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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Sanitation Inspector
(M0006P), Town of West New York

Request for Reconsideration

CSC Docket No. 2016-602

ISSUED: APR 10 2017. (ABR)

The Town of West New York (West New York), represented by Angelo Auteri, Esq., requests reconsideration of the decision rendered on June 3, 2015 by the Civil Service Commission (Commission) in *In the Matter of Sanitation Inspector (M0006P), West New York*, which ordered it to properly dispose of the December 9, 2013 certification for Sanitation Inspector (M0006P) within 30 days and remit \$1,000 in compliance costs. A copy of that decision is attached hereto and incorporated herein.

In its request for reconsideration, West New York argues that no costs should be assessed since it did not act in bad faith in failing to dispose of the certification at issue. In that regard, West New York claims that its non-compliance was due, in part, to management turnover, including the departure of the previous Town Administrator in June 2014 and miscommunication related thereto.¹ West New York also claims that it believed that a December 10, 2014 certification (OL141624) for the title of Registered Environmental Health Specialist, Public Health (M0555S), which contained the provisional employee's name, obviated the need for it to dispose of the December 9, 2013 certification at issue.² Specifically, West New

¹ It is noted that the disposition due date of the subject certification was March 10, 2014.

² It is noted that on March 2, 2015, the Division of Appeals and Regulatory Affairs sent a letter to Felix Roque, the appointing authority for West New York, Public Affairs, at the time the certification was issued. That letter advised that the Commission was reviewing West New York's failure to dispose of the certification for Sanitation Inspector for possible action and it directed West New York to submit any information or reasons regarding that failure within 20 days. This agency does not

York explains that Brian O'Reilly, the interim Town Administrator from July 2014 to September 2014, sent the Division of Agency Services a letter on August 11, 2014, wherein he indicated that the provisional employee was misclassified and was not performing the duties of a Sanitation Inspector. West New York contends that it believed that the December 10, 2014 certification (OL141624) was generated in response to Mr. O'Reilly's August 11, 2014 letter.

West New York also argues that reconsideration is warranted in this matter because a vacancy did not actually exist in the title of Sanitary Inspector at the time of the Commission's initial decision. In that regard, it notes that the duties assigned to the provisional employee, as of that date, while he was serving in the subject title remained assigned to him when he was serving in the title of Registered Environmental Health Specialist, Public Health. Additionally, West New York contends that those duties were actually more consistent with the job specification for Registered Environmental Health Specialist, Public Health. Accordingly, West New York submits that there was no vacancy in the subject title as of the date of the Commission's initial decision.

This agency's records indicate that the December 3, 2014 certification for Sanitation Inspector (M0006P) was returned on January 12, 2016 and cancelled on March 20, 2017.

This agency's records also indicate that West New York appointed the provisional employee to the title of Registered Environmental Health Specialist, Public Health, effective January 29, 2015. However, the County and Municipal Personnel System (CAMPS) indicates that West New York submitted the appointment on August 4, 2015.

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, West New York argues that the Commission erred in its prior decision because it incorrectly determined that there was a vacancy in the title of Sanitation Inspector when there was not a vacancy. However, the Commission does not agree. At the outset, it is noted that in requesting

have any record of West New York furnishing information or arguments before it requested reconsideration in July 2015.

reconsideration, West New York has not specifically addressed its failure to submit arguments or documentation before the Commission's initial decision, despite being given an opportunity to do so. However, the principal issue in this matter is the appointing authority's failure to properly dispose of the certification in accordance with *N.J.A.C. 4A:4-4.8(b)*. Here, the appointing authority was obligated to dispose of the December 9, 2013 certification by March 10, 2014. When the Commission rendered its initial decision in this matter on June 3, 2015, the appointing authority still had not disposed of the certification at issue and the provisional employee's CAMPS record still showed him serving provisionally in the title of Sanitation Inspector, as West New York did not update his CAMPS record until August 2015. It is the responsibility of West New York to timely dispose of a certification and to promptly notify this agency of any required changes to the CAMPS records for its employees. Accordingly, the Commission's decision was consistent with the record in this matter as of June 3, 2015.

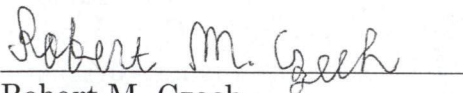
Moreover, West New York's explanations for its failure to properly dispose of the December 9, 2013 certification before the Commission issued its initial decision are unavailing. Although West New York attributes its inaction, in part, to management turnover, it does not account for its failure to act prior to the March 10, 2014 disposition due date or at any time before the departure of its Town Administrator in June 2014. Additionally, West New York does not explain why it believed that the December 10, 2014 certification (OL141624) for the title of Registered Environmental Health Specialist, Public Health eliminated the need for it to take further action with the subject certification after the Division of Appeals and Regulatory Affairs, by letter dated March 2, 2015, advised it of the possible action to be taken by the Commission for West New York's failure to properly dispose of the December 9, 2013 certification. Therefore, West New York has failed to meet the standard for reconsideration.

ORDER

Therefore, it is ordered that this request for reconsideration be denied. Further, the Commission orders that West New York remit the \$1,000 in compliance costs.

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 5TH DAY OF APRIL, 2017



Robert M. Czech
Chairperson
Civil Service Commission

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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Sanitation Inspector
(M0006P), West New York

CSC Docket No. 2015-2461

Salary Disapproval Order

ISSUED: JUN 08 2015 (EG)

The appointing authority's failure to dispose of the certification for Sanitation Inspector (M0006P), West New York, while a provisional 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 Frank DiBenedetto and has made the following findings of fact:

1. Frank DiBenedetto is currently serving provisionally in the title of Sanitation Inspector.
2. There is a vacancy for the title of Sanitation Inspector, and an outstanding certification was issued on December 9, 2013 from the M0006P 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 the 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 salary 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.

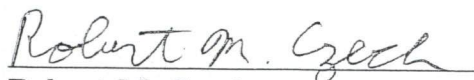
ORDER

The 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 any employee serving provisionally pending open competitive examination procedures in the subject title who does not receive an appointment from the outstanding certification. 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 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 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), Highlands*, 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 3RD DAY OF JUNE, 2015



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