



STATE OF NEW JERSEY

In the Matter of Suzanne Gaffney,
Division of Developmental
Disabilities

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

CSC Docket Nos. 2024-2520, *et al.*

List Removal Appeals

ISSUED: February 26, 2025 (SLK)

Suzanne Gaffney appeals the decisions to remove her name from the Principal Community Program Specialist (PS8740K) and Quality Assurance Specialist Health Services (PS5447K), Division of Developmental Disabilities, Department of Human Services eligible lists for being outside of the organizational unit scope. These appeals have been consolidated due to common issues presented.

The appellant took the promotional examination for Principal Community Program Specialist (PS8740K), Division of Developmental Disabilities, which had a May 23, 2022, closing date and was open to unit scope K430, achieved a passing score, and was ranked on the subsequent eligible list. The (PS8740K) eligible list expires on August 30, 2026. Additionally, the appellant took the promotional examination for Quality Assurance Specialist Health Services (PS5447K), Division of Developmental Disabilities, which had a July 22, 2019, closing date and was open to unit scope K430, achieved a passing score, and was ranked on the subsequent eligible list. The list (PS5447K) eligible list expires on June 1, 2025. The appellant's position as a Habilitation Plan Coordinator was reassigned¹ to unit scope K415, effective January 27, 2024.

¹ The parties refer to the appellant's position movement as a "lateral transfer." However, as it was a movement within the same appointing authority and her title did not change, her movement is considered a reassignment under *N.J.A.C. 4A:4-7.2*.

Regarding the Principal Community Program Specialist (PS8740K) examination, initially, certification (PS231912) was issued, and the appellant was retained on the list as higher ranked eligibles were appointed. Thereafter, certification PS240745 was issued on April 12, 2024. The first positioned candidate was removed for not being in the unit scope, the second positioned candidate was retained, interested in future certifications only, the third positioned candidate was appointed the appellant, the fourth positioned candidate, was removed for not being in the unit scope, and the fifth position candidate was retained, interested in future certifications only. Additionally, certification PS240770 was issued on April 17, 2024. The first positioned candidate was removed for not being in the unit scope, the second positioned candidate was retained as no appointments were made, and the appellant, the third positioned candidate, was removed for not being in the unit scope.

Concerning the Quality Assurance Specialist Health Services (PS5447K) examination, certifications PS220714, PS221401, and PS231597 were issued, and the appellant was either not reachable for appointment or no appointments were made. On April 12, 2024, certification PS240747 was issued, and the first and seventh positioned candidates were appointed, and the candidates positioned in between were removed. The appellant was the fourth positioned candidate and removed for not being in the unit scope.

On appeal, the appellant asserts that she was not informed that her unit scope would change, and she would not have agreed to the reassignment if she had understood that her unit scope would change. She notes that she had been waiting for years for the opportunity to be promoted to Principal Community Program Specialist as she had served provisionally in that title in 2012, but she was not reachable on the Civil Service eligible list for a permanent appointment at that time, which led to her position being returned to Habilitation Plan Coordinator. The appellant presents that she interviewed for a provisional appointment as a Principal Community Program Specialist, but another candidate was selected. However, that other candidate did not pass the Civil Service test but remains in the position. She indicates that in April 2024, she received two certification notices for a position as a Principal Community Program Specialist. However, even though she claims that she was the only candidate that remained on the eligible list, she was not interviewed. Further, it was only after the April certifications were issued when she first learned that her unit scope changed. Therefore, she inquired to human resources about the change and was advised it was changed because she was no longer in the K430 unit scope. Further, she asserts that the interoffice memorandum indicating the change was never sent to her. The appellant believes that the appointing authority violated the Rule of Three, and she reiterates that she would not have agreed to the reassignment if she knew it would have changed her unit scope and removed her from the subject Principal Community Program Specialist eligible list. She notes that she has filed a grievance since she was “skipped” while the provisional who did not pass the Civil Service test remains in the position. The appellant also believes that this

situation violates the Fair Work Act and the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy). Additionally, if she is unable to return to the K430 unit scope, she requests to be allowed to submit a late application for an examination that was open to the K415 unit scope in March 2024.

In response, the appointing authority submits an interoffice communication that was sent to the appellant on February 21, 2024, indicating that her unit scope was changed to K415 due to her “Lateral Transfer to Home & Community Based Waivers Unit, Paterson.” It highlights that the subject certifications for Principal Community Program Specialist were issued in April 2024, which was after the January 27, 2024, effective date of her reassignment to unit scope K415.

In reply, the appellant reiterates her belief that the “Rule of Three” was violated because the provisional who did not pass the test was able to remain in the position until she was able to be appointed as a Quality Assurance Specialist Health Services. Further, now that the former provisional is no longer in the Principal Community Program Specialist position, she states that there is now an opening, but the appointing authority has indicated that the position has been rescinded. The appellant argues that this “hoarding” by human resources is improper and violates the “Rule of Three.” Moreover, she states that human resources advised her to apply for positions that she was interested in and then when the positions were announced, they were not announced open to her unit scope. Additionally, the appellant states that she has dealt with workplace violence in which there is an open investigation for retaliation from appealing to the Civil Service Commission (Commission). She also states that she has a witness that is also being “blackballed” and retaliated against because she is her witness. Further, in regards to workplace bullying, she has relocated her floor and office due to constant issues with coworkers which all stems from violations of the “Rule of Three.”

Concerning the Quality Assurance Specialist Health Services (PS5447K) examination, both parties essentially make the same arguments that they made regarding the Principal Community Program Specialist (PS8740K) examination.

CONCLUSION

N.J.A.C. 4A:4-4.7(a)8 provides that an eligible may be removed due to discontinuance of the eligible’s employment in the unit scope to which a promotional examination was limited, except when the eligible has accepted a temporary or interim appointment in another unit scope. An employee who subsequently returns to the unit scope within current continuous service may request, in writing to an appropriate representative of the Commission, that his or her name be restore to the promotional list.

N.J.A.C. 4A:4-7.2 provides that a reassignment is the in-title movement of an employee to a new job function, shift, location or supervisor within the organizational unit.² Reassignments shall be made at the discretion of the head of the organizational unit. *See N.J.A.C.* 4A:4-7.7.

N.J.A.C. 4A:4-7.7 provides that transfers, reassignments or lateral title changes shall not be utilized as part of a disciplinary action, except when disciplinary procedures have been utilized. When an employee challenges the good faith transfer, reassignment or lateral title change, the burden of proof shall be on the employee.

N.J.S.A. 11A:4-8, *N.J.S.A.* 11A:5-6, and *N.J.A.C.* 4A:4-4.8(a)3ii (“Rule of Three”) allow an appointing authority to select any of the top three interested eligibles from a promotional list, provided that if the eligible who ranks first on a promotional list is a veteran, then a non-veteran may not be appointed.

N.J.A.C. 4A:7-3.1(a) provides, in pertinent part, that the State of New Jersey is committed to providing every State employee and prospective State employee with a work environment free from prohibited discrimination or harassment. Under this policy, forms of employment discrimination or harassment based upon the following protected categories are prohibited and will not be tolerated: race, creed, national origin, nationality, ancestry, age, sex/gender, 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.

N.J.A.C. 4A:4-6.3(b), in conjunction with *N.J.A.C.* 4A:4-4.7(d), provides that the appellant has the burden of proof to show by a preponderance of the evidence that an appointing authority’s decision to remove his or her name from an eligible list was in error.

In this matter, the appointing authority had a valid reason to remove the appellant from the Principal Community Program Specialist (PS8740K) and Quality Assurance Specialist Health Services (PS5447K) eligible lists as she was no longer in the announced unit scope at the time of her removals. *See N.J.A.C.* 4A:4-4.7(a)8. Regarding the appellant’s statement that she would not have accepted her reassignment if she had known that her unit scope would have changed and she would no longer be eligible for positions in the K430 unit scope, reassignments are made at the discretion of the head of the organizational unit, and her agreement was not required. *See N.J.A.C.* 4A:4-7.7. Additionally, there is no obligation under Civil

² *N.J.A.C.* 4A:4-7.1(a)1 indicates that the Department of Human Services is considered a single appoint authority, and thus, a single organization unit. As such, a movement in the same title to any location, division, facility, *etc.*, within the Department of Human Services can only be considered a reassignment.

Service law and rules that the appointing authority inform the appellant about her change in unit scope.

Concerning the appellant's statement that she has been waiting for years to be promoted to Principal Community Program Specialist since her temporary provisional appointment in that title in 2012, a provisional appointee can be removed at any time and does not have a vested property interest in the provisional title. In other words, a provisional employee has no automatic right or expectation of achieving permanent appointment to the position to which he or she is occupying. See *O'Malley v. Department of Energy*, 109 N.J. 309 (1987). Similarly, although the appellant was initially on the subject eligible lists, individuals whose names merely appear on a list do not have a vested right to appointment. See *In re Crowley*, 193 N.J. Super. 197 (App. Div. 1984), *Schroder v. Kiss*, 74 N.J. Super. 229 (App. Div. 1962). Therefore, even if the appellant's name had not been removed from the subject eligible lists and she had been reachable for appointment, the appointing authority would have had no obligation to appoint her under the "Rule of Three." See N.J.A.C. 4A:4-4.8(a)3ii. Also, even if her name had not been removed from the subject eligible lists, her name was the only name remaining on the subject eligible lists, and the positions had previously been occupied by a provisional, there is no obligation under Civil Service law and rules for an appointing authority to fill a vacant position. See *In the Matter of Institutional Fire Chief* (MSB, decided January 12, 2005).

Referencing the appellant's claim that the appointing authority violated the "Rule of Three," a review of the subject certifications does not indicate any violations. Regardless, as the appellant was no longer eligible for either position due to her change in unit scope, she has no claim in this regard. Similarly, the appellant was not "skipped" for the provisional, as the appellant was no longer eligible for the position.

Concerning the appellant's statements that the appointing authority violated the State Policy, the appellant has not presented any evidence that any of the appointing authority's actions violate Civil Service law and rules, were based on her membership in a protected class or were in retaliation for her involvement in another State Policy matter, or were otherwise based on illegal or invidious motivation. However, any claims that the appellant makes regarding workplace violence, bullying, retaliations, discrimination, or other similar claims must initially be filed with the appointing authority which can determine whether such claims merit investigation and if so, issue a determination. Moreover, if the appellant believes that the appointing authority's actions violate her union's collective negotiations agreement, she can file such claims via a contractual grievance to the appointing authority. Finally, the appellant has not presented any basis to allow her to file a late application for any examinations in her current unit scope, K415.

ORDER

Therefore, it is ordered that these appeals 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 26TH DAY OF FEBRUARY, 2025



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