



STATE OF NEW JERSEY

In the Matter of Bayron Delcid,
Campus Police Officer Recruit
(S9999A), Stockton State University

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

CSC Docket No. 2023-287

Administrative Appeal

ISSUED: May 3, 2023 (HS)

Bayron Delcid appeals his non-appointment from the eligible list for Campus Police Officer Recruit (S9999A), Stockton State University.

The appellant, a veteran, took and passed the open competitive examination for Campus Police Officer Recruit (S9999A), which had a closing date of August 31, 2019. The resulting eligible list promulgated on May 15, 2020 and expired on November 9, 2022. The appellant’s name was certified to Stockton State University on May 4, 2022. In disposing of the certification, the appointing authority requested that the appellant’s name be retained on the eligible list for future certifications. The supporting documentation submitted by the appointing authority reflected the following. The appellant responded to the notice of certification stating that he was “very interested” in the position, and his response was received by the appointing authority on May 16, 2022. The appellant was interviewed on June 1, 2022. Subsequently, the appellant and appointing authority had an e-mail exchange over the July 13-15, 2022 period. On July 13, 2022, the appointing authority asked the appellant if he was still interested and advised him that it would now schedule his physical and psychological examinations. The first part of the psychological examination was to be held on July 19, 2022, and the second part was to be held on a different day. On July 14, 2022 at 2:35 p.m., the appellant responded as follows:

Yes I’m still interested in this job opportunity, I need to let you know that right now I’m still on military orders until July 30th, [2022] . . . Do

you think we can reschedule the [psychological] exam and physical? I can do it as soon as I get back.

At 2:55 p.m., the appointing authority responded indicating that it would have to check with the psychologist. On July 15, 2022 at 2:18 p.m., the appellant wrote to the appointing authority as follows:

I'm reaching out before the weekend, please let me know of any updates whenever possible. Remember any rescheduling should be after July 30, [2022] because I can't promise the Army will let me go any [e]arlier since that's when my o[r]ders end.

At 3:04 p.m., the appointing authority responded as follows:

[We are] still awaiting for the final outcome of your background check. [We] also need to inform NJ CSC the final outcome of our search using the list by the end of the month¹ so unless you do not pass the background check, [we] will just inform NJ CSC that we will keep you on the list for future openings.

Thank you for your interest and good luck in your future endeavors.

At 6:22 p.m., the appellant responded, "Thank you for the info, anything happens please let me know."

Agency records indicate that one lower-ranked veteran eligible on the May 4, 2022 certification was appointed, effective July 18, 2022. The disposition of the certification was recorded July 29, 2022.

On appeal to the Civil Service Commission (Commission), the appellant maintains that his disposition on the certification was completely untrue and that he has done everything asked of him to try to get this job. He states that he returned his background investigation package on June 8, 2022 and was told that it would be done by the end of July 2022. The appellant maintains that he was just waiting on those results, but he instead received his certification disposition notice stating that he was not selected for appointment at this time and that his name will remain on the eligible list for future certification until its expiration. The appellant contends that his July 14, 2022 communication shows that he was still interested.

In response, the appointing authority proposes that the appellant's disposition on the certification be amended to reflect that although he was interested and reachable for appointment, he was retained on the eligible list with another being appointed. The appointing authority proffers that it was able to appoint another eligible from the certification using the "Rule of Three."

¹ Agency records indicate that the certification disposition was not due until August 4, 2022.

CONCLUSION

At the outset, the Commission notes that there was no sufficient basis upon which the appointing authority could have requested that the appellant's name be retained on the eligible list for *future* certifications only. On multiple occasions, the appellant communicated his *current* interest: in responding to the notice of certification, the appellant stated he was "very interested;" he interviewed on June 1, 2022; he stated that he was "still interested" on July 14, 2022; and he followed up on July 15, 2022. It is true that in response to the appointing authority's telling the appellant that "unless you do not pass the background check, [we] will just inform NJ CSC that we will keep you on the list for future openings," he responded, "Thank you for the info, anything happens please let me know." However, that response did not provide a sufficient basis for the appointing authority to request that the appellant's name be retained on the eligible list for future certifications. The appellant's mere statement "Thank you for the info" could not reasonably be interpreted to mean that he was affirmatively agreeing to effectively take himself out of consideration for the current opportunity and be considered for future certifications only, especially given the context of all his preceding statements of unequivocal current interest and his request, in the very same e-mail, to "please let [him] know" if "anything happens." In short, the appellant never explicitly stated that he was only interested in future certifications. In responding to the instant appeal, the appointing authority suggests that the appellant's disposition on the certification may be amended to reflect that although he was interested and reachable for appointment, he was retained on the eligible list with another being appointed. It is to the issue of whether such amendment is possible here that the Commission proceeds.

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 on open competitive lists, disabled veterans and then veterans *shall be appointed* in their order of ranking (emphasis added).

N.J.A.C. 4A:4-4.6 provides:

- (a) Interested eligibles on military leave shall continue to be certified. **The appointing authority may consider such eligibles immediately available for appointment even though reporting for work may be delayed.**
- (b) On return from military duty, **an appointed eligible shall, after successful completion of the working test period, have the same rights, privileges, and obligations as if the eligible had served continuously in the title from the original effective date of appointment** (emphasis added).

The record reflects that the appellant, a veteran, was on military duty through July 30, 2022 and did not complete all aspects of preemployment processing. It

appears that, at a minimum, the physical and psychological examinations were yet to completed. The appellant had requested that these be rescheduled until after July 30, 2022, the date his military duty concluded. The appointing authority now proposes to amend the appellant's disposition on the certification to reflect that although he was interested and reachable for appointment, he was retained on the eligible list with another being appointed. However, although the appellant was on military duty, as an interested veteran, unless the appointing authority could have properly removed his name from the subject eligible list pursuant to *N.J.A.C.* 4A:4-4.7,² the appellant was entitled to be appointed and could not have been bypassed. *See 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. He also could not have been deemed unavailable. *See N.J.A.C.* 4A:4-4.6. Thus, as there was no request for his removal at the time of the initial certification disposition, the appellant should have been recorded as appointed on the certification effective July 18, 2022. However, this appointment would have been considered conditional, pending passing the preemployment processing for the position, which includes the background investigation and the physical and psychological examinations. In other words, the appointing authority should have returned the subject certification noting the appellant's appointment. Thereafter, once the appointing authority had the opportunity to fully complete the appellant's preemployment process upon his return from military duty, including sending him for physical and psychological examinations, if there was any basis for removal, it could have requested an amendment to the subject certification and provided the Division of Human Resource Information Services with the appropriate reason for removal and supporting documentation. If a removal was approved, the appellant would then have had an opportunity to appeal his removal.

It is acknowledged that at this juncture, the certification disposition has already been recorded. The appellant, however, remains entitled to a remedy for the reasons discussed, and his military duty apparently concluded on July 30, 2022. Because a lower-ranked eligible was appointed effective July 18, 2022 and the appellant is a veteran, his appointment is mandated, provided that he first passes an updated background investigation and successfully completes pre-employment processing. *See N.J.S.A.* 11A:4-8 and *N.J.S.A.* 11A:5-6.³ However, while the appointing authority must immediately appoint the appellant should he pass the updated background check and successfully complete pre-employment processing, it is not required to displace any currently employed individual in appointing the appellant.

ORDER

² The name of an eligible may be removed from an eligible list for various reasons as set forth in *N.J.A.C.* 4A:4-4.7.

³ It is of no moment that the appointed lower-ranked eligible happens to *also* be a veteran. Civil Service law and rules provide that on open competitive lists, disabled veterans and then veterans shall be appointed *in their order of ranking*. *See 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.

Therefore, it is ordered that the eligible list for Campus Police Officer Recruit (S9999A), Stockton State University be revived so that the appellant may continue with preemployment processing. Absent any disqualification issue ascertained through an updated background check, the appellant's appointment 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 permanent appointment date of July 18, 2022 for salary step placement and seniority-based purposes only. However, the Commission does not grant any other relief, such as back pay, except the enumerated relief.

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 MAY, 2023



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