



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of Gary Govier,
Social Worker Health (C0532T),
Sussex County

CSC Docket No. 2017-1350 and
2017-2798-

Administrative Appeal
Request for Enforcement

ISSUED: MARCH 29, 2018 (DASV)

Gary Govier appeals his non-appointment from the Social Worker Health (C0532T), Sussex County, eligible list. Additionally, the Division of Agency Services (Agency Services) requests that the Civil Service Commission (Commission) order Sussex County to properly dispose of the December 21, 2015 certification (OL151589) of the eligible list.

By way of background, the Social Worker Health (C0532T), Sussex County, eligible list promulgated on December 17, 2015 and expires on December 16, 2018. The eligible list promulgated as a result of the appointment of Kaitlyn Hammerle, a non-veteran, who had been appointed provisionally pending open competitive examination procedures effective May 11, 2015. The eligible list was certified on December 21, 2015 with a roster of 11 names, which included the appellant, a disabled veteran who ranked number one. Hammerle, as well as the remaining nine eligibles, were tied in the second rank on the eligible list. Hammerle appeared fourth on the certification. The appointing authority returned the certification requesting that the appellant be removed from the eligible list for failure to complete pre-employment processing and appointing Hammerle effective May 13, 2016. However, Agency Services could not approve the disposition of the certification since the appointing authority had offered the appellant a salary that was inconsistent with the salary range indicated on the examination announcement. Consequently, Agency Services issued a deficiency notice to the appointing authority. In response, the appointing authority explained that it had two full-time positions, one with a 40-hour work week and the other with a 35-hour work week and a compensation of \$18.94 and \$20.54 per hour, respectively. The

appointing authority stated that it offered the appellant the position with a 35-hour work week and sent him emails on May 26, 2016 and June 2, 2016 with the offer. However, it did not receive a response. Therefore, the appointing authority requested that the appellant's name be removed from the subject eligible list and Hammerle's appointment be approved. It is noted that the examination announcement listed that one position was available with a salary range from \$39,562 to \$74,481 with a 40-hour work week, and the salary offered to the appellant in the May 26, 2016 email was \$37,521 per year with a 35-hour work week. Hammerle was to receive an annual salary of \$40,215 according to the returned certification. As a result of the foregoing, Agency Services referred the matter to the Commission.

The appointing authority was notified that the matter had been referred to the Commission for enforcement as it failed to properly dispose of the subject certification and that the Commission may order an appointment from the certification pursuant to *N.J.S.A. 11A:4-5* and *N.J.A.C. 4A:10-2.2(a)2*. It was also advised that the Commission may assess costs, charges, and fines pursuant to *N.J.A.C. 4A:10-2.2(b)*. Further, the parties were given an opportunity to submit additional information in support of their positions.

In his appeal, the appellant states that he spent over an hour in an interview for the Social Worker Health position. In the interview, he alleges that he "was repeatedly told" that an individual had been provisionally appointed and trained for the position. He contends that "absolute veteran's preference means nothing, to add insult to injury [he] even had to pay a fifteen-dollar filing fee." Moreover, the appellant asserts that there was an attempt to discourage him from accepting the position because he was advised that the salary was \$8,000 less than what was advertised. Additionally, he claims that he did not receive emails on May 26, 2016 and June 2, 2016 or at any time. The appellant also alleges that Sussex County is "well known" for having provisional employees for "long periods of time." He maintains that not being appointed "took away from adding to [his] [S]tate pension, denied [him] benefits, vacations and seniority to move up to higher paying positions." In support of his appeal, the appellant submits what purports to be an article from the Sussex County Herald regarding a lawsuit filed by a Director of Social Services with Sussex County, claiming that she had been subject to a hostile work environment. The appellant contends that the department that had been referenced to in the article was the department in which he was supposedly offered a position.

In response, the appointing authority submits copies of the aforementioned emails, which appears to have been sent to the email address listed in the appellant's appeal.¹

¹ The appellant questions how the emails were sent because the emails only have his name and not his email address. However, it appears that the appellant's email address was stored under his

The appellant reiterates that he did not receive the emails and had a missed telephone call on May 20, 2016 from the appointing authority, which he responded to in writing on May 22, 2016. In that correspondence, the appellant listed concerns similar to his appeal regarding the salary being offered and the examination filing fee. He stated that when he left the interview he felt “disgusted and humiliated that someone else is being paid . . . this has taken away from [his] family.” Moreover, he contends on appeal that he would not have declined a “fair paying full-time position” with benefits to add to his pension with the possibility of a promotion if he did in fact receive one. It is noted that agency records reveal that the appellant currently works as a part-time Parking Enforcement Officer/Parking Meter Collector with the Town of Newton. The appellant states that he is paid \$15 per hour in that position and prior to applying to Sussex County, he returned to college and completed his Bachelor’s degree. He states that returning to college was not an easy task, but it demonstrates that he is capable of “completing any accomplishments.” The appellant questions whether he was not hired because of his disabled veteran status or his age or whether a “family member just needed employment.” He indicates that he is still interested in the subject position.

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. Moreover, *N.J.S.A.* 11A:5-6, *N.J.A.C.* 4A:4-4.8(a)3i and *N.J.A.C.* 4A:5-2.1 provide that on open competitive lists, disabled veterans and then veterans *shall be appointed* in their order of ranking (emphasis added). Additionally, *N.J.S.A.* 11A:3-7(d) states that employees of political subdivisions are to be paid in reasonable relationship to titles and shall not be paid a base salary below the minimum or above the maximum established salary for an employee’s title. *See also N.J.A.C.* 4A:3-4.1(a)2.

Furthermore, the Commission is specifically given the power to assess compliance costs and fines against an appointing authority, including all administrative costs and charges, as well as fines of not more than \$10,000, for noncompliance or violation of Civil Service law or rules or any order of the Commission. *N.J.S.A.* 11A:10-3; *N.J.A.C.* 4A:10-2.1(a)2. *See In the Matter of Fiscal Analyst (M1351H), Newark*, Docket No. A-4347-87T3 (App. Div. February 2, 1989). The Commission may also order the appointment of an eligible from an outstanding list. *See N.J.A.C.* 4A:10-2.1(a)3.

name since there were prior email correspondence between him and the appointing authority. Thus, only his name appears in the addressee line.

In the instant matter, Sussex County requested the removal of the appellant from the subject eligible list for his failure to complete pre-employment processing. It maintained that the appellant did not respond to the emails offering him a position. In response, the appellant asserted that he did not receive those emails and alleged discriminatory motivation and nepotism for his non-appointment. However, the appellant has submitted absolutely no evidence to substantiate such claims. Nonetheless, the record reveals that prior to the date those emails were sent, the appellant expressed his concern to the appointing authority that, during his interview, he was informed that the salary being offered was below the minimum that was advertised. Significantly, the documentation provided by the appointing authority to this agency confirms it. In that regard, the examination announcement listed the minimum salary as \$39,562 for a 40-work week position. The appellant, however, was offered a lower salary with less hours. As set forth above, *N.J.S.A.* 11A:3-7(d), in conjunction with *N.J.A.C.* 4A:3-4.1(a)2, prohibits a local appointing authority from paying an employee a base salary below the minimum or above the maximum established salary for the title. Therefore, if the Commission were to permit the appointing authority to remove the appellant from the subject eligible list on the basis that he did not complete pre-employment processing after he was offered a salary (and work week) below the minimum that was advertised, it would undermine the basic tenet of fairness inherent in the Civil Service system. Such a practice could lead to the arbitrary removal of eligibles based on an unannounced term and condition of employment, and it is therefore prohibited. For example, in a prior case which dealt with this issue, an appointing authority's request for an appointment waiver was denied as the former Merit System Board (Board) found that candidates were offered a salary below the announced salary range. Consequently, the Board ordered that the appointing authority properly dispose of the certification, and if it failed to do so, the Board ordered a constructive permanent appointment of the first interested eligible to be made. *See In the Matter of Community Relations Specialist (C6987H), Passaic County Clerk's Office* (MSB, decided August 29, 2007).

In the present case, the appellant is clearly interested in the advertised position and is the number one ranked disabled veteran. Moreover, but for its request to remove the appellant's name for failure to complete pre-employment processing, the appointing authority has otherwise not presented a sufficient basis to remove the appellant from the subject eligible list. Therefore, since the appellant cannot be bypassed due to his veteran's status, and absent any legitimate reason for his removal, he must be appointed. *N.J.S.A.* 11A:5-6, *N.J.A.C.* 4A:4-4.8(a)3i and *N.J.A.C.* 4A:5-2.1. Accordingly, the appointing authority is ordered to properly dispose of the certification within 20 days of the issuance of this decision, noting the appellant's appointment from the December 21, 2015 certification (OL151589) of the subject eligible list with a salary commensurate with the announced salary range for Social Worker Health. Additionally, upon successfully completing a working test period, the appellant shall be given a retroactive date of appointment to May 23,

2016, for salary step and seniority purposes only. If another position available, Hammerle need not be displaced and her appointment may be recorded effective May 23, 2016. Otherwise, her provisional appointment must be terminated. If, at any time, the appointing authority does not adhere to the timeframes for the proper certification disposition without an approved extension of time, it shall be assessed fines of \$100 per day for each day of continued violation up to a maximum of \$10,000.

ORDER

Therefore, it is ordered that the appellant's appeal be granted. It is further ordered that Sussex County properly dispose of the December 21, 2015 certification (OL151589) of the eligible list for Social Worker Health (C0532T), Sussex County, consistent with this decision within 20 days of the issuance of this decision.

Moreover, the Commission orders that the costs incurred by this agency in the compliance process be assessed against Sussex County in the amount of \$1,000, pursuant to *N.J.S.A.* 11A:10-3 and *N.J.A.C.* 4A:10-3.2(a)5, to be remitted within 30 days of the issuance of this order.

If, at any time, Sussex County does not adhere to the timeframes for the proper certification disposition without an approved extension of time, it shall be assessed fines of \$100 per day for each day of continued violation up to a maximum of \$10,000.

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 27TH DAY OF MARCH, 2018



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