



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Records Support
Technician 2 (M0157S), East Orange

Appointment Waiver

CSC Docket No. 2018-1330

ISSUED: APRIL 20, 2018 (HS)

In *In the Matter of Records Support Technician 2 (M0157S), East Orange* (CSC, decided October 19, 2016), the Civil Service Commission (Commission) held in abeyance East Orange's request for the waiver of the appointment requirement pending the determination of the Division of Agency Services (Agency Services) regarding India Cole's position. Agency Services determined based on a classification review of Cole's position, that she was to be considered serving provisionally, pending promotional examination procedures, in the title of Records Support Technician 2, effective December 8, 2017, and the matter is now being presented to the Commission. Copies of Agency Services and the Commission's decisions are attached hereto and incorporated herein.

The record reveals that the appointing authority provisionally appointed Cole, pending open-competitive examination procedures, to the title of Records Support Technician 2, effective July 13, 2013. As a result of the provisional appointment, an examination was announced with a closing date of February 27, 2014. The resulting eligible list of 16 names, including Cole's name, promulgated on June 19, 2014 and expired on June 18, 2017. The appointing authority took no action to obviate the need for the examination at the time of the announcement or prior to the administration of the examination. On June 24, 2014, the names of 13 eligibles, including Cole, who was tied as the sixth ranked eligible, were certified from the subject eligible list. The appointing authority returned the certification noting that the subject title was not the best fit for the needs of the office. Thereafter, in requesting an appointment waiver, the appointing authority stated that there was an inadequacy with the duties and responsibilities performed by the

subject position and those expected by the appointing authority. Specifically, the appointing authority contended that coordinating support services in accomplishing the agency records processing is beyond an entry level clerical with one year experience as outlined in the subject position's job description. Therefore, it believed a more appropriate title for the duties performed by Cole was the title of Management Assistant. Finally, the appointing authority indicated that it would assume the administrative costs in processing the examination.

In its prior decision, the Commission noted that agency records revealed that Cole was appointed to the noncompetitive title of Records Support Technician 1, effective August 24, 2015 and that there were no employees in the subject title serving provisionally, pending an open competitive examination, with the appointing authority. The Commission found that a review of the job specifications revealed that an individual in the title of Records Support Technician 1 did not perform significantly different duties than an individual in the title of Records Support Technician 2, and it appeared as if Cole was "demoted" to a lower level because she was unreachable for appointment on the subject certification. Based on the foregoing, it appeared that the appointing authority was attempting to circumvent Civil Service law and rules by moving Cole to a lower level noncompetitive title. Since the Commission found that it could not determine on the existing record the title to which Cole should be classified to, it referred the matter to Agency Services for a classification review. See *N.J.S.A.* 11A:3-1, *N.J.A.C.* 4A:3-3.1 and *N.J.A.C.* 4A:3-3.4.

Agency Services completed its classification review and determined that Cole was performing the duties of a Records Support Technician 2. Consequently, Agency Services determined that Cole was considered to be serving provisionally, pending promotional examination procedures, in that title, effective December 8, 2017. It is noted that Cole did not appeal Agency Services' determination.

The appointing authority was provided with an opportunity to submit any arguments in response to Agency Services' determination and to submit any additional arguments regarding its request for an appointment waiver. It was again advised that if its request were granted, it could be assessed for the costs of the selection process in the amount of \$2,048. No arguments were received.

CONCLUSION

In accordance with *N.J.S.A.* 11A:4-5, once the examination process has been initiated due to the appointment of a provisional employee or due to an appointing authority's request for a list to fill a vacancy, the appointing authority must make an appointment from the resulting eligible list if there are three or more interested and eligible candidates. The only exception to this mandate may be made for a valid reason such as fiscal constraints.

In the instant matter, the examination for the subject title, Records Support Technician 2, was generated as a result of the provisional appointment of Cole. After a complete certification was issued, the appointing authority requested an appointment waiver. In this regard, the appointing authority initially maintained that Cole's proper classification was as a Management Assistant but appointed her to the noncompetitive title of Records Support Technician 1. After a classification review, Agency Services determined that Cole was considered to be serving provisionally, pending promotional examination procedures, in the title of Records Support Technician 2, effective December 8, 2017. Based on the foregoing, it appears that the appointing authority was attempting to circumvent Civil Service law and rules by moving Cole to the noncompetitive title of Records Support Technician 1 when it was unable to permanently appoint her. Under these circumstances, the appointing authority has not presented a sufficient basis for granting an appointment waiver.

In examining the legislative history of *N.J.S.A. 11A:4-5*, in *Local 198 of I.A.F.F. v. Atlantic City*, Docket No. A-855-88T1F (App. Div. June 14, 1989), the Court stated that this agency is required to issue a certification automatically where there is a provisional appointee or a vacancy. Moreover, the Court concluded that *N.J.S.A. 11A:4-5* unambiguously stated that once the examination process has been initiated due to the appointment of a provisional employee, the appointing authority must make an appointment from the eligible list if there is a complete certification. Additionally, the Court found that this agency was correct in interpreting *N.J.S.A. 11A:4-5* to find that it was a clear legislative response to pervasive violations of Title 11A, and that noncompliance with this statute is not a mere technical violation. Rather, it undermined the purpose and intent of the constitutionally-based merit selection system. The Court found that in circumstances such as these, it was appropriate for the Commission to order the appointing authority to make an appointment. Thus, there is no doubt that the appointing authority must make an appointment from this list if there is a complete certification, that is, one containing the names of at least three interested and eligible candidates.

Moreover, the Commission is specifically given the power to assess compliance costs and fines against an appointing authority, including all administrative costs and charges, as well as fines of not more than \$10,000, for noncompliance or violation of Civil Service law or rules or any order of the Commission. *N.J.S.A. 11A:10-3*; *N.J.A.C. 4A:10-2.1(a)2*. See *In the Matter of Fiscal Analyst (M1351H)*, Newark, Docket No. A-4347-87T3 (App. Div. February 2, 1989).

ORDER

Therefore, it is ordered that the request for the waiver of the appointment requirement be denied.

Additionally, the Commission orders that East Orange properly dispose of the certification within 30 days, indicating the interested eligible candidates and making the appropriate appointment from the eligible list, with retroactive seniority to June 24, 2014 for record and salary step purposes. If, at any time, East Orange does not adhere to the timeframes for the proper certification disposition without an approved extension of time, it shall be assessed fines of \$100 per day for each day of continued violation up to a maximum of \$10,000.

Further, if no proper disposition is made, the Certification Unit shall canvass the eligible list for interested eligible candidates and constructively permanently appoint the first interested eligible candidate, with retroactive seniority to June 24, 2014 for record and salary step purposes.

Finally, it is ordered that East Orange be assessed \$1,000, to be remitted within 30 days of issuance of this decision, for the administrative costs of ensuring compliance with the certification and appointment procedures thus far.

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 18TH DAY OF APRIL, 2018



Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Christopher S. Myers
Director
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Attachments

- c. Solomon Steplight
Kelly Glenn
Records Center
Beth Wood



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Records Support
Technician 2 (M0157S), East Orange

CSC Docket No. 2015-2305

Appointment Waiver

ISSUED: **OCT 25 2015** (LDH)

East Orange requests permission not to make an appointment from the June 24, 2014 certification for Records Support Technician 2 (M0157S).

The record reveals that the appointing authority provisionally appointed India Cole, pending open-competitive examination procedures to the title of Records Support Technician 2, effective July 13, 2013. As a result of the provisional appointment, an examination was announced with a closing date of February 27, 2014. The resulting eligible list of 16 names, including Cole's name, promulgated on June 19, 2014 and expires on June 18, 2017. The appointing authority took no action to obviate the need for the examination at the time of the announcement or prior to the administration of the examination. On June 24, 2014, the names of 13 eligibles, including Cole, who was tied as the sixth ranked eligible, were certified from the subject eligible list. The appointing authority returned the certification noting that the subject title was not the best fit for the needs of the office.

The appointing authority's request for an appointment waiver was acknowledged, and it was advised that if its request were granted, it could be assessed for the costs of the selection process in the amount of \$2,048. In response, the appointing authority states that there is an inadequacy with the duties and responsibilities performed by the subject position and those expected by the appointing authority. Specifically, the appointing authority contends that coordinating support services in accomplishing the agency records processing is

beyond an entry level clerical with one year experience as outlined in the subject position's job description. Therefore, it believes a more appropriate title for the duties performed by Cole is the title of Management Assistant. Finally, the appointing authority indicates that it will assume the administrative costs in processing the examination.

Agency records reveal that Cole was appointed to the non-competitive title of Records Support Technician 1, effective August 24, 2015. Personnel records further reveal that there are no employees in the subject title serving provisionally, pending an open competitive examination, with the appointing authority.

A review of the job specification for Records Support Technician 1 reveals that an individual in that title performs varied clerical work involving the processing and filing of records. The job specification for Records Support Technician 2 reveals that an individual in that title performs moderately complex and non-routine clerical work involving the processing and filing of records. A review of the job specification for Management Assistant reveals that an individual in that title provides a wide range of administrative services in support of a manager(s) within the area of assignment; assists in the coordination of management/administrative activities of an assigned unit or work area; does other related duties.

CONCLUSION

In accordance with *N.J.S.A. 11A:4-5*, once the examination process has been initiated due to the appointment of a provisional employee or due to an appointing authority's request for a list to fill a vacancy, the appointing authority must make an appointment from the resulting eligible list if there are three or more interested and eligible candidates. The only exception to this mandate may be made for a valid reason such as fiscal constraints.

In the instant matter, the subject examination was generated as a result of the provisional appointment of Cole. After a complete certification was issued, the appointing authority indicated that it would not be making any appointments as the subject position would not meet the needs of the office. Rather, the appointing authority claimed that the appropriate title for the duties performed by Cole was Management Assistant. As noted above, an individual serving in the title of Management Assistant would be responsible for assisting in the coordination of management/administrative activities. However, instead of provisionally appointing Cole to the title of Management Assistant, East Orange appointed her to the non-competitive title of Records Support Technician 1, effective August 24, 2015. A review of the job specification reveals that the title of Records Support Technician 1 does not perform significantly different duties than an individual in the title of Records Support Technician 2. Instead, it appears as if Cole was

"demoted" to a lower level because she was unreachable for appointment on the subject certification. Based on the foregoing, it appears that East Orange is attempting to circumvent Civil Service law and rules by moving Cole to a lower level non-competitive title.

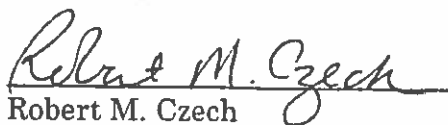
N.J.S.A. 11A:3-1 and *N.J.A.C. 4A:3-3.1(a)* provide that each position in the career and unclassified services shall be assigned to a job title. *N.J.A.C. 4A:3-3.3(d)* provides that positions in the career, unclassified and senior executive service shall be subject to job audit to ensure accurate classification and compliance with Titles 11A and 4A. Moreover, *N.J.A.C. 4A:3-3.4* provides that no person shall be appointed or employed under a title not appropriate to the duties to be performed nor assigned to perform duties other than those properly pertaining to the assigned title which the employee holds. In the instant matter, East Orange asserts that Cole's proper classification should be Records Support Technician 1, a non-competitive title. However, it appears that such an appointment might have been an attempt to circumvent Civil Service law and rules as explained above. Since the Civil Service Commission (Commission) cannot determine on the existing record the title to which Cole should be classified, it is appropriate that this matter be referred to the Division of Agency Services for a classification review of Cole's position.

ORDER

Therefore, it is ordered that the request for the waiver of the appointment requirement be held in abeyance pending the determination of the Division of Agency Services regarding India Cole's position.

It is further ordered that the Division of Agency Services complete its classification review of Cole and issue its determination to Cole, East Orange and the Civil Service Commission within 30 days of the issuance of this decision.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE DAY OF, 2016



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
Director
Correspondence

and

Division of Appeals and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

c: Michele Ralph-Rawls
Kelly Glenn



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Chris Christie
Governor
Kim Guadagno
Lt. Governor

STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION
DIVISION OF AGENCY SERVICES
P. O. Box 313
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Robert M. Czech
Chair/Chief Executive Officer

November 8, 2017

Michele Ralph-Rawls, Personnel Director
Department of Human Resource Services
City of East Orange
44 City Hall Plaza
East Orange, New Jersey 07019

RE: Classification Review – India Cole, Records Support Technician 1, City of East Orange, Clerk Department, AS Log # [REDACTED]

Dear Ms. Ralph-Rawls:

This is to inform you of our determination concerning the classification of the position held by India Cole in the Clerk Department of the City of East Orange. The determination is based upon a desk audit conducted on August 9, 2017, as well as a thorough review and analysis of the Position Classification Questionnaire submitted and signed by India Cole on July 19, 2017 and her immediate supervisor, Cynthia Brown, Municipal Clerk, on July 20, 2017.

Issue:

A classification review was initiated by the Civil Service Commission as a result of a request from the Division of Appeals and Regulatory Affairs (*See In the Matter of Records Support Technician 2 (M0157S), East Orange – CSC Docket No. 2015-2305*). Ms. Cole was serving as a Records Support Technician 2 in the Clerk Department effective July 13, 2013. As a result, an exam was announced and Symbol M0157S generated a complete list of eligibles against the provisional, Ms. Cole. The Appointing Authority of the City of East Orange thereby requested a waiver of appointment and indicated that the subject position is performing the duties of Management Assistant as opposed to Ms. Cole's provisional title of Records Support Technician 2.

Organization:

Ms. Cole is currently assigned to the Clerk Department of the City of East Orange and reports directly to Cynthia Brown, Municipal Clerk. According to the position

classification questionnaire, Ms. Cole does not supervise any full time permanent employees. The position receives assistance as needed and assigns work to summer interns and temporary staff. The position is not responsible for taking the lead of other permanent staff members on a regular basis.

Finding of Fact:

According to the position classification questionnaire submitted and the desk audit performed on August 9, 2017, the following are the primary duties and responsibilities of the position:

- Reviewing, arranging, and preparing records for proper disposition and storage retrieval; ensuring that records are classified, maintained and properly stored and/or disposed.
- Responsible for storing, locating, retrieving, and safeguarding general and confidential records. Populating and maintaining the Clerk Department's records and other documents in various software programs such as Artemis and Marlin Systems.
- Reviewing and submitting records disposal request forms to the Division of Records and Enterprise Services in accordance with retention schedules.
- Processing, scanning, filing and creating new records used to locate documents; creating forms, and updating department on records retention schedules
- Reviewing, arranging, and preparing records, sorting documents for filing and proper disposition and storage retrieval, reviewing disposition requests and updating department of retention schedules.
- Organizing and maintaining the department's storage area to facilitate preservation and retrieval of documents.
- Creating electronic documents and forms for the inter-office use of storage filing, retrieval and disposition, informing and updating other departments of procedures and guidelines for storage.
- Responsible for the transfer of records to storage facilities, verifying the funding of the disposition of the shredding process and the disposition phase in the disposal of records in accordance with guidelines.

Review and Analysis:

In reviewing this position, various titles were examined in relation to the overall duties of the position to determine the appropriate classification for the tasks described at the time of the audit.

The definition section of the title **Management Assistant** (56492), states the following:

“Under the direction of a manager in a state department, institution or agency or within a local government jurisdiction, provides a wide range of administrative services in support of a manager(s) within the area of assignment; assists in the coordination of management/administrative activities of an assigned unit or work area.”

The position currently performs duties and responsibilities that are not consistent with this title in that the incumbent’s primary duties are engaged solely in records processing, maintenance, and storage retrieval.

The definition section of the title **Records Support Technician 2** (56563), states the following:

“Under limited supervision, performs moderately complex and non-routine clerical work involving the processing and filing of records; may provide guidance and assistance to staff; does other related duties as required.”

A review of the employee’s primary job duties and responsibilities indicates that the employee is responsible for performing complex clerical work involving the processing and filing of records for storage, retrieval, maintenance, and disposition of records. The position is responsible for processing and filing records for the department(s); receiving, retrieving and sorting documents and forms; storing data, records, and vital information in accordance with the established policies, procedures and guidelines; reviewing and processing documents, materials; locating and removing storage files; converting documents for storage on an electronic medium; entering and retrieving information in the computer software system; and removing files for storage upon request. The position operates equipment used to retrieve records, classifying, indexing and cross-referencing files, prepares and maintains reports/logs of information regarding the retrieval of records, and ensures those records are classified, maintained, retained, and destroyed in accordance with the established guidelines.

Determination:

As a result of this review, it has been determined that the duties being performed by India Cole are commensurate with the job specification for the title, **Records Support Technician 2 (56563)**. This specification is descriptive of the general nature and scope of the functions that may be performed by an incumbent in this position. However, the examples of work are for illustrative purposes and are not intended to restrict or limit performance of related tasks not specifically listed. The relevancy of such specific tasks is determined by an overall evaluation of their relationship to the general classification factors listed in the specification.

India Cole is considered to be serving provisional in the title, Records Support Technician 2 (56563), pending promotional appointment procedures, effective December 8, 2017.

The New Jersey Administrative Code 4A:3-3.5(c)1 states that "within 30 days of receipt of the reclassification determination, unless extended by the Commissioner in a particular case for good cause, the Appointing Authority shall either effect the required change in the classification of an employee's position; assign duties and responsibilities commensurate with the employee's current title; or reassign the employee to the duties and responsibilities to which the employee has permanent rights. Any change in the classification of a permanent employee's position, whether promotional, demotional or lateral, shall be effected in accordance with all application rules.

Please be aware that an incumbent's eligibility in meeting specification requirements is not the same as properly classifying the duties of a position. It is the responsibility of the Appointing Authority to ensure an incumbent meets the eligibility requirements prior to any appointment to the title.

Please be advised that in accordance with N.J.A.C.:3-3.9(e), appeals may be made by an employee, authorized employee representative, or local appointing authority. The appeal shall be submitted in writing within 20 days of receipt of the decision letter and include copies of all materials submitted, the determination received from the lower level, [and] statements as to which portions of the determination are being disputed, and the basis for appeal. This appeal should be addressed to Written Record Appeals Unit, Division of Appeals and Regulatory Affairs, P.O. Box 312, Trenton, New Jersey 08625-0312.

Michele Ralph-Rawls, Personnel Director
November 8, 2017

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Sincerely,

A handwritten signature in black ink, appearing to read 'Tom Chisholm', with a long horizontal flourish extending to the right.

Tom Chisholm, Team Leader
Agency Services

TC/cp

C: Chris Myers, Appeals and Regulatory Affairs
Records Unit
Team Files