

IMO Andrew Cockerham,
Police Officer (S9999D), Township of Mt. Laurel
DOP Docket No. 2003-3437
(Merit System Board, decided February 11, 2004)

Andrew Cockerham, represented by Joseph Brennan, Esq., appeals the attached determination of the Division of Human Resource Information Services (HRIS) which upheld his removal from the eligible list for Police Officer (S9999D), Township of Mt. Laurel, on the bases that he failed to respond to the certification and had previously been appointed a Police Officer from the S9999D eligible list.

The appellant's name appeared on the Police Officer (S9999D) eligible list that was certified to the appointing authority on August 1, 2002. In disposing of the certification, the appointing authority requested the removal of the appellant's name on the basis that he failed to respond to the certification. HRIS acknowledged the appellant's admission that he did not respond to the certification due to the fact that he was attending a residential Police Academy in Cape May, New Jersey at the time of the notification. Additionally, HRIS determined that the appellant had been appointed as a Police Officer in Ocean City effective August 27, 2002 from the S9999D eligible list. Accordingly, HRIS determined that pursuant to *N.J.A.C. 4A:4-4.7(h)*, which states that when an eligible has been permanently appointed from a certification of a pool of eligibles, the eligible shall be removed from the pool of eligibles for that title area, the appellant was not eligible to be restored to the list for Police Officer.

On appeal to the Merit System Board (Board), the appellant indicates that he was improperly dismissed from the Police Academy after 20 weeks of training on January 10, 2003, and was then wrongfully terminated by Ocean City, effective February 8, 2003.¹ The appellant argues that his Ocean City appointment was not permanent since he did not successfully complete a Police Training Commission approved school as required by *N.J.S.A. 52:17B-68*. Additionally, the appellant contends that the provisions of Title 52, Chapter 17B make it clear that until an officer completes training, he/she is not permanent but probationary. Accordingly, the appellant argues that his removal from the eligible list pursuant to *N.J.A.C. 4A:4-4.7(h)* is incorrect as he was not "permanently" appointed from the certification of a pool of eligibles.

Although provided an opportunity to respond to the appellant's arguments on appeal, the appointing authority has failed to do so.

¹ It is noted that the appellant timely filed an appeal of his dismissal from the Police Academy in Cape May with the Police Training Commission, which action is presently pending before the Office of Administrative Law (OAL). It is also noted that the appellant filed a timely appeal of his removal from employment with the Board. This matter is also presently pending at OAL.

CONCLUSION

N.J.A.C. 4A:4-6.3(b) in conjunction with *N.J.A.C.* 4A:4-4.7(d) provides that, except for disqualification for medical or psychological reasons, the appellant shall have the burden of proof to show by a preponderance of the evidence that an appointing authority's decision to remove his or her name from an eligible list is in error. *N.J.A.C.* 4A:4-4.7(a)6 provides that an eligible's name may be removed from a list for "non-compliance with the instructions listed on the notice of certification." *N.J.A.C.* 4A:4-4.7(h) provides that when an eligible has been permanently appointed from a certification of a pool of eligibles, the eligible shall be removed from the pool of eligibles for that title area only.

In the instant matter, the appellant acknowledges that he did not comply with the certification notice, but offers as an explanation that he was in training at a Police Academy in Cape May during the time in question. The appellant also indicates that he had been at the Academy for 20 weeks of training. The appellant would have the Board accept that during the 20 week-period he was at the Police Academy in Cape May, he disregarded his mail.² The Board does not accept that contention. Since the appellant did not respond to the certification and has not demonstrated that the notice was not mailed to and received at his home address, his failure to respond to the notice provides sufficient cause to remove his name from the list pursuant to *N.J.A.C.* 4A:4-4.7(a)6.

Accordingly, his argument regarding his "permanent" status is of no moment. Nevertheless, the Board finds unpersuasive the appellant's argument that he was not "permanently" appointed as a Police Officer in Ocean City and therefore should not have been removed from the S9999D eligible list pursuant to *N.J.A.C.* 4A:4-4.7(h). The Board acknowledges that *N.J.S.A.* 52:17B-67 (Police Training Act) provides that:

Permanent appointment shall mean an appointment having permanent status as a police officer in a law enforcement unit as prescribed by Title 11A of the New Jersey Statutes, Merit System Board Rules and Regulations, or of any other law of this State, municipal ordinance, or rules and regulations adopted thereunder; and

N.J.S.A. 52:17B-68 provides that:

² Moreover, the notice was dated August 8, 2002. The appellant was appointed by Ocean City on August 27, 2002 and immediately began the Police Academy. The appellant provides no explanation for this gap of time between his entrance into the Police Academy and the date of the notice.

Every municipality and county shall authorize attendance at an approved school by persons holding a probationary appointment as a police officer, and every municipality and county shall require that no person shall hereafter be given or accept a *permanent appointment* as a police officer unless such person has successfully completed a police training course at an approved school.

However, the term “permanent appointment” must be read in conjunction with Title 11A of the New Jersey Statutes and Title 4A of the New Jersey Administrative Code. *N.J.S.A.* 11A:4-13 provides that there shall be the following types of appointment: regular, provisional, temporary, emergency, senior executive service and unclassified. Regular appointments shall be *permanent* after completion of the satisfactory completion of the working test period. The Board finds that the appellant’s appointment as an Ocean City Police Officer from the S9999D eligible list was a regular appointment. As such, the appointment is intended to be fixed and lasting, and upon successful completion of the working test period confers on an employee the tenure and benefits of merit system law. In this matter, the appellant’s appointment was certainly not provisional, temporary, emergency, interim or otherwise. Accordingly, the Board finds that the words “**permanently** appointed” in *N.J.A.C.* 4A:4-4.7(h) should be read as and interpreted to mean “**regularly** appointed.” This reading and interpretation of the rule is consistent with the Board’s policy of bringing consistency and finality to the appointment process. If the appellant’s understanding of the rule were to be given consequence, the Department of Personnel could never bring the certification process to conclusion until the end of every regular appointee’s working test period. Accordingly, there is a sufficient basis to also remove the appellant’s name from the eligible list pursuant to *N.J.A.C.* 4A:4-4.7(h).

ORDER

Therefore, it is order that the appeal be denied.