

B 26



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Equipment Operator
(PM2346T), City of Clifton

Appointment Waiver

CSC Docket No. 2016-4387

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

The City of Clifton requests permission not to make an appointment from the March 28, 2016 certification for Equipment Operator (PM2346T).

The record reveals that the appointing authority provisionally appointed Neurys Medina, pending promotional examination procedures, to the title of Equipment Operator, effective August 1, 2015. As a result of this provisional appointment, an examination for the title was announced with a closing date of November 21, 2015. Four of the applicants, none of whom were veterans, were admitted to the examination, which was processed as an evaluation of education and experience. Medina applied for the examination but was deemed ineligible. The resulting eligible list of four names promulgated on March 24, 2016 and expires on March 23, 2019. On March 28, 2016, the names of all four eligibles were certified from the eligible list. Subsequently, the appointing authority requested an appointment waiver. In its request, the appointing authority indicated that a realignment of personnel and duties had allowed for a use of manpower more conducive to a more rigid and specific agenda and that Medina was no longer serving provisionally in the subject title.

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 \$1,114. In response, the appointing authority submitted a check for the selection costs. However, it submitted no additional arguments.

Agency records indicate that Medina was returned to his permanent title of Laborer 1, effective June 1, 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 Equipment Operator reveals that an individual in that title operates one or more types of gasoline or diesel powered equipment to perform assignments to push, pull, pile, lift and load materials; clears brush and debris; levels earth to rough specification on simple, rolling terrain and/or level surfaces; inspects equipment daily and reports unsafe conditions; services and makes minor emergency repairs in garage or field; and lubricates/oils equipment. A review of the job specification for Laborer 1 reveals that an individual in that title performs varied types of manual and unskilled laboring work and may drive a truck in connection with laboring work on occasion.

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 Medina. However, after a complete certification was issued, the appointing authority indicated that no appointment would be made since Medina was no longer serving in the subject title. He was returned to his permanent title of Laborer 1. A review of the relevant job specifications indicates that an individual in the title of Laborer 1 performs duties sufficiently different from those of an individual in the title of Equipment Operator. In this regard, an individual in the title of Equipment Operator operates one or more types of gasoline or diesel powered equipment to perform assignments to push, pull, pile, lift and load materials; clears brush and debris; levels earth to rough specification on simple, rolling terrain and/or level surfaces; inspects equipment daily and reports unsafe conditions; services and makes minor emergency repairs in garage or field; and lubricates/oils equipment. However, an individual in the title of Laborer 1 performs varied types of manual and unskilled laboring work and may drive a truck in connection with laboring work on occasion. 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.

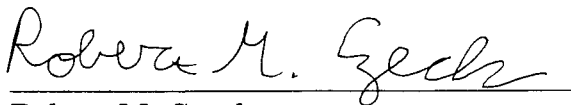
Although the appointment waiver is granted, both *N.J.S.A. 11A:4-5* and *N.J.A.C. 4A:10-2.2(a)2* state that if an appointing authority receives permission not to make an appointment, it can be ordered to reimburse the costs of the selection process. While administering examinations and providing the 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 18TH DAY OF JANUARY, 2017



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Director
Division of Appeals and Regulatory Affairs
Written Record Appeals Unit
Civil Service Commission
P.O. Box 312
Trenton, New Jersey 08625-0312

- c. Dominick Villano
Kelly Glenn
Records Center
Beth Wood