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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION

Examination Appeal

In the Matter of Bevan Carruthers,
Manager 2 Division of Motor Vehicles
(PS8987T), Motor Vehicle
Commission

CSC Docket No. 2015-1093

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ISSUED: DEC - 5 2014

(RE)

Bevan Carruthers appeals the change in the test mode for the promotional examination for Manager 2 Division of Motor Vehicles (PS8987T), Motor Vehicle Commission.

By way of background, the subject examination had a closing date of August 21, 2014 and was open to employees in the competitive division currently serving, and having an aggregate of one year of continuous permanent service as of the closing date, in one of the following titles: Coordinator Motor Vehicle Commission, Manager 3 Division of Motor Vehicles, Supervising Auditor, and Supervising Driver Improvement Analyst. The announcement also indicated that the exam might be tested via the Management Test Battery (MTB). Subsequently, the examination was processed as an unassembled examination (UE). There are two eligible candidates, the appellant, who is a veteran, and a non-veteran. They were both given the same final average, 76.000, and they both ranked 1 on the resultant eligible list. In these cases, where a veteran and a non-veteran both ranked number one, the appointing authority may not appoint a non-veteran. At some point in time, the Division of Selection Services (DSS) recognized that there had been an administrative error, rescinded the results of the examination, and scheduled the candidates to take the MTB.

On appeal, the appellant states that the other candidate was the provisional appointee, and ranked second on the list. He states that the other candidate complained to the personnel office, after which DSS changed the test mode from an unassembled examination to an assembled examination, the MTB. He states that

DSS informed him that it should have been scheduled for testing because one of the applicants had established veteran's preference. He argues that his qualifications exceed those of the other candidate in every category, an unassembled examination was originally selected and it was determined that he was the most qualified, and the change in test mode is the only option giving the provisional appointee the possibility of keeping the position by doing better on the test. He believes that the test mode was changed, to his detriment, to accommodate the complaint of the other candidate.

Based on written policy, an examination announcement open to individuals who meet the title requirements and with a small candidate population can be processed as an unassembled examination when:

1. The number of eligible candidates does not exceed the number of provisional appointees by two.
2. Veterans preference rights are not a factor.
3. The appointing authority agrees with the UE test mode.

CONCLUSION

According to *N.J.A.C. 4A:4-2.2*, the Civil Service Commission (Commission) has the authority to determine the most appropriate selection instrument to use in assessing candidates in a given competitive title. In the subject title, a decision was initially made by DSS to provide an unassembled examination at the appointing authority's request. Nevertheless, written policy requires the above conditions be met before the Commission can consider an unassembled examination.

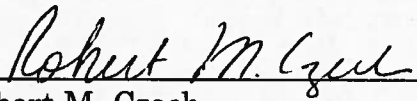
As such, the use of an unassembled examination was inappropriate in this instance, as the basic criteria had not been met. In this case, veteran's preference rights *were* a factor. When this was discovered, an assembled examination was scheduled. Although this was an administrative error, the appellant cannot benefit from such an error. See *Cipriano v. Department of Civil Service*, 151 N.J. Super. 86 (App. Div. 1977); *O'Malley v. Department of Energy*, 109 N.J. 309 (1987); *HIP of New Jersey, Inc. v. New Jersey Department of Banking and Insurance*, 309 N.J. Super. 538 (App. Div. 1998). Nevertheless, the appellant is arguing that the administrative error should be upheld, as following the rule benefits the other candidate. The appellant has veteran's status. Further, the record does not establish that the error was due to bad faith or some invidious reason. In sum, the appellant has failed to meet 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 3rd DAY OF DECEMBER, 2014



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