

been a work week change, and the appellant, who had been in a "non-exempt" work week, laterally displaced an employee with a 35 hour work week.

The appellant did not respond with any substantive arguments regarding timeliness, except to state that she did not discover "the error in her salary" until after she was discussing her declaration options in August 2014 for the subsequent January 2015 layoff. She argues that she moved laterally, and therefore, should have the same salary.

CONCLUSION

N.J.A.C. 4A:3-4.2 states:

- (a) Each new job title shall be evaluated, and existing job titles reevaluated, based upon the New Jersey Job Content Evaluation System as approved by the Commissioner. Class codes shall be designated for job titles through this evaluation process. However, the Commissioner may, in appropriate circumstances, designate a job title as no-range, meaning that no class code is designated, or may assign a single rate, and may include restrictions on salary payments for such titles.
- (b) Once the class code for a job title is designated, the salary range shall be determined according to workweek and work year as follows (See *N.J.A.C.* 4A:6-2.2 and 2.3 for designation of workweek):
 1. The salary range for NL and NE titles shall be the same as the class code;
 2. The salary range for 35 hour and 3E titles shall be one range lower than the class code;
 3. The salary range for 40 hour, 4E and N4 titles shall be one range higher than the class code;
 4. The salary range for 10 month titles shall be three ranges lower than the class code.

Additionally, *N.J.A.C.* 4A:3-4.8(a) states that a lateral pay adjustment occurs when an employee moves to a title having the same class code. An employee affected by such lateral pay adjustment shall not be considered to have been promoted or demoted, even if actual salary changes.

Pursuant to *N.J.A.C.* 4A:8-2.6(b), appeals of layoff issues shall be filed within 20 days of receipt of the final notice of status required by *N.J.A.C.* 4A:8-1.6(f). Appeals must specify what determination is being appealed, the reason for the appeal, and the relief requested. Other appeals must, by regulation, be filed within 20 days after a party has notice or should reasonably have notice of the action or decision being appealed. See *N.J.A.C.* 4A:2-1.1(b) and *N.J.A.C.* 4A:2-1.7(b).

Initially, it is noted that under the rules cited above, the appellant's appeal was clearly untimely filed. Nevertheless, the Commission, in the interest of fairness, will address the appellant's contentions.

In this case, proper procedures were followed in deciding the appellant's placement in lieu of layoff. The appellant's displacement of a Training Technician 1 at Hunterdon Developmental Center was appropriate and is considered a lateral displacement, not a demotional movement since her class code did not change. In this regard, *N.J.A.C. 4A:1-1.3* defines a demotion in State service as movement to a title with a lower class code. It is noted that the one range difference between the NE12 and 35 hour workweek for Training Technician 1 is outside the scope of the determination of rights appeal, and as set forth in *N.J.A.C. 4A:3-4.8(a)*, is not a demotion, but is a reflection in the change in work week.

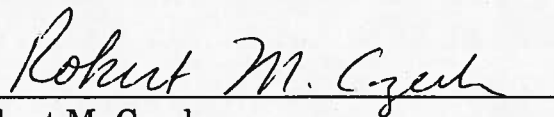
A work week of 35 designates a fixed workweek of 35 hours, and the work schedule is consistently regular, amenable to administrative control and determined by the direction of a supervisor rather than by the nature of the service and employees have minimal discretion over their work schedule; the hours of work conform to a standard pattern of work time for the typical work location; employees normally work under direct supervision within a formal work program in a State office, location or place of business and field work without direct supervision is minimal; and an appointing authority can certify with assurance when an employee performs work beyond the normal workweek. A work week of NE12 designates a non-limited, non-exempt workweek, and employees are expected to work irregular or variable work hours. Those titles are subject to the provisions of the Fair Labor Standards Act, 29 *U.S.C. 201 et seq.* In this instance, the appellant is working at Hunterdon Developmental Center under less stringent work week expectations, a 35 hour fixed work week, than those she was working at Trenton Psychiatric Hospital, a non-limited, variable work week. It is noted that the agency, not the employee, sets the work week. In accordance with the rules, the salary range for an NE Training Technician 1 is 19, the same as the class code, while the salary range for a 35 hour Training Technician 1 is 18, one range lower than the class code. The appellant received a lateral displacement in the June 27, 2014 layoff and is now working a 35 hour work week. Her salary is appropriate to the assigned work week. Thus, 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 20th DAY OF MAY, 2015



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