

STATE OF NEW JERSEY

In the Matter of Clerk 4 (M0303R), City of Plainfield

CSC Docket No. 2014-2546

FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION

Appointment Waiver

ISSUED: AUG 1 5 2014

(WR)

The City of Plainfield requests permission not to make an appointment from the August 13, 2013 certification for Clerk 4 (M0303R).

The record reveals that on December 5, 2012, the appointing authority provisionally appointed Kishon Ridley, pending open competitive examination procedures, to the subject title. As a result of this provisional appointment, an examination was announced with a closing date of April 22, 2013. The examination resulted in an eligible list of 14 individuals, which promulgated on August 8, 2013 and expires on August 7, 2016. Ridley was found ineligible for the examination.1 The appointing authority took no action to obviate the need for the examination at the time of the announcement or prior to the administration of the examination. A certification was issued on August 13, 2013. On April 4, 2014, the appointing authority returned the certification and requested an appointment waiver.

In its request for an appointment waiver, the appointing authority indicates that funding for the subject position was eliminated, and as a result, Ridley was terminated, effective January 24, 2014. Additionally, the appointing authority states that it effectuated layoff procedures on November 18, 2013.² Finally, the appointing authority requests a waiver of the associated costs of the selection process.

The appointing authority's request for an appointment waiver was acknowledged, and it was advised that if its request were granted, it could be

¹ Ridley appealed the finding of her ineligibility, but was denied.

² Agency records indicate that one individual was laid off on November 19, 2013.

assessed for the costs of the selection process in the amount of \$2,048. No further arguments were received.

Agency records indicate that currently there are no individuals in the subject title with the appointing authority.

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 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 for a valid reason such as fiscal constraints.

In the instant matter, the examination for the subject title was generated as the result of the provisional appointment of Ridley. However, after a complete certification was issued, the appointing authority requested an appointment waiver due to budgetary constraints and noted that it had recently initiated layoff procedures. Additionally, the appointing authority notes that Ridley was separated from employment, effective January 24, 2014. Moreover, there are no employees serving provisionally in the subject title with the appointing authority. Therefore, there is sufficient justification for an appointment waiver.

Although an appointment waiver is granted in this matter, both N.J.S.A. 11A4-5 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 for 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, efforts and money to take these examinations in hopes of being considered for a permanent appointment. Thus, although the request for a waiver is granted, it is appropriate that the appointing authority be assessed for the costs of the selection process. However, a review of agency records reveal that the appointing authority instituted a layoff effective November 19, 2013 which affected one employee. Therefore, it would not be appropriate to assess the appointing authority for the total costs of the selection process in this particular matter. Rather, it is appropriate to assess partial costs in the amount of \$1,024. See e.g., in the Matter of Housing Assistance Technician (M1259W, City of Orange Housing Authority (MSB, decided January 16, 2008) (Appointment waiver request granted and partial costs assessed as the Housing Authority had undergone a layoff in May and June 2007, affecting eight employees).

ORDER

Therefore, it is ordered that the request for the waiver of appointment requirement be granted. Additionally, the Civil Service Commission orders that the appointing authority be assessed partial costs of the selection process in the amount of \$1,024 to be paid within 30 days of the issuance of this order.

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 13th DAY OF AUGUST, 2014

Robert M. Czech

Chairperson

Civil Service Commission

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