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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Jakub Nowak, Word
Processing Specialist 2 (S0112R),
Statewide

Request for Reconsideration

CSC Docket No. 2014-2278

ISSUED: OCT 23 2014 (SLD)

Jakub Nowak requests reconsideration of the attached final administrative decision, rendered on February 26, 2014, which denied his request for a make-up examination for the open-competitive examination for Word Processing Specialist 2 (S0112R), Statewide.

By way of background, the examination for Word Processing Specialist 2 (S0112R) was announced with a closing date of February 13, 2013. Agency records indicate that notices were mailed to the eligibles on December 26, 2013, indicating that the written examination was scheduled for January 16, 2014. On January 10, 2014, the petitioner submitted a request to the Division of Selection Services (Selection Services) for a make-up examination. Specifically, he asserted that he had only received the notice scheduling the examination on January 9, 2014. However, that was insufficient time to secure the time-off from his night job, which is a crucial source of income. Finally, the petitioner asserted that the examination should be waived since he possessed a Master's degree. The petitioner did not appear to take the examination. In a January 31, 2014 letter, Selection Services denied the petitioner's request for a make-up examination on the basis that his request did not meet the requirements of *N.J.A.C. 4A:4-2.9*. The examination resulted in an employment roster of 58 eligibles which promulgated on February 20, 2014 and expires on February 19, 2017.

On appeal to the Civil Service Commission (Commission), the petitioner argued that although he timely submitted a request for a make-up examination, Selection Services did not deny his request until January 31, 2014, 15 days after the

examination took place. Moreover, the petitioner maintained that he had only received the notice for the January 16, 2014 examination on January 9, 2014, which did not provide him sufficient time to secure the time off from work. However, he asserted that if Selection Services had timely notified him of the denial of his request, he would have "jeopardized" his evening job and gone to the examination. Therefore, the petitioner maintained that his request for a make-up examination should be granted on the basis of an error by this agency since it failed to timely notify him of the denial of his request.

In its February 26, 2014 decision, the Commission noted that Selection Services correctly determined that the petitioner was not eligible for a make-up examination. In this regard, the Commission found that the petitioner was essentially faced with a personal scheduling conflict which generally does not satisfy the uniform criteria for scheduling a make-up examination. See *N.J.A.C. 4A:4-2.9(a)*. See also, *In the Matter of Scott Hiltner* (MSB, decided August 11, 2004) (Inability to take the day off from work to participate in an open competitive examination is not a valid reason to grant a make-up examination); and *In the Matter of Rose Messere* (MSB, decided May 5, 2004) (Hosting a wedding rehearsal dinner for appellant's daughter was a scheduling conflict and not a valid reason to grant a make-up examination). Consequently, the Commission determined that the appellant had failed to support his burden of proof.

In the instant matter, the petitioner argues that the Commission erred in denying his request for a make-up examination since *N.J.A.C. 4A:4-2.9(a)5* provides for a make-up examination where an individual has "prior vacation or travel plans outside of New Jersey or any contiguous state, which cannot be reasonably changed, as evidenced by a sworn statement and relevant documentation." He maintains that he had prior travel plans outside of New Jersey that could not be reasonably changed since it involved a "legally binding contract." In support, he submits an Uptown Getdowns Performance Contract between Steve Dans representing the Uptown Getdowns and the petitioner for a performance on January 16, 2014 at 7 p.m. to 9 p.m. in Garden City, New York, signed on December 28, 2013.

Additionally, the petitioner asserts that although *N.J.A.C. 4A:4-2.1(b)* requires that all promotional examinations must be posted conspicuously within the unit scope to which it is open, the subject examination was never posted in the office and therefore he had no knowledge of a required examination prior to receiving the notice that he was scheduled for one. The petitioner reiterates that he did not receive the examination notice until January 9, 2014, which did not give him enough time to adjust his schedule. The petitioner maintains that the Commission failed to adequately address his assertion that he was not timely notified of the examination and was thus deserving of a make-up examination.

CONCLUSION

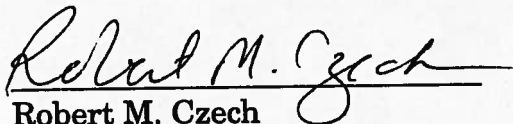
N.J.A.C. 4A:2-1.6(b) sets forth the standards by which a prior decision may be reconsidered. This rule provides that a party must show that a clear material error has occurred or present new evidence or additional information not presented at the original proceeding which would change the outcome of the case and the reasons that such evidence was not presented at the original proceeding. The instant request for reconsideration appears to be based both on an assertion that the Commission made an error in denying the petitioner's appeal and the submission of new evidence that was not presented at the original proceeding. However, a review of the record in the instant matter reveals that reconsideration is not justified. In this regard, the petitioner has failed to provide any documentation which establishes that the Commission's decision was contrary to the evidence presented. Instead, the petitioner merely reiterates his prior arguments and claims that the Commission failed to adequately address his timeliness arguments. However, the Commission does not agree. As previously noted, the petitioner received the notice of the examination prior to the date of the examination. However, due to a personal employment-related conflict, he was unable to attend. Although the petitioner now claims that he had a legally binding contract to perform on that date out of state, he had not previously provided the contract. Rather, he maintained that if he had known that his request would be denied, he would have appeared for the examination. Moreover, the petitioner fails to explain why he did not originally provide a copy of his contract for the date in question. Finally, with regard to the petitioner's assertion that the appointing authority failed to properly post the examination notice, it is noted that *N.J.A.C.* 4A:4-2.1(b) only applies to *promotional* examination notices. However, the subject examination was an open-competitive examination. Furthermore, it is clear that the appellant had notice of the subject examination since he timely applied for and was admitted to the examination. Accordingly, the petitioner has failed to present a sufficient basis for reconsideration of the Commission's prior decision.

ORDER

Therefore, it is ordered that this request for reconsideration 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 22ND DAY OF OCTOBER, 2014**



**Robert M. Czech
Chairperson
Civil Service Commission**

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and
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**Henry Maurer
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Attachment

**c: Jakub Nowak
 William Wander
 Kenneth Connolly
 Joseph Gambino**

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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Jakub Nowak, Word
Processing Specialist 2 (S0112R),
Statewide

Examination Appeal

CSC Docket No. 2014-1248

ISSUED: FEB 28 2014

(SLD)

Jakub Nowak¹ appeals the determination of the Division of Selection Services (Selection Services) denying his request for a make-up examination for the open-competitive examination for Word Processing Specialist 2 (S0112R), Statewide.

By way of background, the examination for Word Processing Specialist 2 (S0112R) was announced with a closing date of February 13, 2013. Of the 162 individuals who applied for the subject examination, 103 were admitted to the examination which was held January 16, 2014. Agency records indicate that notices were mailed to the eligibles on December 26, 2013, indicating that the written examination was scheduled for January 16, 2014. On January 10, 2014, the appellant submitted a request to Selection Services for a make-up examination. Specifically, he asserted that he had only received the notice scheduling the examination on January 9, 2014. However, that was insufficient time to secure the time-off from his night job, which is a crucial source of income. Finally, the appellant asserted that the examination should be waived since he possessed a Master's degree. The appellant did not appear to take the examination. In a January 31, 2014 letter, Selection Services denied the appellant's request for a make-up examination, on the basis that his request did not meet the requirements of *N.J.A.C. 4A:4-2.9*. The examination resulted in an employment roster of 58

¹ Agency records indicate that the appellant received a regular appointment to the non-competitive title of Clerk Typist with the Office of the Public Defender, effective February 26, 2011. The appellant was provisionally appointed, pending open-competitive examination procedures, to the subject title, effective April 7, 2012.

eligibles which promulgated on February 20, 2014 and expires on February 19, 2017.

On appeal, the appellant argues that although he timely submitted a request for a make-up examination, Selection Services did not deny his request until January 31, 2014, 15 days after the examination took place. Moreover, the appellant maintains that he had only received the notice for the January 16, 2014 examination on January 9, 2014, which did not provide him sufficient time to secure the time off from work. However, he asserts that if Selection Services had timely notified him of the denial of his request, he would have "jeopardized" his evening job and gone to the examination. Therefore, the appellant contends that his request for a make-up examination should be granted, on the basis of an error by this agency since it failed to timely notify him of the denial of his request.

CONCLUSION

N.J.A.C. 4A:4-2.9(a) provides that make-up examinations may be authorized for the following reasons:

- 1) Error by the Civil Service Commission (Commission) or appointing authority;
- 2) Serious illness or disability of the candidate on the test date, provided the candidate submits a doctor's certificate specifying that the candidate was not able to take the test on that day for medical reasons;
- 3) Documented serious illness or death in the candidate's immediate family;
- 4) Natural disaster;
- 5) Prior vacation or travel plans outside of New Jersey or any contiguous state, which cannot be reasonably changed, as evidenced by a sworn statement and relevant documentation;
and
- 6) Other valid reasons.

In the present matter, Selection Services correctly determined that the appellant was not eligible for a make-up examination. Although he presents that he worked a second job during the evening and could not attend the scheduled examination, the appellant was essentially faced with a personal scheduling conflict. Generally, a personal scheduling conflict does not satisfy the uniform criteria for scheduling a make-up examination. See *In the Matter of Scott Hiltner* (MSB, decided August 11, 2004) (Inability to take the day off from work to participate in an open competitive examination is not a valid reason to grant a make-up examination); and *In the Matter of Rose Messere* (MSB, decided May 5, 2004) (Hosting a wedding rehearsal dinner for appellant's daughter was a

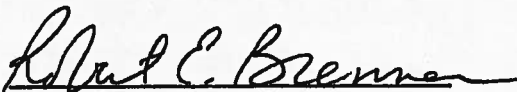
scheduling conflict and not a valid reason to grant a make-up examination). Consequently, a thorough review of all material presented indicates that the determination of Selection Services is supported by the record and the appellant has failed to support his burden of proof in this matter.

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 26TH DAY OF FEBRUARY, 2014**



**Robert E. Brenner
Presiding Member
Civil Service Commission**

**Inquiries
and
Correspondence**

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**c: Jakub Nowak
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