

COMMONWEALTH OF PENNSYLVANIA

Cassandra E. McIlwain : State Civil Service Commission
:
v. :
:
Allegheny County Department of :
Human Services : Appeal No. 30735

Elizabeth A. Tuttle Biannely Diaz Wilk
Attorney for Appellant Attorney for Appointing Authority

LaTari Mitchell
Indispensable Party¹

Biannely Diaz Wilk
Attorney for Indispensable Party

ADJUDICATION

This is an appeal by Cassandra E. McIlwain challenging her non-selection for promotion to County Casework Supervisor employment with the Allegheny County Department of Human Services. A hearing was held on April 26, 2022, via video, before Commissioner Gregory M. Lane.

The Commissioners have reviewed the Notes of Testimony and exhibits introduced at the hearing, as well as the Briefs submitted by the parties. The issue before the Commission is whether appellant established her non-selection for promotion was motivated by discrimination.

¹ In recognition of the due process requirements noted in *Jefferson County Assistance Office, Department of Public Welfare v. Wolfe*, 136 Pa. Commw. 115, 582 A.2d 425 (1990), the individual currently occupying the challenged position was given the opportunity to participate in the proceedings. Comm. Exs. C, C-1. LaTari Mitchell was present and participated in the proceedings. Comm. Exs. C-1, D-1; N.T. pp. 98-115.

FINDINGS OF FACT

1. On May 7, 2021, appellant was notified of her non-selection for promotion to County Casework Supervisor employment with the appointing authority. Comm. Exs. A, E; N.T. pp. 47, 119.
2. The appeal was properly raised before this Commission and was heard under Section 3003 (7)(ii) of Act 71 of 2018. Comm. Ex. D.
3. Appellant is currently employed with the appointing authority as a Caseworker 2. She has been a Caseworker 2 for over twenty-three years. Appellant has never received any disciplinary actions during her employment. Comm. Ex. E; N.T. pp. 21-22, 26, 38.
4. From April 2, 2021, through April 16, 2021, the internal notice and job posting for the County Casework Supervisor position was open. Comm. Ex. E; N.T. pp. 127, 135.
5. On April 8, 2021, appellant applied for the County Casework Supervisor position. Comm. Ex. E; N.T. p. 30; Ap. Ex. 1

6. Appellant's application reflected her nineteen years of experience in the Termination of Parental Rights unit as a Caseworker 2. N.T. pp. 30, 43-44, 64, 66, 67-69; Ap. Ex. 1.
7. Appellant's application did not show she held a supervisory position at the time she applied for the County Casework Supervisor position. N.T. p. 139; Ap. Ex. 1.
8. LaTari Mitchell applied for the County Casework Supervisor position on April 9, 2021.² N.T. p. 107; AA Ex. 5 (p. 4).
9. Mitchell's application showed her work experience as a County Casework Supervisor for the family services unit. N.T. p. 108; AA Ex. 5 (p. 2).
10. After the internal notice closed, Regional Office Director Tracey Nichol received the list of eligible candidates on April 19, 2021. N.T. p. 136; AA Ex. 2.

² On the Commission's Public Hearing Notice, the Indispensable Party's name is spelled Latari Mitchell. Comm. Ex. D. Throughout the hearing and presently recorded in the transcript, Mitchell's name is spelled LaTari. For the purpose of this adjudication, the Commission will proceed with the later spelling.

11. There were nine candidates, including appellant, who were eligible and qualified for the position. N.T. pp. 39, 119, 137-138; AA Ex. 2.
12. Of the nine candidates, three candidates, including Mitchell, held supervisory positions. N.T. pp. 119-120, 138, 141, 150, 159; AA Exs. 2, 3.
13. Nichol decided to select the three candidates holding supervisory positions to be interviewed first. N.T. pp. 119, 120, 141-142.
14. Appellant did not receive an interview for the position. Comm. Ex. E; N.T. pp. 119-120, 141, 150, 159.
15. The appointing authority has a common practice that allows candidates who hold supervisory positions to receive interviews first even when there is no supervisory requirement for the position. N.T. pp. 160, 162.
16. If the candidates with supervisory positions were not strong candidates after their interviews, then the remaining candidates, including appellant, would have received an interview. N.T. pp. 141, 150.

17. On May 3, 2021, Nichol selected and scheduled Alec Finochio, Lisa Wierzbowski, and LaTari Mitchell to be interviewed for the County Casework Supervisor position on May 5, 2021. N.T. pp. 141-142, 149; AA Ex. 3.

18. After Mitchell's interview on May 5, 2021, Nichol selected Mitchell to fill the County Casework Supervisor position because of how Mitchell articulated her supervisory experience, leadership, and organizational skills as a County Casework Supervisor. Comm. Ex. E; N.T. pp. 146-147, 149; AA Ex. 4.

DISCUSSION

The issue in the present appeal is whether appellant established her non-selection for promotion to County Casework Supervisor employment with the appointing authority was motivated by discrimination. Specifically, appellant alleges the appointing authority's determination to not select her was motivated by retaliation and failure to adhere to its own hiring rules. Comm. Ex. B.

In an appeal alleging discrimination, the burden of presenting evidence in support of all allegations of discrimination lies with the appellant. *Nosko v. Somerset State Hospital*, 139 Pa. Commw. 367, 370-371, 590 A.2d. 844, 846 (1991).

Accordingly, the sole question for determination by this Commission is whether appellant has presented evidence sufficient to establish her claims of discrimination.

Section 2704 of Act 71 of 2018 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 non-merit factors.

71 Pa.C.S.A § 2704.³ The prohibition set forth in this section encompasses two general types of discrimination. First, “traditional discrimination” encompasses claims of discrimination based on race, gender, religion, disability, political, partisan or labor union affiliation, or other non-merit factors; and second, “technical discrimination” involves a violation of procedures required pursuant to the Act or related Rules. *Price v. Luzerne/Wyoming Counties Area Agency on Aging*, 672 A.2d 409, 411 n. 4 (Pa. Commw. Ct. 1996), citing *Pronko v. Department of Revenue*, 114 Pa. Commw. 428, 539 A.2d 462 (1988). In the instant matter, this appeal involves claims of traditional discrimination and technical discrimination.

³ 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. Section 905.1 provides:

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.

1 P.S. § 741.905a.

In support of her claims, appellant testified on her own behalf. The appellant and the appointing authority also called the following in support of their cases in chief: Casework Supervisor Wendy Dunbar-Kraus,⁴ Caseworker 2 Ruth Szpanka,⁵ Regional Office Director Tracey Nichol,⁶ Deputy Director Jacki Hoover,⁷ Caseworker 2 Vicki Naccarato,⁸ and Casework Supervisor Tim Jashinski.⁹ Indispensable party LaTari Mitchell provided testimony, as well.¹⁰

Appellant is currently employed with the appointing authority as a Caseworker 2. Comm. Ex. E; N.T. pp. 21-22, 26. She has been a Caseworker 2 for over twenty-three years. N.T. p. 22. Appellant has never received any disciplinary actions during her employment. N.T. p. 38. Appellant previously worked in the Termination of Parental Rights (hereinafter “TPR”) unit as a Caseworker 2. N.T.

⁴ Wendy Dunbar-Kraus is employed a Casework Supervisor for the appointing authority’s permanency department. N.T. p. 76.

⁵ Ruth Szpanka is employed by the appointing authority as a Caseworker 2 in the permanency department as a representative for the adoption services office. N.T. p. 85. Szpanka recalled she has worked with appellant since appellant came to the appointing authority. N.T. p .87.

⁶ Tracey Nichol is employed as a Regional Office Director. Specifically, Nichol is the Regional Office Director for the appointing authority’s south office and is the acting Regional Office Director for the permanency department. N.T. p. 117. She has held the Regional Office Director position for over twenty years. N.T. p. 117.

⁷ Jacki Hoover is employed by the appointing authority as a Deputy Director of the Department of Human Services Office of Children Youth and Families. N.T. p. 156. She has held this position for over twenty-seven years. N.T. p. 156.

⁸ Vicki Naccarato is employed by the appointing authority as a Caseworker 2 in the permanency department. N.T. pp. 170, 176.

⁹ Tim Jashinski is employed by the appointing authority as a Casework Supervisor. N.T. p. 186. Jashinski became Casework Supervisor for the TPR unit in 2017. N.T. p. 189.

¹⁰ Mitchell is employed by the appointing authority as a County Casework Supervisor for the appointing authority’s TPR unit. N.T. pp. 98, 101. Prior to being hired as a County Casework Supervisor, Mitchell was a County Casework Supervisor for the appointing authority’s Ongoing Services Unit. N.T. p. 99. Mitchell has been working for the appointing authority for over fifteen years. N.T. p. 99.

p. 26. While working in the TPR unit, appellant was responsible for reviewing children, youth, and family records. Based on her review, appellant would create and file petitions to terminate parental rights of children in foster care. N.T. p. 27.

Prior to her application for the County Casework Supervisor position and throughout the hiring process, appellant raised complaints against Clinical Manager Angela Filotei.¹¹ N.T. pp. 47, 55. Specifically, appellant complained about how Filotei mistreated herself and her fellow co-workers and how there was a conflict of interest between Filotei and her spouse, who worked as a paralegal in the adoption legal unit that files the TPR unit's documents.¹² N.T. pp. 48-49.

Regional Office Director Nichol became aware of the conflict between Filotei and the TPR unit's staff when Casework Supervisor Jashinski informed her in April 2021. N.T. p. 127. Nichol testified she received appellant's complaints concerning Filotei's conflict of interest, as well.¹³ N.T. pp. 49-50, 121.

Meanwhile, from April 2, 2021 through April 16, 2021, the internal notice and job posting for the County Casework Supervisor position was open.¹⁴ Comm. Ex. E; N.T. pp. 127, 135. Appellant applied for the County Casework

¹¹ On May 21, 2021, appellant filed a formal complaint against Filotei. N.T. pp. 53-54; Ap. Ex. 3. Appellant acknowledged her formal complaint was filed after she received notice of her non-selection. N.T. p. 55; Ap. Ex. 3.

¹² Casework Supervisor Dunbar-Kraus, Caseworker 2 Szpanka, and Caseworker 2 Naccarato testified they were aware of appellant's complaints against Filotei. N.T. pp. 79-81, 87-88, 177.

¹³ Nichol was aware that appellant filed a formal complaint against Filotei in June 2021 but did not know the outcome of the complaint. N.T. pp. 150-151.

¹⁴ To qualify as a candidate for the County Casework Supervisor position, the minimum experience and training requirements were as follows: 1) be a resident of Pennsylvania; and 2) have two years of professional experience in public or private social work and a bachelor's degree with major course work in sociology, social welfare, psychology, gerontology, criminal justice, or other related social sciences; OR any equivalent combination of experience and education which includes 12 college credits in sociology, social welfare, psychology, gerontology, criminal justice, or other related social sciences. AA Ex. 1.

Supervisor¹⁵ position on April 8, 2021. Comm. Ex. E; N.T. p. 30. At the time of her application, appellant had nineteen years of experience in the TPR unit as a Caseworker 2. N.T. pp. 30, 64. Appellant also is a resident of Pennsylvania and had at least two years of professional experience in public social work. N.T. p. 37; Ap. Ex. 1.

Appellant's application reflected appellant's impressive experience a Caseworker 2 in the TPR unit.¹⁶ N.T. pp. 43-44; Ap. Ex. 1. Appellant's application showed appellant's most recent job experience and duties as a Caseworker 2 for the TPR unit. N.T. p. 66; Ap. Ex. 1 (p. 8). Specifically, appellant's experience included: reviewing case records to complete TPR referrals, attending TPR hearings, and providing testimony to move a child toward permanency. N.T. p. 67; Ap. Ex. 1 (p. 8). Appellant acknowledged her application and resume do not mention she holds a supervisory position. N.T. pp. 67-69; Ap. Ex. 1.

LaTari Mitchell applied for the County Casework Supervisor position on April 9, 2021. N.T. p. 107; AA Ex. 5 (p. 4). Mitchell confirmed her application accurately reflects her education and employment history. Mitchell noted her application showed her work experience as a County Casework Supervisor for the family services unit. N.T. p. 108; AA Ex. 5 (p. 2). As a County Casework Supervisor, Mitchell supervised five caseworkers, who had twenty cases and investigations at a time. She ensured her subordinate caseworkers understood how

¹⁵ A County Casework Supervisor's responsibilities and duties include the following: ensuring all casework duties are completed in a timely manner while adhering to state standards; supervising cases and caseworkers; and reviewing filings for child services. N.T. pp. 123-124. For example, a County Casework Supervisor for the TPR unit would supervise, oversee, and review cases and court filings. N.T. p. 124.

¹⁶ In her application, appellant attached three recommendation letters. The recommendation letters were from attorneys from the appointing authority's Adoption Legal Unit, Juvenile Court Project, and Adoption Legal Services Project describing her performance as a Caseworker 2. N.T. pp. 45-46; Ap. Ex. 1.

to navigate the appointing authority's systems, such as Safe Majors, Client View, and On Base. Mitchell emphasized how she encouraged her caseworkers and taught them how to prepare court filings, such as termination of parental rights petitions. N.T. p. 109; AA Ex. 5 (p. 2).

After the internal notice closed, Nichol received the list of eligible candidates on April 19, 2021. N.T. p. 136; AA Ex. 2. There were nine candidates, including appellant, who were eligible and qualified for the position. N.T. pp. 39, 119, 137-138; AA Ex. 2. Before she selected who would be interviewed, Nichol reviewed each eligible candidate's application. N.T. pp. 137-138; AA Ex. 2. Three of the nine eligible candidates held supervisory positions. N.T. p. 138; AA Ex. 2. Appellant did not hold a supervisory position at the time she applied for the County Casework Supervisor position. N.T. p. 139; Ap. Ex. 1.

On May 3, 2021, Nichol selected and scheduled Alec Finocchio, Lisa Wierzbowski, and LaTari Mitchell to be interviewed for the County Casework Supervisor position on May 5, 2021. N.T. pp. 119-120, 141-142, 149, 150, 159; AA Exs. 2, 3. On May 5, 2021, Nichol recommended Mitchell for the County Casework Supervisor position.¹⁷ Comm. Ex. E; N.T. p. 149; AA Ex. 4.

We now turn to appellant's traditional discrimination claim of retaliation. In analyzing claims of discrimination under Section 2704 of the Act, appellant has the burden of establishing a *prima facie* case of discrimination by producing sufficient evidence, if believed and otherwise unexplained, indicates that

¹⁷ Mitchell acknowledged that the TPR unit's forms are different than the forms she was familiar with in the family services unit. N.T. p. 110. As a result, Mitchell needed training to navigate through record reviews and gather information to provide forms to her subordinate caseworkers. N.T. p. 110. Mitchell also received Basic 66 training and paternity training for the TPR unit. N.T. p. 113.

more likely than not discrimination has occurred. 71 Pa.C.S.A. § 2704; *Department of Health v. Nwogwugwu*, 141 Pa. Commw. 33, 38, 594 A.2d 847, 850 (1991). The burden of establishing a *prima facie* case cannot be an onerous one. *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).

Once a *prima facie* case of discrimination has been established, the burden of production then shifts to the appointing authority to advance a legitimate non-discriminatory reason for the personnel action. If it does, the burden returns to appellant, who always retains the ultimate burden of persuasion, to demonstrate that the proffered merit reason for the personnel action is merely pretextual. *Henderson*, 126 Pa. Commw. at 614-615.

It is undisputed that appellant was not selected for an interview and was not promoted to the County Casework Supervisor position.¹⁸ Comm. Ex. E; N.T. pp. 47, 119. Appellant argued that her non-selection was motivated by retaliation for raising and filing complaints against Clinical Manager Angela Filotei to Regional Office Director Nichol. N.T. pp. 38, 55, 66, 73; AA Ex. 1.

¹⁸ After her non-selection, appellant described how she continued to be adversely affected from raising complaints against Filotei. Specifically, after Mitchell was hired as the new County Casework Supervisor, appellant was transferred to the home study unit in June 2021 and continued to receive TPR case assignments. N.T. pp. 29-30. Appellant believed Nichol and Filotei convinced appellant's supervisor, Jashinski, to move appellant to the home study unit as an attempt to move appellant from the TPR unit because of her complaints. N.T. pp. 57-58. However, while appellant contends that her movement to the home study unit was motivated in connection to her complaints, Jashinski admitted that appellant's decision to join the home unit was voluntary and not as a result of Nichol or Filotei forcing her to move. N.T. pp. 191, 197. After appellant and another caseworker was assigned to the home study, the TPR unit only had three caseworkers to maintain the unit's caseload. As a result, Mitchell was instructed by Filotei to assign appellant and another caseworker TPR assignments until the new caseworkers for the TPR unit could be properly trained. N.T. pp. 102, 104, 193-194.

In response to appellant's argument, Nichol testified that based on the complaints she received, she held a meeting with the County Casework Supervisors without inviting Filotei to discuss Filotei's conflict with the TPR unit's staff. N.T. p. 127. Afterwards, Nichol scheduled a meeting on April 21, 2021 with the TPR unit's caseworkers, including appellant, to address their concerns about Filotei. N.T. pp. 127, 128. The purpose of the meeting was for the TPR unit's caseworkers, including appellant, to freely express their concerns regarding Filotei's behavior and conflict of interest without having anything held against them. N.T. pp. 50-51, 71, 127, 130. Nichol recalled how the staff, including appellant, expressed how they felt there was a conflict of interest between Filotei and the TPR unit and Filotei's unfair treatment toward them.¹⁹ N.T. p. 129.

Although appellant expressed her concerns to Nichol before and during the April 21, 2021 meeting, appellant learned that Nichol participated in the County Casework Supervisor hiring process and determined who received interviews after the hiring process. N.T. pp. 51, 119. Appellant contended that Nichol selected a candidate that would not have any relation or conflicts with Filotei. N.T. p. 62. Appellant asserted Nichol selected candidates who held supervisory positions to receive interviews, even though the position's internal posting did not require candidates to possess a supervisory position. N.T. pp. 38, 55, 66, 73.

¹⁹ After the April 21, 2021 meeting, Nichol met with Filotei to give her an opportunity to respond to the complaints raised by the caseworkers. After her meeting with Filotei, Nichol met with her direct supervisor, Jacki Hoover. As a result of their meeting, the review of the complaints, and Filotei's response, Filotei did not have direct supervision of caseworkers while working as a Clinical Manager. Instead, in June 2021, Nichol would have direct supervision over the staff at the law department, including the permanency unit, to mitigate any issues. N.T. p. 125, 130-133.

Nichol admitted that she was not required to interview candidates with supervisory positions first.²⁰ N.T. p. 152. Additionally, Nichol acknowledged she was able to select any eligible candidate to receive an interview regardless of their supervisory experience. N.T. pp. 121, 151, 153. Nevertheless, Nichol explained she selected the first three candidates because the appointing authority has a common practice that permitted her to interview candidates who held supervisory positions before candidates who did not hold supervisory positions. N.T. pp. 141-142. Nichol acknowledged if the first three candidates were not strong candidates for the position, she would have interviewed the remaining candidates, including appellant. N.T. pp. 141, 150. Nichol admitted her decision to not offer appellant an interview happened after the April 21, 2021 meeting. N.T. p. 152. Yet, Nichol emphasized that neither appellant's complaints about Filotei nor the conflict between the TPR unit and the legal department factored into her decision to not interview appellant. N.T. pp. 146, 148, 167.

Additionally, Nichol further explained why she selected Mitchell for the County Casework Supervisor position. After Mitchell completed her interview, Nichol "felt strongly that LaTari was what we were looking for in that unit and would be a great asset to the permanency department." N.T. p. 146. Notably, Nichol recalled how Mitchell articulated her understanding of laws and regulations, provided examples of her strong leadership and organizational skills, and demonstrated how she supervised and interacted with caseworkers as a County Casework Supervisor. N.T. p. 147.

²⁰ Nichol acknowledged she hired candidates who did not have supervisory experience or held supervisory positions into County Casework Supervisor positions. N.T. p. 120. Nichol confirmed that she selected to hire Dunbar-Kraus into a County Casework Supervisor position when she did not have any supervisory experience. N.T. p. 122.

Having carefully reviewed the record, we now turn to whether appellant established her non-selection was motivated by retaliation. A retaliation claim is a specific subcategory of the broader category of non-merit factor discrimination. In a retaliation case, appellant may establish a *prima facie* case by proving 1) she engaged in a protected activity; 2) the appointing authority was aware of the protected activity; 3) that subsequent to participation in the protected activity, appellant was subjected to an adverse employment action by the appointing authority; and 4) that there is a causal connection between participation in the protected activity and the adverse employment action. *Robert Wholey Co., Inc. v. Pennsylvania Human Rel. Commn.*, 606 A2d 982, 983 (Pa. Commw. 1992) citing *Brown Transport Corp. v. Pennsylvania Human Rel. Commn.*, 578 A.2d 555 (Pa. Commw. 1990). When participation in a protected activity and the occurrence of an adverse employment action occurs within close proximity in time, causation is inferred. *Id.* at 984.

It is undisputed that appellant engaged in a protected activity by raising complaints to Nichol regarding Filotei's conflict of interest with the TPR unit and Filotei's mistreatment of TPR staff. We note several complaints occurred prior to and throughout the hiring process for the County Casework Supervisor position. Because Nichol acknowledged receiving appellant's complaints and conducted the April 21, 2021 meeting, the appointing authority was aware of appellant's protected activity. After making these complaints, appellant not only did not receive an interview, but also was not selected for promotion to the County Casework Supervisor position. Considering her complaints were made in close proximity to her non-selection, causation is inferred. Therefore, we find appellant established a *prima facie* case of retaliation. *Robert Wholey Co., supra.*

Nevertheless, the appointing authority presented legitimate non-discriminatory reasons to support appellant's non-selection. Specifically, Nichol explained she selected candidates with supervisory experience to be interviewed first in conformance with the appointing authority's common practice. Upon conducting these interviews, Nichol recommended Mitchell because of how she articulated her leadership and organizational skills and provided examples of how she supervised caseworkers. Further Nichol acknowledged that if the candidates who held supervisory experience were not strong candidates, then appellant, along with the remaining candidates, would be interviewed. As such, we find Nichol credible²¹ that appellant's complaints about Filotei's conflict of interest were not taken into consideration for non-selection. Indeed, appellant's complaints, along with the TPR unit's staff's concerns, were addressed in the April 21, 2021 meeting and resulted in Filotei relinquishing her supervision of caseworkers. Although appellant's complaints regarding Filotei's conflict of interest and the timing of the County Casework Supervisor hiring process were close in proximity, Nichol and Hoover's credible explanation reveal they were two separate, unrelated events. Therefore, we find the appointing authority established merit-related reasons to not select appellant were not rebutted as pretextual. *Henderson, supra*.

We now turn to whether appellant established her non-selection was motivated by technical discrimination. To succeed in a technical discrimination claim, appellant must establish there was a technical violation of Act 71 of 2018, Regulations or related policies. When there is an allegation of technical

²¹ 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).

discrimination, no showing of intent is required. There must be evidence, however, to show appellant was harmed by the technical noncompliance or that because of the peculiar nature of the procedural impropriety that he or she could have been harmed but there is no way to prove that for certain. *Pronko*, 114 Pa. Commw. at 439, 539 A.2d at 462.

In support of appellant's technical discrimination claim, appellant argued the appointing authority only selected to interview candidates with supervisory positions despite the position's internal notice lacking a requirement for a candidate to be a supervisor to be considered for the County Casework Supervisor position. N.T. pp. 38, 73; AA Ex. 1.

In response, Hoover and Nichol explained the appointing authority has a common practice to interview candidates with supervisory positions first even when the job posting and notice does not require a candidate to possess a supervisory position.²² N.T. pp. 160, 162, 165. The reason the appointing authority has the common practice to interview supervisors first is because supervisors hold the necessary skills and experiences in supervising casework staff. N.T. p. 165. Nichol confirmed the appointing authority does not have a hiring rule that states only supervisors should be interviewed for a supervisory position. N.T. p. 121.

Hoover further noted the internal notice for the County Casework Supervisor position lists the following available options to fill the position: promotions without examination, transfers, demotions, reinstatements,

²² Regarding the County Casework Supervisor hiring process, Hoover recalled Nichol asking her if it was the appointing authority's common practice to interview supervisors first. Hoover consulted with Human Resources Director Jamie Regan, who confirmed it was within the appointing authority's guidelines to interview supervisors first. N.T. p. 165.

reassignments, and civil service lists. N.T. p. 163; AA Ex. 1. Hoover explained a lateral move is when an employee moves from their position to a similar position, such as supervisor to supervisor or manager to manager. N.T. p. 164. Nichol confirmed the appointing authority is permitted to conduct lateral movements between positions within itself. N.T. p. 153. Nichol emphasized a County Casework Supervisor transitioning into a new unit would know how to lead and supervise a unit's caseworkers, how to address timeframes, and how to apply the appointing authority's and the court's regulations. N.T. pp. 144-145. As a result, Nichol testified Mitchell's selection was a lateral movement between units. N.T. p. 153.

Upon review of the record, we note appellant has not cited to the Act or Rules in support of her technical discrimination claim. Instead, appellant argued that appointing authority's decision to only select candidates who had supervisory positions for interviews created a procedural impropriety because the County Casework Supervisor internal notice did not require candidates to be supervisors to be qualified as eligible candidates. As a result, appellant argues the appointing authority's decision to only select candidates who had supervisory positions resulted in her non-selection.

While the internal notice for the County Casework Supervisor position does not require a candidate to have supervisory experience to be an eligible candidate, Nichol and Hoover credibly presented how the appointing authority abided by its own common practice to select candidates who had supervisory positions to be interviewed first. Moreover, an appointing authority is permitted to

have an employee appointed to a position through a reassignment. “An appointing authority may reassign an employee from one position to another in the same job classification or in a similar job classification for which the employee qualifies.” 4 Pa. Code § 604.5.

Here, Nichol and Hoover credibly described how the appointing authority hired Mitchell through the recruitment method of a reassignment, which was one of the available options for filling the County Casework Supervisor. Specifically, Mitchell, a former County Casework Supervisor for the appointing authority’s family services unit, was reassigned as a County Casework Supervisor for the TPR unit. Because the appointing authority selected the candidates pursuant to its own common practice and hired Mitchell through an appropriate recruitment method, *i.e.*, reassignment, we find the appointing authority did not engage in technical noncompliance or procedural impropriety. *Pronko, supra*.

SUMMARY

The Commission finds that while appellant established a *prima facie* case of retaliation, the appointing authority established legitimate non-discriminatory reasons to support appellant’s non-selection. The appellant did not rebut these legitimate non-discriminatory reasons as pretextual. The Commission further finds the appointing authority did not engage in either technical noncompliance or procedural impropriety by selecting candidates who held supervisory positions for interviews for the County Casework Supervisory position first. 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 Cassandra E. McIlwain challenging her non-selection for promotion to County Casework Supervisor with the Allegheny County Department of Human Services, and sustains the action of the Allegheny County Department of Human Services in the non-selection of Cassandra E. McIlwain to County Casework Supervisor.

State Civil Service Commission

Maria P. Donatucci
Chairwoman

Gregory M. Lane
Commissioner

Bryan R. Lentz
Commissioner

Mailed: November 22, 2022