



B-35

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Gloria Medina,
Department of Law and Public Safety

Administrative Appeal

CSC Docket No. 2017-2693

ISSUED: JUN 22 2017 (HS)

The Department of Law and Public Safety requests that the provisions of N.J.A.C. 4A:4-1.1(c) be relaxed in order to allow Gloria Medina to be provisionally appointed, pending promotional examination procedures, to the title of Technical Assistant 3.

By way of background, Medina was appointed to the noncompetitive title of Clerk Typist, effective September 21, 2013. Subsequently, Medina filed a classification appeal. The Division of Agency Services (Agency Services) conducted an audit of Medina's position and found that the duties that she performed were consistent with the duties of a Technical Assistant 3, effective November 12, 2016.¹

The appointing authority thereafter requested that Agency Services review Medina's credentials to determine if she met the open competitive requirements for Technical Assistant 3. The requirement for Technical Assistant 3 is two years of experience in reviewing, verifying, authorizing and/or providing information and assistance of a technical or fiscal nature in a public or private organization. Semester hour credits from an accredited college or university could be substituted for the required experience on a year-for-year basis with 30 semester hour credits being equal to one year of experience. Agency Services indicated that Medina possessed three months of applicable experience. Agency Services further indicated that although Medina possessed an additional three years and one month of

¹ As the change in title resulted in a change in category from the noncompetitive division to an unrelated above entry-level title, Medina continues to serve in the title of Clerk Typist.

applicable experience, this additional experience would be considered out-of-title work.

Because the change in title would result in a change in category from the noncompetitive division to an unrelated above entry level title in the competitive division of the career service, the appointing authority seeks approval from the Civil Service Commission (Commission) to process this movement as a provisional appointment, pending promotional examination procedures. The appointing authority explains that due to business necessity, Medina was assigned higher level out-of-title duties. Further, the appointing authority indicates that Medina continues to perform out-of-title duties. Given the finding of the classification study and the fact that Agency Services determined that she possessed the necessary qualifications to establish eligibility, it maintains that a rule relaxation would permit the provisional appointment of Medina to a title that properly classifies her responsibilities.

It is noted that primarily performing the duties of a Technical Assistant 3 would be considered out-of-title work for incumbents in the Clerk Typist title. Although there is an existing open-competitive list, there are no existing promotional or special reemployment lists for the title of Technical Assistant 3.

It is also noted that Agency Services supports the appointing authority's request.

CONCLUSION

N.J.A.C. 4A:4-1.1(c) provides that the Commission may authorize the promotion, through promotional examination procedures, from the noncompetitive division, of permanent employees who meet the open competitive requirements, to: 1) a related entry level title in the competitive division or 2) in appropriate situations, to a related above-entry level title in the competitive division. *N.J.A.C.* 4A:4-2.5(d) provides:

When a promotion is to be made from the noncompetitive division to a related title in the competitive division, the examination shall be open to all permanent employees who meet one of the following:

1. Serving in the next lower or next two lower in-series noncompetitive titles and possessing the complete open competitive requirements;
2. Serving in all related noncompetitive titles and possessing the complete open competitive requirements;
3. All competitive division titles at specified class code levels below the announced title, with or without all or part of the open

- competitive requirements and all titles as described in (d)1 or 2 above;
4. Competitive division employees who meet complete open competitive requirements and all titles as described in (d)1 or 2 above; or
 5. In extraordinary circumstances, the Commission may set another appropriate title scope.

N.J.A.C. 4A:4-2.6(c) provides that, except when permitted for good cause, applicants for promotional examinations with open competitive requirements may not use experience gained as a result of out-of-title work to satisfy eligibility requirements. Moreover, *N.J.A.C.* 4A:1-1.2(c) provides that the Commission may relax a rule for good cause in a particular circumstance in order to effectuate the purposes of Title 11A, New Jersey Statutes.

In the instant matter, the appointing authority is unable to appoint Medina provisionally, pending promotional examination procedures, to the title of Technical Assistant 3, since it would constitute a movement from her underlying noncompetitive title of Clerk Typist to an unrelated above entry level title in the competitive division. Under the particular circumstances presented, the Commission finds that good cause has been presented to relax the provisions of *N.J.A.C.* 4A:4-1.1(c) and authorize the provisional appointment of Medina to the title of Technical Assistant 3, pending promotional examination procedures. In this regard, there is no dispute that she meets the open competitive requirements for the title at issue, with the consideration of her out-of-title experience, as evidenced by the pre-appointment evaluation conducted by Agency Services. Moreover, the Commission emphasizes that her duties changed due to operational needs such that the primary focus of her position is now consistent with the title of Technical Assistant 3, and Agency Services' classification determination evidences this change. Accordingly, the Commission finds that good cause has been established in accordance with *N.J.A.C.* 4A:4-2.6(c) to accept Medina's out-of-title work to qualify her for her promotional examination. Additionally, it is appropriate to relax the provisions of *N.J.A.C.* 4A:4-2.5(d) to announce a promotional examination for the title of Technical Assistant 3 in Medina's unit scope to incumbents serving in the unrelated noncompetitive title of Clerk Typist, who meet the open competitive requirements, as well as to any other title scope deemed appropriate by Agency Services.

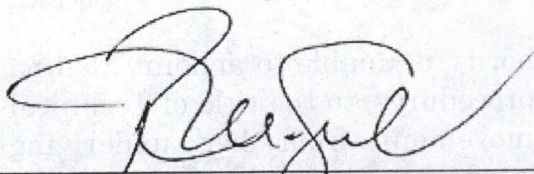
ORDER

Therefore, it is ordered that this request be granted and the appointing authority be permitted to appoint Gloria Medina to the title of Technical Assistant 3 provisionally, pending promotional examination procedures, effective November 12, 2016. It is further ordered that a promotional examination be announced in

accordance with this decision. Medina is to provide a copy of this decision with her promotional application upon announcement of the examination. Moreover, it is ordered that the out-of-title work experience of Medina be considered in qualifying her for the promotional examination and that the Division of Agency Services also accept applicable and documented out-of-title work experience from other applicants for that promotional examination.

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



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