



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of Kathleen Mercurio,
Department of Human Services

Administrative Appeal

CSC Docket No. 2019-406

ISSUED: JULY 2, 2020 (SLD)

Kathleen Mercurio, a Quality Assurance Coordinator with the Department of Human Services, appeals the determination of her salary upon her promotion to her current title, pursuant to *N.J.A.C.* 4A:3-4.9.

By way of background, the appellant was appointed to the title of Quality Assurance Specialist, Health Services, effective June 18, 2011. Thereafter, the appellant was provisionally appointed, pending promotional examination procedures to the title of Quality Assurance Coordinator, effective September 17, 2016. Upon this provisional appointment, the appellant’s salary increased from \$92,011.89 (salary range P26, step 10)¹ to \$98,860.36 (salary range R29, step 8). *See N.J.A.C.* 4A:3-4.9. In this regard, *N.J.A.C.* 4A:3-4.9 provides in pertinent part that:

- (a) Unless a different salary adjustment is established in a collective negotiations agreement, the following provisions shall be applied when employees are appointed to a title with a higher class code, except that in no event shall such adjustment result in a higher salary than that provided for in this section.
- (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

¹ The record indicates that the appellant had been on step 10 of her salary range P26 for more than 39 pay periods.

the salary range of the former title plus the amount necessary to place them on the next higher step in the new range . . . 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;

* * *

- (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.

* * *

An examination for the title of Quality Assurance Coordinator (PS1972K), Human Services Office of Integrity and Accounting, was announced with a closing date of January 12, 2017. The resulting list of 43 eligibles, including the appellant tied as the 21st ranked eligible, promulgated on September 28, 2017 and expires on September 27, 2020. On November 14, 2017, a certification (PS171869) was issued to the appointing authority, and it contained the names of 38 eligibles, including the appellant. The certification was issued against nine individuals who were serving provisionally in the subject title, including the appellant. The appointing authority returned the certification appointing nine eligibles, effective February 17, 2018, including five of the individuals who were serving provisionally. The appointing authority returned the remaining four provisional employees, including the appellant, to their permanent titles, effective February 17, 2018. Three of those provisional employees, including the appellant, were not reachable for appointment on that certification. The remaining provisional employee's name had not appeared on the subject eligible list as she had failed the examination. Upon the appellant's return to her permanent title, the appellant's salary decreased from \$100,837.57²

² It is noted that several contracts, including those for salary range P26 and R29 were ratified during this time and contained some retroactive increases. As such, the salaries the appellant indicates she

(salary range R29, step 8) to \$93,852.18 (salary range P26, step 10) pursuant to *N.J.A.C. 4A:3-4.10*.

On March 20, 2018, a second certification (PS180329) containing 31 names, including the appellant, was issued to the appointing authority. In returning the certification, the appointing authority appointed 11 eligibles, including the appellant who was appointed effective April 14, 2018. Upon her appointment, the appellant's salary increased from \$93,852.18 (salary range P26, step 10) to \$97,251.75 (salary range R29, step 7). *See N.J.A.C. 4A:3-4.9*.

The appellant appealed asserting that it was unfair that she was placed on step 7 upon her regular appointment, as she had previously been on step 8 of salary range R29. Moreover, she argues that the appointing authority had told her that her salary would be the same, \$98,860.36, upon her regular appointment to the subject title. Additionally, the appellant asserts that her "paychecks returned to that previous salary;" however, that when the across the board salary increase went into effect on July 20, 2018, she did not receive the increase. She asserts that she was told that she no longer qualified for step 8, because of the "CWA raise." The appellant maintains that her salary being reduced upon her second appointment to the Quality Assurance Coordinator title was "like being demoted twice." She argues that she is being penalized because she was returned to her permanent title for four pay periods.

The Salary Schedules, dated July 12, 2014, in effect at the time of the appellant's September 117, 2016 provisional appointment to the title of Quality Assurance Coordinator, were, in part, as follows:

	RANGE P26	RANGE R29
INCREMENT	\$3,037.20	\$3,515.51
STEP SEVEN	\$82,900.29	\$95,344.85
STEP EIGHT	\$85,937.59	\$98,860.36
STEP NINE	\$88,974.69	\$102,375.87
STEP TEN	\$92,011.89	\$105,891.38

Accordingly, the appellant's salary was calculated as follows:

ACTION	RANGE	STEP	SALARY
Quality Assurance Specialist, Health Services	P26	10	\$92,011.89
One increment (\$3,037.20) in old range	P24		\$95,049.09
Set at step equal to or greater in new range	R29	7	\$95,344.85

received on appeal are different than what are listed in departmental records. However, as it makes no difference to the issue in this matter, the amounts listed in departmental records will be utilized throughout.

Entitled to additional increment since at step 10 of P26 for more than 39 pay periods, and the increase was less (\$95,344.85) than two increments (\$92,011.89 plus \$6,074.40 equals \$98,086.29).	R29	8	\$98,860.36
Across the Board Increase	R29	8	\$100,837.57

Thereafter, the appellant was returned to her permanent title of Quality Assurance Specialist, Health Services, effective February 17, 2018 and her salary was set at \$93,852.18 (salary range P26, step 10) pursuant to *N.J.A.C.* 4A:3-4.10.

The Salary Schedules, dated August 19, 2017, in effect at the time of the appellant's regular appointment on April 14, 2018 as an Quality Assurance Coordinator, were, in part, as follows:

	RANGE P26	RANGE R29
INCREMENT	\$3,097.95	\$3,585.82
STEP SIX	\$81,460.38	\$93,665.93
STEP SEVEN	\$84,558.33	\$97,251.75
STEP EIGHT	\$87,656.28	\$100,837.57
STEP NINE	\$90,754.23	\$104,423.39
STEP TEN	\$93,852.18	\$108,009.21

Personnel records indicate that for the appellant's April 14, 2018 regular appointment, her salary was calculated as follows:

ACTION	RANGE	STEP	SALARY
Quality Assurance Specialist, Health Services	P26	10	\$93,852.18
One increment (\$3,097.95) in old range	P24		\$96,950.13
Set at step equal to or greater in new range	R29	7	\$97,251.75
Across the Board Increase	R29	7	\$99,196.75

However, since it was less than 39 pay periods since the appellant's return to her permanent title of Quality Assurance Specialist, Health Services, on February 17, 2018, *N.J.A.C.* 4A:3-4.9(d) was not applied.

It is noted that although given the opportunity, the appointing authority did not submit any information or arguments in this matter.

CONCLUSION

In the instant matter, the appellant argues that she was improperly placed on step 7 of salary range R29. Additionally, she asserts that by placing her on step 7 of

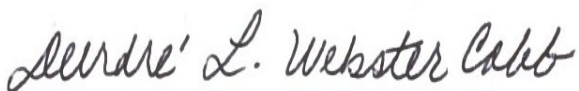
salary range R29, it was like being demoted twice. Although the appellant claims that she was originally placed back on step 8 of salary range R29 upon her regular appointment to the title of Quality Assurance Coordinator, effective April 14, 2018, departmental records indicate that she was placed on step 7 of salary range R29. Regardless, even if she had been placed on step 8 of salary range R29, that was then corrected and for the reasons addressed below, no vested or other rights are accorded by an administrative error. See *Cipriano v. Department of Civil Service*, 151 N.J. Super. 86 (App. Div. 1977); *O'Malley v. Department of Energy*, 109 N.J. 309 (1987); *HIP of New Jersey v. New Jersey Department of Banking and Insurance*, 309 N.J. Super. 538 (App. Div. 1998). The appellant maintains that she was told that her placement on step 7 was due to the "CWA raise" and that she no longer qualified for step 8. However, the record reveals that the appellant was placed on step 7 of salary range R29 since it had *not* been an additional 39 pay periods since her return to her permanent title of Quality Assurance Specialist, Health Services, and for her appointment to Quality Assurance Coordinator, N.J.A.C. 4A:3-4.9(d) was not applied in determining her salary. Accordingly, the appellant's salary was correctly calculated upon her regular appointment to the title of Quality Assurance Coordinator, effective April 14, 2018.

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 1ST DAY OF JULY, 2020



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