

COMMONWEALTH OF PENNSYLVANIA

Cody L. Jones	:	State Civil Service Commission
	:	
v.	:	
	:	
Office of Administration, Executive Offices	:	Appeal No. 30495
	:	
Cody L. Jones <i>Pro Se</i>		Brian L. Hokamp Attorney for Office of Administration

ADJUDICATION

This is an appeal by Cody L. Jones challenging the Office of Administration, Executive Offices’ determination that he was not eligible for Administrative Officer 1 employment and removing his name from all referral lists for the position. A video hearing was held on September 28, 2020, via Skype for Business, before Commissioner Gregory M. Lane.

The Commissioners have reviewed the Notes of Testimony and exhibits introduced at the hearing. The issue before the Commission is whether the Office of Administration found appellant ineligible for Administrative Officer 1 employment and removed appellant’s name from all referral lists for the position due to a mistake of fact.

FINDINGS OF FACT

1. On December 20, 2019, the Office of Administration (hereinafter “OA”) advised appellant there was an error in previously deeming him eligible for Administrative Officer 1 employment and informed appellant he did not meet the minimum experience and training requirements (hereinafter “METs”) for the Administrative Officer 1 position and was determined to be ineligible. Comm. Ex. A; N.T. p. 79; AA Ex. 7.
2. The appeal was properly raised before this Commission and was heard under Section 3003(7)(ii) of Act 71 of 2018.
3. Appellant applied for Administrative Officer 1 employment during the job posting opening from October 7, 2019, to October 21, 2019. N.T. p. 63; AA Exs. 1, 2.
4. Within his application, appellant described his experience as a Clerk 2 from December 19, 2016 to April 2018, when he received a promotion to Clerk 3 employment. N.T. pp. 29, 32-33, 43; AA Ex. 2.

5. Appellant remained a Clerk 3 from April 2018 to February 24, 2020, when he became an Income Maintenance Caseworker for the Northumberland County Assistance Office, Department of Human Services. N.T. pp. 29, 32-33, 43; AA Ex. 2.
6. Appellant was awarded a bachelor's degree in Communication (Broadcasting) from Susquehanna University in 2011. N.T. p. 66; AA Ex. 2.
7. Appellant did not have two years of experience as a Clerk 3 when he applied for the position. N.T. p. 43
8. During December 2019, Angel Nieves received an email from an evaluator informing him of an inconsistency in appellant's eligibility for Administrative Officer 1 employment. N.T. p. 57.
9. Nieves learned that appellant had previously been ineligible for Administrative Officer 1 employment fourteen out of the sixteen times he applied. N.T. pp. 58-59.

10. Appellant was previously deemed eligible for Administrative Officer 1 employment twice due to an evaluator determining appellant's Clerk 2 experience as qualifying experience to meet the position's METs. N.T. p. 62.

11. Nieves conducted an evaluation of appellant's eligibility for Administrative Officer 1 employment by reviewing the position's METs, the Administrative Officer 1 job specification, the Clerk 2 job specification, the Clerk 3 job specification, the Evaluation Guide for the Administrative Officer 1 series (hereinafter "Evaluation Guide"), and appellant's application materials. N.T. pp. 64-65, 67-69, 71-72, 93; AA Exs. 1, 3, 4, 5, 6.

12. The Administrative Officer 1 position METs were "two years of experience in varied office management or staff work; and bachelor's degree; or any equivalent combination of experience and training." N.T. pp. 64-65; AA Ex. 1.

13. The Evaluation Guide defines office management and staff work as follows:

Experience at the paraprofessional level or above with responsibility for analyzing, making recommendations, reviewing, processing, researching, interpreting and/or coordinating office activities or work flow. Work may involve developing procedures, reviewing, processing, implementing or monitoring program information. Paraprofessional level responsibilities such as interpreting policies, procedures, and regulations or interviewing and evaluating clients in order to make a determination are acceptable. Also acceptable are activities such as work simplification, information management, records management, financial management, purchasing, public relations, etc. This level and type of work experience can be obtained from any type of office environment.

N.T. pp. 75-76; AA Ex. 4.

14. When reviewing appellant's application regarding his experience as a Clerk 2, Nieves confirmed appellant's information aligned with a Clerk 2's moderately complex clerical work. N.T. pp. 76-77; AA Exs. 2, 4.

15. Appellant's Clerk 2 experience did not fall within the Evaluation Guide's scope of paraprofessional level of work to meet the Administrative Officer 1 METs for varied office management or staff work. N.T. pp. 66, 76-77, 78, 101; AA Exs. 2, 4.
16. Appellant did not have the requisite two years of office management or staff work experience while employed as a Clerk 3 to meet the Administrative Officer 1 METs. N.T. p. 79; AA Exs. 1, 2, 4.
17. Nieves sent appellant a letter dated December 20, 2019 informing appellant he had ten days to challenge the ineligibility determination. Comm. Ex. A; N.T. p. 79; Ap. Ex; 9; AA Ex. 7.
18. Appellant did not provide any additional information to challenge the ineligibility determination within the ten-day time period. N.T. p. 82.
19. On January 2, 2020, Nieves sent appellant a letter advising him that he was removed from all referral lists for the Administrative Officer 1 job title because he was found ineligible for the position. Comm. Ex. B; N.T. pp. 82-83, 90; Ap. Ex. 10; AA Ex. 8.

20. On January 3, 2020, appellant sent Nieves additional information, including a letter of recommendation from his former supervisor, Nancy Dinkel, to challenge OA's ineligibility determination. N.T. pp. 83-85, 106-107; Ap. Exs. 5, 12; AA Ex. 9.
21. After reviewing appellant's additional information, Nieves concluded appellant still remained ineligible for Administrative Officer 1 employment. N.T. pp. 84-85.
22. On January 13, 2020, Nieves sent appellant a letter advising appellant that he still remained ineligible for Administrative Officer 1 employment. N.T. pp. 87-88; Ap. Ex. 11; AA Ex. 10.

DISCUSSION

The present appeal challenges the January 2, 2020 determination by the Office of Administration, Executive Offices (hereinafter "OA") in which OA reversed its initial eligibility determination, found appellant ineligible for Administrative Officer 1 employment, and removed appellant's name from all referral lists for the position. Comm. Exs. A, B. Appellant alleges OA's ineligibility determination and subsequent list removal determination were based upon a mistake of fact due to OA's erroneous interpretation of the facts of his experience as a Clerk 2

and Clerk 3. Specifically, appellant argues his experience as a Clerk 2 and Clerk 3 were sufficient to meet the minimum experience and training requirements (hereinafter “METs”) for Administrative Officer 1 employment. Comm. Ex. C.

In an appeal alleging discrimination, appellant bears the burden of establishing that the personnel action was due to discrimination. *Henderson v. Office of the Budget*, 126 Pa. Commw. 607, 560 A.2d 859 (1989) *petition for allowance of appeal denied*, 524 Pa. 633, 574 A.2d 73 (1990). Section 2704 of Act 71 of 2018 (hereinafter “Act 71”) provides:

An officer or employee of the Commonwealth may not discriminate against an individual in recruitment, examination, appointment, training, promotion, retention or any other personnel action with respect to the classified service because of race, gender, religion, disability or political, partisan or labor union affiliation or other nonmerit factors.

71 Pa.C.S. § 2704. As expressly provided for in this section, the Commission has jurisdiction over claims of discrimination involving numerous actions that occur in the merit system, including “recruitment,” as well as “examination.” 71 Pa.C.S. § 2704.

The provisions of Section 2704 are substantially the same as the provisions in Section 905.1 of Act 286 (71 P.S. § 741.905a), and both sections of the respective acts use virtually the same language.¹ In applying this language, these

¹ Section 905.1 provides:

905.1 Prohibition of Discrimination—No officer or employe[e] of the Commonwealth shall discriminate against any person in recruitment, examination, appointment, training, promotion, retention or any other personnel action with respect to the classified service because of political or religious opinions or affiliations because of labor union affiliations or because of race, national origin or other non-merit factors.

71 P.S. § 741.905a

provisions address both “traditional” and “procedural” discrimination. *Pronko v. Department of Revenue*, 114 Pa. Commw. 428, 439, 539 A.2d 456, 462 (Pa. Commw. Ct. 1988). “Traditional discrimination” encompasses claims of discrimination based on race, sex, national origin, or other non-merit factors. Discrimination based upon a non-merit factor includes claims of mistake of fact discrimination. *See State Correctional Institution at Albion v. Bechtold*, 670 A.2d 224 (Pa. Commw. Ct. 1996).

To establish a claim of mistake of fact, appellant must show OA’s decision was based upon an erroneous interpretation of the facts. *See State Correctional Institution at Graterford, Department of Corrections v. Goodridge*, 87 Pa. Commw. 527, 487 A.2d 1036 (1985); *and State Correctional Institution at Albion v. Bechtold*, 670 A.2d 224 (Pa. Commw. Ct. 1996). Where a decision is based upon an erroneous interpretation of the facts, the decision is based on a non-merit factor. *Bechtold*, 670 A.2d at 226 (holding removal of Corrections Officer Trainee based upon a mistaken factual assumption was based upon a non-merit factor, and therefore constitutes discrimination). In a mistake of fact case, appellant is not required to prove the appointing authority’s decision was motivated by discrimination, just that it was based upon mistaken factual information. *Goodridge*, 87 Pa. Commw. 527, 487 A.2d 1036; *Bechtold*, 670 A.2d 224. As noted previously, non-merit factor discrimination is expressly prohibited by the antidiscrimination provision of Act 71.

In support of his appeal, appellant testified on his own behalf. In response, OA presented the testimony of Human Resource Analyst 5 Angel Nieves.²

Appellant asserted OA made a mistake of fact when they did not consider his experience as a Clerk 2. N.T. p. 27. According to appellant, the Administrative Officer 1 Job Posting provided that a candidate would be responsible for functions of moderate complexity. Appellant stated since his work as a Clerk 2 would be defined as moderately complex clerical work, his experience as a Clerk 2 should qualify toward meeting the Administrative Officer 1 METs. N.T. pp. 27, 48.

Appellant described his experience toward meeting the position's METs. On December 19, 2016, appellant was employed as a Clerk 2 by the Department of Human Services until he received a promotion in April 2018 to Clerk 3 employment. Appellant continued his employment as a Clerk 3 from April 2018 until February 24, 2020. N.T. pp. 29, 32-33, 43. On February 24, 2020, appellant became an Income Maintenance Caseworker³ for the Northumberland County Assistance Office, Department of Human Services. N.T. p. 30.

Appellant asserted his experience as a Clerk 2 should have been considered as more complex than moderately complex clerical work. N.T. p. 31. Appellant was asked to independently create training manuals, oversee training of

² Nieves is employed as a Human Resource Analyst 5 within the Evaluation Division of OA's Bureau of Talent Acquisition. N.T. pp. 51, 55-56. Nieves has worked within the Commonwealth's Human Resource Analyst class since 1997. N.T. pp. 51-53. As a Human Resource Analyst 5, Nieves is responsible for the external evaluations and the evaluation process for the merit system positions throughout the Commonwealth. Nieves supervises evaluators within the Evaluation Division. N.T. pp. 56-57. Nieves also oversees the challenge process in which candidates who disagreed with their ineligibility determinations would have the opportunity to challenge OA's decision. N.T. p. 57.

³ As an Income Maintenance Caseworker, appellant is still in training. Pursuant to his responsibilities, appellant receives benefit requests for medical and food assistance from clients and determines whether they are eligible to obtain the benefits. N.T. p. 36.

his colleagues, and reorganize filing systems within different archives. Appellant believed “I think that puts me at a little bit of a higher rung than Clerk 2. Maybe Clerk 2 and a half.” N.T. p. 31. Appellant reported to a Clerk Supervisor 2 as a Clerk 2. N.T. p. 38.

In relation to his experience as a Clerk 3, appellant completed complex clerical work. Appellant performed data entries, conducted research, and managed incoming requests from law firms and insurance companies while working within the casualty unit. N.T. pp. 35-36. When appellant applied for Administrative Officer 1 employment, appellant did not have two years of experience as a Clerk 3. N.T. p. 43. Appellant reported to a Clerk Supervisor 3 as a Clerk 3. N.T. p. 39. Appellant’s experience as a Clerk 2 and as a Clerk 3 was within the appointing authority’s Bureau of Program Integrity. N.T. p. 41.

During December 2019, Nieves received an email from an evaluator informing him of an inconsistency in appellant’s eligibility for Administrative Officer 1 employment. N.T. p. 57. Nieves discovered appellant had applied for the Administrative Officer 1 position sixteen times. From these applications, appellant was deemed ineligible for Administrative Officer 1 employment fourteen out of the sixteen applications. Yet, appellant was deemed eligible twice. N.T. pp. 58-59. Nieves explained “in this instance, someone was reviewing an application, saw another application where the individual was qualified and had some concerns about that and brought it to my attention.” N.T. pp. 59-60. Consequently, Nieves began an evaluation of appellant’s application. At the time of the review, Nieves knew appellant had applied for the position, was deemed eligible, and had gone out on a referral list. N.T. p. 60.

Nieves discovered the evaluator deemed appellant initially eligible for Administrative Officer 1 employment by using appellant's Clerk 2 experience as qualifying to meet the position's METs. N.T. p. 62. In comparison, Nieves found appellant's ineligible applications were because appellant's Clerk 2 experience was not deemed as qualifying experience to meet the position's METs. N.T. p. 62.

The Administrative Officer 1 position METs were "two years of experience in varied office management or staff work; and bachelor's degree; or any equivalent combination of experience and training."⁴ N.T. pp. 64-65; AA Ex. 1. When he reviewed appellant's application for the Administrative Officer 1 position, Nieves confirmed appellant received a bachelor's degree in Communication (Broadcasting) from Susquehanna University in 2011, which satisfied one of the requirements of the position's METs. N.T. p. 66; AA Exs. 1, 2. Appellant's application regarding his Clerk 2 experience and duties were "[g]lobal and scan incoming documents before delivering to agents/investigators. Scan and archive prepared paper cases for the statement of claims creation unit. Enter data to complete estate and casualty discard letters to be sent to attorneys. Retrieve requested paper cases from archives." AA Ex. 2.

Nieves utilized the Administrative Officer 1 job specification, Clerk 2 job specification, and Clerk 3 job specification during his evaluation. N.T. pp. 67-69, 93; AA Exs. 3, 5, 6. The Clerk 2 job specification define the position's responsibilities as "moderately complex clerical work involving the processing of documents in a variety of functions." AA Ex. 5. Meanwhile, a Clerk 3 responsibilities are defined as "complex clerical work." AA Ex. 6. Nieves further

⁴ The Administrative Officer 1 job posting was open from October 7, 2019, to October 21, 2019. N.T. p. 63; AA Ex. 1.

used the Evaluation Guide for the Administrative Officer 1 series (hereinafter “Evaluation Guide”) to determine whether appellant’s experience as a Clerk 2 would be qualifying experience to meet the position’s METs.⁵ N.T. pp. 67, 71-72, 93; AA Ex. 4. Specifically, Nieves compared appellant’s application to the Evaluation Guide’s definition of office management and staff work. N.T. p. 74. The Evaluation Guide’s definition of office management and staff work is as follows:

Experience at the paraprofessional level or above with responsibility for analyzing, making recommendations, reviewing, processing, researching, interpreting and/or coordinating office activities or work flow. Work may involve developing procedures, reviewing, processing, implementing or monitoring program information. Paraprofessional level responsibilities such as interpreting policies, procedures, and regulations or interviewing and evaluating clients in order to make a determination are acceptable. Also acceptable are activities such as work simplification, information management, records management, financial management, purchasing, public relations, etc. This level and type of work experience can be obtained from any type of office environment.

N.T. pp. 75-76; AA Ex. 4. When reviewing appellant’s application regarding his experience as a Clerk 2, Nieves determined appellant’s information aligned with a Clerk 2’s moderately complex clerical work. As a result, Nieves concluded appellant’s Clerk 2 experience did not fall within the Evaluation Guide’s scope of paraprofessional level of work to meet the Administrative Officer 1 METs for varied office management or staff work. N.T. pp. 66, 76-77, 78, 101; AA Exs. 2, 4. Nieves explained while the complexity of the Administrative Officer 1 position is

⁵ An Evaluation Guide provides guidance pertaining to the duties, responsibilities, and experiences a candidate would need to qualify for a position’s METs. N.T. p. 72. Furthermore, an Evaluation Guide defines what should be considered as acceptable experience for a candidate to meet a position’s METs. N.T. pp. 74, 90. The Evaluation Guide used to assess appellant’s eligibility was created on October 15, 2018 within the Evaluation’s Division of the State Civil Service Commission prior to the enactment of Act 71 of 2018 and later adopted by OA. N.T. pp. 72-73; AA Ex. 4.

considered moderately complex, the required level of experience to meet the position's METs is complex clerical work. N.T. pp. 96-97, 100; AA Ex. 4. Nieves emphasized while appellant's experience as a Clerk 3 qualified, appellant did not have the requisite two years of office management or staff work experience while employed as a Clerk 3 to meet the Administrative Officer 1 METs. N.T. p. 79; AA Exs. 1, 2, 4.

After concluding appellant did not meet the Administrative Officer 1 METs, Nieves sent appellant a letter⁶ on December 20, 2019, informing him there was an error when OA determined he was eligible for the position and that he lacked the requisite experience. Comm. Ex. A; N.T. p. 79; Ap. Ex. 9; AA Ex. 7. Within the letter, Nieves notified appellant that he had an opportunity to challenge the ineligibility determination by providing additional information within ten days. Comm. Ex. A; N.T. p. 81; AA Ex. 7. Nieves testified appellant did not provide any additional information within ten days. N.T. p. 82. On January 2, 2020; Nieves sent a letter informing appellant that because he did not provide any additional information in response to his ineligibility determination, appellant's name was removed from all referral lists for the Administrative Officer 1 job title. Comm. Ex. B; N.T. pp. 82-83; Ap. Ex. 10; AA Ex. 8. Nieves explained once a candidate is deemed ineligible for a position and after the candidate has been given ten days to dispute the determination, the candidate is removed from the position's referral list. N.T. p. 90.

⁶ Nieves clarified that there was a typographical error in appellant's December 20, 2019, letter. The typographical error stated appellant had Clerk Typist 2 experience when it should have stated Clerk 2 experience. Comm. Ex. A; N.T. p. 81; AA Ex. 7.

On January 3, 2020, Nieves received a letter from appellant providing his challenge to OA's ineligibility determination. Even though he received appellant's letter after the ten-day timeframe, Nieves reviewed the information to see if appellant's newly provided information would change his determination. N.T. pp. 83-85; Ap. Exs. 5, 12; AA Ex. 9. Nieves acknowledges appellant correctly identified there was an error in the calculation of time OA provided him with acceptable experience as a Clerk 3. Nevertheless, Nieves testified appellant did not provide sufficient information that explained how his experience as a Clerk 2 would be classified as complex clerical experience instead of moderately complex clerical experience. N.T. pp. 84-85; Ap. Exs. 5, 12; AA Ex. 9. Nieves affirmed appellant's January 3, 2020 letter did not change his decision that appellant's Clerk 2 experience was moderately complex clerical experience and appellant remained ineligible for Administrative Officer 1 employment. N.T. p. 85.

On January 13, 2020, Nieves sent a letter to appellant informing him that he still remained ineligible for Administrative Officer 1 employment. Nieves explained how OA incorrectly calculated his time as a Clerk 3. While employed as a Clerk 3, appellant was on leave without pay (hereinafter "LWOP") for two and a-half months. Nieves testified appellant's LWOP did not count toward his qualifying experience as a Clerk 3. N.T. pp. 87-88; Ap. Ex. 11; AA Ex. 10. Nieves emphasized even if appellant's LWOP while employed as a Clerk 3 was considered as qualifying experience, appellant would still not have the requisite two years of office management or staff work experience to meet the Administrative Officer 1's METs. N.T. p. 88.

Rebutting Nieves' testimony, appellant contended his letter of recommendation from his former supervisor, Nancy Dinkel, while he was a Clerk 2 presents how his work as a Clerk 2 should be considered above moderately complex clerical work. N.T. p. 107; Ap. Ex. 12. Dinkel wrote the following:

[Appellant] was hired as [C]lerk 2 in the Third-Party Liability Unit. He was quickly promoted to a [C]lerk 3. He would be an asset to your Department. He has a quick mind and will do whatever is asked of him. He exceeded expectations in the TPL Unit by creating an instruction manual for creating letters and then training staff on the procedures in the manual. He also assisted with the scanning manual and training. He undertook the job of moving our file room, setting up a workable new room, organizing and labeling everything in the new file room which was a huge undertaking and much appreciated by supervisor and staff. If you give [appellant] a project he will come up with a detailed solution for the project that is easily understood by all. He thrives when given independent tasks and I wish only the best for him.

N.T. pp. 106-107; Ap. Ex. 12. Appellant acknowledged his letter of recommendation was not a part of his application for Administrative Officer 1 employment. N.T. p. 109. Appellant admitted that the letter of recommendation did not classify his work as being a class above a Clerk 2. N.T. p. 110.

Having carefully reviewed the record, the Commission finds appellant has not established OA's decision regarding his ineligibility was based upon mistaken factual information. In support of our conclusion, we find credible the testimony of Angel Nieves.⁷

⁷ It is within the purview of the Commission to determine the credibility of the witnesses. *State Correctional Institution at Graterford, Department of Corrections v. Jordan*, 505 A.2d 339, 341 (Pa. Commw. Ct. 1986).

There is no dispute that appellant's bachelor degree in Communication (Broadcasting) clearly met the Administrative Officer 1 METs. Furthermore, Nieves admitted appellant's experience as a Clerk 3 qualified toward the Evaluation Guide's definition for office management and staff work for the Administrative Officer 1 METs. Yet, appellant admitted, and Nieves credibly explained appellant did not meet the two-year time requirement to meet the position's METs as a Clerk 3. Therefore, the question before us is whether appellant's experience as a Clerk 2 qualified toward meeting the two-year time requirement for office management and staff work. Appellant asserted his independent experience as a Clerk 2, exemplified through his letter of recommendation, presented his experience as above the moderately complex clerical work described in the Clerk 2 job specification. Nevertheless, Nieves credibly explained how appellant's described experience as a Clerk 2 along with the Clerk 2 job specification did not meet the Evaluation Guide's definition for office management and staff work for the Administrative Officer 1 METs. While there are typographical and calculation errors within the December 20, 2019 letter notifying appellant of his ineligibility, Nieves credibly testified how these errors did not affect OA's ineligibility determination or appellant's subsequent list removal. Once appellant was deemed ineligible, Nieves credibly explained appellant was removed from the referral list for the position. Thus, appellant has failed to prove how OA's ineligibility determination and list removal was based upon mistaken factual information. *Goodridge, supra*. Accordingly, we enter the following:

CONCLUSION OF LAW

Appellant has failed to present evidence establishing discrimination violative of Section 2704 of Act 71 of 2018.

ORDER

AND NOW, the State Civil Service Commission, by agreement of its members, dismisses the appeal of Cody L. Jones challenging the Office of Administration, Executive Offices' determination that appellant was not eligible for Administrative Officer 1 employment, and removing appellant's name from all referral lists for the position, and sustains the action of the Office of Administration, Executive Offices in the determination that Cody L. Jones was not eligible for Administrative Officer 1 employment and removing appellant's name from all referral lists for the Administrative Officer 1 position.

State Civil Service Commission

Gregory M. Lane
Commissioner

Bryan R. Lentz
Commissioner

Mailed: 1/28/21