

COMMONWEALTH OF PENNSYLVANIA

LaSean R. Gardenhire : State Civil Service Commission
 :
 v. :
 :
 Office of Administration, :
 Executive Offices : Appeal No. 30805

LaSean R. Gardenhire Jonathan W. Kunkel
Pro Se Attorney for Appointing Authority

ADJUDICATION

This is an appeal by LaSean R. Gardenhire challenging the determination by the Office of Administration, Executive Offices that she was not eligible for promotion without examination for Clerical Supervisor 1 employment. A hearing was held on May 31, 2022, via video, before Commissioner Gregory 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’s determination that appellant was not eligible for the Clerical Supervisor 1 position was the result of discrimination.

FINDINGS OF FACT

1. By email dated August 18, 2021, appellant was informed she was not eligible for the position of Clerical Supervisor 1 – Allegheny County Assistance Office – Institution Related Eligibility District (hereinafter, “CAO-IREL”) (Job No. I-2021-00673) because she did not provide all the required application materials. Comm. Ex A.
2. The appeal was properly raised before the Commission and was heard under Section 3003(7)(ii) of Act 71 of 2018.
3. Appellant has been employed at the Department of Human Services – IRED as a Clerk Typist 2 since July 2019. N.T. pp. 54-56.
4. Since May 2021, appellant was working out of class as an Acting Clerical Supervisor 1. N.T. p. 41.
5. On August 2, 2021, the Department of Human Services, Allegheny County posted a position for a Clerical Supervisor 1 – Allegheny CAO-IREL, (Job No. I-2021-00673). OA Ex. 1.

6. The posting for Clerical Supervisor 1 was an internal posting.¹ N.T. p. 117; OA Ex. 1.
7. On or about August 2021, appellant applied for the Clerical Supervisor 1 – Allegheny CAO-IREC position, (Job No. I-2021-00673). Comm. Ex. A; OA Exs. 1, 2.
8. OA determined appellant qualified for the promotion without examination (hereinafter, “PWOE”) recruitment method for the Clerical Supervisor 1 posting. N.T. pp. 117, 124.
9. To be eligible for the position of Clerical Supervisor 1, under the PWOE method of recruitment, an applicant must provide all required documentation. N.T. p. 103; OA Ex. 1, p. 2.
10. The Clerical Supervisor 1 – Allegheny CAO-IREC position, (Job No. I-2021-00673) posting provided the following information regarding what required materials must be submitted:

Individuals who apply to an internal posting for a promotion without exam must include a copy of their most recent regular or probationary

¹ An internal posting is a posting open to current Commonwealth employees and former Commonwealth employees. N.T. p. 115.

Employee Performance Review (EPR). Individuals who do not have an EPR must provide a statement to this effect with their application materials. *–(Please note that if you are selected for this position, this information will be confirmed with your supervisor.)* An electronic copy of your EPR can be obtained through ESS (www.myworkplace.pa.gov) in the “Personal” section by clicking on “Official Personnel File.”

OA Ex. 1, p. 3.

11. The Clerical Supervisor 1 posting also stated, “Failure to comply with the above application requirements will eliminate you from consideration for the position. Please use the contact information provided for additional information.” OA Ex. 1, p. 3.
12. At the time appellant applied for the Clerical Supervisor 1 position, appellant had received two Employee Performance Reviews (hereinafter, “EPR”). N.T. pp. 60-67; Ap. Exs. 5, 9; OA Exs. 3, 5.

13. On January 22, 2020, appellant signed her probationary EPR covering the rating period from August 17, 2019 to January 17, 2020. N.T. pp. 60-67; Ap. Ex. 5; OA Ex. 3.
14. On January 27, 2021, appellant signed her annual EPR covering the rating period from January 2020 to December 2020. N.T. pp. 60-67; Ap. Ex. 5; OA Ex. 5.
15. At the time appellant applied for the Clerical Supervisor 1 position, she had neither an electronic copy nor a hard copy of either of her two EPRs. N.T. pp. 47, 63-68, 82-83, 129.
16. Prior to submitting her application and the requested materials for the Clerical Supervisor 1 position, appellant spoke with James Utz² in Human Resources to ask where to obtain a copy of her EPR and how to submit it. N.T. pp. 41-44, 71-75.
17. Based on the information provided by James Utz, appellant went to the state website to obtain a copy of her most recent EPR from her “Official Personnel File.” N.T. p. 44.

² James Utz did not testify at the hearing.

18. The only EPR available in appellant's online "Official Personnel File" on the state website was appellant's 2019 probationary EPR. N.T. p. 44, 73.
19. Appellant attached her 2019 probationary EPR to her application for the Clerical Supervisor 1 position. N.T. p. 44.
20. Field Human Resource Analyst 2 Anya Brown³ was in charge of the Clerical Supervisor 1 – Allegheny CAO-IREC (Job No. I-2021-00673) job posting. N.T. p. 116.
21. Brown reviewed appellant's application, and determined appellant was not eligible because she failed to submit her most recent EPR. N.T. pp. 121-122.
22. Appellant met all eligibility criteria for the Clerical Supervisor 1 position other than failing to provide her most recent EPR. N.T. pp. 124-126.

³ In August 2021, Brown was a Human Resource Analyst 2.

23. Brown knew the EPR appellant submitted was not appellant's most recent because it was over one year old, and the Department of Human Services (hereinafter, DHS) rating period is January to December. N.T. p. 122.
24. Brown did not check appellant's "Official Personnel File" to verify if the submitted EPR was appellant's most recent EPR. N.T. pp. 122-123.
25. Appellant received a letter dated August 18, 2021 from Brown stating appellant failed to provide all the required application materials for the Clerical Supervisor 1 position. N.T. pp. 45-46, 111-113; Comm. Ex. A; OA Ex. 4.
26. On August 23, 2021, appellant contacted Brown by phone, and asked Brown what documents she had failed to provide. N.T. pp. 47-48, 129.
27. Brown told appellant she failed to provide her most recent EPR, and it can take up to six to seven months for EPRs to update in her "Official Personnel File" on the state website. N.T. pp. 45-48.

28. Appellant told Brown she did not have a hard copy of her most recent annual EPR, so Brown emailed appellant a copy of her most recent annual EPR. N.T. pp. 45-48, 129; Ap. Ex. 9.

DISCUSSION

The present appeal challenges the August 18, 2022 determination by the Office of Administration, Executive Offices (hereinafter “OA”) finding appellant ineligible for Clerical Supervisor 1 – Allegheny County Assistance Office – Institution Related Eligibility District (hereinafter, “CAO-IRE”) (Job No. I-2021-00673). Comm. Ex. A. Appellant alleges this determination was the result of discrimination on the grounds of mistake of fact. Comm. Ex. B. Specifically, appellant alleges she provided what she believed was her most recent Employee Performance Review (hereinafter, “EPR”) based on the information provided on the Clerical Supervisor 1 – Allegheny CAO-IRE (Job No. I-2021-00673) job posting, and the additional instructions provided by Human Resources. Comm. Ex. B.

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” and “examination.” 71 Pa.C.S. § 2704. Under Section 3003(7)(ii) of Act 71, the Commission has authority to convene hearings when an individual aggrieved by an alleged violation of Section 2704 files a timely appeal. 71 Pa.C.S. § 3003(7)(ii).

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.⁴ In applying this language, the courts have held these 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).

⁴ 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.

In support of her appeal, appellant testified on her own behalf. OA presented the testimony of Field Human Resource Analyst 2 Anya Brown.⁵ The evidence presented by appellant and OA is summarized below.

Appellant has been employed at DHS – IRED as a Clerk Typist 2 since July 2019. N.T. pp. 54-56. On August 2, 2021, the Department of Human Services, Allegheny County posted a position for a Clerical Supervisor 1 – Allegheny CAO-IRED District, (Job No. I-2021-00673). OA Ex. 1. The posting for Clerical Supervisor 1 was an internal posting.⁶ N.T. p. 117; OA Ex. 1. On or about August 2021, appellant applied for the Clerical Supervisor 1 – Allegheny CAO-IRED position, (Job No. I-2021-00673). Comm. Ex. A; OA Exs. 1, 2. At the time appellant applied for the Clerical Supervisor 1 position, she had been working out of class as an Acting Clerical Supervisor 1 since May 2021. N.T. p. 41.

OA determined appellant qualified for the promotion without examination (hereinafter, “PWOE”) recruitment method for the Clerical Supervisor 1 posting. N.T. pp. 117, 124. To be eligible for the position of Clerical Supervisor 1, under the PWOE method of recruitment, an applicant must provide all required documentation. N.T. p. 103; OA Ex. 1, p. 2. The Clerical Supervisor 1 – Allegheny CAO-IRED position, (Job No. I-2021-00673) stated:

Individuals who apply to an internal posting for a promotion without exam must include a copy of their most recent regular or probationary Employee Performance Review (EPR). Individuals who do not have an EPR must provide a statement to this effect with their application

⁵ In August, 2021, Brown was employed as a Human Resources Analyst 2 with the Health and Human Services OA Delivery Center. N.T. p. 113.

⁶ An internal posting is a posting open to current Commonwealth employees and former Commonwealth employees. N.T. p. 115.

materials. *—(Please note that if you are selected for this position, this information will be confirmed with your supervisor.)* An electronic copy of your EPR can be obtained through ESS (www.myworkplace.pa.gov) in the “Personal” section by clicking on “Official Personnel File.”

OA Ex. 1, p. 3. The Clerical Supervisor 1 posting also stated, “Failure to comply with the above application requirements will eliminate you from consideration for the position. Please use the contact information provided for additional information.” OA Ex. 1, p. 3.

At the time appellant applied for the Clerical Supervisor 1 position, appellant had received two Employee Performance Reviews (hereinafter, “EPR”). N.T. pp. 60-67; Ap. Exs. 5, 9; OA Exs. 3, 5. On January 22, 2020, appellant signed her probationary EPR covering the rating period from August 17, 2019 to January 17, 2020. N.T. pp. 60-67; Ap. Ex. 5; OA Ex. 3. On appellant’s probationary EPR, she received individual ratings of “Satisfactory” in each category, and an overall rating of “Satisfactory.” Ap. Ex. 5; OA Ex. 3. On January 27, 2021, appellant signed her annual EPR covering the rating period from January 2020 to December 2020. N.T. pp. 60-67; Ap. Ex. 9; OA Ex. 5. On appellant’s annual EPR, she received ratings of “Commendable” for “work results” and “communications,” and ratings of “Satisfactory” for the remaining categories. Ap. Ex. 9; OA Ex. 5. Appellant’s overall rating on her annual EPR was “Satisfactory.” Ap. Ex. 9; OA Ex. 5. At the time appellant applied for the Clerical Supervisor 1 position, she had neither an electronic copy nor a hard copy of either of her two EPRs. N.T. pp. 47, 63-68, 82-83, 129. Appellant explained her supervisor did place hard copies of her EPRs in appellant’s mailbox with instructions to sign them and return them to her

supervisor's mailbox. N.T. pp. 68-69. Appellant further testified, "...because I was kind of new still. So even getting it the second year, I really didn't know, you know But now that this happened, I know to keep your own copy." N.T. pp. 68-69.

Prior to submitting her application and the requested materials for the Clerical Supervisor 1 position, appellant contacted James Utz in Human Resources to ask where to get a copy of her EPR and how to submit it. N.T. pp. 41-44, 71-75. Appellant wanted to make sure she was filling everything out correctly, submitting everything correctly, and making sure she got her EPR. N.T. pp. 72, 74. Appellant testified Utz directed "me to this official personnel file. Like I didn't even know about this." N.T. p. 73. Based on the information provided by James Utz, appellant went to the state website to obtain a copy of her most recent EPR from her "Official Personnel File." N.T. p. 44. The only EPR uploaded to appellant's online "Official Personnel File" at the state website was appellant's 2019 probationary EPR. N.T. p. 44, 62, 73. On cross examination, appellant agreed her most recent EPR was her annual EPR she received eight months prior to applying. N.T. pp. 78-79. When asked by OA's counsel whether it even crossed her mind that the probationary EPR in her online "Official Personnel File" may not be her most recent, appellant stated, "So I did not think that...there was an EPR after the one that was on there. I just thought everything was updated. I just thought the state system was more accurate and updated, but I learned it wasn't." N.T. p. 79. Appellant attached her 2019 probationary EPR she obtained from her "Official Personnel File" to her application for the Clerical Supervisor 1 position. N.T. p. 44.

Field Human Resource Analyst 2 Anya Brown was in charge of the Clerical Supervisor 1 – Allegheny CAO-IREC (Job No. I-2021-00673) job posting. N.T. p. 116. Brown was responsible for referring candidates that applied,

determining their eligibility, and conveying a referral list to management so that they can properly interview the referred candidates. N.T. p. 117. Brown reviewed appellant's application, and determined appellant was not eligible because she failed to submit her most recent EPR. N.T. pp. 121-122. Brown testified she knew the submitted EPR was not appellant's most recent because it was over one year old and the DHS rating period is January to December. N.T. p. 122. Additionally, Brown testified she has her staff send memos to remind DHS supervisors and managers the EPRs are due at the end of the year. N.T. p. 122. Brown testified appellant met all other eligibility criteria except failing to submit her most recent EPR. N.T. pp. 123-126. Once Brown determined appellant was not eligible because she failed to submit her most recent EPR, Brown initiated a system generated notice to notify appellant of her ineligibility. N.T. p. 126; OA Ex. 2.

Appellant received a letter dated August 18, 2021 with Brown's name on it notifying appellant she failed to provide all the required application materials for the Clerical Supervisor 1 position. N.T. pp. 45-46, 111-113; Comm. Ex. A; OA Ex. 4. On August 23, 2021, appellant contacted Brown by phone, and asked Brown what documents she failed to provide. N.T. pp. 47-48, 129. Brown told appellant she failed to provide her most recent EPR, and it can take up to six to seven months for EPRs to update on the state website. N.T. pp. 45-48. Appellant told Brown she did not have a hard copy of her most recent annual EPR. N.T. pp. 45-48, 129; Ap. Ex. 9. Brown then emailed appellant a copy of her most recent annual EPR. N.T. pp. 45-48, 129; Ap. Ex. 9. Appellant met all eligibility criteria for the Clerical Supervisor 1 position other than failing to provide her most recent EPR. N.T. pp. 124-126.

At the conclusion of appellant's case-in-chief, OA made an oral Motion to Dismiss appellant's appeal arguing appellant failed to present a *prima facie* case of non-merit discrimination under section 3003(7)(ii) of Act 71 of 2018. N.T. p. 103. Ruling on this Motion was deferred pending review by the full Commission. N.T. p. 105. For the reasons set forth below, we deny OA's Motion to Dismiss.

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 anti-discrimination provision of Act 71.

OA's stated reason for finding appellant ineligible was she failed to provide all the required application materials, specifically, her most recent EPR. Both parties agree, appellant's most recent EPR was her 2020 annual EPR. Both parties also agree, appellant did not submit her 2020 annual EPR, but, instead, submitted her 2019 probationary EPR. These agreed upon facts, if taken in a vacuum, would result in our dismissal of appellant's appeal. We will not decide

appellant's appeal in a vacuum. The foundation of OA's position is built on the mistaken factual premise that appellant either had a copy of her 2020 annual EPR or she had sufficient information to access a copy of her 2020 annual EPR based on the information available to her at the time. We find, for the reasons below, appellant did not have copy of her 2020 EPR, and she did not have sufficient information to access a copy of her 2020 EPR.

We will first address why appellant did not have a copy of her 2020 EPR. Appellant testified she received and signed her 2020 annual EPR, and then returned it to her supervisor. N.T. pp. 68-69. Appellant explained she was new, and she did not think to keep a copy for herself, but she now knows to keep a copy for herself due to this situation. N.T. pp. 68-69. Conversely, Brown testified her general understanding at that time was clerk typists were given copies of their EPRs. N.T. pp. 127-128. Brown's understanding as to the EPR process for clerk typists was not based on direct observations or personal knowledge of appellant's particular situation. N.T. pp. 127-128. Further, OA presented no witnesses, such as appellant's supervisor, to rebut appellant's explanation. Additionally, if appellant had a copy of her 2020 annual EPR it would make no logical sense for her not to submit it because she received higher ratings on her 2020 annual EPR when compared to her 2019 probationary EPR.⁷ Ap. Exs. 5, 9; OA Exs. 3, 5. Accordingly, we find appellant did not have a copy of her 2020 annual EPR, and appellant's explanation as to why she did not have a copy of her 2020 annual EPR was both reasonable and credible.⁸

⁷ On appellant's probationary EPR, she received individual ratings of "Satisfactory" in each category, and an overall rating of "Satisfactory." Ap. Ex. 5; OA Ex. 3. On appellant's annual 2020 EPR, she received ratings of "Commendable" for "work results" and "communications," and ratings of "Satisfactory" for the remaining categories. Ap. Ex. 9; OA Ex. 5. Appellant overall rating on her annual 2020 EPR was "Satisfactory." Ap. Ex. 9; OA Ex. 5.

⁸ 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).

We will now turn to why appellant did not have sufficient information to access her 2020 annual EPR by looking at the information available to her at the time. The first source of information appellant had available was the Clerical Supervisor 1 posting itself. The posting states PWOE applicants, “must include a copy of their most recent regular or probationary Employee Performance Review (EPR),” and gives instructions that “[a]n electronic copy of your EPR can be obtained through ESS (www.myworkplace.pa.gov) in the “Personal” section by clicking on “Official Personnel File.” OA Ex. 1. The most obvious and reasonable purpose to include information about how to obtain an EPR is to provide applicants a means to obtain their most recent regular or probationary EPR if they do not have a copy of their most recent regular or probationary EPR. The posting does not state an applicant’s most recent regular or probationary EPR may not be available at the “Official Personnel File” due to a seven-month delay in uploading EPRs. Additionally, the posting provides no instructions as to what to do if an applicant’s most recent regular or probationary EPR is not uploaded to their “Official Personnel File.” Accordingly, the posting provides a means to obtain an applicant’s most recent EPR, but gives no warning the applicant’s “Official Personnel File” may not contain their most recent EPR.

The second source of information available to appellant were the instructions she received from James Utz in Human Resources. Appellant testified Utz directed “me to this official personnel file. Like I didn’t even know about this.” N.T. p. 73. Based on the information provided by James Utz, appellant went to the state website to obtain a copy of her most recent EPR from her “Official Personnel File.” N.T. p. 44. Again, appellant was not told her “Official Personnel File” may not contain her most recent EPR and there was a seven-month delay in uploading EPRs into her “Official Personnel File.” Also, appellant was not told what to do if

her most recent EPR was not uploaded to her “Official Personnel File.” Appellant was given the same information from James Utz as what she was provided in the Clerical Supervisor 1 posting.

Based on the information available to appellant at the time she applied for the Clerical Supervisor 1 position she did not have sufficient information to access her 2020 annual EPR because she was not informed her “Official Personnel File” may not contain her most recent EPR. First, the Clerical Supervisor 1 posting did not inform appellant her “Official Personnel File” may not contain her most recent EPR. Second, James Utz in Human Resources did not inform appellant her “Official Personnel File” may not contain her most recent EPR. Third, appellant was not aware there was a seven-month delay in uploading EPRs to employee’s “Official Personnel Files.” It is with this information, or lack of information, appellant followed the directions provided by OA and Human Resources to obtain her most recent EPR from her “Official Personnel Files.” Therefore, we find appellant credible when she testified, “So I did not think that...there was an EPR after the one that was on there. I just thought everything was updated. I just thought the state system was more accurate and updated, but I learned it wasn’t.” N.T. p. 79. Accordingly, we find OA’s determination appellant was ineligible for the Clerical Supervisor 1 position because she failed to provide all the required application materials was based on the mistaken factual premise appellant either had a copy of her most recent EPR or had sufficient information to access her most recent EPR.

We also question the purpose of requiring PWOE applicants to submit copies of their most recent EPRs when OA already has access to applicants most recent EPRs. N.T. pp. 137-138. Act 71 was enacted with the goal of modernizing the merit employment system to better meet the needs of the appointing authorities

and those seeking employment with the Commonwealth. Pennsylvania Senate Legislative Journal, 2018 Session, No. 26 (June 5, 2018), at 537. The purpose of Act 71 was “to create and sustain a modern merit system of employment within the Commonwealth workforce that promotes the hiring, retention and promotion of highly qualified individuals, ensuring that government services are efficiently and effectively delivered to the public.” 71 Pa.C.S. § 2102; *see also* 4 Pa. Code. 601.2(a)(expired March 12, 2022). To that end, systems for the evaluation of candidates must avoid procedures which result in erroneous determinations that arise from mistake of fact.

OA’s approach of finding job applicants ineligible for failing to submit materials OA already possess seems counter to the legislative intent of Act 71. In the present case, OA’s requirement resulted in an otherwise eligible candidate being eliminated on what can only be viewed as a technicality. The pointless nature of OA’s requirement is best illustrated when Brown testified to the following conversation with appellant after appellant received notification she was deemed ineligible for not providing all required materials:

[Appellant] had called and we spoke about her not being referred or her receiving that NEOGOV generated email regarding her not providing the necessary documentation to be referred for [an] interview. And I told her it was not her most recent [EPR]. And she said that she did not have it and I sent it to her.

N.T. p. 129. Accordingly, we find OA’s requirement to provide material already in OA’s possession unreasonable when measured against the stated goals of Act 71. *See Northwestern Youth Services, Inc. v. Com., Dept. of Public Welfare*, 620 Pa. 140, 156-158, 66 A.3d 301, 310-312 (2013)(holding guidance documents, such as manuals, interpretive memoranda, and staff instructions, may be disregarded where

the interpretation is unwise or violative of legislative intent). Here, appellant provided the information requested based on the information she had at the time. We find this information was sufficient. We further find a mistake of fact occurred when OA determined appellant was ineligible for not providing all required materials when appellant did not have those materials, appellant did not have sufficient information to access those materials, and OA already possessed those materials. Accordingly, we enter the following:⁹

CONCLUSION OF LAW

Appellant has presented 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, sustains the appeal of LaSean R. Gardenhire challenging the Office of Administration, Executive Office's determination that she was not eligible for Clerical Supervisor 1 employment, and overrules the Office of Administration,

⁹ Under Section 3003(8) of Act 71, where an appellant prevails in an appeal, the Commission has the express authority to fashion a remedy and issue an appropriate order to assure rights accorded to an individual under Act 71 are protected. 71 Pa.C.S. § 3003(8)(ii).

Executive Office's determination that LaSean R. Gardenhire was not eligible for Clerical Supervisor 1 employment. We hereby order the Office of Administration to include LaSean R. Gardenhire in the final round of interviews for the next available Clerical Supervisor 1 position in the Allegheny County Assistance Office.

State Civil Service Commission

Maria P. Donatucci
Chairwoman

Gregory M. Lane
Commissioner

Bryan R. Lentz
Commissioner

Mailed: November 22, 2022