

COMMONWEALTH OF PENNSYLVANIA

Jessica L. Roush	:	State Civil Service Commission
	:	
v.	:	
	:	
Office of Administration, Executive Offices	:	Appeal No. 30932
	:	
Jessica L. Roush <i>Pro Se</i>		Brian Hokamp Attorney for Office of Administration

ADJUDICATION

This is an appeal by Jessica L. Roush challenging the Office of Administration, Executive Office’s determination that she was not eligible for Parole Manager 1 employment. A hearing was held on September 8, 2022, via video, before Chairwoman Maria P. Donatucci.

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 Parole Manager 1 position was the result of discrimination.

FINDINGS OF FACT

1. By email dated March 15, 2022, appellant was informed she did not meet the minimum experience and training requirements (hereinafter “METs”) for the Parole Manager 1 position with the Commonwealth and was determined to be ineligible. Comm. Ex. A.
2. The appeal was properly raised before this Commission and was heard under Section 3003(7)(ii) of Act 71 of 2018. Comm. Ex. C.
3. To be eligible for the Parole Manager 1 position, a candidate must satisfy the position’s METs. N.T. pp. 30, 58-59, Ap. Ex. 1; OA Ex. 1.
4. There are four ways appellant may satisfy the Parole Manager 1 METs: 1) by having two years as a Parole Agent 2 (Commonwealth job title); or 2) by having four years as a Parole Staff Technician 2; or 3) by having two years of professional experience dealing with offenders or offender programs casework or counseling of offenders, or auditing of offender caseloads, in probation, parole, corrections or a law enforcement agency; or 4) by having an equivalent combination of experience and training

that includes one year of professional experience dealing with offenders or offender programs, casework or counseling of offenders or auditing of offender caseloads, in probation, parole, corrections, or a law enforcement agency. Ap. Ex. 1; OA Ex. 1.

5. Appellant applied for the Parole Manager 1 position. N.T. p. 49; OA Ex. 2.
6. On March 16, 2022, appellant filed a reconsideration request challenging the Office of Administration's (hereinafter "OA") determination of her ineligibility. N.T. p. 50; OA Ex. 58.
7. Evaluation Division Area Manager Elizabeth Peresolak was assigned and reviewed appellant's reconsideration request. N.T. pp. 50, 58; OA Ex. 3.
8. When Peresolak reviewed appellant's application, she compared it to the Parole Manager 1 METs and the Evaluation Guide for the Parole Manager 1 position. N.T. p. 55; OA Ex. 4.
9. Appellant does not have work experience as a Parole Agent 2. N.T. pp. 30, 58; OA Ex. 2.

10. At the time of her application, appellant only had three and a half years of work experience as a Parole Staff Technician 2. N.T. pp. 30, 59; OA Exs. 1, 2, 4.
11. Appellant's work experience as a Parole Staff Technician 2 is characterized as advanced technical staff work instead of professional work experience. N.T. p. 62; OA Ex. 6.
12. Appellant's work experience as a Records Specialist 2 was characterized as advanced work in the Records Control Program. N.T. pp. 35, 65; OA Ex. 7.
13. Appellant's work experience as a Records Specialist 1 was characterized as specialized clerical work in the Records Control Program. N.T. pp. 36, 65; OA Ex. 8.
14. Appellant's work experience as a Youth Development Aide was non-professional work providing for the care, custody, supervision, and development of court adjudicated youth in the Commonwealth's Youth Development Center or Youth Forestry Camp. N.T. pp. 38, 65-66; OA Ex. 9.

15. Appellant does not possess graduate coursework. N.T. p. 69.
16. After reviewing appellant's work experience and education, Peresolak confirmed appellant remained ineligible for the Parole Manager 1 position. N.T. p. 71.
17. On May 18, 2022, appellant received OA's determination that she remained ineligible for the Parole Manager 1 position. N.T. pp. 26-27, 71-72; Ap. Ex. 8; OA Ex. 10.

DISCUSSION

The present appeal challenges the March 15, 2022, determination by the Office of Administration (hereinafter "OA") which found appellant ineligible for Parole Manager 1 employment. Comm. Ex. A. Appellant alleges OA's determination was the result of discrimination on the grounds of mistake of fact. 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 “promotions.” 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.¹ 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).

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.

In support of her appeal, appellant testified on her own behalf. In response, OA presented the testimony of Evaluations Unit Supervisor Elizabeth Peresolak.²

Appellant applied for the Parole Manager 1 position. N.T. p. 49; OA Ex. 2. On March 15, 2022, appellant received notice of her ineligibility for Parole Manager 1. Comm. Ex. A; N.T. p. 51; OA Ex. 3. On March 16, 2022, appellant filed a reconsideration request challenging her ineligibility.

Evaluation Division Area Manager Peresolak was assigned and reviewed appellant's reconsideration request in order to determine whether appellant was eligible for the Parole Manager 1 position.³ N.T. pp. 50, 58; OA Ex. 3. When Peresolak reviewed appellant's application, she compared it to the Parole Manager 1 position's minimum experience and training requirements (hereinafter "METs") and the Evaluation Guide for the Parole Manager 1 position.⁴ N.T. p. 55; OA Ex. 4. Upon her review, Peresolak confirmed appellant was ineligible for the Parole Manager 1 position. N.T. p. 71. On May 18, 2022, appellant received OA's determination that she remained ineligible for the Parole Manager 1 position. N.T. pp. 26-27, 71-72; Ap. Ex. 8; OA Ex. 10.

² Peresolak is employed by OA as an Evaluation Division Area Manager. N.T. p. 46. Peresolak is responsible for supervising four evaluation units. Peresolak's responsibilities also include: reviewing temporary working out of class requests, list removal requests, applications for job positions, and reconsideration requests challenging ineligibility determinations. N.T. pp. 47-48. Peresolak has been reviewing eligibility determinations since 2014. N.T. p. 48.

³ Peresolak was not involved in appellant's initial eligibility determination for the Parole Manager 1 position. N.T. p. 49.

⁴ Peresolak explained how she reviews an applicant's reconsideration request. When she is assigned to a reconsideration request, Peresolak reviews the applicant's application and the Evaluation Guide for the job title in question. N.T. p. 54.

Appellant argues on appeal she has sufficient qualifying work experience to meet the Parole Manager 1 METs. Comm. Ex. B. Appellant further asserts OA's ineligibility determination resulted from erroneous interpretations of her work experience. Comm. Ex. B. OA argues appellant's work experience does not qualify as professional experience to meet the position's METs.

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.

To be considered eligible for the Parole Manager 1 position, appellant must meet one of the Parole Manager 1 METs. There are four options for appellant to satisfy the METs for this job title: 1) by having two years as a Parole Agent 2 (Commonwealth job title); 2) by having four years as a Parole Staff Technician 2; 3) by having two years of professional experience dealing with offenders or offender programs casework or counseling of offenders, or auditing of offender caseloads, in

probation, parole, corrections or a law enforcement agency; or 4) by having an equivalent combination of experience and training that includes one year of professional experience dealing with offenders or offender programs, casework or counseling of offenders or auditing of offender caseloads, in probation, parole, corrections, or a law enforcement agency. Ap. Ex. 1; OA Ex. 1.

There is no dispute appellant never worked as a Parole Agent 2. As a result, she did not meet the first MET option. N.T. pp. 30, 58; OA Ex. 2. Similarly, regarding the second MET option, appellant admitted she only had three and a half years of experience as a Parole Staff Technician 2 at the time of her application. N.T. p. 30. When Peresolak reviewed whether appellant's work experience qualified as having four years of work experience as a Parole Staff Technician 2, she discovered appellant only had three and half years of experience. Consequently, appellant did not qualify under the second MET option. N.T. p. 59; OA Exs. 1, 2, 4. Therefore, appellant may only qualify to be eligible for Parole Manager 1 through the remaining two options.

In support of meeting the third MET option, appellant argued OA erred in determining she did not have two years of professional experience dealing with offenders or offender programs. Specifically, appellant explained in February 2022, she had three and a half years of experience in the Staff Technician 2 position dealing with offenders, auditing offender caseloads in probation and parole. N.T. pp. 25-26. Appellant claimed as a Staff Technician 2, she has analyzed DOC calculations since 2013. Appellant also analyzed "Department of Correction reports, changing sentence structure, credit, and the order of service and sentence, and applied where appropriate. That is work that I have been doing since 2013." N.T. pp. 16-17; Ap. Ex. 1 (p. 2). Appellant has also trained new Staff Technician 2s and the newly hired

Parole Manager 1. N.T. p. 17. However, appellant acknowledged her Parole Staff Technician 2 work experience is characterized as advanced technical staff work involving analysis and processing of parole board actions in the central office of the board of probation and parole. N.T. pp. 16, 33; OA Ex. 6.

In response, Peresolak explained the term “professional” means performing professional level of work. N.T. p. 60; OA Ex. 4. Peresolak confirmed pursuant to appellant’s Parole Staff Technician 2 job specifications, appellant’s experience was characterized as advanced technical staff work instead of professional work experience. N.T. p. 62; OA Ex. 6. As a result, Peresolak determined appellant did not possess two years of professional qualifying experience to meet the third option. N.T. pp. 60-61.

In support for meeting the fourth MET option, appellant asserted OA erred in determining her ineligible because she had equivalent combination of experience that included one year of professional experience dealing with offenders, offender programs, casework of offenders, and auditing offender caseloads. N.T. p. 26. In addition to her years as a Parole Staff Technician 2, appellant explained she worked with juvenile offenders at the youth development center, including completing documentation for court hearings. Appellant has also audited offender caseloads for the past eight years in the appointing authority’s records unit and as a Youth Development Aide. N.T. pp. 23, 25. Appellant explained she has taught juvenile offenders. N.T. pp. 17-18. Appellant emphasized her work experience qualifies her for the Parole Manager 1 position.⁵ N.T. p. 23.

⁵ At the conclusion of appellant’s presentation, OA entered a motion to dismiss for appellant’s failure to present a *prima facie* case of discrimination. N.T. p. 43. Ruling was deferred at the hearing. N.T. p. 42.

Regarding the fourth MET option, Peresolak explained appellant did not show an equivalent combination of experience and training that included one full year of qualifying professional experience. N.T. pp. 68-69. After discovering appellant's experience as a Parole Staff Technician 2 was characterized as advanced clerical work, Peresolak reviewed whether appellant's former positions as a Record Specialist 2, Record Specialist 1, and Youth Development Aide qualified as professional work experience to meet the fourth MET option.

Peresolak noted appellant's work experience as a Records Specialist 2 was characterized as advanced work in the Records Control Program and not considered professional work experience. N.T. pp. 35, 64; OA Ex. 7. Peresolak explained appellant's work experience as a Records Specialist 1 did not qualify as professional work experience because pursuant to the position's job specifications, it was characterized as specialized clerical work in the Records Control Program. N.T. pp. 36, 65; OA Ex. 8. Peresolak confirmed appellant's work experience as a Youth Development Aide was non-professional work providing for the care, custody, supervision, and development of court adjudicated youth in the Commonwealth's Youth Development Center or Youth Forestry Camp. As such, appellant's experience as a Youth Development Aide did not qualify as professional experience. N.T. pp. 38, 65-66; OA Ex. 9.

Lastly, Peresolak reviewed appellant's education to determine whether she qualified under the Evaluation Guide's equivalency exception. N.T. p. 69. Pursuant to the Evaluation Guide, candidates may substitute one year of the required professional experience by having one year of graduate coursework in criminal justice, social work, counseling, psychology, addictions science, law, law enforcement, computer science or statistics. Thirty graduate credits would equate to

one year of professional experience. OA Ex. 4. Peresolak reviewed and discovered appellant did not possess graduate coursework to substitute one year of professional work experience.⁶ N.T. pp. 69. Consequently, at the conclusion of her review, Peresolak determined appellant remained ineligible for the Parole Manager 1 position. N.T. p. 71.

Having carefully reviewed the record, the Commission finds OA did not base its decision of appellant's ineligibility for the Parole Manager 1 position upon an erroneous interpretation of appellant's work experience. We find Peresolak's testimony credible⁷ and persuasive in how OA properly reviewed and determined appellant's eligibility. While appellant has three and a half years of experience as a Parole Staff Technician 2 and supporting experiences as a Record Specialist 2, Record Specialist 1, and Youth Development Aide, Peresolak credibly explained how appellant's experience did not qualify as professional experience. Therefore, OA's determination of appellant's ineligibility was not based upon a mistake of fact. *Goodridge, supra*. Accordingly, we enter the following:

⁶ Appellant acknowledged she does not have a master's degree and does not possess graduate coursework in criminal justice. She has a bachelor's degree in criminal justice. N.T. pp. 27-28, 31.

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).

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 two of its members,⁸ dismisses the appeal of Jessica L. Roush challenging the Office of Administration, Executive Office's determination that she is not eligible for Parole Manager 1 employment and sustains the action of the Office of Administration, Executive Office's determination that Jessica L. Roush was not eligible for Parole Manager 1 employment.

State Civil Service Commission

Maria P. Donatucci
Chairwoman

Gregory M. Lane
Commissioner

Mailed: 1/25/23

⁸ Commissioner Pamela M. Iovino, who took office on December 22, 2022, did not participate in the discussion of or decision for this appeal.