

COMMONWEALTH OF PENNSYLVANIA

Jagbir Phogat : State Civil Service Commission
 :
 v. :
 :
 Office of Administration, :
 Executive Offices : Appeal No. 30807

Jagbir Phogat Kayla A. Hammond
Pro Se Anthony R. Holbert
 Attorneys for Office of Administration

ADJUDICATION

This is an appeal by Jagbir Phogat challenging the determination by the Office of Administration, Executive Offices that he was not eligible for Air Quality Engineering Trainee (Job No. CS-20212055-14000) employment. A hearing was held on March 10, 2022, via video, before Commissioner Bryan R. Lentz.

The Commissioners have reviewed the Notes of Testimony and exhibits introduced at the hearing, as well as the Letter Brief submitted by the appointing authority.¹ The issue before the Commission is whether the Office of Administration’s determination that appellant was not eligible for the Air Quality Engineering Trainee position was the result of discrimination.

¹ While appellant was afforded the opportunity to submit a Brief, he chose not to do so. N.T. pp. 133-136.

FINDINGS OF FACT

1. By email dated August 17, 2021, appellant was informed he did not meet the minimum experience and training requirements (hereinafter “METs”) for the position of Air Quality Engineering Trainee, Job No. CS-20212055-14000. 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. To be eligible for the position of Air Quality Engineering Trainee, Job No. CS-20212055-14000, an applicant must satisfy the METs and provide all required documentation. N.T. p. 103; OA Ex. 1 (pp. 2, 4-5).
4. There were two ways an applicant could satisfy the METs for the position of Air Quality Engineering Trainee, Job No. CS-20212055-14000: 1) by having a bachelor’s degree in the field of engineering; or 2) by having one year of engineering experience and a valid Engineer-in-Training certificate issued by or acceptable to the Pennsylvania State

Registration Board for Professional Engineers, Land Surveyors and Geologists. N.T. pp. 104-105; OA Ex. 1 (p. 2).

5. Applicants, who acquired a bachelor's degree in the field of engineering outside the United States, were required to upload a copy of their foreign credential evaluation with their application. N.T. pp. 76, 78-80, 105-106; OA Ex. 1 (pp. 4-5).
6. Applicants were informed of the METs and the foreign credentialing requirement in the posting and application for the position. OA Ex. 1 (pp. 2, 4-5).
7. Question 4 on the application provided applicants with a link to a website for more information on the required foreign credential evaluation. OA Ex. 1 (p. 5).
8. Upon visiting the website in Question 4, applicants were informed of the following:

If you are relying on education acquired outside of the United States (U.S.) to qualify, we are unable to determine if your education is equivalent to that obtained in an accredited U.S. university or college. We rely on documentation prepared by professional foreign credentials

evaluation organizations after they have reviewed your credentials against U.S. accrediting standards. A list of professional credentialing organizations that provide these services can be found on the National Association of Credential Evaluation Services (NACES) website, at www.naces.org. Click on the “How to Find a Member” tab.

The Commonwealth of Pennsylvania does not endorse or regulate services performed by these or any other organizations. It may also be beneficial for you to obtain a course-by-course evaluation breakdown, as certain job titles require specific coursework.

If you have already obtained a foreign credential evaluation, be sure to upload any relevant documentation to the attachments section of your application. If you have education obtained outside of the U.S. and have not obtained your foreign credential evaluation, you should consider obtaining your evaluation prior to applying for a position with the Commonwealth of Pennsylvania. Having your documentation available at the time of application will help ensure you do not miss out on job opportunities.

9. The posting for Air Quality Engineering Trainee, Job No. CS-20212055-14000 informed applicants they must complete the application, including all supplemental questions, to qualify for the position. OA Ex. 1 (p. 3).
10. The posting for Air Quality Engineering Trainee, Job No. CS-20212055-14000 informed applicants failure to provide complete and accurate information may result in disqualification. OA Ex. 1 (p. 2).
11. Appellant's bachelor's and master's degrees were acquired outside the United States. N.T. p. 22; OA Ex. 3D.
12. Appellant did not upload a foreign credential evaluation for his bachelor's degree when he submitted his application for Air Quality Engineering Trainee, Job No. CS-20212055-14000. N.T. p. 28.
13. Appellant did not obtain a foreign credential evaluation for his bachelor's degree. N.T. p. 52.

14. Appellant only uploaded a foreign credential evaluation for his master's degree when he submitted his application for Air Quality Engineering Trainee, Job No. CS-20212055-14000. N.T. pp. 28-29, 108; OA Ex. 3D.
15. Appellant did not submit the transcript for his master's degree with his application for Air Quality Engineering Trainee, Job No. CS-20212055-14000. N.T. pp. 39-40, 61-62.
16. The foreign credential evaluation indicates appellant has a Master of Technology in Building Science and Construction Management. OA Ex. 3D.
17. The foreign credential evaluation indicates the prerequisite for appellant's master's degree is a bachelor's degree. OA Ex. 3D.
18. The foreign credential evaluation does not indicate the field of appellant's bachelor's degree. OA Ex. 3D.

19. The foreign credential evaluation does not indicate which department issued appellant's master's degree. OA Ex. 3D.
20. The word "engineering" is not mentioned anywhere on appellant's foreign credential evaluation. N.T. pp. 57, 126; OA Ex. 3D.
21. Appellant does not possess a valid Engineer-in-Training certificate issued by or acceptable to the Pennsylvania State Registration Board for Professional Engineers, Land Surveyors and Geologists. N.T. pp. 24-25; OA Ex. 3A (p. 10).

DISCUSSION

The present appeal challenges the August 17, 2021 determination by the Office of Administration, Executive Offices (hereinafter "OA") finding appellant ineligible for Air Quality Engineering Trainee, Job No. CS-20212055-14000. Comm. Ex. A. Appellant alleges this determination was the result of discrimination on the grounds of mistake of fact.² Comm. Ex. B. Specifically, appellant asserts he

² In his appeal form, appellant generally alleged disparate treatment. Comm. Ex. B. However, he failed to raise or introduce any evidence related to this allegation during the hearing. Appellant's sole focus at the hearing was his mistake of fact claim. Thus, we will not address appellant's disparate treatment claim as part of this adjudication.

has sufficient qualifying experience to meet the minimum experience and training requirements (hereinafter “METs”) for Air Quality Engineering Trainee employment. Comm. Ex. B. Appellant further claims OA’s ineligibility determination was based upon a mistake by OA created by OA’s erroneous interpretation of the facts of his education. 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,” as well as “examination.” 71 Pa.C.S. § 2704. Under Section 3003(7)(ii), 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.³ 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).

In support of his appeal, appellant testified on his own behalf. OA presented the testimony of Human Resource Analyst 3 Deborah Krammes.⁴ The evidence presented by appellant and OA is summarized below.

³ 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

⁴ Krammes is employed as a Human Resource Analyst 3 within OA’s Bureau of Talent Acquisition. N.T. pp. 98-100. Krammes has held that position since February 2015. N.T. p. 100. In that capacity, she supervises evaluators who review job applications and determine whether the applicants have met the education, experience and training requirements. N.T. p. 99, 101.

Summary of the Evidence

In or around July 2021, appellant applied for Air Quality Engineering Trainee, Job No. CS-20212055-14000. Comm Ex. A; OA Exs. 1, 3A. There is no dispute to be eligible for this position appellant needed to satisfy the minimum experience and training requirements (hereinafter “METs”) and provide all required documentation. OA Ex. 1 (pp. 2, 4-5).

There were two ways appellant could satisfy the METs: 1) by having a bachelor’s degree in the field of engineering; or 2) by having one year of engineering experience and a valid Engineer-in-Training certificate issued by or acceptable to the Pennsylvania State Registration Board for Professional Engineers, Land Surveyors and Geologists. N.T. pp. 104-105; OA Ex. 1 (p. 2). Appellant acknowledged he does not have a valid Engineer-in-Training certificate. N.T. pp. 24-25; OA Ex. 3A (p. 10). Thus, there is no dispute appellant was not eligible under the second option.⁵ N.T. pp. 24-25, 112.

Appellant argued he should have been found eligible under the first option because he has a bachelor’s degree in engineering. N.T. pp. 25, 27-28; OA Exs. 1 (p. 2), 2 (p. 3). Appellant testified he attained his bachelor’s degree in engineering in 1980 from “Regional Engineering College, Visvesvaraya” in India.⁶

⁵ Since there is no dispute appellant was ineligible under the second option of the METs, appellant’s work history in India and Canada is irrelevant. N.T. pp. 23-24. Therefore, we will not discuss appellant’s work history any further.

⁶ On his application, appellant indicated he received a bachelor’s degree in engineering from “Regional Engineering College (Now known as National Institute of Technology).” OA Ex. 3A. Appellant’s diploma for his bachelor’s degree indicates it is from Kurukshetra University. OA Ex. 3B. These differences in the institution’s name have no bearing on our decision as the focus of this matter is whether a mistake of fact occurred.

N.T. p. 22. Appellant stated he subsequently completed his master's degree from Indian Institute of Technology, Delhi. N.T. p. 22; OA Ex. 3D. Thus, there is no dispute appellant obtained both of his degrees outside of the United States.

It is undisputed applicants, who acquired a bachelor's degree in the field of engineering outside of the United States, were required to submit a copy of their foreign credential evaluation with their application. N.T. pp. 76, 78-80, 103, 105-106, 116; OA Ex. 1 (pp. 4-5). Human Resource Analyst 3 Deborah Krammes explained OA requires degrees from foreign universities to go through a credentialing service because OA's evaluators are not trained or certified to review foreign credentials. N.T. p. 106. Therefore, OA relies on applicants to provide a foreign credential evaluation from an accredited member. N.T. pp. 106-107. Krammes testified this requirement is uniformly applied. N.T. pp. 103, 116.

For more information on the foreign credentialing requirements applicants were directed to a Commonwealth employment website,⁷ which informed them, in pertinent part:

If you are relying on education acquired outside of the United States (U.S.) to qualify, we are unable to determine if your education is equivalent to that obtained in an accredited U.S. university or college. We rely on documentation prepared by professional foreign credentials evaluation organizations after they have reviewed your credentials against U.S. accrediting standards....

N.T. p. 107; OA Ex. 13 (p. 1). The website further notified applicants:

⁷ Appellant did not dispute the application directed him to a website for more information regarding the credentialing requirements. N.T. p. 78. Additionally, we note this website is publicly available.

...It may also be beneficial for you to obtain a course-by-course evaluation breakdown, as certain job titles require specific coursework.

...If you have education obtained outside of the U.S. and have not obtained your foreign credential evaluation, you should consider obtaining your evaluation prior to applying for a position with the Commonwealth of Pennsylvania. Having your documentation available at the time of application will help ensure you do not miss out on job opportunities.

OA Ex. 13 (pp. 1-2). In addition to the above, the posting for the position at issue warned applicants failure to provide complete and accurate information could result in disqualification. OA Ex. 1 (p. 3).

Appellant acknowledged he did not submit a foreign credential evaluation for his bachelor's degree with his application, nor did he obtain such an evaluation for his bachelor's degree. N.T. pp. 28, 52. Appellant testified he only uploaded a foreign credential evaluation for his master's degree, which is a Master of Technology in Building Science and Construction Management. N.T. pp. 28-29; OA Ex. 3D. Appellant explained his Master in Technology is equivalent to a Master in Engineering which he argued can be deduced from a review of his transcript and the website for the Indian Institute of Technology, Delhi. N.T. pp. 37, 38-39, 57-59; Ap. Exs. 1, 2.

Additionally, appellant pointed out the prerequisite for his master's degree, as noted on the foreign credential evaluation, is a bachelor's degree. N.T. pp. 30-31; OA Ex. 3D. Appellant further stated the field of his bachelor's degree is implicit. N.T. pp. 56-57. Appellant reasoned a person should be able to deduce his bachelor's degree is in engineering based on a review of the transcript for his

master's degree, the website for the Indian Institute of Technology, Delhi, and by doing a Google search. N.T. pp. 46-50, 59, 72; Ap. Exs. 1, 2, 3; OA Ex. 3D. Appellant also noted the Board of Education Services told him that he did not need to have his bachelor's degree evaluated if his master's degree was evaluated.⁸ N.T. pp. 65-66. Therefore, Appellant believes the foreign credential evaluation for his master's degree is sufficient to satisfy the first option of the METs. N.T. pp. 31, 34.

With that said, appellant acknowledged he did not submit his master's degree transcript with his application for the position at issue. N.T. pp. 39-40, 61-62; Ap. Ex. 1. Appellant stated he only provided his transcript with subsequent applications. N.T. pp. 46-47, 62. Appellant also acknowledged the foreign credential evaluation does not indicate his master's degree was issued by the Department of Civil Engineering, nor does it indicate the field of his bachelor's degree. N.T. pp. 55-57, 59-60; OA Ex. 3D. Appellant conceded the word "engineering" is not mentioned anywhere on the foreign credential evaluation that he submitted with his application. N.T. p. 57.

In response to appellant's testimony, Human Resource Analyst 3 Krammes explained more fully why appellant was not found eligible under option one of the METs. Specifically, Krammes noted the foreign credential evaluation for appellant's master's degree does not indicate the equivalent major in United States, nor does the evaluation indicate appellant's master's degree is in engineering. N.T. pp. 109-110, 126. While Krammes acknowledged such

⁸ The Board of Education Services is the term appellant used to refer to the entity that provided the credential evaluation for his master's degree. N.T. pp. 28, 65. We note this entity is independent from OA. *See Falasco v. Commonwealth of Pennsylvania, Pennsylvania Board of Probation and Parole*, 104 Pa. Commw. 321, 326 n.6, 521 A.2d 991, 994 n. 6 (1987) (holding an administrative agency may take official notice of facts which are obvious and notorious to an expert in the agency's field and those facts contained in reports and records in the agency's files, in addition to those facts which are obvious and notorious to the average person).

evaluations typically provide that level of detail, this evaluation did not which is why OA could not ascertain whether appellant held a bachelor's degree in engineering as required under option one of the METs. N.T. pp. 110-111.

Krammes explained she has to rely on the information contained within the foreign credential evaluation.⁹ N.T. pp. 118-119. Krammes further stated the foreign credential evaluation for appellant's master's degree would have been acceptable had it indicated appellant held an engineering degree. N.T. p. 112. Krammes denied either her or her subordinates deviated from the rules, regulations, or policies when assessing appellant's application. N.T. p. 113. Krammes stated her staff utilized the standard process for evaluating appellant's application. N.T. pp. 107-108.

Additionally, Krammes testified after appellant was found ineligible, he submitted a reconsideration request which prompted OA to reach out to him. N.T. p. 114. Krammes further explained OA reached out to appellant to provide him with an opportunity to submit any other foreign credential evaluation reports he may have, such as an update from the credentialing service stating his major. N.T. pp. 123-125. Krammes stated sometimes applicants have more than one foreign credential evaluation report. N.T. pp. 122-123. Therefore, OA reaches out to applicants to let them know what they provided was not sufficient. N.T. pp. 122-123. Krammes did not believe appellant ever replied. N.T. p. 114.

⁹ The foreign credential evaluation submitted by appellant with his application for the position at issue indicates terms are explained on the reverse side. N.T. pp. 120-121; OA Ex. 3D. However, Krammes testified there was no reverse side to the evaluation and the evaluation indicates there is only one page. N.T. pp. 120-122; OA Ex. 3D. Krammes further noted applicants are responsible for uploading their foreign credential evaluations. N.T. p. 128. Therefore, it was appellant's responsibility to provide any additional pages if there were any. N.T. p. 128.

With that said, Krammes noted the additional information appellant provided during the hearing on the present matter would still be insufficient to find him eligible. N.T. p. 115. Krammes explained: “Without a foreign credential evaluation report from an assessed accredited member stating he has a major in engineering, he would not qualify.” N.T. pp. 115-116. Krammes stated this is required to determine the eligibility of all applicants who have acquired their education outside of the United States. N.T. p. 116.

Motion to Dismiss

Following the presentation of appellant’s case-in-chief, OA made a Motion to Dismiss for failure to establish a *prima facie* case. N.T. pp. 92-93. Ruling on the Motion was deferred pending review by the full Commission. N.T. p. 93. Following our review, the Motion is hereby granted for the reasons articulated below.

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.

Here, the sole matter in dispute is whether OA relied on a mistake of fact when it determined appellant was not eligible for Air Quality Engineer Trainee employment. The relevant underlying facts of this matter are not in dispute.¹⁰ Based upon these undisputed facts, we find there was no misinformation upon which OA relied when making its determination.

There is no dispute to be eligible for the position of Air Quality Engineering Trainee, appellant was required to satisfy the METs and provide all required documentation. *See* Finding of Fact 3. There were two ways appellant could satisfy the METs: 1) by having a bachelor's degree in the field of engineering; or 2) by having one year of engineering experience and a valid Engineer-in-Training certificate issued by or acceptable to the Pennsylvania State Registration Board for Professional Engineers, Land Surveyors and Geologists. *See* Finding of Fact 4. There is no dispute appellant was ineligible under the second option because he did not have a valid Engineer-in-Training certificate. *See* Finding of Fact 21. Thus, the only issue before the Commission is whether OA relied on a mistake of fact when it determined appellant was not eligible under the first option.

¹⁰ 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).

To satisfy the first option, applicants, such as appellant who acquired their degree outside of the United States, were required to upload a copy of their foreign credential evaluation.¹¹ *See* Findings of Fact 5, 6, 7, 8. Applicants were specifically informed of this requirement in Question 4 of the application. *See* Finding of Fact 7. Question 4 also directed applicants to a website for more information on the required foreign credential evaluation. *See* Finding of Fact 8.

Appellant does not claim he was unaware of the foreign credential requirement. Rather, he asserts the foreign credential evaluation he provided for his master's degree is sufficient to establish his bachelor's degree was in the field of engineering. We are not persuaded by appellant's argument.

There is no evidence the foreign credential evaluation appellant submitted with his application established the field of his bachelor's degree, nor did it specifically indicate appellant's master's degree is equivalent to a Master in Engineering. *See* Findings of Fact 12-20. Indeed, the word "engineering" is not mentioned anywhere on appellant's foreign credential evaluation. *See* Finding of Fact 20. Thus, we find OA did not make a mistake of fact when it determined appellant failed to provide the required documentation to satisfy the first option of the METs.

¹¹ We note Section 602.1(b) of the Merit System Employment Regulations, which was in effect at the time of the eligibility decision at issue in the present matter, permits OA to ask for documentation related to an applicant's qualifications for the position. 4 Pa. Code § 602.1(b)(expired March 12, 2022).

Furthermore, while appellant informed OA he held a bachelor's degree in engineering, this is not a substitute for the required documentation. Likewise, appellant's assertion that a Master of Technology and Master of Engineering are equivalent is not a substitute for the required documentation. We cannot find OA made a mistake of fact when evaluating appellant's application where there is no dispute appellant failed to provide the required documentation.¹² *See* Findings of Fact 12-20. Moreover, there is no evidence OA deviated from its rules, regulations, or policies when assessing appellant's application for the position.

In sum, we find appellant failed to establish non-merit factor discrimination in the form of a mistake of fact. We further find OA did not base its ineligibility determination on misinformation. The undisputed evidence presented by the parties established appellant failed to provide the required documentation to satisfy the METs. Accordingly, we enter the following:

¹² While not expressly addressed by the parties during the hearing, we note appellant indicated on his application he held a Civil Engineer Trainee position with the Pennsylvania Department of Transportation. OA Ex. 3A (p. 4). This fact is not instructive on the issue before us. The METs for the Civil Engineer Trainee position as set forth on the public job specification and the METs for the position at issue here are distinct (*e.g.*, only a bachelor's degree in a related field is required for Civil Engineer Trainee employment). *See Falasco, supra*. Also, there is insufficient evidence to determine whether a foreign credential evaluation was required when appellant applied for the Civil Engineer Trainee position. As such, we cannot bootstrap any findings related to appellant's eligibility for the Civil Engineer Trainee position to the position presently at issue.

CONCLUSION OF LAW

Appellant has not 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, dismisses the appeal of Jagbir Phogat challenging the Office of Administration, Executive Office's determination that he was not eligible for Air Quality Engineering Trainee (Job No. CS-20212055-14000) employment, and sustains the Office of Administration, Executive Office's determination that Jagbir Phogat was not eligible for Air Quality Engineering Trainee (Job No. CS-20212055-14000) employment.

State Civil Service Commission

Maria P. Donatucci
Chairwoman

Gregory M. Lane
Commissioner

Bryan R. Lentz
Commissioner

Mailed: September 27, 2022