



STATE OF NEW JERSEY

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

In the Matter of Cody Kirchner,
Home Instructor, Commission for the
Blind and Visually Impaired
(S0025W), Statewide

Administrative Appeal

CSC Docket No. 2018-3207

ISSUED: MAY 25, 2018 (SLK)

Cody Kirchner petitions the Civil Service Commission (Commission) for a retroactive permanent appointment to Home Instructor, Commission for the Blind and Visually Impaired, effective April 14, 2018.

By way of background, the examination at issue had a January 22, 2018 closing date. On his application, the petitioner indicated that his Work Location Preference Areas (Preference Areas) for employment was Essex County. A total of 11 individuals applied for the examination and 10 were found eligible. The petitioner and eight other eligibles were tied as the first ranked eligible and the other eligible was the 10th ranked eligible. Certification OS180140 was issued for positions located in Middlesex County and three eligible were appointed, effective April 14, 2018. Certifications OS180125, OS180126 and OS180164 were issued to other locations and three other eligibles were appointed. As Essex County was not one of the certified locations, the petitioner’s name has not been certified. The list expires on February 21, 2021.

On appeal, the petitioner presents that he was provisionally appointed to the subject title on March 3, 2018 for a position with the Commission for the Blind and Visually Impaired (appointing authority) in Middlesex County. However, the petitioner indicates that he mistakenly did not indicate that Middlesex County was one of his Preference Areas on his application. The petitioner explains that when he completed his application, he was confused about the location of his job and checked his Preference Areas based on the administration office for the appointing

authority, which is located in Essex County, instead of the Joseph Kohn Training Center (JKTC) where he works, which is located in Middlesex County. Further, Hugo R. Ruiz, Manager 1, Human Resources for the appointing authority, submits a letter indicating that the appointing authority supports the petitioner's request as it would have appointed him on certification OS180140 if it were not for his error.

CONCLUSION

N.J.A.C. 4A:4-1.10(c) provides that, when a regular appointment has been made, the Commission may order a retroactive appointment date due to administrative error, administrative delay or other good cause. Generally, this unique remedy has been reserved for two situations. First, the Commission has granted retroactive permanent appointment dates in circumstances in which an employee was actually serving in and performing the duties of a title, but due to some error or other good cause, his attainment of permanent status was delayed or hindered. The second situation in which an employee may be awarded a retroactive date of permanent appointment is where the name of an employee, whose appointment would have otherwise been mandated, was improperly removed from or bypassed on an eligible list, thereby preventing their appointment. When the Commission subsequently corrects the improper list removal or bypass, the Commission also orders the employee's appointment and a retroactive permanent appointment commensurate with the date on which others were appointed from the certification of the eligible list. *See In the Matter of Neil Layden* (MSB, decided March 23, 2005); *In the Matter of Ciri Castro, Jon Martin, and Luis Sanchez* (MSB, decided January 12, 2005).

In this matter, the Division of Agency Services correctly did not certify the petitioner's name for certification OS180140 as he did not indicate on his application that he would accept employment in Middlesex County. However, the petitioner explains that he was confused on the application and inadvertently indicated his Preference Areas based on the location of the appointing authority's administrative office, which is located in Essex County, and not the location of the JKTC, where he worked, which is located in Middlesex County. Further, the petitioner was provisionally appointed and performing the duties of the subject title for the appointing authority at the JKTC. Moreover, the appointing authority indicates that if it were not for the petitioner's error, it would have permanently appointed him on certification OS180140. Additionally, a review of the eligible list indicates that the petitioner is tied as the first ranked eligible and would have been reachable for appointment on that certification. Therefore, the Commission finds good cause to amend certification OS180140 to indicate the petitioner's permanent appointment, effective April 14, 2018, for salary step and seniority purposes.

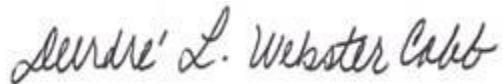
It is noted that this remedy is limited to the particular circumstances of this matter and does not set a precedent in any other matter.

ORDER

Therefore, it is ordered that this petition be granted and certification OS180140 be amended and the permanent appointment of Cody Kirchner to the title of Home Instructor, Commission for the Blind and Visually Impaired, be recorded as April 14, 2018 for seniority and salary step purposes.

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 23rd DAY OF MAY, 2018



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