



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Keyboarding Clerk 2
(Special), Borough of North Arlington

CSC Docket No. 2015-2967

Request for Reconsideration

ISSUED: **DEC 07 2016** (WR)

The Borough of North Arlington (North Arlington), represented by Douglas Bern, Esq., requests reconsideration of the decision rendered on April 15, 2015 by the Civil Service Commission (Commission) in *In the Matter of Keyboarding Clerk 2 (Special), Borough of North Arlington*, which ordered it to properly dispose of the September 30, 2013 certification immediately and remit \$1,000 in compliance costs. A copy of that decision is attached hereto and incorporated herein.

By way of background, Linda Edwards was appointed to the title of Keyboarding Clerk 2, provisionally pending promotional examination procedures, effective April 19, 2013. Subsequently, a certification was issued on September 30, 2014 and Edwards' name was not listed on it. Nevertheless, the appointing authority failed to separate Edwards and properly dispose of the list. As a result, notices of violation were sent to the appointing authority on February 3, 2014; March 10, 2014 and July 10, 2014. Thereafter, the matter was referred to the Commission for enforcement. The Commission ordered the appointing authority to immediately separate Edwards, and properly dispose of the September 30, 2013 certification by making a permanent appointment of a reachable and interested eligible within 30 days of the issuance of the decision. It also ordered that compliance costs in the amount of \$1,000 be remitted within 30 days. Finally, the Commission ordered that fines in the amount of \$100 per day up to \$10,000 be assessed if the appointing authority failed to make a good faith effort to comply with its decision.

In its request for reconsideration, the appointing authority argues that the Commission made a material error in its prior decision. Specifically, it states that correspondence from this agency was directed to Terrance Wall, the former Borough Administrator, who had not been employed with North Arlington since November 2013 and it does not know what happened to communications sent to Wall's attention. Accordingly, the appointing authority argues that it was unaware of the salary disapproval notices sent to it by this agency prior to the Commission's April 15, 2015 decision. Moreover, the appointing authority claims that Thomas Kane, its acting Borough Administrator, sent this agency a letter dated February 19, 2014 requesting that the subject certification be sent to him so he could properly dispose it. The appointing authority asserts that this agency never responded to Kane's letter. Therefore, because the appointing authority did not intentionally ignore the salary disapproval notices, it contends that it should not be penalized in this matter. In support of its request, the appointing authority submits, in part, a letter dated February 19, 2014 from Kane to this agency requesting assistance with the subject certification. It is noted that the subject of the letter is "Re: Notice of Violation dated 2/3/14."

Agency records indicate that Linda Edwards continues to serve in the subject position provisionally pending promotional examination procedures, and North Arlington has still not disposed of the certification.

CONCLUSION

N.J.A.C. 4A:2-1.6(b) sets forth the standards by which the Commission may reconsider a prior decision. This rule provides that a party must show that a clear material error has occurred or present new evidence or additional information not presented at the original proceeding which would change the outcome of the case and the reasons that such evidence was not presented at the original proceeding. A review of the record in the instant matter reveals that reconsideration is not justified.

In the instant matter, North Arlington argues that it should not be assessed any compliance costs because it did not intentionally ignore the salary disapproval notice. In this regard, it states that it does not know what happened to communications from this agency sent to its former Administrator. It also claims that its acting Administrator reached out to this agency in February 2014 for guidance regarding the subject certification but received no response. The Commission does not find these arguments persuasive. It is clear that the appointing authority received the violation notice because the subject of the February 19, 2014 letter from Kane to this agency was "Re: Notice of Violation dated 2/3/14." Moreover, that Kane reached out to this agency *once* for assistance does not absolve the appointing authority of its duty to dispose of the subject certification by its certification due date. It is noted that the letter from Kane

acknowledges receipt of the certification but then, inexplicably, asks to be provided with the certification. Aside from these points and more importantly, there is no dispute that the appointing authority received the attached decision. At that point, the appointing authority could have complied with the order by disposing of the subject certification and separating Edwards. Instead, it failed to do so and sought reconsideration of the attached decision.

The Commission is specifically given the power to assess compliance costs and fines against an appointing authority, including all administrative costs and charges, as well as fines of not more than \$10,000, for noncompliance or violation of Civil Service law or rules or any order of the Commission. N.J.S.A. 11A:10-3; N.J.A.C. 4A:10-2.1(a)2. See *In the Matter of Fiscal Analyst (M1351H), Newark*, Docket No. A-4347-87T3 (App. Div. February 2, 1989). In the Commission's prior decision, the appointing authority was ordered to separate Edwards and properly dispose of the certification within 30 days of the issuance of that order, or May 13, 2015. However, to date, the appointing authority has not separated Edwards nor has it returned the certification properly. Instead, the appointing authority continues to allow Edwards to serve provisionally, despite the Commission's April 15, 2015 decision ordering her to be separated. It has also failed to return the certification for disposition. While a fine of \$10,000 would normally be appropriate in these circumstances, given the apparent confusion in this matter due to the change of the appointing authority, a fine of \$1,500 for the failure to adhere to the timeframes in the prior decision is appropriate. Additionally, as the subject eligible list is a special reemployment eligible list, the Commission orders the appointing authority to appoint a reachable and interested eligible. Lastly, the Commission notes that any further non-compliance by the appointing authority with its order will result in referral to the Department of Public Safety, Division of Law for enforcement or additional fines.

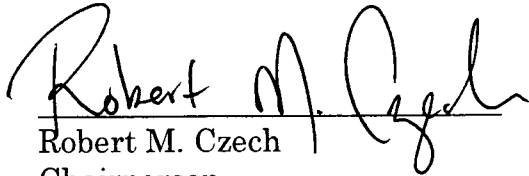
ORDER

Therefore, it is ordered that this request for reconsideration be denied. Further, the Commission orders that the Borough of North Arlington immediately remit the \$1,000 in compliance costs previously assessed. It is also ordered to remit \$1,500 for its failure to adhere to the timeframes in the prior decision.

Further, it is ordered that the appointing authority immediately dispose of the outstanding certification by making a permanent appointment of a reachable and interested eligible. Finally, the appointing authority is ordered to immediately separate Edwards.

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 7th DAY OF DECEMBER, 2016



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Attachment

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B-14

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Keyboarding Clerk 2
(Special), Borough of North Arlington

Salary Disapproval

CSC Docket No. 2015-936

ISSUED: ~~APR~~ 17 2015 (WR)

The appointing authority's failure to dispose of the certification for Keyboarding Clerk 2 (Special), Borough of North Arlington, while a provisional employee is serving in the title, has been referred to the Civil Service Commission (Commission) for enforcement.

The Commission has reviewed the salary disapproval issued against the salary of Linda Edwards and has made the following findings of fact:

1. Edwards is currently serving provisionally in the title of Keyboarding Clerk 2.
2. There is a vacancy for the title of Keyboarding Clerk 2 and an outstanding certification was issued on September 30, 2013 from the special reemployment eligible list.
3. The certification has not been properly disposed of and the appointing authority was advised of the required date of disposition.
4. The Certification Manager issued a Notice of Salary Disapproval to the appointing authority and afforded it an opportunity to appeal such action to the Commission.

5. No such appeal was taken, and no proper disposition of the certification was received; the salary disapproval, therefore, became a final administrative action.
6. By not properly disposing of this certification, the appointing authority is in violation of Civil Service law and rules.

In the instant matter, the appointing authority has refused to properly dispose of the certification issued to fill a vacancy occupied by a provisional employee. The appointing authority has not contested or appealed the findings of the Certification Manager. The payment of salary for which there is a disapproval is illegal and contravenes Civil Service law and rules.

The appointing authority, despite being given the opportunity, did not submit any arguments or documentation for the Commission's review.


ORDER

The Civil Service Commission orders the appointing authority to immediately dispose of the outstanding certification by making a permanent appointment of a reachable and interested eligible. Additionally, the appointing authority is ordered to immediately separate Edwards. Such disposition must be filed with the Certification Manager on or before thirty (30) days from the issuance of this order. If no proper disposition is made within this time period, the Civil Service Commission orders the constructive appointment of the highest ranked interested eligible. See *N.J.A.C. 4A:10-2.1(a)3; In the Matter of Battalion Fire Chief (PM1640E), Deputy Fire Chief (PM1423H), Atlantic City, Docket No. A-229-87T7* (App. Div. December 8, 1988).

The Civil Service Commission further orders that the costs incurred in the compliance process be assessed against the appointing authority in the amount of \$1,000, pursuant to *N.J.S.A. 11A:10-3* and *N.J.A.C. 4A:10-3.2(a)5*, to be remitted within thirty (30) days of the issuance of this order. In the event the appointing authority fails to make a good faith effort to fully comply with this order within this time frame, it is additionally ordered that fines be assessed in the amount of one hundred dollars (\$100.00) per day, beginning on the thirty-first day following the issuance of this order and continuing each day of continued violation, up to a maximum of ten thousand dollars (\$10,000.00). See *N.J.S.A. 11A:10-3; N.J.A.C. 4A:10-2.1(a)2; In the Matter of Fiscal Analyst (M1351H), Jersey City, Docket No. A-4347-87T3* (App. Div. February 2, 1989). This matter will be referred to the Office of the Attorney General for enforcement and for recovery of illegal payments and fines as assessed herein if full compliance is not effected within thirty days.

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 15th DAY OF APRIL, 2015



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