



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Duane Wallace,
Township of Willingboro

Administrative Appeal

CSC Docket No. 2018-297

ISSUED: **NOV 17 2017** (SLK)

Duane Wallace appeals his removal from an unclassified appointment as a Confidential Assistant from the Township of Willingboro (Willingboro).

By way of background, the appellant retired effective January 1, 2010 from his position with Willingboro as a Construction Official/Director of Inspections, a career service title. Thereafter, he was appointed to the unclassified title Confidential Assistant effective February 1, 2010. Subsequently, the appointing authority discontinued his unclassified appointment on April 28, 2017. On July 25, 2017, the appellant appealed his removal to the Civil Service Commission (Commission).

On appeal, the appellant presents that in 2010 he was hired as a Construction Official, a Building Sub-Code Official, and an Electrical Sub-Code Official (Construction Official) and continued to perform the duties of a Construction Official/Director of Inspections until April 25, 2017 when he was informed that he was being separated from his unclassified position as a Confidential Assistant effective April 28, 2017. However, the appellant asserts that the Town Council appointed him to the Construction Official titles, he never received any notice that his Civil Service title was Confidential Assistant, and he never received prior notice that Willingboro was considering separating him from his position. The appellant states that human resources informed him that the Division of Agency Services (Agency Services) conducted an audit of its personnel system and his name did not have a title. Thereafter, the appellant claims that

Willingboro provided Agency Services with false information in 2016 and then Agency Services designated his title as Confidential Assistant. The appellant believes that he was placed in an unclassified title so that he could be wrongfully terminated. The appellant argues that Willingboro should not be able to terminate him after providing Agency Services false information.

In response, Willingboro, represented by James K. Grace, Esq., asserts that the appellant's appeal is untimely as he was notified on April 25, 2017 that he was being removed from his position on April 28, 2017. However, the appellant did not file his appeal until July 25, 2017, which is well after the 20-day timeframe to file an appeal. Further, it states that the appellant has not provided any explanation as to why his appeal was untimely. With respect to the merits of the case, Willingboro submits minutes from its December 8, 2009 meeting that indicate that the appellant expressed his wish to retire from his position as a Construction Official/Director of Inspection effective December 31, 2009, in order to collect his pension, but to continue in a position as a Municipal Housing Liaison, which is a contractual position that did not impact his pension. Accordingly, the appellant was placed in the unclassified title of Confidential Assistant effective February 1, 2010 until April 28, 2017. Willingboro presents that the Civil Service Act contemplates that employees are in either the career service or the unclassified service. Therefore, an employee who is not in the career service must be in the unclassified service. Further, the right to appeal termination from employment only applies to those in the career service. Willingboro emphasizes that the appellant's claim that it falsified records is outrageous and without merit. It reiterates that the appellant wanted to retire from his Construction Official/Director of Inspections position and collect his pension, but remain employed for a substantial salary and Willingboro granted his request. It asserts the appellant has not presented any evidence that it falsified documents that were sent to the Commission.

In reply, the appellant submits a letter from Willingboro dated December 29, 2009. The letter indicates that the appellant retired from the Civil Service title of Construction Official/Director of Inspection effective December 31, 2009 and that he would continue to work for Willingboro under the position of Municipal Housing Liaison. Additionally, the letter states, effective February 1, 2010, he would continue working as a Construction/Building Sub-Code/Electrical Sub-Code Official. The appellant presents that on April 28, 2017 human resources informed him that the Commission listed the appellant as a Confidential Assistant and he was informed that unclassified employees could not appeal his or her separation. On May 5, 2017, the appellant indicates that he spoke with Agency Services, which confirmed that his personnel record indicated that he had been a Confidential Assistant since 2010. He represents that an attorney advised him that he should immediately file an appeal with the Commission. On July 17, 2017, the appellant states that during a State unemployment benefits claims meeting, human resources confirmed that it was Agency Services that assigned him the title of Confidential

Assistant and not the appointing authority. Further, human resources explained it terminated him because the Division of Pensions and Benefits (Pensions and Benefits) was investigating him. However, when he called Pensions and Benefits, it stated that he would have been called if there was a question regarding his pension and he presents that he has subsequently received medical and dental coverage from the State pension system after his termination.

To support his allegations, the appellant submits documents from his personnel file that were submitted to the Commission in either 2016 or 2017. Specifically, the documents show that on January 1, 2016, his personnel record only indicated that he retired on January 1, 2010 from his position as a Construction Official/Director of Inspections. Thereafter, on May 19, 2016, human resources entered into the personnel system that the appellant was a New Hire effective February 1, 2010 and on June 27, 2016, it entered that he was a Confidential Assistant. Therefore, the appellant argues that on June 27, 2016, Willingboro falsely reported a title change to the Commission. The appellant highlights that although his personnel record reflects that he was serving in the Support Services Department starting in February 1, 2010, this department was not created until 2015. He submits the New Jersey Uniform Construction Code Annual Reports from the Department of Community Affairs, which confirm that he was serving as a Construction Official, Building Sub-Code Official, and an Electrical Sub-Code Official from February 2011 until his April 2017 separation. The appellant attaches Salary Ordinances, which reference the Construction Official and Director titles, but do not reference the Confidential Assistant title. The appellant submits a Notification of Employment After Retirement form that Willingboro submitted to Pensions and Benefits that is dated March 30, 2017. He asserts that there is no record that Pensions and Benefits ever solicited this document from Willingboro and the form clearly indicates that it should have submitted this form within 15 days after he was rehired in 2010. The appellant believes this document is another example of Willingboro submitting false information to a State agency. The appellant claims that one of the signers of this document admitted to him that she was forced to sign this document under duress as there was no payroll records indicating that his title was Confidential Assistant nor was there any salary ordinance indicating that this was his title. He attaches letters from other former Willingboro personnel who confirm that it never appointed him to the title of Confidential Assistant.

CONCLUSION

N.J.A.C. 4A:2-1.1(a) provides that unless a different time period is stated, an appeal must be filed within 20 days after either the appellant has notice or should have reasonably have known of the decision, situation, or action being appealed.

N.J.A.C. 4A:2-2.1(a) provides that the subchapter on major discipline applies only to permanent employees in the career service or person serving a working test period.

N.J.A.C. 4A:3-1.1 provides that all jobs in local service be allocated either to the career service or to the unclassified service.

N.J.A.C. 4A:3-1.3(a)2 and *N.J.S.A.* 11A:3-5 provide that an appointing authority may appoint a Confidential Assistant allocated to the unclassified service.

N.J.A.C. 4A:2-1.4(c) provides that the appellant has the burden of proof on appeal.

Regardless of the appellant's title status, the Commission finds that the appellant's appeal is untimely. The appellant received notice on April 25, 2017 that he was being separated from his a position as a Confidential Assistant effective April 28, 2017. Additionally, on May 5, 2017, the appellant acknowledges that Agency Services confirmed that personnel records indicated that he had been serving as a Confidential Assistant since 2010. He further indicates that an attorney advised him that he should appeal immediately. Therefore, at the latest, the appellant should have filed an appeal within 20 days of May 5, 2017. However, the appellant did not file his appeal until July 25, 2017, which is well after the required time period to file an appeal.

In reference to the merits of the case, Willingboro's December 29, 2009 letter states that the appellant decided to "retire from the Civil Service Title of Construction/Director of Inspection on December 31, 2009." The letter goes on to state that although the appellant is retiring from the pension system, he would continue work for Willingboro as Municipal Housing Liaison. Additionally, he was going to continue as a Construction/Building Sub-Code/ Electrical Sub-Code Official. The Commission notes that Municipal Housing Liaison is not a Civil Service title. Further, while Construction Official, Building Sub-Code Official and Electrical Sub-Code Official are Civil Service titles, the appellant does not submit any evidence that he was appointed to these titles subject to competitive examination procedures. Further, even if the appellant believed that he was being appointed to noncompetitive career service titles, the appellant does not submit any evidence that he was required to complete a working test period. Additionally, the appellant submits a February 1, 2011 letter from Willingboro, which reiterated to the appellant that he "retired," but he would continue to work as the Municipal Housing Liaison. The letter further indicates that in this position the appellant had been paid on a contractual basis. Therefore, if the appellant did not realize it earlier, he should have known that since Willingboro was paying him as a "contractual" employee, it did not consider his employment career service. Additionally, it is the appellant's responsibility to understand what his agreement was with the

appointing authority. The fact that the Department of Community Affairs may have recognized him as serving as a Construction Official is not relevant as he was not appointed to that title following the criteria necessary to be a serving in the career service. Even assuming his appointment to that title (or the other career service titles) by Willingboro, without his undergoing an open competitive appointment process, the best his designation in those titles could have been considered was provisional pending open competitive examination procedures. In this regard, a provisional employee has no vested property rights to a career service appointment and can be separated at any time.

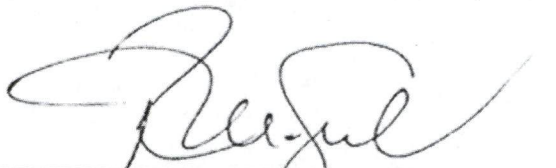
The appellant also accuses Willingboro of very serious allegations, namely, that it submitted false information to Agency Services and Pensions and Benefits. However, the appellant states that Agency Services advised Willingboro that the appellant's title should be Confidential Assistant when it discovered that he was working after retirement. Further, as mentioned above, as there was no evidence that the appellant was hired in a career service title, the appellant's title needed to be in the unclassified service. While Willingboro should have contacted Agency Services and Pensions and Benefits when it planned on rehiring the appellant after retirement, the appellant does not submit one scintilla of evidence that it submitted false information to either Civil Service or Pensions and Benefits. *See In the Matter of Gary Hill* (CSC, decided October 4, 2017). Regardless, this appeal is denied for all the reasons set forth previously.

ORDER

Therefore, it is ordered that this appeal be denied.

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 15th DAY OF NOVEMBER, 2017



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