



STATE OF NEW JERSEY

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

In the Matter of Research Assistant
Criminal Information (M0592V), City
of East Orange

Appointment Waiver

CSC Docket No. 2019-2103

ISSUED: JULY 1, 2019

(ABR)

The City of East Orange requests permission not to make an appointment from the March 19, 2018 certification for Research Assistant Criminal Information (M0592V).

The record reveals that the appointing authority provisionally appointed, pending open-competitive examination procedures, Anthony Paglucci to the title of Research Assistant Criminal Information, effective August 1, 2016. As a result of this provisional appointment, an examination was announced with a closing date of August 7, 2017. The resulting eligible list of nine names, including Paglucci as the sixth-ranked eligible, promulgated on March 15, 2018 and expires on March 14, 2021. The appointing authority took no action to obviate the need for examination at the time of the announcement or prior to the administration of the examination. On March 19, 2018, the names of six eligibles, including Paglucci, were certified to the appointing authority from the subject eligible list. The appointing authority failed to return the subject certification for proper disposition. As a result, the Division of Agency Services (Agency Services) issued a Notice of Violation on July 23, 2018 and Salary Disapproval Order on August 28, 2018 to the appointing authority. Thereafter, the appointing authority returned the certification and requested a waiver of the appointment requirement based upon budgetary constraints. Specifically, the appointing authority stated that when it initially requested the subject certification it was in the process of transitioning under a new Director of Public Safety and that it had intended to move Paglucci into the title of Principal Program Development Specialist Criminal Justice and appoint two of the other eligibles to the title of Research Assistant Criminal Information. It indicated

that although it was able to appoint Paglucci to the Principal Program Development Specialist Criminal Justice title, the budget enacted after the March 19, 2018 certification did not provide funding to make any appointments from the subject certification. The appointing authority stated that it may request another certification for the subject title if its budget allows it to do so prior to the expiration of the subject eligible list on March 14, 2021.

The appointing authority's request for an appointment waiver was acknowledged, and it was advised that if its request were granted, it could be assessed for the costs of the selection process in the amount of \$2,048.00. It is noted that on May 14, 2019, the appointing authority remitted a check in the amount of \$2,048.00 for the costs associated with the selection process. However, it provided no further arguments.

Agency records indicate that there are currently no individuals in the subject title with the appointing authority. Agency records also indicate that effective August 1, 2018, Paglucci was provisionally appointed to the title of Principal Program Development Specialist Criminal Justice, pending open-competitive examination procedures.¹

A review of the job specification for Research Assistant Criminal Information reveals that an individual in that title conducts research and statistical studies to compile and report information on unit programs. A review of the job specification for Principal Program Development Specialist Criminal Justice reveals that an individual in that title performs unusually difficult and complex tasks involved in preparing plans for the development, promotion and implementation of programs or projects to improve judicial and law enforcement procedure.

CONCLUSION

In accordance with *N.J.S.A.* 11A:4-5, once the examination process has been initiated due to the appointment of a provisional employee or due to an appointing authority's request for a list to fill a vacancy, the appointing authority must make an appointment from the resulting eligible list if there are three or more interested and eligible candidates. The only exception to this mandate may be made by the Civil Service Commission for a valid reason such as fiscal constraints.

In the instant matter, the examination for the subject title was generated as a result of the provisional appointment of Paglucci. However, after a complete certification was issued, the appointing authority requested an appointment waiver. It stated that due to financial constraints it could not make a permanent

¹ An open-competitive examination for Principal Program Development Specialist Criminal Justice (M0123A) was announced on January 1, 2019 with a closing date of January 22, 2019. The eligible list has not yet promulgated.

appointment to the subject title. Specifically, it asserted that the budget that was approved after the subject certification was issued, failed to provide the expected funding for vacancies in the subject title. Moreover, it maintained that it had planned to appoint Paglucci to a more appropriate title. In this regard, agency records indicate that Paglucci was appointed provisionally pending open-competitive examination procedures to the title of Principal Program Development Specialist Criminal Justice, effective August 1, 2018. A review of the relevant job specifications indicates that an individual in the title of Research Assistant Criminal Information performs sufficiently different duties than an individual in the title of Principal Program Development Specialist Criminal Justice. Moreover, there are no employees serving provisionally in the subject title with the appointing authority. Under these circumstances, the appointing authority has presented adequate justification for granting an appointment waiver.

Although the appointment waiver is granted, both *N.J.S.A. 11A:4-5* and *N.J.A.C. 4A:10-2.2(a)2* state that if an appointing authority receives permission not to make an appointment, it can be ordered to reimburse the costs of the selection process. While administering examinations and providing the names of eligible job candidates to the jurisdictions under the Civil Service system are two of the primary activities of this agency, these costly efforts are thwarted when appointing authorities fail to utilize the resulting eligible lists to make appointments and candidates have needlessly expended their time, effort and money to take these examinations in hopes of being considered for a permanent appointment. Here, although the appointing authority has shown a valid reason for not making an appointment from the subject eligible list, it has failed to provide a sufficient basis for not being charged the costs of the selection process which produced the subject eligible list. Moreover, the appointing authority submitted a check in the amount of \$2,048.00 for the costs of the selection process. Therefore, since the appointing authority has conceded that it is responsible for those costs, it is appropriate that the appointing authority be assessed for the costs of the selection process.

ORDER

Therefore, it is ordered that the request for the waiver of appointment be granted. Additionally, the Civil Service Commission orders that the City of East Orange be assessed for the costs of the selection process in the amount of \$2,048.00, but notes that these costs have already been remitted.

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 26TH DAY OF JUNE, 2019

Deirdre' L. Webster Cobb

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Chairperson
Civil Service Commission

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