

B-16



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Assistant Engineer  
(M0719T), City of Clifton

Appointment Waiver

CSC Docket No. 2016-4388

ISSUED: **JAN 24 2017** (HS)

The City of Clifton requests permission not to make an appointment from the February 16, 2016 certification for Assistant Engineer (M0719T).

The record reveals that the appointing authority provisionally appointed Paula Montoya, pending open-competitive examination procedures, to the title of Assistant Engineer, effective August 10, 2015. As a result of this provisional appointment, an examination for the title was announced with a closing date of October 15, 2015. Montoya and four other applicants were admitted to the examination, which was processed as a qualifying examination, i.e., applicants who met the announced requirements were given the same score, except that veterans were ranked first. The resulting eligible list of five names promulgated on February 11, 2016 and expires on February 10, 2019. On February 16, 2016, the names of all five eligibles, including one veteran, were certified from the eligible list. The appointing authority returned the certification indicating that no appointments would be made and that Montoya was no longer serving provisionally in the subject title. Therefore, the appointing authority requested an appointment waiver.

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. In response, the appointing authority submitted a check for the selection costs. However, it submitted no additional arguments.

Agency records indicate that Montoya received a regular appointment to the noncompetitive title of Engineering Aide, effective October 3, 2016. Agency records also indicate that currently there are no individuals serving provisionally in the subject title with the appointing authority.

A review of the job specification for Assistant Engineer reveals that an individual in that title, under direction in one or more areas of engineering, performs routine field and office engineering work involved in the design, maintenance and construction of structures and/or systems and may conduct field inspections of a variety of public works construction projects. A review of the job specification for Engineering Aide reveals that an individual in that title, under direction, performs routine, repetitive and noncomplex field and office work as a chairman and rodman and assists in instrument operation, makes the less difficult mathematical calculations and reduces level notes.

### 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 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 Montoya. However, after a complete certification was issued, the appointing authority indicated that no appointment would be made since Montoya was no longer serving in the subject title. She was appointed to the title of Engineering Aide. A review of the relevant job specifications indicates that an Engineering Aide performs duties sufficiently different from those of an Assistant Engineer. In this regard, an Assistant Engineer, under direction in one or more areas of engineering, performs routine field and office engineering work involved in the design, maintenance and construction of structures and/or systems and may conduct field inspections of a variety of public works construction projects. However, an Engineering Aide, under direction, performs routine, repetitive and noncomplex field and office work as a chairman and rodman and assists in instrument operation, makes the less difficult mathematical calculations and reduces level notes. Moreover, there is no one currently serving provisionally in the subject title with the appointing authority. Accordingly, based on the foregoing circumstances, there is sufficient justification for 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

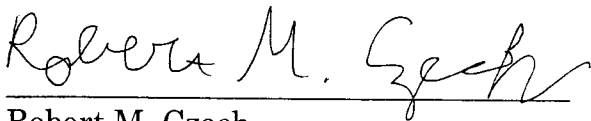
to make an appointment, it can be ordered to reimburse the costs of the selection process. While administering examinations and providing the names of eligible job candidates to the jurisdictions under the Civil Service system are two of the primary activities of this agency, these costly efforts are 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. In the instant situation, although valid reasons exist for not making an appointment from the subject eligible list, the appointing authority has failed to provide a sufficient basis for not being charged for the costs of the selection process that produced the subject eligible list. Moreover, the appointing authority submitted a check 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 appointment waiver be granted. Additionally, the Civil Service Commission orders that the appointing authority be assessed for the costs of the selection process but notes that the 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 18<sup>TH</sup> DAY OF JANUARY, 2017



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