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STATE OF NEW JERSEY

In the Matter of Mhylene Alexander,  
Department of Human Services

CSC Docket No. 2015-1446

FINAL ADMINISTRATIVE  
ACTION OF THE  
CIVIL SERVICE COMMISSION

Layoff Appeal

ISSUED: MAR 10 2015

(RE)

Mhylene Alexander, a Cottage Training Technician with the Department of Human Services, Vineland Developmental Center, appeals her lateral displacement in lieu of layoff to the same title at Woodbine Developmental Center.

By way of background, the Department of Human Services submitted a layoff plan to the Division of Classification and Personnel Management (CPM) to lay off employees in various titles due to the closure of the Woodbridge Developmental Center, effective January 9, 2015. Numerous positions in various titles at several institutions were affected. A review of official records indicates that Ms. Alexander was bumped, and she laterally displaced a Cottage Training Technician at Woodbine Developmental Center.

On appeal, the appellant stated that she would rather take a demotion to Human Services Assistant in Cumberland County. She stated that when she was called, she was on vacation out of the country and her proxy did not understand the major decision to be made.

Commission staff responded that, on her Declaration Form, the appellant indicated that she would accept employment in 12 lateral choices, and she did not list any demotional choices. She made this decision before the interview date for her own reasons. No positions were available in her first choice, Cumberland County, and her proxy selected her second choice, Cape May County. She was informed that the layoff procedure was carried out exactly as described to her, and her failure to communicate her preferences to her proxy and to list all her

preferences in order on her Declaration Form was not evidence of a violation of her title rights. Once she could not be contacted, the layoff team did the best they could with the information she provided. To request a demotion instead of a lateral displacement at this time is, in effect, a change of mind, which is not an option or evidence of a violation of title rights.

In response, the appellant argues that she was on a plane returning to America when she was not able to answer the interview call. She states that her proxy did not understand and forgot what she said to her before she left for vacation. She states that she specifically, repeatedly told "the lady who works in the office who filled and signed my paper" that she would take a demotion to Human Services Assistant before going to a facility in Vineland. She states that when she filled out her job Declaration Form, which was signed and dated September 12, 2014, she was unable to write due to surgery on her left thumb. In that respect, she submits a Worker's Compensation Patient Treatment Plan Form dated September 8, 2013, which contains information regarding a diagnosis and findings that are illegible, and which requires her to return to the insurance office on September 22, 2014. The appellant maintains that as soon as she arrived, she called the office to request a demotion due to transportation and pregnancy complication issues. She states that she was not told her rights, but had to learn them from other people.

### CONCLUSION

In an appeal of this nature, it must be determined whether 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.

At the heart of the title rights determination is the underlying policy to ensure that employees are afforded fair, uniform, and objective title rights without resulting in harm to the public. *See Malone v. Fender*, 80 N.J. 129 (1979). In this case, proper procedures were followed in deciding the appellant's placement in lieu of layoff. The appellant was advised of the layoff and final interview processes and provided with resources to answer questions before the layoff was administered.

A review of the matter indicates that the appellant completed her Declaration Form listing 12 choices. For each choice, the employee was required to indicate whether it was a lateral, demotional or prior held title, and a location that was acceptable. For all twelve choices, the appellant indicated lateral rights. However, a closer review indicates that the first six choices are various locations in the title Cottage Training Technician, and the last six choices for the same locations with the demotional title of Human Services Assistant. As such, the appellant

listed six demotional choices on her declaration form. Nevertheless, the appellant listed various locations for the demotional title after her various locations for the lateral title. The first column on the declaration form is labeled "Priority" with numbers from 1 to 22. Employees were instructed that they were to list their choices from most acceptable to least acceptable. The appellant signed this page of her Declaration Form, and she also signed the bottom of the first page which states that she read the instructions for completing the job Declaration Form and understands the purpose of the form. Employees were informed that the final interview was not the time to deliberate preferences, but was the time to make a decision based on preferences and the available opportunities under the circumstances. If the appellant was unhappy with the listing as it was, she could have reorganized the list. The appellant's argument that the person assisting her in filling out the form would not list a demotional right above a lateral right is not persuasive. All employees were given the same instructions, and an assistant would have listed the choices in the order that the appellant provided by the employee.

Based on the information the appellant provided, her proxy selected a position in her second choice, a lateral movement to Cottage Training Technician in Cape May County. It is noted that it is the employee's responsibility to select a proxy and to ensure that that person understands her wishes. The appellant signed a letter naming the proxy and authorizing the person "as my proxy to act in my place in all matters concerning my layoff rights unless or until I withdraw such authorization in writing." As such, the appellant's proxy's choice regarding the appellant's title rights was fully authorized by the appellant. The appellant's failure to communicate her preferences to her proxy is not evidence of a violation of title rights. To request a demotion instead of a lateral displacement at this time is, in effect, a change of mind, which is not an option or evidence of a violation of title rights. No error or evidence of misapplication of the pertinent uniform regulatory criteria in determining layoff rights has been established.

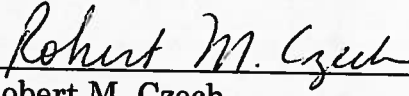
Thus, a review of the record fails to establish an error in layoff process and the appellant has not met her burden of proof in this matter.

#### 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 4<sup>th</sup> DAY OF MARCH, 2015

  
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