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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Heather  
Mastropasqua, Conferee 1, Taxation  
(PS8623U), Department of the  
Treasury

Examination Appeal

CSC Docket No. 2015-1406

ISSUED: APR 02 2015 (HS)

Heather Mastropasqua appeals the validity of the Conferee 1, Taxation (PS8623U), Department of the Treasury promotional examination and alleges that certain candidates were provided with study material.

The subject examination was announced with a closing date of April 21, 2014 and was administered on November 6, 2014. The subject examination consisted of 70 multiple-choice questions, and candidates were required to answer 39 questions correctly in order to pass the examination. The appellant passed the examination with a final examination score of 77.94 and ranked twenty-eighth on the eligible list. Results were issued on November 19, 2014. The eligible list was issued with 37 names. A certification consisting of the names of A.S. and T.E., who were the first and second ranked eligibles respectively on the eligible list, was issued on November 27, 2014. In disposing of the November 27, 2014 certification, the appointing authority appointed A.S. and T.E.

On appeal, the appellant argues that the examination was not valid since questions 61 through 80 pertained to New Jersey Inheritance and Estate Taxes, which gave candidates who were employed in that section an advantage. In this regard, she asserts that several of the questions pertained to specific court cases. The appellant states that she was disadvantaged since she works in the refund section and does not work in the area of inheritance tax. In support, she notes that the five eligibles who ranked the highest were employed in the inheritance tax section. She claims that she has been discriminated against because management favored those candidates employed in the inheritance tax section by provisionally

appointing candidates employed in the inheritance tax section and changing the content of the subject examination from previous examinations. Additionally, she asserts that, on a previous examination for this title, management provided candidates with a list of court cases to study, but for the subject examination, management only provided the candidates employed in the inheritance tax section with a list of relevant court cases to study. In support of these claims, the appellant submits an email dated March 18, 2013 concerning an earlier Conferee 1, Taxation examination in which a former Conferee 1, Taxation, who was at that time serving provisionally in that title and who was a candidate, sent a list of court cases to other candidates. The appellant also submits the eligible list for Auditor 2, Taxation (PS2369U)<sup>1</sup> and notes that A.S. and T.E., the two top ranking individuals on the subject eligible list (PS8623U), ranked lower on the Auditor 2, Taxation (PS2369U) eligible list. The appellant contends that these two individuals must have been provided with court cases to study since their ranks were lower on the Auditor 2 Taxation (PS2369U) eligible list. Citing *N.J.A.C. 4A:7-3.1(a)*, she underscores that the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy) is a zero tolerance policy and that the State and its agencies reserve the right to take either disciplinary action, if appropriate, or other corrective action, to address any unacceptable conduct that violates the policy, regardless of whether the conduct satisfies the legal definition of discrimination or harassment. Additionally, the appellant states that the examination announcement did not specify study materials, court cases or required experience in the inheritance tax section. The appellant avers that she should be compensated for her payment of the application fee. The appellant also requests a hearing on this matter.

### CONCLUSION

Initially, the appellant requests a hearing in this matter. Examination 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)*. For the reasons explained below, 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)*.

*N.J.A.C. 4A:4-6.4(a)1* states, in pertinent part, that candidates may file an appeal with respect to the job-relatedness or appropriateness of test content and that the appeal shall specify the questions being challenged.

A review of the record reveals that a job analysis (JA) was performed for this title in accordance with accepted psychometric principles. The results of this

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<sup>1</sup> The eligible list for Auditor 2 Taxation (PS2369U) promulgated on April 4, 2013 and expires on April 3, 2016.

analysis identified the underlying knowledge, skills and abilities (KSAs) necessary to successfully perform the duties of the position under examination. The questions in the examination were designed to test the KSAs that a candidate must bring to the job as a Conferee 1, Taxation. Specifically, the JA in this matter indicated that knowledge of New Jersey Inheritance and Estate Taxes was important to the position. As such, the last 20 questions, questions 61 through 80, were designed to measure a candidate's knowledge in that subject. Moreover, the Examples of Work in the job specification for the title of Conferee 1, Taxation indicate, in part, that individuals in the title may be responsible for providing general information regarding conferences, tax appeals and application of tax laws for division personnel, legal and accounting communities and the general public; keeping current with legislative changes in New Jersey Tax Statutes and the Internal Revenue Code and court decisions that affect the Division of Taxation; and reviewing, interpreting and applying points of law, applicable regulations, court cases and division policy to tax issues under consideration. Therefore, the application of knowledge in the subject of New Jersey Inheritance and Estate Taxes, including applicable court decisions, falls within the scope of the job specification for Conferee 1, Taxation, and it was appropriate to include questions in that subject on the examination. While the appellant states that she was not provided with study materials regarding the examination, this agency is not obligated to provide a listing of source material for examinations. *See In the Matter of Michael Cozine, et al.* (MSB, decided July 31, 2002). Candidates should be aware that any promotional examination will test the KSAs that are brought to the job and which rank the candidates, *i.e.*, differentiate among them.

The appellant claims that the subject examination was discriminatory in that it favored candidates employed in a particular section. The appellant also claims that she has been discriminated against because study material was provided to candidates for an earlier examination but was provided only to certain other candidates for the subject examination. With respect to the claim that the examination was discriminatory, as discussed above, a JA was performed that identified the areas of knowledge important to the position, and the examination appropriately tested those areas. With respect to the claim that study material was selectively distributed, the appellant does not provide any substantive evidence showing that the appointing authority provided study material to candidates for a previous examination or the subject examination. Furthermore, the appellant provides no evidence that she was treated differently due to her inclusion in a protected category under the State Policy. *See N.J.A.C. 4A:7-3.1(a)*. As such, the appellant's allegations of discrimination as presented here do not implicate the State Policy.<sup>2</sup>

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<sup>2</sup> The appellant is advised that she may still file a complaint with her department's Equal Employment Opportunity office if she believes discrimination has occurred.

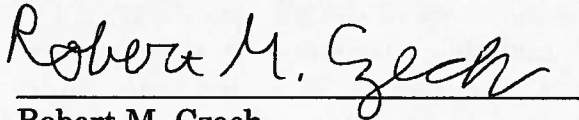
Finally, there is no basis to compensate the appellant for her payment of the application fee. *N.J.A.C. 4A:4-2.17(e)* provides, in pertinent part, that the fee is for processing purposes only and shall not be refunded for any reason except untimely filing of the application or cancellation of the examination.

**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 1<sup>ST</sup> DAY OF APRIL, 2015



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