



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Alexandre Gabler,
Librarian 1, Ocean County Library

Request for Enforcement

CSC Docket No. 2019-389

ISSUED: MARCH 29, 2019

(HS)

Alexandre Gabler requests that the decision of the Civil Service Commission (Commission) rendered on March 27, 2018 be enforced against Ocean County Library. A copy of that decision is attached hereto and incorporated herein.

By way of background, the appellant appealed to the Commission his non-appointment to the noncompetitive title of Librarian 1, Ocean County Library and Librarian 1, Trenton Library. The appellant argued that as he was a qualified disabled veteran, he should have been appointed to one of the positions. The Commission found, for the reasons discussed in the prior decision, that the selection process utilized by the appointing authorities adversely impacted the appellant's disabled veteran preference rights. As such, they did not meet the standard for the non-appointment of a qualified, interested veteran to a noncompetitive position. The Commission mandated the appellant's appointment to the noncompetitive title of Librarian 1, Ocean County Library or Librarian 1, Trenton Library, whichever he accepted, subject to an updated background check.¹

In his request for enforcement, postmarked August 9, 2018, the appellant notes that the Librarian 1 position he had previously applied for had been advertised as "Branch Manager."² He maintains that Ocean County Library was required to offer him the exact position previously advertised, including the work

¹ The appellant is not employed by Trenton Library.

² The exact duties of the position are discussed in the prior decision. The Commission found that the duties and responsibilities were not inconsistent with the title of Librarian 1.

location. The appellant argues that its offer of a Librarian 1 "Information Services" position at a different work location was inadequate.

In response, Ocean County Library states that it has various locations throughout Ocean County and operates as a system. It maintains that employees must be able to work at any location in the system as a condition of employment and that it has the management right to assign and reassign employees and determine staffing patterns and areas worked among any of its locations. Ocean County Library maintains that it complied with the Commission's order and offered the appellant a Librarian 1 position, albeit at a different work location, where a vacancy existed. However, the appellant did not respond to the offer. He also did not respond after being contacted again and given a deadline to respond. In support, Ocean County Library presents, among others, the following documents:

- An April 6, 2018 e-mail to the appellant in which Ocean County Library indicated, among other things, that the offered position was "Information services"
- An April 16, 2018 e-mail to the appellant in which Ocean County Library noted that the title of the offered position was Librarian 1, provided a description of duties, and noted the work location
- An April 27, 2018 e-mail to the appellant in which Ocean County Library indicated that it had not received a response to its offer and that acceptance or rejection of the offer was needed no later than May 2, 2018

CONCLUSION

Initially, *N.J.A.C. 4A:2-1.1(b)* provides that unless a different time period is stated, an appeal must be filed within 20 days after either the appellant has notice or should reasonably have known of the decision, situation or action being appealed. The gist of the appellant's complaint is that Ocean County Library was required to offer him the exact position that had previously been advertised. However, he was provided with the pertinent details of the offer as early as April 16, 2018, yet he did not file the instant request for enforcement until August 9, 2018, nearly four months later. Thus, the request appears untimely. Nevertheless, even assuming this request is timely, there is no basis to order enforcement for the reasons discussed below.

In the prior decision, the Commission only mandated the appellant's appointment to the noncompetitive *title of Librarian 1*. It is clear from the record that Ocean County Library offered the appellant an appointment to the noncompetitive title of Librarian 1 and allowed him over two weeks, from April 16, 2018 to May 2, 2018, to consider the specific details of the offer. Thus, the Commission is satisfied that Ocean County Library complied with the Commission's

order. The appellant had no entitlement to the exact position previously advertised. In this regard, employees, whether they are veterans or not, may be moved, in-title, to a new job function or location within the organizational unit at the discretion of the head of the organizational unit. *See N.J.A.C. 4A:4-7.2; N.J.A.C. 4A:4-7.1(a)2* (defining an organizational unit in local service to mean a department or separate agency within the same county or municipality). As such, the appellant's contention that Ocean County Library was required to offer him the exact position previously advertised is untenable. Moreover, the appellant never responded to Ocean County Library's April 27, 2018 e-mail requesting acceptance or rejection of the offer by May 2, 2018, thereby effectively declining the position by non-response. Accordingly, the appellant has not presented a sufficient basis to order enforcement of the Commission's prior decision.

ORDER

Therefore, it is ordered that this request for enforcement 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 27TH DAY OF MARCH, 2019



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Attachment

- c. Alexandre Gabler
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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matters of Alexandre Gabler,
Librarian 1, Ocean County Library
and Librarian 1, Trenton Library

Administrative Appeals

CSC Docket Nos. 2018-210 and
2018-211

ISSUED: MARCH 29, 2018

(HS)

Alexandre Gabler appeals his non-appointment to the noncompetitive title of Librarian 1, Ocean County Library and Librarian 1, Trenton Library. Since these appeals concern similar issues, they have been consolidated herein.

On appeal to the Civil Service Commission (Commission), the appellant states that he disclosed his disabled veteran status during the application process with both appointing authorities and questions whether his disabled veterans preference was applied correctly. The appellant states that he was a qualified applicant for the subject positions as he holds a Master of Library/Information Science degree from a program accredited by the American Library Association and a New Jersey State Professional Librarian Certificate issued by Thomas Edison State College. Additionally, the appellant claims that Ocean County Library stated that his disabled veterans preference only guaranteed him an interview. In support, the appellant submits a copy of the job posting for the Ocean County Library position, which advertised it as "Branch Manager" and indicated that it was open to individuals who met the requirements for Librarian 1¹ or Librarian 2;² a

¹ Per the job specification, an appointee to the noncompetitive title of Librarian 1 is required to possess a Master's degree in Library or Information Sciences in a library program accredited by the American Library Association or from a New Jersey College Master's program in Library Science that has been deemed acceptable by Thomas Edison State College and may be required to possess a valid license as a Professional Librarian issued by Thomas Edison State College.

² Per the job specification, an appointee to the competitive title of Librarian 2 is required to possess a Master's degree in Library or Information Sciences in a library program accredited by the American Library Association or from a New Jersey College Master's program in Library Science that has been deemed acceptable by Thomas Edison State College and one year of librarian experience. An

copy of the job posting for the Trenton Library position, which advertised it as "Assessment and User Experience Librarian 1;" an e-mail from Patricia Hall, Operational Manager at Trenton Library, indicating that Trenton Library would keep the appellant's application on file for possible future positions; and other documents.

In response, Ocean County Library indicates that a "Branch Manager" is the "leader" at the branch. It states that at the branch in question, there is only one Librarian who also serves as the "Branch Manager." This person acts as the local ambassador for libraries and library services; plans, organizes, implements and evaluates comprehensive branch services and programs for customers of all ages in accordance with Ocean County Library's mission, goals and strategic plan. This includes community outreach, working closely with the local Friends of the Library; participating in system-wide committees and initiatives; attending the monthly Branch Managers' meetings; interpreting and influencing policy; and acting as the general liaison between the administration and local staff and Friends. Ocean County Library further states the "Branch Manager" is responsible for coaching/mentoring staff; writing required reports; providing reference and reader's advisory services; speaking to groups and community organizations; advocating for libraries and library services; and championing the diversity initiative for inclusive policies and services for staff and the public. The "Branch Manager" supervises budgeting and operations of the branch; ensures opportunities for continuing education and training; and ensures compliance with Commission regulations and the bargaining unit agreements. The "Branch Manager" is also the primary leader at the branch and ensures that the facility is safe, welcoming, and a focal point of the community. The "Branch Manager" may participate in local, State or national library organizations. Ocean County Library states that solid communication and problem-solving skills, a positive outlook and leadership abilities are required.

Ocean County Library states, in addition, that the appellant has not worked in any library since receiving his master's degree. It states that although he met the minimum Civil Service requirements, his interview showed a lack of experience or education in planning, coordinating and/or carrying out programs and outreach. The appellant also showed a lack of knowledge or skills in leadership. Ocean County Library maintains that the appellant does not have the knowledge or skills to be a Branch Manager at this time.³ However, it notes that it is considering the appellant for a future Librarian position.

In support, Ocean County Library submits, among other documents, the candidate evaluation forms prepared by the interviewers for the appellant. Each

appointee may be required to possess a valid license as a Professional Librarian issued by Thomas Edison State College.

³ Ocean County Library indicated that it appointed M.C., a non-veteran, to the noncompetitive title of Librarian 1, effective July 27, 2017.

interviewer had to indicate the candidate's proficiency in each of the following 10 skill areas by circling "1," "2," or "3:" Customer Service, Understanding of Diversity, Teamwork (Team Player), Decision Making Ability, Knowledge of Technology, Organization Skills, Ability to Communicate, Event Planning, Innovation, and Outreach/Community Work. "1" signified that the candidate did not meet the required skill, and "3" signified that the candidate exceeded the required skill. Each interviewer had to provide an overall recommendation that the candidate was either the "best overall candidate for this position" or "not the *best* candidate for this position." The first interviewer rated the appellant "3" in one area, "2" in six areas, and "1" in three areas. The second interviewer rated the appellant "3" in four areas, "2"/"3" in one area, "2" in two areas, and "1"/"2" in one area and provided no rating in the remaining two areas. The third interviewer rated the appellant "3" in four areas and "2" in six areas. The first two interviewers indicated that the appellant was "not the *best* candidate for this position," while the third interviewer provided no overall recommendation.

In response, Trenton Library, represented by Katrina M. Homel, Esq., states that based on its needs and the position advertised, it appointed S.M., a non-veteran who was the most qualified candidate for the position, effective July 5, 2017. It states that the veterans preference statute for noncompetitive classified positions such as the one at issue here allows it discretion such that a veteran may not necessarily be automatically appointed upon application. It argues that the statute contemplates the appointment of a qualified non-veteran even though a qualified veteran also applied. Trenton Library states that S.M.'s experience and skills made her the most qualified applicant, and she met its needs in the areas of youth services and technology. S.M.'s application was outstanding because she had substantial prior experience working in libraries as well as significant experience working with digital content, managing accounts, teaching technology skills to library users, and measuring preferences of library users, all of which are needs of Trenton Library. Trenton Library notes that although the position was posted for a librarian with zero to one year of experience, as this was the general experience level expected given the salary offered for the position, it was exceptional that a candidate with S.M.'s experience applied. Hall believed that S.M.'s level of experience would be an asset. Trenton Library also states that during her interview, S.M. expressed a clear understanding of the importance of centering Trenton Library's development on the needs of users in the specific community it serves. It maintains that the ability to work with the public is a key skill it looks for in potential librarian candidates, and S.M. stated that she enjoys communicating with people and working with the public. Additionally, S.M. had new and innovative ideas for the development of Trenton Library's youth services section and for additional services to expand its overall outreach to the community. During her interview, S.M. also discussed ideas for improvement of Trenton Library's services. She demonstrated prior knowledge of Trenton Library such that she could identify and recommend services that it should feature in its marketing.

Although Hall was concerned that S.M.'s overall work history showed relatively short stints at each place of employment, such work was impacted by the career moves of S.M.'s spouse, upon information and belief. Regardless, Trenton Library states that S.M.'s library and technical skills, enthusiasm for the position, and user-centered focus far outweighed any concerns about her application.

Trenton Library acknowledges that the appellant met the educational and professional certification requirements; however, his experience and skills showed that he was not the most qualified candidate for the position compared with S.M.'s application. Per his application and unlike S.M., the appellant lacked prior experience working in libraries. Although the appellant's application showed that he has experience working with technology, particularly telecommunications, he did not explain in his application how his skills connect with the skills needed for the position or would help him serve patrons generally. During his interview, the appellant failed to explain why he was interested in working at Trenton Library specifically and did not offer any new and innovative ideas for services. Trenton Library also states that the appellant was not personable or approachable during his interview. Hall believed that the appellant did not perform well during the interview. She noted that his answers "droned on" and they could not get through the interview questions in the allotted time. Hall also believed that he lacked enthusiasm for the position and that his skill set would not be a good fit particularly compared with S.M.'s. Although Hall was unaware that a veterans preference applied to positions in the noncompetitive division, Trenton Library maintains that it has now shown cause why the appellant should not have been appointed. It requests that it be permitted to retain S.M. without penalty. In support, Trenton Library submits Hall's certified statement; the appellant's and S.M.'s application materials; and Hall's notes from her respective interviews with the appellant and S.M.

In reply to Ocean County Library, the appellant argues that Ocean County Library does not address the denial of his disabled veterans preference or the requirement that it show cause when appointing a non-veteran. The appellant maintains that the ultimate appointee was a non-veteran Librarian 1, and his appeal is thus legitimate. He argues that Ocean County Library, while acknowledging that he met the minimum Civil Service requirements, failed to recognize the preference. The appellant asserts that meeting the threshold of the minimum Civil Service requirements is the only criterion for veterans preference to be applied in the Civil Service system. He maintains that the existence of more qualified applicants or the veteran's lack of possession of all desired skills cannot be used as rationales to deny the preference. The appellant contends that a Civil Service library should only post jobs using the authorized Civil Service job specification. The appellant asserts that an appointing authority must create a hypothetical eligible list when filling a vacancy in the noncompetitive division to ensure that it is applying veterans preference correctly. According to the appellant,

all qualified applicants would be given an internal score, but veterans would be placed at the top of this hypothetical list.⁴

In reply to Trenton Library, the appellant argues, in pertinent part, that Trenton Library embellished the job title by calling the position an "Assessment and User Experience Librarian 1" when it should have adhered to the Civil Service job specification, which contains no experience requirement. He contends that it is irrelevant whether there were applicants who were either more qualified or less qualified than himself; rather, the only relevant circumstances are that he met the qualifications for Librarian 1 and the appointee is a non-veteran. The appellant emphasizes that he is not a qualified veteran but a qualified *disabled* veteran and posits that there is a difference between the two when it comes to preference in noncompetitive division appointments. In this regard, he highlights that *N.J.S.A. 11A:5-8* states that "[i]n all cases, a disabled veteran shall have preference over all others." The appellant also disagrees with Hall's characterization of his interview. Specifically, he states that there was a good rapport between them and that the duration of the interview was not his fault.

In reply, Trenton Library argues that the appellant misinterprets the statute at issue, which does not require that a disabled veteran, or a veteran generally, be appointed over a non-veteran in all circumstances. Specifically, the statute and its related regulations state that disabled veterans shall be preferred above all others, meaning over veterans generally and all non-veteran candidates, but the statute still contemplates circumstances when an appointing authority may appoint a non-veteran even if a veteran has applied by allowing an appointing authority to "show cause before the Civil Service Commission why a veteran should not be appointed." See *N.J.S.A. 11A:5-8*. Therefore, Trenton Library maintains that it is not required to automatically appoint a disabled veteran or other veteran over a non-veteran and has shown cause why it appointed a non-veteran. Although the position at issue was an entry-level one requiring no prior experience, Trenton Library argues that it was not precluded from appointing a candidate with more experience and relevant skills than the appellant possessed provided it could show cause in doing so. It adds that S.M.'s appointment enhanced staff diversity. Trenton Library disputes the appellant's contention that he had a good rapport with Hall. It also states that the duration of S.M.'s interview, which was shorter than the typical two-hour duration, evidenced her strong performance as she was able to answer all of the questions in a shorter interview time because her answers were concise and on-point. Trenton

⁴ In his reply to Ocean County Library, the appellant also suggests that the title of Librarian 3 may be more appropriate for the position at issue. Based on the present record, which includes Ocean County Library's description of the position, the Commission finds that the duties and responsibilities are not inconsistent with the title of Librarian 1. The Commission does not find the remainder of the appellant's claims relevant to whether his non-appointment by Ocean County Library was proper and therefore will not address them.

Library states that the appellant was the only candidate who failed to finish all of the interview questions during his interview.

CONCLUSION

N.J.S.A. 11A:5-8 specifies that:

From among those eligible for appointment in the noncompetitive division, preference shall be given to a qualified veteran. Before an appointing authority shall select a nonveteran and not appoint a qualified veteran, the appointing authority shall show cause before the Civil Service Commission why a veteran should not be appointed. In all cases, a disabled veteran shall have preference over all others.

N.J.A.C. 4A:5-2.3 provides that in making appointments in the noncompetitive division, preference shall be given among qualified applicants to disabled veterans, then veterans.

While the Commission notes that Civil Service law and rules include a strong preference for veterans and disabled veterans, the establishment of veterans preference does not automatically entitle the veteran to a permanent appointment in a career service position. As noted above, *N.J.S.A.* 11A:5-8 permits an appointing authority not to appoint a qualified veteran for cause when making noncompetitive appointments. In *In the Matter of Andrew Triandafilou* (MSB, decided June 8, 2005), the former Merit System Board (Board) delineated the standard necessary to remove qualified veterans from consideration for noncompetitive appointments. In *Triandafilou*, the Board stated that although *N.J.A.C.* 4A:5-2.3 does not specify the standard for the non-appointment of a veteran to a noncompetitive position, the rules regarding use of the preference in promotional examinations delineate what is required of an appointing authority to show cause as to why a veteran should be removed from a list. Thus, in the absence of any other specific regulatory procedure concerning noncompetitive positions, these rules are illustrative of what an appointing authority would need to demonstrate to substantiate not appointing an interested, qualified veteran.

In particular, *N.J.A.C.* 4A:5-2.2(c) provides that a non-veteran shall not be appointed unless the appointing authority shows cause why the veteran should be removed from the promotional list. *N.J.A.C.* 4A:4-4.7 *et seq.*, in conjunction with *N.J.A.C.* 4A:4-6.1 *et seq.*, delineates a number of reasons why a person may be denied an appointment and removed from the list. This would include the failure of a veteran applicant to complete required preemployment processing. See *N.J.A.C.* 4A:4-4.7(a)11, which allows an eligible's name to be removed from an eligible list for

other valid reasons. In short, the Board in *Triandafilou* stated that these rules explain what an appointing authority would have to demonstrate in order not to make an appointment of an interested veteran eligible to a noncompetitive title. As such, an eligible who has established veterans preference does not necessarily have to be permanently appointed.

In this matter, the appellant argues that Ocean County Library and Trenton Library refused to honor his disabled veterans preference and appoint him to one of the noncompetitive Librarian 1 positions, even though as a qualified disabled veteran he should have been appointed. Ocean County Library counters that the appellant lacked library work experience and its interviewers did not consider him to be the “best” candidate for the position. Therefore, it appointed the “best” candidate, a non-veteran. Trenton Library counters that the non-veteran appointee’s technical experience and skills, library experience, superior application and interview performance, and enhancement to staff diversity made her the most qualified candidate for the position. Trenton Library also submits that the appellant did not perform well during his interview, lacked prior library experience, and comparatively was not the most qualified candidate based on his experience and skills. For the reasons discussed below, the Commission finds that the selection process utilized by the appointing authorities adversely impacted the appellant’s disabled veteran preference rights.

Upon a review of the record, the Commission finds that Ocean County Library and Trenton Library have presented insufficient reasons not to appoint the appellant. There is no dispute that the appellant met the minimum requirements set forth in the job specification for the noncompetitive title of Librarian 1, making him eligible for appointment, and that both appointing authorities determined that the appellant’s candidacy merited his moving to the interview stage of the selection process. Although both appointing authorities identified the appellant’s lack of library work experience as a factor, Librarian 1 is an entry-level title as the job specification contains no experience requirement. Ocean County Library’s interviewers, while mostly finding that the appellant met or exceeded the various skill areas listed in the candidate evaluation forms, determined that the appellant was not the best candidate for the position. Trenton Library, while acknowledging the appellant’s technology and telecommunications skills, determined that the appellant was comparatively not the most qualified candidate, based on factors that included technical skills, application quality, and interview performance. Nevertheless, in these particular cases, the appointing authorities’ conclusions that the appellant merely was either not the *best* candidate or not *comparatively* the *most* qualified candidate would not warrant his removal from a promotional list. As such, the appointing authorities have not met the standard for the non-appointment of a qualified, interested veteran to a noncompetitive position as delineated in *Triandafilou, supra*. Accordingly, the appellant has sustained his burden of proof in

these matters and his appointment to whichever position he accepts is mandated, provided that he first passes an updated background check.

ORDER

Therefore, it is ordered that these appeals be granted. Absent any disqualification issue ascertained through an updated background check, Alexandre Gabler's appointment to the noncompetitive title of Librarian 1, Ocean County Library or Librarian 1, Trenton Library, whichever he accepts, is otherwise mandated. Additionally, it is ordered that if the appellant is appointed, upon the successful completion of his working test period, his record will reflect a retroactive appointment date of July 27, 2017 if he is appointed by Ocean County Library or July 5, 2017 if he is appointed by Trenton Library. These dates are for salary step placement and seniority-based purposes only.

This is the final administrative determination in these matters. 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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