



STATE OF NEW JERSEY

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

In the Matter of John White, Crew
Supervisor Electricians (S0513P),
Statewide

CSC Docket No. 2016-4177

Administrative Appeal

ISSUED: DEC 15 2016 (CSM)

John White appeals his non-selection from the open competitive list for Crew Supervisor Electricians (S0513P), Statewide.

By way of background, the subject open competitive examination was open to residents of New Jersey who possessed four years of experience in work involving the installation, inspection, repair, and maintenance of electrical equipment, appliances, machinery and circuits by the July 5, 2012 closing date. A total of 49 applicants applied for the subject examination that resulted in a list of 25 eligibles with an expiration date of May 8, 2016. The appellant, a veteran, was the 1st ranked eligible on the subject list. Subsequently, the subject list was certified on January 7, 2016 (OS160019) to Bayside State Prison and the appellant's name was listed in the 1st position. However, the certification was cancelled on May 23, 2016 because the "resident" eligible list for Crew Supervisor, Electricians (S0814T), Bayside State Prison had promulgated on January 7, 2016. Accordingly, the S0814T eligible list was certified on January 11, 2016 (OS160021) that contained the names of eligibles who met the residency requirement and two permanent appointments were made.

In his appeal to the Civil Service Commission (Commission), the appellant states that he received a Notification of Certification and he responded in writing indicating that he would like to interview for the position. When he followed up his letter with a phone call to the appointing authority, the appellant states he was advised that "Central Office decided to pull the listing" but that he would "be given an interview" since they are still looking to fill the position. Subsequently, he was

advised that the certification had been cancelled and the position had been filled, but he questions why he never was interviewed given that he was the 1st ranked veteran on the S0513P eligible list. Additionally, the appellant requests a hearing.

In response, the appointing authority states that Bayside State Prison has a mandated residency requirement that governs how it can hire for open competitive positions. However, concurrent to when the appellant's name was certified, a "resident" list was promulgated on the same date. After conferring with staff from this agency, the appointing authority states that it was advised that it was required to utilize the "resident" list to fill the positions.

It is noted that the open competitive examination for Crew Supervisor, Electricians (S0814T), Bayside State Prison was open to residents of Maurice River Township, Cumberland, Cape May, and Salem counties who met the previously noted experience requirements by the November 5, 2015 closing date. A total of four individuals applied for the examination that resulted in a list of three eligibles which promulgated on January 7, 2016 and expires on January 6, 2019. The appellant's name is not on this eligible list and records indicate that he resides in Burlington County.

CONCLUSION

*N.J.S.A. 11:9-2.1*¹ states:

Notwithstanding any provisions of law relating to required residence for State employees in Title 11 of the Revised Statutes, the appointing authority of any State correctional facility located in a county with a population of more than 135,000 but less than 175,000 inhabitants, according to the 1990 federal decennial census, shall appoint to positions of employment with the facility residents of the county in which the facility is located and residents of any adjoining county with a population of less than 100,000, according to the 1990 federal decennial census, and shall give first preference in appointments to positions of employment to residents of the municipality in which the facility is located and second preference in appointments to positions of employment (1) to residents of the county in which the facility is located; (2), in the case of any such State correctional facility in operation on the effective date of P.L.1995, c.197, to residents of any adjoining county of the sixth class having a population of less than 100,000, according to the 1990 federal decennial census; and (3), in the case of any such State correctional facility which becomes operational after the

¹ This provision of the former Title 11 was not repealed upon adoption of Title 11A.

effective date of P.L.1995, c.197, to residents of any adjoining county of the third class having a population of less than 70,000, according to the 1990 federal decennial census, provided that:

a. The residents permanently appointed possess at least the minimum qualifications required by Civil Service specifications for the available positions, have lived in the county for at least six months and have complied with other requirements of Title 11 of the Revised Statutes; and

b. A sufficient number of qualified residents exists for permanent appointment to available positions.

Initially, the appellant requests a hearing in this matter. Certification appeals are treated as reviews of the written record. *See N.J.S.A. 11A:2-6b.* Hearings are granted in those limited instances where the Civil Service Commission determines that a material and controlling dispute of fact exists which can only be resolved through a hearing. *See N.J.A.C. 4A:2-1.1(d).* No material issue of disputed fact has been presented which would require a hearing. *See Belleville v. Department of Civil Service, 155 N.J. Super. 517 (App. Div. 1978).*

In the present matter, it was appropriate to cancel certification OS160019 on which the appellant's name appeared because it was issued from the Statewide Crew Supervisor, Electricians (S0513P) eligible list on January 7, 2015, the same date the "resident" Crew Supervisor, Electricians (S0814T), Bayside State Prison promulgated. In compliance with *N.J.S.A. 11:9-2.1*, Bayside State Prison is required to give preference to and appoint either a resident of the municipality in which the facility is located or to residents of specific counties contiguous to the facility. Given that a complete "resident" list promulgated on the day certification OS160019 was issued, the "resident" list was required to be utilized to make permanent appointments. Therefore, since the appellant's name did not appear on the S0814T eligible list, the appointing authority was not required to consider him for appointment.

Although it is unfortunate that the Statewide eligible list initially was erroneously certified to fill the positions at Bayside State Prison, no vested or other rights are accorded by an administrative error. *See Cipriano v. Department of Civil Service, 151 N.J. Super. 86 (App. Div. 1977); O'Malley v. Department of Energy, 109 N.J. 309 (1987); HIP of New Jersey v. New Jersey Department of Banking and Insurance, 309 N.J. Super. 538 (App. Div. 1998).* Finally, it must be noted that the appellant, whose name merely appeared on a list, did not have a vested right to the position when an appropriate list that did not contain his name was available for

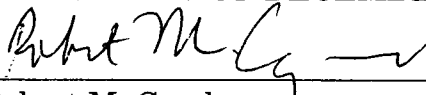
use. *See In re Crowley*, 193 N.J. Super. 197 (App. Div. 1984), *Schroder v. Kiss*, 74 N.J. Super. 229 (App. Div. 1962). The only interest that results from placement on an eligible list is that the candidate will be considered for an applicable position so long as the eligible list remains in force. *See Nunan v. Department of Personnel*, 244 N.J. Super. 494 (App. Div. 1990).

ORDER

Therefore, it is ordered that 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 7TH DAY OF DECEMBER, 2016



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