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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Susan
Travers-McBride,
Motor Vehicle Commission

CSC Docket No. 2016-860

Administrative Appeal

ISSUED: OCT 23 2015 (DASV)

The Motor Vehicle Commission (MVC) requests a relaxation of *N.J.A.C.* 4A:4-5.2(e) in order to recalculate the working test period of Susan Travers-McBride, a Compliance Officer 1, MVC.

N.J.A.C. 4A:4-5.2(e) provides that an approved leave of absence including a furlough extension leave or a voluntary furlough shall extend the completion of the working test period for a period of time equal to that leave or voluntary furlough. Ms. Travers-McBride was promoted and received a regular appointment to Compliance Officer 1, MVC effective May 2, 2015. She was required to serve a four month working test period. See *N.J.A.C.* 4A:4-5.2(b)2. However, Ms. Travers-McBride began a leave of absence on May 2, 2015 and was authorized off duty until June 21, 2015.¹ On June 22, 2015, she was placed on light duty assignment and was then returned to full duty status on September 14, 2015.

In its request, the appointing authority indicates that, by rule, it may extend a working test period when an employee is on an approved leave of absence. However, it explains that when Ms. Travers-McBride returned to work, she was not permitted to return to full duty, as she had certain driving restrictions. As such, the appointing authority argues that Ms. Travers-McBride was not fully performing the duties of a Compliance Officer 1, MVC, for which she was to be evaluated. It states that Ms. Travers-McBride's light duty assignments included clerical duties,

¹ Ms. Travers-McBride received Workers Compensation during her leave. Her placement on light duty and return to full duty were authorized by a State physician.

typing, filing, and computer work. In contrast, it indicates that a Compliance Officer 1, MVC is responsible for covert and overt audits and investigations of Motor Vehicle agencies, private and centralized inspection stations, and driver testing and school bus operations. The appointing authority emphasizes that Ms. Travers-McBride was restricted from performing the full range of her job function. It notes that an extension of the working test period is ineffective because it would only account for Ms. Travers-McBride's leave of absence and not for the time she was on light duty. Therefore, the appointing authority requests that *N.J.A.C. 4A:4-5.2(e)* be relaxed in order for Ms. Travers-McBride's working test period to be recalculated based on the date she was released to full duty. Ms. Travers-McBride's records currently reflect that her working test period ends on October 23, 2015, which is an extended date based on her leave of absence.

In response, Ms. Travers-McBride indicates that a relaxation of the rule should not be approved since, regardless of her light duty status, she has been working as a "Full" Compliance Officer 1, MVC. She explains that there are duties of the position other than just being in the field. For instance, she states that she answered telephone calls from inspection facilities relating to procedures and protocols; assisted other compliance officers with completing and entering reports into a database; collected and reviewed mileage sheets; wrote and edited documents, letters, and hearing requests; filed documents; and performed other office-related duties. She also assisted and worked in the Salvage Office. In support, Ms. Travers-McBride submits e-mails regarding her assignments. She also notes that some of her assignments were given verbally by lead workers.

CONCLUSION

N.J.S.A. 11A:4-15 and *N.J.A.C. 4A:4-5.1(a)* provide that the working test period is part of the examination process designed to permit an appointing authority to determine whether an employee can satisfactorily perform the duties of the title. Moreover, *N.J.A.C. 4A:4-5.1(b)* provides in part that, with certain exceptions, regular appointments to a title in the career service shall be subject to a working test period. During the working test period, an employee shall perform the duties of the title for which appointment was made. See *N.J.A.C. 4A:4-5.1(c)*. Additionally, *N.J.A.C. 4A:4-5.2(a)* states that the working test period shall not include any time served by an employee under provisional, temporary, interim or emergency appointment. The working test period shall begin on the date of regular appointment. Furthermore, *N.J.A.C. 4A:4-5.2(b)* provides that, in State service, the length of the working test period shall be a period of four months of active service, which may be extended on request of an appointing authority for an additional two months. Finally, *N.J.A.C. 4A:1-1.2(c)* states that the Civil Service Commission (Commission) may relax a rule for good cause in order to effectuate the purposes of Title 11A, New Jersey Statutes.

In the instant matter, Ms. Travers-McBride was regularly appointed as a Compliance Officer 1, MVC effective May 2, 2015. However, she was on an approved leave of absence and did not return to work until June 22, 2015. She was initially placed on light duty assignment and was then returned to full duty status on September 14, 2015. Ms. Travers-McBride argues that she worked as a "Full" Compliance Officer 1, MVC. However, the definition section of the job specification for Compliance Officer 1, MVC states:

Under the direction of a supervisory official in the Motor Vehicle Commission, is responsible for conducting audits of Motor Vehicle operations incorporating agencies and inspection stations (including Driver Testing operations); has responsibility for conducting investigations on rules, regulations, and procedures pertinent to private inspection facilities, centralized inspection facilities, mobile inspections, motor vehicle agencies, school bus operators and other related businesses licensed/regulating by the Motor Vehicle Commission; does related work as required.

Based on her description of duties, as well as the appointing authority's confirmation of those duties, Ms. Travers-McBride was not performing the primary duties of her title during her light duty assignment. She did not conduct audits or investigations, but rather, she performed the necessary office-related work of her title. It is emphasized that the purpose of the working test period is to permit an appointing authority to determine whether an employee satisfactorily performs the duties of a title. See *N.J.S.A. 11A:4-15* and *N.J.A.C. 4A:4-5.1(a)*. In other words, the employee must be performing the primary duties of the title in order for the appointing authority to properly evaluate the employee for permanent appointment to that title.²

The record indicates that Ms. Travers-McBride performed other related work. As noted above, *N.J.A.C. 4A:4-5.2(e)* permits an extension of the completion of the working test period if the individual is on a leave of absence. In Ms. Travers-McBride's case, there is no dispute that her approved leave of absence extended her working test period. Based on the circumstances, Ms. Travers-McBride's light duty assignment should also be considered the equivalent of an approved leave for purposes of extending the completion of her working test period. It is emphasized that the employee and employer are entitled to the benefit of a full working test period. The appointing authority must be able to fairly evaluate Ms. Travers-McBride based on the full scope of her duties. Likewise, Ms. Travers-McBride should have the opportunity to fully demonstrate her ability to successfully execute those duties. It is noted that while performing ancillary duties during a limited

² *N.J.A.C. 4A:1-1.3* defines a permanent employee as an employee in the career service who has acquired the tenure and rights resulting from regular appointment and successful completion of the working test period.

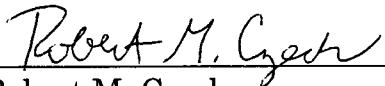
time is sufficient to keep Ms. Travers-McBride's position classified as a Compliance Officer 1, MVC, permanent restrictions from performing the majority of the duties of a title may evidence a misclassification of the position. This would be contrary to *N.J.A.C.* 4A:4-5.1(c), which provides that during the working test period, an employee *shall* perform the duties of the title for which appointment was made. However, Ms. Travers-McBride has returned to full duty status and the appointing authority can now appropriately assess her performance in all aspects of the position. It is also noted that if a light duty assignment was not available, Ms. Travers-McBride would have remained on an approved leave of absence after June 22, 2015 and completed her working test period upon her return. The Commission does not find her situation to be conceptually different. Accordingly, pursuant to *N.J.A.C.* 4A:1-1.2(c), good cause is found to relax *N.J.A.C.* 4A:4-5.2(e) and grant the appointing authority's request to have Ms. Travers-McBride complete her required four month working test period from September 14, 2015, the date she was released to full duty, to January 13, 2016.

ORDER

Therefore, it is ordered that this request be granted.

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 21ST DAY OF OCTOBER, 2015



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