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STATE OF NEW JERSEY

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

In the Matter of Louis Ibekwe,
Department of Human Services

CSC Docket No. 2015-1698

Layoff Appeal

ISSUED: MAR 10 2015 (RE)

Louis Ibekwe, a Cottage Training Technician with the Department of Human Services, Green Brook Regional Center, appeals his demotion in lieu of layoff to Human Services Assistant, effective June 27, 2014.

By way of background, the Department of Human Services submitted a layoff plan to the Division of Classification and Personnel Management (CPM) to lay off employees in various titles, including employees of Division of Developmental Disabilities, due to the closure of the North Jersey Developmental Center, effective June 27, 2014. Numerous positions in various titles at several institutions were affected. Thereafter, the Department of Human Services submitted a layoff plan to CPM to lay off employees in various titles due to the closure of the Woodbridge Developmental Center, effective January 9, 2015. As a result of the first layoff, Mr. Ibekwe was demoted from his Cottage Training Technician position to a Human Services Assistant position in Green Brook Regional Center. As a result of the second layoff, the appellant was laterally moved from Somerset County to Mercer County.

In an appeal postmarked December 9, 2014, the appellant stated that he was misinformed during the layoff of June 27, 2014, and requested restoration to the Cottage Training Technician title. Specifically, he stated that he was told that there were no Cottage Training Technician positions available in Somerset (Green Brook Regional Center) or Hunterdon Counties, but that other individuals with less seniority were given lateral titles.

Commission staff responded by letter that his appeal was untimely. He received a Reduction in Force Final Notice prior to June 27, 2014, and his 20 day period to file an appeal ended no later than July 2014. As he did not pursue an appeal of his determination of rights until December 9, 2014, his appeal was untimely.

In response, the appellant states that it was not explained to him that he could go to another facility as a Cottage Training Technician or in a lateral title. He names two employees who he states were offered positions as a Human Services Technician in Mercer County, and they had less seniority than he did. He states that he accepted a demotion to stay in Somerset County, but that he had no choice. He believed that future bumping would not affect him, but that during the second layoff he was laterally moved to Mercer County where he found that less senior individuals remained in the Human Services Technician title as they were not affected in the second layoff. As to untimeliness, the appellant maintains that he was unaware that his coworkers had transferred to Mercer County in a lateral title until "recently." He argues that he was not offered the opportunity to exercise options given to his coworkers during the first layoff, and that this situation is grossly unfair and fairness demands it be rectified by affording him "equal opportunity."

CONCLUSION

In an appeal of this nature, it must be determined whether CPM properly applied the uniform regulatory criteria found in *N.J.A.C. 4A:8-2.1 et seq.*, in determining layoff rights. It is an appellant's burden to provide evidence of misapplication of these regulatory criteria in determining layoff rights and the appellant must specify a remedy. A thorough review of the record establishes that the appellant's layoff rights were properly determined.

At the heart of the title rights determination is the underlying policy to ensure that employees are afforded fair, uniform, and objective title rights without resulting in harm to the public. *See Malone v. Fender*, 80 N.J. 129 (1979). In this case, proper procedures were followed. The appellant was advised of the layoff and final interview processes and provided with resources to answer questions before the layoff was administered. Employees were informed that they were to make their decisions ahead of time and be prepared to provide their final decision when called for a final interview. The final interview was not the time to deliberate preferences, but was the time to make a decision based on preferences and the available opportunities under the circumstances. Employees were told that they could change their mind at the interview stage, but that once the employee made their final decision, he or she could not change it unless they decided to retire. In his case, the appellant's Declaration Form had lateral choices listed before demotional choices, and he made this listing far in advance of the interview. On his

Declaration Form for the first layoff, the appellant listed five lateral choices and five demotional choices in the counties Somerset, Union, Hunterdon, Morris, and Essex. As he did not list Mercer County as an option, he was not offered a position in that county. The appellant is, on appeal, retrospectively changing his mind and asking that Mercer County be included in his list of acceptable locations, and he is doing so by claiming that the layoff team acted unfairly by not informing him of available options that he had not listed on his form. The appellant's allegation of unfairness is without proof and is unsupported. It is disturbing that he would make such allegations in the absence of any evidence that he had selected Mercer County in the first layoff, and given that the choices he listed on his first Declaration Form were honored. The appellant selected acceptable locations well in advance of his interview date and did not include Mercer County as an option. The appellant has brought this issue up as, in the second layoff, he listed Mercer County as an acceptable location and accepted a lateral position there, where he discovered prior coworkers who had accepted positions as Human Services Technicians there during the first layoff. To request another location for the first layoff is, in effect, a change of mind, which is not an option or evidence of a violation of title rights.

The appellant was given the same instructions as every other employee and he had an equal opportunity to list Mercer County in his list of acceptable locations on the form. However, he did not appeal this issue until over six months after the layoff effective date. He had the benefit of working in a location of his choosing until he was affected by the second layoff, and he did not appeal that he should have been offered a position in Mercer County until he realized that he would be going there is a result of his decisions regarding the second layoff. As such, this appeal is clearly untimely.

Next, *N.J.A.C. 4A:8-2.4(c)* states, in pertinent part, that preferred status is a higher ranking for layoff rights purposes than anyone currently serving in a demotional title. It is provided to employees with permanent status who exercise their demotional rights in a layoff action, other than to a previously held title pursuant to *N.J.A.C. 4A:8-2.2(f)*, or to employees reappointed from a special reemployment list to a lower title in the same layoff unit from which they were laid off or demoted. Individuals with preferred status appear in the layoff ranking before any other employees, but they are not immune to bumping. The appellant had preferred status in the second layoff due to being affected by the first layoff. Nevertheless, he was again affected by an employee who selected his location and, in fact, all Human Services Assistants in Somerset County were impacted by the second layoff. His appeal is without merit.

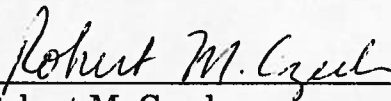
Thus, a review of the record indicates that this appeal is untimely and fails to establish an error in the layoff process. The appellant has not met his burden of proof in this matter.

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 4th DAY OF MARCH, 2015



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