

CSC  
B-2



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Bernadette Pasqua,  
Department of Transportation

Request for Enforcement

CSC Docket No. 2014-1808

ISSUED: **JUL 18 2014** (HS)

Bernadette Pasqua, Realty Specialist 2, Transportation,<sup>1</sup> with the Department of Transportation (DOT), seeks enforcement of the attached decision of the Division of Classification and Personnel Management (CPM) that the duties and responsibilities of her position would be properly classified by the title Realty Specialist 2, Transportation.

By way of background, the appellant received a regular appointment to the title of Realty Specialist 1, Transportation on March 4, 2006. The appellant later appealed the classification of her position to CPM, contending that the functions of her position were inconsistent with her permanent title of Realty Specialist 1, Transportation and that she should be properly classified by the title of Realty Specialist 2, Transportation. In support of her request, the appellant submitted a Position Classification Questionnaire (PCQ) detailing the duties she performed as Realty Specialist 1, Transportation. In its July 19, 2013 determination, CPM found that the appellant's position would be properly classified by the title Realty Specialist 2, Transportation, and she was assigned an effective date of February 9, 2013. After receiving CPM's determination, the appointing authority opted not to effect the required change to the classification of the appellant's position. Rather, the appointing authority chose to assign duties and responsibilities commensurate with the appellant's then-current and permanent title of Realty Specialist 1, Transportation. In November 2013, the appointing authority submitted a revised

<sup>1</sup> Agency records indicate that the appellant was provisionally appointed, pending promotional examination procedures, to the title of Realty Specialist 2, Transportation, effective May 31, 2014.

PCQ indicating the duties and responsibilities that had been reassigned to the appellant. Although the appellant and her supervisor refused to sign the revised PCQ, her program manager signed the revised PCQ on November 7, 2013. After reviewing the revised PCQ, CPM confirmed that the higher level duties had been removed and that the appellant's duties aligned with the Realty Specialist 1, Transportation title. Therefore, the appellant remained in her permanent title of Realty Specialist 1, Transportation and no further action was taken. CPM informed the appointing authority and the appellant of the results of its review of the revised PCQ by letter dated December 23, 2013. Subsequently, the appellant was provisionally appointed to the title of Realty Specialist 2, Transportation, pending promotional examination procedures, effective May 31, 2014.

In her request for enforcement, the appellant alleges that the decision not to effect her reclassification was based on age, gender and disability discrimination. She states that the appointing authority informed her that her reclassification would not move forward due to an oral "front office directive" negating promotions.<sup>2</sup> She disputes the accuracy of the advice that the front office directive prevented her reclassification and the fact that there was no critical need to reclassify her position because she was certified from an eligible list for Realty Specialist 2, Transportation (PS3439T) in January 2014. She further disputes the appropriateness of the front office directive since several individuals serving as trainees are soon to be advanced to the Realty Specialist 1, Transportation title. The appellant contends that she should be reclassified effective February 2013 because she is qualified, experienced and knowledgeable in working at the level of Realty Specialist 2, Transportation, and has passed the promotional examination for that title.<sup>3</sup> In addition, she contends that despite the "front office directive," upper-level managers have received "in-house reclassifications" and other employees in the Realty Specialist 2, Transportation title at DOT headquarters have been "reclassified." Therefore, she should also be "reclassified" at her Mount Arlington location. The appellant also requests that her compensation be set equivalent to that of J.S., a male Realty Specialist 2, Transportation.

## CONCLUSION

As indicated in *N.J.A.C. 4A:3-3.5(c)1*, the appointing authority is permitted to remove certain duties in order to effect a proper classification commensurate with

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<sup>2</sup> The record does, however, reflect that the appointing authority had a procedure in place whereby appeals could be made internally at DOT to allow reclassifications to move forward in cases where it was determined that the higher level duties could not be removed.

<sup>3</sup> Agency records indicate that the appellant's name appeared on the PS3439T eligible list for the subject title, which promulgated on January 27, 2011 and expired January 26, 2014. The appellant, a veteran, was certified to the appointing authority on January 17, 2014. The appointing authority returned the certification indicating that the appellant was not interested in the location of the position.

the appellant's permanent title of Realty Specialist 1, Transportation. Absent any compelling documentation that the appellant's duties did not in fact change, the Civil Service Commission (Commission) must initially defer to the certifications from an employee's supervisor,<sup>4</sup> manager and appointing authority that they in fact removed higher level or out-of-title duties. An employee's unwillingness to sign the PCQ only suggests that she simply does not agree that the duties and responsibilities as described on the PCQ reflect the proper classification. Moreover, on appeal the appellant does not dispute that the higher level duties were removed. The record reflects that the appointing authority followed a policy of directing the removal of higher level duties when employees receive favorable classification determinations. In these cases, new PCQs are prepared reflecting the appropriate level duties. The record further reflects that the appointing authority had a procedure in place whereby appeals could be made internally at DOT to allow reclassifications to move forward in cases where it was determined that the higher level duties could not be removed. In this matter, the appointing authority decided not to process the reclassification of the appellant's position, reassigned the higher level duties that she had been performing and prepared a revised PCQ. CPM reviewed the revised PCQ and confirmed that it reflected the alignment of the appellant's duties with her permanent title of Realty Specialist 1, Transportation.

The appellant claims that her certification from an eligible list for Realty Specialist 2, Transportation (PS3439T), the advancement of trainees, and the advancement of employees at DOT headquarters show that the appointing authority misapplied its own policy regarding classification appeals. The record indicates that the appellant's name was certified on January 17, 2014 as the only eligible. However, no appointment was made since the appellant was not interested in the location, though the appointment would have been within the same unit scope. The appellant's certification in January 2014 is not sufficient to indicate that the appointing authority misapplied its discretion not to move forward with the appellant's reclassification at her location in response to a classification determination dated months earlier in July 2013. Similarly, the advancement of trainees to the title of Realty Specialist 1, Transportation does not indicate a misapplication of policy. In this regard, *N.J.A.C. 4A:3-3.7(j)* provides that the advancement of a successful, permanent trainee to the appropriate primary title shall be accomplished without the usual promotional examination process, but rather by regular appointment of the employee to the appropriate primary title. Therefore, the advancement of employees serving in the title of Realty Specialist Trainee, Transportation to the title of Realty Specialist 1, Transportation would be in accordance with the controlling regulation. The "reclassifications" of upper-level managers and the advancement of employees at DOT headquarters also do not

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<sup>4</sup> Although the appellant's supervisor refused to sign the revised PCQ, the record indicates that he noted that the work duties listed on the revised PCQ appeared to be those associated with the Realty Specialist 1, Transportation title.

indicate a misapplication of policy since the record does not indicate the particular circumstances surrounding these advancements. Regardless, since the appointing authority had a procedure in place to allow appeals internally at DOT in particular cases where higher level duties could not be removed, there is no indication that the appointing authority's policy did not apply to the appellant.

Although the appellant claims that she is qualified, experienced and knowledgeable in working at the level of a Realty Specialist 2, Transportation and has passed promotional examinations for that title, the appellant's possession of these characteristics does not compel an appointing authority to effect a reclassification since, as already noted, *N.J.A.C. 4A:3-3.5(c)1* affords an appointing authority the discretion to assign duties commensurate with the employee's permanent title after receipt of a classification determination.

However, the Commission finds that the appellant is entitled to differential back pay from the effective date of her classification determination, February 9, 2013, to when her program manager completed the revised PCQ, November 7, 2013, as it is apparent from the record that the appellant was performing higher level duties during that period.

As a final matter, it is noted that this appeal is not the proper forum to initially raise claims of discrimination. The appellant is advised that she may file a complaint with her department's Equal Employment Opportunity office if she believes there has been discrimination.

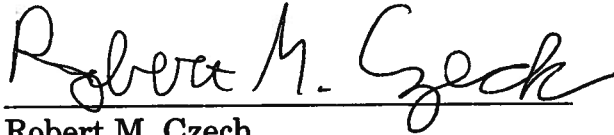
### ORDER

Therefore, the Commission concludes that the appellant's position was properly classified as a Realty Specialist 1, Transportation as of the completion of the revised PCQ. It is ordered that the appointing authority pay the appellant differential back pay from the date specified in the classification determination, February 9, 2013, until her program manager completed the revised PCQ on November 7, 2013.

In the event that the appointing authority fails to make a good faith attempt to comply with this decision within 30 days of its issuance, the Commission orders that a fine be assessed against the appointing authority in the amount of \$100.00 per day, beginning on the 31<sup>st</sup> day of the issuance of this decision, continuing for each day of violation up to the maximum amount of \$10,000.00.

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 16<sup>TH</sup> DAY OF JULY 2014



Robert M. Czech  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Henry Maurer  
Director  
Division of Appeals and  
Regulatory Affairs  
Written Record Appeals Unit  
Civil Service Commission  
P.O. Box 312  
Trenton, NJ 08625-0312

Attachment

- c. Bernadette Pasqua  
Michele A. Shapiro  
Kenneth Connolly  
Joseph Gambino  
Beth Wood





**Finding of Fact:**

The primary responsibilities of your position include, but are not limited to the following duties:

- Receiving and interpreting "Right of Way" construction maps, appraisal reports, non-real estate reports, PAECE reports, access plans, development impact reports, and title document requirements.
- Generating case summaries, department actions and records of negotiations; packing cases for approval of agreements, settlements or for placement information condemnation; and submitting suggestions for improving PAECEtrak database.
- Assisting the deputy attorney general on litigation cases and providing information regarding details case process; negotiating with property owners on the value of their home and providing justification on increased payouts to property owners.
- Assisting displaced families with replacement housing; preparing vouchers and department actions to authorize expenditure of funds; and informing homeowners of condemnation process.
- Generating commercial sign and billboard moving, replacing/reproducing cost estimates related to the relocation; representing Right of Way North at pre-construction meetings; and providing assistance with resolution of Right of Way related issues.

**Review and Analysis:**

Your position is currently classified by the title Realty Specialist 1, Transportation (P18-57062). The definition section of this job title states:

"Under the close supervision of a Realty Specialist 3, Transportation or Realty Specialist 4, Transportation, performs the work involved in conducting negotiation, relocation, property management, project programming, administrative and the laws and principles of Eminent Domain activities associated with the purchased and disposition of property; does other related duties as assigned."

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July 19, 2013

You contend that the title Realty Specialist 2, Transportation (P22-53080) is an appropriate title for your position. The definition section of the job specification states:

"Under the general supervision of a Realty Specialist 3 , Transportation or Realty Specialist 4, Transportation, performs the more sensitive and complex work involved in conducting negotiations, relocation, property management, project programming, administrative and the laws principles of Eminent Domain activities associated with the purchase and disposition of real property; does other related duties as assigned."

A review of the duties and responsibilities for this position finds that this position reviews and interprets right of way construction maps, appraisal reports, non-real estate reports, title document requirements, access plans, PAECE reports, meets with impacted property owners, suggests improvements for database; recommends parcel elimination; generate case summaries, department action, and records of negotiations; assists deputy attorney general assigned to condemnation cases; provides records and details of negotiations to assist deputy attorney general; reports case progress; generates replacement/reproduction cost estimates; and provide assistance with resolution of Right of Way related issues. The position does perform the more sensitive and complex work involved in conducting negotiations, relocation, property management, project programming, administrative and the laws and principals of Eminent Domain activities associated with the purchase and disposition of real property.

The preponderance of your assigned duties and responsibilities are significantly descriptive of tasks assigned to the title Realty Specialist 2, Transportation (P22-57063).

**Determination:**

Based on the findings of fact above, it is my determination that the assigned duties and responsibilities performed by your position would be properly classified by the title Realty Specialist 2 (P22-57063) with an effective date of February 9, 2013.

The Civil Service Commission will work with the Department of Transportation to effectuate this transaction.

Please be aware that an incumbent's eligibility in meeting specification requirements is not the same as properly classifying the duties of the position. It is

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Ms. Bernadette Pasqua

Page 4

July 19, 2013

the responsibility of the Appointing Authority to ensure an incumbent meets the eligibility requirements prior to any appointment to the title.

The New Jersey Administrative Code 4A:3-3.5©1 states that, "within 30 days of the receipt of the classification determination, unless extended by the Commissioner in a particular case for good cause, the Appointing Authority shall either effect the required change in the classification of an employee's position; assign duties and responsibilities commensurate with the employee's current title; or reassign the employee to the duties and responsibilities to which the employee has permanent rights. Any change in the classification of a permanent employee's position whether promotional, demotional or lateral, shall be effected in the accordance with all applicable rules."

Please be advised that in accordance with N.J.A.C. 4A:3-3.9, you may appeal this decision with twenty (20) days of receipt of this letter. This appeal should be addressed to Written Records Appeals Unit, Division of Appeals and Regulatory Affairs, P.O. Box 312, Trenton, New Jersey 08625-0312. Please note that the submission of an appeal must include a copy of the determination being appealed as well as written documentation and/or arguments substantiating the portions of the determination being disputed and the basis for the appeal.

Sincerely,



Joseph Ridolfi, Team Leader  
Classification and Personnel Management

JR/ts

c: Jeanne Victor, Director, Human Resources  
PMIS Unit, CSC

