

CSC
B-21



STATE OF NEW JERSEY

In the Matter of Carlye Lamarca,
Technical Assistant, Contract
Administration, Department of Labor
and Workforce Development

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

Administrative Appeal

CSC Docket No. 2014-3077

ISSUED: SEP 04 2014 (EG)

Carlye Lamarca requests that she receive a permanent appointment to the title of Technical Assistant, Contract Administration.

As background, in the Civil Service Commission (Commission) decision *In the Matter of Management Assistant and Senior Management Assistant, Department of Children and Families* (CSC, decided December 4, 2014) the Commission made certain titles non-competitive for one pay period to effectuate permanent appointments for the individuals indicated in the appeal. Specifically, the decision stated "Moreover, this extraordinary relief is limited to the positions listed and is based solely on the facts of this case and may not be used as precedent in any other proceeding." Subsequently, the Division of Classification and Personnel Management (CPM) erroneously issued a Common Title Memorandum to all Departments indicating that the titles listed in *In the Matter of Management Assistant and Senior Management Assistant, Department of Children and Families, supra*, were being made non-competitive. Thereafter, CPM issued a corrected Common Title Memorandum limiting the non-competitive designation to those listed in the Commission's decision. Further, an examination for Technical Assistant, Contract Administration (S0277R) was announced. The examination was held on April 24, 2014. The list promulgated on May 22, 2014 with five eligibles and expires on May 21, 2017. The list has not yet been certified.

In the instant matter, Lamarca was provisionally appointed to Technical Assistant, Contract Administration with the Department of Labor and Workforce Development (DL&WD) on September 24, 2012. Thereafter, on December 14, 2013,

DL&WD acted upon the erroneously issued Common Title Memorandum and permanently appointed Lamarca to the subject title. On appeal, Lamarca argues that the Commission should "honor her non-competitive appointment." She argues that DL&WD acted in good faith based on CPM's notice. Further, Lamarca indicates that she never received the examination announcement for Technical Assistant, Contract Administration (S0277R). Lamarca also questions why the individuals listed in the Commission's decision are receiving preferential treatment and being allowed to keep their permanent appointments.

In support, DL&WD argues that on December 2013, it received the Common Title Memorandum indicating that the Technical Assistant, Contract Administration title had been reallocated to the non-competitive division. It asserts that since Lamarca was serving provisionally in the subject title, her appointment was converted to a permanent non-competitive appointment and she began serving her working test period. Additionally, it contends that it received the corrected Common Title Memorandum after it had requested the cancellation of the open competitive examination for Technical Assistant, Contract Administration and after Lamarca's appointment. Further, DL&WD indicates that it is now aware that the Common Title Memorandum was issued in response to the decision *In the Matter of Management Assistant and Senior Management Assistant, Department of Children and Families, supra*, and that the Common Title Memorandum was only supposed to have been issued to the Department of Children and Families. However, it contends that Lamarca's permanent appointment should remain in effect due to the administrative error in issuing the Common Title Memorandum to all departments. Moreover, DL&WD asserts that it acted in good faith. Finally, DL&WD argues that Lamarca is deserving of a permanent appointment as she has a very strong work ethic, is conscientious, a dedicated team member, and has learned two very different grant programs in a very short amount of time.

CONCLUSION

Initially, the Commission notes that no vested or other rights are accorded by an administrative error. See *Cipriano v. Department of Civil Service*, 151 N.J. Super. 86 (App. Div. 1977); *O'Malley v. Department of Energy*, 109 N.J. 309 (1987); and *HIP of New Jersey v. New Jersey Department of Banking and Insurance*, 309 N.J. Super. 538 (App. Div. 1998). Additionally, *In the Matter of Management Assistant and Senior Management Assistant, Department of Children and Families, supra*, was clearly restricted to the positions listed in the decision for specific employees within the Department of Children and Families. The individuals received this extraordinary treatment since the Commission deemed it appropriate under the specific circumstance presented. No such extraordinary circumstances have been presented in the present matter. In order to attain permanent status in a career service competitive division title, an individual must pass an examination and be appointed from an eligible list. Moreover, Lamarca is not entitled to any

relief based on the administrative error. Therefore, the request that Lamarca be permanently appointed is denied.

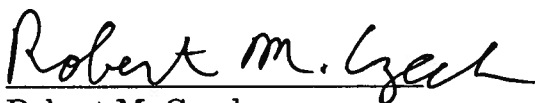
With regard to the Technical Assistant, Contract Administration (S0277R) examination, Lamarca has indicated that she never received the notification for this examination. Further, the Commission notes that even if Lamarca had received the notice, it would have been reasonable for her to ignore it as she believed she had been permanently appointed. *N.J.A.C. 4A:4-2.9(a)1* provides that make-up examinations may be authorized due to an error by the Commission or appointing authority. Accordingly, the Commission finds that since she filed for and has been found eligible for the examination, Lamarca should be given a make-up examination for Technical Assistant, Contract Administration (S0277R) as soon as possible.

ORDER

Therefore, it is ordered that Carlye Lamarca's request for a permanent appointment to Technical Assistant, Contract Administration (S0277R) be denied. Further, it is ordered that Carlye Lamarca receive a make-up examination for Technical Assistant, Contract Administration (S0277R).

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 SEPTEMBER, 2014



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

c: Patricia Moran
Mary Fitzgerald
Carlye Lamarca
Kenneth Connolly
Dan Hill
Joseph Gambino