



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. 2025-83 and
 2025-84

Requests for Reconsideration

ISSUED: February 5, 2025 (HS)

Alexandre Gabler requests reconsideration of the final administrative action in *In the Matters of Alexandre Gabler, Librarian 3 (M0424E), Elizabeth Library* (CSC, decided May 22, 2024).¹

As background, Jeffrey Cupo received a provisional appointment to the title of Librarian 3, pending open competitive examination procedures, with Elizabeth Library, effective April 7, 2021. Subsequently, Cupo, a nonveteran, and the petitioner, a disabled veteran, took and passed the open competitive examination for Librarian 3 (M0424E). The resulting eligible list consisted of their names only, with the petitioner and Cupo respectively ranking first and second. Both eligibles' names were certified to the appointing authority. In disposing of the certification, the appointing authority requested the removal of the petitioner's name on the basis that he failed to respond to the certification notice and permanently appointed Cupo, effective October 16, 2023.

In the previous matter, the petitioner complained that Cupo had been in a provisional appointment that lasted beyond the 12-month period noted in *N.J.S.A. 11A:4-13b*. He also insisted that he responded to the certification notice and was interviewed. With respect to that interview, the petitioner noted that Cupo himself participated and contended that this represented a major conflict of interest. He

¹ The decision was also issued that same date.

argued that other than a failure to pass a required background check, there was no legitimate reason for the appointing authority to deny him a permanent Librarian 3 appointment. Upon the Civil Service Commission's (Commission) review, it noted that the appointing authority had the authority and ability to require potential new hires to undergo preemployment processing as 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. Here, the record reflected 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 petitioner did not respond to correspondence requesting him to appear for that second interview, leaving the interview and application process incomplete. Thus, although it was clear from the record that the petitioner had 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 petitioner's interview. In a footnote, the Commission noted that it did not endorse Cupo's participation in the interview and cautioned the appointing authority not to permit a similar situation to arise in the future. Nevertheless, the Commission continued in that footnote, the removal of the petitioner's name from the eligible list remained appropriate based on his own failure to appear for the second interview and complete preemployment processing. Additionally, the Commission deemed the petitioner's complaint regarding the length of Cupo's provisional appointment no longer viable since, as of October 16, 2023, he was no longer a provisional appointee.

In his requests for reconsideration, postmarked July 8, 2024, the petitioner, citing *N.J.S.A. 11A:5-6*, contends that a veteran should not have to "go through the exact same employment process that an Appointing Authority would go through when discerning a non-Veteran that may be hired under the Rule-of-Three;" seizes on the footnote in the prior decision to argue that the Commission ought to have gone further and ordered relief because his "lawful opportunity to participate in the selection and appointment process" was "obstruct[ed]," *N.J.A.C. 4A:10-1.1(c)*; and continues to complain about the length of Cupo's provisional service.

In response, the appointing authority, represented by Daniel M. Santarsiero, Esq., argues that the petitioner's request must be denied as the uncontroverted facts clearly establish that it sought to engage in a second interview. Specifically, the appointing authority sent the petitioner correspondence to that effect on September 4, 2023 with a follow-up on September 11, 2023, that gave the petitioner until September 18, 2023, to reply. Therefore, the appointing authority maintains that it was provided with the impression that the petitioner was not interested in the position any longer. In addition, the appointing authority argues that the Commission correctly held that the provisional hire status of Cupo was in fact rendered moot. Furthermore, Cupo's status is also a red herring because his status

as a provisional employee was not at all related to the petitioner's unilateral decision to forgo the follow-up interview, thereby removing himself from the hiring process.

CONCLUSION

N.J.A.C. 4A:2-1.6(a) provides that within 45 days of receipt of a decision, a party to the appeal may petition the Commission for reconsideration. *N.J.A.C.* 4A:2-1.6(b) provides that a petition for reconsideration shall be in writing signed by the petitioner or his or her representative and must show the following: (1) the new evidence or additional information not presented at the original proceeding, which would change the outcome and the reasons that such evidence was not presented at the original proceeding; or (2) that a clear material error has occurred. A review of the record reveals that reconsideration is not justified. Initially, the instant requests are untimely. In this regard, the prior decision was issued to the petitioner on May 22, 2024. However, the requests, postmarked July 8, 2024, were filed 47 days after receipt of the decision. The Commission nevertheless addresses the merits below for informational purposes.

The petitioner suggests that his veteran status entitled him to have the appointing authority provide him with some type of modified preemployment process, presumably one that exempted him from the second interview. However, the petitioner cites no substantive authority for this proposition. An appointing authority's authority and ability to require potential new hires to undergo preemployment processing is well-established and was discussed in the prior decision. The petitioner does point to *N.J.S.A.* 11A:5-6, which states: "Whenever a disabled veteran or veteran shall be certified to an appointing authority from an open competitive employment list *under the provisions of N.J.S.A. 11A:4-8*, the appointing authority shall appoint the disabled veteran or veteran in the order of ranking" (emphasis added). However, nothing in *N.J.S.A.* 11A:4-8, in turn, requires an appointing authority to appoint a disabled veteran or veteran eligible who is not an *interested* eligible. An eligible, veteran or not, who does not complete preemployment processing cannot be considered an interested eligible and may rightly be removed from an open competitive list on that basis. See *N.J.A.C.* 4A:4-4.7(a)11. Moreover, the Commission has in the past specifically upheld the removal of veterans from open competitive lists based on a failure to complete preemployment processing. See, e.g., *In the Matter of Ralph Moschella, Jr., License Inspector (M0180P), Atlantic City* (CSC, decided October 22, 2014) (failure to attend interview). Thus, *N.J.S.A.* 11A:5-6 does not entitle the petitioner to any relief as his disabled veteran preference rights were not adversely impacted in this case.

The petitioner also highlights the footnote in the prior decision where the Commission noted that it did not endorse Cupo's participation in the interview and cautioned the appointing authority not to permit a similar situation to arise in the future. The petitioner essentially argues that this footnote demonstrates that the

Commission did not go far enough and that it should have ordered relief because his lawful opportunity to participate in the selection and appointment process had allegedly been obstructed. The Commission was not obligated to go any further because, Cupo's participation notwithstanding, the petitioner's candidacy was proceeding in the normal course. In this regard, the appointing authority invited the petitioner for the second interview, the innocuous purposes of which it explained in some detail in the prior proceedings; followed up with him one week later; and then allowed him one full additional week to reply. This is hardly suggestive of an appointing authority attempting to "obstruct a person's lawful opportunity to participate in the selection and appointment process." In other words, whatever the merits of the appointing authority's decision to have Cupo participate in the interview, such participation in itself objectively had no detrimental impact on the petitioner's candidacy, which, again, remained active by all accounts until the petitioner effectively took himself out of consideration by failing to continue the preemployment process. The petitioner's own inaction could not entitle him to any relief.

Further, while the petitioner continues to complain about the length of Cupo's provisional service, the Commission reiterates that this complaint is no longer viable.


Accordingly, the petitioner has not met the standard for reconsideration as he has not shown that a clear material error has occurred or presented new information that would change the outcome.

ORDER

Therefore, it is ordered that these requests for reconsideration be denied.

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

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 5TH DAY OF FEBRUARY, 2025



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