

COMMONWEALTH OF PENNSYLVANIA

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| Renee M. Rager | : | State Civil Service Commission |
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| v. | : | |
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| Office of Administration, Executive Offices | : | Appeal No. 31091 |
| | : | |
| Renee M. Rager <i>Pro Se</i> | | Jonathan W. Kunkel Attorney for Office of Administration |

ADJUDICATION

This is an appeal by Renee M. Rager challenging the Office of Administration, Executive Offices', determination that she was not eligible for Corrections Unit Manger employment. A hearing was held on September 14, 2023, 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 appellant was not eligible for the Corrections Unit Manager position was the result of discrimination.

FINDINGS OF FACT

1. By email dated March 15, 2023, appellant was informed she did not hold Civil Service status in one of the next lower classifications listed on the Corrections Unit Manager position's job posting 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. The State Correctional Institution at Muncy, Department of Corrections, posted the vacant Corrections Unit Manager job posting for applications from March 3, 2023 to March 12, 2023. N.T. pp. 25-26; OA Ex. 1.
4. The Corrections Unit Manager job posting recruitment methods were promotion without examination, reassignment, and voluntary demotion. N.T. p. 27; OA Ex. 1 (p. 2).

5. A candidate must have or have held regular civil service status in one of the listed lower classifications to be eligible for promotion without examination for the Corrections Unit Manager position. N.T. p. 31; OA Ex. 1 (p. 3).
6. Candidates must have a minimum of one year in the next lower classification by the Corrections Unit Manager position posting closing date with no break in service. OA Ex. 1 (p. 3).
7. The Corrections Officer 3 position is considered a next lower classification for candidates to be considered for promotion without examination for the Corrections Unit Manager position. N.T. p. 32; OA Ex. 1.
8. Appellant applied for the Corrections Unit Manager position. N.T. p. 18; OA Ex. 2.
9. Appellant temporarily worked out of class as a Corrections Officer 3 from November 18, 2008 to October 15, 2009, and again from August 31, 2011 to October 15, 2011. N.T. pp. 39-40; Ap. Ex. 1.

10. Appellant experienced a break in service from the Corrections Officer 3 position from October 15, 2009, to August 31, 2011. N.T. p. 34; Ap. Ex. 1.

DISCUSSION

The present appeal challenges the Office of Administration, Executive Offices' (hereinafter "OA") March 15, 2023, determination finding appellant ineligible for the Corrections Unit Manager position. 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, the burden of presenting evidence in support of all allegations of discrimination lies with the appellant. *Nosko v. Somerset State Hospital*, 139 Pa. Commw. 367, 370-371, 590 A.2d. 844, 846 (1991). Accordingly, the sole question for determination by this Commission is whether appellant has presented evidence sufficient to establish her claim of discrimination. Section 2704 of Act 71 of 2018 provides:

An officer or employee of the Commonwealth may not discriminate against an individual in recruitment, examination, appointment, training, promotion, retention or any other personnel action with respect to the classified service because of race, gender, religion, disability or political, partisan or labor union affiliation or other non-merit factors.

71 Pa.C.S.A § 2704.¹ The prohibition set forth in this section encompasses two general types of discrimination. First, “traditional discrimination” encompasses claims of discrimination based on race, gender, religion, disability, political, partisan or labor union affiliation, or other non-merit factors; and second, “technical discrimination” involves a violation of procedures required pursuant to the Act or related Rules. *Price v. Luzerne/Wyoming Counties Area Agency on Aging*, 672 A.2d 409, 411 n. 4 (Pa. Commw. Ct. 1996), citing *Pronko v. Department of Revenue*, 114 Pa. Commw. 428, 539 A.2d 462 (1988). In the instant matter, this appeal involves a claim of traditional 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

¹ The provisions of Section 2704 are substantially the same as the provisions in Section 905.1 of Act 286 (71 P.S. § 741.905a), and both sections of the respective acts use virtually the same language. Section 905.1 provides:

Prohibition of Discrimination—No officer or employe[e] of the Commonwealth shall discriminate against any person in recruitment, examination, appointment, training, promotion, retention or any other personnel action with respect to the classified service because of political or religious opinions or affiliations because of labor union affiliations or because of race, national origin or other non-merit factors.

1 P.S. § 741.905a.

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.

In support of her appeal, appellant testified on her own behalf.² The Office of Administration elected to not present testimony in response.

The State Correctional Institution at Muncy, Department of Corrections, posted the vacant Corrections Unit Manager job posting for applications from March 3, 2023, to March 12, 2023.³ N.T. pp. 25-26; OA Ex. 1. Appellant applied for the Corrections Unit Manager position. N.T. p. 18; OA Ex. 2. On March 15, 2023, appellant received notice that she was deemed ineligible for the Corrections Unit Manager position. Comm. Ex. A; N.T. pp. 29-30; OA Ex. 3. Specifically, appellant was deemed not eligible because she did not hold Civil Service status for one year in one of the next lower classifications listed on the job posting, therefore, she was deemed not eligible for promotion without examination. Comm. Ex. A; OA Ex. 3.

² Appellant is currently employed as a Corrections Record Specialist for the appointing authority. N.T. p. 18. Appellant explained within a month of these proceedings, she will have over twenty-seven years of work experience with the appointing authority. N.T. p. 19.

³ The Corrections Unit Manager job posting is an internal job posting. N.T. p. 26; OA Ex. 1. Internal postings only allow Commonwealth employees to apply to the appointing authority's job posting while external postings permit members of the public to apply. N.T. p. 26.

The Corrections Unit Manager job posting recruitment methods were promotion without examination, reassignment, and voluntary demotion. N.T. p. 27; OA Ex. 1 (p. 2). Appellant conceded she could not acquire the Corrections Unit Manager position through a reassignment because she does not hold the same or similar title to a Corrections Unit Manager. N.T. p. 27. Similarly, appellant's current Corrections Record Specialist position is not a higher classification than a Corrections Unit Manager that would permit her to voluntarily demote to the Corrections Unit Manager position. N.T. p. 28. Consequently, appellant could only meet the recruitment methods by being promoted without examination. N.T. p. 28.

In order to be eligible for promotion without examination, a candidate must have or have held regular civil service status in one of the listed classifications. N.T. p. 31; OA Ex. 1 (p. 3). In addition to holding one of the listed lower classifications, the Corrections Unit Manager position job posting explicitly states “[a]pplicants must have a minimum of one year in the next lower class(es) by the posting closing date with no break in service.” OA. Ex. 1 (p. 3). One of the listed classifications is the Corrections Officer 3 position. N.T. p. 32; OA Ex. 1 (p. 3).

On appeal, appellant contended her work experience and qualifications while temporarily working out of class as a Corrections Officer 3 equaled approximately a year and three months of service. N.T. p. 19. Specifically, appellant argued her total experience as a Corrections Officer 3 was greater than a year because her combined service from November 18, 2008 to October 15, 2009, and from August 31, 2011 to October 15, 2011, would meet the minimum amount of

time as a Corrections Officer 3. N.T. pp. 39-40; Ap. Ex. 1. Consequently, appellant concluded her work experience and qualifications during her time as a Corrections Officer 3 would make her eligible under the Corrections Unit Manager position's recruitment method for promotion without examination. N.T. p. 19.

Nevertheless, on cross examination, appellant admitted she would have had to held the Corrections Officer 3 position for a minimum of one year with no break in service. N.T. p. 32; OA Ex. 1. Appellant acknowledged the time from November 18, 2008, to October 15, 2009, does not equal to one year of continuous service as a Corrections Officer 3. N.T. pp. 41-42; Ap. Ex. 1. Specifically, appellant correctly calculated it is over one month short of being one year of continuous service. N.T. p. 42. Notably, appellant admitted there was a break in service as an out-of-class Corrections Officer 3 from October 15, 2009, to August 31, 2011. N.T. p. 34; Ap. Ex. 1. Consequently, appellant confirmed she did not meet the threshold time necessary to be eligible for the promotion without examination recruitment method for the Corrections Officer 3 position because she did not possess one year of continuous service as a Corrections Officer 3. N.T. p. 43.

At the conclusion of appellant's testimony, OA moved to dismiss appellant's appeal on the grounds appellant failed to present sufficient evidence to establish her claim of mistake of fact discrimination. N.T. p. 45. The ruling was deferred at the hearing. N.T. p. 45. For the reasons that follow, the Commission grants the OA's motion to dismiss.

Based upon a review of the record, as a whole, the Commission finds appellant failed to establish her claim of mistake of fact discrimination. Based upon appellant's own credible⁴ calculations and admissions, she did not possess one year of continuous service in the Corrections Officer 3 position to be eligible under the promotion without examination recruitment method for the Corrections Unit Manager position. As a result, the Commission finds OA did not erroneously interpret the facts of appellant's work experience when deeming her ineligible for the Corrections Unit Manager position.⁵ *Goodridge, supra*. Accordingly, we grant OA's motion to dismiss and 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 Renee M. Rager challenging the Office of Administration, Executive Offices' determination she was not eligible for

⁴ 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*, 95 Pa. Commw. 475, 478, 505 A.2d 339, 341 (1986).

⁵ The Commission need not even address OA's proposed argument of bifurcating the hearing pursuant to their interpretation of 4 Pa. Code §105.16(a) because appellant has failed to establish her claim of mistake of fact discrimination and the motion to dismiss is granted.

Corrections Unit Manager employment, and sustains the action of the Office of Administration, Executive Offices' determination that Renee M. Rager was not eligible for Corrections Unit Manager employment.

State Civil Service Commission

Maria P. Donatucci
Chairwoman

Gregory M. Lane
Commissioner

Pamela M. Iovino
Commissioner

Mailed: January 22, 2024