



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Brian Panek, Crew
Supervisor, Carpenters (S0138W),
Division of State Police

Administrative Appeal

CSC Docket No. 2019-3735

ISSUED: SEPTEMBER 25, 2019 (SLK)

The Division of State Police, on behalf of Brian Panek, a provisional Crew Supervisor, Carpenters, requests that he be added to the March 11, 2019 certification (OS190159), which was certified from the Crew Supervisor, Carpenters (S0138W), Statewide open-competitive examination list.

By way of background, Panek was hired provisionally pending open competitive procedures as a Crew Supervisor, Carpenters on September 16, 2017. Following his provisional appointment, an announcement for an open competitive examination for the subject title (S0138W) was issued on February 1, 2018 with a February 21, 2018 closing date. Panek and eight other candidates were admitted to the examination and the test was administered on January 8, 2019. However, Panek did not sit for the January 8, 2019 test. Thereafter, he was granted a make-up examination, which was administered on April 9, 2019. However, prior to Panek taking the make-up examination, the S0138W eligible list promulgated on March 7, 2019 and certification OS190159 was issued against Panek's provisional appointment containing the names of six eligibles. On May 9, 2019, Panek was added to the S0138W list and his rank was 3A. He was given prospective relief for future employment opportunities.

In its request, the appointing authority states that Panek is provisional in the subject title and he is ranked among the top three candidates. Therefore, it is requesting that his name be added to the current outstanding certification

(OS190159) so that he can be afforded a current opportunity for a regular appointment and begin his working test period. The appointing authority states that if Panek were added to certification OS190159, he would be reachable for appointment since there are no veterans on the list and there are only four interested candidates, three of which are ranked lower than him. It presents that Panek began his employment in September 2017. The appointing authority asserts that he is an exemplary employee with remarkable knowledge, skills and abilities, which has been demonstrated by both his performance in the position and his final score and rank on the subject examination. It argues that if Panek is not added to the current certification and displaced, this would cause it an extreme hardship based on the amount of time he has been employed, the significant training in State Police practices that he has received, and his familiarity with its facilities and operations throughout the State. The appointing authority argues that it would be unreasonable to exclude Panek from the current certification and the opportunity to be permanently appointed solely because he tested later than other candidates, especially since he is one of the top three ranked candidates.

The Division of Agency Services (Agency Services) indicates that there are four candidates on certification OS190159 who have expressed interest in a position for the subject title. It presents that *In the Matter of Vincent Hutchenson* (MSB, decided January 31, 2007), the Merit System Board (MSB) directed the then Division of Human Resource Information Systems (HRIS) to cease the longstanding practice of adding provisional appointees to existing certifications. Therefore, based on this directive and the fact that there is a complete list, Agency Services does not support the appointing authority's request to add Panek to certification OS190159.

CONCLUSION

N.J.A.C. 4A:4:4-3.6(b) provides that when the name of an eligible is added to an existing list to correct an error made by the Civil Service Commission (Commission), an appropriate representative of the Commission shall determine the retroactive certification and/or appointment rights. When the name of an eligible is added to an existing list for any other reason, the Chairperson or designee shall determine the effect of the action on certifications and prior permanent appointments.

In this matter, the initial test for the subject examination was administered on January 8, 2019. Panek, the provisional in the subject title did not sit for this test. There has been nothing presented in the record that indicates that Panek's failure to sit for the initial test was due to an error by this agency. Thereafter, certification OS190159 was issued on March 11, 2019, which resulted in four interested candidates. Although Panek was afforded the opportunity to take a make-up examination after certification OS190159 was issued, it would be unfair to the four candidates on OS190159 who sat for the initial examination as instructed

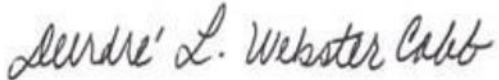
and passed the subject examination to add Panek to the current outstanding certification. In fact, providing such an extreme remedy essentially deprives those candidates who followed all of the standardized examination procedures of an opportunity for appointment, and gives provisional appointees an unfair advantage in the selection process. Thus, permitting the addition of provisional appointee names to an existing certification has the appearance of impropriety and seriously undermines one of the basic tenets of the Civil Service, which is to ensure a level field on which all candidates can compete. The Commission emphasizes that *N.J.A.C.* 4A:4-3.6(b) requires placement on an existing certification or retroactive certification or appointment rights in order to correct an error made by this agency, but, in the absence of such an error, the circumstances present do not warrant a current or retroactive placement on an existing certification that contains the names of four interested eligibles. *See Hutchenson, supra.*

ORDER

Therefore, it is ordered that this request 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 25th DAY OF SEPTEMBER, 2019



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