



STATE OF NEW JERSEY

In the Matter of Alexandre Gabler,
Elizabeth Library

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

CSC Docket No. 2024-2155

Administrative Appeal

ISSUED: July 24, 2024 (HS)

Alexandre Gabler requests the immediate discontinuation of the provisional appointment of U.T. to the title of Librarian 4 with Elizabeth Library.

As background, U.T. received a provisional appointment to the title of Librarian 4, pending open competitive examination procedures, with the appointing authority, effective June 1, 2021. *See N.J.S.A. 11A:4-13b* (provisional appointment may be made only in the absence of a complete certification if appointing authority certifies that appointee meets minimum qualifications for title at time of appointment and that failure to make provisional appointment will seriously impair the appointing authority's work). On January 1, 2024, an open competitive examination for Librarian 4 (M0066F) issued with a closing date of January 22, 2024. U.T. and the appellant, a disabled veteran, were admitted and took the examination, which was administered via the Supervisory Test Battery on April 25, 2024. The resulting eligible list, consisting solely of the appellant's name, promulgated on June 6, 2024 and expires on June 5, 2026. The appellant's name was certified to the appointing authority on June 10, 2024 with a disposition due date of September 10, 2024 (OL240654).

In his appeal to the Civil Service Commission (Commission), postmarked April 16, 2024, the appellant complains that U.T. has been in a provisional appointment lasting beyond the 12-month period noted in *N.J.S.A. 11A:4-13b* ("In no case shall any provisional appointment exceed a period of 12 months."). He calls for this agency to "drop every provisional appointee immediately that is in violation of the twelve

month statute” and insists that *Handabaka v. Div. of Consumer Affairs*, 167 N.J. Super. 12 (App. Div. 1979) is not applicable. In that case, the court stated that it was not requiring the wholesale dismissal of all provisional employees who have served beyond the statutory limitation because such course of action could seriously impede the disposition of essential public matters. *Handabaka*, 167 N.J. Super. at 14. The appellant argues that *Handabaka* is not applicable because the case was decided under former N.J.S.A. 11:10-3, a provision of former Title 11, Civil Service, that prohibited any provisional employee from serving more than four months as such in any one fiscal year, and the law changed in 1986 with the adoption of Title 11A, Civil Service.

The appellant maintains that U.T.’s provisional appointment on June 1, 2021 has caused him cognizable injury because he was qualified for the title of Librarian 4 as of that date, he was desirous of the appointment, and U.T. has been able to accrue supervisory library experience since that date,¹ while he has not. Accruing this supervisory experience, per the appellant, now makes U.T. eligible for job postings for the titles of Assistant Library Director and Library Director, while he is not. He avers that it is “more likely than not” he would be currently fully eligible to apply for Assistant Library Director and Library Director positions, and he “more than likely” would have accrued two years or more of supervisory experience working as a permanent Librarian 4 at the Elizabeth Public Library. As an example, the appellant identifies the open competitive examination announcement for Library Director (M0705F), East Orange, which closed on May 21, 2024 and required, among other things, five years of library experience including work in the service, circulation, and reference areas, two years of which shall have been in a supervisory capacity.² The announcement also indicated a salary of \$136,000, which the appellant states “has [been] taken . . . from [himself] and [his] family, out of the mouths of [his] children!” The appellant maintains that the failure to observe N.J.S.A. 11A:4-13b has cost “[himself] and [his] family \$10,000’s if not \$100,000’s in salary and benefits” and notes that the New Jersey Library Association’s recommended salary range for a Library Director is \$92,177 - \$175,135. He sarcastically “applaud[s]” this agency for a “[f]antastic job . . . !”

Additionally, the appellant invokes the federal Vietnam Era Veterans’ Readjustment Assistance Act (VEVRAA); complains about the movement of job titles from the competitive division to the noncompetitive division, which, according to him, strips and dilutes veterans preference; and suggests that a class action lawsuit against this agency may be in order. He claims that this agency is “responsible for

¹ Per the definition section of the job specification for Librarian 4, the incumbent, under general supervision, oversees a variety of library services in one or more functional areas of a library or library system requiring substantial professional knowledge of and experience with librarianship theories, principles, and practices; supervises library staff, services, programs, and operations; and performs related duties as required.

² Agency records indicate that U.T. did not apply for this examination.

Veterans turning to alcohol and drugs, Veterans committing crimes of desperation, Veteran Homelessness, Veterans taking their own lives, and countless other sufferings.” According to the appellant, what this agency has done to veterans in the State is a “sin.” He declares that “[s]ince 1775 when George Washington took his oath as Commander of the Continental Army; it was and always will be until this country ceases to exist the men and women who have donned the uniform to protect this country that are responsible for everything! Full stop!!!”

CONCLUSION

Initially, the Commission rejects the appellant’s call to “drop every provisional appointee immediately that is in violation of” the 12-month limitation on a provisional appointment. *See N.J.S.A. 11A:4-13b*. The Superior Court, Appellate Division has stated that “[w]holesale dismissal of all provisional employees who have served beyond the four month limitation could seriously impede the disposition of essential public matters. As a practical matter, we are not presently requiring any such course of action.” *Handabaka, supra*, 167 *N.J. Super.* at 14. *Handabaka* continues to apply in construing current *N.J.S.A. 11A:4-13b*, notwithstanding that the case was decided under former *N.J.S.A. 11:10-3*. Current *N.J.S.A. 11A:4-13b* was derived from former *N.J.S.A. 11:10-3*. Presumably, the Legislature was aware of the court’s construction of *N.J.S.A. 11:10-3* and could have drafted *N.J.S.A. 11A:4-13b* to require the automatic immediate dismissal of a provisional employee who has served beyond the 12-month limitation, but it did not explicitly do so. The appellant did not cite any judicial decision that explicitly overrules *Handabaka*. Moreover, in *Melani v. Passaic County Bd. of Freeholders* (Docket No. PAS-L-318-04) (Law Div. May 29, 2007), *aff’d*, Docket No. A-5827-06T2 (App. Div. March 17, 2009), the Superior Court, Law Division cited *Handabaka* for the proposition that to dismiss all of the provisional employees employed in excess of *12 months* could seriously impede the disposition of essential public matters. The Law Division also recognized that such action could affect a long-term provisional employee who has performed faithfully and satisfactorily and thus be deprived of employment through no fault of their own. *See Kyer v. City of East Orange*, 315 *N.J. Super.* 524, 527 (App. Div. 1998) and *Melani v. County of Passaic*, 345 *N.J. Super.* 579, 588, 589 (App. Div. 2001).

With respect to U.T.’s provisional appointment to Librarian 4, the appellant lacks standing to challenge her June 1, 2021 appointment. Not only is the challenge untimely, *see N.J.A.C. 4A:2-1.1(b)*, *N.J.A.C. 4A:4-1.5(a)* provides an appointing authority with the discretion to make provisional appointments until a competitive examination and eligible list can be promulgated. This approach balances both the immediate needs of an appointing authority to staff critical positions with the underlying purpose of the Civil Service system to ensure that permanent appointments are made on the basis of merit and fitness. An employee does not have any vested right to a provisional appointment. Further, an appointing authority is not required to give preference to a disabled veteran or a veteran when making

provisional appointments. *See N.J.A.C. 4A:5-2.1(d), N.J.A.C. 4A:4-1.5, and In the Matter of Alexandre Gabler, Union Township Library* (CSC, decided October 11, 2023). The appellant's argument that he has been injured because U.T. has been able to accrue supervisory library experience serving in the title of Librarian 4 since June 1, 2021, while he has not, is flawed because the argument again assumes that the appellant was otherwise entitled to receive the provisional appointment to Librarian 4 on June 1, 2021. However, as noted above, he was not.

The appellant further contends that he has been injured because he "more than likely" would have accrued two years or more of supervisory experience working as a permanent Librarian 4 at the Elizabeth Public Library and be currently fully eligible to apply for Assistant Library Director and Library Director positions. The appellant identifies the open competitive examination announcement for Library Director (M0705F), East Orange, which closed on May 21, 2024 and required, among other things, five years of library experience including work in the service, circulation, and reference areas, two years of which shall have been in a supervisory capacity. The appellant's contention in this regard is not persuasive because it rests on a speculative chain of past events. Specifically, the claim calls for speculation that the appellant would have received a permanent appointment to the title of Librarian 4 at the Elizabeth Public Library on or about May 21, 2022 and remained in the position to the May 21, 2024 closing date for the M0705F announcement. Further, as M0705F was an *open competitive* examination, it did not require service with the Elizabeth Public Library. Moreover, agency records indicate that U.T. did not apply for the M0705F announcement. As such, this claim of injury cannot be credited.

The Commission notes that as of June 6, 2024, an eligible list for Librarian 4 (M0066F), Elizabeth Library, promulgated with only the appellant's name. Under *N.J.A.C. 4A:4-1.5(b)*, 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. U.T. did file for and take the examination. Moreover, the list was certified against her provisional appointment. As such, no further action with respect to U.T.'s appointment is warranted at this time.

Turning to VEVRAA, the Commission has already addressed its lack of jurisdiction. *See Gabler, supra* (noting that per federal regulations, complaint alleging violation of VEVRAA may be submitted to the Office of Federal Contract Compliance Programs directly; any Office of Federal Contract Compliance Programs regional, district, or area office directly; the Veterans' Employment and Training Service; or the Local Veterans' Employment Representative at the local employment service office). Concerning the movement of job titles from the competitive division to the noncompetitive division, this issue has nothing to do with the issue that prompted this appeal initially, but the Commission notes that it is statutorily authorized to reassign titles from the competitive to the noncompetitive division. *See N.J.S.A. 11A:3-2*. Qualified veterans have preference for appointment in the

noncompetitive division. *See N.J.S.A. 11A:5-8 and In the Matters of Alexandre Gabler, Librarian 1, Ocean County Library and Librarian 1, Trenton Library* (CSC, decided March 27, 2018) (Commission mandated appellant's appointment to whichever title he accepted).

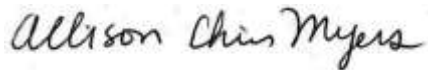
Any other of the appellant's claims and remarks do not here merit a response.

ORDER

Therefore, it is ordered that this appeal 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 24TH DAY OF JULY, 2024



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