



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION

In the Matter of Shawn Small, Fire Fighter (M2516M), East Orange

CSC Docket No. 2016-3258

Administrative Appeal

ISSUED: NOV 30 2018 (CSM)

Shawn Small requests revival of the open competitive list for Fire Fighter (M2516M), East Orange so he may be considered for a prospective appointment.

By way of background, the subject eligible list promulgated on December 13, 2011 and expired on December 12, 2015 after reaching its statutory maximum duration of four years. See N.J.S.A. 11A:4-6. The appellant, a non-veteran, was in the 22nd position (rank 55) on certification OL140710 that was issued to the appointing authority on May 28, 2014. In disposing the certification, the appointing authority appointed the eligibles in the 2nd, 4th through 7th, 9th, 11th and 14th positions on September 2, 2014. The eligibles in the 15th and 17th positions were recorded as interested and reachable (I2) for appointment and the eligibles in the 18th through 20th and 22nd (the appellant) through 24th and 26th positions were recorded as interested but not reachable (I3) for appointment. The remaining eligibles on the certification were removed for various reasons.

In his request to the Civil Service Commission (Commission), the appellant states that he has continuously tried to contact the Fire Chief to schedule an appointment in order to understand what it would take to become a Fire Fighter. However, the appellant asserts that the Fire Chief was "uncooperative and unprofessional," but when he spoke with the Public Safety Director, she expressed a willingness to hire him. In this regard, the appellant states that the Public Safety Director contacted this agency to confirm that there was a "grace period" required to hire him, but was advised that the deadline to stay the list for an additional six months had passed. Therefore, the appellant requests a "re-certification for the

maximum time allotted” so that he may be considered for a Fire Fighter position. The appellant submits a letter from Quilla E. Talmadge, City Council Chairperson, in support of his appeal.

In a supplemental submission, the appellant reiterates that he made numerous attempts to speak with the Fire Chief and on each occasion he was unprofessional, uncooperative, and would not hear his concerns. He also claims that during a council meeting in 2015, he had a conversation with a council member that was allegedly interrupted by the Fire Chief and notes that “this was not a one-time occurrence.” The appellant states that he does not believe that he has been given an adequate opportunity to fulfill his life-long goal to become a Fire Fighter.

In response, the appointing authority, represented by Marlin G. Townes, III, Esq., Assistant Corporation Counsel, states that even after appointments were made from the subject certification and other candidates were removed, there were still the names of five eligibles ahead of the appellant on the list. Additionally, while the appellant discussed the opportunity of becoming a Fire Fighter with the Public Safety Director, the appointing authority states that no offer of employment was extended to the appellant. Moreover, the appointing authority notes that it is well within its discretion not to hire any additional candidates prior to the expiration of a list and that it does not have the legal authority to hire the appellant after the list expired. Further, it states that the appellant’s unsubstantiated interactions with the former Fire Chief and desire to be a Fire Fighter are not good cause to revive and extend the list.

CONCLUSION

N.J.S.A. 11A:4-6 states, in pertinent part, that the duration of an eligible list shall not be more than three years from the date of its establishment, except that it may be extended by the Commission for good cause, but shall not have a duration of more than four years.

N.J.S.A. 11A:4-6 and *N.J.A.C.* 4A:4-3.4(a) provide that an eligible list may be revived to implement a court order or decision of the Civil Service Commission in the event of a successful appeal instituted during the life of a list, to correct an administrative error or for other good cause.

In the present matter, there is no basis on which to revive the subject list in order for the appellant to be considered for a Fire Fighter position. As noted by the appointing authority, the appellant’s unsubstantiated interactions with the former Fire Chief and discussions with the Public Safety Director regarding Fire Fighter opportunities do not provide a basis to revive and re-certify the subject list. Significantly, no offer of employment was extended by the appointing authority to the appellant and, given that higher ranked eligibles indicated that they were

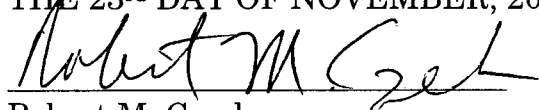
interested in a position, but were not reachable, it is unlikely that an appointment of the appellant could have been recorded. In this regard, in disposing of the last certification that was issued to the appointing authority on which the appellant's name appeared in the 22nd position, permanent appointments were made only up to the eligible in the 14th position on the certification. Thus, since the appointing authority filled all of its available positions with higher ranked eligibles, it was not obligated to permanently appoint him from the list where he was not reachable for appointment. Further, there is no Civil Service law or rule that mandates an appointing authority to hire additional eligibles prior to the expiration of an open-competitive list. Finally, it must be noted that the appellant, whose name merely appeared on a list, did not have a vested right to the Fire Fighter position. *See In re Crowley*, 193 *N.J. Super.* 197 (App. Div. 1984), *Schroder v. Kiss*, 74 *N.J. Super.* 229 (App. Div. 1962). The only interest that results from placement on an eligible list is that the candidate will be considered for an applicable position so long as the eligible list remains in force. *See Nunan v. Department of Personnel*, 244 *N.J. Super.* 494 (App. Div. 1990).

ORDER

Therefore, it is ordered that the request 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 NOVEMBER, 2016



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