



In response, the appointing authority indicates that incumbents who serve as Laborer 1s are expected to plow snow in the winter and mow grass in the summer operating vehicles that require a Commercial Driver's License (CDL), which the appellant did not indicate on his application that he possessed.

In reply, the appellant states the announcement for the subject position did not require the possession of a CDL as it only indicated that one may be required. He highlights that the announcement states that the possession of a driver's license, which he possesses, is only required if the operation of a vehicle, rather than employee mobility, is necessary to perform essential duties of the position. Therefore, the appellant believes that he meets the minimum qualifications for the subject position and his non-appointment violated his veterans preference rights.

### CONCLUSION

*N.J.A.C.* 4A:5-2.3 provides that in making appointments in the noncompetitive division, preference shall be given among qualified applicants to disabled veterans, then veterans. *N.J.A.C.* 4A:2-1.4(c) provides that the appellant has the burden of proof.

Initially, while veterans preference does apply to the appointment of noncompetitive positions, it only applies to *qualified* applicants. See *N.J.A.C.* 4A:5-2.3. Additionally, there is no obligation under Civil Service law or rules for the appointing authority to proactively inform an applicant who is not qualified for a position in a noncompetitive title that the candidate is not being considered.

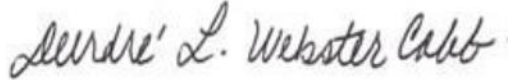
In this matter, the subject announcement indicated that a CDL may be required. Further, the appointing authority explains that it needs Laborer 1s to plow snow and mow grass operating vehicles that require the possession of a CDL. These duties are consistent with the job specification for the subject title. In other words, while not every appointing authority that hires Laborer 1s requires the possession of a CDL, an appointing authority can require the possession of CDL for incumbents in this title. As the appointing authority explains a legitimate business reason as to why it requires a CDL for this title, it was appropriate for the appointing authority not to consider the appellant for a position in the subject title, as the appellant was not qualified as he has not disputed that he lacks a CDL. Veterans preference rights only become applicable after an applicant is determined to be qualified for the position. See *In the Matter of Joseph Chapman* (MSB, decided October 7, 1997), *aff'd on reconsideration* (MSB, decided June 16, 1998). Accordingly, the appellant has not met his burden of proof in this matter.

### ORDER

Therefore, it is ordered that this appeal 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 6<sup>th</sup> DAY OF NOVEMBER, 2019



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