissenting), *rev'd based on dissent*, 75 *N.J.* 372 (1978); *Adams v. Goldner*, 79 *N.J.* 78 (1979); *In the Matter of Reena Naik* (MSB, decided February 28, 2007). In the instant, the appellant alleges that she received a regular appointment to the Deputy Police Chief title, effective April 2, 2014 and provides documentation indicating that at some point the appointing authority intended to appoint her to this title. Clearly these intentions changed by the time the (PL140258) certification was returned to this agency on July 1, 2014, as the appellant was listed as Retained, Interested Others Appointed and the other eligible was noted as having been appointed, effective April 2, 2014. In the absence of a certification requesting her appointment and the approval of this agency, the appellant has failed to demonstrate that she received a regular appointment to the title of Deputy Police Chief. As such, she attained no property interest in the title of Deputy Police Chief, and the appointing authority appropriately returned her to her permanent tile of Police Captain. In this regard, the only interest that results from placement on an eligible list is that the candidate will be considered for an applicable position so long as the eligible list remains in force. See *Nunan v. Department of Personnel*, 244 *N.J. Super.* 494 (App. Div. 1990).

The appellant also argues that the appointing authority did not follow any of the established rules and regulations concerning working test periods and that she should be considered permanent in the title of Deputy Police Chief by virtue of the appointing authority's failure to timely advise her that she had not successfully completed her working test period. See *N.J.A.C.* 4A:2-4.1(c). However, *N.J.A.C.* 4A:4-5.2(a) provides that an employee's working test period shall begin on the date of regular appointment. As discussed above, an employee receives a regular appointment when he or she passes an examination, is appointed from an eligible

list, and the appointment is approved by the appointing authority and this agency. As the appellant's appointment was never approved by this agency, she never received a regular appointment and, thus, had not commenced her working test period. Further, by letter dated March 31, 2014, the appointing authority requested that the Commission grant a rule relaxation in order to permit the appellant to serve a working test period as a Deputy Police Chief while simultaneously carrying out the duties of an unclassified Police Chief. By email dated April 1, 2014, this agency clearly advised that the request could not be considered because *N.J.S.A. 11A:4-15* requires that a working test period be served in the title to which the certification was issued and appointment made. Thus, the appointing authority was advised by this agency prior to the asserted appointment date of April 2, 2014, that the appellant could not serve a working test period for Deputy Police Chief while simultaneously serving in the unclassified title of Police Chief.

Accordingly, the appellant has not established her entitlement to permanent status in the title of Deputy Police Chief and the appellant has not met her 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 27TH DAY OF MARCH, 2018



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