



**STATE OF NEW JERSEY**

In the Matter of Sean Hendricks,  
Coordinator, Employment and  
Training Programs (PS1105N),  
Department of Labor and Workforce  
Development

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

Examination Appeal

CSC Docket No. 2024-630

**ISSUED: July 24, 2024 (HS)**

Sean Hendricks, represented by Paul T. Gregory, Esq., requests a make-up examination for Coordinator, Employment and Training Programs (PS1105N), Department of Labor and Workforce Development (Department).

As background, the appellant received a provisional appointment, pending promotional examination procedures, to the subject title, effective March 26, 2022. Subsequently, he applied for the subject promotional announcement, which issued on March 1, 2023 with a closing date of March 21, 2023. On May 1, 2023, the appellant requested, and was approved for, vacation leave for the August 28, 2023 – September 1, 2023 period. Candidates were sent notices dated August 3, 2023 informing them of the examination location and that the examination was scheduled for 6:00 p.m. on August 29, 2023. On August 16, 2023, the appellant requested a make-up examination on the basis that he would be away on vacation. The Division of Administrative and Employee Services denied the request on August 29, 2023 as not satisfying the established criteria, namely that the appellant's vacation was outside of New Jersey or any contiguous state. There were a total of 18 applicants for the subject examination that resulted in an eligible list of 10 names that promulgated on September 28, 2023 with an expiration date of September 27, 2026. It is noted that a certification consisting of all 10 names issued from the eligible list on January 24, 2024 (PS240166).

In his original appeal to the Civil Service Commission (Commission), the appellant maintained that he followed the process to request a make-up examination

and provided a copy of his approved vacation leave request. In a February 1, 2024 letter, the Division of Appeals and Regulatory Affairs advised the appellant that his circumstances did not meet the criteria for a make-up examination as his vacation was in New Jersey and that the matter was considered closed. In correspondence postmarked June 18, 2024, the appellant argued that he had insufficient lead time for the examination as he only received his notification to appear for the examination on August 14, 2023; that despite requesting a make-up examination on August 16, 2023 due to his prepaid vacation and leave approved more than three months earlier, this agency did not respond until 12 days later on the very date of the examination; and that upon hearing of the denial of his request while on vacation, he could not, upon two hours' notice, return to the examination site. The appellant maintains that the denial of his request is arbitrary and capricious based solely on the timing of the Division of Administrative and Employee Services' denial notice. He notes that he received the support of the Department's Commissioner, who appreciated that based on the circumstances of his receiving the denial on the date of the actual examination, that "when there is appeal or waiver authority granted to our department, we utilize it as much as possible for the benefit of workers, their families and our communities."

In addition, the appellant requests that he be permitted to continue serving provisionally in the subject title, pending his make-up examination. In support, the appellant provides an e-mail from Howard Miller, Senior Executive Service, who states that in his experience, discontinuation of a provisional appointment by this agency has not occurred if there is no one that is willing or eligible to replace the person in the current role. Miller indicates:

I have been assured that while our past experience in watching how positions were filled and tests executed are one set of experiences it is also not proper CSC practice. Specific to this circumstance proper CSC practice is to remove the person from the role they did not test for . . . In short our past experiences of what we have seen are wrong or were handled incorrectly and not in accordance with CSC policy.

## CONCLUSION

*N.J.A.C.* 4A:2-1.1(b) states that unless a different time period is stated, an appeal must be filed within 20 days after either the appellant has notice or should reasonably have known of the decision, situation, or action being appealed.<sup>1</sup>

*N.J.A.C.* 4A:4-2.9(a) provides, in pertinent part, that make-up examinations may be authorized for the following reasons: (1) error by this agency or appointing authority; (2) serious illness or disability of the candidate on the test date, provided

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<sup>1</sup> It is noted that pursuant to a rule modification, this timeframe is 60 days so long as the emergency declared pursuant to Executive Order No. 103 (Murphy, March 9, 2020) is in effect. 52 *N.J.R.* 971(a).

the candidate submits a doctor's certificate specifying that the candidate was not able to take the test on that day for medical reasons; (3) documented serious illness or death in the candidate's immediate family; (4) natural disaster; (5) prior vacation or travel plans outside of New Jersey or any contiguous state, which cannot be reasonably changed, as evidenced by a sworn statement and relevant documentation; (6) when required for certain persons returning from military service (*see N.J.A.C. 4A:4-4.6A*); and (7) other valid reasons.

*N.J.A.C. 4A:4-1.5(b)* provides that any employee who is serving on a provisional basis and who fails to file for and take an examination that has been announced for his or her title shall be separated from the provisional title. The appointing authority shall be notified by this agency and shall take necessary steps to separate the employee within 30 days of notification, which period may be extended by this agency for good cause.

In the instant matter, it is initially noted that the appellant's pursuit of this appeal is untimely. After receipt of his original appeal, in a February 1, 2024 letter, this agency advised the appellant that his circumstances did not meet the criteria for a make-up examination and the matter was considered closed. However, the record indicates that the appellant did not continue his pursuit of this appeal until June 18, 2024. Therefore, the appellant did not effectively request that this matter be reopened until more than four months after he was advised of the decision that this matter would be closed. *See N.J.A.C. 4A:2-1.1(b)*.

Regardless, even if the Commission was to consider this matter, the Division of Administrative and Employee Services correctly determined that the appellant was not eligible for a make-up examination. Although the appellant's argument in this appeal rests primarily on procedural issues such as the timing of the Division of Administrative and Employee Services' denial notice, the pertinent regulatory provision is substantively clear: *N.J.A.C. 4A:4-2.9(a)5* states in relevant part that a make-up examination may be authorized for prior vacation or travel plans *outside of New Jersey or any contiguous state*. This provision is longstanding, and it has been in effect since well before the appellant applied for the subject examination. The appellant's plans were in New Jersey, so *N.J.A.C. 4A:4-2.9(a)5* is not grounds for relief. He was faced, essentially, with a scheduling conflict, which is not a valid reason for a make-up. *See, e.g., In the Matter of Rose Messere* (MSB, decided May 5, 2004) and *In the Matter of Douglas Green, Elida Ortiz and Elba Rosario-Diaz* (MSB, decided July 13, 2011). Merely noting that the vacation was preplanned and prepaid is not sufficient. In fact, the appellant did not provide any documentation indicating that he had prepaid anything or concerning where he was. As there are no extenuating circumstances with respect to the appellant's plans evident in the record, the Commission also declines to grant a make-up examination pursuant to *N.J.A.C. 4A:4-2.9(a)7*.

Further, the appellant requests that he be permitted to continue serving provisionally in the subject title. However, the Commission notes that it has denied his request for a make-up examination; the examination process produced an eligible list of 10 names; and the list was certified against the appellant's provisional appointment. As such, the Department shall take the necessary steps to separate the appellant from his provisional appointment to the subject title no later than 30 days from receipt of this decision.

### ORDER

Therefore, it is ordered that this appeal be denied. The Department of Labor and Workforce Development shall take the necessary steps to separate Sean Hendricks from his provisional title of Coordinator, Employment and Training Programs no later than 30 days from receipt of this decision.

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 24<sup>TH</sup> DAY OF JULY, 2024




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