



STATE OF NEW JERSEY

In the Matter of Lekisha Bondurant,
Assistant Director, Property
Improvement, East Orange

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

CSC Docket No. 2022-2113

Examination Appeal

ISSUED: March 29, 2023 (DASV)

Lekisha Bondurant, represented by Valerie Palma DeLuisi, Esq., appeals the determination of the Division of Agency Services (Agency Services) which found that she was below the minimum requirements in experience for the qualifying examination for Assistant Director, Property Improvement, East Orange.

By way of background, official personnel records in the County and Municipal Personnel System (CAMPS) reveal that the appellant was appointed provisionally, pending open competitive examination procedures (PAOC), as an Administrative Assistant 3, effective February 4, 2014, and then was appointed PAOC as a Rent Regulation Officer effective December 1, 2015. Thereafter, she received a regular appointment and achieved permanent status as a Rent Regulation Officer on July 1, 2017. On January 1, 2018, the appellant was appointed provisionally, pending a qualifying examination (PAQ), to the Assistant Director, Property Improvement title. However, she did not pass the qualifying examination and was returned to her permanent title of Rent Regulation Officer on January 9, 2020. Then, for a second time, the appellant was appointed PAQ to the Assistant Director, Property Improvement title effective August 27, 2021. In that regard, the appointing authority submitted a Personnel Action Form, prepared on September 14, 2021, and signed by the appellant on September 16, 2021, that requested the appellant's title change effective August 27, 2021. The Department Head, Business Administrator/appointing authority, and the Chief Financial Officer also signed the form. However, since the appellant was found once again not to have passed the qualifying examination due to being below the minimum requirements in experience,

she was returned to her permanent title of Rent Regulation Officer effective February 23, 2022. The appellant was then appointed PAOC as a Management Specialist on March 24, 2022. Since the appellant's initial appointment with East Orange on February 4, 2014, the appellant has been assigned to the Department of Property, Maintenance and Revitalization. Additionally, the movement from the Rent Regulation Officer to the Assistant Director, Property Improvement title is considered a lateral title change. As of 2018, agency records do not indicate that the appellant filed a request for classification review of her position.

With regard to the subject qualifying examination, the requirements for Assistant Director, Property Improvement are four years of experience, two of which shall have been in a supervisory capacity in either the preparation or revision of building construction plans, or the inspection or supervision of buildings, or as a journeyman in the building construction structural trades. Upon a review of the appellant's application which served as the test paper, as set forth in its determination dated February 23, 2022, Agency Services credited the appellant with two years and seven months of experience while she was serving as an Assistant Director, Property Improvement. However, the appellant did not receive credit for any of her other experience. Agency Services noted that the appellant indicated one year and seven months of relevant out-of-title work experience as a Rent Regulation Officer but did not credit her with that experience. Therefore, Agency Services determined that the appellant lacked one year and five months of applicable experience. Accordingly, the appellant was found not to have passed the qualifying examination for Assistant Director, Property Improvement.

The appellant appealed the results of her qualifying examination and outlined the duties of her position. She maintained that she had been performing the duties of an Assistant Director, Property Improvement for the past four years and that she had asked the appointing authority for a letter of support. Agency Services was contacted, and it advised that the appointing authority did not certify to the appellant's performance of out-of-title work nor the business necessity of performing such work. Moreover, on appeal, agency staff contacted the appointing authority to verify whether the appellant performed relevant out-of-title duties as a Rent Regulation Officer from January 2020 to August 2021. In response, the appointing authority advised that during that time period, it employed another individual to perform the duties of the Assistant Director, Property Improvement.¹ Moreover, agency records indicated that the appellant was returned to her permanent title of Rent Regulation Officer, effective February 23, 2022.

¹ That individual served in the title permanently beginning on June 29, 2015, but took a leave of absence to accept an unclassified appointment as the Municipal Department Head for the Department of Property, Maintenance and Revitalization, effective January 1, 2018. His record also states that his unclassified appointment was discontinued, and he resigned from his permanent position on June 30, 2022.

In response, in a certification, the appellant maintains that the “City of East Orange was untruthful” and that she has been working as an “Assistant Director in the Department of Code Enforcement consistently since 2018” and “still holds that title today.” In support of her claim, the appellant submits copies of emails, dated between November 2019 and August 2021, where she signs her name with the title of “Assistant Director Department of Property Maintenance.” Moreover, the appellant maintains that those emails confirm the day-to-day job duties she performs which is consistent with the duties of the subject title. In that regard, the appellant emphasizes that the Job Specification for the subject title states that an incumbent “[u]nder direction, assists the Director in the direction and administration of all functions and activities of a housing code enforcement program designed to eliminate blight and substandard structures; does other related duties as required” and that one of the examples of work includes assisting “the Director in the modification and promulgation of housing code ordinances and regulations.”

Specifically, the appellant presents an email, dated June 19, 2020, from the appellant to the Mayor of East Orange, stating that she is forwarding “a few proposed initiatives for the Department of Code Enforcement” and “will continue to forward initiatives for [the Mayor’s] review, comments and recommendations. Best, Lekisha Bondurant Assistant Director Department of Property Maintenance.” The appellant argues that this email “falls within the description of ‘modification and promulgation of housing code ordinances and regulations’” and that the Mayor’s response of “Have it” acknowledges that the appellant is “working within her job criteria.” The appellant also submits email exchanges with the Mayor, Chief of Staff, Director, and other staff, dated December 29, 2020, January 27, 2021, July 22, 2021, July 27, 2021, August 9, 2021, and August 10, 2021, asserting that the contents of the emails demonstrate the performance of the duties of the subject title in that she is directing the organization and planning of the housing enforcement program and is responsible for the training and supervision of code enforcement staff. The appellant contends that none of these emails show that she was performing the duties of a Rent Regulation Officer. The appellant notes that she was unaware that “her title reverted back to Rent Regulation Officer in February 2022” since the appointing authority directed her to complete a Financial Disclosure Statement as the “Assistant Director Property Maintenance” in May 2022. She has completed one every year since 2018 as the “Assistant Director” for the “Department of Property Maintenance.” In addition, the appellant notes that various articles, published in 2020, 2021, and 2022, refer to her as the “Assistant Director of Code Enforcement.” She asserts that the information in these articles come from the appointing authority. Moreover, she states that the Staff Directory shows she is listed in the “Department of Code Enforcement” and not as a Rent Regulation Officer. It is noted that there is no title listed for the appellant in the copy of the directory page she submits. Therefore, the appellant requests that she “not be prejudiced by the City’s lack of candor” and that her appeal be granted.

It is noted that, despite the opportunity, the appointing authority has not submitted a response but indicates that it agrees with the initial disposition of this matter.

CONCLUSION

N.J.A.C. 4A:4-7.6(c) states, in pertinent part, that if the nature of the work, education and experience qualifications of both titles are dissimilar for a lateral title change, then the employee shall be appointed pending examination. *N.J.A.C.* 4A:4-6.3(b) provides that the appellant has the burden of proof in examination appeals.

Initially, it is noted that a qualifying examination requires candidates to demonstrate that they possess the necessary experience for a particular title in order to effect a demotional, lateral or promotional transfer to the title with permanent status. Since a determination of eligibility equates to a candidate passing this type of examination, and generally results in the candidate's provisional appointment (PAQ) being changed to a permanent appointment (RAQ), it is imperative that candidates unambiguously indicate their experience on the application. This information is crucial because it is essentially equivalent to correct responses on a multiple-choice or "assembled" examination. Thus, the Commission must primarily focus on the "test papers," *i.e.*, the original application materials presented to Agency Services for review, and determine if an "error" was made in the "scoring" of the test or other noncompliance with Civil Service law and rule. Additionally, unverified out-of-title work is generally not acceptable for qualifying examinations for a lateral or promotional title change. This is because constant, repeated or lengthy out-of-title work assignments of career service employees is damaging to the system, creates salary inequities, and undermines the integrity of the classification plan.

In the instant matter, because Agency Services was not able to verify the appellant's asserted out-of-title work and its necessity with the appointing authority, its determination that the appellant did not pass the qualifying examination was correct. The appellant did not have enough acceptable experience to meet the requirements for the subject title. On appeal, the appellant has not proved by the preponderance of the evidence that Agency Services' determination was incorrect. The appointing authority has declined to support the appellant's claim of out-of-title work. Accordingly, the Commission does not find a sufficient basis to grant the appellant's appeal of Agency Services' determination.

Nonetheless, the appellant maintains that she has been performing the duties of an Assistant Director, Property Improvement since 2018 despite the various titles she has held since that time. Thus, there is clearly a dispute over the appellant's job duties and title. Under such circumstances, the Commission finds that it is appropriate to refer the matter of the classification of the appellant's position to Agency Services for its review pursuant to *N.J.A.C.* 4A:3-3.9. This will involve the

appellant, supervisory personnel, and the appointing authority completing a Position Classification Questionnaire (PCQ) of the appellant's position. However, the Commission emphasizes that classification reviews are based on a current review of assigned duties and any remedy derived therefrom is ordinarily prospective in nature since duties which may have been performed in the past cannot be reviewed or verified. In other words, the foundation of a position classification review, as practiced in New Jersey, is the determination of duties and responsibilities being performed at a given point in time as verified by this agency through an audit or other formal study. Despite maintaining that she was performing the duties of an Assistant Director, Property Improvement since January 2018, the appellant did not request a classification review of her position during the time periods she was returned to her permanent title of Rent Regulation Officer to verify that she was in fact still performing the duties of the subject title. Rather, she has presented this claim in the instant appeal. Therefore, an appropriate remedy must be fashioned should Agency Services find that the proper classification of the appellant's position is Assistant Director, Property Improvement.

In that regard, *N.J.A.C.* 4A:3-3.9(e)3ii provides that if an appeal is granted by the Commission with regard to the classification of a position, the effective date of implementation shall be, in local service, the date an appropriate representative of the Commission first received the appeal or reclassification request, or at such earlier date as directed by the Commission. Thus, should Agency Services find that the appellant's position is properly classified as an Assistant Director, Property Improvement, under the unique circumstances of this case, the Commission finds that the appellant's PAQ appointment as an Assistant Director, Property Improvement, would be retroactive to February 23, 2022, which is the date that she returned to her permanent title of Rent Regulation Officer, and the date of Agency Services' determination which she appealed. The appellant's PAQ appointment to the subject title would then be continuous as of August 27, 2021.²

Nevertheless, an appointing authority has the option of effecting the reclassification of the position or returning employees to their current title. Specifically, *N.J.A.C.* 4A:3-3.5(c)(1) provides that within 30 days of receipt of a reclassification determination, the appointing authority shall either effect the required change in classification of the employee's position *or* assign duties and responsibilities commensurate with the employee's current title. Thus, if the appointing authority chooses the latter, no later than the expiration of the 30 days, it must submit a new PCQ to Agency Services demonstrating that it has assigned the appellant the duties and responsibilities commensurate with the appellant's current

² The retroactive date does not guarantee that the appellant will pass the qualifying examination at the time of its administration as the appellant would still need the required four years of experience. However, the out-of-title work will have been verified by the position classification review, and if the appellant is found to be performing the duties of the subject title, the appellant's record will be amended as set forth in the decision.

provisional title of Management Specialist. Under that circumstance while the appellant's August 27, 2021 and February 23, 2022, PAQ appointments as an Assistant Director, Property Improvement will not change if Agency Services finds that the position is properly classified in that title, the appellant's PAQ appointments, however, will be terminated and the appellant will be recorded as serving PAOC as a Management Specialist. Moreover, the Commission notes that the appointing authority is not precluded from assigning the appellant duties and responsibilities commensurate with her permanent title of Rent Regulation Officer. The effective date of the appointment will be determined pursuant to the appointing authority's demonstration through the PCQ that it assigned the duties of either title.

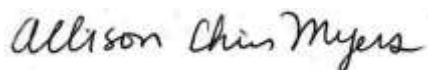
Should Agency Services find that the appellant is not performing the duties of an Assistant Director, Property Improvement, the Commission does not grant the appellant a February 23, 2022 PAQ appointment to that title. The appellant's appointments and any return to her permanent title as reflected in her CAMPS record set forth in this decision, including her March 24, 2022 PAOC appointment as a Management Specialist, shall remain in her record and not be deleted. If the appellant is found to be performing the duties of a Management Specialist, Agency Services is directed to proceed with the examination process. If the appellant is found to be performing the duties of a title other than a Management Specialist, Agency Services is directed to record the new appointment effective the date of this decision and initiate the appropriate examination procedures if the title is competitive. If the appellant is found to be performing the duties of her permanent title of Rent Regulation Officer, she is to be returned to the title effective the date of this decision.

ORDER

Therefore, it is ordered that this appeal be denied, and the matter of the classification of the appellant's position be referred to Agency Services for review consistent with this decision.

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 MARCH, 2023



Allison Chris Myers
Acting Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Nicholas F. Angiulo
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

c: Lekisha Bondurant
Valerie Palma DeLuisi, Esq.
Solomon Steplight
Monica Reed
Division of Agency Services
Records Center