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STATE OF NEW JERSEY

In the Matters of Rebecca Croke
and Lorie Guerieri, Department of
Environmental Protection

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket Nos. 2014-1461
2014-1462

Request for
Reconsideration

ISSUED: DEC 19 2014 (JET)

Rebecca Croke, a Senior Management Assistant, and Lorie Guerieri, a Principal Technician, Management Information Systems, request reconsideration of the attached final administrative decision, *In the Matters of Rebecca Croke and Lorie Guerieri, Department of Environmental Protection* (CSC, decided October 2, 2013), which found that there was not a sufficient basis to grant a waiver of the salary overpayment amounts owed by Guerieri and Croke pursuant to *N.J.A.C. 4A:3-4.21*. Since these matters concern similar issues, they have been consolidated herein.

In the prior matter, the appointing authority requested a waiver of the salary overpayment amounts of \$2,587.20 for Guerieri and \$2,279.20 for Croke.¹ In this regard, the appointing authority argued that Croke and Guerieri would experience financial hardship if they were required to repay the salary overpayment amounts. In its decision, the Civil Service Commission (Commission) determined that the salary overpayments occurred as a result of the appointing authority's failure to timely comply with the May 21, 2012 classification determinations issued by this agency. The Commission also determined that Croke and Guerieri were aware that their titles were to be reclassified to a title with a lower salary range and failed to

¹ The Commission previously determined in a separate but related matter that Croke and Guerieri were in salary overpayment status since June 22, 2012. See *In the Matters of Lorie Guerieri, Rebecca Croke, and Donna Zalis, Department of Environmental Protection* (CSC, decided April 3, 2013).

demonstrate that they would experience financial hardship if they were required to repay the salary overpayment if reasonable repayment schedules were established.

In the instant matter, Croke and Guerieri contend that they were required to perform out-of-title work that was assigned to them by their supervisor, Matthew Coefer. They add that they should not be penalized for the work they performed since it was Coefer's responsibility to assign the appropriate duties consistent with their permanent titles. Further, Croke and Guerieri assert that Coefer instructed them to file a classification evaluation if they wanted to be promoted² and that they only pursued the classification evaluations in order to avoid contention in the workplace. In this regard, they contend that another employee in their unit, Donna Zalis, harassed and used them throughout the classification evaluation process so she could get promoted.³ Croke also indicates that she was under duress to complete the classification evaluation packages. In addition, Croke and Guerieri argue that, given the particular circumstances involving their classification evaluations, they cannot reasonably be expected to repay the salary overpayment amounts. Croke and Guerieri explain that while they were aware they could be demoted as a result of the classification evaluations, they were not notified that they would be required to repay the salary overpayment. In this regard, no one at the appointing authority or from this agency notified them that they were in salary overpayment status until they received the Commission's April 3, 2013 decision regarding their classifications. Croke and Guerieri maintain that they are in the salary overpayment status due to an administrative error and it was the appointing authority's responsibility to timely reclassify them in the Program Technician title or to assign them duties consistent with their permanent titles. They add that the appointing authority erroneously stated that the classification requests could be withdrawn and they relied on that advice to their detriment. Moreover, Croke and Guerieri question why it was necessary to amend the job specification for Program Technician on December 20, 2012 with an effective date of November 20, 2010. In this regard, they argue that the change in the job specification contributed to the situation pertaining to the salary overpayment amounts. Therefore, Croke and Guerieri maintain that the Commission should waive the salary overpayment amounts.

Additionally, Guerieri maintains that she is experiencing a financial hardship. She explains that her husband's salary was reduced by \$8,000 last year and her daughter was involved in a car accident. In support of her arguments, she provides copies of W-2s for her husband, tax statements, college tuition bills, automotive repair bills, medical bills, mortgage statements, and life insurance statements. Thus, she cannot afford to repay the salary overpayment amount based on her expenses. It is noted that Croke does not provide any additional information

² Croke and Guerieri also indicate that they filed the classification evaluations against their better judgment.

³ At the time she filed for the classification evaluation, Zalis was serving as a Management and Operations Analyst 3 (class code 19). Zalis was reclassified as a Program Technician (class code 20).

to show that she is experiencing a financial hardship. Additionally, Croke asserts that she was performing supervisory duties out-of-title from the time she filed for the classification evaluation until the date the appointing authority realigned her duties as consistent with her permanent title of Senior Management Assistant. Thus, she requests to be compensated for any out-of-title supervisory work that she performed.⁴

CONCLUSION

N.J.A.C. 4A:2-1.6(b) sets forth the standards by which the Commission may reconsider a prior decision. 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 of the case and the reasons that such evidence was not presented at the original proceeding.

In the instant matter, the appellants have not met the standard for reconsideration. Initially, Croke and Guerieri argue, for the first time, that they were subjected to harassment and duress in the workplace which resulted in them filing classification appeals. Other than their assertions, Croke and Guerieri have provided no substantive evidence to show that they were harassed into filing their classification appeals. Although Coefer may have advised Guerieri and Croke that they could pursue a classification evaluation, this does not evidence that they were under duress or pressured into filing position classification appeals. Given that Croke and Guerieri acknowledge that they inquired about promotional opportunities, it is not unreasonable that they willingly filed their classification appeals. Therefore, the Commission is satisfied that Croke and Guerieri submitted the classification requests on their own accord as there is no substantive evidence to confirm that they were subjected to harassment and duress in the workplace. Similarly, the argument that another employee "used" Coefer and Guerieri in the classification process to get promoted is misplaced. In this regard, a classification appeal cannot be based solely on a comparison to the duties of another position, especially if that position is misclassified. *See In the Matter of Carol Maita, Department of Labor* (Commissioner of Personnel, decided March 16, 1995); *In the Matter of Dennis Stover, Middletown Township* (Commissioner of Personnel, decided March 28, 1996).

In the prior matter, the Commission properly determined that the salary overpayments did not result from an administrative error. As indicated in the prior matter, the overpayments were the result of the appointing authority's failure to timely comply with the May 21, 2012 classification determinations. This is a delay in processing a change in pay status. Further, the Commission properly determined that Croke and Guerieri received the benefit of the salary overpayments for a

⁴ At the time Croke filed for the classification request, she was supervising an employee serving as a Technician, Management Information Systems.

number of months. In addition, there was no substantive information to show that Croke and Guerieri were not aware of the overpayments, Croke failed to present any specific evidence to substantiate a claim of hardship, and neither appellant explained how a reasonable repayment schedule would be unduly burdensome.

In regard to Croke's and Guerieri's concerns regarding the amended job specification for Program Technician, it was determined that the existing job specification for Program Technician did not accurately describe the position's duties as performed by individuals serving in that title who performed OPRA work at DEP. Indeed, concerns regarding what title to be used in the appellants' work unit had been identified by the appointing authority in August 2008 when it submitted a crosswalk proposal to realign various titles in the unit to the Records Analyst title series. When it was determined that the Records Analyst title series could not be utilized, the job specification for Program Technician was amended with a retroactive date. While changes to job specifications are generally not applied retroactively, it was appropriate to do so in this case due to the ongoing classification issues experienced by individuals performing OPRA work. More importantly, regardless of the changes in the job specification, the appellants' titles would clearly not be properly classified as Administrative Analyst 3, Principal Technician, Management Information Systems, or Senior Management Assistant. Thus, it was appropriate for the job specifications to be applied retroactively as this resolved a long standing classification problem in order to properly classify Croke's and Guerieri's positions. *See In the Matter of Judith S. Englander* (Commissioner of Personnel, decided December 6, 1996), *reversed on reconsideration* (Commissioner of Personnel, decided October 14, 1997). *See also, In the Matter of Quality Assurance Officer* (CSC, decided September 17, 2014).

Further, the assertion that the amended job specification contributed to the overpayment status is misplaced. Although the job specification for Program Technician was amended with a retroactive effective date, that did not cause Guerieri's and Croke's overpayment status. As indicated in the prior decision, the overpayments were the result of the appointing authority's failure to timely comply with this agency's May 21, 2012 classification determinations. Thus, the amended job specification for Program Technician did not cause them to be in salary overpayment status.

Pertaining to Croke's request to be compensated for the supervisory work she performed on an out-of-title basis, the May 21, 2012 classification determination confirms that Croke's duties included supervisory duties. Further, the classification determination established that the proper classification of her position was Program Technician, and the job specification for Program Technician indicates that it is an "R" or a supervisory title. In contrast, Croke's permanent title is Senior Management Assistant (class code 22), which is a non-supervisory professional title. Since Croke was performing out-of-title work as a Senior Management Assistant,

good cause does not exist in this matter to award differential back pay for the supervisory duties she performed since the title that would properly classify her position, Program Technician, is a supervisory title, but is evaluated for compensation purposes at a lower class code. Essentially, Croke has received an overpayment for performing supervisory duties even though supervisory duties are not permitted by the Senior Management Assistant classification. Therefore, it is not possible to award differential back pay when it was determined that her position should be classified by a supervisory title that is evaluated at a lower class code than her permanent non-supervisory title. Further, the appointing authority has provided documentation to this agency confirming that Croke's out-of-title duties have been removed and her duties are now aligned with her permanent title of Senior Management Assistant.

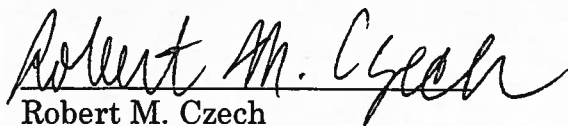
Accordingly, Croke and Guerieri have failed to present a sufficient basis for reconsideration of the Commission's prior decision. Moreover, if the appointing authority has not already done so, it is encouraged to set reasonable repayment schedules for the amounts of \$2,587.20 for Guerieri and \$2,279.20 for Croke.

ORDER

Therefore, it is ordered that this request for reconsideration be denied. It is also ordered that, if it has not already done so, the appointing authority encouraged to set a reasonable repayment schedule for Croke and Guerieri.

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 17th DAY OF DECEMBER, 2014



Robert M. Czech
Chairperson
Civil Service Commission

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and
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Attachment

**c: Rebecca Croke
Lorie Guerieri
Deni Gaskill
Kenneth Connolly
Joseph Gambino**



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matters of Rebecca Croke
and Lorie Guerieri, Department of
Environmental Protection

Request for Waiver of Repayment
of Salary Overpayment

CSC Docket No. 2013-2896
2013-2897

ISSUED: **OCT 02 2013** (JET)

The Department of Environmental Protection, on behalf of Rebecca Croke, a Senior Management Assistant, and Lorie Guerieri, a Principal Technician, Management Information Systems, requests a waiver of repayment of a salary overpayment, pursuant to *N.J.S.A. 11A:3-7*, which provides that when an employee has erroneously received a salary overpayment, the Civil Service Commission (Commission) may waive repayment based on a review of the case. Since these matters concern similar issues, they have been consolidated herein.

By way of background, Croke's permanent title is Senior Management Assistant (salary range 21) and Guerieri's permanent title is Principal Technician, Management Information Systems (salary range 21). Guerieri and Croke requested classification reviews of their positions and the former Division of State and Local Operations (SLO)¹ determined that their positions would be more appropriately classified as Program Technician (salary range 20). Since the recommended classification represented a demotion from their permanent titles, SLO advised the appointing authority that it would reclassify Croke's and Guerieri's positions to Program Technician with a "current effective date" unless they were assigned duties commensurate with their permanent titles within 30 days of the May 21, 2012 determination. Guerieri and Croke subsequently appealed SLO's determinations to the Civil Service Commission (Commission). *See In the Matters of Lorie Guerieri and Rebecca Croke* (CSC, decided April 3, 2013). In its decision, the Commission upheld SLO's determination that the proper classification was

¹ Now the Division of Classification and Personnel Management.

Program Technician for Guerieri's and Croke's titles, and ordered that they be reassigned to that title with an effective date of June 22, 2012, or reassign them duties that were commensurate with their permanent titles.

In its request for waiver of salary overpayment, the appointing authority states that Croke and Guerieri were assigned duties commensurate with their permanent titles effective April 20, 2013, and they have been reassigned to the Division of Enforcement, Technical and Financial Support. Therefore, Croke's salary overpayment of \$2,279.20 and Guerieri's salary overpayment of \$2,597.20 was for a period of 10 months. The appointing authority asserts that Croke and Guerieri would experience financial hardships if they were required to repay their salary overpayments. The appointing authority adds that Croke's and Guerieri's classification appeals were submitted on November 1, 2010 and the appointing authority's request that they be reclassified to the Record Analyst title was denied. Moreover, the appointing authority explains that it did not have the intention to assign out-of-title work to Croke and Guerieri. Therefore, given the situation, the appointing authority requests a waiver of repayment of salary overpayment for Croke and Guerieri.

On her own behalf, Croke states that the expenses for her family include clothes, food, school supplies, religious education (CCD) classes, summer camp, and Girl Scout activities. In addition, Croke states that she pays property taxes, home and auto insurance, utilities, and health care costs. She also makes payments on her mortgage, and buys gas and covers the cost of maintenance for her vehicles. It is noted that Croke does not submit any information indicating the amounts of her expenses in support of her request.

Guerieri also submits information in support of this request. Specifically, Guerieri asserts that she cannot afford to make repayments due to her financial status. In this regard, Guerieri indicates that she pays \$1200 a month for her mortgage, \$182 a month for utilities, \$180 a month for basic cable, \$250 a month for PSE&G, \$624 a year for sewer, \$1,600 a year for homeowner's insurance, and \$7,300 a year for property taxes. Guerieri adds that she pays \$200 a month in auto insurance, \$145 a month for her son's dental needs, and \$730 annually for her son's baseball league and uniforms. In addition, the appellant explains that she expends \$7,000 a year to buy food for her family, and her husband recently received a pay cut of \$8,000 a year. Moreover, the appellant avers that she makes weekly contributions to her church collection, and she covers the cost of college and high school education expenses for her children, which includes school supplies, school trips, school pictures, and religious education (CCD).

CONCLUSION

N.J.A.C. 4A:3-4.21 Salary overpayments: State service, provides as follows:

- (a) The [Commission] may waive, in whole or in part, the repayment of an erroneous salary overpayment, or may adjust the repayment schedule based on consideration of the following factors:
1. The circumstances and amount of the overpayment were such that an employee could reasonably have been unaware of the error;
 2. The overpayment resulted from a specific administrative error, and was not due to mere delay in processing a change in pay status;
 3. The terms of the repayment schedule would result in economic hardship to the employee.

It is well settled that all of the factors outlined in *N.J.A.C. 4A:3-4.21* must be satisfied to successfully obtain a waiver of the repayment obligation. Thus, in *In the Matter of Thomas Micai v. Commissioner of Department of Personnel, State of New Jersey*, Docket No. A-5053-91T5 (App. Div., July 15, 1993), the Superior Court of New Jersey, Appellate Division, affirmed the Commissioner of Personnel's decision to deny a request for waiver of repayment of salary overpayment, finding that, although the appellant had established that the overpayment was the result of an administrative error, he failed to show that enforcement of the repayment would create economic hardship.

A review of the instant matters reveals that the salary overpayments did not result from an administrative error and no substantive evidence has been presented to show that Croke or Guerieri would not have been aware of the overpayments. Rather, the record reflects that the overpayments were the result of the appointing authority's failure to timely comply with SLO's May 21, 2012 classification determinations. Moreover, both Croke and Guerieri were aware that their positions were to be reclassified to a title with a lower salary range when they received SLO's determination. Thus, since they were maintained in their positions until the appointing authority reassigned them duties in April 2013, they were clearly aware that the matter of their position classification was in dispute. Although Croke and Guerieri appealed SLO's classification determinations to the Commission, filing of an appeal does not absolve an appointing authority of the responsibility to timely comply with classification determinations nor form the basis that an employee could reasonably have been unaware of the error. Additionally, the fact that the

appointing authority requested another title in their classification requests does not support a waiver of the repayment of these salary overpayments. At the latest, Croke and Guerieri should have been reassigned duties commensurate with their permanent titles effective June 22, 2012 as set forth in SLO's May 21, 2012 determination and in the April 3, 2013 Commission decision. However, the appointing authority failed to do so. Instead, the appointing authority continued to assign out-of-title duties to Guerieri and Croke while their classification appeals were pending.

Under these circumstances, the Commission does not find that a sufficient basis exists to grant a waiver of the overpayment amounts of \$2,587.20 for Guerieri and \$2,279.20 for Croke pursuant to *N.J.A.C. 4A:3-4.21*. In this regard, the Commission notes that Guerieri and Croke received the benefit of the salary overpayments for a number of months. Although Croke and the appointing authority claim that the repayment of the amount she owes would create a financial hardship, they have failed to present any specific evidence, such as her monthly income and expenses, to substantiate a claim of hardship. *See In the Matter of Yvette Waugh, et al.* (Commissioner of Personnel, decided October 25, 1996) (Lack of documentation in support of claimed economic hardships did not warrant waiver of salary overpayment for employees erroneously awarded salary at the fourth step of the salary range). Rather, Croke simply states that if she is required to repay the salary overpayment, she would be unable to maintain her current living expenses. Thus, since Croke did not provide any substantive information to show that she would experience a financial hardship, she has not established her contentions. Further, while Guerieri submits information in regard to her expenses, her arguments are not persuasive. In this regard, the Commission is not convinced that Croke or Guerieri would be unable to afford repayment of the salary overpayment over a period of time since they have not demonstrated that the amount they would be required to pay on a bi-weekly basis each pay period would create a hardship. To illustrate an example of potential repayment plans that could be put into effect, Guerieri could repay \$33.17 (\$2,587.20 divided by 78 pay periods) over a period of three years, and Croke could repay \$29.22 (\$2,279.20 divided by 78 pay periods) over a period of three years. The appointing authority may consider other repayment schedules at its discretion and extend the payment period within reason for Croke and Guerieri.

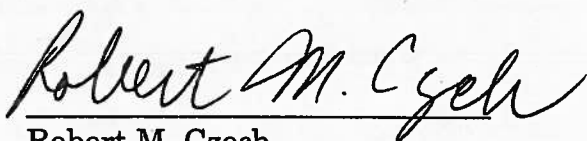
Accordingly, the appointing authority is encouraged to set reasonable repayment schedules for the amounts of \$2,587.20 for Guerieri and \$2,279.20 for Croke.

ORDER

Therefore, it is ordered that these requests be denied. It is also ordered that the appointing authority is encouraged to set a reasonable repayment schedule for the salary overpayments for Croke and Guerieri.

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 2nd DAY OF OCTOBER, 2013**



Robert M. Czech
Chairperson
Civil Service Commission

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Attachment

c: Rebecca Croke
Lorie Guerieri
Debra Ewalt
Kenneth Connolly
Joseph Gambino

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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matters of Lorie Guerieri,
Rebecca Croke, and Donna Zalis,
Department of Environmental
Protection

CSC Docket Nos. 2012-3528, 2012-
3529, and 2012-
3541

Classification Appeals

ISSUED: APR 05 2013 (JET)

Lorie Guerieri, Rebecca Croke, and Donna Zalis appeal the attached decisions of the former Division of State and Local Operations (SLO)¹ that the proper classification of their positions with the Department of Environmental Protection (DEP) is Program Technician. The appellants seek Administrative Analyst 3 classifications in this proceeding. It is noted that these appeals have been consolidated due to common issues presented.

The record in the present matter establishes that Ms. Guerieri's permanent title is Principal Technician, Management Information Systems,² Ms. Croke's permanent title is Senior Management Assistant,³ and Ms. Zalis's permanent title was Management and Operations Analyst 3.⁴

The appellants pursued the matter of the reclassification of their positions with SLO, which received the matters on November 1, 2010. SLO reviewed all documentation supplied by the appellants, including their Position Classification Questionnaires (PCQs). It found that their positions are located in the DEP, Office

¹ Now the Division of Classification and Personnel Management (CPM).
² The Principal Technician, Management Information Systems, title is designated in class code 21.
³ The Senior Management Assistant title is designated in class code 22.
⁴ The Management and Operations Analyst 3 title is designated in class code 19. Zalis was subsequently appointed provisionally pending promotional examination procedure to Program Technician, effective November 20, 2010, pursuant to the classification determination in this matter.

of Records Access (ORA), and they report directly to Matthew Coefer, Chief Records Custodian.⁵ Ms. Croke supervises one Technician, Management Information Systems, and Ms. Guerieri and Ms. Zalis do not have any supervisory duties.

SLO found that the primary duties and responsibilities of the appellants' positions entailed the same duties of reviewing all incoming Open Public Records Act (OPRA) requests against the Division of Law (DOL) active case file and DEP concerns to identify and alert the respective program area of requests involving litigation and potential legal concerns; coordinating the inspection of records by State and DEP Special Counsel to ensure all privileged records are redacted prior to access by the requestor; assigning work to Record Custodians and File Officers, monitoring their actions, and reviewing their work product; responding to record requests from the DOL, DEP Special Counsel, Office of Legal Affairs, Press Office, and other State agency requests; investigating and identifying the existence and location of records for the Site Remediation Program and Central File Room operations; coordinating the production of records for inspection, examination, and copying by the requesting party; scheduling file review appointments; preparing weekly, monthly, and yearly litigation and assessment status reports for management; analyzing government records identified through database searches and evaluating their responsiveness to the OPRA request and the potential legal concerns; assigning government record requests to technical staff for review and response actions; reviewing staff's response actions for technical compliance and completeness; analyzing OPRA requests for identification of exact interest and comparing it to the Department's response actions; reviewing data requests and identifying key data gathering criteria; creating and executing searches and queries on various programs and Department-wide systems to collect data to satisfy the OPRA request; conducting efficiency reviews of program and office procedures and workflow processes and recommending changes; and issuing or drafting program response correspondence to requestors and inter-government agencies. Based upon this information, SLO concluded that the appellants' positions should be reclassified to the Program Technician title.

On appeal to the Civil Service Commission (Commission), the appellants assert that the Program Technician title is an inappropriate classification for the duties that they are performing. Ms. Croke and Ms. Guerieri add that it would constitute a demotion if their titles were reclassified to that title.⁶ Further, the appellants state that they serve as Legal Concerns Coordinators for ORA, and their duties include, among other things, serving as the liaison to the DOL, the appointing authority's special counsel, and other interested parties investigating government records; analyzing reporting results of data searches/queries on program systems and office databases; coordinating all OPRA requests based on

⁵ Coefer's permanent title is Manager 4, Environmental Protection (Administrative/Management).

⁶ The Program Technician title is designated in class code 20.

priority and against an active case list and identifying areas of concern; notifying program areas about legal matters; coordinating the inspection of responsive records and ensuring that all privileged records are redacted prior to being provided to the requester; coordinating the production of records by program areas; assigning work to Record Custodians and File Officers and reviewing their work; ensuring that records are archived or destroyed according to procedure; analyzing request flow process and providing feedback; troubleshooting problems and performing corrective actions; performing quality assurance/quality control data searches; conducting searches to identify the location of records; identifying time frames for access and scheduling file review appointments; preparing weekly, monthly, and yearly status reports for legal matters and assessments; reallocating staff resources to address compliance issues and other areas of concern; analyzing requests for exact interests and comparing to response actions; working as Section Contact for the Legal Concerns Section; creating invoices for billing data/record requesters; conducting reviews of program and office procedures for efficiency and workflow processes; making recommendations for changes to increase efficiency for response time; issuing program response correspondence to the immediate manager for outside parties and intergovernmental agencies; maintaining comprehensive documentation of office determinations; and maintaining a working knowledge of rules, regulations, guidelines, and standard operating procedures for efficient and effective record processing. Additionally, Ms. Guerieri and Ms. Croke note that, contrary to SLO's determination, they do not serve as backup Assistant Commissioner Records Custodians. Thus, the appellants contend that their duties are commensurate with the duties of an Administrative Analyst 3. However, it is noted that despite their request for that title and Coefer's indication that the Administrative Analyst 3 title is appropriate, SLO's determination did not include an evaluation of that title.

In support of their contentions, the appellants submit a letter from Coefer, who maintains that they are currently performing the duties of an Administrative Analyst 3 and their duties are beyond those usually performed by a Program Technician. In this regard, Coefer states that the appellants' duties include completing reports providing detailed information regarding all OPRA requests and performing an analysis of the requested information. Coefer adds that this analysis entails correlating information for litigation and administrative matters; detecting requests that require management and Deputy Attorney General (DAG) notification and scheduling of privilege review; and reviewing the interest/information from the requester. In addition, Coefer avers that the appellants' duties include monitoring activities in response to OPRA requests, scheduling a privilege review, identifying records that are affiliated with counsel matters and ensuring that such information is reviewed, and directly working with DAGs in reviewing and identifying privileged records. Further, Coefer contends that the appellants' duties include reviewing, analyzing, and conducting performance evaluations to ensure that litigation or liability is not affected by a separate court matter. He adds that the appellants'

responsibilities also include analyzing operations and programs; measuring efficiencies; ascertaining program staff and effectiveness of counsel; troubleshooting program process problems and providing solutions; reviewing regulatory laws, policies and procedures against disclosure; identifying errors and performing the necessary corrective steps; and recommending changes to the process. Coefer also states that the appellants perform research investigations based on major litigation and discovery received from litigants, and they identify what information is required by counsel.

Additionally, Debra Ewalt, Director, Division of Human Resources, submits a letter in regard to the appellants' appeals. While Ewalt does not specifically indicate that she is in support of the appellants' requests for their positions to be reclassified to Administrative Analyst 3, she states that SLO incorrectly determined the appellants' classification. In this regard, Ewalt asserts that on August 5, 2008, the appointing authority submitted a crosswalk proposal in order to consolidate and properly realign various titles that were assigned to ORA, but no written response was received. Further, Ewalt contends that the appointing authority identified a title series, *e.g.*, Records Analyst 1, 2 and 3, which could conceivably be used if the job specifications were modified and the titles were able to be utilized by other State appointing authorities.⁷ Thus, the appointing authority requests that the Commission review the job specifications for the Record Analyst title series because it believes that the title series is a better fit for the duties that the appellant is currently performing. In addition, Ewalt avers that this request is consistent with the Commission's efforts to consolidate and generalize active titles. Moreover, Ewalt explains that the use of a stand-alone, singular title, such as Program Technician, does not afford DEP employees any possibility of career mobility and limits ORA in its mission to properly align their current organizational structure.

It is noted that the appointing authority was informed in a letter from CPM, dated July 19, 2012, that the Records Analyst title series was only utilized by the Department of State for its Division of Archives and Records Management, and the work performed by incumbents in the Records Analyst title series was limited to establishing uniform record keeping standards and practices under State law and administrative rules. Moreover, CPM indicated that similar requests for the Records Analyst title series were received from other agencies for units that perform OPRA work, but their requests could not be granted. Thus, the appointing authority was informed that the job specification for the Records Analyst title series could not be amended.

⁷ According to the current job specifications, the Records Analyst title series is only available for positions at the Department of the State.

CONCLUSION

Initially, it is noted that SLO received the appellants' request for classification reviews on November 1, 2010. However, the job specification for Program Technician changed on December 20, 2012, with an effective date of November 20, 2010. Thus, the job specification was changed during the review of the appellants' classification requests and it is appropriate to also consider these matters based on the amended specification. Additionally, as indicated below, the effective date of the reclassifications either corresponds to the effective date of the amended job specification or is set at a later date.⁸

The definition section of the amended job specification for Program Technician states:

Under the direction of a supervisor in a State department or agency, has charge of staff assigned to a specific work program or technical unit responsible for reviewing, monitoring and processing specific actions requiring the application of rules, regulations, policies, and/or procedures; does related work.

For positions in the [DEP], assigned to comply with provisions of the [OPRA], appointees may be assigned oversight of OPRA unit activities in lieu of staff and will be assigned all of the following duties:

Reviews all incoming OPRA requests to identify those that may be assigned for processing and refers to appropriate unit; reviews all incoming OPRA requests to identify those that are of a sensitive nature involving litigation concerns, Division of Law involvement, press requests, and DEP special concerns, and refers to appropriate unit; notifies Division of Law and Program area of requests involving litigation and potential legal matters; ensures that sensitive records are reviewed by the appropriate legal and/or press personnel to identify and remove information from public records which does not fall within the parameters of OPRA; and directs the technical activities of staff assigned to investigate, identify, and provide actions concerning Department/Program record requests.

⁸ It is noted that it would have been appropriate to utilize the prior job specification of record to determine the classification of the appellants' positions up until the effective date of the amended specification. See e.g., *In the Matter of Ralph Bitter III* (CSC, decided April 18, 2012); *In the Matter of Supervising Geologist, Environmental Protection and George Blyskun* (CSC, decided November 22, 2011); *In the Matter of Glenn Savary* (CSC, decided May 4, 2011); *In the Matter of Thomas Ferrara* (CSC, decided May 4, 2011).

The definition section of the job specification for Administrative Analyst 3 states:

Under direct supervision of an Administrative Analyst 1 or other supervisor in a State department, institution, or agency, assists in the review, analysis, and appraisal of current department administrative procedures, organization, and performance, and helps to prepare recommendations for changes and/or revisions; does related duties.

In the instant matter, SLO determined that the appellants' positions should be reclassified to the Program Technician title. However, the appellants contend that their duties are outside the scope of those performed by Program Technicians, since their duties include, among other things, assigning work to Record Custodians and File Officers, serving as Legal Concerns Coordinators for the ORA; coordinating all OPRA requests; notifying program areas about legal matters; coordinating the production of records; analyzing request flow process; completing searches for records; preparing status reports; and maintaining a working knowledge of rules, regulations, guidelines, and standard operating procedures for efficient and effective record processing. However, a review of the record clearly shows that the appellants' duties are in accord with the definition and examples of work in the amended job specification for Program Technician for DEP employees. In this regard, based on a thorough review of the appellants' PCQs and related documents, SLO correctly characterized their duties as having oversight of OPRA unit activities, which include program area requests involving litigation and potential legal concerns and Division of Law involvement.

Further, it is evident that the duties of the appellants' positions do not rise to the level of those performed by an Administrative Analyst 3, since their duties do not include evaluating *administrative objectives and procedures* and making recommendations for changes. In this regard, the primary experience in the Administrative Analyst title series includes being involved with the *overall* operational analysis of a specialized area in the organization with the direct responsibility for the recommendation, planning, or implementation of improvements for the agency as a result of such analysis. See *In the Matter of Victoria Yang-Liu* (CSC, decided April 28, 2010); *In the Matter of Maria Jacobi* (MSB, decided July 27, 2005). The appellants do not revise or evaluate administrative procedures, organization, and performance. Their duties focus on investigating, reviewing, and retrieving records for OPRA and litigation matters. Moreover, Coefer indicated on the appellants' PCQs that their most important duties were identifying requests involving litigation concerns; coordinating record inspections; conducting record investigations; identifying processes and record retrieving under OPRA; directing technical activities of subordinate staff; possessing a strong working knowledge of policies and procedures; analyzing work-

flow processes and identifying potential concerns; monitoring program and operating processes; identifying work flow objectives; coordinating staff and program activities; and identifying records and implementing processes. This cannot be considered "other related duties" because the duties do not support the analysis of organizational administrative practices for an Administrative Analyst. Accordingly, there is no basis to disturb the determination of SLO that the appellants' positions are properly classified in the Program Technician title.

Regarding the effective date, *N.J.A.C. 4A:3-3.9(f)*1 provides that in State service, if an appeal is granted by the Commission, the effective date of implementation shall be the pay period immediately after 14 days from the date an appropriate Commission representative first received the appeal or reclassification request, or at such earlier date as directed by the Commission. SLO issued the reclassification determinations on May 21, 2012. For Ms. Zalis's position, the appointing authority was advised that the effective date was November 20, 2010. Personnel records indicate that the reclassification was implemented on that date. SLO received the classification request on November 1, 2010, and pursuant to *N.J.A.C. 4A:3-3.9(f)*, that was an appropriate effective date. As for Ms. Guerieri and Ms. Croke, the appointing authority was to reclassify their positions using "a current effective date," or to assign appropriate duties and responsibilities commensurate with their permanent titles within 30 days of receipt of the reclassification determination letter. In light of the foregoing circumstances, it is equitable to lessen the monetary impact of the reclassification on Ms. Guerieri and Ms. Croke and assign the effective date 30 days after the May 21, 2012 date of the reclassification determination. Accordingly, June 22, 2012 is an appropriate effective date. Additionally, personnel records indicate that Ms. Croke has been serving as a Senior Management Assistant, and Ms. Guerieri has been serving as a Principal Technician, Management Information Systems. Accordingly, Ms. Croke and Ms. Guerieri have been overpaid for the duties they performed since June 22, 2012. Since Ms. Zalis was serving as a provisional Program Technician, she was not subject to any salary overpayments. It is noted that this decision shall not be used as precedent in any other matter, since the decision is based on these particular circumstances. Nonetheless, there remains a salary overpayment issue for Ms. Croke and Ms. Guerieri beginning June 23, 2012. Ms. Croke and Ms. Guerieri may petition the Commission for a waiver of repayment of the salary overpayment beginning June 23, 2012 pursuant to *N.J.A.C. 4A:3-4.21*. It must be emphasized that all of the factors outlined in *N.J.A.C. 4A:3-4.21* must be satisfied to successfully obtain a waiver of the repayment obligation.

Further, under normal circumstances, an employee whose position is reclassified downward can either be returned to his or her permanent title or be demoted to the reclassified title voluntarily or via layoff procedures. Thus, if Ms. Guerieri and Ms. Croke are unwilling to accept a voluntary demotion to the title of Program Technician, it will then be necessary for the appointing authority to

implement layoff procedures to effectuate the reclassification of the appellants' position. Since *N.J.S.A. 11A:8-1* and *N.J.A.C. 4A:8-1.6* require 45 days' notice to affected employees in the event of a layoff, the appointing authority should utilize a current date when implementing the layoff and demotion.

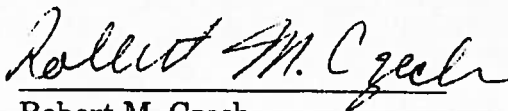
Lastly, the appointing authority's argument that the appellants should be reclassified in the Records Analyst title series is not persuasive. SLO found that the appellants' positions are properly classified as Program Technicians, which has been confirmed by the Commission. Further, CPM previously informed the appointing authority that the job specification for the Records Analyst title series could not be amended since that title series was utilized only by the Department of State for duties specific to that agency and could not be expanded to include other agencies. Moreover, the appointing authority does not present sufficient justification to amend the job specifications for the Record Analyst title series. Accordingly, there is no basis for further action on that matter.

ORDER

Therefore, it is ordered that these appeals be denied. It is further ordered that within 30 days of receipt of this decision, if it has not already done so, the appointing authority should reclassify the positions of Lorie Guerieri and Rebecca Croke to Program Technician effective June 22, 2012, or assign duties commensurate with their current permanent titles. If Ms. Croke and Ms. Guerieri are unwilling to accept a voluntary demotion, then the appointing authority must implement layoff procedures. The appointing authority shall submit to CPM the appropriate documents to support its actions.

This is the final administrative determination in these matters. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 3rd DAY OF APRIL, 2013



Robert M. Czech
Chairperson
Civil Service Commission



CHRIS CHRISTIE
Governor
KIM GUADAGNO
Lt. Governor

STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION
Division of State and Local Government Operations
P. O. Box 313
Trenton, New Jersey 08625-0313

ROBERT M. CZECH
Chair/Chief Executive Officer

May 21, 2012

Ms. Lorie M. Guerieri
New Jersey Department of Environmental Protection
Office of Record Access
401 East State Street
PO Box 420 Mail Code 401-06
Trenton, New Jersey 08625-0420

Re: Classification Appeal
Principal Technician Management Information Systems



Dear Ms. Guerieri:

This is to inform you, and the Department of Environmental Protection, of our determination concerning the classification appeal referenced above. Our review involved a detailed analysis of the Position Classification Questionnaire you completed, which was reviewed and signed by Matthew Coefer, Manager 4, Environmental Protection (M32), and a desk audit that was conducted on May 17, 2011.

Issue:

You requested that your position be audited to determine if you are performing out of title work for your title of Principal Technician, Management Information Systems. You believe that your level of responsibility and the complex nature of work warrant a higher title. The Bureau of Human Resources Operations agreed that an audit should be conducted in order to determine the appropriate classification of your position.

Organization:

The position is located in the Department of Environmental Protection, Office of Records Access. You are supervised by Matthew Coefer, Manager 4, Environmental Protection (M32), and you have no direct supervisory responsibility.

Findings of Fact:

The position performs the following duties and responsibilities:

- Reviews all incoming OPRA requests against the Division of Law active case file and DEP concerns to identify and alert the respective program area of requests involving litigation and potential legal concerns.
- Coordinates the inspection of records by State and DEP Special Counsel to ensure all privileged records are redacted prior to access by the requestor.
- Assigns work to record custodians and file officers, monitors their actions, and reviews their work product.
- Responds to record requests from the Division of Law, DEP Special Counsel, Office of Legal Affairs, Press Office, program requests, and other State Agency requests.
- Investigates and identifies the existence and location of records for the Site Remediation Program and Central File Room operations.
- Coordinates the production of records for inspection, examination, and copying by the requesting party.
- Schedules file review appointments.
- Prepares weekly, monthly, and yearly litigation and assessment status reports for management.
- Analyzes government records identified through database searches and evaluates their responsiveness to the OPRA request and the potential legal concerns.
- Assigns government record requests to technical staff for review and response actions.

- Reviews staff's response actions for technical compliance and completeness.
- Analyzes OPRA requests for identification of exact interest and compares to the Department's response actions.
- Reviews data requests and identifies key data gathering criteria.
- Creates and executes searches and queries on various programs and Department-wide systems to collect data to satisfy the OPRA request.
- Conducts efficiency reviews of program and office procedures and workflow processes and recommends changes.
- Issues or drafts program response correspondence to requestors and inter-government agencies.

Review and Analysis:

The duties and responsibilities of the position were compared to those described within the class specification for Principal Technician, Management Information Systems and Program Technician.

The definition section of the specification for the title, Principal Technician, Management Information Systems (R21, 62043), states:

“Under direction of a supervisory official in a state or local department, institution, or agency, supervises staff involved in the planning, development, and implementation of information systems, reviews related programs and systems; acts as liaison with internal components utilizing the systems, and/or with other government jurisdictions; or in a client/server environment, provides hardware/software support to end users; installs hardware and software on servers or workstations; does other related duties.”

A Principal Technician, Management Information Systems designs and develops management information systems and applicable procedures to support retrieval of information. This title responds to requests for assistance, identifies and corrects hardware, software, and printer problems and troubleshoots application errors. Your position reviews incoming Open Public Records Act (OPRA) requests to determine if requested records are associated with a litigation matter, press

request, or a sensitive concern involving the Department. Your position coordinates with the appropriate office to ensure proper redaction of privilege records prior to requestor access. Your position coordinates production and access to records based upon priority, court order, and schedules. Your position serves as a backup Assistant Commissioner Records Custodian when required and performs duties associated with that position. Your position processes case managers' and other in-house records requests and schedules records reviews. Your position serves as liaison with the Division of Law in the processing of OPRA requests which necessitate their involvement due to litigation and other concerns. Taking the aforementioned tasks into consideration, this position's work duties and responsibilities do not reflect those associated in the current title. Therefore, Principal Technician, Management Information Systems is an inappropriate classification for the functions of this position.

The definition section of the specification for the title, Program Technician (R20, 10258), states:

"Under the direction of a supervisor in a state department or agency, has charge of staff assigned to a specific work program or technical unit responsible for reviewing, monitoring and processing specific actions requiring the application of rules, regulations, policies, and/or procedures; does related work."

A Program Technician provides assignments and instruction to subordinate technical employees and supervises their work. Your position reviews all OPRA requests received in the Department to identify and determine whether the request represents an area of special concern for the Department. Your position provides information and instruction to the Assistant Commissioner Records Custodians and File Officers in compiling special concerns OPRA requests and technical assistance in the collection, review and verification of data compiled through the files. Your position informs the appropriate agency, Press Office, Division of Law, Office of Legal Affairs, or Commissioner's Office of the request and determines whether the respective office desires to review obtained records to ensure only the appropriate information is provided the requestor. Your position serves as liaison between the Department and the Division of Law and will oversee the compiling of and review of any requested records. Your position will update the OPRA database, identifying those requests that are of sensitive concern. Your position coordinates the gathering and assembly of data to respond to requests submitted under OPRA and your position reviews and extracts information from agency documents and verifies completeness. Taking the aforementioned factors into consideration, the breadth and depth of your position within the section aligns with the professional expectations of the Program Technician title.

Name: Lorie Guerieri
Date: May 21, 2012

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Determination:

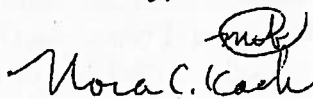
By copy of this letter, the Appointing Authority is advised that we will reclassify your position to Program Technician (R20, 10258) using a current effective date, unless they assign duties and responsibilities that are commensurate with your current title, Principal Technician, Management Information Systems (R21, 62043) within thirty days of receipt of the determination letter.

The class specification for Program Technician is descriptive of the general nature and scope of the functions that may be performed by an incumbent in this position. However, the examples of work are for illustrative purposes and are not intended to restrict or limit performance of related tasks not specifically listed.

Please note that this classification determination does not imply that you will meet the eligibility requirements of the title. It is the responsibility of the Appointing Authority to ensure an incumbent meets the eligibility requirements prior to any appointment.

If you wish to appeal this decision, you may do so within twenty days of receipt of this letter. Since an appeal will be subject to final administrative review, all argument that you wish considered should be submitted within the specified timeframe. Appeals should be addressed to the Written Records Appeals Unit, Division of Merit System Practices and Labor Relations, NJ Civil Service Commission, P.O. Box 312, Trenton, New Jersey 08625-0312.

Sincerely,



Nora C. Koch
Assistant Director
Division of State and Local Operations

NCK/mtb/rej
C: Debra Ewalt
Diane Ogonofski
Ref # 11100003



CHRIS CHRISTIE
Governor
KIM GUADAGNO
Lt. Governor

STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION
Division of State and Local Government Operations
P. O. Box 313
Trenton, New Jersey 08625-0313

ROBERT M. CZECH
Chair/Chief Executive Officer

May 21, 2012

Ms. Rebecca A. Croke
New Jersey Department of Environmental Protection
Office of Record Access
401 East State Street
PO Box 420 Mail Code 401-06
Trenton, New Jersey 08625-0420

Re: Classification Appeal
Senior Management Assistant



Dear Ms. Croke:

This is to inform you, and the Department of Environmental Protection, of our determination concerning the classification appeal referenced above. Our review involved a detailed analysis of the Position Classification Questionnaire you completed, which was reviewed and signed by Matthew Coefer, Manager 4, Environmental Protection (M32), and a desk audit that was conducted on May 10, 2011.

Issue:

You requested that your position be audited to determine if you are performing out of title work for your title of Senior Management Assistant. You believe that your level of responsibility and the complex nature of work warrant a higher title. The Bureau of Human Resources Operations agreed that an audit should be conducted in order to determine the appropriate classification of your position.

Organization:

The position is located in the Department of Environmental Protection, Office of Records Access. You are supervised by Matthew Cofer, Manager 4, Environmental Protection (M32), and you supervise one Technician, Management Information Systems.

Findings of Fact:

The position performs the following duties and responsibilities:

- Reviews all incoming OPRA requests against the Division of Law active case file and DEP concerns to identify and alert the respective program area of requests involving litigation and potential legal concerns.
- Coordinates the inspection of records by State and DEP Special Counsel to ensure all privileged records are redacted prior to access by the requestor.
- Assigns work to record custodians and file officers, monitors their actions, and reviews their work product.
- Responds to record requests from the Division of Law, DEP Special Counsel, Office of Legal Affairs, Press Office, program requests, and other State Agency requests.
- Investigates and identifies the existence and location of records for the Site Remediation Program and Central File Room operations.
- Coordinates the production of records for inspection, examination, and copying by the requesting party.
- Schedules file review appointments.
- Prepares weekly, monthly, and yearly litigation and assessment status reports for management.
- Analyzes government records identified through database searches and evaluates their responsiveness to the OPRA request and the potential legal concerns.

- Assigns government record requests to technical staff for review and response actions.
- Reviews staff's response actions for technical compliance and completeness.
- Analyzes OPRA requests for identification of exact interest and compares to the Department's response actions.
- Reviews data requests and identifies key data gathering criteria.
- Creates and executes searches and queries on various programs and Department-wide systems to collect data to satisfy the OPRA request.
- Conducts efficiency reviews of program and office procedures and workflow processes and recommends changes.
- Issues or drafts program response correspondence to requestors and inter-government agencies.

Review and Analysis:

The duties and responsibilities of the position were compared to those described within the class specification for Senior Management Assistant and Program Technician.

The definition section of the specification for the title, Senior Management Assistant (P21, 56493), states:

“Under direction of a supervisory official in a state department, institution, or agency, coordinates management or administrative activities of an assigned area or unit of work; does other related duties.”

A Senior Management Assistant is expected to oversee work performance and assignments to meet the varying workload of an office. This title coordinates data processing requests and on-the-job training as required. Your position reviews incoming Open Public Records Act (OPRA) requests to determine if requested records are associated with a litigation matter, press request, or a sensitive concern involving the Department. Your position coordinates with the appropriate office to ensure proper redaction of privilege records prior to requestor access. Your position coordinates production and access to records based upon priority, court order, and

schedules. Your position serves as a backup Assistant Commissioner Records Custodian when required and performs duties associated with that position. Your position serves as liaison with the Division of Law in the processing of OPRA requests which necessitate their involvement due to litigation and other concerns. Taking the aforementioned tasks into consideration, this position's work duties and responsibilities do not reflect those associated in the current title. Therefore, Senior Management Assistant is an inappropriate classification for the functions of this position.

The definition section of the specification for the title, Program Technician (R20, 10258), states:

"Under the direction of a supervisor in a state department or agency, has charge of staff assigned to a specific work program or technical unit responsible for reviewing, monitoring and processing specific actions requiring the application of rules, regulations, policies, and/or procedures; does related work."

A Program Technician provides assignments and instruction to subordinate technical employees and supervises their work. Your position reviews all OPRA requests received in the Department to identify and determine whether the request represents an area of special concern for the Department. Your position provides information and instruction to the Assistant Commissioner Records Custodians and File Officers in compiling special concerns OPRA requests and technical assistance in the collection, review and verification of data compiled through the files. Your position informs the appropriate agency, Press Office, Division of Law, Office of Legal Affairs, or Commissioner's Office of the request and determines whether the respective office desires to review obtained records to ensure only the appropriate information is provided the requestor. Your position serves as liaison between the Department and the Division of Law and will oversee the compiling of and review of any requested records. Your position will update the OPRA database, identifying those requests that are of sensitive concern. Your position coordinates the gathering and assembly of data to respond to requests submitted under OPRA and your position reviews and extracts information from agency documents and verifies completeness. Taking the aforementioned factors into consideration, the breadth and depth of your position within the section aligns with the professional expectations of the Program Technician title.

Name: Rebecca Croke
Date: May 21, 2012

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Determination:

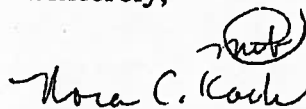
By copy of this letter, the Appointing Authority is advised that we will reclassify your position to Program Technician (R20, 10258) using a current effective date, unless they assign duties and responsibilities that are commensurate with your current title, Senior Management Assistant (P21, 56493) within thirty days of receipt of the determination letter.

The class specification for Program Technician is descriptive of the general nature and scope of the functions that may be performed by an incumbent in this position. However, the examples of work are for illustrative purposes and are not intended to restrict or limit performance of related tasks not specifically listed.

Please note that this classification determination does not imply that you will meet the eligibility requirements of the title. It is the responsibility of the Appointing Authority to ensure an incumbent meets the eligibility requirements prior to any appointment.

If you wish to appeal this decision, you may do so within twenty days of receipt of this letter. Since an appeal will be subject to final administrative review, all argument that you wish considered should be submitted within the specified timeframe. Appeals should be addressed to the Written Records Appeals Unit, Division of Merit System Practices and Labor Relations, NJ Civil Service Commission, P.O. Box 312, Trenton, New Jersey 08625-0312.

Sincerely,



Nora C. Koch
Assistant Director
Division of State and Local Operations

NCK/mtb/rej
C: Debra Ewalt
Diane Ogonofski
Ref # 11100004

