B-17

STATE OF NEW JERSEY

In the Matter of Carol Hardy,
Newark School District

CSC Docket No. 2015-444

FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION

Administrative Appeal

ISSUED: FEB 09 2015 (DASV)

Carol Hardy appeals the determination that she was not permanent with the Newark School District upon the termination of her employment as a Confidential Assistant effective August 1, 2014.

By way of background, agency records indicate that the appellant first received a permanent appointment as a Senior Library Assistant, Typing with the Newark School District on June 23, 1986. She subsequently served in the following titles: Clerk Stenographer 3 (appointed provisionally from May 22, 1989 to July 1, 1990); Senior Library Assistant, Typing (returned to permanent title from July 2, 1990 to December 6, 1999); Keyboarding Clerk 3 (received permanent appointment from December 7, 1999 to March 28, 2000); and Secretarial Assistant, Typing (received permanent appointment from March 29, 2000 to June 15, 2012). Secretarial Assistant, Typing was subsequently renamed Secretarial Assistant effective June 16, 2012. Additionally, the records indicate that the appellant served as a Secretarial Assistant until her resignation in good standing effective July 1, 2012. However, in a letter dated August 1, 2014, the appointing authority advised the appellant that "[a]s an unaffiliated, at-will employee, the [Newark School District] is exercising its right to terminate your services as a Confidential Assistant, effective the close of business [on] Friday, August 1, 2014." The appellant's appointment to the Confidential Assistant title, which is designated in the unclassified service, was not recorded in the County and Municipal Personnel System (CAMPS).

In the instant matter, the appellant contends that she did not resign from her Secretarial Assistant position. Rather, she accepted a promotion to the "confidential assistant unaffiliated" title. However, she claims that she was never told that the position was "unaffiliated." The appellant alleges that the appointing authority only advised her that her title would change to Confidential Assistant in order to receive a raise. Moreover, when she was terminated from the position, the appellant was not permitted to return to her permanent title. Additionally, the appellant notes that prior to serving as a Confidential Assistant, she worked as an Administrative Secretary. In that regard, she submits a letter, dated April 27, 2011, confirming her provisional appointment to Administrative Secretary effective May 9, 2011. Furthermore, the appellant argues that her Civil Service rights were violated since she did not receive 45 days' notice of her separation and was advised of her termination on the same day. The appellant submits a letter, dated November 20, 2013, confirming her "reassignment" to the title of Confidential Assistant on July 1, 2012 and specifically informing her that her "employment record will reflect a resignation from [her] civil service title of Secretarial Assistant effective June 30, 2012." She was also advised that "you will no longer be afforded Civil Service rights." The letter also indicated that the appellant could request consideration for reemployment at a future date.

In response, the appointing authority relies on the November 20, 2013 letter, confirming the appellant's appointment to the title of Confidential Assistant and specifically informing her that her records would reflect a resignation from her title of Secretarial Assistant and she would no longer have Civil Service rights. Additionally, the appointing authority submits a copy of a letter to the appellant, dated June 28, 2012, advising her that she is "being reclassified in [her] position of Administrative Secretary-Confidential to Confidential Assistant effective July 2 2012[1]" and her "current location and union affiliation will remain the same." The appointing authority asserts that the appellant accepted the new position and salary increase and never conveyed that she did not want to be separated from her permanent title of Secretarial Assistant. Moreover, the appointing authority acknowledges that the appellant was appointed as an Administrative Secretary effective May 9, 2011. However, the appointment was provisional and was not approved by this agency.

The appellant replies that she is "confused about the information" she has received. While she understands that she was terminated from her Confidential Assistant position and "being in an unaffiliated title you have no rights," she questions her loss of permanent status as a Secretarial Assistant. The appellant explains that when she received the November 20, 2013 letter, she called this agency and spoke with a representative from the Division of Classification and Personnel Management (CPM), who told her that she had "nothing to be concerned

---

[1] The letter indicates a date of July 2, 2012. However, other correspondence reflects a July 1, 2012 date.

about because they will have to go by seniority." Further, the appellant maintains that, while she accepted the Confidential Assistant position, she never relinquished her permanent status. Had she known that would occur, she would not have taken the position. Additionally, the appellant notes that she contacted CPM again and was told to write an appeal, stating that she had been misinformed and that the appointing authority should update her personnel file. Further, the appellant claims that she never received a reemployment form, which was supposed to be mailed to her. She reiterates that the information she received from the appointing authority and this agency is confusing and she still believes that her rights have been violated.

CONCLUSION

N.J.A.C. 4A:2-2.1 provides that the right to appeal major discipline, which includes the termination of an employee, applies only to permanent employees in the career service or a person serving a working test period. *See also N.J.S.A.* 11A:2-6. As such, individuals in unclassified titles cannot appeal their separation to the Civil Service Commission (Commission) unless they retain underlying status in a career service title. In order to retain underlying career service status, an employee must receive a leave of absence from his or her career service title for the duration of the unclassified appointment. *See generally, N.J.S.A.* 11A:6-1 and *N.J.A.C.* 4A:6-1.1(a)2.

In the present case, the appellant has not shown that she retained her permanent status in the career service. The Confidential Assistant title is designated in the unclassified service. Pursuant to *N.J.S.A.* 11A:2-6 and *N.J.A.C.* 4A:2-2.1, the Commission does not have jurisdiction to review the termination of an unclassified employee. Moreover, contrary to the appellant's contention that she has received confusing information, the November 20, 2013 letter unequivocally states that her personnel records would reflect her resignation as a Secretarial Assistant and she would no longer have Civil Service rights. It is noted that there is no documentation whatsoever that the appellant requested or was granted leave from her permanent career service title to accept the unclassified appointment. Rather, she was resigned in good standing effective July 1, 2012. Although she was notified of that action over one year later in the November 20, 2013 letter, she did not contest it at the time.

Further, while the appellant asserts that she had called a CPM representative when she received the letter, it is not clear what was discussed since the statement that the appellant had "nothing to be concerned about because they will have to go by seniority" does not appear to actually involve her resignation or the loss of her Civil Service rights as set forth in the November 20, 2013 letter. Nonetheless, even if the representative provided incorrect information, it is emphasized that no vested or other rights are accorded by an administrative error.

See Cipriano v. Department of Civil Service, 151 *N.J. Super.* 86 (App. Div. 1977); *O'Malley v. Department of Energy*, 109 *N.J.* 309 (1987); *HIP of New Jersey v. New Jersey Department of Banking and Insurance*, 309 *N.J. Super.* 538 (App. Div. 1998). Moreover, while the Commission is indeed troubled by the length of time between the effective date of the appellant's resignation and the confirmation of that action, the fact remains that the appellant's Confidential Assistant position was unclassified, and the appointing authority notified the appellant of her status almost one year prior to her termination. Regarding the appellant's argument that she did not receive proper notice, it is noted that an appointing authority is required to provide an employee with written notice 45 days prior to the employee's separation or demotion as a result of a *layoff action*. *See N.J.S.A.* 11A:8-1(a) and *N.J.A.C.* 4A:8-1.6(a). This was not the situation in the appellant's case. Thus, based on the foregoing, the Commission does not find that the appellant's Civil Service rights were violated. Furthermore, the appellant questions her prior appointment as an Administrative Secretary. In that regard, the appointing authority was advised on March 30, 2012 that it could not exceed the permitted number of 11 Administrative Secretary appointments due to its organizational structure. Therefore, the appellant's appointment was ultimately not approved by this agency as a result of the foregoing. Accordingly, the Commission concludes that the appellant no longer retained permanent career service status with the Newark School District at the time of her separation on August 1, 2014. Additionally, to the extent that the appellant challenges the termination of her employment as a Confidential Assistant, that matter is dismissed for the Commission's lack of jurisdiction.

As final comments, if the appointing authority has not yet done so,[2] it is directed to correct the appellant's personnel record in CAMPS to reflect her unclassified appointment as a Confidential Assistant and her dates of service. Moreover, since the appellant was permanent as a Secretarial Assistant, she may request to be placed on a regular reemployment list. In this regard, *N.J.A.C.* 4A:4-7.10(a) provides that a permanent employee who has resigned in good standing, received a general resignation, retired or voluntarily demoted, may request consideration for reemployment by indicating availability to his or her appointing authority. Should the appellant file an Application for Reemployment upon receipt of this decision[3] and the appointing authority recommends her reemployment,[4] pursuant to *N.J.A.C.* 4A:4-7.10(b), the appellant shall be placed on the regular

---

[2] The appointing authority was previously advised to update the appellant's record regarding her unclassified appointment.

[3] The appellant may find the Application for Reemployment on the Commission's website at http://www.state.nj.us/csc/about/publications/forms/pdf/dpf-178.pdf, but it is also being sent to her along with this decision.

[4] The determination as to whether to place the appellant's name on a regular reemployment list rests within the discretion of the appointing authority. That discretion is not reviewable by the Commission. *See Richard Marinelli v. Department of Personnel*, Docket No. A-1415-97T2 (App. Div. Mar. 9, 2000.

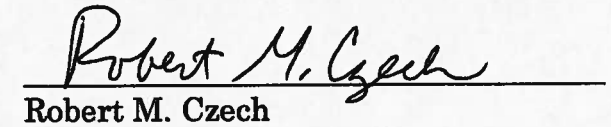
reemployment list to be considered for appointment for four years from July 1, 2012 to June 30, 2016. Under the circumstances of this case, good cause has been shown to extend the regular reemployment list to four years. In this regard, *N.J.A.C.* 4A:4-7.10(c) provides that regular reemployment lists for non-public safety titles shall have a duration of three years from the date of resignation unless extended for one year for good cause pursuant to *N.J.A.C.* 4A:4-3.3(b)1. *See also N.J.S.A.* 11A:4-9c and *N.J.S.A.* 11A:4-6. The appellant is to enclose a copy of this decision with her Application for Reemployment.

ORDER

Therefore, it is ordered that this appeal 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 4TH DAY OF FEBRUARY, 2015



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: Carol Hardy
Vanessa Rodriguez
Kenneth Connolly
Joseph Gambino