

B-18



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Bernadette Pasqua,  
Department of Transportation

Request for Reconsideration

CSC Docket No. 2015-362

ISSUED: NOV 06 2014 (HS)

Bernadette Pasqua requests reconsideration of the attached final administrative decision rendered on July 16, 2014, which granted, in part, the petitioner's request for enforcement of a classification determination. A copy of that decision is attached hereto and incorporated herein.

By way of background, the petitioner appealed the classification of her position to the Division of Classification and Personnel Management (CPM), contending that her position should be classified by the title of Realty Specialist 2, Transportation. In its July 19, 2013 determination, CPM agreed her position should be reclassified, effective February 9, 2013. However, the appointing authority chose not to effect the reclassification of the petitioner's position and submitted a revised Position Classification Questionnaire (PCQ), dated November 7, 2013, for CPM's review. CPM confirmed that the revised PCQ indicated that the higher level duties had been removed, and no further action was taken at that time.

On appeal to the Civil Service Commission (Commission), the petitioner presented several arguments, including her passing previous promotional examinations for the Realty Specialist 2, Transportation title and her education and abilities, as to why the appointing authority should have effected her reclassification per CPM's July 19, 2013 determination. The Commission did not find her arguments persuasive and noted that it was within the appointing authority's discretion not to effect the reclassification of her position by removing higher level duties. However, the Commission did find that the petitioner was

entitled to differential back pay from the effective date of CPM's determination, February 9, 2013, until the completion of the revised PCQ on November 7, 2013.<sup>1</sup> The Commission also noted that the petitioner subsequently received a provisional appointment, pending promotional examination procedures, to the title of Realty Specialist 2, Transportation, effective May 31, 2014.

In her request for reconsideration, the petitioner contends that she should have received a permanent appointment to the title of Realty Specialist 2, Transportation, with an effective date of February 9, 2013 or another date deemed "fair," without having to take a promotional examination. Pointing to *N.J.A.C. 4A:4-1.5(a)*, which provides that a provisional appointment may be made only in the competitive division of the career service, the petitioner posits that a provisional appointment to the Realty Specialist 2, Transportation title is inappropriate since the appointment represents a promotion for her and cannot be considered "competitive." The petitioner sets forth additional reasons why her appointment should have been made permanent without an examination. Specifically, the petitioner argues that because she has passed two previous examinations for the Realty Specialist 2, Transportation title<sup>2</sup> and possesses relevant education, experience and credentials, she is the only one who would be eligible for appointment. The petitioner reiterates that she received a favorable classification determination from CPM dated July 19, 2013. The petitioner argues that she has been performing higher level duties since at least 2006. In this regard, the job specification for Realty Specialist 2, Transportation encompasses relocation work, and the petitioner states that she performed relocation work in 2005 and 2006. Finally, the petitioner avers that her salary should be at the "top grade" for the Realty Specialist 2, Transportation position and that she should receive "fair and equitable" back pay. In this regard, the petitioner alleges that R.P. and B.M. were hired in the title of Right of Way Negotiator<sup>3</sup> months after the petitioner's initial hire and were paid substantially more than she was because they possessed a license that the petitioner also holds but for which she was not paid as R.P. and B.M. were.

Agency records indicate that the petitioner applied for and was admitted to the examination for Realty Specialist 2, Transportation (PS8997T), which had a closing date of August 21, 2014. The petitioner was one of three applicants for the examination, which was processed as an evaluation of education and experience. The resulting eligible list of two names promulgated on September 25, 2014 and expires September 24, 2017. The petitioner was certified as the second ranked veteran eligible on September 25, 2014. The certification has not yet been returned.

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<sup>1</sup> Agency records indicate that the appointing authority paid the petitioner the required differential back pay effective August 15, 2014.

<sup>2</sup> Agency records indicate that the petitioner appeared on two earlier eligible lists, PS3438T and PS3439T, both of which have expired.

<sup>3</sup> The nomenclature for the title subsequently changed to Realty Specialist 1, Transportation.

## CONCLUSION

*N.J.A.C.* 4A:2-1.6(b) sets forth the standards by which a prior decision may be reconsidered. This rule provides that a party must show that a clear material error has occurred or present new evidence or additional information not presented at the original proceeding which would change the outcome and the reasons that such evidence was not presented at the original proceeding. A review of the record in the instant matter reveals that the petitioner has not met the standard for reconsideration.

Initially, the petitioner argues that she should have received a permanent appointment to the title of Realty Specialist 2, Transportation rather than a provisional appointment, pending promotional examination procedures. Regular appointments to titles allocated to the competitive division of the career service are subject to an examination process and successful completion of a working test period. *See N.J.A.C.* 4A:4-1.1(a). Therefore, since the title of Realty Specialist 2, Transportation is allocated to the competitive division of the career service, her provisional appointment to that title was appropriate regardless of the fact that such an appointment represents a promotion, since at the time of her provisional appointment there were no valid lists. *See N.J.A.C.* 4A:4-1.5. Upon the petitioner's provisional appointment, a promotional examination (PS8997T) was correctly announced. Moreover, the petitioner's appearance on two earlier eligible lists, that have since expired, does not, in itself, negate the examination requirement for a subsequent announcement. Her possession of particular education, experience and credentials also does not negate the examination requirement. It is well settled that, as part of the process of selection and appointment, a candidate must establish eligibility by demonstrating possession of the applicable experience and/or education requirement *and* pass an examination. *See In the Matter of Bindu Shah* (MSB, decided May 19, 2004).

While the petitioner also points to the classification determination dated July 19, 2013, as evidence that she should have received an earlier appointment date, it is noted that although the petitioner was certified to the appointing authority in January 2014, she did not accept the earlier appointment due to the position's location. Moreover, as noted in the Commission's prior decision, the appointing authority had the discretion not to effectuate the reclassification of the petitioner's position to the higher title at that time and it instead removed the higher level duties. Additionally, following receipt of a reclassification determination, any change in the classification of a permanent employee's position, whether promotional, demotional or lateral, must be effected in accordance with all applicable rules. *See N.J.A.C.* 4A:3-3.5(c)1. Accordingly, the July 19, 2013 classification determination did not automatically entitle the petitioner to a permanent appointment date.

The petitioner also claims that she has been working as a Realty Specialist 2, Transportation since 2006 and thus, is entitled to a retroactive appointment date. However, although the record supports that the petitioner performed duties consistent with the title of Realty Specialist 2, Transportation from February 9, 2013 to November 7, 2013 and since May 31, 2014, the petitioner has not provided any substantive evidence to indicate that she was working as a Realty Specialist 2, Transportation at any other time. In this regard, the foundation of position classification, 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. Thus, classification reviews are based on a current review of assigned duties and any remedy derived therefrom is prospective in nature since duties which may have been performed in the past cannot be reviewed or verified. Given the evolving nature of duties and assignments, it is simply not possible to accurately review the duties an employee may have performed six months ago or a year ago or several years ago. This agency's established classification review procedures in this regard have been affirmed following formal Commission review and judicial challenges. *See In the Matter of Community Service Aide/Senior Clerk (M6631A), Program Monitor (M62780), and Code Enforcement Officer (M00410)*, Docket No. A-3062-02T2 (App. Div. June 15, 2004) (Accepting policy that classification reviews are limited to auditing current duties associated with a particular position because it cannot accurately verify duties performed by employees in the past). *See also, In the Matter of Engineering Technician and Construction and Maintenance Technician Title Series, Department of Transportation*, Docket No. A-277-90T1 (App. Div. January 22, 1992); and *In the Matter of Theresa Cortina* (Commissioner of Personnel, decided May 19, 1993). Thus, since the petitioner did not file a classification review request until 2013, the Commission is unable to confirm that she was misclassified earlier than February 9, 2013. However, even if the petitioner had been performing relevant out of title duties since 2006, that fact alone would not entitle her to a retroactive permanent appointment date or entitle her to bypass the examination process for a regular appointment.

Finally, with regard to the petitioner's argument that R.P. and B.M. incorrectly received a higher salary than the petitioner upon their initial hire, it is noted that the petitioner's initial appointment was to the title of Right of Way Negotiator Trainee and R.P. and B.M.'s initial appointments were to the title of Right of Way Negotiator. This distinction is critical since State appointing authorities have no discretion with regard to salaries for Trainee titles. In this particular matter, a review of agency records indicates that R.P. and B.M.'s salaries were set in accordance with the salary schedule and regulations controlling at the time of their initial appointment to the title of Right of Way Negotiator. Records also indicate that the petitioner's salary was correctly set in accordance with the salary schedule and regulations controlling at the time of her initial appointment as a Right of Way Negotiator Trainee, her advancement to Right of Way Negotiator,

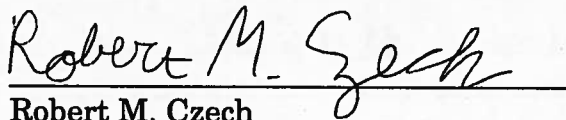
and her provisional appointment to Realty Specialist 2, Transportation on May 31, 2014. The petitioner was awarded differential back pay in the prior decision, and there is no basis for an additional award of back pay. Accordingly, the petitioner has failed to present a sufficient basis for reconsideration of the Commission's prior decision.

**ORDER**

Therefore, it is ordered that this request for reconsideration 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 6<sup>TH</sup> DAY OF NOVEMBER, 2014**



Robert M. Czech  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Henry Maurer  
Director  
Division of Appeals and Regulatory Affairs  
Written Record Appeals Unit  
Civil Service Commission  
P.O. Box 312  
Trenton, NJ 08625-0312

**Attachment**

- c. Bernadette Pasqua  
Michele A. Shapiro  
Kenneth Connolly  
Joseph Gambino



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Bernadette Pasqua,  
Department of Transportation

Request for Enforcement

CSC Docket No. 2014-1808

ISSUED: **Jul 18 2014** (HS)

Bernadette Pasqua, Realty Specialist 2, Transportation,<sup>1</sup> with the Department of Transportation (DOT), seeks enforcement of the attached decision of the Division of Classification and Personnel Management (CPM) that the duties and responsibilities of her position would be properly classified by the title Realty Specialist 2, Transportation.

By way of background, the appellant received a regular appointment to the title of Realty Specialist 1, Transportation on March 4, 2006. The appellant later appealed the classification of her position to CPM, contending that the functions of her position were inconsistent with her permanent title of Realty Specialist 1, Transportation and that she should be properly classified by the title of Realty Specialist 2, Transportation. In support of her request, the appellant submitted a Position Classification Questionnaire (PCQ) detailing the duties she performed as Realty Specialist 1, Transportation. In its July 19, 2013 determination, CPM found that the appellant's position would be properly classified by the title Realty Specialist 2, Transportation, and she was assigned an effective date of February 9, 2013. After receiving CPM's determination, the appointing authority opted not to effect the required change to the classification of the appellant's position. Rather, the appointing authority chose to assign duties and responsibilities commensurate with the appellant's then-current and permanent title of Realty Specialist 1, Transportation. In November 2013, the appointing authority submitted a revised

<sup>1</sup> Agency records indicate that the appellant was provisionally appointed, pending promotional examination procedures, to the title of Realty Specialist 2, Transportation, effective May 31, 2014.

PCQ indicating the duties and responsibilities that had been reassigned to the appellant. Although the appellant and her supervisor refused to sign the revised PCQ, her program manager signed the revised PCQ on November 7, 2013. After reviewing the revised PCQ, CPM confirmed that the higher level duties had been removed and that the appellant's duties aligned with the Realty Specialist 1, Transportation title. Therefore, the appellant remained in her permanent title of Realty Specialist 1, Transportation and no further action was taken. CPM informed the appointing authority and the appellant of the results of its review of the revised PCQ by letter dated December 23, 2013. Subsequently, the appellant was provisionally appointed to the title of Realty Specialist 2, Transportation, pending promotional examination procedures, effective May 31, 2014.

In her request for enforcement, the appellant alleges that the decision not to effect her reclassification was based on age, gender and disability discrimination. She states that the appointing authority informed her that her reclassification would not move forward due to an oral "front office directive" negating promotions.<sup>2</sup> She disputes the accuracy of the advice that the front office directive prevented her reclassification and the fact that there was no critical need to reclassify her position because she was certified from an eligible list for Realty Specialist 2, Transportation (PS3439T) in January 2014. She further disputes the appropriateness of the front office directive since several individuals serving as trainees are soon to be advanced to the Realty Specialist 1, Transportation title. The appellant contends that she should be reclassified effective February 2013 because she is qualified, experienced and knowledgeable in working at the level of Realty Specialist 2, Transportation, and has passed the promotional examination for that title.<sup>3</sup> In addition, she contends that despite the "front office directive," upper-level managers have received "in-house reclassifications" and other employees in the Realty Specialist 2, Transportation title at DOT headquarters have been "reclassified." Therefore, she should also be "reclassified" at her Mount Arlington location. The appellant also requests that her compensation be set equivalent to that of J.S., a male Realty Specialist 2, Transportation.

## CONCLUSION

As indicated in *N.J.A.C. 4A:3-3.5(c)1*, the appointing authority is permitted to remove certain duties in order to effect a proper classification commensurate with

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<sup>2</sup> The record does, however, reflect that the appointing authority had a procedure in place whereby appeals could be made internally at DOT to allow reclassifications to move forward in cases where it was determined that the higher level duties could not be removed.

<sup>3</sup> Agency records indicate that the appellant's name appeared on the PS3439T eligible list for the subject title, which promulgated on January 27, 2011 and expired January 26, 2014. The appellant, a veteran, was certified to the appointing authority on January 17, 2014. The appointing authority returned the certification indicating that the appellant was not interested in the location of the position.

the appellant's permanent title of Realty Specialist 1, Transportation. Absent any compelling documentation that the appellant's duties did not in fact change, the Civil Service Commission (Commission) must initially defer to the certifications from an employee's supervisor,<sup>4</sup> manager and appointing authority that they in fact removed higher level or out-of-title duties. An employee's unwillingness to sign the PCQ only suggests that she simply does not agree that the duties and responsibilities as described on the PCQ reflect the proper classification. Moreover, on appeal the appellant does not dispute that the higher level duties were removed. The record reflects that the appointing authority followed a policy of directing the removal of higher level duties when employees receive favorable classification determinations. In these cases, new PCQs are prepared reflecting the appropriate level duties. The record further reflects that the appointing authority had a procedure in place whereby appeals could be made internally at DOT to allow reclassifications to move forward in cases where it was determined that the higher level duties could not be removed. In this matter, the appointing authority decided not to process the reclassification of the appellant's position, reassigned the higher level duties that she had been performing and prepared a revised PCQ. CPM reviewed the revised PCQ and confirmed that it reflected the alignment of the appellant's duties with her permanent title of Realty Specialist 1, Transportation.

The appellant claims that her certification from an eligible list for Realty Specialist 2, Transportation (PS3439T), the advancement of trainees, and the advancement of employees at DOT headquarters show that the appointing authority misapplied its own policy regarding classification appeals. The record indicates that the appellant's name was certified on January 17, 2014 as the only eligible. However, no appointment was made since the appellant was not interested in the location, though the appointment would have been within the same unit scope. The appellant's certification in January 2014 is not sufficient to indicate that the appointing authority misapplied its discretion not to move forward with the appellant's reclassification at her location in response to a classification determination dated months earlier in July 2013. Similarly, the advancement of trainees to the title of Realty Specialist 1, Transportation does not indicate a misapplication of policy. In this regard, *N.J.A.C. 4A:3-3.7(j)* provides that the advancement of a successful, permanent trainee to the appropriate primary title shall be accomplished without the usual promotional examination process, but rather by regular appointment of the employee to the appropriate primary title. Therefore, the advancement of employees serving in the title of Realty Specialist Trainee, Transportation to the title of Realty Specialist 1, Transportation would be in accordance with the controlling regulation. The "reclassifications" of upper-level managers and the advancement of employees at DOT headquarters also do not

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<sup>4</sup> Although the appellant's supervisor refused to sign the revised PCQ, the record indicates that he noted that the work duties listed on the revised PCQ appeared to be those associated with the Realty Specialist 1, Transportation title.



indicate a misapplication of policy since the record does not indicate the particular circumstances surrounding these advancements. Regardless, since the appointing authority had a procedure in place to allow appeals internally at DOT in particular cases where higher level duties could not be removed, there is no indication that the appointing authority's policy did not apply to the appellant.

Although the appellant claims that she is qualified, experienced and knowledgeable in working at the level of a Realty Specialist 2, Transportation and has passed promotional examinations for that title, the appellant's possession of these characteristics does not compel an appointing authority to effect a reclassification since, as already noted, *N.J.A.C. 4A:3-3.5(c)1* affords an appointing authority the discretion to assign duties commensurate with the employee's permanent title after receipt of a classification determination.

However, the Commission finds that the appellant is entitled to differential back pay from the effective date of her classification determination, February 9, 2013, to when her program manager completed the revised PCQ, November 7, 2013, as it is apparent from the record that the appellant was performing higher level duties during that period.

As a final matter, it is noted that this appeal is not the proper forum to initially raise claims of discrimination. The appellant is advised that she may file a complaint with her department's Equal Employment Opportunity office if she believes there has been discrimination.

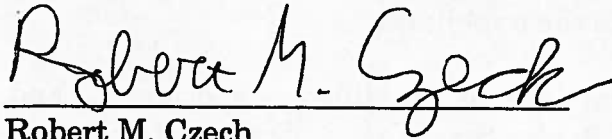
### **ORDER**

Therefore, the Commission concludes that the appellant's position was properly classified as a Realty Specialist 1, Transportation as of the completion of the revised PCQ. It is ordered that the appointing authority pay the appellant differential back pay from the date specified in the classification determination, February 9, 2013, until her program manager completed the revised PCQ on November 7, 2013.

In the event that the appointing authority fails to make a good faith attempt to comply with this decision within 30 days of its issuance, the Commission orders that a fine be assessed against the appointing authority in the amount of \$100.00 per day, beginning on the 31<sup>st</sup> day of the issuance of this decision, continuing for each day of violation up to the maximum amount of \$10,000.00.

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 16<sup>TH</sup> DAY OF JULY 2014**



**Robert M. Czech  
Chairperson  
Civil Service Commission**

**Inquiries  
and  
Correspondence**

**Henry Maurer  
Director  
Division of Appeals and  
Regulatory Affairs  
Written Record Appeals Unit  
Civil Service Commission  
P.O. Box 312  
Trenton, NJ 08625-0312**

**Attachment**

- c. Bernadette Pasqua  
Michele A. Shapiro  
Kenneth Connolly  
Joseph Gambino  
Beth Wood**



**Finding of Fact:**

The primary responsibilities of your position include, but are not limited to the following duties:

- Receiving and interpreting "Right of Way" construction maps, appraisal reports, non-real estate reports, PAECE reports, access plans, development impact reports, and title document requirements.
- Generating case summaries, department actions and records of negotiations; packing cases for approval of agreements, settlements or for placement information condemnation; and submitting suggestions for improving PAECEtrak database.
- Assisting the deputy attorney general on litigation cases and providing information regarding details case process; negotiating with property owners on the value of their home and providing justification on increased payouts to property owners.
- Assisting displaced families with replacement housing; preparing vouchers and department actions to authorize expenditure of funds; and informing homeowners of condemnation process.
- Generating commercial sign and billboard moving, replacing/reproducing cost estimates related to the relocation; representing Right of Way North at pre-construction meetings; and providing assistance with resolution of Right of Way related issues.

**Review and Analysis:**

Your position is currently classified by the title Realty Specialist 1, Transportation (P18-57062). The definition section of this job title states:

"Under the close supervision of a Realty Specialist 3, Transportation or Realty Specialist 4, Transportation, performs the work involved in conducting negotiation, relocation, property management, project programming, administrative and the laws and principles of Eminent Domain activities associated with the purchased and disposition of property; does other related duties as assigned."

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Ms. Bernadette Pasqua

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You contend that the title Realty Specialist 2, Transportation (P22-53080) is an appropriate title for your position. The definition section of the job specification states:

“Under the general supervision of a Realty Specialist 3 , Transportation or Realty Specialist 4, Transportation, performs the more sensitive and complex work involved in conducting negotiations, relocation, property management, project programming, administrative and the laws principles of Eminent Domain activities associated with the purchase and disposition of real property; does other related duties as assigned.”

A review of the duties and responsibilities for this position finds that this position reviews and interprets right of way construction maps, appraisal reports, non-real estate reports, title document requirements, access plans, PAECE reports, meets with impacted property owners, suggests improvements for database; recommends parcel elimination; generate case summaries, department action, and records of negotiations; assists deputy attorney general assigned to condemnation cases; provides records and details of negotiations to assist deputy attorney general; reports case progress; generates replacement/reproduction cost estimates; and provide assistance with resolution of Right of Way related issues. The position does perform the more sensitive and complex work involved in conducting negotiations, relocation, property management, project programming, administrative and the laws and principals of Eminent Domain activities associated with the purchase and disposition of real property.

The preponderance of your assigned duties and responsibilities are significantly descriptive of tasks assigned to the title Realty Specialist 2, Transportation (P22-57063).

**Determination:**

Based on the findings of fact above, it is my determination that the assigned duties and responsibilities performed by your position would be properly classified by the title Realty Specialist 2 (P22-57063) with an effective date of February 9, 2013.

The Civil Service Commission will work with the Department of Transportation to effectuate this transaction.

Please be aware that an incumbent's eligibility in meeting specification requirements is not the same as properly classifying the duties of the position. It is

Ms. Bernadette Pasqua

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the responsibility of the Appointing Authority to ensure an incumbent meets the eligibility requirements prior to any appointment to the title.

The New Jersey Administrative Code 4A:3-3.5©1 states that, "within 30 days of the receipt of the classification determination, unless extended by the Commissioner in a particular case for good cause, the Appointing Authority shall either effect the required change in the classification of an employee's position; assign duties and responsibilities commensurate with the employee's current title; or reassign the employee to the duties and responsibilities to which the employee has permanent rights. Any change in the classification of a permanent employee's position whether promotional, demotional or lateral, shall be effected in the accordance with all applicable rules."

Please be advised that in accordance with N.J.A.C. 4A:3-3.9, you may appeal this decision with twenty (20) days of receipt of this letter. This appeal should be addressed to Written Records Appeals Unit, Division of Appeals and Regulatory Affairs, P.O. Box 312, Trenton, New Jersey 08625-0312. Please note that the submission of an appeal must include a copy of the determination being appealed as well as written documentation and/or arguments substantiating the portions of the determination being disputed and the basis for the appeal.

Sincerely,



Joseph Ridolfi, Team Leader  
Classification and Personnel Management

JR/ts

c: Jeanne Victor, Director, Human Resources  
PMIS Unit, CSC