



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Program Manager
Disease Prevention/Control
(S0844U), Department of Health

CSC Docket No. 2019-411

Request for Reconsideration

ISSUED: OCTOBER 29, 2019 (EG)

Deelip Mhaske requests reconsideration of the attached final administrative decision, rendered on April 4, 2018, which granted the Department of Health's (DOH) request for a waiver of the appointment requirement for the Program Manager Disease Prevention/Control (S0844U) eligible list. The history of this matter is fully laid out in the attached decision.

In the instant petition to the Civil Service Commission (Commission), the petitioner, who was listed as the third eligible on the subject certification, argues that the Commission erred in granting the appointing authority's appointment waiver request. Rather, he maintains that the DOH should have been required to make an appointment from the subject eligible list as there is a "great need" for this title. In support, he submits organizational charts which he claims highlights the need for the position to be filled. He adds that the DOH should fill this position with a permanent appointment rather than using temporary staffing. Additionally, the petitioner contends that the Center for Disease Control (CDC), which provides federal funding for the program, has recommended the hiring of permanent staff over temporary staff.

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.

The instant request for reconsideration appears to be based on the assertion that the Commission made an error by granting the appointing waiver instead of requiring an appointment to be made as there was a "great need" for the position to be filled. However, a review of the record in the instant matter reveals that reconsideration is not justified. In this regard, the petitioner has failed to provide any documentation which establishes that the Commission's decision was contrary to the evidence presented. Instead, he merely claims, without presenting any evidence of his assertions, that the CDC requires that the position to be filled by a permanent employee, rather than a temporary employee. Nor, has he presented any evidence that the position is actually being filled by an individual, temporarily or otherwise. Moreover, the Commission has consistently found that nothing in Civil Service system law or rules requires that an appointing authority fill all of its budgeted positions. See *In the Matter of Institutional Fire Chief* (MSB, decided January 12, 2005); See also, *In the Matter of Todd Sparks* (MSB, decided April 6, 2005). Additionally, in the instant matter, the petitioner has failed to establish that there was employee serving provisionally in the subject position at the time of the appointment waiver request, nor is there any evidence that an individual is currently serving in the subject position. Therefore, there is no evidence that a certification for the subject title is required. See e.g., *In the Matter of Fire Captain (PM3517F), City of Trenton* (MSB, decided August 9, 2006) (The Division of Human Resource Management issued a determination based on its classification review that seven Fire Fighters were performing Fire Captain duties. The Board ordered the City to appoint these seven to Fire Captain or provide evidence that they were no longer performing Fire Captain duties).

Finally, the Commission notes that none of the individuals on the subject list possessed a vested right to an appointment. The only interest that results from placement on an eligible list is that the candidate will be considered for an applicable position so long as the eligible list remains in force. See *Nunan v. Department of Personnel*, 244 N.J. Super. 494 (App. Div. 1990). Accordingly, since the petitioner has not shown that the Commission's decision in *In the Matter of Program Manager Disease Prevention/Control (S0844U), Department of Health* (CSC, decided April 4, 2018) was improper, nor has he provided a valid basis to mandate that the appointing authority make an appointment from the subject list, this appeal is denied.

ORDER

Therefore, it is ordered that this request for reconsideration be denied.

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 OCTOBER, 2019

Deirdre L. Webster Cobb

Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

Attachment

c: Deelip Mhaske
Loreta Sepulveda
Kelly Glenn
Records Center



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

Appointment Waiver

In the Matter of Program Manager
Disease Prevention/Control,
(S0844U), Department of Health

CSC Docket No. 2018-2078

ISSUED: April 6, 2018 (AMR)

The Department of Health requests permission not to make an appointment from the July 17, 2017 certification for Program Manager Disease Prevention/Control, (S0844U).

The record reveals that on May 31, 2016, the appointing authority provisionally appointed Twanda Walker-Valery, pending open competitive examination procedures, to the subject title. An examination was announced with a closing date of November 16, 2016. The examination resulted in an eligible list of 6 individuals, which promulgated on July 13, 2017 and expires on July 12, 2019. It is noted that Walker-Valery is no longer serving as a Program Manager Disease Prevention/Control and there are currently no employees serving provisionally pending open competitive examination procedures in the subject title with the appointing authority.

The appointing authority returned the certification indicating that a permanent appointment would not be made from the subject list because the provisional appointee was no longer serving. Specifically, it explained that the employee accepted another position in a different program within the Department of Health and the program has decided not to backfill this position.

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 \$8,295. Although provided the opportunity, the appointing authority did not provide any reasons why the costs of the selection process should not be assessed. Agency records indicate

that currently there are no individuals in the subject title with the appointing authority.

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 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 the result of the provisional appointment of Walker-Valery. However, after a complete certification was issued, the appointing authority requested an appointment waiver due to Walker-Valery no longer serving in the subject title and the decision not to backfill the position. Therefore, since the provisional is no longer serving in the subject title and there are no employees serving in the subject title with the appointing authority, there is sufficient justification for an appointment waiver.

Although an appointment waiver is granted in this matter, 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 for 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, efforts and money to take these examinations in hopes of being considered for a permanent appointment. In this case, the appointing authority's determination that it no longer needs to maintain the position of Program Manager Disease Prevention/Control after it requested an examination for the subject title does not provide a basis on which to waive the selection costs. Thus, although a waiver is granted, it is appropriate that the appointing authority be assessed \$8,295 for the costs of the selection process.

ORDER

Therefore, it is ordered that the request for the waiver of the appointment requirement be granted. Additionally, the Civil Service Commission orders that the appointing authority be assessed for the costs of the selection process in the amount of \$8,295 to be paid within 30 days of the issuance of this order.

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 4th DAY OF APRIL , 2018

Deirdre L. Webster Cobb

Deirdré L. Webster Cobb
Acting Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

c: Ann Kopczynski
Kelly Glenn
Records Center
Beth Wood