



B-8c

STATE OF NEW JERSEY

In the Matter of Rene C. Ligons
Muhammad, East Orange

CSC Docket No. 2014-2017

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

Court Remand

ISSUED: **JUL 17 2014**

(CSM)

The Appellate Division, Superior Court of New Jersey, has remanded the appeal Rene C. Ligons Muhammad, represented by Jody T. Walker, Esq., to the Civil Service Commission (Commission) so that it can make a final agency determination regarding her request for a retroactive position classification to Assistant Superintendent of Recreation.

By way of background, in July 2013, the appellant, who was permanently appointed as an Administrative Secretary effective February 26, 1990, filed a classification appeal with the Division of Classification and Personnel Management (CPM) contending that the assigned duties of her position would be properly classified by the title Assistant Superintendent of Recreation. In support of her appeal, the appellant submitted a Position Classification Questionnaire (PCQ) to CPM detailing the different duties she performed as an Administrative Secretary. CPM reviewed and evaluated the PCQ and determined that her position should be classified as Superintendent of Recreation effective July 13, 2013. Subsequently, by letter dated September 16, 2013, the appellant petitioned the Commission for "recognition of time served in the capacity of Assistant Superintendent of Recreation from January 1, 2009 thru January 12, 2013." By letter dated October 2, 2013, a staff member from this agency's Division of Appeals and Regulatory Affairs (DARA) advised the appellant that position classification is the determination of duties and responsibilities being performed at a given point in time as verified through an audit or formal study conducted by this agency. Accordingly, since the appellant did not request a classification review of her

position in 2009, the matter would not be presented to the Commission for a determination.

Thereafter, the appellant sought review of this matter with the Appellate Division. Subsequently, the parties agreed to remand the matter to the Commission for its evaluation and to allow the full Commission to render a decision (see attached). On remand, the parties were provided with the opportunity to submit additional information and arguments concerning these matters for the Commission to review.

In response, the appellant presents that in April 1993, she was assigned to the Department of Recreation where she worked as Administrative Secretary to Recreation Director Wayne L. Richardson¹. The appellant states that she took immediate supervision over all recreational staff, except seasonal employees, and that her job duties went well beyond handling clerical issues. In 1998, when Larry Schumacher became the new Recreation Director, the appellant continued to supervise all recreation staff except seasonal employees, and was entrusted with the day-to-day running of the department.² For example, she states that Schumacher regularly left memoranda designating her as "Supervisor-in-Charge" while he was out of the office. In light of her qualifications, in a memorandum dated December 10, 2008, Schumacher requested that the appellant be provisionally appointed to the title of Assistant Superintendent of Recreation effective January 1, 2009. Although she began performing the duties of a provisional Assistant Superintendent of Recreation on January 1, 2009, the appellant argues that the appointing authority failed to submit the required forms to this agency in order for it to approve the provisional appointment and announce an examination. Nevertheless, she continued to perform the duties of the position when, in late August 2010, it was discovered that the required personnel forms to record her provisional appointment were never sent to this agency. Accordingly, a new Personnel Action Form was prepared for submission to this agency. However, Schumacher passed away in September 2010 and the Mayor did not appoint anyone to fill his position. The appellant states that she continued to work in the position of Assistant Superintendent of Recreation until July 12, 2013, when the desk audit revealed that her position should actually be classified as Superintendent of Recreation effective July 13, 2013.

Subsequently, a new administration took office in East Orange on January 1, 2014 and a new Director was appointed to oversee the Department of Recreation. At that time, the appointing authority transferred the appellant to the Department of Property Maintenance and "demoted" her to her permanent title of

¹ According to agency records, Richardson's permanent title was Assistant Superintendent of Recreation.

² Agency records indicate that Schumacher served in the unclassified title of Municipal Department Head from January 1, 1998 to September 4, 2010.

Administrative Secretary. Thus, the appellant argues that had this agency received notice of her provisional appointment in a timely manner in 2009, it is likely that she would have achieved permanency in the title of Assistant Superintendent of Recreation. But for this neglect, the appellant states that she would not have been transferred or demoted. In support of her request, the appellant provides various memoranda and personnel action forms dated between July 1995 and January 2011 regarding her service in the Department of Recreation. Therefore, since she performed the duties of the position for an extended period of time and had the qualifications to establish eligibility for the title, in reliance on *Ruby Robinson Kyer v. City of East Orange*, 315 N.J. Super. 524 (App. Div. 1998), the appellant maintains that she should be retroactively appointed to the title of Assistant Superintendent of Recreation.

In response, the appointing authority, represented by Marlin G. Townes III, Assistant Corporation Counsel, presents that the appellant is not entitled to a retroactive classification to Assistant Superintendent of Recreation because she did not meet the educational requirements for the position. Further, while she may have been designated as the point of contact on a few occasions when the Director of Recreation was out on leave, this does not demonstrate that the appellant had the requisite experience "when she was first appointed as Assistant Superintendent of Recreation." Additionally, the appointing authority states that there is no evidence that she was officially appointed to the position prior to September 6, 2010. In this regard, although the appellant submits a prior personnel form signed by herself and Schumacher, it was not approved by the City Administrator or the Finance Director. Moreover, even assuming *arguendo* that she was serving in the title from January 1, 2009, the appointing authority states that she would not have met the education and experience requirements to establish eligibility for a promotional examination. Therefore, the appointing authority maintains that the appellant should not be considered as being permanent as an Assistant Superintendent of Recreation.

According to agency records, the appellant was returned to her permanent title of Administrative Secretary effective April 8, 2014 and transferred to the Department of Property Maintenance and Revitalization.

CONCLUSION

The job specification for Administrative Secretary states:

Assists an administrative official of a department or autonomous government agency at a level no lower than department head, by performing administrative clerical work, usually varied and involving some elements of troubleshooting, or, under the immediate direction of an administrative official, performs administrative clerical work, and

supervises the office and other clerical and related operations of a department or autonomous government agency; does other related duties as required.

The job specification for Assistant Superintendent of Recreation states:

Assists the Superintendent in planning, promoting, organizing, and administering a recreation service for the community; acts as liaison at conferences, meetings, and other functions; does other related duties as required.

The requirements for Assistant Superintendent of Recreation are graduation from an accredited college or university with a Bachelor's degree and three years of supervisory experience in recreation work involving the planning, promoting, organizing, and/or directing of a comprehensive recreation service or program for an entire community. Applicants who do not possess the required education may substitute additional experience as indicated on a year-for-year basis with 30 semester hour credits being equal to one year of experience. Possession of a Master's degree in Recreation or Parks and Recreation Management may be substituted for one year of the required experience. The appellant does not indicate in her submissions that she possesses a Bachelor's degree or any college credits. Therefore, in accordance with the substitution clause for education, the appellant would need seven years of experience to qualify for the examination.

Initially, there is no evidence that the appellant was provisionally appointed to Assistant Superintendent of Recreation effective January 1, 2009. Although Schumacher advised the City Administrator in the December 10, 2008 memorandum that the appellant was eligible to be appointed, pending promotional procedures, to Assistant Superintendent of Recreation, the Personnel Action Form submitted with the memorandum, which was signed by the appellant on September 25, 2008, was not signed or approved by the City Administrator or the Finance Director. In a subsequent Personnel Action Form, which was signed by the appellant as well as the City Administrator and Finance Director almost two years later on November 18, 2010, the appellant's appointment to Assistant Superintendent of Recreation was in fact approved with an effective date of September 6, 2010. Therefore, as conceded by the appointing authority, the appellant's record should reflect that she was provisionally appointed, pending promotional procedures, to Assistant Superintendent of Recreation, effective September 6, 2010.

While the appellant's personnel record should reflect that she was provisionally appointed to Assistant Superintendent of Recreation, she is not entitled to a permanent appointment as it does not appear that she would have satisfied the open competitive requirements to establish eligibility for a promotional

examination for that title. Although she cites *Kyer* in support of her position that the appointing authority erroneously did not report her provisional appointment, the matter in *Kyer* is distinguishable. The situation in *Kyer* involved an employee who was provisionally appointed, pending open competitive examination procedures, and had no underlying permanent Civil Service status. Moreover, *Kyer's* appointment was never reported to this agency and, importantly, *Kyer* reasonably believed, based on her appointing authority's actions, that she was permanent in her position. In this case, the appellant was permanently appointed as an Administrative Secretary, a competitive title subject to examination and certification procedures. Further, her employment with East Orange was known by this agency since her appointment was recorded. Therefore, unlike *Kyer*, who had no underlying permanent status, the appellant had permanent status and any promotional activity that would have resulted in a change of her title would have been contingent upon her competing in a promotional examination, her name being certified from a resultant list, the appointing authority effecting a permanent appointment from that list, and completion of a working test period in the higher level title.

Regardless, the appellant's permanent title is Administrative Secretary. Therefore, any supervisory experience in recreation work involving the planning, promoting, organizing, and/or directing of a comprehensive recreation service or program for an entire community that she may have gained prior to September 6, 2010 would be considered out-of-title work. *N.J.A.C. 4A:4-2.6(c)* provides that, except when permitted for good cause, applicants for promotional examinations may not use experience gained as a result of out-of-title work to satisfy eligibility requirements. Even assuming good cause existed to accept her out-of-title work, as stated above, the appellant would have had to compete for the position in a promotional examination situation. In this regard, it is purely speculative that the appellant would have passed the examination and been ranked high enough to be permanently appointed. Moreover, given the fact that there were Recreation Supervisors serving with the appointing authority, whose experience would not be considered out-of-title for eligibility purposes for Assistant Superintendent of Recreation, it is unclear if good cause could have been established to accept any of the appellant's documented out-of-title work. Further, the only documentation that the appellant provided in support of her assertion that she satisfied the requirements for the position were several memorandums indicating that in her capacity as the Director's Administrative Secretary, she would be in charge of the office on various occasions when Schumacher was out of the office. In fact, in a memorandum dated September 12, 2001 regarding overtime and compensation, Schumacher specifically indicated that "in addition to [the appellant's] normal duties as the Administrative Secretary, she inherited the duties of a recent retiree in the Recreation Department." In other words, there is nothing in the record indicating that the appellant **primarily** performed the duties, out-of-title or

otherwise, required to satisfy the experience requirements for a promotional examination for Assistant Superintendent of Recreation.

Additionally, the appellant premises her request on the assertion that she was performing the duties of an Assistant Superintendent of Recreation since January 1, 2009. However, even assuming the paperwork in support of this appointment was not properly handled, the appellant must have known the provisional appointment was not recorded because she signed a new Personal Action Form on November 18, 2010, indicating the effective date of her appointment to Assistant Superintendent of Recreation was September 6, 2010. However, it was not until July 2, 2013, almost three years later, when she first filed a classification appeal with this agency contending that her position should be classified as Assistant Superintendent of Recreation, that she took any action to address this matter. Further, a provisional appointee can be removed at any time and does not have a vested property interest in the provisional title. In other words, a provisional employee has no automatic right or expectation of achieving permanent appointment to the position to which he or she is occupying. *See O'Malley v. Department of Energy*, 109 N.J. 309 (1987) (Appointing authority was not equitably estopped from removing a provisional employee even when the provisional employee occupied the position longer than the statutory one-year limit). However, while a position classification 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 and is based on a current review of assigned duties, since the appointing authority has conceded that it provisionally appointed her effective September 6, 2010, the Commission finds good cause to revise the date of her provisional appointment and the appellant's County and Municipal Personnel System (CAMPS) record should be revised to reflect her provisional appointment from September 6, 2010 to July 12, 2013.

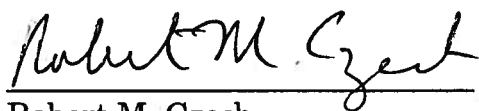
One additional matter warrants comment. *N.J.A.C.* 4A:4-1.5(a) requires provisional appointees to meet the minimum qualifications for the title at the time of the provisional appointment. As explained in detail above, based on her permanent title history, the appellant could not have met the minimum qualifications for Assistant Superintendent of Recreation at the time of her provisional appointment. While the appointing authority should not have provisionally appointed her to the title, it would be unfair to the appellant not to properly document how her position should have been classified in her personnel record. Therefore, although the Commission will permit the recording of her provisional appointment, the appointing authority is cautioned not to make provisional appointments unless all of the provisions of *N.J.A.C.* 4A:4-1.5 are satisfied.

ORDER

Therefore, it is ordered that this appeal be granted in part and that Renee Ligons Muhammad's County and Municipal Personnel System record be revised to reflect her provisional appointment, pending promotional examination procedures, from September 6, 2010 to July 12, 2013.

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 16TH DAY OF JULY, 2014



Robert M. Czech
Chairperson
Civil Service Commission

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and
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Attachment

c: Rene Ligons Muhammad
Jody Walker, Esq.
Marlin G. Townes, III, Esq.
Kenneth Connolly
Joseph Gambino

Pamela Ullman
Pres. Comm. Affairs

A-1550-13

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1550-13T2

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APPELLATE DIVISION

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IN THE MATTER OF
RENE C. LIGONS MUHAMMAD
ADMINISTRATIVE APPEAL

[Signature]
CLERK


ORDER OF REMAND
AND DISMISSAL OF APPEAL
BY CONSENT
SUPERIOR COURT
OF NEW JERSEY

A preargument telephonic conference having been held on February 4, 2014, in the above matter under the Civil Appeals Settlement Program, and it appearing that a Human Resource Consultant for respondent, the Civil Service Commission (Commission), declined to present the issue on appeal to the Commission, and it further appearing that the appointing authority has not been heard in this matter; and it further appearing that the Commission has not rendered a final determination in this matter; and it further appearing that appellant, Rene C. Ligons Muhammad (appellant) and the Commission have consented to a remand of the matter to the Commission for it to consider Administrative Appeal, CSC Docket No. 2014-841, and for the full Commission to render a decision thereon on the merits of the appeal.

It is, on this 4 day of February, 2014, ORDERED that the matter be and the same is hereby remanded to the Commission for it to consider Administrative Appeal, CSC Docket No. 2014-841,


and for the full Commission to render a decision thereon on the merits of the appeal; and

IT IS FURTHER ORDERED that the above matter is dismissed, without prejudice, however, to the automatic reinstatement of the appeal, without costs, upon the appellant's request should the Commission decline to consider the matter on remand.



Naomi G. Eichen, J.A.D.
(Retired and temporarily
assigned on recall)

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION