

could have filed appeals of those issues within appropriate time frames. However, her standing on open-competitive eligible lists has no bearing on her title rights. There are six employees in the Department of Human Services in the Social Worker 1 title, three of whom were more senior to the appellant, and her position and another were targeted. The appellant displaced the least senior person in her title, and there were no other positions available. Official records do not evidence any positions in this title at Greystone Park Psychiatric Hospital, in Morris County, at the time of the layoff. The appellant did not establish any error or evidence of misapplication of the pertinent uniform regulatory criteria in determining layoff rights.

The appellant replied that there is a vacancy currently being filled in the title Social Worker 1 Psychiatric at Greystone Park Psychiatric Hospital, and the appellant cannot understand how there can be a vacancy so soon after a layoff. Also, she states that she "applied for this position and was told she was not eligible." She inquires why this position was not offered during the layoff as a lateral title right, would like an explanation as to her eligibility, and she expects to be put into this position immediately.

CONCLUSION

There are three types of displacement rights, two of which are title rights, lateral and demotional; the third right is a demotional right to a previously held title (or prior held right). Lateral and demotional title rights are determined in accordance with *N.J.A.C. 4A:8-2.1 et seq.* A lateral right is the right of a permanent employee to exercise displacement rights against an employee in the layoff unit holding a title determined to be the same or comparable to the affected title of the employee. A variant is a designation appended to a title to distinguish it from its base title because of certain aspects unique to the variant.

Usually, in an appeal of this nature, it must be determined whether the Division of Classification and Personnel Management (CPM) properly applied the uniform regulatory criteria found in *N.J.A.C. 4A:8-2.1 et seq.*, in determining layoff rights. It is an appellant's burden to provide evidence of misapplication of these regulatory criteria in determining layoff rights and the appellant must specify a remedy. A thorough review of the record establishes that the appellant's layoff rights were properly determined. In this case, the appellant would like bumping rights to another variant of her title. Pursuant to *N.J.A.C. 4A:8-2.1(a)*, for lateral rights purposes, in pertinent part, the selected title must have substantially similar duties and responsibilities; the education and experience requirements for the titles must be the same or similar, and the mandatory requirements shall not exceed those of the affected title; and any employee in the affected title with minimal training and orientation could perform the duties of the designated title by virtue of having qualified for the affected title.

The Social Worker 1 base title has five active variants. These titles are Social Worker 1, Psychiatric; Social Worker 1, Developmental Disabilities; Social Worker 1, Corrections, Social Worker 1 (Bilingual in Spanish and English), and Social Worker 1, Corrections (Bilingual in Spanish and English). The base title has lateral rights to the Developmental Disabilities and Corrections variants only. It does not have rights to the others, due to dissimilarities. The Social Worker 1 (Bilingual in Spanish and English), and Social Worker 1, Corrections (Bilingual in Spanish and English) titles require a special skill, the ability to read, write, speak, understand, or communicate in Spanish and English sufficiently to perform the duties of this position. The Definition portion of the job specifications for the base title and the Social Worker 1, Psychiatric variant are as follows:

Social Worker 1

Definition: Under direction of a supervisory official in a State department, hospital, training school, research unit, or agency, is responsible for the more difficult and complex field and office work involved in conducting varied types of social investigations involving the collection, analysis, and recording of significant social facts, drawing sound conclusions therefrom, and basing appropriate action thereon; does other related duties as required.

Social Worker 1, Psychiatric

Definition: Under direction of a supervisory officer in a mental hygiene clinic, institution, or agency, performs varied types of tasks in assisting children and adults to make satisfactory social and emotional adjustments; does other related duties.

One of the differences between these two titles is the client populations serviced. The Social Worker 1 title can serve any client. Indeed, the client population at North Jersey Developmental Center consisted of developmentally disabled patients. Developmentally disabled patients are those who have a severe, chronic disability which:

1. is attributed to a mental or physical impairment or a combination thereof;
2. begins before age 22;
3. is likely to continue indefinitely;
4. results in substantial functional limitations in three or more areas of a major living activity (self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency);

5. reflects the need for a combination of services planned and coordinated over an individual's life time or for an extended duration; and

6. is attributed to mental retardation, cerebral palsy, autism, epilepsy, spina bifida, or other conditions, as approved by the Commissioner, New Jersey Department of Human Services.

Developmentally disabled patients are not psychiatric patients, and require differing social services. Psychiatric patients require mental health assistance as well as social assistance, and Social Workers 1, Psychiatric require knowledge of mental health theory, practices, procedures, and knowledge of the methods and principles of mental health social work, and their application to specific situations. Thus, an incumbent in the base title cannot be expected to perform the duties of an incumbent in the Psychiatric variant. As such, there is no basis to relax the criteria in *N.J.A.C. 4A:8-2.1 et seq.* in order to provide the appellant with layoff rights to the title Social Worker 1, Psychiatric, as no good cause has been shown. There is no error in the determination of layoff rights in this circumstance.

As to vacancies, vacancies are submitted as part of the layoff plan and cannot be added as the Reduction in Force is being administered. If vacancies were not identified prior to the layoff, they could not be added during the layoff since this gives the appearance of impropriety. Thus, a position may be vacated during a layoff and be unoccupied, but it is not an available vacancy. The position does not become an available vacancy until various personnel actions are performed, and those actions are not done during the layoff. After the layoff, vacancies could be processed and become available. Appointments would have to be made from a Special Reemployment List. If Ms. Joseph filed an application and passed an examination for Social Worker 1, Psychiatric, she is eligible for consideration for appointment if the list is certified. Moreover, placement on an eligible list does not provide an eligible with a vested property interest in employment. Rather, the only interest that results from placement on an eligible list is that a candidate will be *considered* for an applicable position so long as the eligible list remains in force. See *Nunan v. Department of Personnel*, 244 N.J. Super. 494 (App. Div. 1990).

Ms. Joseph refers to the examination for Social Worker 1, Psychiatric (S0450R), where she ranked 58 out of 66 eligible candidates. This was an open-competitive examination, and 20 appointments have been made. This list was recently certified on August 1, 2014, with four names, for Ancora Psychiatric Hospital in Camden County. The appellant was not on this certification as she listed on her application for this examination that she was interested only in employment in Passaic, Essex, Bergen and Hudson Counties. The last certification for Greystone Park Psychiatric Hospital was in February 2014, with a disposition due date of April 28, 2014, and was cancelled with no appointments made. There has not been a recent certification at Greystone Park Psychiatric Hospital from an

eligible list for Social Worker 1, Psychiatric. As such, the appellant was not deemed ineligible or removed from a list. Rather, it appears as though her request for a job re-assignment was denied. It is within the purview of the appointing authority to accept or decline a request for a job re-assignment, and it is noted that provisional appointments are made at the discretion of the appointing authority. This has no bearing on the appellant's title rights.

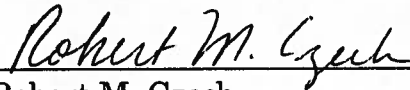
Thus, a review of the merits fails to establish that Ms. Joseph's layoff rights were determined incorrectly and the appellant has not met her burden of proof in this matter.

ORDER

Therefore, it is ordered that this appeal and request 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 17th DAY OF SEPTEMBER, 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: Ancy Joseph
Jenna Gledhill, CWA Local 1040
Chanda Curtis
Christina Mongon
Kenneth Connolly
Joseph Gambino