



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of David Bailey, *et al.*,
Department of Labor and Workforce
Development

CSC Docket Nos. 2021-1238, *et al.*

Classification Appeals

ISSUED: APRIL 12, 2021 (SLK)

The Department of Labor and Workforce Development (Labor), on behalf of David Bailey, Carol Gilchrist, Shivon Harris, and Jacquelyn Hutchinson, petition the Civil Service Commission (Commission) for retroactive regular appointment dates as Employment and Training Specialist 2s for Bailey and Harris, as a Senior Clerk Transcriber for Gilchrist, and as an Employment and Training Specialist 1 for Hutchinson.

By way of background, Bailey received a regular appointment to the title Program Specialist 1 on March 18, 2017. Bailey sought a review of the classification of his position and completed and submitted a Position Classification Questionnaire (PCQ) on February 24, 2020. The PCQ was signed by his supervisor on February 24, 2020, the Assistant Commissioner on February 28, 2020, and the appointing authority on March 2, 2020. The Division of Agency Services (Agency Services) received the file on June 15, 2020 and issued a determination on January 8, 2021, finding that the classification of Bailey’s position was Employment and Training Specialist 2, effective July 4, 2020.

Gilchrist received a regular appointment to the title Clerk on September 6, 2016. Gilchrist sought a review of the classification of her position and completed and submitted a PCQ on March 2, 2020. The PCQ was signed by her supervisor on March 2, 2020, the Manager 1 on March 13, 2020, and the appointing authority.¹ Agency Services received the file on June 15, 2020 and issued a determination on

¹ The date is blank next to the appointing authority’s signature on Gilchrist’s PCQ.

January 8, 2021, finding that the classification of Gilchrist's position was Senior Clerk Transcriber, effective July 4, 2020.

Harris received a regular appointment to the title Program Specialist 1 on March 4, 2017. Harris sought a review of the classification of her position and completed and submitted a PCQ on February 24, 2020. The PCQ was signed by her supervisor on February 24, 2020, the Assistant Commissioner on February 28, 2020, and the appointing authority on March 2, 2020. Agency Services received the file on June 15, 2020 and issued a determination on January 8, 2021, finding that the classification of Harris' position was Employment and Training Specialist 2, effective July 4, 2020.

Hutchinson received a regular appointment to the title Program Specialist 1 on October 14, 2017. Hutchinson sought a review of the classification of her position, and completed and submitted to the Chief Employment and Training a PCQ on February 24, 2020. The PCQ was signed by her supervisor on February 24, 2020, the Assistant Commissioner on February 28, 2020, and the appointing authority on March 2, 2020. Agency Services received the file on June 15, 2020 and issued a determination on February 12, 2021 that the classification of Bailey's position was Employment and Training Specialist 1, effective July 4, 2020.

In its request, Labor indicates that it received several classification review requests from employees which coincided with the State shut-down due to the COVID-19 pandemic. Further, because of the shift to working from home and new processes to keep the Division of Human Capital Strategies (HCS) operational, several of these classification reviews were significantly delayed in being transmitted to this agency. Specifically, HCS received Bailey's, Hutchinson's and Harris' requests on March 11, 2020, and Gilchrist's request on March 17, 2020. However, it did not forward these requests to this agency until June 15, 2020. Consequently, the effective dates established for the approvals were commensurately delayed. Labor states that if it were not for the unprecedented circumstances in March 2020, these actions would have been forwarded promptly and would have resulted in much earlier effective dates. It presents that these administrative delays negatively impacted the employees in questions with a reduced differential back pay award and less seniority in title.

CONCLUSION

N.J.A.C. 4A:3-3.9(c)4 provides, in pertinent part, that the agency representative shall within 10 days of receipt of the classification petition, forward the petition to the appropriate representative of the Commission.

N.J.A.C. 4A:3-3.9(e)3i provides, if a State classification appeal is granted by the Commission, the effective date of implementation shall be the pay period

immediately after 14 days from the date an appropriate Commission representative first received the appeal or reclassification request, or at such earlier date as directed by the Commission.

In these matters, the record indicates that HCS received Bailey's, Hutchinson's and Harris' requests on March 11, 2020, and Gilchrist's request on March 17, 2020. Therefore, under *N.J.A.C. 4A:3-3.9(c)4*, HCS should have forwarded Bailey's, Hutchinson's, and Harris' requests to this agency by March 21, 2020, and Gilchrist's request by March 27, 2020. However, due to the COVID-19 pandemic, the requests were not received by this agency until June 15, 2020.²

As there is nothing in the record that indicates that the petitioners caused the delay, and in fact, Labor has indicated that the delays were directly related to the COVID-19 pandemic, the Commission finds good cause to assign earlier effective dates. As such, the Commission determines that the effective date of implementation should be based on the latest date that these matters should have been forwarded to this agency, and not the actual date, as this is the date this is most in-line with the intent of these regulations. Based on the circumstances, the Commission understands Labor's delay in forwarding these matters, and finds that the petitioners should not be penalized because of it.

Therefore, if the classification appeals for Bailey, Hutchinson and Harris had been forwarded to this agency by March 21, 2020, 14 days from that date was April 4, 2020, and the effective implementation date should have been the pay period immediately after April 4, 2020, which was April 11, 2020. Concerning Gilchrist, 14 days from March 27, 2020 was April 10, 2020, and the effective implementation should have been the pay period immediately after April 10, 2020, which was also April 11, 2020.

Further, in the future, when Agency Services receives a classification appeal after the time proscribed in *N.J.A.C. 4A:3-3.9(c)4* due to no fault of the employee requesting the position review, and the appeal is granted, Agency Services is directed to interpret the pertinent regulations in a manner most favorable to the employee and calculate the effective date of implementation based on the latest date it should have received the appeals, and not the actual date of receipt, as to determined otherwise would be to contradict the purposes of the time frames outlined in *N.J.A.C. 4A:3-3.9, et seq.*³

² It is noted that under Executive Order No. 103(2020), effective April 9, 2020, the time frame for an appointing authority to submit classification appeals was waived for good cause due to the understanding that the COVID-19 pandemic might cause difficulty in complying with the regulatory time frame under *N.J.A.C. 4A:3-3.9 et. seq.* See: 52 *N.J.R.* 971(a).

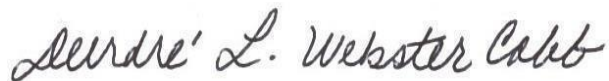
³ To better and more efficiently handle the enormous workload of first-level classification appeals, the Commission amended *N.J.A.C. 4A:3-3.9*, by R.2012 d.009, effective January 3, 2012, to facilitate the gathering of information necessary to process the appeals, particularly in the case of State matters,

ORDER

Therefore, it is ordered that the effective date of the classification of David Bailey's position to Employment and Training Specialist 2, Shivon Harris' position to Employment and Training Specialist 2, Jacquelyn Hutchinson's position to Employment and Training Specialist 1, and Carol Gilchrist's position to Senior Clerk Transcriber shall be April 11, 2020. The appointing authority shall issue any additional differential back pay to the petitioners based on that effective date.

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

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 7TH DAY OF APRIL, 2021



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c: David Bailey (2021-1238)
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Shivon Harris (2021-1239)
Jacqueline Hutchinson (2021-1237 and 2021-1277)
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and permit Commission staff more time to evaluate and decide the appeals. *See* 43 *N.J.R.* 2404(a), 44 *N.J.R.* 70(a).