



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Debra Priolo-Allen,
Department of Law and Public Safety

CSC Docket No. 2020-1695

Classification Appeal

ISSUED: May 1, 2020 (RE)

Debra Priolo-Allen appeals the decision of the Division of Agency Services (Agency Services) which found that her position with the Department of Law and Public Safety is properly classified as Program Specialist 2. She seeks an Executive Assistant 2 or Program Specialist 3 job classification in this proceeding.

The appellant was permanent in the title Senior Parole Counselor, State Parole Board when she received a provisional appointment to the title Executive Assistant 2¹ on February 6, 2016. In January 2017, she filed an application for an examination for a promotional examination for Executive Assistant 2 and was found ineligible. In its determination *In the Matter of Debra Priolo-Allen, Executive Assistant 3 (PS4250P), Department of Law and Public Safety* (CSC, decided October 18, 2017), the Civil Service Commission (Commission) found that the appellant’s duties were inconsistent with Executive Assistant 2, and it ordered a classification review of the position. The position is in the Department of Law and Public Safety, Division of Consumer Affairs, Team 5, reports to an Executive Secretary, and does not have any supervisory responsibilities. The classification review found that the appellant assigned duties and responsibilities were commensurate with the title of Program Specialist 2.

On appeal, the appellant argues that her position was encumbered previously by an Executive Assistant 2 until the employee’s retirement in 2015. She states,

¹ The title series was inversed in August 2019. Thus, she was provisionally appointed to Executive Assistant 3, and is now an Executive Assistant 2. For purposes of this determination, the current title series will be used.

“There was never a point in time when it was suggested that the position for which I was being hired could potentially be reclassified resulting in a significant loss in level and salary for me.” She argues that the appointing authority misrepresented the position as it must have known that this was an entitlement title and the supervisor would be an Executive Secretary, which does not warrant an Executive Assistant 2 pursuant to the Entitlement Plan. Rather, the appointing authority indicated to her that the position would report to the “Executive Director, Division of Consumer Affairs Medical Board,” (Board) which is her supervisor’s functional title. She states that she was made and accepted an offer which she was told years later was invalid based on factors out of her control and facts that were not available to her. She argues that this completely disregards her career path at the time and causes irreparable harm to her livelihood.

As to the duties of the position, the appellant states that as the Preliminary Evaluation Committee (PEC) Coordinator, she works autonomously as a unit of one with limited oversight and guidance, and reports directly to the highest-level executive at the Board. She states that she is responsible for the administrative tasks associated with the PEC, and it is her primary responsibility to act as the Board’s representative, and on the behalf of management of the Board and the Division. She develops, reviews, interprets and controls objectives of the PEC, and ensures that those objectives are carried out. When necessary, she assists in the development and implementation of measures to ensure the directives of the Director are carried out whether specifically through the PEC, or another Committee or Board section, and serves as the liaison to other department and division agencies in all matters related to the PEC, as well as for other Board sections when necessary. To effectuate the objectives of the PEC, she conducts research, prepares materials, sets deadlines, and directs assignment of necessary tasks from other staff, units or departments. As the PEC coordinator for the Board, she works independently with limited supervision, and the objectives of the PEC are planned, supported and carried out daily under her direction. All modifications, evaluations, analysis, and recommendations for program policies and procedures fall within her responsibility as she is solely responsible for the execution of the unit and its defined goals. She states that the absence of staff does not preclude the use of the Program Specialist 3 title. The appointing authority adds that a five-range demotion is a serious financial loss to the appellant, who accepted the position without knowledge of the position’s classification concerns at the time of the promotional examination. It requests that her salary be red-circled and maintained at the level prior to the demotion.

CONCLUSION

N.J.A.C. 4A:3-3.9(e) states that in classification appeals the appellant shall provide copies of all materials submitted, the determination received from the lower level, statements as to which portions of the determination are being disputed, and the basis for appeal. Information and/or argument which was not presented at the prior level of appeal shall not be considered.

N.J.A.C. 4A:3-3.4 provides that no person shall be appointed or employed under a title not appropriate to the duties to be performed nor assigned to perform duties other than those properly pertaining to the assigned title which the employee holds.

N.J.S.A. 11A:4-13(b) provides, in pertinent part, that in no case shall any provisional appointment exceed a period of 12 months.

N.J.A.C. 4A:4-1.5(a)2 states that the appointing authority certifies that a provisional appointee meets the minimum qualifications for the title at the time of appointment.

The definition section of the job specification for Program Specialist 2 states:

Under the limited supervision of a Program Specialist 3 or 4, or other supervisory official in a State department, institution or agency, or in a local jurisdiction, takes the lead over professional and/or technical staff engaged in program activities; performs professional, administrative and analytical work to promote the planning, operation, implementation, monitoring and evaluation of various programs and services administered by the Department of assignment; conducts the research and field work necessary to meet the needs of the appropriate state and/or local public or private agencies; does other related work.

The definition section of the job specification for Program Specialist 3 states:

Under the general supervision of a Program Specialist 4 or other supervisory officer in a State department, institution or agency, or in a local jurisdiction, directly supervises professional and/or technical staff engaged in program activities; performs the more complex and sensitive professional, administrative and analytical work to promote the planning, operation, implementation, monitoring and evaluation of various programs and services administered by the Department of assignment; conducts the research and fieldwork necessary to meet the needs of the appropriate State and/or local public or private agencies;

prepares and signs official performance evaluations for subordinate staff; does other related work.

The definition section of the job specification for Executive Assistant 2 states:

Under direction of a bureau chief in a State department or the head of an agency, institution, or college, acts as staff and personal representative responsible for assisting in the execution of a bureau function or the less complex departmental, agency, or institutional functions through the implementation of policy and development, management, and control of plans, programs, and operations by employing accepted modern techniques of management; may assist a higher level Executive Assistant in a large department or agency; does related work as required.

It is long-standing policy that upon review of a request for position classification, when it is found that the majority of an incumbent's duties and responsibilities are related to the examples of work found in a particular job specification, that title is deemed the appropriate title for the position. The outcome of position classification is not to provide a career path to the incumbents, but rather is to ensure that the position is classified in the most appropriate title available within the State's classification plan. *See In the Matter of Patricia Lightsey* (MSB, decided June 8, 2005), *aff'd on reconsideration* (MSB, decided November 22, 2005). There is a sharp distinction made between a position and an incumbent. A position consists of a group of currently assigned duties and responsibilities requiring employment of one person, while an incumbent is an individual occupying a position. How well or efficiently an employee does his or her job, length of service, volume of work and qualifications have no effect on the classification of a position currently occupied, as *positions*, not employees are classified. *See In the Matter of Debra DiCello* (CSC, decided June 24, 2009). Therefore, the outcome of a position classification review is not to provide a career path to the incumbent, but rather, to ensure the position is classified by the most appropriate title available within the State Classification Plan.

The Program Specialist 3 is a supervisory title. Since October 2015, the Commission has upheld the classification standard that for a position to be classified in a title assigned the first-level or second-level employee relations group, incumbents are required to be the rater of employee, or subordinate-level supervisory employee, performance using a formal performance evaluation system. *See In the Matter of Alan Handler, et al.*, (CSC, decided October 7, 2015); *In the Matter of Marc Barkowski, et al.*, (CSC, decided October 19, 2016); and *In the Matter of David Bobal, et al.*, (CSC, decided November 23, 2016). In *In the Matter of Rosemary Lynn Gash, Office of Information Technology* (CSC, decided April 19, 2017), the Commission noted that Agency Services determined that the standard

required to classify titles assigned to the primary level supervisory ERG is that position must supervise three or more lower-level employees, including the preparation and signing of their PARs. As the appellant has no supervisory duties, Program Specialist 3 is not an appropriate classification of the position.

Further, the utilization of the professional level Executive Assistant title series is determined based on the level of the assigned immediate supervisor. In this regard, this title is an “entitlement title,” and one Director is allowed only one Executive Assistant. An incumbent Executive Assistant assists in the execution of the unit’s program, *i.e.*, with developing and implementing internal and external policy. An Executive Assistant 2 reports to a Bureau Chief, while the appellant’s supervisor is an Executive Secretary. Team 5 has a Director, a Deputy Director, and an Assistant Deputy, to whom the supervisor reports. All others report to this Executive Secretary.

In essence, the Executive Secretary may be the “defacto” Bureau Chief. However, the list of duties that the appellant submitted on appeal is not consistent with the duties of an Executive Assistant 2. She reports to an Executive Secretary, but is not acting as staff and personal representative by assisting in the execution of a bureau function through the implementation of policy and development, management, and control of plans, programs, and operations through management techniques. The Commission analyzed the appellant’s duties which she submitted on an application in January 2017 in *Priolo-Allen, supra*, and found that they were not those of provisional Executive Assistant 2. Agency Services reviewed the duties and found that they were not those of an Executive Assistant 2.

The appellant provides a summary of duties which essentially confirms that she is the Coordinator of a committee (PEC) which carries out disciplinary functions of the Board for physicians who do not adhere to the Board’s requirements, and most of her duties revolve around this function. The Executive Assistant title is used to classify positions that are responsible for overseeing and assisting in the implementation of programmatic objectives and goals and setting standards used to measure the success of program goals. These duties have more to do with the actual mission of the Division than ensuring that daily operation and expenditures stay within prescribed rules and regulations relating to monitoring the budget, the expenditures, and the management of personnel activities for the Division. Furthermore, an Executive Assistant is responsible for performing studies and investigations which require analysis that is based on academic knowledge of a program’s subject matter. The Executive Assistant’s primary responsibility is to assist in the execution of the unit’s program, *i.e.*, with developing and implementing internal and external policy. Also, the Executive Assistant title requires more in-depth knowledge of the subject matter of the unit, so that the Executive Assistant can act for the executive officer in his or her absence. The Executive Assistant is not solely responsible for an area of work that belongs to the Executive, but is the

assistant in the execution of a function. The fact that the appellant claims she is solely responsible for the unit and its defined goals precludes the Executive Assistant 2 classification as that is not the purpose of a support title. Having responsibility for a single committee in which the executive is not actively involved, and not having responsibility for assisting with the executive's other programs, is not the purpose of the Executive Assistant title. Rather, it speaks to engagement in program activities, and performing professional, administrative and analytical work to promote the planning, operation, implementation, monitoring and evaluation of the program administered. As such, the Program Specialist 2 classification is the most appropriate to the appellant's duties.

The appellant maintains that the position should be classified as an Executive Assistant 2 as it had this classification in 2015 when the last incumbent retired. Nonetheless, the remedy for misclassification of another position is not to perpetuate the misuse of the higher title by reclassifying the appellant's position to that title, but rather, to review the position classification of the position encumbered by the employee to ensure that it is properly classified. See *In the Matter of Stephen Berezny* (CSC, decided July 27, 2011). Also, a classification appeal cannot be based solely on a comparison to the duties of another position, especially if that position is misclassified. See *In the Matter of Carol Maita, Department of Labor* (Commissioner of Personnel, Decided March 16, 1995); *In the Matter of Dennis Stover, Middletown Township* (Commissioner of Personnel, Decided March 28, 1996); *In the Matter of Lorraine Davis, Office of the Public Defender* (Commissioner of Personnel, Decided February 20, 1997), *affirmed*, Docket No. A-5011-96t1 (App. Div. October 3, 1998). The classification of a position is determined based on the duties and responsibilities currently assigned to a position. Duties performed in the past or expected to be performed in the future are not considered. The appellant's position stands on its own and is classified based on the duties she performs.

The appellant maintains that she was not informed that she would not be made permanent in her Executive Assistant 2 title, and the appointing authority requests that her salary be red circled. It is well settled that a provisional employee, whether provisional for one day, one year or seven years, does not have a vested right to a permanent position. In this respect, the appellant was provisionally appointed on February 6, 2016, she filed an application for an examination for a promotional examination for Executive Assistant 2 and was found ineligible. In its determination *Priolo-Allen, supra*, dated October 18, 2017, the Commission found that the appellant's duties were inconsistent with Executive Assistant 2, and it ordered a classification review of the position. As such, the appellant was on notice at least by then that she may not be remaining in her title. It is noted that the appellant's prior-held title, Senior Parole Counselor, State Parole Board and Program Specialist 2, are in the same class code, 21. The appellant's position continued to be misclassified as evidenced by her provisional

experience in the Executive Assistant 2 title not being credited as applicable experience to establish eligibility for the promotional examination announced against her provisional position in January 2017. With respect to the appointing authority's request to red-circle the appellant's salary as a provisional Executive Assistant 2, since Priolo-Allen never received a regular appointment as an Executive Assistant 2, she has not established any tenure or rights resulting from her provisional appointment. In this regard, a provisional appointee can be removed at any time and does not have a vested property interest in the provisional title. In other words, a provisional employee has no automatic right or expectation of achieving permanent appointment to the position to which he or she is occupying. *See O'Malley v. Department of Energy*, 109 N.J. 309 (1987). As such, since she was never regularly appointed or achieved permanent status as an Executive Assistant 2, there is no basis on which the Commission can justify red-circling her salary at that level.

A thorough review of the information presented in the record establishes that the appellant's position was properly classified as Program Specialist 2, and she has not presented a sufficient basis to establish that her position is improperly classified.

ORDER

Therefore, the position of Debra Priolo-Allen is properly classified as Program Specialist 2.

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 29TH DAY OF APRIL, 2020



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