

CSC
B-19



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Melanie Miladinov,
Department of Law and Public Safety

Administrative Appeal

CSC Docket No. 2015-1618

ISSUED: APR 02 2015 (HS)

The Department of Law and Public Safety requests that the provisions of *N.J.A.C.* 4A:4-1.1(c) be relaxed in order to allow Melanie Miladinov to be provisionally appointed, pending promotional examination procedures, to the competitive title of Principal Clerk.

By way of background, Miladinov was appointed to the noncompetitive title of Computer Operator Assistant effective October 7, 2006. In December 2013, Miladinov filed a classification appeal, maintaining that her duties were inconsistent with the title of Computer Operator Assistant. The Division of Classification and Personnel Management (CPM)¹ conducted an audit of Miladinov's position and found that the duties that she performed were consistent with the duties of a Principal Clerk, a competitive title.² CPM indicated that the effective date of reclassification would be August 10, 2013.

The appointing authority thereafter requested that the Division of Selection Services (Selection Services) review Miladinov's credentials to determine if she met the open competitive requirements for Principal Clerk. The requirement for Principal Clerk is two years of experience in clerical work. Successful completion of a clerical training program with a minimum of 700 classroom training hours or 30 semester hour credits in secretarial science from an accredited college or university

¹ CPM is now the Division of Agency Services.

² Miladinov appealed CPM's determination to the Civil Service Commission, which denied the appeal in a decision rendered April 1, 2015.

could be substituted for one year of the indicated general experience. Course work must include keyboarding skills, methods and procedures, and other courses may include office procedures, word processing and business English. Selection Services determined that Miladinov did not meet the requirements for the position. Selection Services indicated that although Miladinov possessed two years of applicable experience, such experience would be considered out-of-title work.

Because the change in title would result in a change in category from the noncompetitive division to an unrelated above entry level title in the competitive division of the career service, the appointing authority seeks approval from the Civil Service Commission (Commission) to process this movement as a provisional appointment, pending promotional examination procedures.³ The appointing authority explains that due to business necessity, Miladinov was assigned duties pertaining to the collection and review of information and documentation and technical clerical support. The appointing authority contends that there are no related noncompetitive, classified titles to which Miladinov could advance since she is not performing information technology work.

It is noted that primarily performing the duties of a Principal Clerk would be considered out-of-title work for incumbents in the Computer Operator Assistant title. There are no existing open-competitive, promotional, regular reemployment or special reemployment lists for the title of Principal Clerk.

It is also noted that the Division of Agency Services (Agency Services) supports the appointing authority's request.

CONCLUSION

N.J.A.C. 4A:4-1.1(c) provides that the Commission may authorize the promotion, through promotional examination procedures, from the noncompetitive division, of permanent employees who meet the open competitive requirements, to: 1) a related entry level title in the competitive division or 2) in appropriate situations, to a related above-entry level title in the competitive division. *N.J.A.C.* 4A:4-2.5(d) provides:

When a promotion is to be made from the noncompetitive division to a related title in the competitive division, the examination shall be open to all permanent employees who meet one of the following:

³ It is noted that Computer Operator Assistant and Principal Clerk are both in class code 12. However, since the lateral movement is from the noncompetitive to competitive division, it must be processed as a promotion. See *N.J.A.C.* 4A:4-7.6(a)3 and *N.J.A.C.* 4A:4-2.5(e).

1. Serving in the next lower or next two lower in-series noncompetitive titles and possessing the complete open competitive requirements;
2. Serving in all related noncompetitive titles and possessing the complete open competitive requirements;
3. All competitive division titles at specified class code levels below the announced title, with or without all or part of the open competitive requirements and all titles as described in (d)1 or 2 above;
4. Competitive division employees who meet complete open competitive requirements and all titles as described in (d)1 or 2 above; or
5. In extraordinary circumstances, the Commission may set another appropriate title scope.

N.J.A.C. 4A:4-2.6(c) provides that, except when permitted for good cause, applicants for promotional examinations with open competitive requirements may not use experience gained as a result of out-of-title work to satisfy eligibility requirements. Moreover, *N.J.A.C.* 4A:1-1.2(c) provides that the Commission may relax a rule for good cause in a particular circumstance in order to effectuate the purposes of Title 11A, New Jersey Statutes.

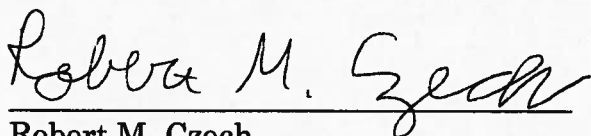
In the instant matter, the appointing authority is unable to appoint Miladinov provisionally, pending promotional examination procedures, to the title of Principal Clerk, since it would constitute a movement from her underlying noncompetitive title of Computer Operator Assistant to an unrelated above entry level title in the competitive division. Under the particular circumstances presented, the Commission finds that good cause has been presented to relax the provisions of *N.J.A.C.* 4A:4-1.1(c) and authorize the provisional appointment of Miladinov to the title of Principal Clerk, pending promotional examination procedures. In this regard, there is no dispute that she meets the open competitive requirements for the title at issue, with the consideration of her out-of-title experience, as evidenced by the pre-appointment evaluation conducted by Selection Services. Moreover, the Commission emphasizes that her duties changed due to operational needs such that the primary focus of her position is now consistent with the title of Principal Clerk, and CPM's classification determination evidences this change. Additionally, it is appropriate to relax the provisions of *N.J.A.C.* 4A:4-2.5(d) to announce a promotional examination for the title of Principal Clerk in the appellant's unit scope to incumbents serving in the unrelated noncompetitive title of Computer Operator Assistant, who meet the open competitive requirements, as well as to any other title scope deemed appropriate by Agency Services. Finally, the Commission finds that good cause has been established in accordance with *N.J.A.C.* 4A:4-2.6(c) to accept Miladinov's out-of-title work to qualify her for her promotional examination.

ORDER

Therefore, it is ordered that this request be granted and the appointing authority be permitted to appoint Melanie Miladinov to the title of Principal Clerk provisionally, pending promotional examination procedures, effective August 10, 2013. It is further ordered that a promotional examination be announced in accordance with this decision. Miladinov is to provide a copy of this decision with her promotional application upon announcement of the examination. Moreover, it is ordered that the out-of-title work experience of Miladinov be considered in qualifying her for the promotional examination and that the Division of Agency Services also accept applicable and documented out-of-title work experience from other applicants for that promotional examination.

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 1ST DAY OF APRIL, 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. Mirella Bednar
Melanie Miladinov
Kelly Glenn
Kenneth Connolly
Joseph Gambino**