

B-13



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Gary Plescia,
Department of Human Services

Administrative Appeal

CSC Docket No. 2017-191

ISSUED: JUN 26 2017 (SLD)

Gary Plescia, a Clinical Psychologist 1, Division of Mental Health Services (DMHS), with the Ann Klein Forensic Center, Department of Human Services, appeals the calculation of his salary upon his appointment to the title effective May 14, 2016.

By way of background, Plescia was appointed to the non-competitive title of Software Development Specialist 1 with the Office of Information Technology (OIT), effective April 22, 2013 and was subsequently given an interim appointment to the title of Software Development Specialist 2, OIT on August 8, 2015. Plescia applied for and was admitted to the open-competitive examination for the title of Clinical Psychologist 1, DMHS (S0988R), which had a closing date of November 13, 2013. The resulting eligible list of 10 names, including Plescia who was listed as the first ranked veteran, promulgated on April 3, 2014 and expired on April 2, 2017. Plescia's name was certified to the appointing authority on March 27, 2015 (OS150216) from the S0988R eligible list. The appointing authority returned the certification appointing him, effective May 14, 2016.

On appeal, Plescia argues that when he accepted the position of Clinical Psychologist 1, DMHS, he was provided with written confirmation that his salary was to be \$83,659.44. However, he maintains that 10 days after he started working, he was verbally advised that his salary was actually \$80,470.41. Plescia argues that he would not have accepted the position if he had known that the new salary was to be only \$80,470.41. In this regard, he notes that he had previously been offered the

position at a lower salary which he had turned down. Moreover, he notes that his new position requires a much longer commute and daily tolls which increased his commuting costs by \$3,000 per year. Plescia contends that if he opted to return to OIT his salary would decrease by \$10,000 as he had not completed his working test period in his prior title before his transfer. Plescia submits that as he was not at fault for the incorrect salary being offered to him, his current salary should be corrected to the "contracted salary" he accepted.

In response, the appointing authority maintains that due to the difficulty in recruiting psychologists, all levels of psychologists are offered an initial salary of step 4 of the salary range, which for Plescia was \$77,281.38 (step 4, salary range P27). After he declined the salary, and it was determined he was already a permanent State employee, it calculated his salary pursuant to *N.J.A.C. 4A:3-4.9*, and offered him \$83,659.44.¹ After Plescia accepted and began his employment in the title of Clinical Psychologist 1, DMHS, the appointing authority was notified that his salary was calculated incorrectly. Specifically, this agency indicated that since Plescia was appointed from an unrelated title (Software Development Specialist 2), his new salary could only be \$80,470.41, or step 5, salary range P27.

The Salary Schedules in effect at the time of Plescia's appointment were, in part, as follows:

	Range P26	Range P27
Increment	\$3,037.20	\$3,189.03
Step 4	\$73,788.69	\$77,281.38
Step 5	\$76,825.89	\$80,470.41
Step 6	\$79,863.09	\$83,659.44
Step 7	\$82,900.29	\$86,848.47

The job specification for Software Development Specialist 2 provides that an individual in that title, performs analysis, consulting, design, programming, maintenance, and/or support work on software for State or Local government Information Technology services; participates in the resolution of complex problems through consultation with higher-level technical staff; may coordinate projects and serve as a technical mentor/coach to lower level staff; and may develop web applications on websites. The title requires a Bachelor's degree and two years of programming, systems analysis, or computer analysis experience. It is noted a Master's degree in an Information Technology field may be substituted for one year of the indicated experience.

¹ Plescia's previous salary was \$79,863.09 (step 6, salary range P26) so he was advanced one increment in his old range and placed on the lowest step that is equal to or exceeds that amount in the new range (step 6, salary range P27).

The job specification for Clinical Psychologist 1, DMHS, provides that an individual in that title, in a State institution, community mental health center, or other setting, has responsibility for providing and supervising programs of psychological services including program development and evaluation, training psychologists and other professionals and nonprofessionals and monitoring their performance, carrying out psychological programs in accord with professional and administrative standards, representing psychology staff in contacts with other professionals, agencies, and the community, providing direct high level services to inmates, and participating in administrative decision making within the psychology department. The title requires a Bachelor's degree supplemented by a Doctor of Philosophy (Ph.D.) in Psychology, a Doctor of Psychology (Psy.D.), or a Doctor of Education (Ed.D.) in Psychology which should have included at least 30 graduate semester hour credits in a psychology program consisting of six credit hours in counseling/psychotherapy; three credit hours in each of the following areas: individual intelligence testing, objective and/or projective testing, and abnormal psychology; and at least 15 credit hours in courses relevant to clinical psychology such as: learning theories, human motivation, personality theories, human growth and development, psychopharmacology, and statistics and research. It also requires the completion of a one-year clinical internship and two additional years of experience in the field of clinical psychology in a community mental health center, mental hospital, school for the developmentally disabled, or penal, correctional, or juvenile institution, or other setting involving the use of psychodiagnostic, psychotherapy, projective techniques, and other clinical methods, with one year of this experience earned subsequent to the receipt of the Doctorate degree. It is noted that one year of residency (advanced training beyond internship) is considered equivalent to one year of the indicated experience.

All Civil Service titles are assigned to an Occupational Group, which classifies titles by type. The title Clinical Psychologist 1, DMHS, is in Occupational Group 6 (Social and Psychological Services)² while Software Development Specialist 2 is in Occupational Group 12 (Information Processing Systems).³ It is noted that both Occupational Group 6 and Occupational Group 12 are classified under the category of "Professional, Technical, and Managerial Occupations."⁴

² The Civil Service Commission's Occupational Code Dictionary (OCD) indicates that this subcategory includes occupations concerned with: rendering assistance to individuals or groups with problems, such as poverty, illness, family maladjustments, antisocial behavior, financial mismanagement, and inadequate housing; the collection, interpretation, and application of scientific data relating to human behavior and mental processes; providing individual and group guidance and counseling services relative to problems of a(n) educational, vocational, rehabilitative, or personal/social nature. Also includes occupations concerned with religious worship, observance, and guidance.

³ This subcategory in the OCD includes occupations concerned with the application of information processing methods and techniques to store, manipulate, transform, or present information by means of computer systems, including the development of application system software, hardware systems design, and telecommunication systems.

⁴ The United States Department of Labor (USDOL), Employment and Training Administration, organizes groups of jobs into "occupations" based on their similarities and defines the structure and

CONCLUSION

N.J.A.C. 4A:4-7.9(a) provides, in relevant part, that a permanent employee who is appointed from an open competitive list to a title in a different organizational unit within the same governmental jurisdiction shall be considered to have resigned from the previous permanent title. See *N.J.A.C.* 4A:3-4.4(b) for salary placement in State service. *N.J.A.C.* 4A:3-4.4(b), provides, in part, that when the employee has separated from another State appointing authority and has been hired without an interruption in service, the employee may be placed up to and including that step of the salary range that the employee would receive if the employee had been continuously employed in the new agency. *N.J.A.C.* 4A:3-4.9 provides in relevant part, that:

* * *

(b) Employees who are appointed to a title with a higher class code shall receive a salary increase equal to at least one increment in the salary range of the former title plus the amount necessary to place them on the next higher step in the new range. If the workweek changes, workweek adjustments will be made prior to the determination of anniversary date. If the workweek increases, workweek adjustments will be made prior to salary determination. (See (g) below). This subsection shall apply when the following conditions are met:

1. Employees are appointed from their permanent title to a title with a higher class code following or subject to a promotional examination;
2. Employees are serving in a title which is reevaluated to a higher class code;
3. Employees receive an advancement appointment to a higher title level with a higher class code in a job band; or
4. Employees are appointed to a title with a higher class code, when the conditions in (b)1, 2, or 3 above are not applicable, provided the Chairperson of the Civil Service Commission or designee finds the following criteria are met:

content of occupations in the *Dictionary of Occupational Titles (DOT)*. The Employment and Training Administration reports that the occupational definitions are the result of "comprehensive studies of how similar jobs are performed in establishments across the nation and are composites of data collected from diverse sources." Thus, the term "occupation" as used in the DOT refers to this collective description of a number of individual jobs performed, with minor variations, in many establishments. Occupations are clustered into nine broad "categories," which are further divided into "divisions" and then into specific "groups." See *Dictionary of Occupational Titles, Volume 1, Fourth Edition, Revised 1991, Employment and Training Administration*.

- i. The employee has served continuously in the lower title for at least four months immediately preceding the effective date of the advancement; and
- ii. The service in the lower title provided significant preparation and training for service in the higher title.

(c) When an employee is advanced to a title with a salary schedule which is different (dollar value of ranges and steps do not coincide) from the employee's previous salary schedule, the steps described in (b) above are first performed in the previous schedule, and then the employee's salary is set at the lowest step in the new schedule and range that equals or exceeds that salary.

(d) When an employee has been at the maximum of his or her previous salary range for at least 39 pay periods, and the salary increases after workweek adjustment would be less than two increments in the employee's previous range, the employee shall receive an additional increment in the new range, providing the employee is not already at the maximum of the new range.

(e) Employees who do not meet the criteria set forth in (b) above shall be placed on a step in the salary range of the title with the higher class code that is the same or next higher than the salary paid in the title with the lower class code.

1. The adjustments described in (c) and (d) above shall be applied as appropriate.

* * *

Initially, it is noted that since Plescia was appointed from an open competitive list to a title in a different organizational unit within the same governmental jurisdiction, then pursuant to *N.J.A.C. 4A:4-7.9(a)* and *N.J.A.C. 4A:3-4.4(b)*, his salary was appropriately calculated pursuant to *N.J.A.C. 4A:3-4.9(b)4*. Moreover, although *N.J.A.C. 4A:3-4.9(b)4ii* does not define "significant preparation and training," this agency has, as a matter of longstanding practice, utilized the placement of titles in individual occupational groups as an objective tool to make a myriad of determinations. For example, this agency utilizes a uniform and objective automated system to determine the layoff rights for all titles. This system uses occupational group categorizations, as recognized by the United States Department of Labor, and is an objective method for identifying job similarities as required by *N.J.A.C. 4A:8-2.1*. See *In the Matter of State Layoff Title Rights* (Commissioner of Personnel, decided May 24, 1996), *aff'd*, Docket No. A-5847-95T3 (App. Div.

December 9, 1997). Accordingly, the Civil Service Commission (Commission) finds that the use of occupational groups to determine whether a previous title provided "significant preparation and training" for a new title is a valid and proper standard.

However, the Commission is required to review every appeal based on the particular record presented. *See In the Matter of Jose Gonzalez, Department of Human Services* (MSB, decided January 26, 2005). A review of the record in this matter clearly indicates that the position of Software Development Specialist 2 does not provide "significant preparation and training" for the position of Clinical Psychologist 1, DMHS. In this regard, a review of the above noted job specifications reveals that individuals in the title of Software Development Specialist 2 and individuals in the title of Clinical Psychologist 1, DMHS performs much different duties as detailed previously. Consequently, it is clear that the title of Software Development Specialist 2 is substantially different from, and would not have provided significant preparation and training for, the title of Clinical Psychologist 1, DMHS. Accordingly, Plescia's salary was correctly calculated to be \$80,470.41 (step 5, salary range P27).

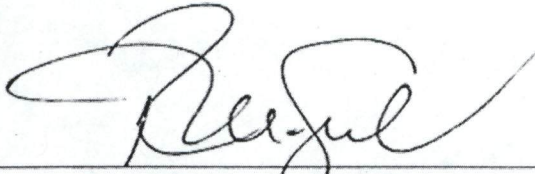
Plescia argues that he is entitled to the salary that he was initially offered and accepted (\$83,659.44) since it was not his fault that he was offered the incorrect salary and he relied on that offer when accepting the position. In this regard, he maintains that he only accepted the position because of the salary offered as his new position has increased his commuting costs, although Plescia does not dispute that his salary was correctly calculated pursuant to *N.J.A.C. 4A:3-4.4*. Based on the specific circumstances of this matter, and for equitable reasons, the Commission orders that Plescia's record be corrected to reflect his placement on step 6 of salary range P27, effective May 14, 2016. Finally, it is noted that this remedy is limited to the facts of this case and does not provide precedent in any other matter.

ORDER

Therefore, it is ordered that this appeal be granted and the appellant's record be corrected to reflect the decision above. It is also ordered that he receive differential back pay from the effective date of his appointment to the title of Clinical Psychologist 1, Division of Mental Health Services until his salary is changed.

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 21ST DAY OF JUNE 2017




Robert M. Czech, Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Christopher Myers
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

c: Gary Plescia
Anne S. Kenyon
Kelly Glenn
Records Unit

NOT TO BE REPRODUCED BY THE
FEDERAL BUREAU OF INVESTIGATION
OR ANY OTHER AGENCY



Special Agent in Charge
Federal Bureau of Investigation

Chief, New York Office
Director
Division of Investigation
Federal Bureau of Investigation
Washington, D.C. 20535
P.O. Box 100
New York, New York 10001

Chief, New York Office
Special Agent in Charge
Federal Bureau of Investigation
New York, New York 10001