



STATE OF NEW JERSEY

In the Matter of Senior Community
Relations Specialist (M0263C),
Paterson

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

CSC Docket No. 2023-647

Appointment Waiver

ISSUED: January 18, 2023 (AMR)

Paterson requests permission not to make an appointment from the March 25, 2022 certification for Senior Community Relations Specialist (M0263C).

The record reveals that Paterson provisionally appointed Dacil Tilos, pending open competitive examination procedures, to the subject title, effective November 2, 2020.¹ An examination was announced with a closing date of August 23, 2021, that originally resulted in a list of two eligibles with an expiration date of September 29, 2024, which included Tilos.² It is noted that Tilos separated from her provisional position and was appointed provisionally to the title of Public Information Officer, effective September 21, 2021. A year later, on September 21, 2022, Tilos received a regular appointment. It is further noted that there are currently no employees serving provisionally pending open competitive examination procedures in the subject title with the appointing authority.

¹ The appointing authority identified Della Fischer as the provisional appointee in its September 13, 2022 request for an appointment waiver. However, agency records indicate that Fischer had not served provisionally in the subject title.

² Fischer was later deemed eligible for the Senior Community Relations Specialist (M0263C), Paterson, examination. See *In the Matter of Della Fischer* (CSC, Decided January 19, 2022). Her name was added to the subject eligible list and appeared on the March 25, 2022 certification with the two other eligibles who had been admitted originally to the examination.

The appointing authority returned the certification and requested a waiver of the appointment requirement, indicating that a permanent appointment would not be made from the subject eligible list. It explained that it requested the certification in order to appoint Della Fischer³ to the subject title, after her appeal was granted on January 19, 2022. However, in the interim, Fischer was provisionally appointed to the title of Program Coordinator Special Events, effective November 3, 2021. An examination announcement for that title was generated, and Fischer applied for the examination and was deemed eligible. Fischer's name appeared on the resulting eligible list (M0407D), which was subsequently certified. She was permanently appointed, effective July 11, 2022, as a Program Coordinator Special Events. Therefore, the appointing authority maintained that no appointment was necessary for the Senior Community Relations Specialist title.

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 \$2,048. It is noted that the appointing authority took no action to obviate the need for the examination at the time of the announcement or prior to its processing. However, the appointing authority did not provide any additional information for the Civil Service Commission (Commission) to review.

CONCLUSION

Initially, in examining the legislative history of *N.J.S.A. 11A:4-5*, in *Local 198 of I.A.F.F. v. Atlantic City*, Docket No. A-855-88T1F (App. Div. June 14, 1989), the court stated that this agency is required to issue a certification automatically where there is a provisional appointee or a vacancy. Moreover, the court concluded that *N.J.S.A. 11A:4-5* unambiguously stated that once the examination process has been initiated due to the appointment of a provisional employee, the appointing authority must make an appointment from the eligible list if there is a complete certification. Additionally, the Court found that this agency was correct in interpreting *N.J.S.A. 11A:4-5* to find that it was a clear legislative response to pervasive violations of Title 11A, and that non-compliance with this statute is not a mere technical violation, rather it undermined the purpose and intent of the constitutionally-based merit selection system. The court found that in circumstances such as these, it was appropriate to order the appointing authority to make an appointment. Thus, there is no doubt that the appointing authority must make an appointment from this list if there is a complete certification, that is, one containing the names of at least three interested and eligible candidates. Moreover, the Commission is specifically given the power to assess compliance costs and fines against an appointing authority, including all administrative costs and charges, as well as fines of not more than \$10,000, for noncompliance or violation of Civil Service law or rules or any order of the Commission. *N.J.S.A. 11A:10-3*; *N.J.A.C.*

³ Fischer's last name is now McCall-Williams.

4A:10-2.1(a)2. See *In the Matter of Fiscal Analyst (M1351H), Jersey City*, Docket No. A-4347-87T3 (App. Div. February 2, 1989).

Therefore, 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 a result of the provisional appointment of Tilos. However, after a complete certification was issued, the appointing authority requested an appointment waiver, explaining that although its intent was to appoint Fischer to the subject title, Fischer was provisionally appointed to the title of Program Coordinator Special Events, effective November 3, 2021, and has been subsequently permanently appointed effective July 11, 2022. Additionally, Tilos has been separated from her provisional position in the subject title and has been serving in the title of Public Information Officer since September 21, 2021. Thus, in conjunction with the fact that there are no provisionals currently serving in the subject title, there is a 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 did not take any action to obviate the need for the examination at the time of the announcement or prior to its processing. The appointing authority's determination that it no longer needed to fill the Senior Community Relations Specialist position after it appointed a provisional employee to the subject title does not provide a basis on which to waive the selection costs. Thus, although an appointment waiver is granted, it is appropriate that the appointing authority be assessed \$2,048 for the costs of the selection process.

ORDER

Therefore, it is ordered that a waiver of the appointment requirement be granted. Additionally, the Commission orders that the appointing authority be

assessed for the costs of the selection process in the amount of \$2,048 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 18TH DAY OF JANUARY, 2023



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