



STATE OF NEW JERSEY

In the Matters of Kristina Koreivo
and Stephen Kelly, Environmental
Specialist 3 (PS9836G), Department
of Environmental Protection

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

CSC Docket Nos. 2024-677 and
2024-680

Examination Appeals

ISSUED: February 28, 2024 (HS)

Kristina Koreivo and Stephen Kelly request permission to submit late applications for the promotional examination for Environmental Specialist 3 (PS9836G), Department of Environmental Protection (DEP). These matters have been consolidated due to similar issues presented.

The announcement for the subject examination originally issued on October 1, 2022 with a closing date of October 21, 2022. The examination was later re-announced on June 1, 2023 with notes that “[a]ll requirements must be met as of the [October 21, 2022] closing date, however applications will be accepted up to and including **June 21, 2023**” but that “[i]f you filed an application for this announcement during the original posting period, you cannot file again. No additional information will be accepted.” It was open to employees in the competitive division who were currently serving in the title of Environmental Specialist 2 and had an aggregate of one year of continuous permanent service as of the closing date in that title or to employees in the competitive division who had an aggregate of one year of continuous permanent service as of the closing date in any competitive title and met the requirements listed in the announcement. The applicable unit scope was the Division of Watershed Protection and Restoration, and an application processing fee was required. The examination was processed as a written test. Candidates were notified to appear for the examination on or about August 24, 2023, and the examination was administered on September 14, 2023. The resulting eligible list of 13 names promulgated on November 16, 2023 and expires on November 15, 2026. A

certification issued from the list on November 24, 2023, but it has not yet been returned. The petitioners did not submit applications.

In her request, filed September 12, 2023, Koreivo states:

By way of background, I have been employed by the DEP for four years and nine months. I was appointed provisionally to an Environmental Specialist 2 on December 4, 2021. In July of 2022, I took another position (Conservation Officer Recruit) in another Division, where I spent three months until I was dismissed from the NJ Police Officer Training Academy. I was reinstated in my last permanent position as an Environmental Specialist 1 in September 2022.¹

During the time that I was in another division, my colleagues who were also serving as provisional Environmental Specialists 2, applied to the Civil Service Commission posting for the Environmental Specialist 3 (PS9836G). When the posting was reopened in [June] 2023 for the Environmental Specialist 3 (PS9836G) position, I was never made aware that I was eligible to also apply, as my colleagues did previously. At the time my colleagues applied, they also assumed they would not be eligible because they did not have a full year of permanent Environmental Specialist 2 time, but they submitted applications anyway.²

Continuing, Koreivo states that in May 2023, she was instructed by the DEP Division of Human Resources (HR) that she was not eligible to apply for the subject examination because she did not have at least one year of continuous permanent service in the title of Environmental Specialist 2. Based on those instructions, Koreivo states, she did not apply during the June 2023 posting period. She maintains that it was not until colleagues received notices to appear for the examination that she realized that she could have applied.

In his request, filed September 12, 2023, Kelly acknowledges that when the examination was announced in October 2022, the posting stated that it was “open to those with permanent status in the [Environmental Specialist 2] title, or those permanent for a minimum of a year in the competitive division.” He states that at that time, he did not understand that he was eligible to apply based on his permanent service in the title of Environmental Specialist 1 because he had been serving

¹ Agency records indicate that Koreivo received a permanent appointment to the competitive title of Environmental Specialist 1 in December 2019. Koreivo served in the title of Conservation Police Officer Recruit in the Division of Fish and Wildlife Conservation from July 16, 2022 through September 23, 2022. Effective September 24, 2022, she returned to her permanent title of Environmental Specialist 1 in the Division of Watershed Protection and Restoration.

² A review of agency records finds that of those applicants who were not permanent in the title of Environmental Specialist 2, not one was rejected on the basis that the applicant was not permanent in a title to which the examination was open.

provisionally in the title of Environmental Specialist 2. Kelly further states that he also did not apply during the June 2023 posting period because DEP HR advised that the posting was only open back in October 2022. Thus, per Kelly, he did not apply in June 2023 as he believed he had missed his opportunity to apply because he had not done so in October 2022. Kelly maintains that it was not until colleagues received notices to appear for the examination that he realized that he could have applied.³

DEP supports these petitions, stating that the petitioners did not apply “[d]ue to erroneous information they received regarding their eligibility.”

Agency records indicate that on April 19, 2022, Kelly applied for, and was admitted to, the Environmental Specialist 2 (PS8341G) examination. This examination was open only to employees in the competitive division who were currently serving in the title of Environmental Specialist 1 and had an aggregate of one year of continuous permanent service as of the closing date in that title.

CONCLUSION

Initially, *N.J.A.C.* 4A:2-1.1(b) provides, in pertinent part, that a request for relief must be filed within 20 days after either the petitioner has notice or should reasonably have known of the decision, situation, or action being appealed.⁴ Here, the examination was announced in two filing periods: once from October 1, 2022 to October 21, 2022 and again from June 1, 2023 to June 21, 2023. However, the instant petitions were not filed until September 12, 2023, 83 days after the second of two filing periods had passed. For that reason, the petitions have not been timely presented.

Nor is there any basis in this case to extend or to relax the time for appeal. *See N.J.A.C.* 4A:1-1.2(c) (Civil Service Commission has the discretionary authority to relax rules for good cause). In this regard, it is appropriate to consider whether the delay in asserting the petitioner’s right to petition was reasonable and excusable. *Appeal of Syby*, 66 *N.J. Super.* 460, 464 (App. Div. 1961) (construing “good cause” in appellate court rules governing the time for appeal); *Atlantic City v. Civil Service Com’n*, 3 *N.J. Super.* 57, 60 (App. Div. 1949) (describing the circumstances under which delay in asserting rights may be excusable). Among the factors to be considered are the length of delay and the reasons for the delay. *Lavin v. Hackensack Bd. of Educ.*, 90 *N.J.* 145 (1982). *See, e.g., Matter of Allen*, 262 *N.J. Super.* 438 (App. Div. 1993) (allowing relaxation of former Merit System Board’s appeal rules where

³ Agency records indicate that Kelly received a permanent appointment to the title of Environmental Specialist 1, effective December 2018; a provisional appointment to the title of Environmental Specialist 2, effective December 2021; and a permanent appointment to the title of Environmental Specialist 2, effective March 2023.

⁴ It is noted that pursuant to a rule modification, this timeframe is 60 days so long as the emergency declared pursuant to Executive Order No. 103 (Murphy, March 9, 2020) is in effect. 52 *N.J.R.* 971(a).

police officer repeatedly, but unsuccessfully, sought clarification of his employment status). The petitioners maintain that it was only when their colleagues started receiving notices to appear for the examination, which would have been on or about August 24, 2023, that they realized that they could have applied for the examination. For the reasons discussed below, this is unpersuasive.

Koreivo, in stating that her colleagues applied for the examination during the time that she was serving in the title of Conservation Police Officer Recruit in the Division of Fish and Wildlife Conservation, implies that the original posting period fell during that period. However, that was not the case. The original posting period was October 1, 2022 to October 21, 2022. By that time, Koreivo's assignment in the Division of Fish and Wildlife Conservation had concluded, and she had returned to her permanent title of Environmental Specialist 1 in the Division of Watershed Protection and Restoration, effective September 24, 2022. Thus, her colleagues were applying after she had returned to the Division of Watershed Protection and Restoration. The entire original posting period occurred after Koreivo's return. The appellant's statement that her colleagues "assumed" they would be found ineligible for lack of one year of permanency in the title of Environmental Specialist 2 but applied anyway strains credibility. If the individuals truly "assumed" their applications would be futile, it is questionable that they would still file and pay application processing fees. In fact, of those applicants who were not permanent in the title of Environmental Specialist 2, not one was rejected on the basis that the applicant was not permanent in a title to which the examination was open. A review of the announcement – which, again, was posted entirely during the time that Koreivo had returned to the Division of Watershed Protection and Restoration – would have revealed that, in fact, it was not open only to those with permanent service in the title of Environmental Specialist 2 as this was clearly noted therein.

Kelly claims that during the October 2022 posting period, he did not understand that he was eligible to apply based on his permanent service in the title of Environmental Specialist 1 because he had been serving provisionally in the title of Environmental Specialist 2 since December 2021. This is not persuasive. It is well-established that an employee with permanent status in a career service title who takes a provisional appointment retains the underlying permanent status. *See, e.g., N.J.A.C. 4A:4-1.9(a)*. And as already noted, the announcement clearly specified the employees to which it was open. But, if Kelly still had doubts in that respect, a reasonable inquiry to this agency would have cleared them. *See N.J.S.A. 11A:4-1 (this agency provides for the announcement and administration of examinations)*. Further, Kelly's claim of a misunderstanding is undercut by his April 2022 application for the Environmental Specialist 2 (PS8341G) examination. That examination was open only to employees in the competitive division who were currently serving in the title of Environmental Specialist 1 and had an aggregate of one year of continuous *permanent* service as of the closing date in that title. As of April 2022, Kelly was serving provisionally in the title of Environmental Specialist 2,

yet he was not deterred from applying. As such, he apparently understood then that he could still rely on his underlying permanent status in the Environmental Specialist 1 title to establish his eligibility, notwithstanding his provisional appointment.

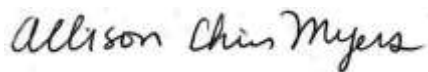
Both petitioners indicate that DEP HR provided them with erroneous information regarding their eligibility around the time of the second filing period in June 2023. However, since the petitioners' arguments as to why they did not file during the first filing period in October 2022 are not persuasive, there is no basis to allow late applications based on the erroneous information they later received.

ORDER

Therefore, it is ordered that these petitions be denied.

This is the final administrative determination in these matters. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 28TH DAY OF FEBRUARY, 2024



Allison Chris Myers
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

c: Kristina Koreivo (2024-677)
Stephen Kelly (2024-680)
Phiroza Stoneback
Division of Agency Services
Records Center