



STATE OF NEW JERSEY

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

In the Matter of Jillian Brett, *et al.*,
County Services Specialist
(PC1644U), Monmouth County

Examination Appeal

CSC Docket No. 2017-3650, *et al.*

ISSUED: APRIL 2, 2018

(ABR)

Jillian Brett, Marc Goldberg, Charles Laskay, Arti Sinha and Kimberly (Johnson) White appeal the scoring of the promotional examination for County Services Specialist (PC1644U), Monmouth County. Since these appeals address similar issues, they have been consolidated herein.

By way of background, the subject examination was announced with a closing date of August 22, 2016. A total of 43 applicants applied for the subject examination. All 43 applicants were admitted to the examination, which was administered on February 14, 2017 utilizing the Supervisory Test Battery (STB). Applicants were notified of the scheduled examination by mail on January 19, 2017. Candidates who had the option of reusing a previous score, including Brett and Laskay, were contacted via email on February 10, 2017 notifying them that they could use their old score or take the current examination. Two candidates utilized a prior STB score in lieu of retaking the STB on the examination date. Candidates were required to achieve a raw score of 446 to pass the examination. Brett earned a final raw score of 538, Goldberg earned a final raw score of 564, Laskay earned a final raw score of 546, Sinha earned a final raw score of 552 and White earned a final raw score of 556. The subject examination resulted in an eligible list containing 38 names that promulgated on March 9, 2017 (Original List) and expires on March 8, 2019. A certification (PL170340) containing the names of six eligibles was issued on March 13, 2017.

Thereafter, several candidates advised the Division of Administrative Support and Logistics (Administrative Support and Logistics) that they had taken

the test without knowing that they had the option to reuse their prior STB score. Consequently, the Division of Agency Services (Agency Services) revised the rankings on the subject eligible list (April 2017 List) by applying the prior STB score for candidates who had taken the February 14, 2017 examination but who had scored higher on a prior STB. Additionally, Agency Services cancelled the March 13, 2017 certification (PL170340).

Sinha, Laskay, Goldberg, White and Brett were ranked seventh, ninth, 12th, 13A,¹ and 21st, respectively, on the Original List and 14th, 12th, 15th, 18th and 25th, respectively, on the April 2017 List. However, on the April 2017 list, Sinha and another eligible, K.T., were erroneously ranked based upon lower raw scores they received from prior STB examinations. Sinha's rank of 14th on the April 2017 List was based upon a final average of 78.360. However, Sinha's correct final average on the subject examination was 78.640, which would have ranked her 12th on the April 2017 List. K.T. was ranked 31st on the Original List based upon an incorrect final average of 74.240 and ranked 17th on the April 2017 List based upon a final average of 78.050.²

After the issuance of the April 2017 List, certifications were issued on April 26, 2017 (PL170547) and June 8, 2017 (PL170697). The disposition of the April 26, 2017 certification resulted in the appointments of Leslie Madden and Eliza Rodriguez-Mahmoud, effective June 16, 2017, while the disposition of the June 8, 2017 certification resulted in the appointments of Shonna Fatta, Amanda Widdis and Lauren Townsend, effective August 16, 2017.³ It is noted that a certification issued on November 22, 2017 (PL171402) from the April 2017 list has not yet been disposed of.

In their respective appeals, Brett, Goldberg, Laskay, Sinha and White argue that their rankings were unjustly lowered by Agency Services' reissuance of the subject eligible list. Sinha also argues that her final average on the STB was erroneously lowered when the April 2017 List took effect and she contends that she may have been reachable for appointment on one or more of the above-noted certifications if the error had not occurred.

Brett, Goldberg, Laskay and White argue, in part, that it was unfair for Agency Services to allow eligibles with a prior STB score to use the best of their scores because they had at least some form of notice about the option to use their earlier STB score prior to taking the subject examination. Brett maintains that at

¹ Johnson was ranked as "13A" because her name was not added to the Original List until March 9, 2017.

² K.T.'s correct final average from the February 14, 2017 examination was 81.040, which would have ranked her fifth on both lists.

³ Madden, Rodriguez-Mahmoud, Fatta, Widdis and Townsend were ranked fourth, fifth, sixth, 10th and 22nd, respectively, on the Original List and fourth, sixth, eighth, ninth and 11th, respectively, on the April 2017 List.

least some of the eligibles who had a prior STB score and retook the STB examination on February 14, 2017 knew that they had the ability to keep their original score. White proffers that the January 19, 2017 examination notice referred all candidates to the Civil Service Commission's (Commission) website for additional information. Moreover, Goldberg, Laskay and White contend that all candidates had notice of the rules regarding the use of a prior STB score for up to five years through the Commission's website. Laskay argues that, per the STB guidelines published on the Commission's website, candidates should not have been allowed to use prior STB scores, as the STB administered on February 14, 2017 was not the "exact same version" as previous STB tests. White also submits that all candidates were notified of that option via email in the days prior to the exam and were reminded about the option again at the testing location prior to the examination. Finally, Laskay also argues that the reissuance of the list was improper, as it was done without a decision by the Commission.

As to requested remedies, Brett and White argue that all candidates should be required to take the examination again and re-ranked on the eligible list based upon that new score. Alternatively, they submit that candidates who had not previously taken the STB should be allowed to take it again and receive a new ranking that utilizes the higher of the two STB scores. Finally, Goldberg, Laskay and White argue that the rankings from the Original List should be reinstated.

Administrative Support and Logistics states that candidates were notified about the scheduled examination by mail on January 19, 2017. It indicates that its policy at the time of the subject examination was to send candidates an email advising them about the option to reuse a previous STB score about a week after notifying them that they had been admitted to the examination. However, with the subject examination, candidates with that option were not advised of it until Administrative Support and Logistics emailed candidates on February 10, 2017, four days before the date of the examination. Administrative Support and Logistics states that the aforementioned email was not sent using a tracker or a read receipt to verify that candidates received the message. It submits that, after the examination, multiple candidates contacted it, claiming that they had not received the February 10, 2017 email regarding the option to apply their prior STB score to the subject examination instead of retaking the examination. Administrative Support and Logistics indicates that under those circumstances and because they had utilized newer procedures, it was possible that some of the candidates may not have received or read the notification by the examination date. Consequently, Administrative Support and Logistics and Agency Services decided to utilize the higher score of either examination taken for all eligibles with a prior STB score when ranking the eligibles on the April 2017 List.

Following Sinha's instant appeal, Agency Services reviewed the rankings of candidates on the April 2017 List and corrected the scores and rankings for her and

K.T. As a result, K.T. was ranked as “4A” since her score on the examination was between the scores received by the fourth and fifth ranked eligibles on the April 2017 List and Sinha was ranked as “11A” since her score on the examination was between the scores received by the 11th and 12th ranked eligibles on that list.

CONCLUSION

N.J.A.C. 4A:4-6.3(a)1 provides that appeals may be made on examination items, scoring and administration. *N.J.A.C.* 4A:4-6.3(c) provides that unless ordered by the Commission or the Chairperson, the filing of an appeal shall not affect the promulgation of a list, a certification or an appointment. *N.J.A.C.* 4A:4-1.4 provides:

(a) A conditional regular appointment may be made in the competitive division of the career service when disputes or appeals concerning higher ranked eligibles may affect the final appointments. The names of conditional appointees shall remain on the eligible list for consideration for other employment.

(b) If the rights of a higher ranked eligible are upheld, the conditional regular appointment shall end.

(c) If the final determination of appointment rights causes no change in the selection process, the conditional appointment will be changed to a regular appointment.

(d) The appointing authority shall advise conditional appointees of their status and rights, including any change in appointment status.

N.J.A.C. 4A:4-3.8 provides that the Commission may correct an error at any time and that corrections of errors may result in a change in ranking. *See N.J.A.C.* 4A:4-3.8(a) and (c). *See also In the Matter of Senior Training Technician (PC2241C), Passaic County Board of Social Services* (MSB, decided October 6, 2004), *aff'd, In the Matter of Senior Training Technician (PC2241C), Passaic County Board of Social Services*, Docket No. A-1344-04T1 (App. Div. 2005). No vested or other rights are accorded by such 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).

At the outset, it is clear that the proper final averages for K.T. and Sinha are not in dispute, as Agency Services has corrected their scores for the subject examination. Additionally, it is noted that K.T.'s ranking of 4A reflects her correct rank on both the Original List and the April 2017 List. However, the proper

rankings for Sinha and the other appellants in this matter necessarily depend on whether Agency Services' decision to issue the revised rankings contained in the April 2017 List is sustained.

A review of the record indicates that the subject promotional announcement advised candidates that the STB may be used as the evaluation method and the announcement referred applicants to the Commission's website for more information on the test. The Commission's website specifically provides:

**SPECIAL NOTICE TO CANDIDATES SCHEDULED TO TAKE
THE SUPERVISORY TEST BATTERY (STB) EXAM**

Once you establish a score on the STB exam, your score is valid for up to five years. Your score may be applied to future announcements tested under this program for up to five years, as long as the same version of the STB test is in use. Test score duration does not affect the duration of eligible lists issued. These lists will remain in effect until their established expiration date.

You may retake the STB after one year. If you choose to retake the STB after one year, your score is based solely on that latest test administration.

Thus, ample notice was provided to all candidates regarding the use of the score achieved on the STB. It is a candidate's responsibility to ensure that he or she reviews testing information on the Commission's website that is specifically referenced in an examination announcement. Indeed, the Merit System Board, the predecessor to the Commission, denied appellants' requests to utilize previous scores after retaking the STB or the Management Test Battery, based upon findings that they had sufficient notice of such an option through examination announcements that advised all applicants of the test mode and directed them to the agency website for more information. *See e.g., In the Matter of Marcy Blatt* (MSB, decided July 27, 2005); *In the Matter of Eric Pierre* (MSB, July 19, 2006). Candidates for the subject examination were similarly situated, as the January 19, 2017 examination notice referred them to the Commission's website for additional information and the website apprised candidates about the option to reuse a prior STB score. Thus, with the subject examination, even if one or more eligibles was unaware of the option to reuse a previous STB score prior to taking the STB on February 14, 2017, it would be inconsistent with the decisions noted above to allow that lack of actual knowledge to serve as a basis for utilizing a higher score from a prior STB examination. Moreover, it would also provide them with an unfair advantage over two eligibles who reused prior STB scores in lieu of sitting for the February 14, 2017 STB examination and, consequently, did not receive the same opportunity to utilize the highest score of either a prior or the current STB

examination. Therefore, the subject eligible list must be reissued, applying the February 14, 2017 STB examination scores for all candidates.

As noted above, *N.J.A.C.* 4A:4-1.4(a) provides that a conditional regular appointment may be made when there is a dispute or an appeal concerning a higher ranking eligible which may affect the final appointment. Therefore, when the appellants filed the instant appeal, the appointments made by the appointing authority from the April 26, 2017 and June 8, 2017 certifications became conditional.

With regard to the April 26, 2017 (PL170547) certification, the appointing authority appointed Madden and Rodriguez-Mahmoud, who were ranked fourth and fifth, effective June 16, 2017. Upon the correction of K.T.'s score, her rank would be 4A on the April 26, 2017 certification. As such, it would be inappropriate to allow the appointing authority to reconsider the appointment of Madden, who scored higher than K.T. and whose rank was listed as fourth on the April 4, 2017 certification. Therefore, the April 26, 2017 certification, as corrected, should be returned to the appointing authority to allow it to consider K.T. and Rodriguez-Mahmoud for appointment. It is noted that the only interest which 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). However, if the appointing authority appoints K.T. from the subject certification, she shall receive a June 16, 2017 appointment date for seniority and record purposes upon successful completion of a current working test period.

With regard to the June 8, 2017 certification (PL170697), the appointing authority appointed Fatta, Widdis, and Townsend. The June 8, 2017 certification, as corrected, should be returned to the appointing authority, to allow it to consider K.T. or Rodriguez-Mahmoud, Fatta and any lower-ranked eligible reachable for appointment based upon the rankings from the Original List. The first, second and third positions on the June 8, 2017 certification shall remain unchanged. K.T. or Rodriguez-Mahmoud shall appear in the fourth position, as determined by the disposition of the corrected April 26, 2017 certification. The respective eligibles listed in the fifth through 15th positions shall be: Fatta, Sinha, F.J., Laskay, Widdis, K.W., Goldberg, A.A., White, R.O. and S.R. It is noted that Widdis and Townsend, who were ranked 10th and 22nd on the Original List, would not have been reachable on a certification based on the original rankings.⁴ In so doing, those

⁴ When the June 8, 2017 certification (PL170697) was originally issued to the appointing authority, the names of the eligibles were listed therein in the following order: S.A., A.O., C.Y., F.J., L.I.Mo., Townsend, Fatta, S.P., Widdis, Sinha, Laskay, K.W., Goldberg, and A.A. As noted above, the appointing authority returned the certification indicating that Fatta, Widdis and Townsend were appointed, effective August 16, 2017; F.J. and Laskay were bypassed; S.A., A.O., C.Y. and S.P. should be retained as interested in future certifications only; and that the remaining eligibles should be retained as interested. Based upon the number of currently interested eligibles appearing ahead

appointees shall receive an August 16, 2017 appointment date (the effective date for the appointment of Fatta, Widdis and Townsend from the June 8, 2017 certification) for seniority and record purposes upon successful completion of a current working test period.⁵ If more than three appointments are to be made, only the three highest ranked appointees shall receive the retroactive appointment date.

Finally, the November 22, 2017 certification shall be reissued based on the recalculation of candidates' scores and the disposition of the corrected April 26, 2017 and June 8, 2017 certifications.

ORDER

Therefore, it is ordered that these appeals be granted.

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 27TH DAY OF MARCH, 2018

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of Widdis and Townsend on the corrected June 8, 2017 certification, the "Rule of Three" would prevent the appointing authority from appointing Widdis or Townsend to the subject title with an effective date of August 16, 2017.

⁵ Should Fatta be appointed, she would not be required to undergo a new working test period, as she has already completed one.

c: Jillian Brett (2017-3650)
Marc Goldberg (2017-3634)
Charles Laskay (2017-3498)
Arti Sinha (2017-3493)
Kimberly White (2017-3553)
K.T.
Leslie Madden
Eliza Rodriguez-Mahmoud
Lauren Townsend
Shona Fatta
Amanda Widdis
All other eligibles on the PC1644U eligible list
Frank J. Tragno, Jr.
Kelly Glenn
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