

B-20



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Gerard P. Houck,
Department of Transportation

Administrative Appeal

CSC Docket No. 2014-915

ISSUED: DEC 05 2014 (JET)

Gerard P. Houck, an Engineering Technician 3 with the Department of Transportation, seeks differential compensation for out-of-title work that he performed based on the attached decision of the Division of Classification and Personnel Management (CPM)¹ finding that the proper classification of his position was Engineering Technician 3.

The record in the present matter establishes that the appellant is currently serving permanently in the title of Engineering Technician 3. At the time the appellant filed his request for a reclassification, he was serving as an Engineering Technician 4. The appellant pursued the matter of the reclassification of his position with CPM. CPM reviewed all documentation supplied by the appellant, including a Position Classification Questionnaire (PCQ). Based on its review of the record, CPM concluded that the appellant's position would be properly classified as an Engineering Technician 3 and assigned him an effective date of February 23, 2013. However, upon receipt of CPM's determination, the appointing authority notified the appellant on September 4, 2013 that his position would not be reclassified to Engineering Technician 3 as a result of an internal directive and hiring freeze and his out-of-title duties would be removed. Thereafter, on October 15, 2013, CPM received a revised PCQ demonstrating that the appointing authority had removed the higher level duties. Subsequently, the appellant was permanently appointed as an Engineering Technician 3 from a promotional list effective March 8, 2014.

¹ Now the Division of Agency Services.

In his instant request, the appellant asserts that he performed the duties of an Engineering Technician 3 from September 2011 to October 2013 while serving as an Engineering Technician 4. The appellant adds that CPM's classification determination confirmed that he was performing higher level duties of an Engineering Technician 3. Therefore, the appellant requests to be compensated for his performance of higher level duties.

In response, the appointing authority maintains that it will not compensate the appellant for any out-of-title duties that he performed while serving as an Engineering Technician 4 as it has removed the higher level duties.

CONCLUSION

N.J.A.C. 4A:3-3.5(c)1 states, in pertinent part, that within 30 days of receipt of a reclassification determination, the appointing authority shall either effect the required change in the classification of the 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.

N.J.A.C. 4A:3-3.9(e)3 states, in pertinent part, that in State service, when a classification appeal is upheld, the effective date of implementation shall be the pay period immediately after 14 days from the date an appropriate Civil Service Commission (Commission) representative first received the appeal or reclassification request, or at such earlier date as directed by the Commission.

In the present matter, in its August 12, 2013 determination, CPM found that the appellant's position would be properly classified as Engineering Technician 3, effective February 23, 2013. Accordingly, in compliance with *N.J.A.C. 4A:3-3.5(c)1*, the appointing authority exercised the option to remove the higher level duties and assigned the appellant duties and responsibilities commensurate with his permanent title of Engineering Technician 4. Absent any compelling documentation that the appellant's duties did not in fact change, the Commission must defer to the appointing authority's notice indicating that the appellant's higher level or out-of-title duties were removed. Moreover, the appellant does not dispute on appeal that the higher level duties were not removed. Nonetheless, the Commission finds that the appellant is entitled to differential back pay from the effective date of his classification determination, February 23, 2013, to October 19, 2013, the beginning of the first pay period after CPM received the revised PCQ documenting that the higher level duties had been removed.

Although the appellant contends that he performed higher level duties as far back as September 2011, 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 CPM 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 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). Therefore, since the appellant did not appeal the matter of his position's classification until January 2013, there is no basis on which to provide him differential back pay prior to February 23, 2013.

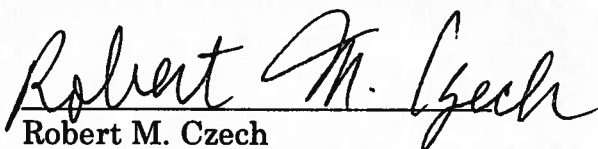
ORDER

Therefore, it is ordered that this appeal be granted in part and that the appointing authority pay the appellant differential back pay for performing duties of an Engineering Technician 3 from February 23, 2013 to October 19, 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 31st 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 3rd DAY OF DECEMBER, 2014



Robert M. Czech

Chairperson

Civil Service Commission

**Inquiries
and
Correspondence**

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

**c: Gerard P. Houck
Michele Shapiro
Kenneth Connolly
Joseph Gambino**



Chris Christie
Governor
Kim Guadagno
Lt. Governor

STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION
DIVISION OF CLASSIFICATION AND PERSONNEL MANAGEMENT
P. O. Box 313
Trenton, New Jersey 08625-0313

Robert M. Czech
Chair/Chief Executive Officer

August 21, 2013

Mr. Gerard Houck
Department of Transportation
1035 Parkway Avenue
Trenton, New Jersey 08625

**Re: Classification Appeal, Senior Engineer, Transportation,
Position # 019106, CPM log # 02130027, EID # 000342014**

Dear Mr. Houck:

This is in response to the classification appeal dated February 4, 2012 submitted to this office on your behalf by Jeanne M. Victor, Director of Human Resources. The package indicates that you are appealing your current permanent title of Engineering Technician 4 (A15-10117), and that you believe the appropriate classification of your position is Engineering Technician 3 (A17-10118). Your position is located in the Department of Transportation, Division of Bridge Engineering & Infrastructure Management, Structural & Railroad Engineering Services.

This office has conducted a review of the submitted information, including the Position Classification Questionnaire (DPF-44S); organization chart; your statements; and the statements of your Program Manager, Division Director; and a telephone audit conducted with you and your immediate supervisor, Todd Hirt, Supervising Engineer 2 Surface Design (S31) on July 25, 2013. Based on the written record and that the aforementioned parties are in agreement with the stated duties, it is our determination that the appropriate classification of your position is Engineering Technician 3 (A17-10118). This action shall be effective February 23, 2013.

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 that an incumbent meets the eligibility requirements prior to any appointment.

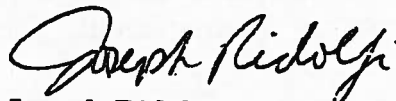
Gerard Houck
August 21, 2013
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The New Jersey Administrative Code 4A:3-3.5(c)1 states that "within 30 days of receipt of the reclassification determination, unless extended by the [Commission] in a particular case for good cause, the appointing authority 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 accordance with all applicable rules."

Within 30 days of receipt of this letter, we will implement reclassification procedures to reclassify this position to the title Engineering Technician 3 (A17-10118) unless we are advised by the appointing authority that out of title duties and responsibilities not commensurate with your permanent title will be reassigned.

Please be advised that in accordance with *N.J.A.C.* 4A:3-3.9, you may appeal this decision within twenty (20) days of receipt of this letter. The appeal should be addressed to the Written Records Appeals Unit, Division of Merit System Practices and Labor Relations, 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 argument substantiating the portions of the determination being disputed and the basis for the appeal.

Sincerely,



Joseph Ridolfi, Team Leader
Classification and Personnel Management

JR/tc

c: Ms. Jeanne Victor, Human Resources
PMIS Unit, CSC