

B-22



STATE OF NEW JERSEY

In the Matter of Administrative
Analyst (C0561P), Mercer County

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2014-1826

Appointment Waiver

ISSUED: **AUG 15 2014** (WR)

Mercer County requests permission not to make an appointment from the April 22, 2013 certification for Administrative Analyst (C0561P).

The record reveals that on February 17, 2012, the appointing authority provisionally appointed DuEwa Edwards-Dickson, pending open competitive examination procedures, to the subject title. As a result of the provisional appointment, an examination was announced with a closing date of July 24, 2012. The examination resulted in an eligible list of 11 individuals, which promulgated on April 18, 2013 and expires on April 17, 2016. 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 April 22, 2013, listing Edwards-Dickson in the seventh position. On December 13, 2013, the appointing authority returned the certification and requested an appointment waiver.

In its request for an appointment waiver, the appointing authority indicates that the subject position has been eliminated due to budgetary constraints. Moreover, it asserts that it has recently effectuated layoff plans in the past few years, and intends to effectuate one in 2014.¹ The appointing authority also claims that Edwards-Dickson was released from the position in July 2013.² Finally, the

¹ The Division of Classification and Personnel Management indicates that it has not received a proposed layoff plan from the appointing authority for 2014.

² Agency records indicate that Edwards-Dickson was appointed to the unclassified position of Confidential Aide, effective July 19, 2013.

appointing authority states that should its fiscal constraints lessen in the future, it may appoint an eligible from the subject eligible list.

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. 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 Edwards-Dickson. However, after a complete certification was issued, the appointing authority requested an appointment waiver due to budgetary constraints and indicated Edwards-Dickson was no longer serving in the subject title. Subsequently, she was appointed to the unclassified title of Confidential Aide, effective July 19, 2013. Therefore, since the provisional is no longer serving in the subject title and there are no employees serving in the subject title with the appointing authority, there is sufficient justification for an appointment waiver.

Although the appointing authority's petition for a 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. However, the Civil Service Commission notes that the list in question will not expire until April 17, 2016 and the appointing authority indicates that it may be able to use the list in the future. Accordingly, under the particular circumstances of this matter, it would not be appropriate to assess the appointing authority for the costs of the selection process at this time. See e.g., *In the Matter of Supervising Administrative Analyst (PS1837I)*, Department of Corrections (MSB, decided March 22, 2006) (Not appropriate to assess the Department of Corrections for the costs of the selection process since it had indicated its intention to utilize the


eligible list prior to its expiration date). Nevertheless, in the event the appointing authority fails to utilize the list by its expiration date of April 17, 2016, this matter can be reviewed at that time to ascertain whether an assessment for the costs of the selection process should be made. *See e.g., In the Matter of Supervising Administrative Analyst (PS1837I), Department of Corrections* (MSB, decided April 11, 2007) (Costs assessed upon the expiration of the eligible list since the Department of Corrections failed to utilize the eligible list and there was no evidence that it had even attempted to utilize the eligible list).

ORDER

Therefore, it is ordered that the request for the waiver of the appointment requirement be granted and no selection costs presently be assessed.

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


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