



STATE OF NEW JERSEY

In the Matter of Vocational
Rehabilitation Counselor 2 (S0404D),
Commission for the Blind and
Visually Impaired, Department of
Human Services

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

Appointment Waiver

CSC Docket No. 2023-1450

ISSUED: March 29, 2023 (AMR)

The Commission for the Blind and Visually Impaired, Department of Human Services, requests permission not to make an appointment from the June 6, 2022 certification for Vocational Rehabilitation Counselor 2 (S0404D).

The record reveals that on July 3, 2021, the appointing authority provisionally appointed Nina Green, pending open competitive examination procedures, to the subject title. As a result of the provisional appointment, an examination was announced with a closing date of April 21, 2022. The examination resulted in an eligible list of nine individuals, which promulgated on June 2, 2022, and expires on June 1, 2025. It is noted that Green’s provisional appointment was terminated, and she was appointed to the noncompetitive title of Vocational Rehabilitation Counselor 1, effective October 8, 2022. 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.

The appointing authority returned the subject certification and requested a waiver of the appointment requirement, indicating that the certification was issued against its provisionally appointed candidate, Green. Green was subsequently separated from her provisional position due to the fact that she was inadvertently placed into the wrong title when hired. The appointing authority discovered this error after the certification was issued. Therefore, due to the fact that there was not a vacant position for the Vocational Rehabilitation Counselor 2 title, the appointing authority returned the certification and made no appointments. In support of its request, the appointing authority submitted a job announcement that was issued on April 9, 2021, which was for a Vocational Rehabilitation Counselor 1 position. The appointing

authority also presented a copy of Green's application for that job posting and her offer of employment, dated July 1, 2001, to the position of Vocational Rehabilitation Counselor 1.

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 \$8,285. Despite the opportunity, the appointing authority did not provide any additional information for the Civil Service Commission (Commission) to review.

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 Green. However, after a complete certification was issued, the appointing authority requested an appointment waiver, indicating that Green had been placed in the wrong title and has since been separated from the subject title. Therefore, since the provisional is no longer serving in the subject title and there are currently 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 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, effort and money to take these examinations in hopes of being considered for a permanent appointment. However, the Commission notes that the list in question will not expire until June 1, 2025 and the appointing authority may be able to use the list in the future. Furthermore, the examination was announced statewide for all departments. Thus, the list is of such duration and scope as to make utilization by this or other State appointing authorities probable. Accordingly, under the particular circumstances of this matter, it would not be appropriate to assess the appointing authority for the costs of the selection process at this time. Nevertheless, in the event the appointing authority fails to utilize the list by its expiration date of June 1, 2025, this matter can be reviewed to ascertain whether an assessment for the costs of the selection process should be made.

ORDER

Therefore, it is ordered that the request for the waiver of the appointment requirement be granted, and no selection costs presently be assessed.

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 29TH DAY OF MARCH, 2023



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