



STATE OF NEW JERSEY

In the Matter of Michael Marciniak,
Police Sergeant (PM2558W),
Wallington

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

CSC Docket No. 2019-1530

Examination Appeal

ISSUED: October 29, 2019 (JH)

Michael Marciniak appeals the determination of the Division of Agency Services, which found that he did not meet the experience requirements for the promotional examination for Police Sergeant (PM2558W), Wallington.

The subject examination was open to employees in the competitive division in the Wallington Police Department who had an aggregate of three years of continuous permanent service as of the January 31, 2019 closing date and were serving in the title of Police Officer. A review of the record finds that effective March 22, 2004, Marciniak received a regular appointment as a County Correction Officer with Bergen County and on January 23, 2005, he resigned in good standing. Effective January 27, 2005, he received a regular appointment to the Police Officer title in Wallington from an open competitive list. Effective September 23, 2009, Marciniak intergovernmentally transferred from Wallington to the Bergen County in the title of County Police Officer and effective June 26, 2017, he was laid off. Effective March 5, 2018, Marciniak intergovernmentally transferred from Bergen County to Wallington in the title of Police Officer. The Division of Agency Services determined that he lacked the required amount of permanent status in a title to which the examination was open as of the closing date. It is noted that 9 other applicants were found eligible to take this examination. It is further noted that the subject test was administered on February 23, 2019.

On appeal, the appellant presents that he was “employed by Wallington Police Department from January 2005 to September 2009. In September 2009 I did

an IGT to the Bergen County Police Department. In 2015 the Bergen County Police Department was merged with the Bergen County Sheriff's Department. In June of 2017 I was one of the officers that was laid off . . . After being laid off for nine months I was approved to return to work for the Wallington Police Department. While negotiating my hiring package with the Mayor and Council, Chief Imbruglia and I, it was agreed that I would be eligible for a promotional exam due to my prior employment with the Wallington Police Department and my fourteen years of law enforcement experience. The Mayor and Council along with Chief Imbruglia agreed that they would grant me a waiver that would allow me to be eligible for the promotional exam. Chief Imbruglia informed me that there have been waivers granted to other members of the Wallington Police Department for various levels of promotional exams." In support of his appeal, the appellant provides additional documentation including: a letter dated January 4, 2019 from Mark W. Tomko, Mayor, Borough of Wallington, in which he indicates, in part, "In 2017, [Marciniak] was laid off [from the Bergen County Sheriff's Department] and regained employment with the Borough of Wallington in 2018. During the transfer he waived his seniority rights. Although he waived his seniority, his contract with the Borough indicates that he is permitted by the Borough to take [the] upcoming Police Sergeant [examination];" a letter dated November 30, 2018 from Chief Carmello Imbruglia, Borough of Wallington Police Department, in which he notes that the appellant served four years with Wallington and over eight years with Bergen County and thus, "having served over twelve years in the capacity as a patrol officer I feel that Michael Marciniak has fulfilled the three [year] prerequisite to take the promotional exam for the position of sergeant;" and a document, dated February 22, 2018, with the title, "Employment Agreement Borough of Wallington and Michael Marciniak"¹ which provides, in part:

10. SENIORITY FOR THE PURPOSES OF TESTING, LAYOFFS AND SERVICE.

- a. Marciniak may be eligible for seniority for the purposes of testing, layoffs and service in accordance with all established rules of the Civil Service Commission and all applicable laws. Marciniak will be eligible for the next round of Sergeant testing, which will be approximately two (2) years from now.
- b. Marciniak will be considered a 'new hiree' and shall start on the bottom of the seniority list for days off and overtime purposes.

¹ It is noted that the Commission was not a party to the subject employment agreement. It is further noted that the subject employment agreement was not presented to the Commission to ensure compliance with Civil Service law and rules.

CONCLUSION

N.J.A.C. 4A:4-2.6(b) provides that in local service, applicants for promotion from entry level law enforcement titles must have three years of *continuous* permanent service in a title to which the examination is open. Thus, in order to be eligible for the subject exam, applicants were required to possess three years of continuous permanent service as of the closing date in the Police Officer title in Wallington.

N.J.S.A. 11A:2-28(a) provides for the intergovernmental transfer of law enforcement officers and permits them the option to waive all accumulated seniority and sick leave. In other words, the parties to an intergovernmental transfer can agree *not to waive accumulated seniority*. Retention of accumulated seniority rights in the context of an intergovernmental transfer means that all seniority gained in the prior jurisdiction shall be retained for purposes of determining promotional, layoff or demotional rights and sick and vacation leave entitlements in the receiving jurisdiction. *See N.J.A.C.* 4A:4-7.4(b). Conversely, *N.J.A.C.* 4A:4-7.4(c) specifically provides that those law enforcement officers who intergovernmentally transfer and waive all accumulated seniority rights *shall not retain seniority* for purposes of determining promotional, layoff or demotional rights and sick and vacation leave entitlements. Reviews of both of the intergovernmental transfer agreements finds that Marciniak requested to waive his rights to all accumulated seniority and to all accumulated sick leave. The receiving agencies in each of these intergovernmental transfer agreements acknowledged Marciniak's requests and certified that his accumulated seniority and accumulated sick leave would not be retained after the effectuation of the intergovernmental transfer. Therefore, as of the January 31, 2019 closing date, the appellant did not possess the required three years of *continuous* permanent status in the title of Police Officer in Wallington.

Despite the claim by the appellant and Mayor Tomko that the employment agreement entitles the appellant to sit for the PM2558W exam, the employment agreement explicitly states that seniority for testing purposes shall be "*in accordance with all established rules of the Civil Service Commission and all applicable laws*" (emphasis added). Furthermore, the employment agreement clearly did not contemplate that Marciniak would sit for the PM2558W test which was administered on February 23, 2019, *i.e.*, one year from the date of the agreement, as the employment agreement refers to testing "two (2) years from now." As such, Marciniak has not demonstrated that eligibility for the PM2558W test was an intended consequence of the agreement.²

Accordingly, based on the foregoing, the appellant has not provided a basis to disturb the determination of the Division of Agency Services.

ORDER

² Moreover, Civil Service rules and laws supersede any terms or provisions presented in the employment agreement, which is solely binding on the parties to the agreement.

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 23RD DAY OF OCTOBER, 2019

Deirdre' L. Webster Cobb

Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

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