

MEMORANDUM

B-21

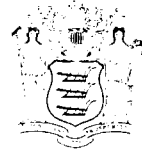
DATE: November 30, 2016

FROM: Walker Ristau
Division of Appeals and Regulatory Affairs

SUBJECT: Secretarial Assistant (M2225N), Newark (WR)
CSC Docket No. 2015-2661

Please note that the original decision in the above-captioned matter incorrectly referred to the certification date for certification number OL150004 as August 27, 2014. A corrected decision has been issued to reflect the actual date of that certification, January 6, 2015.

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STATE OF NEW JERSEY

In the Matter of Secretarial Assistant
(M2225N), Newark

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2015-2661

Appointment Waiver

Corrected Decision

ISSUED: **DEC 02 2016** (WR)

Newark requests permission not to make an appointment from the January 6, 2015 certification for Secretarial Assistant (M2225N), Newark.

By way of background, the appointing authority requested the subject examination, which was announced with a closing date of August 29, 2011. Seventy-eight applicants applied for the subject examination. The resulting eligible list of 14 names promulgated on January 19, 2012 and expired on January 18, 2015. A certification was issued on January 23, 2012 containing the names of 13 eligibles. However, for reasons that are unclear in the record, the January 23, 2012 (OL120132) certification was cancelled.

Thereafter, the appointing authority provisionally appointed Desiree Hadley, pending open competitive examination procedures, to the subject title, effective January 1, 2014. However, since there was a complete eligible list (M2225N) for the subject title, Hadley's appointment was rejected and on January 6, 2015 a certification containing all nine eligibles was issued to the appointing authority. The appointing authority returned the certification on November 24, 2014 and indicated that it would not make a permanent appointment since Hadley had resigned, effective May 30, 2014.¹ The appointing authority thereafter requested a waiver of the appointment requirement and of the costs because it was "under budgetary constraints."

¹ Agency records indicate that Hadley was appointed to the title of Aide to Councilperson, effective January 1, 2014 and resigned, effective May 30, 2014.

The appointing authority's request for an appointment waiver was acknowledged, and it was advised that if its request were granted, it could be assessed for the costs of the selection process in the amount of \$2,048. No further arguments were received.

A review of agency records reveals that Hadley resigned, effective May 30, 2014. Agency records also reveal there are currently no other employees serving in the subject title in Newark.

CONCLUSION

In accordance with *N.J.S.A.* 11A:4-5, once the examination process has been initiated due to the appointment of a provisional employee or due to an appointing authority's request to fill a vacancy, the appointing authority must make an appointment from the resulting eligible list if there are three or more interested and eligible candidates. The only exception to this mandate may be made for a valid reason such as fiscal constraints.

In the instant matter, as the result of the provisional appointment of Hadley, a complete certification was issued to the appointing authority. However, the appointing authority then requested an appointment waiver because Hadley had been terminated from employment. Therefore, since no one is currently serving provisionally, pending open-competitive examination procedures, in the subject title with the appointing authority, there is sufficient justification for an appointment waiver.

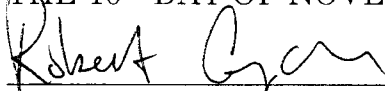
Although an appointment waiver is granted in this matter, both *N.J.S.A.* 11A:4-5 and *N.J.A.C.* 4A:10-2.2(a)2 state that if an appointing authority receives permission not to make an appointment, it can be ordered to reimburse the costs of the selection process. While administering examinations and providing the names of eligible job candidates to the jurisdictions under the Civil Service system are two of the primary activities of this agency, these costly efforts are thwarted when appointing authorities fail to utilize the resulting eligible lists to make appointments and candidates have needlessly expended their time, efforts and money to take these examinations in hopes of being considered for a permanent appointment. In the instant situation, the appointing authority merely stated that Hadley had been terminated and that due to fiscal constraints, it requested that the costs of the selection process be waived. However, although the Commission is sympathetic to the appointing authority's situation, its economic problems, while serious, are no less than those encountered by many, if not most other New Jersey county and municipal governments. Furthermore, reimbursement of selection costs pursuant to *N.J.S.A.* 11A:4-5 and *N.J.A.C.* 4A:10-2.2(a)2 does not place an undue burden on the appointing authority or prohibit it from looking towards other cost saving measures. Thus, although a waiver is granted, it is appropriate that the appointing authority be assessed \$2,048 for the costs of the selection process.

ORDER

Therefore, it is ordered that the request for a waiver of the appointment requirement be granted. Additionally, the Commission orders that the appointing authority be assessed for the costs of the selection process in the amount of \$2,048 to be paid within 30 days of the issuance of this order.

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 10th DAY OF NOVEMBER, 2016



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Director
Division of Appeals
and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

c: Kecia Daniels
Kelly Glenn
Records Center
Beth Wood