



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Theresa Spence,
Department of Human Services

CSC Docket No. 2016-1279

Request for Reconsideration

ISSUED: NOV 29 2016 (RE)

Theresa Spence, a Human Services Assistant with the Department of Human Services, represented by Todd Drayton, Esq., petitions the Civil Service Commission for reconsideration of the decision rendered on March 4, 2015, which found that her layoff title rights were correctly applied. A copy of that decision, entitled *In the Matter of Theresa Spence, Department of Human Services* (Civil Service Commission, decided March 4, 2015), is attached hereto and incorporated herein.

By way of background, the petitioner was laid off from her Human Services Assistant position as a result of layoff on January 9, 2015. The petitioner argued that that she was not called, and her proxy was not called, and this was unfair as no one talked to her. The Civil Service Commission determined that the layoff procedure was carried out exactly as described it would be, and the appellant listed only her home phone number on her Declaration Form, and did not list her cell phone as a contact number for the interview. As such, the layoff team did not call her cell phone number. Once she could not be contacted, the layoff team did the best they could with the information provided. According to the cell phone records provided by the appellant, no call was made to the proxy's phone number. Thus, either that record did not list incoming calls which did not leave a message or the layoff team called the wrong number. In any event, there was no choice on the declaration form to be made as no choices were available for full-time work in the four locations listed by the appellant, and she checked that she would not accept less than full-time work. Courtesy choices may have been available but it is simply not known whether or not her proxy would have selected one in the absence of the availability of her selected choices on the form. The appellant argues that she

should have been told that part-time positions were available for her chosen locations, but she did not indicate in either submission that she would have accepted a part-time position, or that her proxy knew that she would have done so and would have selected a part-time position for her. The Commission also found that the choices she made on her Declaration Form were honored.

In the present matter, the petitioner argues that the Commission relied on incomplete information, as she had updated her Declaration Form which updated the telephone numbers. As such, she argues that the layoff team resorted to the wrong Declaration Form and therefore incorrectly attempted to contact Mrs. Spence at a number she was no longer utilizing. She did not produce a copy of this updated Declaration Form. She also maintains that the layoff team did not make any follow up attempt to contact her proxy, but had he been contacted, he would have selected a part-time position for her had one been offered. She argues that since the layoff denied her and her proxy any such opportunity to choose, Mrs. Spence's rights under title 4A were improperly denied. She also maintains that she was at work at the time of the call, and no explanation has ever been provided concerning why she was not contacted at work. She argues that the Commission erred in its determination.

CONCLUSION

N.J.A.C. 4A:2-1.6(b) provides that a petition for reconsideration must show the following:

1. New evidence or additional information not presented at the original proceeding which would change the outcome and the reasons that such evidence was not presented at the original proceeding; or
2. That a clear material error has occurred.

Further, the rule provides that a party may petition the Commission for reconsideration within 45 days of receipt of the decision. As this request was postmarked September 22, 2015, over six months after the initial decision, this request for reconsideration is untimely.

Nevertheless, as to the merits of the issue, the petitioner has not met the standard cited above. The appellant refers to an "updated" Declaration Form which she does not provide. The record indicates that the appellant did update her Declaration Form. Originally, the appellant completed the form indicating that her first choice was Somerset County, the second choice was Morris County, and the third choice was Mercer County. There are four questions associated with the locations preference section of this form. They are: if you are full-time, are you willing to take a part-time position (or part-time to full-time); are you willing to

take a position with less or more hours in the week; are you willing to take a 10 or 12-month position if available; and, are you willing to go back to prior-held titles. For these questions, the appellant selected yes to all of them, and this form is dated September 9, 2010. Clearly, the appellant meant to date the form with 2014. The second form has the word "amended" across the top and it is signed and dated by the appellant on September 10, 2014. On this form, the appellant indicated that her first choice was Morris County, the second choice was Somerset County, the third choice was Hunterdon County, and the fourth choice was Mercer County. For each of the four questions, she clearly checks "no." There is no other form in the official file, and the appellant did not produce a copy of what she believes is another correction to the Declaration Form. On the first page, the appellant lists one phone number, and there was one number listed for the proxy on the proxy page. The layoff team noted that the employee did not answer, that the proxy did not answer, and that the team made the decision. It even put a star next to the first question, if you are fulltime are you willing to take a part-time position, and made the notation "See indicated – no p/t pos. therefore layoff."

The Commission made its determination based on the record before it, and no error is evident. The appellant has not produced another form. It has already been explained that the layoff team may have misdialed the proxy's phone number. The appellant provided one phone number on the form, which was called. Had she provided her cell phone or her work phone numbers, they would have been called. But she did not. Additionally, the appellant is not entitled to a part-time position, which may have been a courtesy offer, on the basis that the layoff team misdialed her proxy. Simply put, a courtesy offer is not an entitlement, and there were no choices available for full-time employment in the counties she listed. The appellant had already changed her mind and amended her form to indicate that she was not willing to take a part-time position, and the layoff team followed the appellant's decisions as outlined by her on her Declaration Form.

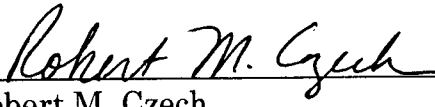
This request is untimely, and the petitioner has failed to present a basis for reconsideration of this matter since she failed to establish that a clear material error occurred in the original determination or that new evidence presented would change the outcome of the appeal.

ORDER

Therefore, it is ordered that this request 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
THE 23rd DAY OF NOVEMBER, 2016



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
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Attachment

- c: Theresa Spence
- Todd Drayton, Esq.
- Barbara Maticic
- Christina Mongon
- Kelly Glenn
- Records Center



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE
ACTION OF THE
CIVIL SERVICE COMMISSION

In the Matter of Theresa Spence,
Department of Human Services

CSC Docket No. 2015-1817

Layoff Appeal

ISSUED: ~~MAR~~ 10 2015 (RE)

Theresa Spence, a Human Services Assistant with the Department of Human Services, Woodbridge Developmental Center, appeals her layoff.

By way of background, the Department of Human Services submitted a layoff plan to the Division of Classification and Personnel Management (CPM) to lay off employees in various titles due to the closure of the Woodbridge Developmental Center, effective January 9, 2015. Numerous positions in various titles at several institutions were affected. A review of official records indicates that Ms. Spence was laid off.

On appeal, the appellant stated that she was not called, and her proxy was not called, and she was laid off. She stated that this was unfair as no one talked to her. However, she did not request a remedy.

Commission staff responded by letter that the final interview procedures, including the necessity for and the responsibilities of the proxy, were explained to all employees, and employees could also have asked questions at the meetings. The employees were required to take the final interview call, and if unavailable, the proxy could have taken the call. Employees were informed that they were to make their decisions ahead of time and be prepared to provide their final decision when called for a final interview. The final interview was not the time to deliberate preferences, but was the time to make a decision based on preferences and the available opportunities under the circumstances. Employees were told that they could change their mind at the interview stage, but that once the employee made

their final decision, he or she could not change it unless they decided to retire. In her case, on her Declaration Form, the appellant indicated that she would not accept a part-time position, less hours in the work week, a 10 month position, or a demotion to a prior-held title. She made this decision before the interview date for her own reasons. She signed and dated page 2 of the form and confirmed choices by completing and signing the last section on page 1, "Employee Certification and Signature." This states that she understood the instructions for the Declaration Form, and its purpose.

The appellant was informed that no full-time positions were available in the counties she selected. The numbers called for her and her proxy were those she provided on her Declaration Form. The team was unable to contact her or her proxy. Thus, the decision was made on her behalf using the information she provided. One of the decision makers was a union representative, to ensure that proper procedures were followed, and the layoff procedure in her case was carried out as described it would be in the event that she and her proxy were unavailable. Her Declaration Form was the basis for the decision for the layoff, and there was no evidence of a violation of title rights. Once she could not be contacted, the layoff team did the best they could with the information she provided.

In response, the appellant stated that she had not been contacted on her cell phone, and her proxy could not be contacted, and she provides records from the cell phone provider. She argues that she should have been told that only part-time positions were available in the four locations she chose, and she should not have been laid off.

CONCLUSION

In an appeal of this nature, it must be determined whether CPM properly applied the uniform regulatory criteria found in *N.J.A.C. 4A:8-2.1 et seq.*, in determining layoff rights. It is an appellant's burden to provide evidence of misapplication of these regulatory criteria in determining layoff rights and the appellant must specify a remedy. A thorough review of the record establishes that the appellant's layoff rights were properly determined.

At the heart of the title rights determination is the underlying policy to ensure that employees are afforded fair, uniform, and objective title rights without resulting in harm to the public. *See Malone v. Fender*, 80 N.J. 129 (1979). In this case, the appellant was advised of the layoff and final interview processes and provided with resources to answer questions before the layoff was administered. She chose not to accept a part-time position, less hours in the work week, or a 10 month position, on her Declaration Form. This information was taken under consideration before the decision was made to lay her off.

As to contacting her, the appellant listed only her home phone number on her Declaration Form, and did not list her cell phone as a contact number for the interview. As such, the layoff team did not call her cell phone number. Had she listed that number on her Declaration Form, they would have done so.

The appellant also maintains that her proxy had not been contacted. According to the cell phone records provided, no call was made to that number. As such, either that record did not list incoming calls which did not leave a message or the layoff team called the wrong number. In any event, there was no choice on the declaration form to be made. For example, a decision that might have been given to the proxy from the Declaration Form could have been whether to accept a position in the second or third location choices listed on the form. In this case, however, no choices were available for full-time work in the four locations listed by the appellant, and she checked that she would not accept less than full-time work. Choices may have been available in part-time work or in other locations not listed as her choices on the form, and these would have been offered as a courtesy had she been available. It is simply not known whether or not her proxy would have selected one of these courtesy choices in the absence of the availability of her selected choices on the form. She does not argue in her appeal that he would have done so. Rather, in her appeal she states that the fact that she could not be contacted was unfair. When told that the choice made was based on the information provided on the Declaration Form by her, she argues that she should have been told that part-time positions were available for her chosen locations. She did not indicate in either submission that she would have accepted a part-time position, or that her proxy knew that she would have done so and would have selected a part-time position for her in opposition to what she indicated on her Declaration Form. While it is unfortunate that she or her proxy were not contacted or could not be reached on the layoff date, the choices she made on her Declaration Form were honored, and there is no evidence of misapplication of the pertinent uniform regulatory criteria in determining her layoff rights.

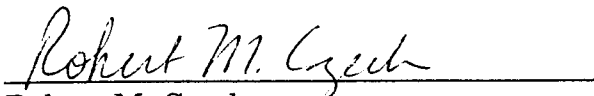
Thus, based on the totality of the circumstances, a review of the record fails to establish an error in the layoff process and the appellant has not met her burden of proof in this matter.

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 4th DAY OF MARCH, 2015



Robert M. Czech
Chairperson
Civil Service Commission

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