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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0053-15T1

IN THE MATTER OF
ANDREA STUMPF,
DEPARTMENT OF HUMAN SERVICES.

Argued June 1, 2017 – Decided July 17, 2017

Before Judges Whipple and Mawla.

On appeal from Civil Service Commission,
Docket Nos. 2015-1444, 2015-2658 and 2015-
2872.

Sarai K. King argued the cause for appellant
Andrea Stumpf (Weissman & Mintz, L.L.C.,
attorneys; Ms. King, on the briefs).

Pamela N. Ullman, Deputy Attorney General,
argued the cause for respondent Civil Service
Commission (Christopher S. Porrino, Attorney
General, attorney; Melissa Dutton Schaffer,
Assistant Attorney General, of counsel; Ms.
Ullman, on the brief).

PER CURIAM

Petitioner Andrea Stumpf appeals from a July 16, 2015 Final
Administrative Action of the Civil Service Commission (Commission)
denying her job reclassification and requiring her to refund a

salary overpayment. For the reasons that follow, we affirm in part and reverse in part.

Petitioner worked at the New Jersey Department of Human Services (DHS) as a principal clerk typist beginning in 2003. On February 19, 2005, petitioner was provisionally appointed as an Administrative Analyst 4 (AA4), pending promotional examination procedures. A 2008 audit revealed petitioner was actually performing the duties of a Technical Assistant 3 (TA3), therefore, the Commission reclassified her as a TA3 effective May 24, 2008.

Petitioner challenged the reclassification, arguing she was in fact performing the duties of an AA4. The Division of State and Local Operations of the Commission found petitioner's assertion unsubstantiated and upheld the reclassification; however, recognizing the financial hardship as a result of the reclassification, the effective date of petitioner's reclassification was set as May 9, 2009. The decision was upheld by the full Commission on December 16, 2009.

Petitioner was on maternity leave when the order issued. DHS did not implement the title change after the Commission's decision and maintained petitioner as an AA4 after she returned. Petitioner was provisionally assigned as an AA4 to a different unit within DHS, effective October 8, 2011. DHS and petitioner took no action relating to her title until she applied to take a promotional

examination for the AA4 title in 2012. Although she was provisionally placed in the AA4 title, she was not qualified to take the examination. Petitioner appealed the ineligibility determination and the Commission determined she was ineligible, as DHS should have reclassified petitioner to a TA3 in 2009. As a result, the Commission ordered a reclassification review of petitioner's position on October 16, 2013.

Around the same time, petitioner applied for the open competition examination for AA4, but because of educational deficiencies, was again found ineligible on December 4, 2013. Because the Commission had already referred petitioner's title for reclassification, it deferred to the pending audit. The Commission ruled petitioner's proper classification was TA3. The Commission alerted petitioner she was overpaid since February 19, 2005; however, because the classification determination was not issued until 2009 and for equitable considerations, it set the reclassification date to December 19, 2009, the starting date of the pay period following the December 4, 2009 decision. The decision also advised petitioner she could seek a waiver of the salary overpayment if she could satisfy the factors outlined in N.J.A.C. 4A:3-4.21.

Petitioner moved for reconsideration of the Commission's December 4, 2013 decision denying her eligibility for the AA4

examination and requested a waiver of the salary overpayment. On May 27, 2014, the Commission denied reconsideration of the eligibility for the AA4 examination and rejected the waiver request. It found petitioner failed to demonstrate an administrative error of which she was unaware and found the factors of N.J.A.C. 4A:3-4.21 were not met based upon the lack of evidence repayment constituted a hardship. Petitioner was reclassified as a TA3, pending the outcome of the ongoing audit.

DHS did not comply with the Commission's order to reclassify petitioner until November 28, 2014. DHS submitted a current Position Classification Questionnaire (PSQ), current Performance Assessment Review and organizational chart to the Commission. Additionally, DHS, along with petitioner, submitted a request for rule relaxation to the Commission, which was treated as a request for reconsideration of the waiver for the salary overpayment. The Commission initially denied DHS's request for reconsideration because it was outside the forty-five day time limit. DHS subsequently re-submitted information addressing the untimeliness of the request.

The Division of Agency Services (Division) clarified its determination on April 2, 2015, finding petitioner's current duties and responsibilities commensurate with the title AA4, effective December 13, 2014. Petitioner appealed the Division's

determination as to only the date, arguing she should have been working as an AA4 provisionally since October 8, 2011.

The Commission consolidated the two pending appeals, the appeal of the request for reconsideration of the overpayment waiver and the classification appeal, and issued a decision on July 16, 2015, denying the request for reconsideration of the repayment waiver and upholding the December 13, 2014 reclassification date. These appeals followed.

The scope of our review of an administrative agency determination is limited. Circus Liquors, Inc. v Governing Body of Middletown Twp., 199 N.J. 1, 9 (2009). We do not ordinarily disturb an administrative agency's determination or findings unless there is a clear showing that (1) the agency did not follow the law; (2) the decision was arbitrary, capricious, or unreasonable; or (3) the decision was not supported by substantial credible evidence. See McGowan v. N.J. State Parole Bd., 347 N.J. Super. 544, 563 (App. Div. 2002). Furthermore, we defer to the expertise of an agency charged with the responsibility to administer a regulatory scheme. In re Virtua-West Jersey Hosp. Voorhees for a Certificate of Need, 194 N.J. 413, 422 (2008).

We first address petitioner's challenge to the Commission's reclassification decision. Petitioner argues the evidence supports the conclusion she was performing AA4 duties since October

8, 2011, and to penalize her for the actions of her employer is arbitrary and capricious. After reviewing the record, we find the Commission's reclassification decision is supported by sufficient credible evidence in the record. Despite petitioner performing duties commensurate to the AA4 position, she did not have the qualifications necessary to hold the AA4 position. Therefore, the Commission's decision to reclassify petitioner, effective May 9, 2009, was not arbitrary or capricious.

As to the denial of the waiver, we are persuaded the Commission erred as the record reflects petitioner detrimentally relied upon her employer and took reasonable efforts to apply for examinations for the AA4 position. While our review of an agency's determination is circumscribed, we do not simply "rubber stamp findings that are not reasonably supported by the evidence[.]" Chou v. Rutgers, State Univ., 283 N.J. Super. 524, 539 (App. Div. 1995), certif. denied, 145 N.J. 374 (1996). We do not find the denial of petitioner's waiver of an obligation to repay an overpayment of salary reasonably supported by the evidence.

The Commission will grant a waiver, in whole or in part, after considering:

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.

[N.J.A.C. 4A:3-4.21(a).]

In the present case, petitioner was asked to pay an overpayment amount of approximately \$42,000. Petitioner argues the Commission failed to consider she was not responsible for the administrative errors made by her employer and the legitimate economic hardship she would face if forced to repay \$42,000.

"Courts are generally reluctant to apply estoppel theories against government agencies." Cipriano v. Dept. of Civil Serv., 151 N.J. Super. 86, 91 (App. Div. 1977) (citing Summer Cottagers' Ass'n of Cape May v. City of Cape May, 19 N.J. 493, 503 (1955)). However, "[w]hen an agency misrepresents the effect of a determination under circumstances calculated to induce reliance by reasonable persons to their detriment, the agency may be estopped to prevent a manifest injustice." In re Johnson, 215 N.J. 366, 386 (2013) (citing Horsemen's Benevolent & Protective Ass'n v. Atl. City Racing Ass'n, 98 N.J. 445, 456 (1985)).

As to N.J.A.C. 4A:3-4.21(a)(1), petitioner relied on DHS's determination her assignment as an AA4 in a different unit satisfied the Commission's decision. Based upon DHS's action,


petitioner could reasonably have been unaware she was being overpaid. Additionally, the overpayment resulted from a specific administrative error. See N.J.A.C. 4A:3-4.21(a)(2). Petitioner detrimentally relied upon DHS, as evidenced by DHS's failure to submit the 2011 PSQ detailing her duties being commensurate with an AA4. Additionally, when petitioner returned from maternity leave, DHS moved her position to a different unit, as an AA4, and therefore she detrimentally relied upon their assurances the new position was consistent with the Commission's December 2009 decision. As such, the overpayment was a result of DHS's administrative error.

Lastly, requiring petitioner to repay \$42,000 would result in an economic hardship. The Commission's rationale for finding no economic hardship relied upon petitioner's family expenditures for non-essential items including, \$415 for entertainment, \$108 for recreation, and \$28.50 for dues and subscription. These modest non-essential expenditures do not reflect an ability to repay \$42,000 without creating an economic hardship.

As such, we find the denial of petitioner's waiver request to be arbitrary, capricious, and unreasonable. We therefore affirm the Commission's decision as to the reclassification decision and reverse the denial of petitioner's waiver request.

Affirmed in part, reversed in part, consistent with this
opinion.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION