



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of Matthew Orsini,
Moorestown Township
Fire District #2

CSC Docket No. 2017-2058

Administrative Appeal

ISSUED: MARCH 29, 2018 (DASV)

Moorestown Township Fire District #2, represented by Gregory R. McCloskey, Esq., requests a lateral title change, pending qualifying examination, for Matthew Orsini, to Fire Official, Uniformed Fire Department (UFD), effective February 1, 2009.

By way of background, Orsini was provisionally appointed pending open competitive procedures as a Fire Prevention Specialist effective February 2, 2009,¹ and received a regular appointment on July 1, 2010. He then received a regular appointment to Fire Official on March 4, 2014.

In the instant matter, the appointing authority contends that if it had been permitted to appoint Orsini as a Fire Prevention Specialist, UFD, as it originally intended, Orsini would then have been promoted to Fire Official, UFD. In that regard, the appointing authority explains that it contacted this agency on October 26, 2009, requesting that an examination be scheduled for Fire Prevention Specialist, UFD. However, it indicates that the request was denied since “the UFD position was a promotional position and could only be filled by a person who had already passed the Fire Fighter exam.” The appointing authority states that, at the time, the only paid position was Fire Chief and there were no employees to promote. Thereafter, in 2011, the appointing authority once again asked this agency for Orsini’s title change. In a letter dated March 15, 2011, the Division of State and

¹ The appointing authority states that Orsini was provisionally appointed on February 1, 2009. However, agency records indicate that Orsini’s appointment was effective February 2, 2009.

Local Operations (SLO), which is now known as the Division of Agency Services (Agency Services), responded that the Fire Prevention Specialist, UFD, title is a “combined civilian/uniformed title” . . . and, pursuant to the job specification, positions “may only be filled through promotional examination procedures only.” SLO further indicated that a promotional examination for the title would be open to permanent employees who meet the time-in-grade requirements, which meant in this case that only applicants who passed the Civil Service Fire Fighter examination could be appointed to the Fire Prevention Specialist, UFD, title. Possession of a Firefighter 1 Certification issued by the Department of Community Affairs did not qualify Orsini for the position. Additionally, SLO stated that there was no eligible candidates for a promotional examination as there were no career service Fire Fighters in Moorestown Township Fire District #2. In that regard, it is noted that the Fire District houses the Lenola Volunteer Fire Company No. 1. It is further noted that Orsini filed for the examination for Fire Fighter (M9999M), which had a closing date of March 31, 2010. However, he did not appear for the examination.

Moreover, the appointing authority maintains that it recently became aware of a 2012 decision of the Civil Service Commission (Commission), *In the Matter of Scott McCormick, Hamilton Township Fire District #7* (CSC, Decided August 1, 2012). In that case, the Commission granted a Fire District’s request to change a Fire Official’s title to Fire Official, UFD, retroactive to May 3, 2010. McCormick received a permanent appointment as a Fire Official effective January 7, 2008. The Hamilton Township Fire District #7 indicated that McCormick had been an active member of its volunteer fire company since 1989 and possessed the education, training and certifications for the Fire Official, UFD, position. Fire District #7 has both paid and volunteer Fire Fighters. Subsequently, Fire District #7 and Fire District #4 and #3, respectively, entered into shared services agreements, whereas Fire District #7 would provide the enforcement necessary for the Uniform Fire Safety Act for the other two districts. Thereafter, by resolution the Board of Fire Commissioners of Fire District #7 re-designated the “Fire Marshal” position to Fire Official, UFD, and appointed McCormick to that title on June 20, 2011. The appointing authority explained that it was unaware that a resolution was required and personnel changes were necessary in the County and Municipal Personnel System to effect the title change, but in actuality, McCormick was performing the duties since May 3, 2010. Given McCormick’s volunteer service, the Commission found that he met the age requirements for the position at the time he commenced the duties of a Fire Official, UFD. Further, McCormick met the other requirements for the position, including being qualified for and performing firefighting duties. Therefore, the Commission found it appropriate under the circumstances to record the permanent appointment of McCormick as a Fire Official, UFD, effective May 3, 2010. It is noted that McCormick had passed the qualifying examination.

The appointing authority in the present case argues that *McCormick, supra*, “serves as precedent and would serve as an estoppel from treating the District’s request in a disparate fashion.” “Very similar” to McCormick, the appointing authority states that Orsini has the necessary education, experience, and professional certifications necessary to fulfill the requirements for the position and has in fact been performing the duties of a “UFD position” since February 1, 2009. Moreover, Moorestown Fire District #1 has entered into a shared services agreement with Moorestown Fire District #2, effective January 1, 2015, whereby the two districts have utilized the services of Orsini as the Fire Official since that time. The appointing authority states that Orsini turned 35 in January 2016 and has served as a volunteer Fire Fighter since he was 18 years old and has responded to fire calls as a Fire Official. Therefore, it requests that the Commission approve the lateral title change of Orsini to Fire Official, UFD, retroactive to February 1, 2009.

Despite the opportunity, Agency Services did not respond to the request.

CONCLUSION

Initially, it is noted that there is no record of the appointing authority appealing SLO’s March 15, 2011 determination to the Commission. Nonetheless, the Commission finds that Orsini could not have been appointed to the Fire Prevention Specialist, UFD, title at the time of his initial provisional appointment in 2009 or his regular appointment in 2010. In that regard, the job specification for Fire Prevention Specialist, UFD, clearly states that:

Positions in this class may be filled through promotional examination procedures only. Candidates must meet those requirements and qualifications for promotion specified in Civil Service law, rules, and regulations.

N.J.A.C. 4A:4-2.6(a)1 provides in relevant part that applicants for promotional examinations shall have 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. Thus, since Orsini did not have one year of permanent service at the time of his appointment as a Fire Prevention Specialist, he did not qualify for a promotional examination. While the variant title has the one-year requirement, the Fire Prevention Specialist title does not. Furthermore, at the time of the appointing authority’s second request in 2011, Orsini still did not have one year of permanent service. He was appointed as a Fire Prevention Specialist, effective July 1, 2010, and SLO’s determination was dated March 15, 2011. As noted above, there was no appeal of that determination.

In addition, there is no basis to grant the appointing authority's request for a retroactive title change for Fire Official, UFD, effective February 1, 2009. Clearly, the appointing authority at the time chose to appoint Orsini to the Fire Prevention Specialist title and not as a Fire Official. Whether it intended the position to perform UFD duties is irrelevant, since it was not until March 4, 2014, after Orsini was found eligible for the Fire Official (PM1945R) examination, was he certified² and appointed. In addition, for the same reason set forth above, a retroactive title change in 2009 or 2010 to Fire Official, UFD, cannot be approved as the title would have been tested via promotional examination procedures and Orsini did not possess one year of permanent service. A Fire Official, UFD, position may only be filled through promotional examinations procedures. Additionally, the appointing authority could have promoted Orsini to the variant title and requested an examination for the title in 2014, but instead, it chose to appoint him to the base title.

Furthermore, the appointing authority cites *McCormick, supra*. By resolution dated June 20, 2011, the Board of Fire Commissioners of Hamilton Township Fire District #7 re-designated the "Fire Marshal" position to Fire Official, UFD, and appointed McCormick to that title. The retroactive date was granted based on the evidence in the record that the Board of Fire Commissioners of Fire District #7 was initially unaware that a resolution was required and personnel changes were necessary to effect the title change at the time McCormick began performing the duties of a Fire Official, UFD, on May 3, 2010. In the present case, there was never an attempt to appoint Orsini to the Fire Official, UFD, title in 2014 or earlier. Nonetheless, the appointing authority asserts that Orsini began performing the duties of a Fire Official, UFD, since the January 1, 2015 shared services agreement with Moorestown Fire District #1. *N.J.A.C.* 4A:4-1.10(c) states that an individual may receive a retroactive date of appointment to correct an administrative error, for an administrative delay or for other good cause. Although the appointing authority's delay is inexplicable, the fact remains that Orsini has been performing the UFD duties since January 1, 2015. Therefore, the Commission finds good cause to grant Orsini a lateral title change, pending qualifying examination, to the title of Fire Official, UFD. *See N.J.A.C.* 4A:4-7.6(c). Should Orsini pass the examination and a current working test period, his appointment date shall be recorded as January 1, 2015. Therefore, this matter is being referred to Agency Services to process the title change. It is emphasized that Orsini must meet the eligibility requirements for the position, which shall include the requirements of *N.J.S.A.* 40A:14-12 that "no person shall be appointed as a member or officer of the paid fire department or force or as a paid member or officer of a part-paid fire department or force in any municipality, who is under 21 or over 35 years of age." However, since Moorestown Fire District #2 maintains a volunteer fire company, *N.J.S.A.* 40A:14-44 would apply. The statute provides that:

² The Fire Official (PM1945R), Moorestown Fire District #2, eligible list promulgated on February 27, 2014 and expired on February 26, 2017. Orsini was the only eligible.

In any municipality where there is a volunteer fire company or force, maintained and controlled by the municipality and a part-paid fire department composed of both paid and volunteer firemen, any appointment to such part-paid fire department shall be made from the members of the volunteer fire company or force, who shall have served as active firemen for at least two years next preceding such appointment or from among the exempt firemen of the company or force . . . Said appointees shall not be under 21 or over 40 years of age at the time of the appointment.

ORDER

Therefore, it is ordered that this request be granted in part, and the matter of Mathew Orsini's lateral title change, pending qualifying examination, be referred to Agency Services to process.

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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