



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Michael Gibilisco, *et al.*, Department of the Treasury

CSC Docket Nos. 2016-3990, *et al.*

Administrative Appeal

ISSUED: August 20, 2018 (SLD)

Michael Gibilisco, Debra Goeke and Stephen Mayer, appeal the determination of their salary upon their promotion to their current title, pursuant to *N.J.A.C.* 4A:3-4.9.

By way of background, the appointing authority appointed Goeke and Mayer to the non-competitive title of Information Technology Specialist (ITS) (workweek-35, salary range P21), effective October 23, 2010. It appointed Gibilisco to the non-competitive title of ITS, effective September 22, 2012. Thereafter, due to a classification appeal of a co-worker, the appellants were also reclassified to the non-competitive title of Software Development Specialist 1 (SDS1) (workweek-3E, salary range P21), effective October 17, 2015. It is noted that as both titles were class code 22, salary range P21, their salaries remained the same, step 5, salary range P21 (\$61,404.58).<sup>1</sup> However, the appellants were required to undergo a working test period upon their lateral appointment to the title of SDS1. *See N.J.A.C.* 4A:4-7.6(c).

Thereafter, the appellants filed a classification appeal, asserting that the duties of their positions had changed. As a result, Mayer was provisionally appointed, pending promotional examination procedures, to the title of Software

<sup>1</sup> Recently due to the 2018 approval of the Communications Workers of America (CWA) contract, increments that were to be received as a result of an anniversary date, were retroactively applied. As a result, Mayer and Goeke received an increment for their anniversary date on October 17, 2015, and were placed on step 6, salary range P21 (\$63,431.90). As a result of the retroactive receipt of the increments due to their anniversary dates, as well as the new salary steps, this decision will utilize the appellants' current salary history.

Development Specialist 2 (SDS2) (salary range P25), effective December 12, 2015 and Gibilisco and Goeke were provisionally appointed, pending promotional examination procedures, to the title of SDS2, effective January 23, 2016. Mayer and Goeke were placed on step 3, salary range P25 (\$67,569.97) and Gibilisco was placed on step 1, salary range P25 (\$61,784.21). Specifically, it was explained that as they had not completed their working test period in the title of SDS1, pursuant to *N.J.A.C. 4A:3-4.9(e)* their salary was set “on a step in the salary range of the title with the higher class code that is the same or next higher than the salary paid in the title with the lower class code.”

On appeal to the Civil Service Commission (Commission), the appellants argue that upon their initial reclassification to the title of SDS1, they were inexplicably required to serve a working test period, despite their job duties, salary range and salary step not changing. The appellants maintain that after the initial department-wide determination that placed them in the title of SDS1, they were given supervisory duties. Consequently, they filed a new classification appeal. The appellants assert that the determination of their second classification audit was that the appropriate title for their duties was SDS2. However, they argue that they were penalized for filing the classification appeal while still in their working test period for the title of SDS1. The appellants assert that if the initial classification determination had not been made, they would have been promoted from their prior title of ITS, and they would have been placed on the next higher step in salary range P25.

Despite an opportunity to do so, the appointing authority did not submit a response.

The Salary Schedule for range P21 and P25, effective July 12, 2014 is as follows:

	<b>P21</b>	<b>P25</b>
<b>INCREMENT</b>	\$2,380.39	\$2,892.88
<b>Step 1</b>	\$51,529.95	\$61,784.21
<b>Step 2</b>	\$53,910.34	\$64,677.09
<b>Step 3</b>	\$56,290.73	\$67,659.97
<b>Step 4</b>	\$58,671.12	\$70,462.85
<b>Step 5</b>	\$61,051.51	\$73,355.73
<b>Step 6</b>	\$63,431.90	\$76,248.61

The appellants’ records reflect, in pertinent part, the following:

	Appointment Date	Title	Anniversary Date	Appointment Type	Range & Step	Salary
<b>Gibilisco</b>	9/22/12	ITS	13/13	RAN	P21, step 2	\$52,458.55
	5/31/15	ITS	12/16	RAN	P21, step 5	\$61,051.51
	10/17/15	SDS1	12/16	RAN	P21, step 5	\$61,051.51
	1/23/16	SDS2	12/16	PAP	P25, step 1	\$61,784.21
<b>Goeke</b>	10/23/10	ITS	23/11	RAN	P21, step 1	\$48,446.64
	10/18/14	ITS	23/15	RAN	P21, step 5	\$61,051.51
	10/17/15	SDS1	23/15	RAN	P21, step 5	\$61,051.51
	10/17/15	SDS1	22/16*	RAN	P21, step 6	\$63,431.90
	1/23/16	SDS2	22/16	PAP	P25, step 3	\$67,569.97
	10/23/10	ITS	23/11	RAN	P21, step 1	\$48,446.64
<b>Mayer</b>	10/18/14	ITS	23/15	RAN	P21, step 5	\$61,051.51
	10/17/15	SDS1	23/15	RAN	P21, step 5	\$61,051.51
	10/17/15	SDS1	22/16*	RAN	P21, step 6	\$63,431.90
	12/12/15	SDS2	22/16	PAP	P25, step 3	\$67,569.97

\*Pursuant to an agreement with the union (CWA), increments were restored.

## CONCLUSION

*N.J.A.C.* 4A:3-4.9 provides, in pertinent part, that:

\* \* \*

- (b) Employees who are appointed to a title with a higher class code shall receive a salary increase equal to at least one increment in the salary range of the former title plus the amount necessary to place them on the next higher step in the new range . . . This subsection shall apply when the following conditions are met:
1. Employees are appointed from their permanent title to a title with a higher class code following or subject to a promotional examination;
  2. Employees are serving in a title which is reevaluated to a higher class code;
  3. Employees receive an advancement appointment to a higher title level with a higher class code in a job band; or

4. Employees are appointed to a title with a higher class code, when the conditions in (b)1, 2, or 3 above are not applicable, provided the Chairperson of the Civil Service Commission or designee finds the following criteria are met:

- i. The employee has served continuously in the lower title for at least four months immediately preceding the effective date of the advancement; and
- ii. The service in the lower title provided significant preparation and training for service in the higher title.

(c) When an employee is advanced to a title with a salary schedule which is different (dollar value of ranges and steps do not coincide) from the employee's previous salary schedule, the steps described in (b) above are first performed in the previous schedule, and then the employee's salary is set at the lowest step in the new schedule and range that equals or exceeds that salary.

\* \* \*

(e) Employees who do not meet the criteria set forth in (b) above shall be placed on a step in the salary range of the title with the higher class code that is the same or next higher than the salary paid in the title with the lower class code.

- 1. The adjustments described in (c) and (d) above shall be applied as appropriate.

\* \* \*

In the instant matter, the appellants' salaries were determined pursuant to *N.J.A.C.* 4A:3-4.9(e). Specifically, it was determined that *N.J.A.C.* 4A:3-4.9(b)4i applied since the appellants had not completed their working test period in their prior title of SDS1. However, the Commission does not agree. In this regard, *N.J.A.C.* 4A:3-4.9(b)1 provides that employees who are appointed to a title with a higher class code *following or subject to a promotional examination* shall receive a salary increase equal to at least one increment in the salary range of the former title plus the amount necessary to place them on the next higher step in the new range (emphasis added). The appellants were appointed to the title of SDS2,

provisionally pending a promotional examination. Therefore, as their appointments to the higher title were subject to a promotional examination, *N.J.A.C.* 4A:3-4.9(b)1 applies. As such, it was unnecessary for the appellants' appointments to also meet the requirements of *N.J.A.C.* 4A:3-4.9(b)4. Additionally, *N.J.A.C.* 4A:3-4.9(e) does not apply since the appellants met the requirements of *N.J.A.C.* 4A:3-4.9(b). Consequently, their salaries upon their promotion should have calculated pursuant to *N.J.A.C.* 4A:3-4.9(b).

### ORDER

Therefore, it is ordered that these appeals be granted and Michael Gibilisco, Debra Goeke and Stephen Mayer's records be corrected to reflect the decision above. It is also ordered that the appellants receive differential back pay from the effective date of their appointments to the title of Software Development Specialist 2 until their salary is changed in accordance with this decision.

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 15TH DAY OF AUGUST, 2018



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