



STATE OF NEW JERSEY

In the Matter of Trisha Rausa-Coats,	:	FINAL ADMINISTRATIVE ACTION
Secretarial Assistant 3 (Non-	:	OF THE
Stenographic) (PS2165G),	:	CIVIL SERVICE COMMISSION
Department of Environmental	:	
Protection	:	
	:	Examination Appeal
	:	
CSC Docket No. 2021-1030	:	
	:	
	:	

ISSUED: MAY 3, 2021 (RAM)

Trisha Rausa-Coats appeals the determination of the Division of Agency Services (Agency Services) that she did not meet the experience requirement for the promotional examination for Secretarial Assistant 3 (Non-Stenographic)¹ (PS2165G), Department of Environmental Protection (DEP).

By way of background, the announcement for the subject examination was issued on February 1, 2020 and was open to employees in the competitive division who were currently serving as a Principal Clerk Typist or Principal Clerk Transcriber and had an aggregate of one year of continuous permanent service **or** to employees in the competitive division who had an aggregate of one year of continuous permanent service in any competitive title with three years of experience in secretarial and administrative clerical work as of the February 21, 2020 closing date. Successful completion of a clerical training program with a minimum of 700 classroom training hours or 30 semester hour credits in secretarial science from an accredited college or university could have substituted for one year of experience. It is noted that the appellant was the only applicant who filed for the subject examination. As a result, the examination was cancelled effective January 24, 2021.

On her application and resume, the appellant indicated that she had been employed with DEP from November 2017 to the closing date as a Secretarial Assistant 3 (Non-Stenographic). Prior to that position, she served as a Technical Assistant 3 from February 2010 to November 2017, a Senior Clerk Transcriber from March 2004 to February 2010, and a Clerk Transcriber from September 2003 to

¹ The title series was renumbered effective November 21, 2020. The subject title is now known as Secretarial Assistant 1 (Non-Stenographic).

March 2004. She also listed that she had been a Sales Manager at a hotel from September 1997 to September 2003. On her resume which she included with her application, the appellant added that she had worked as a “Front Desk Supervisor, Food Runner, Buspersion” from October 1996 to September 1997 and as a Customer Service Assistant from November 1993 to May 1994. Agency Services reviewed the appellant’s application and resume and credited her with two years and four months of experience that she gained provisionally in the subject title prior to the closing date.² The review also determined that all other jobs listed by the appellant lacked secretarial work. Moreover, the appellant indicated possession of an Associate’s degree and other college credit, but she was not able to substitute any of her education for experience as her education was not in a program set forth in the substitution clause for experience. Therefore, Agency Services concluded that the appellant lacked eight months of applicable experience as of the examination closing date.

On appeal to the Civil Service Commission (Commission), the appellant states that she has now been working in the subject title provisionally for three years. The appellant submits that her past work experiences as a Technical Assistant 3, Senior Clerk Transcriber, and Clerk Transcriber in State service, along with experiences as a Front Desk Supervisor and Sales Manager at a hotel, provided her with well over the required three years of experience in secretarial and administrative clerical work as of the closing date. Moreover, the appellant notes that she has earned a Bachelor’s degree. Therefore, she requests that the initial determination of her ineligibility be reversed.

It is noted that, as a result of the appellant’s provisional appointment, an examination for Secretarial Assistant 3 (Non-Stenographic) (PS7806G), DEP, had previously been announced with a closing date of July 23, 2018. The appellant filed for the examination and was found to lack two years and three months of applicable experience. Agency Services credited her at that time with nine months of experience for her provisional service. The examination was thereafter cancelled as the appellant was the only applicant. The appellant was notified of her ineligibility on February 13, 2019 and filed an appeal (CSC Docket No. 2019-2377). In response, by letter dated April 23, 2019, the appellant was advised that Agency Services’ determination was correct since, other than her provisional service, her prior positions did not involve secretarial work. The appellant did not further pursue the appeal. The appointing authority was notified of this determination. However, the appellant continued to serve provisionally in the subject title.

² Agency records indicate that the appellant has been serving provisionally pending promotional examination procedures in the subject title since November 11, 2017.

CONCLUSION

N.J.A.C. 4A:4-2.6(a) provides that applicants shall meet all requirements specified in the promotional examination announcement by the closing date. *N.J.A.C.* 4A:4-1.5 states that:

(a) A provisional appointment may be made only in the competitive division of the career service when all of the following conditions are met:

1. There is no complete list of eligibles, and no one remaining on an incomplete list will accept provisional appointment;
2. The appointing authority certifies that the appointee meets the minimum qualifications for the title at the time of the appointment; and
3. The appointing authority certifies that failure to make the provisional appointment will seriously impair its work.

(b) Any employee who is serving on a provisional basis and who fails to file for and take an examination that has been announced for his or her title shall be separated from the provisional title. The appointing authority shall be notified by the Chairperson or designee and shall take necessary steps to separate the employee within 30 days of notification, which period may be extended by the Chairperson or designee for good cause.

Moreover, *N.J.A.C.* 4A:1-1.2(c) indicates that the Commission may relax a rule for good cause in particular situations, on notice to affected parties, in order to effectuate the purposes of Title 11A, New Jersey Statutes.

Agency Services was correct in its initial determination that the appellant did not meet the three years of required work experience for the subject examination as of the February 21, 2020 closing date since she listed prior experience that did not reflect secretarial work. The examination announcement called for not only administrative clerical work but also secretarial experience. In that regard, it is noted that secretarial work involves working for an executive, including scheduling appointments, giving information to callers, reading and routing incoming mail, locating files, typing, filing, greeting visitors and conducting them to the executive or appropriate person, arranging travel schedules, placing outgoing calls, recording minutes of staff meetings, making copies of printed matter, and preparing outgoing mail. *See In the Matter of Rosemarie Baylies* (MSB, decided April 6, 2005). Moreover, the duties performed as a Senior Clerk Transcriber and Clerk Transcriber are clerical in nature and not secretarial and/or administrative clerical work. In order to be accepted as secretarial and administrative clerical, duties performed must be complex and involve independent judgment. Thus, work performed in these titles is not

acceptable for the Secretarial Assistant title series. Conversely, experience gained in the Principal Clerk Typist or Principal Clerk Transcriber titles involves frequent exercise of independent judgment and is applicable for the Secretarial Assistant title series. *See In the Matter of Suzanne Bauerle, et al.* (MSB, decided October 9, 2002). Therefore, the appellant was properly credited for the experience she gained in her provisional position, but the remainder of the positions she listed on her application and resume could not be credited to her.

However, a review of agency records indicates that the appellant was appointed provisionally to the Secretarial Assistant 3 (Non-Stenographic) title, effective November 11, 2017, and continues to serve provisionally in the renumbered title. The Commission finds that, for examination eligibility purposes, the appellant has been performing the duties of the subject title since that date. Therefore, the appellant now possesses enough applicable experience based on her provisional service. Furthermore, the appellant was the only applicant for the subject examination. Under these circumstances, the Commission finds that good cause exists to relax the provisions of *N.J.A.C.* 4A:4-2.6(a). Thus, absent accepting the appellant's provisional experience after the closing date, no other eligible candidate can be appointed as the subject examination has been cancelled.

The Commission notes that the appellant's remedy is based on the particular circumstances. As this remedy is limited to the instant matter, it does not provide precedent in any other matter.

A final comment is warranted in this matter. It is well established that the purpose of the Civil Service system is best served when more rather than fewer individuals are presented with appointments and/or advancement opportunities. *See Communications Workers of America v. New Jersey Department of Personnel*, 154 N.J. 121 (1998). However, this paramount intent of Civil Service system employment is frustrated when statutory or regulatory provisions cannot be achieved. In that regard, *N.J.S.A.* 11A:4-13(b) provides that "provisional appointments shall be made only in the competitive division of the career service and only in the absence of a complete certification, if the appointing authority certifies that in each individual case the appointee meets the minimum qualifications for the title at the time of appointment and that failure to make a provisional appointment will seriously impair the work of the appointing authority. In no case shall any provisional appointment exceed a period of 12 months."

In this case, the appellant has been serving provisionally over three years since 2017. Two promotional announcements were issued by this agency so that competitive lists could be established to make a permanent appointment. The appellant was the only applicant for each announcement and each examination was cancelled because Agency Services found that the appellant, the provisional appointee, did not meet the minimum qualifications for the title. As noted earlier,

provisional appointments are premised on an appointing authority's certification that failure to fill the position at that time will seriously impair its work. Since no complete certification or eligible list exists, and failure to fill the position will seriously impair the appointing authority's work, Civil Service law and rule obligates an appointing authority to certify that a provisional appointee meets the qualifications of the title at the time of the appointment. In some cases, such as in the instant matter, when a promotional or open competitive announcement is issued against the position filled on a provisional basis, this agency determines that the provisional appointee does not meet the qualifications of the title and is ineligible to compete for a permanent appointment. Stated differently, it is not uncommon for an appointing authority, in good faith, to determine that its provisional appointee satisfies the requirements of the title, but this agency ultimately determines that the individual is ineligible. In this regard, it must be emphasized that this agency makes the official eligibility determination for all prospective candidates for permanent appointments and a provisional appointment does not establish a presumption of eligibility when the competitive examination is announced. *See In the Matter of Cynthia Bucchi, Maria D'Angelo, Rosalind R. James, Carla M. Lewis, and Rhonda McLaren, Management Assistant (PS5831F), Department of Education, Docket No. A-1266-04T2 (App. Div. February 27, 2006).*

However, in cases such as the instant matter, the need for the appointing authority to fill the position with a person who meets the qualifications for a certain level of classification so its work is not impaired was not achieved after the issuance of two promotional announcements. Indeed, despite the appointing authority being notified of the appellant's ineligibility for the title as result of the first promotional announcement approximately two years ago in 2019, in contravention of *N.J.S.A. 11A:4-13(b)*, it retained a provisional appointee who did not meet the qualifications for the title. While this may be the case, it cannot be ignored that for a provisional appointment, the appointing authority initially certifies that failure to fill the position at that time will seriously impair its work. Stated differently, the inability of this agency to provide competitive lists of qualified eligibles does not necessarily obviate the need of an appointing authority to fill a position at a certain level of classification. Nevertheless, in such cases, in accordance with *N.J.A.C. 4A:4-1.5(b)*, steps should be taken by an appointing authority to separate the provisional appointee within 30 days of notification, which can be extended for good cause, and efforts be made to recruit a new provisional appointee who satisfies the requirements of the title.

Therefore, while the Commission holds the appellant harmless in that her continued provisional service is being credited to her for examination eligibility purposes and for the possibility of permanent appointment, in the future, when a provisional employee who has been deemed ineligible by this agency after a competitive announcement for a position, the appointing authority should take steps to recruit a new provisional appointee who satisfies the requirements of the title and

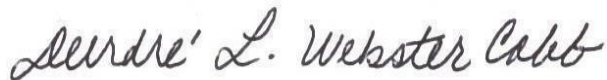
then separate the provisional appointee in compliance with *N.J.A.C.* 4A:4-1.5(b). Failure to do so may result in the imposition of fines or other penalties in the future. *See N.J.S.A.* 11A:10-3 and *N.J.A.C.* 4A:10-2.1(a)2.

ORDER

Therefore, it is ordered that the appeal be granted, the examination cancellation be rescinded, and the appellant's application be processed for prospective employment opportunities only.

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 28th DAY OF APRIL, 2021



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