



STATE OF NEW JERSEY

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

In the Matter of Deborah Upchurch,
City of Orange

Acknowledgment of Settlement

CSC Docket No. 2019-3624

ISSUED: October 29, 2019 (RE)

The Division of Agency Services (Agency Services) petitions the Civil Service Commission (Commission) for the revival of the eligible list for Police Captain (PM1559R) in order to effect a retroactive regular appointment for Deborah Upchurch, effective January 14, 2018, due to a settlement agreement.

By way of background, Deborah Upchurch was permanently appointed to Police Lieutenant on February 7, 2012. The eligible list for Police Captain (PM1559R), Orange was promulgated on April 3, 2014 and Upchurch ranked first of four. There were no certifications and the list expired March 28, 2018. A subsequent eligible list (PM0660V) was promulgated on March 29, 2018. One certification (PL181188) was issued on September 12, 2018, and both eligibles were appointed on October 3, 2018. Orange submitted a settlement agreement to Agency Services in January 2019, which includes the regular appointment of Upchurch to Police Captain, effective January 14, 2018.

CONCLUSION

N.J.A.C. 4A:4-4.8(c), states, in pertinent part, that upon receipt of the certification, an appointing authority shall appoint one of the top three interested eligibles (rule of three) from an open competitive or promotional list, and shall notify the Civil Service Commission of the disposition of the certification by the disposition due date. *N.J.A.C.* 4A:4-1.10(c), states that when a regular appointment has been made, the Commission may order a retroactive appointment date due to an administrative error, administrative delay or other good cause, on notice to

affected parties. *N.J.A.C.* 4A:4-3.4(a)5 states that the Commission may revive an expired eligible list for good cause.

The policy of the judicial system strongly favors settlement. *See Nolan v. Lee Ho*, 120 *N.J.* 465 (1990); *Honeywell v. Bubb*, 130 *N.J. Super.* 130 (App. Div. 1974); *Jannarone v. W.T. Co.*, 65 *N.J. Super.* 472 (App. Div. 1961), *cert. denied*, 35 *N.J.* 61 (1961). This policy is equally applicable in the administrative area. A settlement will be set aside only where there is fraud or other compelling circumstances. *See Nolan, supra.*

Agency Services recommends that the Police Captain (PM1559R), Orange eligible list be revived so that Upchurch can be regularly appointed with a retroactive appointment date to January 14, 2018, for seniority purposes only in order for Orange to come into compliance with the settlement. The “for seniority purposes only” appointment designation establishes that an appellant has no claim for or entitlement to back pay. However, such an award establishes that for seniority based programs, such as salary step placement, layoffs, and vacation leave time entitlement, seniority is predicated upon the retroactive appointment date. *See In the Matter of Wayne A. Robbins* (Merit System Board, decided September 5, 1991). As there is no evidence that Upchurch performed the duties of Police Captain, the award of a retroactive date of permanent appointment is contingent upon her successful completion of a current working test period.

ORDER

Therefore, it is ordered that this request be granted, and the Police Captain (PM1559R), Orange eligible list be revived for Upchurch to be appointed retroactive to January 14, 2018 as a Police Captain upon completion of a current working test period, for seniority purposes only, and her personnel record of be amended in accordance with this decision.

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 23rd DAY OF OCTOBER, 2019



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