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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION

In the Matter of Jerry Mays, Manager Golf Facilities (C0344U) Essex County

CSC Docket No. 2017-590

Examination Appeal

ISSUED: **DEC 2 3 2016** (RE)

Jerry Mays appeals the decision of the Division of Agency Services (DAS) which found that he did not meet the experience requirements for the open-competitive examination for Manager Golf Facilities (C0344U), Essex County.

The subject examination had a closing date of May 20, 2016 and was open to open to residents of Essex County, and contiguous counties, who met the experience requirements. These requirements included three years of experience in the management, operation, and supervision of a revenue producing facility or facilities, or a recreational or sport or entertainment center. The appellant was found to be ineligible based on a lack of experience. As no applicants were admitted, the examination was cancelled on August 26, 2016.

Mr. Mays listed three positions on his application: provisional Manager Golf Facilities from February 2013 to the May 2016 closing date, Maintenance Supervisor with a law firm, and Site Development Supervisor. Official records indicate that the appellant was a provisional Manager Golf Facilities from March 2016 to the May 2016 closing date. As he possessed only three months of applicable experience, he was found to be lacking two years, nine months of required experience.

On appeal, Mr. Mays argues that he has worked in his provisional position over three years and he submits a letter from the Director of Golf Operations in support of his appeal. The Director explains that the appellant has been doing the duties of a "temporary" Manager Golf Facilities since April 2013. He states that the prior Manager Golf Facilities had a long-term illness and had accumulated unused

vacation, compensation hours, and holiday hours that needed to be exhausted before his retirement, and that the appellant bridged the gap.

N.J.A.C. 4A:4-2.3(b) provides that applicants shall meet all requirements specified in the open competitive examination announcement by the closing date. N.J.A.C. 4A:4-2.1(f) provides that an applicant may amend a previously submitted application prior to the closing date.

CONCLUSION

The appellant was denied admittance to the subject examination since he lacked two years, nine months of required experience. When an applicant indicates experience in titles established under the State Classification Plan for an open competitive examination, it is appropriate to utilize official records of employment. In this case, the appellant indicates that he worked for more than three years as a Manager Golf Facilities, but his record indicates that he was given a provisional appointment pending open-competitive examination on March 18, 2016. The Director of Golf Operations confirms the appellant's employment there from April 2013.

Absent a compelling emergent situation, such as public safety, accepting and employing interested applicants prior to formal approval by the Civil Service Commission seriously circumvents the merit system and frustrates the legislative goals of appointments based on merit and fitness as demonstrated in a competitive testing situation. There was no compelling reason for the appellant to be employed by Essex County without a formal appointment. The types of appointment which exist in a Civil Service jurisdiction are clearly delineated in N.J.S.A. 11A:4-13. De facto appointments are not discussed or recognized in Title 11A. See In the Matter of Police Sergeant (PM3220S), Jersey City, 360 N.J. Super. 367 (App. Div. 2003), cert. denied, 178 N.J. 33 (2003). If the prior incumbent was out for extended periods of time, the appellant should have been given a formal temporary or interim appointment.

Nevertheless, the Director states that the appellant has worked as a Manager Golf Facilities since April 2013. The Commission is concerned that Essex County employed the appellant at that time without approval, especially given that he did not meet the requirements at that time. In this regard, his positions as a Maintenance Supervisor with a law firm and Site Development Supervisor are clearly inapplicable. Had Essex County sent the proper paperwork to the Commission in 2013, an open-competitive examination would have been announced, and Mr. Mays would not have been qualified to take it. Nevertheless, the record now establishes, as verified by the Director, that the appellant has over three years of applicable experience. It would be inequitable to ignore this information under these circumstances, especially since the appellant continues to serve provisionally and the

examination was cancelled due to a lack of eligible candidates. Accordingly, the Commission accepts the appellant's clarifying information, for eligibility purposes, and admits him to the subject examination. However, the Commission cautions Essex County to strictly follow Civil Service selection and appointment rules in the future. Failure to do so may subject it fines or other penalties pursuant to *N.J.A.C.* 4A:10.

ORDER

Therefore, it is ordered that this appeal be granted, the cancellation of the examination be rescinded, and the appellant's application processed.

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 21st DAY OF DECEMBER, 2016

Robert M. Czech Chairperson

Civil Service Commission

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