



## STATE OF NEW JERSEY

 FINAL ADMINISTRATIVE ACTION  
 OF THE  
 CIVIL SERVICE COMMISSION

 In the Matter of Housing Coordinator  
 (M0942R), City of Newark

Request for Reconsideration

CSC Docket No. 2016-2784

ISSUED: April 20, 2018 (SLD)

Elmore Gaines, requests reconsideration of the attached final administrative decision, rendered on June 17, 2015, which granted the City of Newark's (Newark) request for a waiver of the appointment requirement for the Housing Coordinator (M0942R), eligible list. The history of this matter is fully laid out in the attached decision.

In Mr. Gaines instant petition to the Civil Service Commission (Commission), he asserts that the Commission erred in granting the appointing authority's appointment waiver request. Specifically, he asserts that this agency allowed the certification to remain outstanding for two years, which was more than the 90 days the certification was "good for." He also asserts that Newark only requested the appointment waiver because he, as a veteran and the first ranked eligible on the subject eligible list, was entitled to the appointment.<sup>1</sup> Additionally, he asserts that this agency failed to notify him until January 21, 2016 that the certification had been cancelled. Mr. Gaines also asserts that the provisional remained in the subject position for more than six months after the date of the certification. Therefore, he maintains that since Newark failed to notify this agency by the date of the examination or within 30 days of the examination, the appointment waiver should have been denied.

<sup>1</sup> Although agency records indicate that Mr. Gaines appeared as the first ranked eligible on the subject eligible list, he was not the first ranked eligible on the March 7, 2014 certification (OL140291). In this regard, the first ranked eligible, was a non-veteran from the M0345R eligible list, which promulgated on August 15, 2013 and expired on August 14, 2016.

In response, the appointing authority notes that it is under a Memorandum of Understanding with the Department of Community Affairs (DCA) as it is a distressed city that receives transitional aid. As such, for reasons of economy and efficiency, it terminated the provisional employee's service with it and appropriately requested the appointment waiver. With regard to Mr. Gaines claims that it took two years for it to dispose of the certification, it notes that the subject certification was issued on March 14, 2014, and it disposed of the certification on September 22, 2014. Newark asserts that any delay in disposing of the certification was due to the change in administration which was sworn in on July 1, 2014. Accordingly, it asserts that the instant request for reconsideration should be denied.

### 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 on the assertion that the Commission made an error by denying the petitioner's appeal of his non-appointment. However, a review of the record in the instant matter reveals that reconsideration is not justified. In this regard, Mr. Gaines has failed to provide any documentation which establishes that the Commission's decision was contrary to the evidence presented. Instead, he merely claims that the Commission made an error since there was a delay in disposing of the certification, the provisional remained in the position after the certification was issued, the appointing authority failed to timely request the cancellation of the examination, and he is a veteran who was entitled to the appointment.

Mr. Gaines correctly notes that the appointing authority did not request the cancellation of the subject examination either by the date of the examination or within 30 days after the initial date of the examination announcement as required by *N.J.A.C.* 4A:10-2.2(a)1. However, a waiver of the appointment requirement is made pursuant to *N.J.A.C.* 4A:10-2.2(a)2, which provides in pertinent part, that **following the period set forth in (a)1**, an appointing authority may, for valid reasons such as fiscal constraints, petition the Commission for permission not to make a permanent appointment (emphasis added). Therefore, Newark's failure to timely request the cancellation of the subject certification, is only relevant in so much as it was then required to request an appointment waiver pursuant to *N.J.A.C.* 4A:10-2.2(a)2, which it did. With regard to the appointing authority's delay in disposing of the certification within the required time period, the Commission notes that such a technical delay, does not, in and of itself, require the appointing authority's request for an appointment waiver be denied. Moreover, although Mr. Gaines correctly noted that the provisional employee was still in the

subject position after the certification was issued, at the time of the appointing authority's request for an appointment waiver, the provisional's service with the appointing authority had been terminated. Therefore, the fact that there was no employee currently serving in the subject position, and the appointing authority had documented fiscal constraints, as evidenced by its receipt of transitional aid, the Commission's granting of its request for an appointment waiver was appropriate.

Finally, with regard to Mr. Gaines' assertion that as the first ranked veteran he was entitled to an appointment from the subject eligible list, the Commission does not agree. In this regard, *N.J.S.A. 11A:5-6*, *N.J.A.C. 4A:4-4.8(a)3i* and *N.J.A.C. 4A:5-2.1* provide that, whenever a disabled veteran or veteran is certified from an open competitive list *and a regular appointment is to be made*, the appointing authority shall first appoint disabled veterans and then veterans in the order of ranking. Therefore, on an open-competitive certification, a veteran is only entitled to an appointment when an appointing authority makes a regular appointment. *See In the Matter of Alan Gatto, Budget Analyst 3 (S0958L), Statewide (CSC, decided July 27, 2011)*. Since no appointment was made in the instant matter, Mr. Gaines' veteran's preference is irrelevant in determining whether the appointment waiver should have been granted. Accordingly, Mr. Gaines 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 18TH DAY OF APRIL, 2018



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**Attachment**

c: Elmore Gaines  
Jack Kelly  
Kelly Glenn  
Records



STATE OF NEW JERSEY

In the Matter of Housing Coordinator  
(M0942R), Newark

CSC Docket No. 2015-1216

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

Appointment Waiver

ISSUED: **JUN 18 2015** (WR)

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Newark requests permission not to make an appointment from the March 7, 2014 certification for Housing Coordinator (M0942R), Newark.

The record reveals that the appointing authority provisionally appointed Gregory Good, pending open competitive examination procedures, to the subject title, effective December 3, 2012. The examination was announced with a closing date of October 30, 2013. Nineteen applicants, including Good, applied for the subject examination. The resulting eligible list of six names promulgated on February 27, 2014 and expires on February 26, 2017. Good was found ineligible for the examination. It is noted that the appointing authority took no action to obviate the need for this examination at the time of the announcement or prior to its administration. A certification was issued on March 7, 2014 containing the names of all six eligibles. The appointing authority returned the certification on September 24, 2014 and indicated that it would not make a permanent appointment since Good was no longer serving in the title. The appointing authority thereafter requested a waiver of the appointment requirement and the costs because it was "under budgetary constraints."

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. No further arguments were received.

A review of agency records reveals that Good's provisional service was terminated, effective August 29, 2014. Agency records also reveal there are

currently no other employees serving provisionally pending open competitive examination procedures in the subject title in Newark.

### 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 Good to the subject title. However, after a complete certification was issued, the appointing authority requested an appointment waiver because the provisional was no longer serving provisionally in the subject title. Therefore, since no one is currently serving provisionally, pending open-competitive examination procedures, in the subject title with the appointing authority, there is sufficient justification for an appointment waiver.

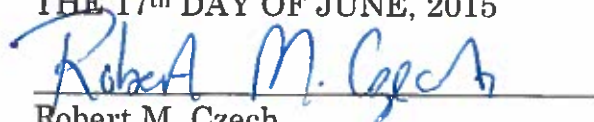
Although an appointment waiver is granted in this matter, both *N.J.S.A.* 11A:4-5 and *N.J.A.C.* 4A:10-2.2(a)2 state that if an appointing authority receives permission not to make an appointment, it can be ordered to reimburse the costs of the selection process. While administering examinations and 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 the instant situation, the appointing authority merely stated that Good was no longer serving provisionally at the time of the certification and that due to fiscal constraints, it requested that the costs of the selection process be waived. However, although the Commission is sympathetic to the appointing authority's situation, its economic problems, while serious, are no less than those encountered by many, if not most other New Jersey county and municipal governments. Furthermore, reimbursement of selection costs pursuant to *N.J.S.A.* 11A:4-5 and *N.J.A.C.* 4A:10-2.2(a)2 does not place an undue burden on the appointing authority or prohibit it from looking towards other cost saving measures. 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 the request for a waiver of the appointment requirement be granted. Additionally, the 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 17<sup>th</sup> DAY OF JUNE, 2015



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