

B-57



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Joseph Gallagher,
Department of the Treasury

Administrative Appeal

CSC Docket No. 2015-3034

ISSUED: NOV 10 2015 (SLD)

Joseph Gallagher, an Auditor 1, Taxation, with the Department of the Treasury (Treasury), appeals the determination of his salary upon his promotion to his current title, pursuant to *N.J.A.C.* 4A:3-4.9.

By way of background, the appellant was appointed to the title of Auditor 2, Taxation, effective December 14, 2002. In response to the appellant's August 22, 2013 classification appeal, the Division of Classification and Personnel Management (CPM)¹ determined that the proper classification of the appellant's position was Auditor 1, Taxation. As a result, the appellant was provisionally, appointed, pending promotional examination procedures, to the title of Auditor 1, Taxation, effective September 7, 2013. Upon his provisional appointment, the appellant's salary increased from \$82,362.22 (salary range P24, step 10)² to \$88,488.93 (salary range R27, step 8). See *N.J.A.C.* 4A:3-4.9. In this regard, *N.J.A.C.* 4A:3-4.9 provides in pertinent part that:

- (a) 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 . . . This subsection shall apply when the following conditions are met:

¹ Now, the Division of Agency Services.

² The record indicates that the appellant had been on step 10 of salary range R27 for more than 39 pay periods.

1. Employees are appointed from their permanent title to a title with a higher class code following or subject to a promotional examination;

* * *

- (b) 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 (a) 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.
- (c) 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.

* * *

An examination for the title of Auditor 1, Taxation (PS8544U), Treasury, was announced with a closing date of June 21, 2013. The resulting list of 63 eligibles, including the appellant tied as the 12th ranked eligible, promulgated on May 22, 2014 and expires on May 21, 2016. On May 29, 2014, a certification (PS140694) was issued to the appointing authority for the appellant's work location, and it contained the names of 43 eligibles, including the appellant whose name appeared as the ninth listed eligible. The appointing authority returned the certification appointing the first, second, third, fourth, fifth and eighth listed eligibles, effective September 20, 2014, noted that the sixth listed eligible was interested in future certifications only and returned the appellant to his permanent title of Auditor 2, Taxation. Upon his return to his permanent title, the appellant's salary decreased from \$90,037.50 (salary range R27, step 8) to \$83,803.57 (salary range P24, step 10) pursuant to *N.J.A.C. 4A:3-4.10*.

Subsequently, the appellant filed a second classification appeal, alleging that the proper classification of his position was Auditor 1, Taxation. In a January 26, 2015 decision, CPM agreed that the proper classification of his position was Auditor 1, Taxation. Therefore, he was provisionally appointed, pending promotional examination procedures, to that title, effective December 13, 2014.³ Upon his

³ As a result, on February 18, 2015, a certification (PS150189) was issued to the appointing authority and contained three names, including the appellant as the third listed eligible. The appointing authority returned the certification appointing the appellant, effective February 18, 2015.

provisional appointment, the appellant's salary increased from \$83,803.57 (salary range P24, step 10) to \$86,848.47 (salary range R27, step 7). *See N.J.A.C. 4A:3-4.9.*

The appellant appealed asserting that he was improperly placed on step 7 of salary range R27 upon his appointment on December 3, 2014.⁴ The appellant argues that it appears that he was not placed on step 8 of salary range R27 in retaliation for filing the second successful classification audit. In this regard, he notes that after his first classification appeal, he was provisionally appointed to the title of Auditor 1, Taxation, and placed on step 8 of salary range R27. However, he submits a September 16, 2014 memorandum that indicates he was not reachable for appointment on the May 29, 2014 certification from the Auditor 1, Taxation (PS8544U) eligible list and was returned to his permanent title. The appellant maintains that he was encouraged to file the second classification audit by his former supervisor, however, upon his appointment to the title of Auditor 1, Taxation he was only placed on step 7 of salary range R27, instead of step 8, the step he had previously been at in that title.

The Salary Schedules, dated July 13, 2013, in effect at the time of the appellant's September 7, 2013 provisional appointment to the title of Auditor 1, Taxation, were, in part, as follows:

	RANGE P24	RANGE R27
INCREMENT	\$2,705.08	\$3,134.18
STEP SEVEN	\$74,246.98	\$85,354.75
STEP EIGHT	\$76,952.06	\$88,488.93
STEP NINE	\$79,657.14	\$91,623.11
STEP TEN	\$82,362.22	\$94,757.29

Accordingly, the appellant's salary was calculated as follows:

ACTION	RANGE	STEP	SALARY
Auditor 2, Taxation	P24	10	\$82,362.22
One increment (\$2,705.08) in old range	P24		\$85,067.30
Set at step equal to or greater in new range	R27	7	\$85,354.75
Entitled to additional increment since at step 10 of P24 for more than 39 pay periods, and the increase was less (\$85,354.75) than two increments (\$82,362.22 plus \$5,410.16 equals \$87,772.38).	R27	8	\$88,488.93

⁴ The appellant had initially filed a grievance on this matter; however, he was informed that he needed to file the appeal with the Civil Service Commission.

Thereafter, the appellant was returned to his permanent title of Auditor 2, Taxation, effective September 20, 2014 and his salary was set at \$83,803.57 (salary range P24, step 10) pursuant to *N.J.A.C.* 4A:3-4.10.

The Salary Schedules, dated July 12, 2014, in effect at the time of the appellant's provisional appointment on December 13, 2014 as an Auditor 1, Taxation, were, in part, as follows:

	RANGE P24	RANGE R27
INCREMENT	\$2,752.42	\$3,189.03
STEP SEVEN	\$75,546.31	\$86,848.47
STEP EIGHT	\$78,298.73	\$90,037.50
STEP NINE	\$81,051.15	\$93,226.53
STEP TEN	\$83,803.57	\$96,415.56

Personnel records indicate that for the appellant's December 13, 2014 provisional appointment, his salary was calculated as follows:

ACTION	RANGE	STEP	SALARY
Auditor 2, Taxation	P24	10	\$83,803.57
One increment (\$2,752.42) in old range	P24		\$86,555.99
Set at step equal to or greater in new range	R27	7	\$86,848.47

However, since it was less than 39 pay periods since his return to his permanent title of Auditor 2, Taxation, on September 20, 2014, *N.J.A.C.* 4A:3-4.9(f) was not applied.

It is noted that although given the opportunity, the appointing authority did not submit any information or arguments in this matter.

CONCLUSION

In the instant matter, the appellant argues that he was improperly placed on step 7 of salary range R27. Additionally, he asserts that by placing him on step 7 of salary range R27, he was penalized for filing two appeals of the classification of his position. In this regard, he argues that upon his first provisional appointment he was placed on step 8 of salary range R27, but was returned to his permanent title because he was not reachable on the subject eligible list. However, upon his second provisional appointment to the subject title he was only placed on step 7 of salary range R27.⁵ Therefore, he requests that *N.J.A.C.* 4A:3-4.9 be relaxed to allow his placement on step 8 of salary range R27. As noted above, the appellant was provisionally appointed to the title of Auditor 1, Taxation, effective September 7,

⁵ The appellant received a regular appointment to the subject title, effective February 18, 2015.

2013 and pursuant to *N.J.A.C.* 4A:3-4.9, he was placed on step 8 of salary range R27. Upon his return to his permanent title of Auditor 2, Taxation, effective September 20, 2014, he was returned to step 10 of salary range P24. Thereafter, he received a provisional appointment to the title of Auditor 1, Taxation, effective December 13, 2014. However, since it had *not* been an additional 39 pay periods since his return to his permanent title of Auditor 2, Taxation, and his appointment to Auditor 1, Taxation, *N.J.A.C.* 4A:3-4.9(c) was not applied in determining his salary.

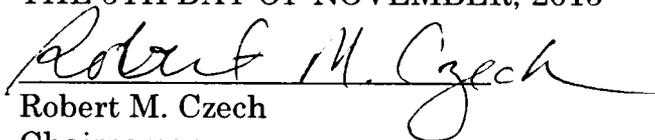
Due to the unique circumstances presented in this matter, it is appropriate to fashion an appropriate remedy. *N.J.A.C.* 4A:1-1.2(c) provides that the Commission may relax a rule for good cause in a particular circumstance in order to effectuate the purposes of Title 11A, New Jersey Statutes. Accordingly, it is appropriate to relax the provisions of *N.J.A.C.* 4A:3-4.9(c), and to count all of the appellant's time spent on step 10 of salary range R27, before and after his 2013 provisional appointment to the title of Auditor 1, Taxation. By doing so, the appellant is not adversely affected for filing the classification audits, and then not being appointed from the first certification. Moreover, the appellant does not gain any salary advantage from this action, other than being placed on the same step as he was previously placed on upon his initial appointment to the title of Auditor 1, Taxation. Consequently, the appellant is to be placed on step 8 of salary range R27, effective December 13, 2014, the effective date of the second classification decision. Furthermore, it is noted that in fashioning this remedy, no harm is caused to any other employee. Finally, it is noted that this remedy is limited to the unique facts of this case and does not provide precedent in any other matter.

ORDER

Therefore, it is ordered that this appeal be granted and Joseph Gallagher be placed on step 8 of salary range R27, effective December 13, 2014. It is also ordered that Mr. Gallagher receive differential back pay from December 13, 2014 until his salary is changed.

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 5TH DAY OF NOVEMBER, 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**

**c: Joseph Gallagher
Douglas Ianni
Kenneth Connolly
Joseph Gambino**