



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Supervising
Advocate Victim Witness Program
(M0868T), Newark

Appointment Waiver

CSC Docket No. 2018-3181

ISSUED: August 2, 2018 (AMR)

Newark requests permission not to make an appointment from the April 11, 2016 certification for Supervising Advocate Victim Witness Program (M0868T).

The record reveals that Newark provisionally appointed Lashae Lopez-Duverneau, pending open competitive examination procedures to the subject title, effective August 31, 2015. An examination was announced with a closing date of December 1, 2015 that resulted in a list of four eligibles with an expiration date of April 6, 2019. It is noted that Lopez-Duverneau is no longer serving as a Supervising Advocate Victim Witness Program and there are currently no employees serving provisionally pending open competitive examination procedures in the subject title with the appointing authority. The record indicates that Lopez-Duverneau was appointed provisionally to title of Advocate Victim Witness Program effective June 6, 2016. See *In the Matter of Supervising Advocate Victim Witness Program (M0868T)*, Newark.¹

The appointing authority returned the certification indicating that a permanent appointment would not be made from the subject list because the provisional appointee was no longer serving. Specifically, it explained that the city is under budgetary constraints. They have implemented a city-wide layoff plan to accommodate the budget and they can no longer afford to hire additional staff. The

¹ The Civil Service Commission previously issued a salary disapproval order against Lopez-Duverneau's provisional appointment however, as indicated above her provisional appt was terminated on June 6, 2016, wherein she was provisionally appointed as Advocate Victim Witness Program.

city also receives transitional aid from the Department of Community Affairs (DCA) and has implemented a hiring freeze in accordance with a Memorandum of Agreement between the city and DCA.

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. However, the appointing authority did not provide any additional information for the Civil Service Commission (Commission) to review.

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, the examination for the subject title was generated as a result of the provisional appointment of Lashae Lopez-Duverneau, who is no longer serving in the subject title. However, after a complete certification was issued, the appointing authority requested an appointment waiver, explaining that due to budgetary constraints and the presence of city-wide layoffs, they can no longer hire additional staff. In conjunction with the fact that there are no provisionals currently serving, there is a 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 for 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 this case, the appointing authority's determination that due to budgetary constraints, they can no longer maintain the position of Supervising Advocate Victim Witness Program after it requested an examination for the subject title does not provide a basis on which to waive the selection costs. 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 a waiver of the appointment requirement be granted. Additionally, the Civil Service 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 1st DAY OF AUGUST, 2018



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