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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Jaleila Wilson,  
Department of Law and Public Safety

CSC Docket No. 2016-1288

Reprisal Appeal

Corrected Decision

ISSUED: FEB 28 2017 (DASV)

Jaleila Wilson, an Investigator 3, Law and Public Safety with the Department of Law and Public Safety, petitions the Civil Service Commission (Commission) for relief, pursuant to *N.J.S.A. 11A:2-24* and *N.J.A.C. 4A:2-5.1*, from alleged reprisal from her employer.

The appellant maintains that her agency's Office of Human Resources, with the support of the Office of the Attorney General, retaliated against her for filing a grievance in July 2013 regarding her Performance Assessment Review (PAR) by forwarding "falsified documents" to the Division of Agency Services (Agency Services) with respect to her position classification requests, which it rejected, and threatening to write her up "on trumped up charges" and reassign<sup>1</sup> her to another unit. She contends that the actions of the appointing authority "go beyond a mere procedural violation" as to the processing of her classification requests. In that regard, it is noted that the Commission previously reviewed the appellant's appeal of Agency Services' determination that her position was properly classified as an Auditor 3. The appointing authority rejected the appellant's request for reclassification and indicated that representatives of the appointing authority met with the appellant and advised her that out-of-title duties would be removed from her position "effective immediately" and duties equivalent to her current title of Auditor 3 would be assigned. In response, the appellant claimed, among other things, that "this whole fiasco was due to the childishly vindictive and petty

<sup>1</sup> The parties refer to a reassignment as a "transfer." Movement to another unit is considered a reassignment. See *N.J.A.C. 4A:4-7.2*.

attempts of certain employees with [the Office of the Attorney General's Human Resource] department to get back at [her] for filing a grievance over [her PAR] in July 2013.<sup>2</sup> She also claimed that the appointing authority held her Position Classification Questionnaire (PCQ) for over a year and falsified documents that her out-of-title duties were removed which resulted in an erroneous classification determination. Upon review, the Commission found that there was a time that the appellant ceased performing certain tasks, but the out-of-title duties were not fully removed. Based on its findings, the Commission concluded that the duties of the appellant's position compared favorably with the duties of an Investigator 2, Law and Public Safety.<sup>3</sup> Moreover, given the delay of the appointing authority in forwarding the appellant's classification request to Agency Services pursuant to *N.J.A.C. 4A:3-3.9(c)7* and for equitable reasons set forth in the Commission's prior decision, the appellant was provided with a retroactive effective reclassification date to January 12, 2013 and differential pay up to the effective date of Agency Services' new determination. In that regard, the appellant filed another request for reclassification into the Administrative Analyst title series which the appointing authority also rejected. At the time of the classification appeal, the new classification matter was pending.<sup>4</sup> Thus, the Commission ordered that Agency Services perform an expedited review of the appellant's position to finally resolve the issue of her position classification. *See In the Matter of Jaleila Wilson* (CSC, decided October 7, 2015).<sup>5</sup>

In response, the appointing authority, represented by Emily Samuels, Deputy Attorney General, submits that the Commission should deny the appellant's appeal because it did not deny her classification appeals, nor threaten her with discipline or reassignment. It explains that reclassification requests to the Office of the Attorney General significantly increased beginning in 2010 and the department developed a process to evaluate whether the out-of-title duties could be reassigned to an employee with an appropriate title. If the duties could not be reassigned, a supervisor would meet with the employee and advise that the duties would be removed. Then the department would submit a revised PCQ and PAR to Agency Services. The appointing authority further states that, in 2015, several decisions of the Commission informed the department that it should not remove the duties

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<sup>2</sup> The appointing authority advises that the 2013 grievance was settled. It acknowledged that the appellant should not be assigned certain duties, nor be rated on them on her PAR.

<sup>3</sup> It is noted that effective April 16, 2016, the Investigator, Law and Public Safety title series was renumbered. The Investigator 2, Law and Public Safety is now Investigator 3, Law and Public Safety.

<sup>4</sup> The appellant filed another grievance in July 2014. The grievance was settled by the parties' agreement to wait for Agency Services' determination on a new request for position reclassification.

<sup>5</sup> Agency Services rendered its determination on February 23, 2016, finding that the appellant's position was properly classified as an Investigator 2, Law and Public Safety and denied her request to be reclassified. The appellant filed an appeal of this denial (CSC Docket No. 2016-3450) but withdrew the matter, asserting that she no longer was performing Administrative Analyst duties and the removal of the duties "which was the true issue . . . [is] addressed in [her] reprisal appeal."



while a classification appeal was pending. Therefore, the appointing authority maintains that it did not retaliate against the appellant, nor was she "singled out." The process was applied to other classification requests. The appointing authority notes that the appellant acknowledged that the appointing had done this in other cases. Moreover, it states that it recommended rejection of the appellant's second reclassification request since the additional duties that she had been delegated were the result of a proposed but not approved reorganization and not within the duties of her then Auditor 3 title.

As for the appellant's reprisal claim, the appointing authority contends that for incidents that occurred earlier than August 2015, the Commission should deem her allegations as untimely since she did not raise a claim of reprisal until September 2015. Nonetheless, the appointing authority argues that the appellant's allegations do not establish any adverse employment or retaliatory action. It notes that it does not have the authority to deny a classification appeal. Further, the appointing authority submits certifications from a management representative of the appellant's unit and the Director of Human Resources that they are unaware of any threats of discipline. Moreover, the appellant only offers "vague allegations of threats to discipline or transfer her." Additionally, the appointing authority contends that the appellant did not prove that her "disclosure" was protected or that there was "a cause and effect relationship" of an adverse employment action to sustain her claim of reprisal. In that regard, it states that the appellant's two grievances were "settled to her satisfaction." It emphasizes that the second grievance raised an issue of her position classification and could not have been addressed by the grievance as there was specific appeal process to the Commission, which the Commission has the authority to remedy. Regarding the appellant's claim that the appointing authority forwarded falsified documents to Agency Services, the appointing authority states that it was not privy to the submissions in the appellant's classification appeal or what she represented to the Commission.<sup>6</sup> Thus, it maintains that it could not have retaliated against her for something it was not aware of it.

In response, the appellant maintains that she did not state that the appointing authority denied her reclassification requests but rather it "**rejected**" them. She indicates that the first rejection came shortly three months after she "won" her PAR grievance. Moreover, the appellant claims that, in a meeting held on August 21, 2014 which she believed was to discuss her grievance, a management representative threatened, bullied, and berated her about slanderous reports filed

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<sup>6</sup> A State appointing authority is not a party to a classification appeal, since it is an appeal from the determination of Agency Services. See e.g., *N.J.A.C.* 4A:3-3.9(c). As such, the appointing authority should only be provided with a copy of the Commission's final determination as it is a public record. See *N.J.A.C.* 4A:1-2.2(c)1 and *N.J.A.C.* 4A:2-1.1(d)2.

by managers and a deputy director. The representative also supposedly complained about the work in reassigning the appellant, but the appellant contends that she did not ask to be reassigned. In that regard, she sets forth what purports to be a transcript of what the management representative allegedly stated in the meeting. For instance, the appellant indicates that the management representative stated that it was reported that the appellant was "walking around" "bragging and saying" that she was not going to do the work she had been assigned. The reports were that the appellant was being "disruptive" and the representative did not know what she was going to do with the appellant. She further allegedly stated that "[t]he reason why [she] didn't have the meeting with [the appellant] is because [the representative] felt like maybe [the appellant needs] to be transferred to another unit where [she] can do Auditing 3 all day." Moreover, the representative supposedly indicated that "[w]hen [the appellant is] called into a meeting, [she] will be presented with any accusations that was against [her]." In the meantime, the representative conveyed that "while [the appellant is] trying to deal with this [classification issue], if that behavior is such, [the appellant should] just cease it." The representative also stated that she does "care what's removed from [the appellant's] PAR or her 44 [PCQ], [the appellant was] hired to do a job and [she has] to work every day." Therefore, the appellant disputes that the appointing authority was not aware of threats to reassign or discipline her.

Moreover, the appellant notes that the grievance she filed in 2014 and her classification appeal sought two different things: the former requested that duties to be removed because she was denied a promotion, and the latter sought a title change and higher pay. Moreover, in response that the appointing authority was unaware of her disclosures to the Commission, the appellant indicates that Agency Services copied the appointing authority on a memorandum in response to her classification appeal. Thus, the appellant argues that other documents could have been "leaked." Furthermore, the appellant maintains that she was retaliated against and does not find coincidental that her out-of-title duties were removed the same day that she "blew the whistle" on the Office of the Attorney General. She states that "[t]o be clear, the adverse employment action was the Department forcing [her] to remain in an Auditor 3 title despite overwhelming evidence that the position was misclassified as well as threats to discipline/transfer" her. Moreover, she questions that if there was an internal process in place, then why were her out-of-title duties not removed. Additionally, no one met with her to remove those duties prior to July 2014 and her PCQ was rejected. Moreover, the appellant sets forth her claims as to what occurred regarding her PAR and the false assertion that she refused to sign it. She maintains that she was never informed that a new PAR and revised PCQ indicating that she had refused to sign had been sent to Agency Services. The appellant also discusses the circumstances surrounding her PCQ for an Administrative Analyst title that was rejected and questions various individuals' lack of knowledge of a proposed reorganization as the basis for the rejection. Furthermore, she maintains that her reprisal appeal is timely. She was not aware



of the appointing authority's retaliatory acts until she reviewed the contents of her classification appeal file, which contained the revised PAR and PCQ that was submitted to Agency Services and unbeknownst to her. She notes that the management representative refused to show her any paperwork in their August 2014 meeting. Nonetheless, the appellant emphasizes that the retaliation was ongoing since her first PCQ was filed. In addition, she submits that her PAR grievance is a protected disclosure to sustain a claim of reprisal and the appointing authority and its representatives retaliated by "sabotaging" her classification appeal. In conclusion, the appellant states that no one ever complained of her behavior prior to her grievance, and her most recent PAR rating is exceptional. She requests that employees involved be reprimanded, interest be assessed on her differential back pay, and steps taken to prevent what occurred to her to not happen again.

In reply, the appointing authority objects to the purported verbatim statements from the management representative as competent proof of the appellant's allegations. Nevertheless, it argues that these statements do not constitute a threat of discipline or reassignment in retaliation for filing a grievance. The appellant does not deny that she was "walking around saying I was not going to work." Moreover, the management representative discussed a reassignment in the context of a unit that would be most appropriate for the work of an Auditor 3, which was the appellant's title at the time. The appointing authority reiterates that the appellant was not reassigned or disciplined for allegedly being disruptive or not performing work after the meeting of August 21, 2014. Moreover, the appointing authority asserts that the fact that it received a memorandum from Agency Services during the pendency of the appellant's classification appeal does not prove that it received other documents that the appellant submitted. Thus, it maintains that it could not have retaliated against the appellant for her disclosures to the Commission of which it did not know. Additionally, the appointing authority asserts that the appellant's refusal to sign her PAR in a July 2014 meeting has no bearing to the reprisal appeal and she has not established that she would have signed the PAR. It indicates that the appellant and her union representative clearly was objecting to the PAR. Furthermore, it indicates that although the appellant characterized the notation on her PAR that she refused to sign it as falsification, the appointing authority repeats that it was not aware of this alleged "disclosure" to have retaliated against her. Additionally, it stresses that the appellant's arguments regarding her classification appeal for an Administrative Analyst title concerns the merits of that request and should not be addressed herein. The appointing authority submits a supplemental certification of a Human Resource staff member, noting that there was a misunderstanding between her and the Human Resource Manager regarding a meeting where the appellant was not actually present. In that regard, in the revised PCQ, it was mistakenly stated that the appellant was at a meeting on February 6, 2014.

The appellant responds that the appointing authority attached her 2013 PAR grievance to her PCQ. She maintains that there was no reason for this other than retaliation and to sabotage her classification appeal, given that the appointing authority did not remove out-of-title duties as per its contention. As for the management representative statements that the appellant submits, she contends that if the appointing authority wanted them to be “thrown out,” it should have submitted another certification from the representative to deny the threatening statements, but it failed to do so. Furthermore, she reiterates that she did not ask for a reassignment and there was no legitimate reason to do so except to prevent her from receiving a promotion. She also maintains that the supervisors lied that she refused to sign the July 2014 PAR, which was not valid. By not informing her that the PAR was signed or giving her a copy of the same prevented her from grieving that PAR. Additionally, the PAR was forwarded to Agency Services and not the PAR that she was actually rated on in December 2014. Furthermore, she disputes that the error that she was at a February 6, 2014 meeting was unintentional. In conclusion, the appellant maintains that the appointing authority has made many “erroneous and misleading statements” in response to this reprisal appeal and the certifications that were submitted in support of its position are “woefully inadequate.”

### CONCLUSION

Initially, *N.J.A.C.* 4A:2-5.2 provides in relevant part that an employee may appeal a reprisal or political coercion action to the Commission within 20 days of the action or the date on which the employee should reasonably have known of its occurrence and the appeal must be in writing and specify the basis for appeal. Moreover, pursuant to *N.J.A.C.* 4A:1-1.2(c), the Commission has the discretionary authority to relax rules for good cause.<sup>7</sup> In the present case, one of the first acts of “reprisal” claimed by the appellant was the appointing authority’s rejection of her initial classification request which was sometime in 2014, and the within matter was filed during the pendency of her classification appeal in 2015, more than 20 days after the rejection. Nonetheless, the history of this case provides critical information on claims of which are timely. Therefore, in order for the Commission to render a reasoned decision, there is good cause for the Commission to consider all the claims of the appellant in the totality of its review.

*N.J.A.C.* 4A:2-5.1(a) generally provides that an appointing authority shall not take or threaten to take any reprisal action against employees in retaliation for an employee’s lawful disclosure of information on the violation of any law or rule, governmental mismanagement or abuse of authority or on the employee’s permissible political activities or affiliations. See also, *N.J.S.A.* 11A:2-24. In *Katherine Bergmann v. Warren County Prosecutor*, Docket No. A-5665-01T5 (App.

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<sup>7</sup> Although the right to file an appeal of reprisal to the Commission is statutory under *N.J.S.A.* 11A:2-24, the time period governing such an appeal is regulatory and can be relaxed.



Div. December 1, 2004), it was determined that an employee asserting a cause of action under N.J.S.A. 11A:2-24 is required to prove the following elements:

- 1) The employee "reasonably believed" in the integrity of the disclosure at the time it was made, meaning the employee had no reasonable basis to question the substantive truth or accuracy of the content of the disclosure just prior to communication (it is here that the term "reasonable belief" is borrowed from the Conscientious Employee Protection Act (CEPA), N.J.S.A. 34:19-1, *et seq.*, to define what is the substantive content of a "lawful disclosure");
- 2) The employee disclosed the information to a source "reasonably" deemed an appropriate recipient of such information just prior to communication (here, the term "reasonably" is used to describe the perceived proper channels through which a "lawful disclosure" should be communicated);
- 3) There is a connection, or nexus, between the disclosure and the complained of action (this is a standard cause-and-effect showing by the employee). *Carlino v. Gloucester City High School*, 57 F. Supp. 2d 1, 35 (D.N.J. 1999); *Kolb v. Burns*, 320 N.J. Super. 467, 476 (App. Div. 1999).

Only after the employee satisfies the criteria above does the appointing authority bear the burden of showing that the action taken was not retaliatory. See *Wright Line*, 251 NLRB 1083 (1980); *Mount Healthy City School District Bd. of Educ. v. Doyle*, 429 U.S. 274 (1977).

Using the test as enumerated above, the appellant has failed to present a *prima facie* case of reprisal. Although the appellant met the first and second prong of the test, she has failed to satisfy the third prong of the test. In this regard, the appellant's PAR grievance meets the first prong and the filing of the grievance with the appointing authority meets the second prong. However, the record does not establish the presence of a connection, or nexus, between this disclosure and the complained of action, namely, the appointing authority's rejection of the appellant's reclassification requests<sup>8</sup> or that it submitted "falsified documents" to sabotage the

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<sup>8</sup> The Commission is mindful that an appointing authority and its representatives may agree or disagree with an employee's description of his or her duties set forth in a PCQ. See N.J.A.C. 4A:3-3.(c). Moreover, it is within an appointing authority's discretion not to reclassify a position. In that regard, N.J.A.C. 4A:3-3.5(c)1 provides that within 30 days of receipt of a reclassification determination, the appointing authority shall either effect the required change in classification of the employee's position or assign duties and responsibilities commensurate with the employee's current title.

requests. In that regard, it is clear that the appointing authority had an internal process for reclassification requests which was not only applied to the appellant. Indeed, in unrelated cases, the Commission admonished the appointing authority for its internal process. See e.g., *In the Matter of Allison Ketchum* (CSC, decided July 15, 2015); *In the Matter of Bruce Hurlburt* (CSC, decided August 19, 2015); *In the Matter of Jeffrey Brown* (CSC, decided September 16, 2015). The Commission stated that removing duties *only* in response to an employee's request for classification review prior to this agency's review of the duties of the position could be considered arbitrary and may result in an unjust consequence for an employee. It also indicated it would remedy such a situation by providing the employee with differential back pay if found that he or she was performing duties of a higher title based on an initial PCQ. Thus, the Commission ordered the appointing authority to assess and make any necessary changes to its internal processing of classification review requests in order to avoid future violation of Civil Service rules. In the present case, the appellant has not proven that the rejection of her particular reclassification requests, the processing of the same, or the fact that her duties were removed or not establishes that she was retaliated against for filing her grievance given that the appointing authority's internal process was applied to her as well as other employees. It is also clear from the record that there was miscommunication and/or errors in the appellant's classification documents which resulted in what the appellant has identified as "falsification." However, the appointing authority has provided plausible reasons for such errors that show that they were not intentional, much less retaliatory or an act of "sabotage."

There is also not enough evidence that the appellant was threatened on "trumped up charges" or that she would be reassigned. In that regard, while the appellant may have felt that was the case, the Commission does not objectively find that threatening statements were made by the management representative. Rather, at best, the statements show that the management representative was informing the appellant as to what could happen if the alleged behavior of the appellant continued and that reassignment of her to a unit that performed only Auditor 3 work was possible if the appellant's position was misclassified. Furthermore, it is emphasized that the appointing authority and the appellant settled her two grievances, no disciplinary action resulted, and the Commission determined the proper classification of the appellant's position and remedied the procedural violations made by the appointing authority. Accordingly, based on the foregoing, the appellant has failed to present a *prima facie* case of reprisal and her appeal must be denied.

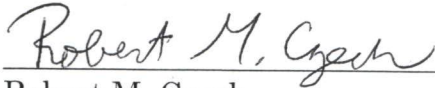
### ORDER

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 22<sup>ND</sup> DAY OF FEBRUARY, 2017



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