

MARLAINE T. CRUZ,
Appellant,

v.

**Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,**
Respondent.

**RULING
ON
REQUEST
TO EXCLUDE
INFORMATION**

Case No. 00-0083-PC

This matter arises from an appeal from a reallocation decision. Respondent filed a motion to dismiss one day before the appellant filed some additional materials with the Commission. Respondent asked the additional materials from appellant "be stricken from the record and not considered" when ruling on respondent's motion. Appellant opposes the request. Respondent's request is the only matter before the Commission.

FINDINGS OF FACT

1. On or about April 6, 2000, appellant was notified that her position had been reallocated, effective March 12, 2000, from the Nursing Supervisor 2 classification to the Nursing Supervisor classification.

2. By letter dated May 4, 2000, and received by the Commission on May 5th, appellant filed an appeal. The letter of appeal stated, in part:

This letter serves as notice of my appeal of the reallocation of my position from range 51-12 to 81-78.

I would like this position to be placed in 81-79 and a review of my position to determine the appropriate classification.

3. The Commission responded by providing appellant an opportunity, *inter alia*, to identify one or more existing classifications that better described her particular set of duties and to submit the required filing fee.

4. By letter dated May 23, 2000, appellant submitted the filing fee and wrote:

This letter serves as notice of my appeal of the reallocation of my job classification by the Department of Employee Relations (DER) from pay range 51-12 to 81-78. I believe that my position should be placed in broadband 81-79 in the classification of Nursing Supervisor 4.

5. In correspondence dated June 13, 2000, respondent moved to dismiss the appeal and submitted exhibits showing that the classification series of Nursing Supervisor 1-4 was abolished, effective March 12, 2000. Respondent contended that complainant had "not identified an 'existing' classification."

6. The Commission received correspondence from the appellant on the following day, June 14th that was dated June 10, 2000. The letter stated, in part:

I have been out of the office from May 23, 2000 through June 9, 2000. It has come to my attention today that the Nursing Supervisor 4 classification in the old classification system was a Director of Nursing but in the new system is not. It was my intention that my current position should be placed in broadband 81-79 in the classification of Director of Nursing. . .

For these reasons, I believe that my position should more accurately, under the basis of "best fit," be designated to the classification of Director of Nursing.

7 In a letter to the parties dated June 20th, a member of the Commission's staff noted that respondent's motion and appellant's letter had crossed in the mail and sought clarification of respondent's motion:

Respondent may wish to modify or withdraw its motion in light of the appellant's recent submission. Therefore, I am granting the respondent until July 3, 2000, to clarify whether it wishes to pursue a motion to dismiss at this juncture and, if so, to provide any additional materials in light [of] appellant's June 14th filing. After respondent has provided this clarification, I will prepare a schedule for appellant to respond to any remaining motion.

8. Respondent provided the following response:

In its May 8, 2000, letter, the Commission gave the Appellant until June 7, 2000, to identify all classifications she believed that her position

would fit. Prior to that deadline, the Appellant identified Nursing Supervisor 4. The Commission then gave Respondent until June 23, 2000, to file any motions challenging the appeal; this Respondent did in timely fashion.

If any meaning and credence is to be given to Commission imposed deadlines, then the materials submitted by Appellant after the deadline should be stricken from the record and not considered. Respondent's motion should then be addressed. Respondent respectfully submits that because of deadline, this is the approach that must be taken. However, *if the Commission does not strike the materials, then a pre-hearing conference should be held to set the issue to put this on track like all other appeals.* Then Respondent will bring a motion for summary judgment. (Emphasis added.)

9. Appellant responded by noting:

I received the first letter from the Commission on May 8, 2000. This letter stated that I needed to reply to the Commission by June 7, 2000. I was scheduled to be out of state for 2 1/2 weeks during this time. In the limited time I had and with the limited information I was provided, I searched the DER classification listing under nursing and found only the classification of Nursing Supervisor. When I read the classification specifications, I believed Nursing Supervisor 4 to be a better match to my current job duties and the equivalent of the previous Nursing Supervisor 4-classification specification, which was Director of Nursing. In the DER classification listing the new classification for Director of Nursing is listed under D for director and not N for nursing. In my first review of other current classification I believed to better match my job requirements, I did not look through all listings but mistakenly assumed that all pertinent nursing positions would be located together under N.

I was not aware at the time I submitted my initial response that the classifications of Nursing Supervisor 1 through 4 had been changed to Director of Nursing and Nursing Supervisor. When I returned on June 10, the other nursing section chief in my Bureau informed me about these changes. She shared these with me and I rewrote my appeal to accurately reflect my original intent with the new classification system. I then submitted the appeal with the corrected information on the day that I returned, June 10th.

OPINION

The appellant appears *pro se*. Her position was reallocated from Nursing Supervisor 2 to Nursing Supervisor. Appellant has shown she made a good faith effort to identify an alternative classification within the time period originally provided to her. That time became truncated when she was out-of-town for an extended period. Appellant initially identified Nursing Supervisor 4 as the alternative classification. After learning that the Nursing Supervisor 4 classification no longer existed, appellant promptly identified the current equivalent and notified the Commission and the respondent of her error and that she felt her position was better described at the Director of Nursing classification.

Given these circumstances, there is an insufficient basis for granting the respondent's request to strike the appellant's submission dated June 10, 2000. While the respondent may have spent some time preparing a motion based upon appellant's initial reference to the Nursing Supervisor 4 classification, respondent has not established circumstances sufficient to limit appellant to that statement.

The question in the present case is analogous to the situation when a party to a stipulation asks to be released from the stipulation due to error. In *Novak v. DER*, 83-0104-PC, 2/29/84, the Commission permitted the appellant to amend the issue for hearing, effectively reopening a prior stipulation between the parties, where the changes were based upon the appellant's inadvertence or excusable neglect and there was no indication the respondent had been prejudiced by appellant's delay in seeking the amendment. Here, the appellant's initial reference to the Nursing Supervisor 4 classification was inadvertent and excusable while respondent has shown no significant prejudice that would occur if the appellant was permitted to refer to the Director of Nursing classification, instead.

Respondent's request is denied and the Commission will consider those materials. The Commission will, as requested by respondent, schedule a pre-hearing conference with the parties. The pre-hearing conference will be premised on


appellant's contention that her position should have been reallocated to the Director of Nursing classification.

ORDER

Respondent's request to strike appellant's June 10th submission is denied.

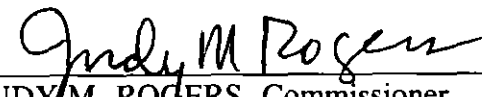
Dated: July 19, 2000

STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

KMS:000083Arul1


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner