

B-18



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Linda Ditmars,  
Department of Community Affairs

Administrative Appeal

CSC Docket No. 2016-2518

ISSUED: **JUN 12 2017** (SLD)

Linda Ditmars, a Regulatory Officer 4 with the Department of Community Affairs (DCA), appeals the determination that her salary upon her promotion was properly calculated under *N.J.A.C. 4A:3-4.9*.

By way of background, Ditmars had previously served in the competitive title of Program Specialist 2 (salary range P21) from February 9, 2013 to November 28, 2015. Ditmars maintained that she was offered the position of Regulatory Officer 4, she was originally told that her salary would be \$73,789 (step 4 of salary range P26). Ditmars asserted that she was later informed that pursuant to *N.J.A.C. 4A:3-4.9(e)*, her salary would actually only be \$70,751.49 (step 3 of salary range P26). Ditmars accepted the non-competitive appointment to the title of Regulatory Officer 4 (salary range P26) effective November 28, 2015. Subsequently, Ditmars filed a grievance concerning the calculation of her salary upon her appointment to the title of Regulatory Officer 4. However, her grievance was dismissed as it was determined that she had accepted the position of Regulatory Officer after it was explained that her new salary would be \$70,751.49.

On appeal, Ditmars argues that *N.J.A.C. 4A:3-4.9(e)* was not applied appropriately. In this regard, she maintains that *N.J.A.C. 4A:3-4.9(e)1* was not applied to her situation, because if it had been, she would have been placed on step 4 of salary range P26 (\$73,788.69), the amount the appointing authority initially told her would be her new salary. Ditmars argues that applying *N.J.A.C. 4A:3-4.9(e)1* in this matter is the only reading of the regulation that is equitable. She notes that otherwise she only received a \$178 annual increase even though she



went from salary range P21 to P26, whereas if she had been appointed to a title with the salary range P22 through P25, she would have received a substantially higher increase. Therefore, she argues that *N.J.A.C. 4A:3-4.9(e)1* is clearly intended to correct such an equality, and thus must be applied.

In response, DCA notes that *N.J.A.C. 4A:3-4.9* provides, in relevant part, that:

\* \* \*

(b) Employees who are appointed to a title with a higher class code shall receive a salary increase equal to at least one increment in the salary range of the former title plus the amount necessary to place them on the next higher step in the new range. If the workweek changes, workweek adjustments will be made prior to the determination of anniversary date. If the workweek increases, workweek adjustments will be made prior to salary determination. (See (g) below). This subsection shall apply when the following conditions are met:

1. Employees are appointed from their permanent title to a title with a higher class code following or subject to a promotional examination;
2. Employees are serving in a title which is reevaluated to a higher class code;
3. Employees receive an advancement appointment to a higher title level with a higher class code in a job band; or
4. Employees are appointed to a title with a higher class code, when the conditions in (b)1, 2, or 3 above are not applicable, provided the Chairperson of the Civil Service Commission or designee finds the following criteria are met:

- i. The employee has served continuously in the lower title for at least four months immediately preceding the effective date of the advancement; and
- ii. The service in the lower title provided significant preparation and training for service in the higher title.

(c) When an employee is advanced to a title with a salary schedule which is different (dollar value of ranges and steps do not coincide) from the employee's previous salary schedule, the steps described in (b) above are first performed in the previous



schedule, and then the employee's salary is set at the lowest step in the new schedule and range that equals or exceeds that salary.

- (d) When an employee has been at the maximum of his or her previous salary range for at least 39 pay periods, and the salary increases after workweek adjustment would be less than two increments in the employee's previous range, the employee shall receive an additional increment in the new range, providing the employee is not already at the maximum of the new range.
- (e) Employees who do not meet the criteria set forth in (b) above shall be placed on a step in the salary range of the title with the higher class code that is the same or next higher than the salary paid in the title with the lower class code.
  - 1. The adjustments described in (c) and (d) above shall be applied as appropriate.

\* \* \*

- (g) The workweek adjustment is computed by finding the workweek adjusted range, according to the following chart, and then placing the employee on the same step in the workweek adjusted range as the employee's step in the former range.

Workweek of Employee's Former Title	Workweek Of Employee's New Title			
	35 or 3E	NL or NE	40, 4E or N4	
35 or 3E	No Change	+1 Salary Range	+2 Salary Ranges	
NL or NE	-1 Salary Range	No Change	+1 Salary Range	
40, 4E or N4	-2 Salary Ranges	-1 Salary Range	No Change	

\* \* \*

DCA explains that Ditmars did not meet any of the requirements in *N.J.A.C. 4A:3-4.9(b)* since her appointment to the title of Regulatory Officer 4 from the title of Program Specialist 2 was not subject to promotional examination procedures, as the title of Regulatory Officer 4 is in the non-competitive division, nor was her title reevaluated to a higher class code. Moreover, DCA maintains that although Ditmars had served in the "lower title" of Program Specialist 2 for at least four months preceding her advancement, the two titles are not considered to be related,



per this agency's title file. Therefore, pursuant to *N.J.A.C. 4A:3-4.9(e)*, Ditmars' salary was to be equalized, which placed her on step 3 of salary range P26. Moreover, DCA disputes the appellant's claim that she was originally told that upon her appointment to Regulatory Officer 4 that she would be placed on step 4 of salary range P26. It notes that neither it nor its Human Resource division provided Ditmars with such information. However, it also notes that Ditmars was clearly told that the salary she was to receive was contingent upon approval by this agency.

In response, Ditmars asserts that it is unclear from the record how the determination was made that her prior title of Program Specialist 2 was not related to her new title of Regulatory Officer 4. She maintains that she was never asked to provide any details of her prior positions with the DCA. However, she asserts that all of her prior positions with DCA helped to prepare her for her current title of Regulatory Officer 4. She also notes that in its response, DCA acknowledges that she was selected for the position of Regulatory Officer 4, "due to her qualifications and experience in Housing and Urban Development (HUD) programs." In this regard, she indicates that all of the positions were within the Division of Housing and Community Resources. As a Field Representative, Housing Assistance Programs, she worked directly with participants and landlords in the various Federal and State housing assistance programs. Ditmars notes that as a Program Specialist 2 she primarily worked with the non-profit and governmental grantees of both the Neighborhood Stabilization Program and the Community Block Grant Program. As a Regulatory Officer 4, she serves as a hearing officer in cases involving individuals who are participants of the same housing assistance programs, applying the same federal and State statutes and regulations. Therefore, Ditmars asserts that since her prior titles are clearly related to the title of Regulatory Officer 4, *N.J.A.C. 4A:3-4.9(b)* should have been used to calculate her new salary.

Additionally, Ditmars asserts that even if *N.J.A.C. 4A:3-4.9(b)* is determined not to apply, then she reiterates her arguments with regard to *N.J.A.C. 4A:3-4.9(e)1*. For example, she maintains that *N.J.A.C. 4A:3-4.9(e)1* is intended to correct inequities that result from the "quirks" in the salary ranges. In this regard, Ditmars argues that it is inequitable for an employee who received a "lesser promotion (*i.e.*, fewer ranges of increase)" to be "rewarded with a greater initial annual increase."

The job specification for Program Specialist 2 reveals that an individual in that title takes the lead over professional and/or technical staff engaged in program activities; performs professional, administrative and analytical work to promote the planning, operation, implementation, monitoring and evaluation of various programs and services administered by the Department of assignment; and conducts the research and field work necessary to meet the needs of the appropriate state and/or local public or private agencies. The title requires possession of a



Bachelor's degree and two years of experience in planning, monitoring, coordinating, implementing, modifying and/or evaluation agency programs and services. A Master's degree in a discipline appropriate to the position may be substituted for one year of the indicated experience. Some "Examples of Work" are: 1) takes the lead over professional and/or technical staff engaged in program activities; 2) participates in the planning, coordinating, implementing and upgrading of existing programs in assigned area; 3) researches funding sources, develops and reviews grant applications, and writes proposals, negotiates and monitors contracts or grants; 4) conducts onsite evaluations or audits to monitor compliance with federal, State or local regulation, and prepares related reports containing findings, conclusions and recommendations; 5) negotiates and monitors contracts or grants; 6) conducts surveys or other studies to help identify program needs; 7) researches, collects, and disseminates information regarding assigned program(s); 8) performs work involving budget preparation and State aid requests for the assigned program; 9) establishes business relationships with potential funding sources; 9) serves as a program liaison to a variety of parties including federal, State and local government officials and providers; 10) prepares informational materials such as manuals, guides or handbooks; 11) may develop and monitor program evaluation strategies; and 12) plans and conducts program outreach and promotional activities.

The job specification for Regulatory Officer 4 reveals that an individual in that title assists with respect to regulatory matters, formal and informal, both legislative and quasi-judicial in nature, including matters related directly to administrative procedure and policy matters considered by the agency. The title requires possession of a Juris Doctor degree and one year of experience in conducting legal research, analyzing and evaluating legal documents, rules, regulations, and/or legislation, or the review and analysis of regulatory matters in a government agency; or one year of experience as an attorney. The title also requires an appointee to possess a current Certificate of Good Standing issued by the New Jersey Board of Bar Examiners or other license to practice law issued by any State in the United States; and must be eligible to practice as an Attorney-At-Law in the State of New Jersey. Some "Examples of Work" are: 1) assists in the drafting, coordinating, and revision of rules, regulations, and orders that may be required to implement the statutory authority, powers, and duties imposed upon the department or agency of effective regulation of all other entities and activities over which the department or agency has jurisdiction; 2) assists in formulating policies and procedures governing the conduct of all formal proceedings in non-contested cases or pursuant to agreement between the Office of Administrative Law and the department or agency; 3) assists the supervisory official in advising the department or agency and staff with respect to the application of various statutes, federal, and State; 4) assists in coordinating formal hearings conducted by staff members; 5) assists in formulating policies and procedures covering all investigations as directed by the department or agency; 6) participates in investigations conducted on behalf



of the department or Agency; 7) assists the staff in the performance of their duties which are affected by the regulatory and legal responsibilities of the department or agency; 8) assists in evaluating testimony and proofs in order to facilitate the presentation of testimony in state and federal courts and agencies; 9) coordinates and supervises the implementation and enforcement of the department's or agency's rules and regulations; 10) helps evaluate Initial Decisions issued by Administrative Law Judges that must be considered and decided by the department or agency; and 11) drafts Decisions and Orders adopting or modifying Initial Decisions of Administrative Law Judges.

All Civil Service titles are assigned to an Occupational Group, which classifies titles by type. The title Program Specialist 2 is in Occupational Group 16 (Administrative Specializations)<sup>1</sup> while Regulatory Officer 4 is in Occupational Group 11 (Law).<sup>2</sup> It is noted that both Occupational Group 16 and Occupational Group 11 are classified under the category of "Professional, Technical, and Managerial Occupations."<sup>3</sup>

The Salary Schedules in effect at the time of Ditmars' appointment were, in part, as follows:

	<b>RANGE P21</b>
<b>INCREMENT</b>	\$2,308.39
<b>STEP EIGHT</b>	\$68,192.68
<b>STEP NINE</b>	\$70,573.07
<b>STEP TEN</b>	\$72,953.46

	<b>RANGE P26</b>
<b>INCREMENT</b>	\$3,037.20
<b>STEP TWO</b>	\$67,714.29
<b>STEP THREE</b>	\$70,751.49
<b>STEP FOUR</b>	\$73,788.69

<sup>1</sup> The Civil Service Commission's Occupational Code Dictionary (OCD) indicates that this subcategory includes occupations concerned with a variety of professional administrative specializations related to the internal operation of an agency in supporting agency goals and objectives involving utilization of resources other than fiscal, such as formulating and recommending policies and administering programs, human resources management and labor relations; and program compliance review. It includes managerial occupations which may cross other categories in this dictionary, but excludes managerial occupations of specific disciplines in other categories.

<sup>2</sup> This subcategory in the OCD includes occupations concerned with the application of principles relating to statute law and its administration.

<sup>3</sup> The United States Department of Labor (USDOL), Employment and Training Administration, organizes groups of jobs into "occupations" based on their similarities and defines the structure and content of occupations in the *Dictionary of Occupational Titles (DOT)*. The Employment and Training Administration reports that the occupational definitions are the result of "comprehensive studies of how similar jobs are performed in establishments across the nation and are composites of data collected from diverse sources." Thus, the term "occupation" as used in the DOT refers to this collective description of a number of individual jobs performed, with minor variations, in many establishments. Occupations are clustered into nine broad "categories," which are further divided into "divisions" and then into specific "groups." See *Dictionary of Occupational Titles, Volume 1, Fourth Edition, Revised 1991, Employment and Training Administration*.



## CONCLUSION

In the instant matter, Ditmars argues that her salary increase was improperly calculated under *N.J.A.C. 4A:3-4.9(b)*. Although *N.J.A.C. 4A:3-4.9(b)4ii* does not define "significant preparation and training," this agency has, as a matter of longstanding practice, utilized the placement of titles in individual occupational groups as an objective tool to make a myriad of determinations. For example, this agency utilizes a uniform and objective automated system to determine the layoff rights for all titles. This system uses occupational group categorizations, as recognized by the United States Department of Labor, and is an objective method for identifying job similarities as required by *N.J.A.C. 4A:8-2.1*. See *In the Matter of State Layoff Title Rights* (Commissioner of Personnel, decided May 24, 1996), *aff'd*, Docket No. A-5847-95T3 (App. Div. December 9, 1997). Accordingly, the Civil Service Commission (Commission) finds that the use of occupational groups to determine whether a previous title provided "significant preparation and training" for a new title is a valid and proper standard.

However, the Commission is required to review every appeal based on the particular record presented. See *In the Matter of Jose Gonzalez, Department of Human Services* (MSB, decided January 26, 2005). A review of the record in this matter clearly indicates that the position of Program Specialist 2 does not provide "significant preparation and training" for the position of Regulatory Officer 4. Although Ditmars indicates that her prior positions were in the same division and concerned the same statutes and regulations, a review of the specific duties listed by Ditmars reveals that the performance of those duties would not have provided "significant training and preparation" for an individual seeking the title of Regulatory Officer. In this regard, a review of the above noted job specifications reveals that individuals in the title of Program Specialist 2 and individuals in the title of Regulatory Officer 4 performs much different duties as detailed previously. Consequently, it is clear that the title of Program Specialist 2 is substantially different from, and would not have provided significant preparation and training for, the title of Regulatory Officer 4.

Ditmars argues that since she was determined to be "qualified" for the position of Regulatory Officer 4, then it must follow that she has the necessary preparation and training for the position. However, the Commission does not agree. In this regard, eligibility is determined based on any employment, whether in the private or public sector, and not simply an individual's last employment. Consequently, it is possible to determine that an individual's last title did not provide "significant preparation and training" while that individual may still qualify, based on his or her education and experience, for the title.

Ditmars maintains that due to the small annual increase she actually received, and the fact that individuals who received a "lesser" promotion would



receive a substantially larger annual increase than she did, then *N.J.A.C.* 4A:3-4.9(e)1 should have been applied in the instant matter by providing her with an increment in her prior salary range before she was equalized into her new salary range. However, the Commission does not agree. *N.J.A.C.* 4A:3-4.9(e) provides that employees who do not meet the criteria set forth in *N.J.A.C.* 4A:3-4.9(b) "shall be placed on a step in the salary range of the title with the higher class code that is the same or next higher than the salary paid in the title with the lower class code." *N.J.A.C.* 4A:3-4.9(e)1 provides that "the adjustments described in (c) and (d) above shall be applied as appropriate." *N.J.A.C.* 4A:3-4.9(e) clearly states that if an employee does not meet the criteria set forth in *N.J.A.C.* 4A:3-4.9(b), then the employee's salary is to be equalized into the new salary range. Ditmars reading of this section would provide her with the same result as if she had met the criteria set forth in *N.J.A.C.* 4A:3-4.9(b). Her reading of these regulations is incorrect. Rather, *N.J.A.C.* 4A:3-4.9(e)1 is only applied "as appropriate" when there is workweek change or if the employee had been in his or her prior step for more than 39 pay periods.<sup>4</sup> The record in this matter does not evidence that Ditmars had been at the same step of her prior salary range for more than 39 pay periods. Moreover, although Program Specialist 2 is an NE title and Regulatory Officer in an NL title, movement to or from an NE to an NL title does not result in any salary range change. See *N.J.A.C.* 4A:3-4.9(g). Accordingly, *N.J.A.C.* 4A:3-4.9(e)1 was properly applied to Ditmars promotion. However, since there was no workweek adjustment needed nor was she on her previous step for more than 39 pay periods, her salary was properly equalized to her new salary range. Therefore, since Ditmars' previous salary of \$70,573.07 (step 9, salary range P21) fell between step 2 of salary range P26 (\$67,714.29) and step 3 of salary range P26 (\$70,751.49), Ditmars was placed on step 3 of salary range P26.

### ORDER

Therefore, it is ordered that this appeal be denied.

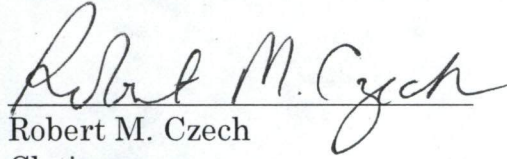
This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

---

<sup>4</sup> In this regard, *N.J.A.C.* 4A:3-4.5(c) indicates "the steps described in (b) above are first performed in the previous schedule." The steps referred to are the workweek adjustments referred to in section (b). The first sentence of section (b) is **not** a step to be taken, rather it is a statement of what an employee is entitled to when calculating a salary under section (b).



DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 7TH DAY OF JUNE, 2017



Robert M. Czech  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

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

c: Linda Ditmars  
Jodi Evangelista  
Kelly Glenn  
Records Unit



DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION  
THE TWENTY OF JUNE 2017

*[Handwritten Signature]*  
Robert M. Koch  
Chairman  
Civil Service Commission

Director  
Division of Appeals and Pardon Review  
Civil Service Commission  
777 North Broad Street, 10th Floor  
P.O. Box 112  
Trenton, New Jersey 08646-0112

Inquiries  
and  
Correspondence

Linda Dittmar  
Just Eyal  
Kelly Glenn  
Linda Dittmar