

COMMONWEALTH OF PENNSYLVANIA

Amanda L. Mattioli : State Civil Service Commission

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v. :

:

:

Department of Conservation and Natural :

Resources; and Office of :

Administration, Executive Offices :

Appeal No. 30953

Amanda L. Mattioli

Pro Se

Mark C. Baldwin

Attorney for Appointing Authority

Jonathan W. Kunkel

Attorney for Office of Administration

Christine Kopasko
Indispensable Party¹

Lawrence D. Kerr
Attorney for Indispensable Party

ADJUDICATION

This is an appeal by Amanda L. Mattioli challenging the Office of Administration, Executive Office’s determination that appellant is not eligible for Administrative Assistant 1 employment and the Department of Conservation and Natural Resources’ decision to rescind the job offer. A hearing was held on October 13, 2022, via video, before Commissioner Bryan R. Lentz.²

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. Christine Kopasko was present and participated in the proceedings. Comm. Exs. C, C-1.

² Bryan R. Lentz’s service as Commissioner ended December 16, 2022, before this adjudication was issued.

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 Administrative Assistant 1 position and the Department of Conservation and Natural Resources' decision to rescind appellant's job offer was the result of discrimination.

FINDINGS OF FACT

1. By email dated May 2, 2022, appellant was informed her conditional offer of employment for the Administrative Assistant 1 position with the Department of Conservation and Natural Resources was withdrawn. Comm. Ex. A.
2. Appellant's conditional offer of employment was withdrawn because the Office of Administration (hereinafter "OA") was unable to verify her work experience. Comm. Ex. A.
3. The appeal was properly raised before this Commission and was heard under Section 3003(7)(ii) of Act 71 of 2018. Comm. Ex. D.
4. Appellant applied for the Administrative Assistant 1 position. N.T. p. 33; Ap. Ex. 2; OA Exs. 2, 3.

5. In her application, appellant listed her former military service as a Counterintelligence Screener and a contracted Human Intelligence Collector. N.T. pp. 33, 55, 123; Ap. Ex. 2; OA Exs. 2, 3.
6. For her Human Intelligence Collector entry, appellant listed she worked in this position from October 2008 to October 2016 and worked for forty hours per week. N.T. p. 79; Ap. Ex. 2; OA Exs. 2, 3.
7. For her Counterintelligence Screener entry, appellant listed she worked in this position from September 2012 to July 2013 and worked for 120 hours per week. N.T. pp. 33, 55; Ap. Ex. 2; OA Exs. 2, 3.
8. In her application, appellant listed her three years of experience as a Clerk Typist 2. N.T. p. 37; Ap. Ex. 2; OA Exs. 2, 3.
9. On her application, appellant's Clerk Typist 2 entry did not identify her as temporarily working out of class. N.T. p. 37; Ap. Ex. 2; OA Exs. 2, 3.

10. Appellant never made a temporary working out of class request for her work experience as an Administrative Assistant 1. N.T. p. 301.
11. Appellant listed her work experience in Customer Service from October 2013 to February 2014 and that she worked forty hours per week. N.T. pp. 218, 267; Ap. Ex. 2; OA Exs. 2, 3.
12. In her application, appellant submitted a DD214 representing her years of military service. N.T. p. 34.
13. Human Resource Analyst 1 Elaine Foor reviewed the applicants' applications, including appellant's application, to determine whether they met the Administrative Assistant 1 minimum experience and training requirements (hereinafter "METs"). N.T. pp. 161, 177-178, 214.
14. The Administrative Assistant 1 METs are as follows "such training as may have been gained through graduation from a four year college or university; OR any equivalent combination of experience and training." N.T. pp. 53-54, 155, 266; Ap. Ex. 1.

15. Foor reviewed appellant's application and initially determined appellant was eligible for the position. N.T. pp. 162, 178.
16. Foor based appellant's eligibility upon her experience as a Human Intelligence Collector. N.T. p. 162; OA Exs. 2, 3.
17. After determining the applicants' eligibility, Foor forwarded the list of eligible applicants for interviews. N.T. pp. 167, 215.
18. Appellant received an interview and was selected for the position. N.T. pp. 89, 168, 215.
19. On April 1, 2022, appellant received a conditional job offer for the Administrative Assistant 1 position. N.T. p. 88.
20. Appellant's conditional job offer was contingent upon a successful background check and verification certification. N.T. pp. 172, 251; OA Ex. 6.

21. While performing the verification certification, Foor contacted the U.S. Army's Human Resources but was unable to verify appellant's work experience as a Human Intelligence Collector. N.T. pp. 35, 174, 176, 217; OA Ex. 2 (p. 2).
22. On April 1, 2022, Foor contacted appellant to request a contact to verify appellant's work experience as a Human Intelligence Collector. Appellant provided her former unit's phone number and referred her to the U.S. Army's Human Resource's contact. N.T. pp. 89-90, 173-174, 217; OA Ex. 8.
23. Upon contacting the U.S. Army's Human Resources, Foor obtained appellant's Status Report, but it did not verify appellant's hours served as a Human Intelligence Collector. N.T. p. 181; OA Ex. 9.
24. Foor contacted appellant's former Master Sergeant Cassandra Ellis to verify appellant's work experience as a Human Intelligence Collector but could not verify the hours appellant spent in this position. N.T. pp. 181, 186, 220.

25. After contacting appellant's former Master Sergeant, Foor submitted a verification form to OA's Talent Management Organization for approval. N.T. pp. 181, 221; OA Ex. 10.
26. Human Analyst 4 Elizabeth Peresolak reviewed appellant's application and discovered appellant's Human Intelligence Collector entry overlapped with appellant's Counterintelligence Screener and Customer Service entries. N.T. pp. 218, 267; Ap. Ex. 2; OA Exs. 2, 3.
27. Consequently, Peresolak requested appellant's time as a Human Intelligence Collector be verified by the amount of hours she served. N.T. pp. 255-256; OA Ex. 14 (p. 3).
28. In response to Peresolak's request, Foor contacted appellant, who provided the amount of years she served in positions throughout her military service. N.T. pp. 92, 191; OA Ex. 13 (p. 3).
29. On April 12, 2022, Foor provided appellant's description to the Talent Management Organization regarding her service in the U.S. Army National Guard. N.T. p. 92; OA Ex. 13 (p. 3).

30. On April 14, 2022, Foor emailed appellant requesting her to provide the number of hours she served in each position and whether she had a contact within the U.S. Army National Guard to verify her time. N.T. pp. 92, 191; OA Ex. 13 (p. 2).
31. Appellant did not provide a description of the number of hours for her work experience and did not provide a contact in response to Foor's April 14, 2022 request. N.T. pp. 93-94, 192, 197, 209; Ap. Ex. 6; OA Ex. 13 (pp. 1-2).
32. Foor did not have additional communications with appellant from April 15, 2022 to May 2, 2022. N.T. p. 210.

DISCUSSION

The present appeal challenges the May 2, 2022, determination by the Office of Administration (hereinafter "OA") to rescind appellant's job offer and to determine appellant was ineligible for Administrative Assistant 1 employment. Comm. Ex. A. Appellant alleges OA's determinations were 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.³ In applying this language, the

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

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 the instant appeal, appellant raises a claim of traditional discrimination.

In support of her appeal, appellant testified on her own behalf. In response, OA, the Department of Conservation and Natural Resources (hereinafter “DCNR”) and Christine Kopasko presented the testimony of Human Resource Analyst 1 Elaine Foor,⁴ Human Resource Analyst 4 Elizabeth Peresolak,⁵ and Human Resource Analyst 5 Christine Haertsch.⁶

Appellant argues she is appealing her ineligibility and rescinded job offer for the Administrative Assistant 1 position because these actions were motivated by an erroneous interpretation of her work experience. Comm. Ex. B;

⁴ Foor is employed by OA as a Human Resource Analyst 1. N.T. p. 147. Foor’s responsibilities include reviewing applications for DCNR’s state park hiring processes. N.T. p. 149. By the end of April 2022, Foor’s responsibilities changed to a time advisor role responsible for timekeeping and transactions. N.T. p. 150.

⁵ Peresolak is employed by the Office of Administration as a Human Resource Analyst 4 in the Bureau of Talent Acquisition. N.T. pp. 246, 249. Peresolak has been employed with the Office of Administration since April 2019. N.T. pp. 248, 263. Prior to her employment with the Office of Administration, Peresolak was employed by the Civil Service Commission where she reviewed job applications for posted job vacancies. N.T. p. 248.

⁶ Haertsch is employed as a Human Resource Analyst 5. N.T. p. 294. In February 2022, Haertsch was a Human Resource Analyst 5 and acted as the Chief of Talent Planning and Acquisition. Haertsch’s responsibilities include overseeing job placement, job filling, recruitment, and organizational management related duties. N.T. p. 297.

N.T. p. 33. Appellant asserted OA could not verify her military time and as a result, they could not account for four years of appellant's experience to meet the position's minimum experience and training requirements (hereinafter "METs"). N.T. p. 62. Appellant further argued her rescinded job offer was motivated by discrimination because her three years of experience temporarily working out of class was unaccounted.⁷ Comm. Ex. B; N.T. pp. 46-47, 108.

Appellant applied for the Administrative Assistant 1 position. Within her application, appellant listed her former Counterintelligence Screener⁸ position where she worked in this capacity from September 2012 to July 2013 for 120 hours per week. N.T. pp. 33, 55; Ap. Ex. 2. Appellant contended her work experience as a Counterintelligence Screener would equal an estimated amount 6,240 hours or approximately three years of work. N.T. p. 55; Ap. Ex. 2.

Additionally, appellant listed her former work experience as a contracted Human Intelligence Collector. While serving the military overseas as a Human Intelligence Collector, appellant was responsible for interrogations and source operations. N.T. pp. 35, 123; Ap. Ex. 2. Appellant entered in her application she worked as a Human Intelligence Collector from October 2008 to October 2016 for forty hours per week. N.T. p. 79; OA Ex. 2.

⁷ Appellant did not specify the job position that she worked out of class. Instead, appellant believed she was doing the job of an Administrative Assistant 1. N.T. pp. 46-47.

⁸ As a Counterintelligence Screener, appellant was responsible for ensuring local nationals in Afghanistan and third country nationals who worked on military bases were adequate and suitable for work and did not pose a threat. N.T. p. 34.

Furthermore, appellant submitted a DD214 presenting appellant's twenty-one months of active military service. N.T. p. 34. Appellant contends the combined experience as a Counterintelligence Screener and a Human Intelligence Collector amount to five years of acceptable work experience. N.T. p. 35. Appellant argued she provided sufficient time covering her U.S. Army National Guard experience, military reserve experience, and active duty.⁹ N.T. p. 35.

Appellant acknowledged her military time was not clearly represented in her application and attempted to summarize her military service from when she joined the military in 2008 to the year she was discharged in 2016. N.T. p. 117. Nevertheless, appellant contended all her military time would qualify as paraprofessional experience. N.T. pp. 118-119. Appellant emphasized she was not attempting to lie about her military service. N.T. p. 119.

Appellant further provided her work experience as a Clerk Typist 2 for DCNR at the Linn Run State Park for three years. N.T. p. 37. Appellant claims her experience as a Clerk Typist 2 was temporarily working out of class.¹⁰ N.T. p. 37. Appellant acknowledged her job application does not list or identify her as temporarily working out of class as an Administrative Assistant 1. N.T. pp. 80-81; OA Ex. 2. Appellant admitted she did not have a desk audit conducted in relation to

⁹ Appellant also attached two EPRs and a copy of her discharge documents reflecting appellant was honorably discharged from the military. N.T. pp. 110-111; OA Ex. 2 (p. 3). Appellant acknowledged her 2020 and 2021 EPR and subsequent comments did not identify her as temporarily working out of class as an Administrative Assistant 1. N.T. pp. 87, 114; OA Exs. 4, 5.

¹⁰ Temporarily working out of class is when an employee is performing higher level duties. N.T. p. 298. Temporary working out of class is also a formal request submitted and if a valid request, then the employee would be compensated for higher level of work. N.T. p. 299.

her Clerk Typist 2 position.¹¹ N.T. p. 84. Human Resource Analyst 5 Haertsch also confirmed appellant never made a temporary working out of class request. N.T. p. 301.

Once the posting for the Administrative Assistant 1 closed, Human Resource Analyst 1 Foor reviewed the applicants' applications to determine whether they met the position's METs. N.T. pp. 161, 177-178, 214. Foor explained she made her determination based on what was in the four corners of the applications. N.T. p. 178. The Administrative Assistant 1 METs are as follows "such training as may have been gained through graduation from a four year college or university; OR any equivalent combination of experience and training." N.T. pp. 53-54, 155, 266; Ap. Ex. 1.

When she reviewed appellant's application, Foor determined 1) whether appellant's job duties and experience were equivalent to paraprofessional work, and 2) whether appellant's duration in the position covered the period of time necessary to meet the Administrative Assistant 1 METs. N.T. p. 167.

Based on her initial review of appellant's application, Foor found her eligible for the position. N.T. pp. 162, 178. Foor explained she relied upon appellant's experience as a Human Intelligence Collector. N.T. p. 162; OA Exs. 2, 3. Specifically, Foor noted appellant's Human Intelligence Collector work

¹¹ Peresolak explained Clerk Typist 2 experience is not qualifying paraprofessional experience to meet the Administrative Assistant 1 METs. N.T. p. 258. Instead, Clerk Typist 3 experience would be qualifying paraprofessional experience because it contains complex clerical work. N.T. pp. 259-260; OA Ex. 20.

experience and work hours of forty hours per week for eight years were equivalent experience and time needed to meet the METs. N.T. pp. 162-163. Foor also reviewed appellant's entry describing her Human Intelligence Collector experience and referred to the position's Evaluation Guide to determine whether appellant's work experience would be considered paraprofessional work. N.T. p. 164. Foor noted appellant's work experience in debriefing and interrogating human intelligence sources, analyzing and preparing reports, coordinating intelligence of Afghanistan direct financial cells, and maintaining schedules for staff were acceptable forms of experience. N.T. p. 165; OA Exs. 2, 3.

After determining the eligible applicants, Foor forwarded the list of eligible applicants, including appellant, for interviews. N.T. pp. 167, 215. Appellant received an interview for the position. N.T. p. 89. After the interviews were conducted, Foor received notice appellant was the selected applicant. N.T. pp. 168, 215. Once appellant was the selected applicant for the position, Foor requested a copy of her official personnel folder to verify whether appellant had a disciplinary history. N.T. pp. 168-169. Foor reviewed appellant's 2020 and 2021 EPRs. N.T. p. 170. After reviewing appellant's official personnel file and confirming appellant had no potential discipline in the previous twelve months, she advised Keystone State Park they could give a conditional job offer to appellant. N.T. p. 171.

On April 1, 2022, Keystone State Park offered appellant a conditional job offer for the Administrative Assistant 1 position. N.T. p. 88. Meanwhile, Foor sent appellant the conditional job offer notice through the NEOGOV system. N.T.

p. 171; OA Ex. 6. Appellant's conditional job offer was contingent upon a successful background check and verification certification.¹² N.T. pp. 172, 251; OA Ex. 6.

Before contacting appellant, Foor contacted the U.S. Army's Human Resources through the phone number listed on appellant's application but was unable to verify appellant's work experience as a Human Intelligence Collector. N.T. pp. 35, 174, 176, 217; OA Ex. 2 (p. 2). As a result, on April 1, 2022, Foor emailed appellant informing her she was assigned to verify appellant's military service as a Human Intelligence Collector while she served the U.S. Army National Guard and requested a contact name and number. N.T. p. 89, 173, 215; OA Ex. 7. In response, appellant emailed Foor, provided her unit's phone number and address, and the U.S. Army's Human Resource's phone number located on her attached DD214. N.T. pp. 89-90, 173-174, 217; OA Ex. 8.

Utilizing information on appellant's DD214 form, Foor contacted the U.S. Army's Human Resource contact a second time and she was able to retrieve a Status Report regarding appellant's military service. N.T. pp. 35, 180; OA Ex. 9. Upon review, Foor discovered the Status Report did not verify appellant's experience or time spent working as a Human Intelligence Collector. N.T. p. 181; OA Ex. 9.

¹² When an applicant is tentatively selected for a position, the background check and hire division performs a criminal background check and certification verification. If there is a topic that cannot be determined, the applicant's information is sent to the evaluation division to review and audit in order to verify whether the applicant's information is accurate. N.T. p. 251.

After not being able to verify appellant's time through the Status Report, Foor contacted appellant's Master Sergeant Cassandra Ellis, whose contact information was listed on appellant's application. N.T. p. 181. Foor noted Master Sergeant Ellis confirmed appellant was in the military from October 2008 to October 2016. N.T. p. 220. Foor explained Master Sergeant Ellis also verified appellant's Human Intelligence Collector experience and duties she performed. N.T. p. 181, 186, 220. However, when Foor attempted to verify appellant's hours as a Human Intelligence Collector, Master Sergeant Ellis could only verify the time period that she would have been the master sergeant for appellant's unit but it was not long. N.T. p. 186.

After speaking with the Master Sergeant Ellis, Foor listed appellant's experience on a verification form and submitted it to Michael Brookhart from the Talent Management Organization (hereinafter "TMO"). N.T. pp. 181, 221; OA Ex. 10. Approval was required to determine if appellant's employment history and work experience met the METs. N.T. p. 189. Foor also emailed Brookhart notice that there were no furloughs for the Administrative Assistant 1 position and requested approval with the hiring verification. N.T. p. 189; OA Ex. 14 (p. 6).

Human Resource Analyst 4 Peresolak recalled appellant's eligibility and verification being brought to the Evaluation Division for review. N.T. p. 251. Peresolak testified Brookhart forwarded appellant's certification information to her. N.T. p. 252; OA Ex. 14. When she received appellant's application, Peresolak reviewed it and compared the information to the Administrative Assistant 1 METs within the position's job specifications to determine whether Foor's eligibility determination was accurate. N.T. pp. 252-253; OA Ex. 21.

When she reviewed appellant's application, Peresolak noticed appellant's entry for her Human Intelligence Collector's dates overlapped with another full-time employment. N.T. p. 255. Specifically, appellant's Human Intelligence Collector entry listed the dates of employment from October 2008 to October 2016 for forty hours per week and appellant Customer Service entry listed the dates of employment from October 2013 to February 2014 at forty hours per week. N.T. pp. 218, 267; OA Exs. 2, 3. Also, appellant's Counterintelligence Screener position listed the dates of employment from September 2012 to July 2013 with 120 hours per week. N.T. p. 267; OA Exs. 2, 3. Peresolak noted based on the information on appellant's application, it was insufficient support to determine whether the Human Intelligence Collector entry was accurate to be considered toward the position's METs. N.T. p. 270. As a result, Peresolak asked for additional clarification on the specific dates of employment and the hours worked per week for the Human Intelligence Collector job. N.T. pp. 255-256; OA Ex. 14 (p. 3).

To verify appellant's Human Intelligence Collector work hours, Foor contacted appellant by phone. On April 12, 2022, Foor emailed Michael Brookhart appellant's explanation of her service in the US Army National Guard. N.T. p. 92; OA Ex. 13 (p. 3). Foor provided the following information to Brookhart regarding appellant's time with the U.S. Army National Guard: 1) February 2008 – Basic Training for approx. 10 weeks; 2) February 2009 – December 2009 – Deployed to Afghanistan; 3) January 2011 – December 2011 – Deployed to Afghanistan; 4) August 2012 – July 2013 – Contractor overseas (Counterintelligence Screener with C2 Portfolio); and 5) 2 weeks a year – drills – All other times in between, one weekend a month drill. N.T. p. 191; OA Ex. 13 (p. 3).

On April 14, 2022, Foor emailed appellant informing her she needed the hours for each period of time she provided during their phone conversation and asked whether there was anyone at the U.S. Army National Guard to verify her hours. N.T. pp. 92, 191; OA Ex. 13 (p. 2). In response, appellant provided Foor a description of what she did during each period of time. N.T. pp. 192, 209; OA Ex. 13 (pp. 1-2). Additionally, appellant provided an updated timeline of her military service but the only number she could provide Foor was the Human Resources number listed on her DD214. N.T. pp. 93-94; OA Ex. 13 (p. 1). Appellant also acknowledged she did not inform Foor that she was attempting to contact her former superior officers to verify her time in the military. N.T. p. 56-57, 94, 111; Ap. Ex. 6. Appellant admitted she was unable to provide a contact for the U.S. Army National Guard in response to Foor's April 14, 2022 request. N.T. p. 93. While appellant provided Foor information about her Financial Officer position for Ligonier FVW on April 15, 2022, Foor explained to appellant this new position could not be considered toward her eligibility because it was not within the four corners of appellant's job application. N.T. pp. 200, 205; OA Ex. 13 (p. 1).

Foor contended appellant's description alone was not acceptable to verify her time as a Human Intelligence Collector. N.T. p. 192. Foor further noted appellant did not provide an individual's contact information for her employment verification. N.T. p. 197. Foor explained to verify an applicant's time in a position, she would need to speak with someone with firsthand knowledge of an applicant's time and work experience. N.T. p. 192. Peresolak further provided in order to verify an applicant's work experience, there would need to be an official document to

support the work experience and time listed in an application. N.T. pp. 280-281. The official document must come from either a supervisor or someone within the employer who can confirm the applicant's information in the application. N.T. p. 281.

In appellant's case, Foor needed to contact someone with firsthand knowledge of appellant's time as a Human Intelligence Collector to verify her time. N.T. p. 193. After her numerous attempts to acquire a contact from appellant to verify her experience as a Human Intelligence Collector, Foor informed TMO she was unable to obtain appropriate verification about how many hours appellant worked as a Human Intelligence Coordinator.¹³ N.T. pp. 200, 229.

On April 15, 2022, Foor was informed the hire record for appellant's Administrative Assistant position was denied. N.T. p. 201; OA Ex. 15. Foor explained the hire record was denied because there was insufficient support to show appellant possessed four years of full-time paraprofessional experience to meet the Administrative Assistant 1 METs. N.T. pp. 201, 222-223. Foor did not have any additional communications with appellant between April 15, 2022 and May 2, 2022. N.T. p. 210. On May 2, 2022, Foor provided appellant notice that her conditional offer was withdrawn.¹⁴ Comm. Ex. A; N.T. pp. 37, 202, 227; OA Ex. 16.

¹³ To assist in verifying her military service, appellant contacted her former superior officers Jared Rasbury and Lisa Krisik to provide letters confirming her military service. N.T. pp. 63-65; Ap. Exs. 3, 4. Appellant admitted she never provided her superior officers' letters to OA or Foor. N.T. pp. 66, 112-113. Appellant did not submit these verification letters because she received her rescinded job offer and ineligibility letter before receiving the letters. N.T. p. 66.

¹⁴ Foor acknowledged appellant's notice of her withdrawn conditional offer was late because of the amount of work she was under. N.T. pp. 210, 223. Foor admitted to receiving notice of appellant's withdrawn conditional offer on April 15, 2022. N.T. pp. 211, 223.

We now turn to whether appellant successfully established her rescinded job offer and ineligibility determination were the result of mistake of fact discrimination. 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.

Having carefully reviewed the record, the Commission finds OA did not base its decision to rescind appellant's job offer or its decision to characterize appellant ineligible for the Administrative Assistant 1 position upon an erroneous interpretation of appellant's work experience. We find Foor, Peresolak, and Haertsch credible¹⁵ and persuasive in how OA made extensive efforts to verify

¹⁵ 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).

appellant's work experience in light of the discrepancy between appellant's Human Intelligence Collector and Customer Service entries, and how OA did not err in determining appellant did not temporarily work out of class as an Administrative Assistant 1.

Throughout the verification process after appellant's conditional offer, Foor made numerous attempts to verify appellant's work experience as a Human Intelligence Collector. While appellant provided her DD214, a description of her military service, and her Master Sergeant's contact information, none of the sources were able to provide sufficient verifying information to clarify the discrepancy presented in appellant's application regarding appellant's Human Intelligence Collector position. Peresolak further credibly explained how appellant's Clerk Typist 2 experience did not qualify as paraprofessional work because it did not contain complex clerical experience. Although appellant may have had approximately three years as a Counterintelligence Screener, it is insufficient alone to meet the four year requirement presented in the Administrative Assistant 1 METs.

Moreover, while appellant contends her work experience as a Clerk Typist 2 was in effect temporarily working out of class as an Administrative Assistant 1, Haertsch properly confirmed appellant never submitted a temporary working out of class request. As such, OA did not err in determining appellant did not temporarily work out of class. Because appellant could not provide sufficient information during the verification process to verify her hours worked as a Human Intelligence Collector, OA did not commit a mistake of fact when it determined appellant ineligible, resulting in the rescinding of appellant's job offer. *Goodridge, supra*. Accordingly, we enter the following:

CONCLUSION OF LAW

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

ORDER

AND NOW, the State Civil Service Commission, by agreement of its members, dismisses the appeal of Amanda L. Mattioli challenging the determination that she is not eligible for Administrative Assistant 1 employment and the subsequent decision to rescind the job offer and sustains the actions of the Office of Administration, Executive Office's determination that appellant is not eligible for the Administrative Assistant 1 employment and the Department of Conservation and Natural Resources' decision to rescind the job offer.

State Civil Service Commission

Maria P. Donatucci
Chairwoman

Gregory M. Lane
Commissioner

Pamela M. Iovino
Commissioner

Mailed: March 20, 2023