

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Sean M. Donahue,	:	
Petitioner	:	
	:	
v.	:	
	:	
State Civil Service Commission	:	
(Department of Human Services),	:	No. 150 C.D. 2020
Respondent	:	Submitted: January 22, 2021

OPINION NOT REPORTED

MEMORANDUM OPINION  
PER CURIAM

FILED: April 23, 2021

Sean M. Donahue (Donahue), representing himself, petitions for review of an order of the State Civil Service Commission (Commission) that dismissed an appeal he filed after the Department of Human Services (DHS) did not hire him for a civil service position. Upon review, we affirm.

**I. Background**

In 2018, Donahue applied for a civil service position as an Income Maintenance Caseworker for the DHS in its Luzerne County Assistance Office. There was a posted opening in Wilkes-Barre and another in Hazleton. Donahue contends he applied for both positions. Br. of Pet'r at 17 & 44. However, the position number on his application matches only the Wilkes-Barre posting. Certified Record (C.R.) Item #2, Notes of Testimony, 12/19/18 (N.T.) at 54, 58, & 72; C.R. Item #6, Comm'n Adj. at 2, Findings of Fact (F.F.) 3-4 & Ex. A at 4.

Donahue states he is an Army veteran. He asserts he scored 97 points on the civil service exam, giving him a score of 107 after adding the 10 points for

other agencies are external hires rather than internal hires and not entitled to preference over veterans, that the DHS, rather than Donahue, had the burden of proof, that he was intentionally targeted for exclusion from state employment, and that the DHS discriminated against him by not hiring him because he is not Hispanic.

In his reply brief, Donahue restates some of the same assertions and also argues that this Court should entertain some of his arguments in its original jurisdiction. He cites 42 Pa. C.S. § 761(a)(1), which confers original jurisdiction upon this Court over civil actions against the Commonwealth or a Commonwealth officer acting in his official capacity. In addition, Donahue asks this Court to expand the record or take judicial notice of purportedly related records and cases.

### **III. Discussion**

Although Donahue asserts that he applied for both the Wilkes-Barre and Hazleton positions, there is only one application in the record, and the Commission found as a fact that the position number on that application matched the Wilkes-Barre position rather than the Hazleton position. C.R. Item #6, Comm'n Adj. at 2, F.F. 3-4. That finding was supported by substantial evidence. *See* C.R. Item #2, N.T. at 54, 58, & 72; C.R. Item #6, Comm'n Adj. Ex. A at 4. This Court will not disturb the Commission's findings of fact on appeal. *See Commonwealth v. State Civ. Serv. Comm'n (Wheeland)*, 219 A.3d 1257, 1275 (Pa. Cmwlth. 2019).

At the hearing, there was testimony concerning both the Wilkes-Barre and Hazleton positions. Field Human Resource Officer 2 Janet Norton (Norton), who testified on behalf of the DHS, stated at two points that the position at issue had been filled. C.R. Item #2, N.T. at 51 & 71. However, after a sidebar conference among Norton, Commissioner Lane, the Commission's counsel, DHS counsel, and Donahue, Norton clarified in further testimony that the Hazleton position was filled

been within the Commission's discretion. *Accord Commonwealth v. Counterman*, 719 A.2d 284, 299 (Pa. 1998) (trial court's decision whether to sequester witnesses is discretionary and will be reversed only for an abuse of discretion).

Having found as facts that Donahue applied only for the Wilkes-Barre position and that the DHS did not fill that position, the Commission correctly dismissed Donahue's claim for relief. Donahue's remaining arguments relate to various reasons why he believes the DHS acted improperly in the selection process for the position. Because the position was never filled, however, all such arguments are irrelevant.

Regarding the additional arguments raised in Donahue's reply brief, this Court declines to take judicial notice of other case records or adjudications, which are not relevant in light of our disposition of this matter. As for Donahue's assertion that this Court should consider his arguments in our original jurisdiction, although the statement of jurisdiction in Donahue's principal brief cited 42 Pa. C.S. § 761, which relates to this Court's original jurisdiction, he did not otherwise refer to this Court's original jurisdiction in his principal brief. An argument cannot be raised for the first time in a reply brief. Pa. R.A.P. 2113(a); *see Richardson v. Thomas*, 964 A.2d 61, 66 n.6 (Pa. Cmwlth. 2009) (court would not consider issue raised in reply brief but not in statement of questions involved in the principal brief). Therefore, that argument is waived. Further, Donahue has not set forth any basis to consider his petition for review as the commencement of a civil action in this Court's original jurisdiction. He has cited no authority and offered no analysis in support of his assertion. It is therefore waived for this additional reason. *See Commonwealth v. Johnson*, 985 A.2d 915, 924 (Pa. 2009) (claim is waived where appellate brief

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PER CURIAM

ORDER

AND NOW, this 23<sup>rd</sup> day of April, 2021, the order of the State Civil Service Commission is AFFIRMED.

**Certified from the Record**  
**APR 23 2021**  
**And Order Exit**