



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of Program
Coordinator Mental Health (S0036V),
Department of Military and Veterans
Affairs

Appointment Waiver

CSC Docket No. 2018-2509

ISSUED: April 20, 2018 (AMR)

The Department of Military and Veterans Affairs requests permission not to make an appointment from the September 29, 2017 certification for Program Coordinator Mental Health (S0036V).

The record reveals that on September 19, 2016, the appointing authority provisionally appointed William Lobach, pending open competitive examination procedures, to the subject title. As a result of the provisional appointment, an examination was announced with a closing date of January 13, 2017. The examination resulted in an eligible list of 81 individuals, which promulgated on September 28, 2017 and expires on September 27, 2020. It is noted that Lobach is no longer serving as a Program Coordinator Mental Health and there are currently no employees serving provisionally pending open competitive examination procedures in the subject title with the appointing authority. A certification was issued, listing Lobach in the sixth position. On February 2, 2018, the appointing authority returned the certification and requested an appointment waiver.

In its request for an appointment waiver, the appointing authority indicates that Lobach was provisionally appointed to the title of Program Coordinator Mental Health in September, 2016 and worked in that capacity until approximately August, 2017 when it was discovered that he was acting in the capacity of Deputy Superintendent. A request was made to have Lobach's title evaluated for proper classification to a title that was commensurate with his duties being performed. The review subsequently determined that the title of Special Staff Officer 1 was deemed appropriate.

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 \$8,295. Agency records indicate that currently there are no individuals in the subject title with the appointing authority.

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 the result of the provisional appointment of Lobach. However, after a complete certification was issued, the appointing authority requested an appointment waiver due to Lobach no longer serving in the subject title. Subsequently, he was appointed to the unclassified title of Special Staff Officer 1, effective January 30, 2018. Therefore, since the provisional is no longer serving in the subject title and there are no employees serving in the subject title with the appointing authority, there is sufficient justification for an appointment waiver.

Although the appointing authority's petition for a waiver is granted, 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 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, effort and money to take these examinations in hopes of being considered for a permanent appointment. However, the Civil Service Commission notes that the list in question will not expire until September 27, 2020 and the appointing authority may be able to use the list in the future. Accordingly, under the particular circumstances of this matter, it would not be appropriate to assess the appointing authority for the costs of the selection process at this time. *See e.g., In the Matter of Supervising Administrative Analyst (PS1837I), Department of Corrections (MSB, decided March 22, 2006)* (Not appropriate to assess the Department of Corrections for the costs of the selection process since it had indicated its intention to utilize the eligible list prior to its expiration date). Nevertheless, in the event the appointing authority fails to utilize the list by its expiration date of September 27, 2020, this matter can be reviewed at that time to ascertain whether an assessment for the costs of the selection process should be made. *See e.g., In the Matter of Supervising*

Administrative Analyst (PS1837I), Department of Corrections (MSB, decided April 11, 2007) (Costs assessed upon the expiration of the eligible list since the Department of Corrections failed to utilize the eligible list and there was no evidence that it had even attempted to utilize the eligible list).

ORDER

Therefore, it is ordered that the request for the waiver of the appointment requirement be granted and no selection costs presently be assessed.

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 18th DAY OF APRIL, 2018



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