



STATE OF NEW JERSEY

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

In the Matter of Melanie Burak and
Raechal Chagrin, Principal Parole
Counselor State Parole Board
(PS6246I), State Parole Board

Examination Appeals

CSC Docket Nos. 2022-1912
2022-1951

ISSUED: APRIL 11, 2022

Melanie Burak and Raechal Chagrin appeal the validity and test mode, and their ranks and scores for the promotional examination for Principal Parole Counselor, State Parole Board (PS6246I), State Parole Board. These appeals have been consolidated due to common issues.

The subject examination was open to employees in the competitive division who were serving as a Senior Parole Counselor, State Parole Board and had an aggregate of one year of continuous permanent service as of the September 21, 2021 closing date. This examination was processed as an unassembled examination (UE), *i.e.*, candidates were ranked on the eligible list based on an evaluation of their education and experience as listed on their applications. The UE standard conferred a base score of 70.000 for all eligible applicants. Additional credit of eight points was awarded for possession of a Bachelor’s degree, two points were given for possession of a Master’s degree (completed degree only) in the field of criminal justice, social work, or related areas, and up to 10 years of experience in the field of criminal justice, social work, or related areas. It is noted that no credit was given for experience gained more than 10 years prior to the examination closing date, in this case, October 2011.

Burak indicated possession of a Bachelor’s degree, and a Master’s degree, and listed two positions on her application, Senior Parole Counselor from May 2017 to the closing date, and Library Associate. Official records indicate that Burak was a Senior Parole Counselor from April 2019, and a Parole Counselor Apprentice, State Parole Board, from April 2017 to April 2019. She was credited with a Bachelor’s

degree and two years, six months of applicable experience as a Senior Parole Counselor from April 2019 to the September 2021 closing date. Her remaining position as a Library Associate was inapplicable, as was her Master's degree in Organizational Leadership. Burak received a UE score of 78.670, a seniority score of 2.400, zero PAR points, a final average of 81.070 and ranks 13th on the eligible list.

Chagrin indicated possession of a Bachelor's degree, and listed two internships and two positions on her application. She indicated experience as a Senior Parole Counselor from March 2018, and experience as a Camp Counselor/Assistant Teacher/Cheerleading Coach from June 2011 to March 2018. On a previous resume, the appellant listed duties for her first internship for her Bachelor's degree, and she separated her experience as a Summer Camp Counselor/Day Care Worker with the Atlantic Club, from experience as an Assistant Teacher/Cheerleading Coach with Atlantis Preparatory School. Official records indicate that Chagrin was a Senior Parole Counselor from March 2020, and a Parole Counselor Apprentice, State Parole Board, from March 2018 to March 2020. She was credited with one year, seven months of applicable experience as a Senior Parole Counselor from March 2020 to the September 2021 closing date. Her remaining positions were inapplicable. Chagrin received a UE score of 77.450, a seniority score of 1.519, zero PAR points, a final average of 78.970 and ranks 18th on the eligible list.

On appeal, Burak states that she should have a higher rank and score, and she appeals the validity and scoring of the examination. As to scoring, she states that she did not receive credit for her work experience as a Library Associate, where she was a paralegal for the inmate population, coordinated Inmate Legal access in the Law Library, handled the Courtline system and legal access, acted as liaison to the Inmate Courtline and Inmate Legal Associations, wrote internal management procedures for the Law Library, and assisted with case files. She states that a resume which she had sent with another application should not have been considered as it provided incorrect information on her current position¹ and past positions, and she provides a current resume on appeal. She maintains that her Master's degree in Organizational Leadership is related to criminal justice and/or social work and should be credited. As to validity and test mode, Burak argues that the test mode should have been a written examination, as a UE is invalid and unfair. She states that a UE does not test the requisite knowledge needed for the position.

On appeal, Chagrin also states that she should have a higher rank and score, and she appeals the validity and scoring of the examination. As to scoring, she states that she should have received credit for her social work internship, which she accrued towards a Master's degree which she has not yet acquired. She states that

¹ The appellant's current position was not listed on her prior resume.

she worked 24 hours per week with Memorial Middle School, and should be credited for it since she did not complete her degree. As to test mode, the appellant argues that she was not notified that the test mode would be a UE, and it is unfair as it tests seniority and prior job experience. She states that a UE discriminates against the young, and she was in school for much of the 10 years prior to the closing date, and was not able to have a career path like older applicants. She believes that a written test would be more fair, and that her better performance on the entry examination proves that the modes are inconsistent. She also believes, for reasons unexpressed, that her prior resume should not have been considered.

CONCLUSION

N.J.A.C. 4A:4-2.1(f) provides that an application may only be amended prior to the announced closing date for filing applications.

N.J.A.C. 4A:4-2.2(a)5 states, in pertinent part, that an examination may be an evaluation of education, training or experience.

N.J.A.C. 4A:4-2.15(a)1 states that when education and experience are to be rated as part of an examination, they shall be graded through the use of scales prepared by the Chairperson or designee.

According to *N.J.A.C.* 4A:4-2.2, the Civil Service Commission (Commission) has the authority to determine the most appropriate selection instrument to use in assessing candidates in a given competitive title. In the subject announcement, a decision was made to select individuals for appointment using a UE, which reflects the education and experience of candidates. This decision is not made arbitrarily. The Commission can consider appointing authority requests to hold unassembled examinations, but in all cases, the Commission has the authority to determine the most appropriate, valid and cost-efficient method of testing.

Burak states that a UE does not test the requisite knowledge needed for the position. Chagrin believes that a written test would be more fair, and that her better performance on the entry examination proves that the modes are inconsistent. Such arguments, however, are contrary to the philosophy exhibited in *N.J.S.A.* 11A:4-1(a) which provides, in part, that the Commission shall provide for the announcement and administration of examinations which shall test fairly the knowledge, skills and abilities required to satisfactorily perform the duties of the title and may include an evaluation of education and experience. The Commission has been afforded broad discretion in selection of a test mode, and there is nothing which indicates an intention for restraint in taking into consideration the past achievements of applicants. The use of such a test mode does not evidence a violation of equal protection. Though a class has benefited from the policy, those with extensive education and experience, the class is reasonably designated to fulfill

the Civil Service policy of selection based on relative merit and fitness to perform the duties of the title under examination. See *Brown v. State, et al.* 115 N.J. Super. 348 (1971). Moreover, the New Jersey Supreme Court has upheld the processing of an examination through the provisions of N.J.A.C. 4A:4-2.7 as being within the lawful discretion of the Commission. See *Pringle v. Department of Civil Service*, 45 N.J. 329 (1965) and *Falcey v. Civil Service Commission*, 16 N.J. 117 (1954).

As to age discrimination, adverse impact refers to a differential rate of selection which works to the disadvantage of an applicant subgroup of a protected class. Typically, in a discrimination case, the applicant has the burden of proof to show that she is a member of a protected class, and that the hiring practice had an adverse impact on this class. The *Age Discrimination in Employment Act of 1967* (ADEA), 29 U.S.C. 621 *et seq.*, prohibits employment discrimination against individuals between 40 and 60 years of age, and was amended in 1974 to extend its coverage to employees of State and local governments,² and amended in 1978 for workers up to 70 years. Moreover, two statutes specifically prohibit State agencies from discriminating against applicants for employment aged 40 and over by reason of age. See N.J.S.A. 10:3-1 and N.J.S.A. 52:14.11. Nonetheless, Chagrin has not proven that she is a member of a protected class.

Next, the UE examination, with the 10-year cutoff rule, has been in use for more than 40 years. The 10-year rule affects two groups of applicants: those who lacked relevant experience within the last 10 years; and those whose failure to complete the application correctly resulted in denial of credit for relevant experience with the last 10 years. The appellants fall into both categories. It is the purpose of the UE to rank candidates on their relevant education and experience, as more educated and experienced candidates perform better on the job.³ The announcement has a notation at the bottom that states, “Your score may be based on a comparison of your credentials with the job requirements. Failure to complete your application properly may lower your score or cause you to fail.” Additionally, the Online Application System (OAS) User Guide states, on page i, “Carefully review your application to ensure that it is complete and accurate before submitting,” and “You must complete your application in detail. Your score may be based on a comparison of your background with the job requirements. Failure to complete your application properly may cause you to be declared ineligible or may lower your score if your application is your test paper.” Page 18 instructs applicants to, “Provide **all** employment information (not just your current employment information). If you have multiple experiences, make sure that you provide each one separately.” The application itself states, “Employment Record: You may be declared ineligible or you may not receive proper credit for scoring purposes if you do not properly complete your application. If you held different positions with the same employer, list each position separately. ... Since your application may be your

² *EEOC v. Wyoming*, 75 L. Ed. 2d.18 (1983).

³ Out-of-title experience is not accepted for scoring purposes.

only test paper, be sure it is complete and accurate. Failure to complete your application properly may cause you to be declared ineligible, lower your score, or possibly cause you to fail.” As such, although the Commission is not obligated to inform candidates of the test mode at the time of announcement, it advises candidates in multiple places that the UE test mode could be utilized.

The appellants object to the use of resumes submitted with their prior applications for examination. In that regard, the applicant is the same person, and employment history does not change. Burak’s argument that a resume which she had sent with another application should not have been considered as it provided incorrect information on her current position is illogical, as her current position is not listed therein. As to past positions, each position has one primary focus. Arguing that the description of a past position is outdated is akin to asking for the leeway to tailor the duties of a past position to match current announcement requirements. There is nothing prohibiting the applicant from listing all past positions on the current application, yet the Commission is not prohibited from using past applications and resumes to provide clarity to, and verification of, duties of past positions. Indeed, the Commission’s function is to ascertain those applicants possessed of merit and fitness ascertained as far as practicable by examination and every reasonable effort is made to ensure the veracity of applicant information. If the appellants wished to have a current resume reviewed, they were required to upload or attach one to their application. As this is a formal examination, no new positions or information regarding positions can be considered. A UE is still an examination, and not an application to be considered for eligibility. The original application is the “test paper,” and additional information provided on appeal is not considered. To do so would be tantamount to alteration of an answer sheet following the administration of an assembled examination. As such, the determination of scores is based solely on what was originally provided. In that respect, the resumes already on file can provide information that the candidates neglect to add, such as duties for internships.

The appellants’ scores indicate a base score of 70.000, credit for Bachelor’s degrees, and Burak received full credit for two years, six months of experience as a Senior Parole Counselor, State Parole Board, while Chagrin received full credit for one year, seven months of experience as a Senior Parole Counselor, State Parole Board as they only provided duties for positions as Senior Parole Counselor, State Parole Board. As such, although they combined the time of their employment in this title with that of Parole Counselor Apprentice, State Parole Board, they cannot receive credit for time in that title without a list of duties. They did not properly complete their applications, and as indicated repeatedly in instructions to candidates, credit would be declined for a lack of detailed information as requested.

Burak states that she did not receive credit for her work experience as a Library Associate, and she provides duties for that position relating to being a

paralegal for the inmate population. In that respect, the duties of a Library Associate are to take the lead in organizing and implementing the technical or public service aspects of one or more library programs such as the development and coordination of events, patron services or collection management. That the patrons are inmates does not establish that work as a Library Associate is an area related to criminal justice or social work. Moreover, pursuant to *N.J.A.C. 4A:4-2.6(c)*, in pertinent part, applicants may not use experience gained as a result of out-of-title work for credit in the examination process. Burak cannot be credited for this position as criminal justice or social work is not related to organizing and implementing aspects of library programs.

Next, Burak wants credit for her Master's degree in Organizational Leadership, which she argues is related to criminal justice or social work. In that regard, the Commission utilizes the U.S. Department of Education's current Classification of Instructional Programs (CIP) as reference authority to determine if degrees and/or coursework fall within a specific academic discipline. Each discipline is given a separate CIP code. In this case, Organizational Leadership is in a different CIP code than Criminal Justice or Social Work. CIP describes Organizational Leadership as a program that focuses on leadership skills that can be applied to a business, government, non-profit, or educational setting, which includes instruction in organizational planning, dynamics of leadership, finance, team building, conflict resolution and mediation, communication and other management skills. Accordingly, Burak appropriately did not receive credit for a Master's degree in Organizational Leadership.

Chagrín argues that she should have received credit for her social work internship, which she accrued towards a Master's degree which she did not complete. In that regard, Chagrín indicated this internship, but did not list it with duties as position that she held. As such, credit for this internship was properly denied since there were no duties to review, either on her application or on the prior resume. As noted above, since the application for the subject announcement is the test paper, it is no more subject to later amendment than a multiple choice test answer sheet. *See In the Matter of Alex Westner* (Commissioner of Personnel, decided August 11, 1997). Chagrín did not supply a current resume including this position with her application, and was scored accordingly. Chagrín's positions either as Camp Counselor/Assistant Teacher/Cheerleading Coach, or in the positions as Summer Camp Counselor/Day Care Worker and Assistant Teacher/Cheerleading Coach are inapplicable.

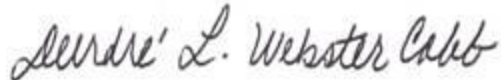
A thorough review of the record indicates that the decisions of Agency Services are amply supported by the record, and appellants provide no basis to disturb those decisions. The appellants have failed to meet their burden of proof in these matters.

ORDER

Therefore, it is ordered that these appeals 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 6TH DAY OF APRIL 2022



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