



STATE OF NEW JERSEY

In the Matter of Alexandre Gabler,
Union Township Library

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

CSC Docket No. 2023-1848

Administrative Appeal

ISSUED: October 11, 2023 (HS)

Alexandre Gabler appeals his non-appointment to a provisional position as a Librarian 4 with the Union Township Library.

On appeal to the Civil Service Commission (Commission), the appellant contests the appointment of G [REDACTED] R [REDACTED] to the title of Librarian 4, a competitive career service title, with the Union Township Library to serve as the Vauxhall Branch Manager. The appellant states that he learned of a LinkedIn page in which R [REDACTED], a nonveteran, indicates that he accepted the appointment with a March 1, 2023 start date. He notes that he had made the appointing authority aware of his disabled veteran status. The appellant argues that as he is a disabled veteran, he should have received the appointment. He maintains that as a provisional appointment cannot exceed a period of 12 months, veterans and disabled veterans preferences surely become a factor after such period has expired. The appellant also suggests that this agency take steps to “reign in off Civil Service website postings” for provisional positions in the competitive division as the posting for the Librarian 4 position at issue here, which he had found on the website of the New Jersey Library Association, was flawed.

Further, the appellant contends that in appointing R [REDACTED] over him, the appointing authority gave no consideration to the federal Vietnam Era Veterans’ Readjustment Assistance Act (VEVRAA) or the Americans with Disabilities Act (ADA). The appellant states that *N.J.A.C. 4A:1-5.2* requires that the ADA is followed.

In addition, the appellant expresses a concern that when an open competitive examination for Librarian 4 posts, it will not be announced open to his county of residence now that the appointing authority is aware of his disabled veterans preference. Specifically, the Union Township Library is situated within Union County, but the appellant is not a Union County resident.

In response, the appointing authority initially expresses its puzzlement that the appellant requested that this appeal be reopened after it had been closed by this agency and that the appeal actually was reopened. Turning to the merits, the appointing authority argues that absent an examination announcement, the appeal has no basis. The appointing authority suggests that the appellant is making irrelevant assumptions due to his past experiences at other libraries. It insists that the appellant's questions regarding the Civil Service title at issue and geographical requirements were answered accurately. The appointing authority also maintains that the appellant has antagonistically pursued information and referred to the provisional hire in his appeal.

It is noted that the County and Municipal Personnel System indicates R [REDACTED]'s provisional appointment, pending open competitive examination procedures, effective March 1, 2023.

CONCLUSION

As an initial matter, the Commission rejects the appointing authority's apparent suggestion that the appellant somehow had no right to request that his appeal, which had been closed by this agency, be reopened or that it was inappropriate for this agency to reopen the appeal at such request. The appointing authority cites to no authority for its position. Moreover, the appointing authority was afforded the opportunity to respond to the appeal, and it in fact did so. As such, the Commission is appropriately considering this matter now and will proceed to the merits.

N.J.A.C. 4A:4-1.5(a) provides an appointing authority with the discretion to make provisional appointments until a competitive examination and eligible list can be promulgated. This approach balances both the immediate needs of an appointing authority to staff critical positions with the underlying purpose of the Civil Service system to ensure that permanent appointments are made on the basis of merit and fitness. An employee does not have any vested right to a provisional appointment. Further, an appointing authority is not required to give preference to a disabled veteran or a veteran when making provisional appointments. *See N.J.A.C.* 4A:5-2.1(d) and *N.J.A.C.* 4A:4-1.5. Veterans preference only becomes applicable *after* an applicant has been determined to be eligible for an examination. Although the appellant argues that veterans and disabled veterans preferences become a factor with respect to a provisional appointment after the 12-month provisional

appointment period, *see N.J.S.A.* 11A:4-13b, he cites to no authority for this proposition and the Commission is aware of none.

The Commission will not address the appellant's claim that the vacancy posting was flawed. In this regard, vacancy postings are initiated by the appointing authority, and they are not monitored by this agency. Such postings are used by the appointing authority to generate a list of interested individuals to fill vacant positions. If a provisional appointment pending open competitive examination results from the posting, the appointing authority must adhere to Civil Service rules and procedures regarding provisional appointments and open competitive examination announcements. Therefore, the requirements set forth in the vacancy posting may not necessarily be those included on the resultant open competitive announcement. *See In the Matter of Alexandre Gabler* (CSC, decided February 2, 2022); *In the Matter of Sarah J. Seigel* (MSB, decided January 11, 2000).

Turning to the appellant's VEVRAA claim, the Commission is not convinced that it has jurisdiction to entertain such a claim in this matter, and the appellant has not provided any substantive evidence that it does. *See* 41 C.F.R. § 60-300.61(a) (complaint alleging violation of VEVRAA may be submitted to the Office of Federal Contract Compliance Programs directly; any Office of Federal Contract Compliance Programs regional, district, or area office directly; the Veterans' Employment and Training Service; or the Local Veterans' Employment Representative at the local employment service office). The Commission also cannot entertain the appellant's ADA claim as it lacks jurisdiction over claims of disability discrimination in local service. *See N.J.A.C.* 4A:7-1.1(g). The appellant's reliance on *N.J.A.C.* 4A:1-5.2 is misplaced. *N.J.A.C.* 4A:1-5.2(b) states that the purpose of *N.J.A.C.* 4A:1-5 is "to establish a designated coordinator whose duties shall include assuring that [this] agency complies with and carries out its responsibilities under the ADA." Clearly, the provision concerns the establishment of an ADA coordinator for this agency. It is not a grant of jurisdiction to the Commission to address matters of alleged local service discrimination. As such, the appellant may wish to file a complaint with the New Jersey Department of Law and Public Safety's Division on Civil Rights, the U.S. Equal Employment Opportunity Commission, or both.

Additionally, the appellant expressed a concern that a future open competitive examination for Librarian 4 will not be announced open to his county of residence. However, aside from the premature nature of the concern as the examination announcement has not yet posted,¹ it should be noted that any such announcement would generally be governed by the applicable local residency ordinance or resolution. *See N.J.A.C.* 4A:4-2.3(b) and *N.J.A.C.* 4A:4-2.11(b). Any suggestion that the appointing authority will seek to alter its residency requirements now that it is aware

¹ Open competitive examination announcements are posted on, and applications are made available through, this agency's website and may be publicized by other appropriate means, as approved by this agency, to secure sufficient qualified candidates. *N.J.A.C.* 4A:4-2.1(a).

that the appellant holds disabled veterans preference is speculative. As such, his concern does not call for action at this time.

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 11TH DAY OF OCTOBER, 2023



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