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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Judiciary Clerk 4
(S0089R), Vicinage 13, the Judiciary

Administrative Appeal

CSC Docket No. 2017-2673

ISSUED: JUN 09 2017 (SLK)

Vicinage 13 requests reconsideration of the decision rendered on December 21, 2016, which ordered Vicinage 13 to be assessed selection costs in the amount of \$8,285 after granting it permission to not make an appointment from the July 19, 2013 certification for Judiciary Clerk 4.

By way of background, the appointing authority failed to make an appointment from the complete July 19, 2013 (OS130504) certification. The appointing authority explained that its reason for filling this vacancy was due to an employee being diagnosed with a catastrophic illness and possibly not returning to work. Once it could not select a replacement from existing Judiciary personnel, the Administrative Office of the Courts (AOC) contacted the Division of Agency Services (Agency Services) to obtain authorization to make a non-competitive appointment since the Civil Service Commission (Commission) did not have an active eligible list for the subject title. It asserted that it requested to make a non-competitive appointment since it believed it would be unlikely to appoint another individual from a Statewide list prior to the list expiring. However, it presented that instead, Agency Services announced a Statewide open-competitive examination with a closing date on January 30, 2013. The test was administered on June 20, 2013. However, in July 2013, the appointing authority stated that the employee it initially thought it needed to replace informed it that she could return to work. Further, the appointing authority claimed that it requested that Agency Services not follow through with administering the subject examination. Regardless, on March 6, 2014 the appointing authority indicated that it expected to use the subject list.

Additionally, the Commission found that the appointing authority took no action to obviate the need for the examination at the time of the announcement or prior to its administration, even acknowledging that it did not request that the examination be cancelled until July 2013, which was after the test administration date. Consequently, although the Commission granted the appointing authority's request for an appointment waiver, it found it appropriate to assess the appointing authority with the costs of the selection process.

On reconsideration, the appointing authority acknowledges that in January 2014 it expected to fill multiple positions for the subject title due to anticipated retirements prior to the list expiring. However, in actuality, there was only one vacant position to be filled prior to the list expiration date which it filled by advancement, and therefore it did not need to use the list. The appointing authority asserts that it could not have possibly known that individual employees decided not to retire as expected and therefore it should not be charged for the selection costs as it simply did not have the opportunity to use the list and was not acting in bad faith. It asserts that the Commission did not fully have the information regarding the recruitment of Judiciary Clerk 4s prior to its decision to assess selection costs and therefore this assessment requires reconsideration. Furthermore, the appointing authority reiterates its claim that it was Agency Services' decision to announce a Statewide examination and it was not the appointing authority's request. Therefore, it claims that a clear material error has been made. Additionally, the appointing authority emphasizes that the circumstances that led to the announcement were exceptional and unlikely to reoccur, as there was an employee who was unlikely to return who then informed it after the test administration date that she would return.

CONCLUSION

N.J.A.C. 4A:2-1.6(b) sets forth the standards by which a prior decision may be reconsidered. This rule provides that a party must show that a clear material error has occurred or present new evidence or additional information not presented at the original proceeding which would change the outcome of the case and the reasons that such evidence was not presented at the original proceeding.

On reconsideration, the appointing authority argues that Agency Services made a clear material error by announcing a Statewide open-competitive examination when it requested to make a non-competitive appointment and therefore it should not assessed the selection costs when it did not make an appointment from the subject list. However, a review of the appointing authority's exhibits does not show any evidence that it requested that Agency Services permit a non-competitive appointment for Judiciary Clerk 4. On the contrary, on December 19, 2012, the AOC submitted to Agency Services a Vacancy Announcement Request Form (VARF), signed by the appointing authority's Human Resources Division

Manager on December 19, 2012, that it had one Judiciary Clerk 4 position to fill and that it was to be open to the State. Accordingly, the subject Statewide open-competitive examination was announced with a January 30, 2013 closing date. Further, if it had requested to make a non-competitive announcement, Agency Services would have advised that the subject title is a competitive title and therefore it could only issue a Statewide open-competitive announcement for the vacancy. Additionally, it would have advised that the subject title does not appear to meet the criteria to be reallocated to the non-competitive division, and even if it did, that it did not have the authority to reallocate the title to the non-competitive division. Instead, it would have advised that only the Commission could issue a decision ordering that the subject title be reallocated to the non-competitive division and there is nothing in the record to indicate that there was any attempt to petition the Commission to do so. Moreover, regardless of whether the appointing authority initially asked for a non-competitive announcement for the subject title, as indicated by the signed VARF referenced above, the appointing authority was well aware that Agency Services was going to issue a Statewide open-competitive announcement for the subject title. However, there is no evidence in the record that the appointing authority attempted to obviate Agency Services from issuing the subject announcement prior to the closing date or administering the test prior to the administration date. Instead, as stated in the initial decision, the appointing authority acknowledged that it did not know until after the test administration date that its employee on leave would be returning to work. As such, Agency Services did not commit an error by issuing the subject announcement or administering the subject test.

Additionally, the appointing authority presents, prior to the subject examination being announced or the subject test being administered, that it could not have known that it was not going to use the list as it could not know that the employee on leave would return and the employees it anticipated retiring prior to the list expiring would not retire. Therefore, it asserts that it acted in good faith. It also states that the circumstances that caused the appointing authority to ask for the subject announcement were exceptional and unlikely to be repeated. Thus, it believes that it should not be assessed for the costs for the subject examination. However, the appointing authority's arguments are immaterial to the assessment of selection costs. The Commission did not fine or punish the appointing authority because it found that the appointing authority acted in bad faith by not making an appointment from the list. On the contrary, the Commission found that the appointing authority presented a valid reason for not making an appointment and granted an appointment waiver. However, as stated in the initial decision, although the appointment waiver was 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

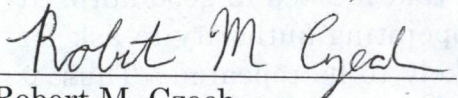
primary activities of this agency, these costly efforts are thwarted when appointing authorities fail to utilize the resulting eligible lists to make appointments and candidates have needlessly expended their time, effort and money to take these examinations in hopes of being considered for a permanent appointment. The amount of \$8,285 has been determined to be the cost of the selection process for open-competitive examinations for State government positions. In other words, while it is unfortunate that the appointing authority did not realize that it did not need to ask for the subject examination until after the announcement was issued and the test was administered, this does not mean that this agency did not incur selection costs for the subject announcement. Similarly, the fact that the appointing authority's subsequent circumstances did not permit it to utilize the list or that it may never again ask for an announcement for the subject title does not present valid bases to grant a waiver or lessening of the selection costs. It is also noted that the determination that selection costs for a Statewide examination are \$8,285 has been in place for over 20 years and a current evaluation of these costs would undoubtedly illustrate that actual costs incurred by this agency were far greater.

ORDER

Therefore, it is ordered that the appointing authority's request for reconsideration be denied and the assessed selection costs in the amount of \$8,285 to be paid within 30 days of the issuance of this decision.

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



Robert M. Czech

Chairperson

Civil Service Commission

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Attachment

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VICINAGE 13
SUPERIOR COURT OF NJ
HUMAN RESOURCES

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE
ACTION
OF THE
CIVIL SERVICE COMMISSIONIn the Matter of Judiciary Clerk 4
(S0089R), Vicinage 13, the Judiciary

CSC Docket No. 2017-198

Administrative Appeal

ISSUED: DEC 22 2016 (SLK)

In *In the Matter of Judiciary Clerk 4 (S0089R), Vicinage 13, the Judiciary and Sharon Hackworth* (CSC, decided May 7, 2014), the Civil Service Commission (Commission) granted the appointing authority's request for an appointment waiver from the July 19, 2013 certification and ordered that no selection costs be assessed at that time since there was a possibility that the list could be utilized prior to its expiration. A copy of that decision is attached hereto and incorporated herein. However, the appointing authority did not utilize the subject eligible list and the matter of the assessment of costs is now before the Commission.

Agency records reveal that no further certifications were issued from the subject list. Therefore, the appointing authority was notified that since the eligible list was not utilized by its expiration date, the matter of the costs for the selection process in the amount of \$8,285 would be forwarded to the Commission for a determination.

The appointing authority explains, as indicated in its initial request for an appointing waiver on January 29, 2014, that its reason for filling this vacancy was due to an employee being diagnosed with a catastrophic illness and possibly not returning to employment. Once it could not select a replacement from existing Judiciary personnel, the Administrative Office of the Courts contacted the Division of Agency Services (Agency Services) to obtain authorization to make a non-competitive appointment since the Commission did not have an active eligible list for the subject title. It asserts that it requested to make a non-competitive

appointment since traditionally positions for the subject title are advanced internally and, as this was an isolated circumstance, it believed that it would be unlikely that it would need to appoint another individual to the subject title from a Statewide list prior to the list expiring. However, it presents that instead of authorizing a non-competitive appointment, Agency Services announced a Statewide open-competitive examination with a closing date on January 30, 2013. Thereafter, the appointing authority was provided a list of eligible candidates in Hunterdon County, it provisionally appointed Christine Ibrahim on May 3, 2013, and the test was administered on June 20, 2013. The appointing authority presents that from the time it began the recruitment process, more than a year passed before it received the responses from interested candidates in August 2013. However, the employee who it initially thought that it needed to replace informed it in July 2013 that she could return to work. It emphasizes that if it had received notice sooner, it would have requested that the examination be cancelled. The appointing authority reiterates that it did not request a Statewide examination and contends that it requested that Agency Services not follow through with administering the subject examination. It argues that it should not be held accountable for Agency Services' decision to administer a Statewide examination for the subject title.

CONCLUSION

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. The amount of \$8,285 has been determined to be the cost of the selection process for open-competitive examinations for State government positions.

A review of agency records indicates, that contrary to the appointing authority's assertion that it did not request that the subject examination be announced, the appointing authority requested to Agency Services that it announce an open-competitive examination for the subject title due to its difficulty filling the position by advancement and its indication that there were no interested eligibles in lower titles. Accordingly, Agency Services announced the subject examination with a January 30, 2013 closing date and administered the test on June 20, 2013. Thereafter, certification OS130504 was issued on July 19, 2013. In a letter dated January 14, 2014, Agency Services advised the appointing authority that its records indicated that the subject list was generated when the appointing authority requested a list for the subject title and subsequently appointed a provisional to serve in that title. Therefore, it indicated that the appointing authority either

needed to make a permanent appointment or request an appointing waiver. In a letter dated January 29, 2014, the appointing authority requested an appointment waiver since the employee who was on leave was returning and it also indicated that the provisional was being removed from her provisional title and being placed in a confidential title due to its needs. Further, in a letter dated March 6, 2014, the appointing authority additionally indicated that it expected that positions in the subject title would need to be filled and recruitment from the certified list would be warranted. Moreover, in the Commission's May 7, 2014 decision, the Commission noted that the appointing authority took no action to obviate the need for the examination at the time of the announcement or prior to its administration. Additionally, in this appeal, the appointing authority states that it would have requested that the examination be cancelled if it had received notice sooner than the end of July 2013 that its employee on leave would be returning. In other words, the appointing authority is acknowledging that it did not request that the examination be cancelled because it did not know until after the test was administered that its employee would be returning.

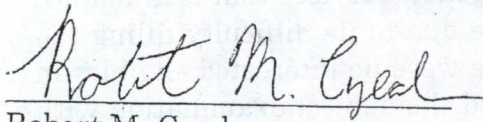
Therefore, in the instant situation, although the appointing authority had shown a valid reason for not making an appointment from the subject eligible list, it failed to provide a sufficient basis for not being charged for the costs of the selection process which produced the subject eligible list. Thus, it is appropriate that the appointing authority be assessed the costs of the selection process.

ORDER

Therefore, it is ordered that the appointing authority be assessed the costs of the selection process in the amount of \$8,285 to be paid within 30 days of the issuance of this decision.

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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Attachment

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