B-80

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION

In the Matter of Dr. Rajender Reddy, Department of Human Services

CSC Docket No. 2014-2330

Administrative Appeal

ISSUED: MAR 0 9 2015 (DASV)

Dr. Rajender Reddy, represented by Mario A. Iavicoli, Esq., requests a retroactive date of appointment to Physician Specialist 1, effective August 27, 2001, and differential back pay, benefits, and counsel fees.

By way of background, agency records indicate that Ancora Psychiatric Hospital, Department of Human Services, appointed the petitioner in the unclassified title of Physician 1 effective August 27, 2001. He then received an appointment to the unclassified title of Physician Specialist 1 effective June 12, 2004. In a letter, postmarked March 24, 2014, which is the subject of the within matter, the petitioner requested a correction of his personnel records to reflect his employment as a Physician Specialist 1 as of the date of his appointment to Physician 1. The Division of Appeals and Regulatory Affairs responded by letter, dated April 3, 2014, that the petitioner's request was untimely and the claims he presented were not actionable. However, the petitioner sought further review of the matter. Therefore, the parties were provided with an opportunity to submit additional information for the Civil Service Commission's (Commission) review.

The petitioner indicates that he is a Board Certified internal medicine physician "and has been for a number of years." He claims that the appointing authority placed him in an incorrect title upon his appointment. He asserts that he worked out-of-title as a Physician 1 from August 27, 2001 until June 12, 2004. Moreover, the petitioner states that 10 other internal medicine physicians have been serving as Physician Specialist 1s and were paid accordingly. Thus, he argues that the appointing authority "violated New Jersey law." He notes that he sought

to correct the "title error," but the appointing authority did not "engage in a discussion regarding the issue." Furthermore, he alleges that because he was born in India, he "was the subject of discrimination in being singled out to be paid and/or work in the incorrect title as the only physician on staff to be subjected to discrimination.[1]" Thus, the petitioner maintains that his personnel records should be amended to reflect his continuous employment as a Physician Specialist 1 as of the date of his appointment to Physician 1. He also requests differential back pay, benefits and counsel fees. However, the petitioner notes that he will waive the back pay and counsel fees if he is granted the retroactive title change to Physician Specialist 1. In support of his petition, the petitioner submits a position classification questionnaire (PCQ), which he claims was completed at the time of his hire and proves that he was being hired as a Physician Specialist 1. He also presents an August 3, 2012 listing of employees serving as Physician Specialist 1s and their dates of appointment.

In response, the appointing authority, represented by Gene Rosenblum, Deputy Attorney General, maintains that the petitioner's request is untimely and could have been made over 13 years ago. In support of its position, the appointing authority submits a Personnel Maintenance Request Form, which was signed by the petitioner and shows his appointment to the title of Physician 1 effective August 27, 2001. The form was dated October 4, 2001. Nonetheless, the appointing authority states that even if this matter were timely, the petitioner was not discriminated against based on his national origin. Rather, he was appointed and paid in a title for which he was qualified. He was not qualified as a Physician Specialist 1 on August 27, 2001 because he did not have the required "[t]wo (2) years of clinical experience in the practice of the clinical specialty," as indicated in the title's job specification.[2] In that regard, the appointing authority states that the petitioner's resume at the time of his appointment indicated that he completed his residency in internal medicine and was licensed in New Jersey in July 2000. He was also Board

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[1] In 2010, there were similar claims raised by the petitioner and three other physicians through their union representative regarding their title. They alleged that Caucasian physicians as opposed to physicians of Indian descent were appointed to the higher unclassified title of Physician Specialist 1. By letter dated April 7, 2010, they were advised that the Commission did not have jurisdiction to provide an employee with a retroactive date of appointment to a higher unclassified title. However, the matter was referred to the Department of Human Services' Office of Equal Employment Opportunity for review and determination. The union representative was informed that the Commission would review an appeal of the final decision of the agency head or designee and the employees would have an opportunity to file an appeal within 20 days of the decision. Although it was not clear whether a determination had been made in the petitioner's case, no further appeal was received from him at that time.

[2] A Physician Specialist 1 must also meet the following requirements: "[c]ompletion of [a] medical internship or equivalent; licensure to practice medicine in the State of New Jersey; three (3) years of approved specialty training; certification or eligibility for certification by the American Board of the specialty; demonstrated competence in hospital practice; Credentials Committee or equivalent recommendation; and approval by the Central Office Board of Professional Standards."

Eligible in August 2000. The petitioner subsequently obtained Board Certification in internal medicine on August 19, 2003. Accordingly, the appointing authority submits that, when the petitioner was appointed on August 27, 2001, he did not meet the required two years of experience. In other words, the required two years of experience must have been completed post residency. Therefore, the appointing authority maintains that the petitioner was properly appointed as a Physician 1, since he met the requirements for that title, which is completion of a medical internship or equivalent and a medical license. Once the petitioner acquired the experience, he was promoted to Physician Specialist 1 on June 12, 2004. The appointing authority notes that promotions are not automatic and are filled upon availability and application. Regarding the PCQ, the appointing authority states that this questionnaire was not contained in the petitioner's personnel file. Further, it argues that this document has no bearing to the instant matter because the form was facsimile-stamped on January 1, 2001, prior to the petitioner's appointment to Physician 1 and does not indicate to which position he was actually appointed. Furthermore, the appointing authority indicates that the petitioner filed a letter of complaint on April 4, 2014, alleging discrimination with regard to the matter of his title. The appointing authority investigated the claim and determined on June 30, 2014 that the petitioner had not completed the required clinical specialty experience after his residency to qualify for the higher title of Physician Specialist 1 at the time of his initial appointment. Accordingly, his discrimination complaint was not substantiated. It is noted that, although given appeal rights information in the June 30, 2014 determination, the petitioner did not file an appeal of that determination with the Commission.

CONCLUSION

N.J.A.C. 4A:2-1.1(b) states that unless a different time period is stated, an appeal must be filed within 20 days after either the appellant has notice or should reasonably have known of the decision, situation or action being appealed. In the instant matter, the issue in dispute occurred from 2001 to 2004. The petitioner's letter, postmarked March 24, 2014, is clearly out-of-time. Moreover, although the petitioner contends that he should have been appointed as a Physician Specialist 1 based on the PCQ, that PCQ was dated in 2001. He was well aware of his situation prior to his 2014 petition. As noted above, the petitioner's union representative had been advised earlier in 2010 of the Commission's jurisdiction in this matter and no further appeal from the petitioner was filed. Therefore, the Commission cannot consider this matter as it is untimely.

Nonetheless, it is noted that the petitioner does not dispute the appointing authority's explanation as to why it did not initially appoint him to a Physician Specialist 1 position, nor does the record indicate that he was qualified to be appointed to the latter title based on the job requirements.

Moreover, regardless of whether he actually met the requirements, the petitioner could have requested a review of his position classification pursuant to *N.J.A.C.* 4A:3-3.9 if he believed his position was misclassified from 2001 to 2004. In this regard, 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 this agency through an audit or other formal study. However, 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 generally be reviewed or verified. Accordingly, since the petitioner was appointed to the Physician Specialist 1 title in 2004, an appeal of his position classification after that time would be considered moot.

Further, to the extent that the petitioner is requesting added compensation for his prior work, it is within the discretion of the appointing authority to initially request a salary adjustment. Salary adjustments are also subject to Salary Adjustment Committee approval pursuant to the Annual Appropriations Act. The Commission lacks the authority in such matters.

Regarding the petitioner's claims of discrimination based on his country of birth, it is emphasized that the Commission reviews appeals of the final determination of a State agency head or designee regarding allegations of discrimination. *See N.J.A.C.* 4A:7-3.2(m). The Commission cannot review a matter unless a determination has been issued. As noted above, it is unclear as to whether a determination was issued by the appointing authority regarding the petitioner's 2010 claims. Nonetheless, no further appeal was received from the petitioner at the time. There was also no appeal from the appointing authority's June 30, 2014 determination, denying the petitioner's April 4, 2014 discrimination complaint with regard to his title. In that regard, *N.J.A.C.* 4A:7-3.2(m) permits a discrimination complainant to file an appeal within 20 days of the receipt of the final letter of determination. Nevertheless, even assuming *arguendo*, that the petitioner filed a timely appeal, apart from his assertions, the petitioner does not provide any convincing evidence that he was discriminated against based on his national origin.[3] Rather, the appointing authority presents a legitimate non-discriminatory basis for the petitioner's initial appointment to Physician 1. Accordingly, the Commission finds that the petitioner's claims are untimely and not actionable.

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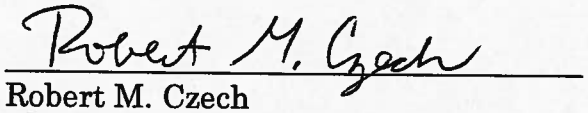
[3] *N.J.A.C.* 4A:7-3.1(a) provides that under the New Jersey State Policy Prohibiting Discrimination in the Workplace, discrimination or harassment based upon the following protected categories are prohibited and will not be tolerated: race, creed, color, national origin, nationality, ancestry, age, sex/gender (including pregnancy), marital status, civil union status, domestic partnership status, familial status, religion, affectional or sexual orientation, gender identity or expression, atypical hereditary cellular or blood trait, genetic information, liability for service in the Armed Forces of the United States, or disability.

ORDER

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



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