CSC

B-15

STATE OF NEW JERSEY

In the Matter of Timothy Rattigan, Department of Labor and Workforce Development

CSC Docket No. 2015-2208

FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION

Administrative Appeal

ISSUED: AUG 21 2015 (HS)

Timothy Rattigan appeals his return to his permanent title of Intermittent Labor Services Worker, effective January 24, 2015.

By way of background, a promotional examination for the title of Claims Examiner, Unemployment and Disability Insurance (Claims Examiner) (PS8598N) was announced with a closing date of April 21, 2014. The PS8598N examination was open, in part, to employees serving in the title of Intermittent Labor Services Worker and who met the listed education and experience requirements. The appellant, who had received a regular appointment to the title of Intermittent Labor Services Worker on October 24, 2011, filed for the PS8598N examination but was deemed ineligible on August 6, 2014 by the former Division of Selection Services (Selection Services)[1] on the basis that he did not meet the experience requirement. The appellant appealed that decision to the Civil Service Commission, which upheld Selection Services' decision. *See In the Matter of Timothy Rattigan* (CSC, decided November 19, 2014). It is noted that the PS8598N examination was administered as a written examination on November 6, 2014. The resultant eligible list promulgated on December 4, 2014 with 13 names and expires on December 3, 2017.

The appellant had separately requested a classification review of his position. In its decision dated September 26, 2014, the former Division of Classification and

[1] The eligibility review unit is now part of the Division of Agency Services.

Personnel Management (CPM)[2] found that the assigned duties and responsibilities of the appellant's position were commensurate with the title of Claims Examiner. As a result, the appellant was considered to be serving provisionally as a Claims Examiner effective May 3, 2014.

Thereafter, on December 5, 2014, a certification (PS141557) containing the names of eight eligibles was issued from the Claims Examiner (PS8598N) eligible list. In disposing of that certification, the appointing authority made one appointment effective January 24, 2015. It also returned the appellant to his prior held permanent title of Intermittent Labor Services Worker, effective January 24, 2015.

On appeal, the appellant states that at the time he received his classification determination, he was informed that he would remain serving provisionally in the Claims Examiner title and be required to take the next available promotional examination for that title. Subsequently, he was informed of his removal from his provisional position due to the issuance of a certification for Claims Examiner. The appellant finds the timing of his removal "questionable" in that the effective date of his provisional appointment was May 3, 2014, yet he did not have an opportunity to sign up for the Claims Examiner examination subsequent to that date. He contends that the appointing authority appointed him to the Claims Examiner title at a time when it knew that he would be unable to attain placement on the next eligible list. The appellant also contends that despite the result of his classification review, he was denied a means to retain the Claims Examiner title. Therefore, he requests an opportunity to sit for the next available examination for Claims Examiner so that he may become permanent in that title. Finally, the appellant argues that an "intermittent" designation for his position is inappropriate since he performs the same duties and works the same amount of hours as individuals in the title of Claims Examiner.

CONCLUSION

Initially, the appellant argues that the timing of the September 26, 2014 classification decision was questionable as he was not provided with an opportunity to take an examination for the title of Claims Examiner, after CPM found him to be serving in the subject title provisionally, pending a promotional examination, effective May 3, 2014. However, it is noted that an examination (PS8598N) for Claims Examiner had already been announced and was open, in part, to employees serving in the appellant's Intermittent Labor Services Worker title. Although the appellant filed for that examination, he was deemed ineligible because he failed to demonstrate on his application possession of the requisite experience. Moreover, the appellant's contention that the appointing authority provisionally appointed him to the Claims Examiner title knowing that he would be unable to attain

[2] Now the Division of Agency Services.

placement on the PS8598N eligible list appears unfounded as the PS8598N examination was announced open to the appellant's Intermittent Labor Services Worker title; the appellant did file for that examination; and the appellant was not deemed ineligible for the examination by Selection Services until August 6, 2014, about three months after the effective date of his provisional appointment. As such, the appellant's arguments that he was denied an opportunity to retain the Claims Examiner title are unpersuasive. As to his request to be able to sit for the next available examination for Claims Examiner, the appellant may file for any announced examinations as appropriate.

Moreover, the classification determination the appellant received was a determination of duties and responsibilities being performed at a given point in time as verified by this agency through an audit. Following receipt of a reclassification determination, any change in the classification of a permanent employee's position, whether promotional, demotional or lateral, must be effected in accordance with all applicable rules. *See N.J.A.C.* 4A:3-3.5(c)1. It is well settled that upon reclassification of a position to a higher title, the incumbent is considered serving provisionally in the new title. Further, as part of the process of selection and appointment, a candidate must establish eligibility by demonstrating possession of the applicable experience and/or education requirements *and* pass an examination. *See In the Matter of Pinky Bemah* (MSB, decided December 1, 2004) (Satisfactory performance of duties on a provisional basis for several years did not warrant appellant's appointment since she did not pass the examination for her positions). In other words, the only method by which an individual can achieve permanent appointment in the competitive division is if the individual applies for and passes an examination, is appointed from an eligible list, and satisfactorily completes a working test period. *See In the Matter of Joseph S. Herzberg* (MSB, decided June 25, 2003). Thus, the appellant's classification determination did not represent a guarantee that he would become permanent in the Claims Examiner title or even be admitted to an examination for the subject title.

Additionally, with regard to the appellant's objection concerning his return to his permanent title of Intermittent Labor Services Worker, it is noted that in accordance with *N.J.S.A.* 11A:4-5 and *N.J.A.C.* 4A:4-4.8, once the examination process has been initiated due to the appointment of a provisional employee or due to an appointing authority's request for a list to fill a vacancy, the appointing authority must make an appointment from the resulting eligible list if there are three or more interested and eligible candidates. A complete eligible list for Claims Examiner (PS8598N) promulgated on December 4, 2014 and the appointing authority properly disposed of the December 5, 2014 certification (PS141557) by appointing an individual from that certification. Accordingly, it was appropriate for the appellant, who held the provisional position, to be displaced. Moreover, a provisional appointee can be removed at any time and does not have a vested property interest in the provisional title. In other words, a provisional employee

has no automatic right or expectation of achieving permanent appointment to the position which he or she is occupying. *See O'Malley v. Department of Energy*, 109 *N.J.* 309 (1987) (Appointing authority was not equitably estopped from removing a provisional employee even when the provisional employee occupied the position longer than the statutory one-year limit).

Finally, should the appellant believe that he is misclassified as an "intermittent" employee, he may file a new request for a classification review of his position. Accordingly, a review of the record indicates that the appellant has not demonstrated entitlement to relief.

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 19TH DAY OF AUGUST, 2015

Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

c. Timothy Rattigan
Thomas Healy
Kenneth Connolly
Joseph Gambino