

B-25



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE
ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of Chaunte Semmon,
Department of Health

CSC Docket No. 2014-132

Classification Appeal

ISSUED: JUL 21 2014 (WR)

Chaunte Semmon, represented by Daniel Smith, Staff Representative, CWA Local 1036, appeals the attached decision of the Division of Classification and Personnel Management (CPM) that her position with the Department of Health is properly classified as Data Entry Operator 1. The appellant seeks a Data Entry Operator 2 or Senior File Clerk classification in this proceeding.

The record in the present matter establishes that at the time of her position classification review, Ms. Semmon's permanent title was Senior File Clerk (Salary Range A-8). Her position was located in the Division of HIV, STD and TB Services, Department of Health and she reported to Sonia Acevedo, Principal Data Entry Operator. Ms. Semmon sought a reclassification review of her position to see if she was performing the duties of a Data Entry Operator 2 (Salary Range A-10). In support of her request, Ms. Semmon submitted a Position Classification Questionnaire (PCQ) detailing the different duties she performed as a Senior File Clerk, which CPM reviewed and analyzed. CPM found that Ms. Semmon's primary duties included entering laboratory report forms into databases for investigation; scanning, and verifying for accuracy, case reports and related laboratory forms using the Docushare-scanning module; completing Updated Identification matches and verifying there are no duplicate matches in the database; and reviewing a system to verify cases with positive status and removing visible identifiers from forms, date stamp, make copies, and distribute them. As such, CPM concluded that the duties performed by Ms. Semmon were consistent with the title of Data Entry

Operator 1 (Salary Range A-7) and her position was to be reclassified to that non-competitive title, effective September 22, 2012.

On appeal to the Civil Service Commission (Commission), Ms. Semmon asserts that, in light of her Performance Assessment Review (PAR) and telephone audit, her duties are more akin to those of a Data Entry Operator 2 than a Data Entry Operator 1. For instance, she states that, like a Data Entry Operator 2, she works under limited supervision, provides guidance to a lower-level operator and a Data Machine Operator 2, and her duties are varied and moderately complex. Moreover, she states that she provides guidance by "giv[ing] ideas and suggestions" to her coworkers. In the alternative, Ms. Semmon notes that she was promoted to the title of Senior File Clerk through open competitive testing procedures and asserts that prior to her classification request, she should have been assigned duties commensurate with her permanent title of Senior File Clerk. She contends that the appointing authority's failure to assign her those duties after CPM's determination resulted in a demotion and violated Civil Service rules. She states that the appointing authority could have assigned her to a vacant Senior File Clerk position. Additionally, Ms. Semmon claims that because she competently performed the duties she was assigned, she should not be liable for the appointing authority's decision to assign her the duties of a Data Entry Operator 1. She therefore requests that she be granted a salary overpayment waiver, stating that to repay the overpayment in the amount of \$761.67, which constitutes about 2.13 percent of her annual pay, would be a serious financial hardship.

CONCLUSION

The definition section of the job specification for Data Entry Operator 1 states:

Under close supervision, uses an alphanumeric keyboard, image scanner, or other data entry input device to enter, edit, and/or update data from a standard source document into a prescribed computer system for storage, processing, or data management purposes; compares entered data to source document to ensure the accuracy of input, and reenters or edits inaccurate data where necessary; does other related duties as required.

The definition section of the job specification for Data Entry Operator 2 states:

Under limited supervision, uses an alphanumeric keyboard, image scanner, or other data entry input device to enter, edit and/or update data from varied source documents into a prescribed computer system for storage, processing or data management purposes; compares

entered data to source document to ensure the accuracy of input, and reenters or edits inaccurate data where necessary; provides guidance and direction to entry level operators; does other related duties as required.

The definition section of the job specification for Senior File Clerk states:

Under direction of a Principal File Clerk or other supervisory official in a State department, agency, or institution, performs varied filing tasks requiring the exercise of independent judgment and a considerable knowledge of department functions, policies, and procedures in a large filing unit and/or takes the lead in the activities of a small filing unit; does related work as required.

The issue in the instant matter is whether the duties performed by Ms. Semmon are at the level and scope of a Data Entry Operator 1, a Data Entry Operator 2, or a Senior File Clerk. An individual performing the duties of a Senior File Clerk typically indexes, maintains and retrieves files. The difference between Data Entry Operator 1 and Data Entry Operator 2 is that the work a Data Entry Operator 2 performs must be varied and moderately complex. An aspect of this complexity is that a greater percentage of a Data Entry Operator 2's time is spent verifying data, answering questions, and providing guidance to lower level operators.

Based on a thorough review of the entire record, it is clear that the position of Ms. Semmon is properly classified as a Data Entry Operator 1. As described above and in CPM's determination, the position of Data Entry Operator 2 requires that an individual must perform varied and moderately complex work. The record does not establish that Ms. Semmon does this. Rather, the record reflects that the work Ms. Semmon performs is routine. Additionally, while Ms. Semmon claims that she provides guidance and direction to entry level operators, the record reflects that she does not take the lead over such workers. Moreover, the type of guidance and direction that Ms. Semmon contends that she provides appears to be more akin to consulting with her coworkers rather than guiding and directing them. Nevertheless, even if some of the duties Ms. Semmon performs are at the level of a Data Entry Operator 2, it is clear that the majority of her duties are at the level of a Data Entry Operator 1. In this regard, the fact that some of an employee's assigned duties may compare favorably with some examples of work found in a given job specification is not determinative for classification purposes, since, by nature, examples of work are utilized for illustrative purposes only. Moreover, it is not uncommon for an employee to perform some duties which are above or below the level of work which is ordinarily performed. For purposes of determining the appropriate level within a given class, and overall job specification purposes, the definition portion of the job specification is appropriately utilized. Finally, it is

noted that when a classification review results in a reclassification, *N.J.A.C. 4A:3-3.5* provides an appointing authority with the option to “effect the required change in the classification of an employee's position; assign duties and responsibilities commensurate with the employee's current title; or reassign the employee to the duties and responsibilities to which the employee has permanent rights.” Thus, contrary to Ms. Semmon's assertion, the appointing authority was not obligated to assign her the duties of a Senior File Clerk. However, as discussed below, it was required to implement layoff procedures to effectuate her reclassification to Data Entry Operator 1. Accordingly, a thorough review of the information presented in the record establishes that Ms. Semmon's position is properly classified as Data Entry Operator 1, effective September 22, 2012.

Consequently, there is a salary overpayment issue. In this regard, Ms. Semmon has been overpaid for the duties she performed since September 22, 2012, the date CPM found that she began performing the duties of a Data Entry Operator 1, to June 14, 2013, the date CPM issued its determination in this matter. However, as noted above, an employee whose position is reclassified downward can either be returned to her permanent title or demoted to the reclassified title voluntarily or via layoff procedures. In this matter, the movement from Ms. Semmon's former title of Senior File Clerk to the title of Data Entry Operator 1 constitutes a demotion. Accordingly, the appointing authority was required to implement layoff procedures to effectuate the reclassification of the appellant's position, but did not do so. See *N.J.S.A. 11A:8-1* and *N.J.A.C. 4A:8-1.6*. In such cases, the employee is owed 45 days of back pay. See *In the Matter of Robert W. Hartley* (MSB, decided June 20, 2007) (45 days of back pay granted to employee who was laid off without 45 days notice). Consequently, the amount Ms. Semmon's owes in a salary overpayment should be reduced accordingly.

N.J.A.C. 4A:3-4.21 Salary overpayments: State service, provides as follows:

- (a) The [Commission] may waive, in whole or in part, the repayment of an erroneous salary overpayment, or may adjust the repayment schedule based on consideration of the following factors:
 1. The circumstances and amount of the overpayment were such that an employee could reasonably have been unaware of the error;
 2. The overpayment resulted from a specific administrative error, and was not due to mere delay in processing a change in pay status;

3. The terms of the repayment schedule would result in economic hardship to the employee.

It is well settled that all of the factors outlined in *N.J.A.C. 4A:3-4.21* must be satisfied to successfully obtain a waiver of the repayment obligation. Thus, in *In the Matter of Thomas Micai v. Commissioner of Department of Personnel, State of New Jersey*, Docket No. A-5053-91T5 (App. Div., July 15, 1993), the Superior Court of New Jersey, Appellate Division, affirmed the Commissioner of Personnel's decision to deny a request for waiver of repayment of salary overpayment, finding that, although the appellant had established that the overpayment was the result of an administrative error, he failed to show that enforcement of the repayment would create economic hardship.

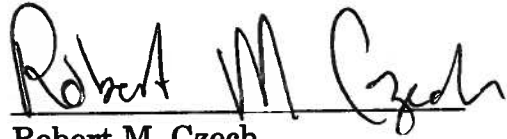
With respect to the aforementioned factors, Ms. Semmon merely states that any repayment ordered would result in a serious financial hardship. However, Ms. Semmon remains employed and she has not provided any substantive documentation in support of her financial situation which would indicate that repayment would result in financial hardship. See *In the Matter of Ruth Samonski* (Commissioner of Personnel, decided July 5, 2005) (Waiver of repayment of the salary overpayment in the amount of \$20,568.40 for improperly receiving sick leave injury benefits denied, where the appellant failed to provide any information to establish that the repayment would cause an economic hardship). Applying the salary overpayment criteria to the instant matter, and considering the fact that the overpayment amount will be reduced as explained above, a sufficient basis does not exist to grant a waiver of the repayment at issue pursuant to *N.J.A.C. 4A:3-4.21*. However, if the repayment schedule is unreasonable, the petitioner should contact the appointing authority to arrange more suitable terms.

ORDER

Therefore, the position of Chaunte Semmon is properly classified as Data Entry Operator 1.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

**DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 16 DAY OF JULY, 2014**

A handwritten signature in black ink, appearing to read "Robert M. Czech", written over a horizontal line.

**Robert M. Czech
Chairperson
Civil Service Commission**

**Inquiries
and
Correspondence**

**Henry Maurer
Director
Division of Appeals
and Regulatory Affairs
Civil Service Commission
Written Records Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312**

Attachment

**c: Chaunte Semmon
Loreta Sepulveda
Kenneth Connolly
Joseph Gambino**



Chris Christie
Governor
Kim Guadagno
Lt. Governor

STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION
DIVISION OF CLASSIFICATION AND PERSONNEL MANAGEMENT
P. O. Box 313
Trenton, New Jersey 08625-0313

Robert M. Czech
Chair/Chief Executive Officer

June 14, 2013

Chaunte Semmon



Re: Classification Appeal – Chaunte Semmon
EID - 000487944
CPM Log # 08121283
Position # 946427

Dear Ms. Semmon:

A classification review of position number 946427 has been completed and the determination follows. This determination is based upon a thorough review and analysis of all information and documentation submitted by you, consultation and clarification with your immediate supervisor, Sonia Acevedo, and your Appointing Authority during the review process.

Issue:

You believe the duties of your position are out of the scope of your permanent title, Senior File Clerk (20723, A08), and are commensurate with the job duties of a Data Entry Operator 2 (Senior Data Entry Machine Operator) (53293, A10).

Organization:

This position is currently classified in the title of Senior File Clerk (20723, A08) and is located in the Division of HIV, STD, and TB Services, Department of Health and Senior Services. The unit is responsible for collecting, processing, and disseminating comprehensive data detailing those behaviors which place individuals at risk for HIV infection. The position is directly supervised by Sonia Acevedo (Principal Data Machine Operator, 53294, R14).

Finding of Fact:

The primary responsibilities of the position you encumber include the following:

- Enter HIV/AIDS laboratory report forms into the Enhanced HIV/AIDS Reporting System (eHARS) and the Not on File (NOF) database for investigation.
- Scan HIV/AIDS case reports and related laboratory forms using Docushare-scanning module and verify for accuracy. These reports are scanned for retrieval by field representatives.

- Complete Updated Identification (UID) matches and verify that there are no duplicate matches in the database.
- Review Program Evaluation Monitoring System (PEMS) to verify cases with positive status. Remove visible identifiers from form, date stamp, make copies, and distribute.

Review and Analysis

A comparative review of the job specifications for various titles was conducted to determine the nature and scope of the duties and responsibilities assigned to determine the level at which the position functions.

The position is currently classified in the title of Senior File Clerk (20723, A08). The definition of this title is:

Under direction of a Principal File Clerk or other supervisory official in a state department, agency, or institution, performs varied filing tasks requiring the exercise of independent judgment and a considerable knowledge of department functions, policies, and procedures in a large filing unit and/or takes the lead in the activities of a small filing unit; does related work as required.

An incumbent properly classified in this title performs duties and responsibilities which are primarily focused on indexing, maintaining, and retrieving files. Samples of these duties are included in the job specification which is available online. The review of the information obtained during the classification process does not support that this position performs the tasks generally involved in the duties of a Senior File Clerk.

The definition of the title, Data Entry Machine Operator 1 (53292, A07) is:

Under close supervision, uses an alphanumeric keyboard, image scanner, or other data entry input device to enter, edit and/or update data from a standard source document into a prescribed computer system for storage, processing or data management purposes; compares entered data to source document to ensure the accuracy of input, and reenters or edits inaccurate data where necessary; does other related duties as required.

The definition of the title, Data Entry Machine Operator 2 (53293, A10) is:

Under limited supervision, uses an alphanumeric keyboard, image scanner, or other data entry input device to enter, edit and/or update data from varied source documents into a prescribed computer system for storage, processing or data management purposes; compares entered data to source document to ensure the accuracy of input, and reenters or edits inaccurate data where necessary; provides guidance and direction to entry level operators; does other related duties as required.

A review of the job duties and responsibilities revealed that your position is responsible for entering laboratory reports into the eHARS database. Your position is tasked with scanning case reports and related laboratory reports. In addition, when needed you provide office support, including mail handling and telephone coverage.

While the duties and responsibilities of the level 1 and 2 are similar, an element of the Data Entry Operator 2 requires that the work be varied and moderately complex. An aspect of complexity that is present in the Data Entry Operator 2 level is the greater percentage of time spent verifying data, answering questions, and providing guidance to lower level operators. The majority of your time is spent performing routine and repetitive data entry which is consistent with the Data Entry Operator 1 level.

Determination

The review revealed that the position's current duties and responsibilities are commensurate with the title **Data Entry Operator 1 (53292, A07)**. By copy of this letter, the Appointing Authority is advised that the position will be reclassified to the title Data Entry Operator 1 effective September 22, 2012, unless the Appointing Authority assigns duties and responsibilities that are commensurate with your permanent title, Senior File Clerk (20723, A08), within thirty days of receipt of this determination letter. If you are returned to your permanent title, then the Appointing Authority must submit to this office a signed DPF-44S showing that duties consistent with your permanent title have been assigned.

Please note that this classification determination does not imply that you will meet the eligibility requirements of the title. It is the responsibility of the Appointing Authority to ensure an incumbent meets the eligibility requirements prior to any appointment.

Please be advised that in accordance with *N.J.A.C. 4A:3-3.9*, you may appeal this decision within twenty (20) days of receipt of this letter. This appeal should be addressed to Written Record Appeals Unit, Division of Appeals and Regulatory Affairs, P.O. Box 312, Trenton, New Jersey 08625-0312. Please note that the submission of an appeal must include a copy of the determination being appealed as well as written documentation and/or argument substantiating the portions of the determination being disputed and the basis for the appeal.

Sincerely,



Nora C. Koch, Assistant Director
Classification and Personnel Management

MR/SLA
Attachments

Cc: Loretta Sepulveda
Martha Bell

