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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Gary Davis, Senior
Buyer (PS2709H), Department of
Health

Examination Appeal

CSC Docket No. 2017-584

ISSUED: JUN 09 2017 (ABR)

Gary Davis appeals the determination of the Division of Agency Services (Agency Services), which found that he did not meet the experience requirement for the promotional examination for Senior Buyer (PS2709H), Department of Health (DOH).

The subject examination was announced with a closing date of May 23, 2016 and was open to employees with a Bachelor's degree and three years of experience in the large-scale purchase of commodities, materials, equipment and/or supplies. Applicants who did not possess the required education could substitute additional experience, with 30 semester hour credits being equal to one year of experience. The subject examination was cancelled on August 26, 2016, as the appellant was the only applicant and he was deemed ineligible.

On his application, the appellant did not indicate that he possessed a Bachelor's degree. Therefore, pursuant to the substitution clause for education, the appellant needed to possess seven years of the above-indicated large-scale purchasing experience. On his application, the appellant indicated, in relevant part, that he served as a Senior Buyer from December 2015 to the closing date for the subject examination (May 2016); and as a Technical Assistant 1, Purchasing, from October 2008 to December 2015.¹ Agency Services credited the appellant with six months of applicable experience based upon his provisional service as a Senior

¹ Agency records indicate that the appellant was appointed to the title of Technical Assistant 1, Purchasing, effective September 13, 2008.

Buyer. However, Agency Services noted that any applicable duties that the appellant may have performed while serving in the title of Technical Assistant 1, Purchasing, would be considered out-of-title work. Consequently, he was deemed ineligible because he did not possess an additional six years and six months of applicable experience for the subject examination.

On appeal to the Civil Service Commission (Commission), the appellant argues that his service as a Technical Assistant 1, Purchasing, should be deemed applicable experience for the subject examination. The appellant maintains that due to a hiring freeze, he was assigned higher-level duties throughout his tenure in that title, with responsibilities that included performing direct purchasing of equipment, material, supplies and services for several DOH divisions. He also states that he reviewed and corrected purchase requests from DOH divisions with procurement staff.

The appointing authority, the appellant's immediate supervisor, David Meckel, Administrative Analyst 4, and his manager, Jackie Shelly, Manager 2, Fiscal Resources, support the appellant's appeal and confirm that he was assigned out-of-title duties involving large-scale purchasing as a Technical Assistant 1, Purchasing, from September 2008 to December 2015 due to a hiring freeze at the DOH. Both the appellant's supervisor and his manager state that the appellant facilitated complex procurements connected to the response to various public health crises, including contagious diseases and natural disasters. The appellant's manager notes that the appellant's purchasing work has routinely involved matters of public exigency, such as the procurement of goods needed for a program designed to distribute preparedness kits to individuals facing a high risk of exposure to the Zika virus. The appellant's supervisor adds that the appellant provides highly complex administrative, technical and procedural guidance to DOH staff.

Agency records indicate that the appellant continues to serve provisionally in the subject title.

CONCLUSION

N.J.A.C. 4A:4-2.6(a) provides that applicants must meet all requirements specified in a promotional examination announcement by the closing date. *N.J.A.C.* 4A:4-2.6(c) provides that, except when permitted for good cause, applicants for promotional examinations may not use experience gained as a result of out-of-title work to satisfy eligibility requirements.

Agency Services correctly determined that the appellant was ineligible for the subject examination because he lacked the requisite amount of creditable experience as of the May 23, 2016 closing date. On appeal, the appellant contends that he performed applicable duties while serving in the title of Technical Assistant

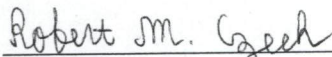
1, Purchasing. Additionally, the appellant's immediate supervisor, his manager, and the appointing authority have confirmed that he performed applicable large-scale procurement duties as a Technical Assistant 1, Purchasing. However, the appellant's performance of applicable duties while serving in the title of Technical Assistant 1, Purchasing, would be considered out-of-title work. Ordinarily, the Commission looks to whether or not "good cause" has been established in determining whether to grant or deny appeals involving out-of-title work. Generally, the Commission finds good cause where the record evidences that the examination situation is not competitive, no third parties are adversely impacted, and the appointing authority wishes to effect a permanent appointment and verifies that the appellant has performed the relevant duties which otherwise satisfy the eligibility requirements. *See In the Matter of John Cipriano, et al.* (MSB, decided April 21, 2004). In the instant matter, the examination situation is not competitive, as the subject examination was cancelled after the appellant, who was the only applicant, was deemed ineligible. Moreover, the Commission finds that no third parties will be adversely impacted. Finally, the appellant continues to serve provisionally in the subject title. As such, good cause exists in this particular case to accept the appellant's out-of-title work experience, for eligibility purposes only, and admit him to the examination.

ORDER

Therefore, it is ordered that this appeal be granted, the cancellation of the examination be rescinded and the appellant's application be 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 7TH DAY OF JUNE, 2017



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Chairperson

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