



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Duane Wallace,
Township of Willingboro

Reconsideration

CSC Docket No. 2018-1857

ISSUED: JUNE 8, 2018 (SLK)

Duane Wallace, represented by Thomas M. Barron, Esq, requests reconsideration of the decision rendered on November 15, 2017, which denied his appeal of his removal from an unclassified appointment as a Confidential Assistant from the Township of Willingboro (Willingboro).

By way of background, Wallace retired effective January 1, 2010 from his position with Willingboro as a Construction Official/Director of Inspections, a career service title. Thereafter, he was appointed to the unclassified title Confidential Assistant effective February 1, 2010. Subsequently, Willingboro discontinued his unclassified appointment on April 28, 2017. On July 25, 2017, Wallace appealed the discontinuance of his unclassified appointment to the Civil Service Commission (Commission). On November 15, 2017, the Commission denied Wallace's appeal as untimely and on the merits.

On reconsideration, Wallace argues that he meets the standard for reconsideration. Specifically, he presents as new evidence the certification of a Principal Payroll Clerk (Payroll Clerk). The Payroll Clerk certifies that at the time Wallace was separated from his employment, Willingboro's payroll records listed him as a Construction Official and Building Code Sub-Official. Further, the Payroll Clerk indicates that she disagreed with documents and forms that she was required to submit to the Division of Pensions and Benefits, which listed his job title as "Confidential Assistant," and his earnings as only \$12,000 per year when he was receiving more than \$80,000 per year as a Constructional Official and Building

Code Sub-Official. Wallace explains that the Payroll Clerk was out of State from August through November 2017, which is why he could not submit her certification at the time of his appeal. Wallace additionally presents the statements of the current Town Manager, made to Willingboro's Town Council on December 28, 2017 after the Commission's decision, that indicated the assignment of personnel to fill Wallace's titles were all assigned to the career service titles held by him. Wallace emphasizes that the current Town Manager never once referred to him as a Confidential Assistant. Further, Willingboro's Human Resource Director, who was the individual who entered in the County and Municipal Personnel System (CAMPS) six years after Wallace retired that he was an unclassified Confidential Assistant, was sitting next to the Town Manager and never once corrected him by stating that Wallace was a Confidential Assistant. Consequently, Wallace argues that the Town Manager's statements are an admission that Wallace was not a Confidential Assistant.

Additionally, Wallace argues that the Commission made material errors in its decision. Specifically, Wallace contends that since he was performing the duties of career service titles after he was rehired that he could not be classified as an unclassified employee under the Civil Service Act. He reiterates that Willingboro listed him as holding various Civil Service titles in its February 11, 2011 letter, the Department of Community Affairs indicated that he was Willingboro's Construction Official, each document that he signed on behalf of Willingboro was as a Construction Official and Sub-Code Official, which was certified by Willingboro's Chief Financial Officer. Additionally, Willingboro's Salary Ordinances did not list Confidential Assistant as one of its titles and he did not perform the duties of a Confidential Assistant as he was not an unclassified department head. Instead, Wallace emphasizes that he performed the duties of a Construction Official. Wallace presents that each appointing authority is statutorily mandated to appoint a Construction Official as a department head. Wallace emphasizes that under the Civil Service Act that no Construction Official or Sub-Code Official can be appointed to these titles without having passed a Civil Service examination. Wallace reiterates that he originally passed a Civil Service examination when he was initially appointed to these titles and he believes that it is hard to conceive that his transitioning from a full-time to a part-time position would void his tenure rights gained through competitive testing and satisfactorily completing a working test period.

Moreover, Wallace argues that the Commission made an error when it stated that the best his designation could have been considered was provisional pending open competitive examination procedures and that provisional appointees have no vested property rights to a career service appointment and can be separated at any time. Wallace presents that the Construction Official statute indicates that a provisional Construction or Sub-Code Official cannot be removed without just cause without a fair and impartial hearing and the Civil Service Act's purpose is to put

positions into the career service so that appointments are not subject to politics and personal favoritism. He explains that the Department of Community Affairs and the Commission have dual authority for the appointment of Construction Officials and he meets the criteria for appointment as a Construction Official. Wallace believes that at minimum he is a provisionally employee who has a statutory right to a due process hearing.

Wallace further argues that the Commission erred when it determined that his appeal was untimely. Wallace states that the Civil Service Act requires that permanent employees in the career service be given notice of charges and the right to be heard. He claims that Willingboro and this agency's representative incorrectly advised him that he did not have the right to appeal. Wallace presents that the Civil Service Act provides that when an employer fails to provide notice that its employee has the right to appeal, the employee can appeal "within a reasonable time." Additionally, the Commission can relax the time to appeal when it finds "good cause." Wallace explains that he made prompt inquiry after he was fired, was twice told by a person in authority he could not appeal and he promptly appealed when advised by counsel to do so. Wallace argues that Willingboro has not been prejudiced in any way by his delay in appealing and the interests of equity should allow the time frame for his appeal to be relaxed.

Wallace additionally argues that if he is deemed a provisional employee, he should be given a remedial opportunity to become a permanent employee. He cites case law that states where a long-term provisional employee has performed satisfactorily and failed to achieve permanent status due the appointing authority's neglect, the Commission has the authority to retroactively determine that the employee would have achieved permanency in the normal course of municipal management of its affairs. Wallace believes that he has a compelling case to have the Commission retroactively appoint him to permanent status as he served Willingboro well and without complaint for the past seven years. He reiterates that when he became part-time, it was his understanding that he would retain his permanent title of Construction Official and he would perform the same duties as a full-time permanent employee. Wallace contends that the Commission should designate him as a permanent member of the career service as it is unfair that he was deemed a Confidential Assistant in the unclassified service.

In response, Willingboro, represented by Lester E. Taylor, III, Esq., argues that Wallace has not met the standard for reconsideration. Specifically, the Payroll Clerk's certification is not material new evidence as she was under the mistaken assumption that Wallace was a career service employee and as a Payroll Clerk, she lacked the authority to appoint or designate Wallace to any title or position. Additionally, in his appeal, Wallace already submitted several unsworn letters from Willingboro employees who shared the same misconception and the Commission found that these statements were unpersuasive because they were contrary to the

law and facts. Further, Wallace did not explain why he was not able to submit this certification at the time of the original proceeding as, although the Payroll Clerk certifies that she was out of State from August 22, 2017 to November 10, 2017, his appeal was filed in July 2017. Further, Wallace's assertion that the appointing authority's Human Resource Director admitted that he was not a Confidential Assistant at its Town Council Meeting by not commenting when the Town Manager did not refer to him as a Confidential Assistant is pure speculation, which is not grounds for reconsideration and not properly characterized as evidence.

Additionally, Willingboro presents that Wallace offers no new evidence or judicial authority to support his claim that his appeal should not be considered untimely. It reiterates that the Commission concluded that on May 5, 2017, this agency confirmed that Wallace was a Confidential Assistant and an attorney advised him that he should immediately file an appeal. Yet, Wallace did not file an appeal until July 25, 2017, which is well after 20 days when he knew of the situation that he was appealing. Therefore, Willingboro argues that this alone is enough to deny Wallace's request for reconsideration.

Moreover, Willingboro argues that the Commission did not commit material error in its decision. It emphasizes that under the Civil Service Act, an employee is either in the career or unclassified service and an unclassified civil servant has no property interest in his employment protected by procedural due process. Regardless of Wallace's arguments, Willingboro highlights that Wallace voluntarily retired from his career service position in 2009. Willingboro asserts that the Commission did not find that Wallace was provisionally serving as a Sub-Code Official. Rather, the Commission found that Wallace did not submit any evidence that his appointment was subject to the competitive process or a working test period. Further, Willingboro presents that Wallace did not argue that the circumstances under *N.J.A.C. 4A:4-1.5*, which allows for provisional appointments, were present. Instead, Wallace just summarily states that he is entitled to the protections of a provisionally appointed Construction Official.

In reply, Wallace submits the transcript from the December 28, 2017 Town Council meeting where the Town Manager and Human Resources Director referred to Wallace as the Construction Official and a department head and not as a Confidential Assistant. Wallace argues that there is a dispute of material fact that requires a hearing. Wallace states that the Commission made a mistake in its decision where it stated that, "[T]he petitioner states that Agency Services advised Willingboro that the petitioner's title should be Confidential Assistant." Wallace indicates that he did not state this. Instead, his statement was, "During the [unemployment conference call], Mr. King related to [the hearing officer] that Civil Service had given Duane the title of Confidential Assistant and not the action of the Township." Wallace claims that this is evidence of a direct conflict of material fact that needs to be addressed at a hearing and without a hearing he is being denied

his due process rights. Wallace also states that while it is true that he filed his appeal on July 25, 2017, when he submitted his argument and evidence on September 15, 2017, the Payroll Clerk was unavailable to Wallace as she was in Florida.

In further response, Willingboro presents that the Town Manager's statements at the Town Council Meeting are only relevant to a limited extent in the scope of this petition for reconsideration as he was not the Town Manager when Wallace was terminated. Further, the transcript does not demonstrate that Wallace was a career service employee at the time he was terminated. Willingboro argues that Wallace is not entitled to an evidentiary hearing for a number of reasons. Specifically, Wallace's appeal was inexplicably untimely. Additionally, Wallace has failed to demonstrate any material and controlling issues that would warrant a hearing. Instead, the Commission decided that it was Wallace's responsibility to understand what his agreement was with Willingboro and the fact that others, such as the Department of Community Affairs, recognized Wallace as a Construction Official, was not relevant as he was not appointed to that title following the criteria necessary to be serving in the career service.

CONCLUSION

N.J.A.C. 4A:2-1.6(b) sets forth the standards by which a prior decision may be reconsidered. This rule provides that a party must show that a clear material error has occurred or present new evidence or additional information not presented at the original proceeding which would change the outcome of the case and the reasons that such evidence was not presented at the original proceeding.

N.J.A.C. 4A:2-1.1(a) provides that unless a different time period is stated, an appeal must be filed within 20 days after either the petitioner has notice or should have reasonably have known of the decision, situation, or action being appealed.

N.J.A.C. 4A:2-2.1(a) provides that the subchapter on major discipline applies only to permanent employees in the career service or person serving a working test period.

N.J.A.C. 4A:3-1.1 provides that all jobs in local service be allocated either to the career service or to the unclassified service.

N.J.A.C. 4A:3-1.3(a)2 and *N.J.S.A. 11A:3-5* provide that an appointing authority may appoint a Confidential Assistant allocated to the unclassified service.

N.J.A.C. 4A:2-1.4(c) provides that the petitioner has the burden of proof on appeal.

Initially, Wallace requests a hearing in this matter. Reconsideration petitions are treated as reviews of the written record. *See N.J.S.A. 11A:2-6b*. Hearings are granted in those limited instances where the Commission determines that a material and controlling dispute of fact exists which can only be resolved through a hearing. *See N.J.A.C. 4A:2-1.1(d)*. No material issue of disputed fact has been presented which would require a hearing. *See Belleville v. Department of Civil Service*, 155 N.J. Super. 517 (App. Div. 1978).

In the instant matter, Wallace has not met the standard for reconsideration. With respect to the determination that Wallace's appeal was untimely, Wallace has not submitted any new evidence that would change the outcome of the case or any argument, evidence, or authority to support his claim that the Commission made a clear material error. Wallace asserts that if Willingboro and this agency's representative had not "erroneously" advised him that he had no appeal rights as an unclassified employee, he would have filed his appeal in a timely fashion. Further, Wallace highlights that the Civil Service Act allows for employees to file appeals "within a reasonable time" when they are not advised of their appeal rights. Additionally, Wallace argues that there is "good cause" for the Commission to relax the rule requiring him to file an appeal within 20 days of having notice of the action he is appealing. However, as stated in the initial decision, on May 5, 2017, Wallace acknowledged that this agency advised him that personnel records indicated that he had been serving as a Confidential Assistant since 2010 and an attorney advised him that he should immediately file an appeal. Yet, despite knowing the situation and being advised by an attorney that he should immediately appeal, Wallace waited until July 25, 2017 to file an appeal, which is well after the required time period to file an appeal. The Commission finds under these circumstances that Wallace's delay in appealing was unreasonable and there is not good cause to relax the rules.

In reference to the merits of the case, Wallace has also not met the standard for reconsideration. Wallace maintains that there is new or additional information not presented at the original proceeding which would change the outcome of the case. Specifically, Wallace submits the certification of a Principal Payroll Clerk who certifies that Willingboro's payroll records indicated that Wallace was a Construction Official and a Building Code Sub-Official and he was not listed as a "Confidential Assistant." Willingboro argues that this certification should not be considered because the Principal Payroll Clerk was available at the time of Wallace's appeal and therefore her certification should have been presented at the original proceeding. Wallace states that although he filed his appeal in July 2017, the Principal Payroll Clerk was away at the time he presented his appeal. Therefore, Wallace argues he could not have obtained the certification for the original proceeding. The Commission finds that the Payroll Clerk's certification should not be considered on reconsideration because Wallace has not provided a valid reason as to why it was not supplied with the original proceeding. Initially, it

is noted that the Payroll Clerk was available at the time Wallace filed his appeal. Further, if Wallace believed that the Payroll Clerk's certification was material to this matter and she was not available when he sought it, he could have asked for an extension to submit this information, but he did not. Regardless, even if considered, the Payroll Clerk's certification would not change the outcome of the case. In the initial decision, the Commission determined that Wallace was not serving in a career service title because he retired from his Civil Service title in 2009. Further, even though Willingboro rehired him shortly thereafter to perform the same duties on a part-time basis, as Wallace's rehiring was not subject to competitive testing nor was he required to complete a working test period, his rehiring **could not be** in the career service. Wallace's and any appointing authority employees' misconception that he could retain career service status after retiring from his Civil Service title to collect his pension without having been subject to competitive testing or a working test period is irrelevant. Wallace also submits as new evidence statements made by the Town Manager at its Town Council Meeting after the initial decision that characterize Wallace as having been working in Civil Service titles after he retired. However, for the aforementioned reasons, the Town Manager's characterization that Wallace was working in career service Civil Service titles is irrelevant.

Moreover, Wallace has not shown that a clear material error occurred in the initial decision. While the Department of Community Affairs may have recognized Wallace as Willingboro's Construction Official, it is this agency which determines whether an employee is serving in the career service. As Wallace was not required to pass a competitive examination and be certified when he was rehired after his retirement, he could not be considered for permanent employment in the competitive division of the career service. Similarly, Wallace's rehiring could not be considered a noncompetitive appointment as he was not required to complete a working test period. While Wallace reiterates that he originally passed a Civil Service examination when he was initially appointed to career service Civil Service titles and he believes that it is hard to conceive that his transitioning from a full-time to a part-time position would void his tenure rights gained through competitive testing and satisfactorily completing a working test period, Wallace neglects to recognize the most important fact, which is that he **retired** from his Civil Service title in 2009. A review of Willingboro's December 29, 2009 letter to Wallace states:

Congratulations on your decision to retire from the Civil Service Title of Construction Official/Director of Inspections on December 31, 2009...although you are retiring from the PERS systems, you will continue to work for Willingboro Township under the appointed position of Municipal Housing Liaison...Your compensation for those duties will be \$6,650 per month. Effective February 1, 2010, you will continue as Construction Code, Building Sub-Code and Electrical Sub-Code Official at a salary of \$4,000 per year for each title.

N.J.S.A. 43:15A-57.2(a) and (b) provide, in pertinent part, that an employee can earn up to \$15,000 per year and still be granted a retirement allowance. Further, the State's Division of Pension and Benefits' website advises that, under *N.J.A.C.* 17:1-17.14(a)2, an employee that retires and then becomes re-employed in a part-time position by his or her former employer within 180 days of retirement will be not be considered to have a "bona fide severance of employment" and will be responsible for the repayment of any benefits that the employee was not entitled to receive. Therefore, it is hard to conceive that Wallace believed that he could retire from his Civil Service title, get immediately rehired by the same appointing authority performing the same or similar duties for a salary that greatly exceeded the \$15,000 per year limit, collect his pension, and retain his status as a career service employee with all the protections that entails. In essence, if Wallace's arguments were accepted, the entire Civil Service system would be broken as all eligible employees would seek to "retire" from Civil Service to collect his or her pension and then ask to be immediately rehired so that they could continue to earn a substantial salary and keep their career service status. Common sense should have dictated that Wallace and Willingboro contacted this agency before Wallace retired to see if this "plan" was acceptable.

In regard to Wallace's other arguments, he has not presented any evidence to indicate that the circumstances were present that would have enabled him to become a provisional appointee at the time of his retirement and subsequent rehiring. Further, the circumstances in this case do warrant any retroactive relief for Wallace as it was not Willingboro's neglect that prevented him from achieving permanent status in the career status. Rather, it was Wallace's retirement from his Civil Service title. Additionally, Wallace is not entitled to an evidentiary hearing as there are no material facts that are in dispute. The only material facts are that Wallace retired from his Civil Service title in 2009 and was rehired by Willingboro to perform the same duties without being subject to competitive testing or a working test period and therefore his employment could not be in the career service.

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 6th DAY OF JUNE, 2018

Deirdre' L. Webster Cobb

Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

c: Duane Wallace
Thomas M. Barron, Esq.
Richard Brevogel
Lester E, Taylor, III
Kelly Glenn
Records Center



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Duane Wallace,
Township of Willingboro

Administrative Appeal

CSC Docket No. 2018-297

ISSUED: **NOV 17 2017** (SLK)

Duane Wallace appeals his removal from an unclassified appointment as a Confidential Assistant from the Township of Willingboro (Willingboro).

By way of background, the appellant retired effective January 1, 2010 from his position with Willingboro as a Construction Official/Director of Inspections, a career service title. Thereafter, he was appointed to the unclassified title Confidential Assistant effective February 1, 2010. Subsequently, the appointing authority discontinued his unclassified appointment on April 28, 2017. On July 25, 2017, the appellant appealed his removal to the Civil Service Commission (Commission).

On appeal, the appellant presents that in 2010 he was hired as a Construction Official, a Building Sub-Code Official, and an Electrical Sub-Code Official (Construction Official) and continued to perform the duties of a Construction Official/Director of Inspections until April 25, 2017 when he was informed that he was being separated from his unclassified position as a Confidential Assistant effective April 28, 2017. However, the appellant asserts that the Town Council appointed him to the Construction Official titles, he never received any notice that his Civil Service title was Confidential Assistant, and he never received prior notice that Willingboro was considering separating him from his position. The appellant states that human resources informed him that the Division of Agency Services (Agency Services) conducted an audit of its personnel system and his name did not have a title. Thereafter, the appellant claims that

Willingboro provided Agency Services with false information in 2016 and then Agency Services designated his title as Confidential Assistant. The appellant believes that he was placed in an unclassified title so that he could be wrongfully terminated. The appellant argues that Willingboro should not be able to terminate him after providing Agency Services false information.

In response, Willingboro, represented by James K. Grace, Esq., asserts that the appellant's appeal is untimely as he was notified on April 25, 2017 that he was being removed from his position on April 28, 2017. However, the appellant did not file his appeal until July 25, 2017, which is well after the 20-day timeframe to file an appeal. Further, it states that the appellant has not provided any explanation as to why his appeal was untimely. With respect to the merits of the case, Willingboro submits minutes from its December 8, 2009 meeting that indicate that the appellant expressed his wish to retire from his position as a Construction Official/Director of Inspection effective December 31, 2009, in order to collect his pension, but to continue in a position as a Municipal Housing Liaison, which is a contractual position that did not impact his pension. Accordingly, the appellant was placed in the unclassified title of Confidential Assistant effective February 1, 2010 until April 28, 2017. Willingboro presents that the Civil Service Act contemplates that employees are in either the career service or the unclassified service. Therefore, an employee who is not in the career service must be in the unclassified service. Further, the right to appeal termination from employment only applies to those in the career service. Willingboro emphasizes that the appellant's claim that it falsified records is outrageous and without merit. It reiterates that the appellant wanted to retire from his Construction Official/Director of Inspections position and collect his pension, but remain employed for a substantial salary and Willingboro granted his request. It asserts the appellant has not presented any evidence that it falsified documents that were sent to the Commission.

In reply, the appellant submits a letter from Willingboro dated December 29, 2009. The letter indicates that the appellant retired from the Civil Service title of Construction Official/Director of Inspection effective December 31, 2009 and that he would continue to work for Willingboro under the position of Municipal Housing Liaison. Additionally, the letter states, effective February 1, 2010, he would continue working as a Construction/Building Sub-Code/Electrical Sub-Code Official. The appellant presents that on April 28, 2017 human resources informed him that the Commission listed the appellant as a Confidential Assistant and he was informed that unclassified employees could not appeal his or her separation. On May 5, 2017, the appellant indicates that he spoke with Agency Services, which confirmed that his personnel record indicated that he had been a Confidential Assistant since 2010. He represents that an attorney advised him that he should immediately file an appeal with the Commission. On July 17, 2017, the appellant states that during a State unemployment benefits claims meeting, human resources confirmed that it was Agency Services that assigned him the title of Confidential

Assistant and not the appointing authority. Further, human resources explained it terminated him because the Division of Pensions and Benefits (Pensions and Benefits) was investigating him. However, when he called Pensions and Benefits, it stated that he would have been called if there was a question regarding his pension and he presents that he has subsequently received medical and dental coverage from the State pension system after his termination.

To support his allegations, the appellant submits documents from his personnel file that were submitted to the Commission in either 2016 or 2017. Specifically, the documents show that on January 1, 2016, his personnel record only indicated that he retired on January 1, 2010 from his position as a Construction Official/Director of Inspections. Thereafter, on May 19, 2016, human resources entered into the personnel system that the appellant was a New Hire effective February 1, 2010 and on June 27, 2016, it entered that he was a Confidential Assistant. Therefore, the appellant argues that on June 27, 2016, Willingboro falsely reported a title change to the Commission. The appellant highlights that although his personnel record reflects that he was serving in the Support Services Department starting in February 1, 2010, this department was not created until 2015. He submits the New Jersey Uniform Construction Code Annual Reports from the Department of Community Affairs, which confirm that he was serving as a Construction Official, Building Sub-Code Official, and an Electrical Sub-Code Official from February 2011 until his April 2017 separation. The appellant attaches Salary Ordinances, which reference the Construction Official and Director titles, but do not reference the Confidential Assistant title. The appellant submits a Notification of Employment After Retirement form that Willingboro submitted to Pensions and Benefits that is dated March 30, 2017. He asserts that there is no record that Pensions and Benefits ever solicited this document from Willingboro and the form clearly indicates that it should have submitted this form within 15 days after he was rehired in 2010. The appellant believes this document is another example of Willingboro submitting false information to a State agency. The appellant claims that one of the signers of this document admitted to him that she was forced to sign this document under duress as there was no payroll records indicating that his title was Confidential Assistant nor was there any salary ordinance indicating that this was his title. He attaches letters from other former Willingboro personnel who confirm that it never appointed him to the title of Confidential Assistant.

CONCLUSION

N.J.A.C. 4A:2-1.1(a) provides that unless a different time period is stated, an appeal must be filed within 20 days after either the appellant has notice or should have reasonably have known of the decision, situation, or action being appealed.

N.J.A.C. 4A:2-2.1(a) provides that the subchapter on major discipline applies only to permanent employees in the career service or person serving a working test period.

N.J.A.C. 4A:3-1.1 provides that all jobs in local service be allocated either to the career service or to the unclassified service.

N.J.A.C. 4A:3-1.3(a)2 and *N.J.S.A.* 11A:3-5 provide that an appointing authority may appoint a Confidential Assistant allocated to the unclassified service.

N.J.A.C. 4A:2-1.4(c) provides that the appellant has the burden of proof on appeal.

Regardless of the appellant's title status, the Commission finds that the appellant's appeal is untimely. The appellant received notice on April 25, 2017 that he was being separated from his a position as a Confidential Assistant effective April 28, 2017. Additionally, on May 5, 2017, the appellant acknowledges that Agency Services confirmed that personnel records indicated that he had been serving as a Confidential Assistant since 2010. He further indicates that an attorney advised him that he should appeal immediately. Therefore, at the latest, the appellant should have filed an appeal within 20 days of May 5, 2017. However, the appellant did not file his appeal until July 25, 2017, which is well after the required time period to file an appeal.

In reference to the merits of the case, Willingboro's December 29, 2009 letter states that the appellant decided to "retire from the Civil Service Title of Construction/Director of Inspection on December 31, 2009." The letter goes on to state that although the appellant is retiring from the pension system, he would continue work for Willingboro as Municipal Housing Liaison. Additionally, he was going to continue as a Construction/Building Sub-Code/ Electrical Sub-Code Official. The Commission notes that Municipal Housing Liaison is not a Civil Service title. Further, while Construction Official, Building Sub-Code Official and Electrical Sub-Code Official are Civil Service titles, the appellant does not submit any evidence that he was appointed to these titles subject to competitive examination procedures. Further, even if the appellant believed that he was being appointed to noncompetitive career service titles, the appellant does not submit any evidence that he was required to complete a working test period. Additionally, the appellant submits a February 1, 2011 letter from Willingboro, which reiterated to the appellant that he "retired," but he would continue to work as the Municipal Housing Liaison. The letter further indicates that in this position the appellant had been paid on a contractual basis. Therefore, if the appellant did not realize it earlier, he should have known that since Willingboro was paying him as a "contractual" employee, it did not consider his employment career service. Additionally, it is the appellant's responsibility to understand what his agreement was with the

appointing authority. The fact that the Department of Community Affairs may have recognized him as serving as a Construction Official is not relevant as he was not appointed to that title following the criteria necessary to be a serving in the career service. Even assuming his appointment to that title (or the other career service titles) by Willingboro, without his undergoing an open competitive appointment process, the best his designation in those titles could have been considered was provisional pending open competitive examination procedures. In this regard, a provisional employee has no vested property rights to a career service appointment and can be separated at any time.

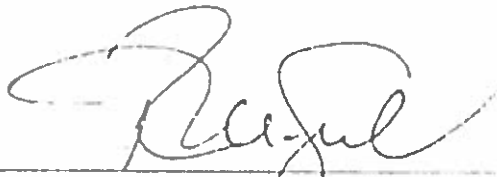
The appellant also accuses Willingboro of very serious allegations, namely, that it submitted false information to Agency Services and Pensions and Benefits. However, the appellant states that Agency Services advised Willingboro that the appellant's title should be Confidential Assistant when it discovered that he was working after retirement. Further, as mentioned above, as there was no evidence that the appellant was hired in a career service title, the appellant's title needed to be in the unclassified service. While Willingboro should have contacted Agency Services and Pensions and Benefits when it planned on rehiring the appellant after retirement, the appellant does not submit one scintilla of evidence that it submitted false information to either Civil Service or Pensions and Benefits. *See In the Matter of Gary Hill* (CSC, decided October 4, 2017). Regardless, this appeal is denied for all the reasons set forth previously.

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 15th DAY OF NOVEMBER, 2017



Robert M. Czedh, Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

c: Duane Wallace
James K. Grace, Esq.
Richard Brevogel
Kelly Glenn
Records Center