



**STATE OF NEW JERSEY**

In the Matter of Fawn McGee,  
Department of Environmental  
Protection

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

CSC Docket No. 2023-254

Administrative Appeal

**ISSUED: November 23, 2022 (SLK)**

Fawn McGee, represented by Kevin D. Jarvis, Esq., requests that her title, Manager 4 Environmental Protection, Technical/SCIE (Manager 4), revert to her prior title, Manager 3 Environmental Protection, Technical/SCIE (Manager 3).

In her request, McGee states that the appointing authority intended to implement a reorganization, which included a salary adjustment request and/or title change for her. She argues that the appointing authority’s reorganization plan violated Civil Service law and rules as the affected negotiations representative did not receive notice of the reorganization plan and her title change. Therefore, she requests that the reorganization plan be rejected by this agency or enjoined until the union can respond. McGee argues that the appointing authority essentially “demoted” her by reclassifying her position without receiving any notice from this agency that her position had been reclassified in violation of Civil Service law and rules. She contends that the reclassification of her position is not justified as her duties have remained the same as the same individuals report to her even after the reorganization. She is now also requesting that this agency review the classification of her position. McGee also requests an evidentiary hearing to establish that her job duties and reporting requirements remain unchanged. Additionally, she contends that the change in her title constitutes discipline without due process in violation of Civil Service law and rules. McGee highlights her “Exceptional” Performance Assessment Review (PAR) rating. McGee suggests that the “demotion” may be discriminatory or unjustly motivated. She presents that she has been the Director of

the Superstorm Sandy Blue Acres Program and Bureau Chief, State Land Acquisition of the Green Acres Program for over nine years, and during that time, she participated in all reorganization planning that touched her program. However, McGee indicates that she was not consulted or advised of any proposed reorganization or reclassification of her position until she was informed by Human Resources on June 15, 2022, which she believes demonstrates that this proposal was hidden from her. While she acknowledges that her salary was “red-circled,” this change will deprive her of contractually-promised cost of living increases.

In response, the appointing authority presents that McGee was appointed as a Manager 3 as a reflection of her directing the Sandy Blue Acres Buyout Program. It explains why the Natural and Historic Resources (NHR) Program was reorganized in early 2022. The appointing authority submits its organization chart to show that after the reorganization, McGee no longer directed the Blue Acres Program and therefore it returned to her former Manager 4 title. It states that contrary to McGee’s claim, it did provide notice to the affected negotiations representatives of its notice to this agency of the impending reorganization, known as the “NHR Reorganization.” Further, the appointing authority indicates that McGee was involved in many discussions with senior management regarding how different functions under the prior Sandy Blue Acres Program could be distributed to other areas within the appointing authority. It attaches the February 14, 2022, correspondence to this agency regarding the reorganization. The appointing authority denies that the change of McGee’s position violated Civil Service law and rules because her appointment was unclassified, and the change was approved by this agency. It refutes McGee’s claim that the change was done without due process as she was advised that when she accepted her unclassified appointment as a Manager 3 in 2015, that her appointment was made at management’s discretion and could be terminated at any time. The appointing authority explains why it made the change and notes that it “red-circled” her salary. It also notes that it did provide her notice of the impending change.

In reply, McGee takes issue with the appointing authority’s explanation that justifies the reorganization. She asserts that the appointing authority simply realigned personnel into different areas, but with identical responsibilities. McGee indicates that the entire Blue Acre Buyout process and job duties remain under her. She contends that the appointing authority is mischaracterizing the discussions that it had with her as she was only asked about job duties and functions of various people and it was never discussed with her how different functions could be distributed. McGee claims that she was expressly told by Senior Management that even if there was a reorganization of staff, nothing would change. She states that she is first learning of the appointing authority’s February 14, 2022, letter to this agency and her union has no record of receiving it. Further, the correspondence does not indicate that she would be demoted. She reiterates her claim that the reclassification of her

position violates Civil Service law and rules as there has been no change in her duties and her responsibilities.

In further response, the appointing authority explains why her duties have changed as it is no longer in the height of the Sandy Blue Acres Program, which was the case when McGee was appointed to Manager 3. It states that its February 14, 2022, letter to this agency was forwarded to McGee's union in a February 15, 2022 email.

In further reply, McGee states that the appointing authority's uncertified repose is replete with inaccuracies and outright falsehoods regarding her, her duties and responsibilities, and conversations the appointing authority falsely allege that she had. Therefore, she requests a hearing so that the parties can provide specific testimony on the issues before the Civil Service Commission (Commission).

### CONCLUSION

*N.J.A.C.* 4A:2-1.1(d) provides that except where a hearing is required by law or where the Commission finds that a material and controlling dispute of fact exists that can only be resolved by a hearing, an appeal will be reviewed on a written record. For the reasons set forth below, no hearing is warranted in this matter.

*N.J.A.C.* 4A:2-1.4(c) provides that the burden of proof shall be on the appellant.

*N.J.A.C.* 4A:2-2.1(a) provides that this subchapter only applies to permanent employees in the career service or a person serving a working test period.

*N.J.A.C.* 4A:3-3.3(f)1 provides that in State service, the agency representative shall provide notice to affected and potentially affected negotiations upon submission of the following to the appropriate Commission representative. The Commission representative shall verify that proper notice has been given for reorganizations.

*N.J.A.C.* 4A:3-3.5(a)1 provides that when the duties and responsibilities of a position change to the extent that they are no longer similar to the duties and responsibilities set forth in the specification and the title is no longer appropriate, the Chairperson or designee, shall after review, reclassify the position to a more appropriate title if there is one;

*N.J.A.C.* 4A:3-3.5(c) provides that no reclassification of any position shall become effective until notice is given affected permanent employees and approval is given by an appropriate Commission representative.

*N.J.A.C.* 4A:3-3.9(a) provides that a position review request is a petition for a review from the classification or reclassification of a position, or a complaint that the

duties of a specific position do not conform to the approved job specification for the title assigned to that position.

*N.J.A.C. 4A:3-3.9(b)* provides that the procedures in this section are applicable to employee in the career and unclassified services.

*N.J.A.C. 4A:7-3.1(a)* provides, in pertinent part, the State is committed to providing every State employee and prospective State employee with a work environment free from prohibited discrimination or harassment. Under this policy, forms of employment discrimination or harassment based race, creed, color, national origin, nationality, ancestry, age, sex/gender, pregnancy, marital status, civil union status, domestic partnership status, familial status, religion, affectional or sexual orientation, gender identity or expression, atypical hereditary cellular or blood trait, genetic information, liability for service in the Armed Forces of the United States, or disability.

In this matter, the record indicates that McGee had an unclassified appointment as a Manager 3 (Salary Range &35). On February 14, 2022, a letter was sent to this agency requesting that the NHR Program Area be reorganized. Further, although McGee's union claims it never received notice of the reorganization, the appointing authority indicates that her union was notified.<sup>1</sup> Regardless, the appointing authority submitted a form, signed June 15, 2022, to this agency, requesting that McGee's position be changed from Manager 3 to Manager 4 (Salary Range &32) indicating that due to the reorganization that her title was more aligned with Manager 4 duties. This agency approved the request, effective June 18, 2022. It is noted that even though Manager 4 has a lower salary range than Manager 3, McGee's salary was "red circled" and her salary stayed the same. As such, the record indicates that the appointing authority complied with Civil Service rules regarding the change in her title. It is also noted that since McGee is an unclassified employee, she was not entitled to any notice as *N.J.A.C. 4A:3-3.5(c)* only applies to permanent employees.

Concerning McGee's claim that she was "demoted" or otherwise disciplined based on her change of title, the disciplinary procedures under *N.J.A.C. 4A:2* only apply to permanent career service employees. Therefore, even if the movement is considered a demotion, as an unclassified employee, she was not entitled to receive any disciplinary due process under Civil Service law or rules. Regarding McGee's claim that the change in her title will deprive her of contractually-promised cost of living increases, the Commission does not have jurisdiction over contractual rights

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<sup>1</sup> The appointing authority indicates in its further response that it attaches a correspondence that was forwarded to McGee's union representative on February 15, 2022. However, this document was not attached to the submission received by this agency. Regardless, whether the union received notice regarding the NHR Program Area has no bearing on this matter concerning the change of McGee's unclassified title.

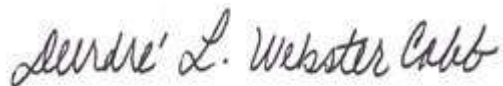
and she should pursue this claim through whatever the appropriate mechanism is under the collective negotiations agreement. It is noted, however, that if McGee believes that her position is misclassified, she can submit a request for a review of the classification of her position using the procedures as outlined under *N.J.A.C.* 4A:3-3.9. Additionally, it noted that while McGee asserts that the change of her title may be discriminatory or unjustly motivated, as she has not made any claim that this change was based on her membership in a protected class nor has she provided any evidence that the change was based on any invidious motivation, there is nothing in the record to support this claim. Mere speculation, without evidence, is insufficient to support such a claim. Should she believe that she has such evidence, she should pursue that by filing a discrimination complaint under *N.J.A.C.* 4A:7-2.3 with her appointing authority. Accordingly, her request is denied.

### ORDER

Therefore, it is ordered that this request is 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 23<sup>RD</sup> DAY OF NOVEMBER, 2022




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