



STATE OF NEW JERSEY

In the Matters of Alexandre Gabler,
Librarian 3 (M0424E), Elizabeth
Library

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

CSC Docket Nos. 2024-646 and
2024-1028

Administrative Appeal
List Removal Appeal

ISSUED: May 22, 2024 (HS)

Alexandre Gabler appeals the removal of his name from the eligible list for Librarian 3 (M0424E), Elizabeth Library, and requests other relief. These matters have been consolidated herein.

As background, Jeffrey Cupo received a provisional appointment to the title of Librarian 3, pending open competitive examination procedures, with the appointing authority, effective April 7, 2021. Subsequently, Cupo, a nonveteran, and the appellant, a disabled veteran, took and passed the open competitive examination for Librarian 3 (M0424E), which had a closing date of May 22, 2023. The resulting eligible list, consisting of their names only, promulgated on July 27, 2023 and expires on July 26, 2026. The appellant and Cupo respectively ranked first and second on the list. Both eligibles' names were certified to the appointing authority on July 31, 2023 (OL230987). In disposing of the certification, the appointing authority requested the removal of the appellant's name on the basis that he failed to respond to the certification notice and permanently appointed Cupo, effective October 16, 2023. The appointing authority returned the disposition of the certification on October 19, 2023, and it was recorded by this agency the next day, October 20, 2023.

On appeal to the Civil Service Commission (Commission), the appellant complains that Cupo was in a provisional appointment that lasted beyond the 12-month period noted in *N.J.S.A.* 11A:4-13b. He objects to the salary range that was noted in the examination announcement. He also insists that he in fact responded to the certification notice and was interviewed. With respect to the appellant's

interview and selection process, the appellant notes that Cupo himself participated and contends that this represented a major conflict of interest. The appellant argues that other than a failure to pass a required background check, there is no legitimate reason for the appointing authority to deny him a permanent Librarian 3 appointment. Per the appellant, he should receive a retroactive appointment with back pay and reimbursement for any monies he has spent in the course of his appeals on copying, postage, and other incidentals. He invites the Commission to consider sanctioning the appointing authority.

In response, the appointing authority, represented by Daniel M. Santarsiero, Esq., concedes that the appellant responded to the certification notice and was interviewed. However, it maintains that it attempted to schedule a second, follow-up interview, but the appellant did not respond to correspondence requesting him to appear for a second interview, where the parties would have discussed potential terms of employment and which would have included additional details not discussed in the first interview. This, per the appointing authority, left the interview and application process incomplete. The appointing authority explains that it provided a second interview to discuss some of the notable things about the position and responsibilities. Some of these terms of employment were planned for discussion during the appellant's second interview to explain some of the ways that the library functions. The second interview, according to the appointing authority, is designed to provide information for the applicant to allow that person to make an informed decision. The second interview was required by all for it to be known that the appellant would not necessarily be assigned to reference permanently and could be assigned to one of the branches of the library and that a long-term role in the reference division was not a guarantee and that he could be assigned to circulation from time to time. These are the kinds of things that were going to be discussed in the second interview, which did not occur on account of the appellant's not responding and later objecting to a second interview.

The appointing authority indicates that it is willing to hire the appellant for the title of Librarian 3. However, it insists that the salary is set by the appointing authority locally and is not subject to the appellant's personal salary requirements.

CONCLUSION

N.J.A.C. 4A:4-4.7(a)11 allows the Commission to remove an eligible's name from an eligible list for other valid reasons. *N.J.A.C.* 4A:4-6.3(b), in conjunction with *N.J.A.C.* 4A:4-4.7(d), provides that the appellant has the burden of proof to show by a preponderance of the evidence that an appointing authority's decision to remove his name from an eligible list was in error.

It is initially noted that the appointing authority has the authority and ability to require potential new hires to undergo preemployment processing to ensure that

the candidate is qualified for appointment. Such preemployment processing may include any and all conditions necessary for an appointing authority to assess a candidate's qualifications. Such information is a necessary and proper part of the appointment process and serves as an indication to both the appointing authority and the individual as to whether the appointment should proceed. *See In the Matter of Laura C. Bonilla* (MSB, decided September 7, 2005); *In the Matter of Bruce C. Cooke* (MSB, decided May 8, 2001); *In the Matter of James Smith* (MSB, decided April 24, 2001). The record reflects that the appointing authority attempted to schedule a second, follow-up interview to address terms of employment not discussed in the first but that the appellant did not respond to correspondence requesting him to appear for a second interview, leaving the interview and application process incomplete. Thus, although it is clear from the record that the appellant responded to the certification notice, the removal of his name from the subject eligible list was still justified due to his failure to complete preemployment processing, notwithstanding that Cupo participated in the appellant's interview.¹

The Commission adds the following comments on other issues raised. The appellant's complaint that Cupo was in a provisional appointment that lasted beyond the 12-month period noted in *N.J.S.A.* 11A:4-13b is no longer viable since, as of October 16, 2023, that was no longer the case. With respect to the appellant's claim for back pay and reimbursement for any monies spent in the course of these appeals on various incidentals, there is no basis for these remedies. *See N.J.A.C.* 4A:2-1.5. Finally, the Commission declines the invitation to sanction the appointing authority as there is no basis to do so in light of the totality of the record in this case.

ORDER

Therefore, it is ordered that these appeals be denied.

This is the final administrative determination in these matters. Any further review should be pursued in a judicial forum.

¹ To be clear, the Commission does not endorse such participation and cautions the appointing authority not to permit a similar situation to arise in the future. Nevertheless, as noted, the removal of the appellant's name from the eligible list remains appropriate based on his own failure to appear for the second interview and complete preemployment processing.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 22ND DAY OF MAY, 2024

Allison Chris Myers

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