



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Thomas Kohler,
Construction Official (M0825E),
Lacey Township

Administrative Appeal

CSC Docket No. 2024-746

ISSUED: February 28, 2024 (MC)

Thomas Kohler appeals his standing on the Construction Official (M0825E), Lacey Township, eligible list.

By way of background, the examination for Construction Official (M0825E), was announced with an August 21, 2023, closing date. The subject eligible list of one name promulgated on October 19, 2023,¹ and expires on October 18, 2026. The appellant submitted an application, indicating that he was a veteran and remitted a reduced fee of \$15. He was notified on August 17, 2023, that he was subsequently ineligible due to him not remitting the full application fee of \$25, since he had indicated he was a veteran, but had not yet applied for veterans' preference. Thereafter, he submitted an application for veterans' preference to the Department of Military and Veterans Affairs (DMAVA),² which ultimately found that he had established his entitlement to veterans' preference, effective on October 5, 2023.

¹ Agency records indicate that the subject eligible list **issued**, effective October 11, 2023.

² Specifically, the Adjutant General of DMAVA is required to determine whether an applicant has established an entitlement to veterans' or disabled veterans' preference. Once the determination is made, DMAVA enters the appropriate coding for the approved veterans or disabled veterans' preference into the Civil Service Commission (Commission) database. The date this occurs establishes the date of the Adjutant General's initial determination for veterans or disabled veterans' preference. See *N.J.A.C. 5A:9-1.4*.

In his appeal, received October 4, 2023, the appellant remitted the balance of the application fee and requested that his application be processed. Agency records reveal that upon review of his appeal it was found that he had been deemed a veteran, effective October 5, 2023. The Division of Agency Services (Agency Services) accepted the reduced fee and added his name to the subject eligible list, for prospective employment opportunities only. As a result of the foregoing, the appeal file was closed.

Thereafter, the appellant requested that his appeal be reopened, and his name be added to October 23, 2023, certification (OL231409) of the subject eligible. Specifically, he argued that since he had only learned after he had applied for the subject examination that he had to apply for veterans' preference and, he was subsequently found to be entitled to veterans' preference, then his name should have been added to the October 23, 2023, certification (OL231409). The appellant argues that, by not adding him to the October 23, 2023, certification violates his veterans' preference rights. Finally, the appellant argues that he was reasonably unaware of the requirement that he had to file an application for veterans' preference.

Agency records reveal that the appellant was added to the subject eligible list on or about October 25, 2023, as a veteran. Records further reveal that certification (OL231409) was issued to the appointing authority on October 23, 2023. The appointing authority returned the certification and appointed a non-veteran, the only eligible on that certification, effective October 31, 2023.

CONCLUSION

The ultimate issue in this matter is whether the appellant's veterans' preference was properly applied. *N.J.S.A.* 11A:5-1(b) provides in part that:

"Veteran" means . . . any soldier, sailor, marine, airman, nurse or army field clerk, who has served in the active military or naval service of the United States and has been discharged or released under other than dishonorable conditions from that service in any of the following wars or conflicts and who has presented to the Adjutant General of the Department of Military and Veterans' Affairs sufficient evidence of the record of service *and received a determination of status no later than eight days prior to the issuance of an employment list, for which that individual received a passing score on an examination* (emphasis added):

See also N.J.A.C 4A:5-1.3 which provides that:

- (a) Veterans or disabled veterans' preference shall apply prospectively from the date of the initial determination of the Adjutant General of the Department of Military and Veterans' Affairs or the date of the

Adjutant General's determination from an appeal, as the case may be. *See N.J.A.C. 6A:9-1.4.*

- (b) Veterans or disabled veterans' preference is effective for all eligible lists for which an eligible has received a determination from the Adjutant General, as provided in (a) above, **no later than eight days prior to the list's issuance date.** (emphasis added).

In this matter, agency records reveal that DMAVA's determination, that the appellant met the requirements for veterans' preference, was effective October 5, 2023. However, as the subject eligible list **issued** on October 11, 2023, only six days later, he should not have been provided veterans preference for the M0825E eligible list. In this regard, the determination of veterans' preference must be made "no later than eight days prior to the issuance of an employment list" to apply for that eligible list. *See N.J.S.A. 11A:5-1(b).* Therefore, since the determination of his veterans' status was not made at least eight days prior to the list issuance date, he cannot be listed as a veteran on the M0825E eligible list. Moreover, as the provision is statutory, the Commission does not have the authority to relax it and list him as a veteran on the M0825E eligible list. Accordingly, the appellant's status must be corrected to non-veteran on the Construction Official (M0825E), Lacey Township eligible list.

Additionally, the Commission does not agree that the failure to add the appellant's name to the October 23, 2023 (OL231409) certification was in error. Specifically, the Commission notes that there was no administrative error in the initial determination that the appellant was not eligible for the subject examination. In this regard, the appellant had not established veterans' preference prior to submitting his application, and thus, his selection of veteran status, and his payment of the reduced fee was an error made by the appellant, and not this agency. The Commission also notes that despite the appellant's arguments to the contrary, there is sufficient information on this agency's website as to what denotes a veteran for civil service purposes. Therefore, any relief provided to the appellant was correctly prospective in nature.

Regardless, even if the appellant's name had been added to an outstanding certification, based on the foregoing determination that the appellant must be listed as a non-veteran on the M0825E eligible list, the appellant would not have been entitled to any appointment from the M0825E eligible list. In this regard, individuals whose names merely appear on a list do not have a vested right to appointment. *See In re Crowley*, 193 *N.J. Super.* 197 (App. Div. 1984), *Schroder v. Kiss*, 74 *N.J. Super.* 229 (App. Div. 1962). The only interest that results from placement on an eligible list is that the candidate will be considered for an applicable position so long as the eligible list remains in force. *See Nunan v. Department of Personnel*, 244 *N.J. Super.*

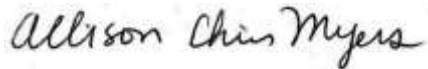
494 (App. Div. 1990). Accordingly, the appellants name was properly not added to the October 23, 2023 (OL231409) certification.

ORDER

Therefore, it is ordered that this appeal be denied and that the appellant's name be recorded as a non-veteran on the Construction Official (M0825E), Lacey Township eligible list.

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 FEBRUARY, 2024



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