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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Kelly Ottobre,  
Department of Law and Public Safety

Request for Waiver of Repayment of  
Salary Overpayment

CSC Docket No. 2015-2540

ISSUED: JUN 19 2015

(LDH)

Kelly Ottobre, a Grants Manager, with the Department of Law and Public Safety, requests a waiver of repayment of a salary overpayment pursuant to N.J.S.A. 11A:3-7, which provides that when an employee has erroneously received a salary overpayment, the Civil Service Commission (Commission) may waive repayment based on a review of the case.

By way of background, personnel records indicate that the appellant had been serving provisionally in the position of Administrative Analyst 1 (salary range R29) since November 16, 2013 and that her permanent title is Grants Manager (salary range &28). The appellant had applied for the subject promotional examination and was admitted. During an audit of her application, the Division of Selection Services<sup>1</sup> (Selection Services) asked the Division of Classification and Personnel Management<sup>2</sup> (CPM) for a review of the appellant's classification. CPM issued its classification determination that Grants Specialist (salary range P27) was the appropriate title for her position, effective April 5, 2014. Thereafter, the appellant appealed the determination that she was classified incorrectly and the Commission decided on February 4, 2015 to affirm CPM's determination.<sup>3</sup> This resulted in her receiving a salary overpayment in the amount of \$738.15.

<sup>1</sup> Now, part of the Division of Agency Services.

<sup>2</sup> Now, the Division of Agency Services

<sup>3</sup> In *In the Matter of Kelly Ottobre* (CSC, February 4, 2015), the Commission ordered, in part, that the appointing authority immediately place the appellant into the title of Grants Specialist, or return her to her permanent title, effective April 5, 2014. Subsequently, the appointing authority returned the appellant to her permanent title, effective April 5, 2014.

Subsequently, the appellant submitted a request for waiver of repayment of the salary overpayment. The repayment schedule is \$105.45 for seven pay periods that began on pay period eight.<sup>4</sup>

In her request, Ottobre argues that the salary overpayment was not due to any of her own actions. Rather, she merely was offered and accepted an appointment to the title of Administrative Analyst 1. Moreover, she states that the salary overpayment would create a financial hardship for her as her family has adjusted to the lifestyle the new salary has provided. She argues that the repayment will prohibit her from paying her babysitter over the summer and her children will have to go to a camp where they will be unhappy and bored. Additionally, she maintains that her children will be prevented from participating in extracurricular activities. In addition, she wouldn't be able to afford her newly refinanced mortgage payments.

Agency records reveal that as an Administrative Analyst 1 she was on step eight of salary range R29 (\$79,884.83), effective November 16, 2013. Upon her return to her permanent title of Grants Manager on April 5, 2014, she was placed on step seven of salary range M28 (\$77,647.56), she received an across the board increase on July 12, 2014 (\$79,006.39)<sup>5</sup> and advanced to step eight of salary range &28 on November 15, 2014 (\$82,046.04).

## CONCLUSION

*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.

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<sup>4</sup> Pay Period eight began on March 21, 2015.

<sup>5</sup> It is noted that employees in salary range M28 who were covered by the International Brotherhood of Electrical Workers were moved to the same step in salary range &28, effective July 12, 2014.

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.

In the instant matter, the appellant argues that the overpayment was through no fault of her own, since she merely accepted the position that she was offered, and thus the amount should be waived. However, regardless of whether or not the overpayment was due to the appellant's actions, it was the result of an administrative error and it is well settled that an employee cannot benefit from an administrative error. See e.g., *Cipriano v. Department of Civil Service*, 151 *N.J. Super.* 86 (App. Div. 1977); *O'Malley v. Department of Energy*, 109 *N.J.* 309 (1987); *HIP of New Jersey v. New Jersey Department of Banking and Insurance*, 309 *N.J. Super.* 538 (App. Div. 1998) (No vested or other rights are accorded by an administrative error).

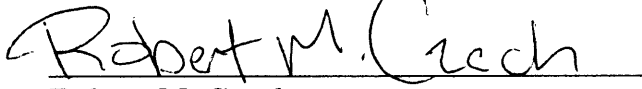
Furthermore, although the appellant claims that the repayment of the \$738.15 overpayment would create a hardship, she failed to present any evidence or documentation in support. For example, although the appellant claimed that she would be unable to afford her newly refinanced mortgage payments, she has failed to provide the monthly household income and all expenses, to substantiate her claim of hardship. Moreover, the record evidences that the appellant's current salary is \$82,046.04, and that the repayment schedule of \$105.45, was for only seven pay periods beginning on pay period eight of 2015. Therefore, her current salary of \$82,046.04, minus the repayment of \$105.45, is still significantly higher than her former salary of \$79,884.83. Accordingly, a sufficient basis does not exist to grant a waiver of the repayments at issue pursuant to *N.J.A.C. 4A:3-4.21*.

### ORDER

Therefore, it is ordered that the request for a waiver of the repayment by Kelly Ottobre is 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 17<sup>th</sup> DAY OF JUNE, 2015



Robert M. Czech  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

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

Attachment

c: Kelly Ottobre  
Mirella Bednar  
Kenneth Connolly  
Joseph Gambino



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Kelly Ottobre,  
Department of Law and Public Safety

Classification Appeal

CSC Docket No. 2014-3163

ISSUED: FEB - 9 2015

(LDH)

Kelly Ottobre appeals the attached decision of the Division of Classification and Personnel Management (CPM) that determined the proper classification of her position with the Department of Law and Public Safety is Grants Specialist. Ottobre seeks a Contact Administrator 3 classification in this proceeding.

The record in the present matter establishes that Ottobre is currently serving provisionally, pending a promotional examination in the title of Administrative Analyst 1.<sup>1</sup> As a result, a promotional examination for the subject title was announced with a closing date of February 21, 2013. Initially, the appellant was admitted to the written examination which was held on October 29, 2013. During an audit of her application, the Division of Selection Services (Selection Services) asked CPM for a review of the appellant's classification. The promotional examination's scores are being held pending the decision of the appellant's classification. CPM based its decision on the Position Classification Questionnaire, phone audit and the appellant's most recent Performance Assessment Review. The position is located in the Division of Highway Traffic Safety, Department of Law and Public Safety. CPM found that the appellant's duties and responsibilities are: ensuring expenditures are in compliance with grant guidelines, State and federal regulations; reviewing and submitting grant information into GTS and SAGE systems; utilizing NJCFS for electronic transfer of grant funds; developing budget controls to meet fiscal constraints, State and federal guidelines; and preparing annual budget requests and financial status reports. Thus, CPM concluded that the

<sup>1</sup> The appellant's permanent title is Grants Manager.

duties of Ottobre's position were appropriately classified by the title of Grants Specialist, effective April 5, 2014.

On appeal, Ottobre does not dispute CPM's determination. However, she argues that the appointing authority has since given her new duties and responsibilities that are commensurate with a Contract Administrator 3 classification. Specifically, she asserts that she is responsible for the supervision of an Administrative Analyst 3 and is performing grant administration duties. Thus, she maintains that a Contract Administrator 3 classification is more appropriate to her current duties. Lastly, she asserts that it would be unfair for her to be admitted and take the examination for Administrative Analyst 1 (PS6737P), yet be deemed ineligible after the fact.

### CONCLUSION

In the instant matter, the appellant does not dispute that the title of Grants Specialist was the appropriate classification for her position based upon CPM's review of her duties and responsibilities. Rather the appellant argues that the appointing authority has assigned her new duties which involve the supervision of an Administrative Analyst 3. However, though the appellant may have been given new duties and responsibilities, it is irrelevant to the instant appeal.<sup>2</sup> The foundation of position classification, as practiced in New Jersey, is the determination of duties and responsibilities being performed at a given point in time as verified by this agency through an audit or other formal study. This agency's established classification review procedures in this regard have been affirmed following formal Civil Service Commission review and judicial challenges. *See In the Matter of Community Service Aide/Senior Clerk (M6631A), Program Monitor (M62780), and Code Enforcement Officer (M00410), Docket No. A-3062-02T2 (App. Div. June 15, 2004).*

With regard to the appellant's argument that she was admitted and took the Administrative Analyst 1 (PS6737P) examination, a determination of ineligibility can be made at any point in the selection and appointment process. *See N.J.A.C. 4A:4-6.1 and 6.2.* The fact that she was admitted in error to that examination does not provide her with an entitlement to eligibility. No vested or other rights are accorded by an administrative error. *See Cipriano v. Department of Civil Service, 151 N.J. Super. 86 (App. Div. 1977); O'Malley v. Department of Energy, 109 N.J. 309 (1987); HIP of New Jersey v. New Jersey Department of Banking and Insurance, 309 N.J. Super. 538 (App. Div. 1998).*

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<sup>2</sup> If the appellant's duties have changed, she may request that the Division of Agency Services preform a new classification review of her current duties.

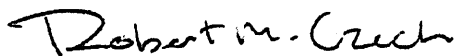
A thorough review of the information presented in the record establishes that Ottobre's position was properly classified as a Grants Specialist and she has presented no arguments that CPM's decision was incorrect.

### ORDER

Therefore, the position of Kelly Ottobre is properly classified as Grants Specialist, effective April 5, 2014. Also, the Department of Law and Public Safety shall immediately place the appellant in the Grants Specialist title or her permanent title of Grants Manager, effective April 5, 2014, and effectuate steps for salary repayment. Failure to initiate procedures to properly effect changes to the appellant's classification by the appointing authority within 10 days of receiving this determination shall subject it to fines and penalties pursuant to *N.J.A.C. 4A:10-2.1*. Any actions taken by the appointing authority in this matter shall be promptly reported to the Division of Agency Services.

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 4<sup>TH</sup> DAY OF FEBRUARY, 2015



Robert M. Czech  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

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

#### Attachment

c: Kelly Ottobre  
Mirella Bednar  
Kenneth Connolly  
Joseph Gambino



Chris Christie  
*Governor*  
Kim Guadagno  
*Lt. Governor*

STATE OF NEW JERSEY  
CIVIL SERVICE COMMISSION  
Classification and Personnel Management  
P. O. Box 313  
Trenton, New Jersey 08625-0313

Robert M. Czech  
*Chair/Chief Executive Officer*

March 14, 2014

Ms. Mirella Bednar, Director of Human Resource Management  
Department of Law and Public Safety  
Division of Personnel  
P.O. Box 081 Trenton, NJ 08625-0081

**Re: Classification Review—Administrative Analyst 1, Position # 943348,  
Log # 07130064**

Dear Ms. Bednar:

This is to inform you and the incumbent, Kelly Ottobre, of our determination concerning the classification review referenced above. The determination is based upon the results of a detailed analysis of the Position Classification Questionnaire, information obtained during a phone audit on January 29<sup>th</sup>, 2014, and Ms. Ottobre's most recent Performance Assessment Review.

**Issue:**

Ms. Ottobre is serving provisionally (PAP) in the title, Administrative Analyst 1 (50076, R29), and holds permanent status (RAP) in the title, Grants Manager (51082, M28). A review of Ms. Ottobre's duties was initiated as a result of a request from the Division of Selection Services, Civil Service Commission, upon receiving an application for the promotional examination for the title, Administrative Analyst 1 (PS6737P). The description of current job duties provided in the application appears to be inconsistent with the definition of the job specification for the title.

**Organization:**

Ms. Ottobre is assigned to the Fiscal Unit of the Division of Highway Traffic Safety, Department of Law and Public Safety. She reports to Gary Poedubicky, Manager Office of Highway Safety, Law and Public Safety (17466, M32).

**Findings of Fact:**

The incumbent performs the following duties and responsibilities:

- Ensures expenditures are in compliance with grant guidelines, state, and federal regulations.

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Re: Kelly Ottobre  
March 14, 2014  
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- Reviews and submits grant information into GTS and SAGE systems.
- Utilizes NJCFS for electronic transfer of grant funds.
- Develops budgets and budget controls to meet fiscal constraints, state and federal guidelines.
- Prepares annual budget requests and financial status reports.

**Review and Analysis:**

The definition section of the class specification for the title, Administrative Analyst 1(R29), states:

*“Under supervision of a supervisory official in a state department, institution, or agency, performs duties of significant difficulty and/or supervises staff involved with review, analysis, and appraisal of current department administrative procedures, organization, and performance, and prepares recommendations for changes and/or revision therein; does other related duties as required.”*

An incumbent properly classified in this title evaluates the functioning of a department to improve work systems and determine if established programs are essential, effective and economically efficient. She/He investigates administrative practices to identify inefficiencies and eliminate unnecessary procedures and positions. She/He evaluates program objectives, methods of operations, costs, and accomplishments to identify problem areas and prepare recommendations to improve administrative functioning.

The primary responsibility assigned Ms. Ottobre’s position is not analyzing and appraising the efficiency of program operations. The primary function of the position is to audit expenditures to ensure compliance with grants guidelines and agreements as well as state and federal regulations.

The definition of the class specification for the title, Grants Specialist (P27), states:

*“Under the direction of a supervisory official, in a state department or agency, is responsible for the management of assigned federal and private grants within the department and the development of methods and means to secure new funds for proposed programs; does other related duties.”*

A position assigned this title is responsible for the preparation of budgets and financial status reports. She/He monitors expenditures to ensure compliance with grant guidelines and state and federal regulations. She/He assists in implementing procedures to oversee the accuracy of accounting and efficiency of work flow. She/He ensures proper utilization of resources and makes budgetary amendments as needed. She/He operates computerized grant information systems to input and analyze data for the preparation of reports, issuance of reimbursements and tracking of expenditures. The duties and responsibilities assigned to Ms. Ottobre’s position compare most favorably with the definition section and the examples of work of the class specification for the title, Grants Specialist.

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Re: Kelly Ottobre  
March 14, 2014  
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**Determination:**

Within thirty days of receipt of this letter, this department will initiate procedures to reclassify Ms. Ottobre's position to the title, Grants Specialist, effective April 5, 2014, unless duties and responsibilities are assigned commensurate with her permanent title, Grants Manager. If she is to be returned to her permanent title, then please provide documentation by submitting a Position Classification Questionnaire (DPF-44S) and an organization chart within the timeframe indicated.

For encumbered positions, please advise the employee that this classification determination does not imply she 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.

An appeal of this decision may be filed within twenty days of receipt of this letter. Since an appeal will be subject to final administrative review, all arguments that you wish considered should be submitted within the specified timeframe. Appeals should be addressed to the Division of Appeals and Regulatory Affairs, New Jersey Civil Service Commission, 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 portion(s) of the determination being disputed and the basis for the appeal.

Sincerely,



Cheryl Legg, Human Resource Consultant 5  
Classification and Personnel Management

CL/sr

C: Kelly Ottobre  
Jane Bando  
File