**Assessment of a review to appeal**

Details:

**Review Number:** 22-008

**Complainant:** Ms Jane Doe.

## Background

Ms Doe is a Level 2 Administrative Officer attached to the Centre for Training and Development. She submitted an application for the position of Level 3 Training Co-ordinator (position no. XXXXXX) and was one of eight (8) applicants shortlisted for the position. She was interviewed for the position on 5 September 2022.

## Appeal to Review

On Monday 19 September 2022 an appeal to review the selection process was submitted by Ms Doe for the above position. In her application she has listed two issues, they are:

1. prior to her interview, the preferred candidate was in possession of Training Unit documentation that she did not have the appropriate security clearance to possess and the possession of such correspondence provided her with an unfair advantage over the applicant.
2. the preferred candidate, (currently classified as a Level 4) in being selected above Ms Doe, (Level 2, applying for a Level 3 role) clearly does not meet the requirements in accordance with the Required Assessment Guidelines v.2 – Recruiting for Growth Potential.

### Issue 1

Ms Doe has stated that the preferred candidate was in possession of Training Unit documentation that she was not authorised to access and as a result, was provided with an unfair advantage over her and other candidates with regard to her suitability. The documents concerned are listed below:

1. Training Unit - Standard Operating Procedures 29/9/2020 and 01/102022
2. Training Unit - User Manual v5
3. Training Unit - Instructions and password to load the Training Program.

A Pre-Employment check is the appropriate security level required to access the information contained within the above documents. This was confirmed by the Unit Manager, Information Security, in her email on 3 October 2022.

The preferred candidate has also successfully completed all pre employment / probity checks prior to her application for this role as confirmed by the recruitment team in their email on 4 October 2022. Security clearance for the preferred candidate was further validated by the Screening Co-ordinator in her email dated 4 October 2022.

Accessibility and security authorisation levels are confirmed in the summary table below:

|  |  |  |  |
| --- | --- | --- | --- |
| **Document** | **Security Classification** | **Clearance Required** | **Compliant Y/N** |
| 1.Training Unit - Standard Operating Procedures | Official: Sensitive | Pre - Employment Check | Yes |
| 2.Training Unit - User Manual V2 3/2019 | For Official Use Only | Pre - Employment Check | Yes |
| 3.Training Unit - Instructions and password to load the Daily Training Program | No Classification listed\*\* default classification of - Official: Sensitive | Pre - Employment Check | Yes |

As such, the eligibility of the successful candidate to access the above documents falls within her security clearance level and is compliant with the Protective Security Guidelines.

As a current PSM employee, the preferred candidate is entitled to seek and access information she is authorised to review in preparation for her application and interview. All other PSM candidates shortlisted with the same level of security clearance, (including the applicant) had the capacity to seek and access the same information. The panel convenor, Mr Rodriguez informed supervisors to provide the same information to shortlisted candidates with the appropriate security clearance, upon request.

It should be noted that Ms Doe whilst having the same level of security clearance as the preferred candidate, did not seek to access the documentation in question. It should also be noted that the applicant was performing the role she was applying for, (in a higher-duties capacity) for the preceding 6 months prior to her application for the position.

As such, there is no breach of organisational values or information security protocols. The applicant and the preferred candidate both had the capacity to identify, seek and access the documentation in question. It could be suggested that the applicant had greater capacity.

### Issue 2

Ms Doe believes the process was unfair on the basis that the selection of the preferred candidate does not meet the requirements in accordance with the Required Assessment Guidelines v.2 – Recruiting for Growth Potential.

The overall intent of that Recruitment Policy is to develop and upskill the PSM workforce within a merit-based selection process. Five sections are provided to support hiring managers undertake a Required Assessment Process, they are:

* Section A – General standards to support best practice recruitment
* Section B – Recommended assessment checklist
* Section C – Recruiting for growth potential
* Section D – Access for redeployees
* Section E – Review to appeal process

Section C – Recruiting for Growth Potential

Growth Potential is defined within the policy as*, ‘the ability to develop, adapt to and grow into a role and environment’.* It confirms that this can be done throughout the whole recruitment cycle and ‘...*should be given appropriate consideration throughout a merit-based recruitment process and should be considered when assessing the attributes and skills demonstrated by candidates against all requirements of the role.* It further states that hiring managers*’... should assess growth potential across all key selection criteria for a role’.*

Selection

Section 3.4.5 of the Recruitment policy states - Selecting the applicant outlines the criteria to be met when selecting an applicant. The section requires that:

* panel members must assess applicants against the applicable employment criteria; and
* should individually assess each applicant against the employment criteria and establish their own order of merit

In assessing suitability for the role, ‘Growth Potential’ is a consideration by the selection panel. Primacy for selection involves a merit base selection process as confirmed in both the Public Administration Act 2014 (the Act) and Standards for Application of the Public Sector Employment Principles (the Standards).

### References

The Standards state:

Fair and Reasonable Treatment - Employees are treated fairly and reasonably when:

* Processes are fair, clear, and applied consistently in comparable circumstances.
* Criteria are relevant, objective and readily available to the people subject to the decision.
* Decisions and actions are free of bias and unlawful discrimination.
* Documentation is sufficiently clear and comprehensive to make decisions transparent and capable of effective review
* There are no other grounds which contribute to unfair and unreasonable treatment.

Merit in Employment - Employment decisions are based on merit when:

* Individuals’ work-related qualities, abilities and potential are assessed against the genuine requirements of the employment opportunity.
* Employees are appointed or promoted on the basis of relative ability.
* Processes are transparent and designed to identify a suitable field of qualified candidates.
* Employees are appointed or promoted from a limited field of candidates only where candidates are identified based on objective criteria.
* Employees are assigned duties or transferred to roles at an equivalent level based on a proper assessment of the employee against the genuine requirements of the duties or role.

Both Ms Doe and the preferred candidate were deemed suitable by the selection panel in a transparent and merit-based selection process as outlined in the report.

Mr Jack Dunnel, Principal Advisor Governance was consulted during the assessment of this issue and corroborated the above methodology regarding assessment. The submission by Ms Doe that a Level 4 being selected as the preferred applicant above a Level 2, for a Level 3 role clearly does not meet these guidelines is not supported in the Recruitment policy, nor is it supported in the Recruitment Guidelines, specifically; the Required Assessment Guidelines v2.0 – Recruiting for Growth Potential.

## Assessment

Based on the above, the selection decision:

* was based on merit
* was based on relative efficiency in relation to the position involved
* treated all applicants fairly and reasonably

Section 3 of the Appeals and review policy (grievances) states that to apply for an appeal:

 - the employee lodging the review of actions must have been an applicant for the advertised position

 - there must be an effort of law or a significant deficiency in the selection process (under section 92(1), *Public Administration (Appeals) Regulations 2018* review to appeal applications may only apply to the selection process not the person selected).

*Significant* is defined as having or likely to have [influence](https://www.merriam-webster.com/dictionary/influence#h1) or effect : [important](https://www.merriam-webster.com/dictionary/important); also : of a noticeably or measurably large amount. In this instance, the selection process does comply with PSM XXX-10 Transfer and Promotion.

In accordance with section 15.2 of PSM (grievances and appeals), Ms Doe’s consideration for appeal is not accepted as it lacks substance in that no significant deficiencies in the selection process which prevented merit selection were identified.