

B-18



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Candice Hendricks,
Civil Service Commission

CSC Docket No. 2015-1012

Classification Appeal

ISSUED: **DEC 21 2015** (LDH)

Candice Hendricks appeals the determination of the Division of Classification and Personnel Management¹ (CPM) that her position with the Civil Service Commission (Commission) is properly classified as Investigator 2. Hendricks seeks an Investigator 1 or an Affirmative Action Officer 2 classification.

The record in the present matter establishes that Hendricks is currently serving in the unclassified title of Court Executive 1B with the Judiciary, effective September 5, 2015. Therefore, this appeal pertains to the potential differential pay that Hendricks would receive from July 7, 2014 when her request for an audit was submitted to the Office of Human Resources, to September 5, 2015 when she was appointed to the title of Court Executive 1B.

At the time of the classification request, Hendricks' position was located in the Division of Equal Employment/Affirmative Action (EEO/AA), Civil Service Commission and she was serving in the unclassified title of Legislative Liaison. Hendricks pursued the matter of her classification with CPM. She was asked to complete a Position Classification Questionnaire (PCQ),² an audit was conducted with Hendricks and her supervisor, on August 26, 2014 and September 5, 2014, and all documentation supplied by her supervisor and Hendricks was reviewed. CPM

¹ Currently, the Division of Agency Services.

² On her PCQ, Hendricks stated that she performed investigative work 80% of the time and non-investigative work 20% of the time.

found that the duties and responsibilities of Hendricks' position entailed investigating assigned discrimination, harassment and retaliation complaints from State employees, applicants for employment and vendors doing business with the State; monitoring and maintaining the complaint tracking system; producing statistical and other reports from source data; providing technical assistance and guidance to agency EEO/AA Officers; and reviewing and commenting on internal investigative reports and appeal responses to the Division of Appeals and Regulatory Affairs. Additionally, it noted that since the Investigator 1 title was assigned to the "R" bargaining unit, it was considered a primary or first-level supervisory title. However, CPM found that Hendricks had no supervisory responsibilities. Lastly, Hendricks' supervisor indicated that Hendricks performed her work under limited supervision. Based on the foregoing, CPM determined that the primary duties performed by Hendricks were consistent with the definition and examples of work included in the job specification for Investigator 2, effective October 18, 2014.

On appeal to the Commission, Hendricks argues that her duties and responsibilities were more consistent with the title of Investigator 1. She also asserts that CPM incorrectly concluded that she worked under limited supervision, as she exercised independent judgment on a daily basis in the performance of her investigative duties. She maintains that she should have listed the percentage of time she performed non-investigatory duties as 10%, instead of the 20% she listed on the PCQ, since the performance of those additional duties should not reduce her position to the title of Investigator 2. Hendricks also argues that despite CPM's decision, the job specification for the title of Investigator 1 does not require supervision. She also points to several employees who do not supervise and performed the same investigative duties as herself, yet were serving in the title of Investigator 1. Furthermore, Hendricks argues that she has over five years of experience performing investigations, which is more than the three years required to qualify for the Investigator 1 title, and that she possess a law degree. Lastly, she argues that if she cannot be classified as an Investigator 1, she suggests that she should be classified as an Affirmative Action Officer 2.

CONCLUSION

The definition section of the job specification for Investigator 1 states:

Under the general direction of a Supervisor of Investigations or other higher level supervisory official, supervises a unit or team of subordinate investigators; may be required to conduct sensitive, complex investigations, in the field or from the central office, involving alleged noncompliance with state statutes and regulatory requirements; supervises staff and work activities; prepares and signs

official performance evaluations for subordinate staff; does other related duties.

The definition section of the job specification for Investigator 2 states:

Under the limited supervision of a Supervisor of Investigators or other supervisory official, conducts complex investigations, in the field or from the central office, involving alleged noncompliance with state statutes and regulatory requirements; does other related duties.

The definition section of the job specification for Affirmative Action Officer 2 states:

Under direction of the Commissioner or Chief Executive Officer, in an executive department, college, or independent agency of less than 4,000 regular employees with a centralized Equal Employment Opportunity and Affirmative Action Program or under the general direction of an Affirmative Action Officer 1 and/or the Chief Operations Officer, in an institution, division, or enforcement agency of 1,000 regular employees or more, within a department or agency with a decentralized Equal Employment Opportunity and Affirmative Action Program, has responsibility for the planning, implementation, development, and supervision of the component's Equal Employment Opportunity and Affirmative Action Program and ensuring compliance with State and federal statutes, rules, and regulations, Executive Orders and guidelines, including those directed by the Department of Personnel, Division of Equal Employment Opportunity and Affirmative Action; does related work as required.

In the instant matter, CPM appropriately found that Hendricks' position was properly classified as an Investigator 2. The job specification for Investigator 1 states that an incumbent must supervise staff and work activities. Moreover, when a title is supervisory in nature, the Commission has found that, along with the myriad of other supervisory duties that must be performed, the essential component of supervision is the responsibility for formal performance evaluation of subordinate staff. *See In the Matter of Timothy Teel* (MSB, decided November 8, 2001). As such, in order to be classified at the level of Investigator 1, an incumbent must supervise subordinate staff, including having the responsibility for performing formal performance evaluations. Merely making recommendations regarding a subordinate's performance, or even assisting in the preparation of a performance evaluation is not sufficient. Rather, to be considered a supervisor, the individual must be the person actually administering and signing off on the evaluation as the subordinate's supervisor. A review of the record does not establish that Hendricks' performed such duties.

Further evidence that the Investigator 1 title is at the supervisory level is its inclusion in the "R" Employee Relations Group (ERG). In this respect, titles are assigned to ERGs based on the classification of the position by this agency. See *N.J.S.A. 11A:3-1*. Each ERG is distinctly defined, and the "R" ERG is defined as those titles used in the primary or first level of supervision. See *In the Matter of Alan Handler, et al.* (CSC, decided October 7, 2015) (Commission found that Auditor 1 was a supervisory level title based on job definition, duties and inclusion in "R" ERG).

Regarding Hendricks' argument that co-workers in the title of Investigator 1 also do not supervise subordinate staff or complete employee PARs, a classification appeal cannot be based solely on a comparison to the duties of another position, especially if that position is misclassified. See *In the Matter of Dennis Stover*, Docket No. A-5011-96T1 (App. Div. October 3, 1998), affirming *In the Matter of Dennis Stover, Middletown Township* (Commissioner of Personnel, decided February 20, 1997). See also, *In the Matter of Carol Maita, Department of Labor* (Commissioner of Personnel, decided March 16, 1995). Regardless, a thorough review of the entire record fails to establish that Hendricks has presented a sufficient basis to warrant an Investigator 1 classification of her position.

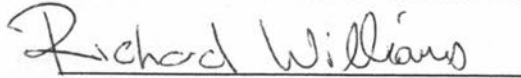
Additionally, she has failed to present a sufficient basis to warrant an Affirmative Action Officer 2 classification. The job specification for Affirmative Action Officer 2 indicates that an individual in that title would be responsible for the planning, implementation, development and supervision of the component's Equal Employment Opportunity and Affirmative Action Program. However, a review of the record in this matter does not establish that Hendricks' position was responsible for the planning, implementation, development and supervision of the component's Equal Employment Opportunity and Affirmative Action Program. Thus, Affirmative Action Officer 2 is also not an appropriate title for Hendricks' duties.

ORDER

Therefore, the Civil Service Commission concludes that the proper classification of Candice Hendricks' position was Investigator 2.

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 16TH DAY OF DECEMBER, 2015



Richard E. Williams
Presiding Member
Civil Service Commission

Inquiries
and
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Henry Maurer
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Attachment

c: Candice Hendricks
Ann McClaskey
Kenneth Connolly
Joseph Gambino



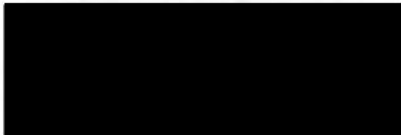
Chris Christie
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STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION
DIVISION OF CLASSIFICATION AND PERSONNEL MANAGEMENT
P.O. Box 313
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Robert M. Czech
Chair/Chief Executive Officer

September 15, 2014

Ms. Candice Hendricks



Re: Classification Review

Dear Ms. Hendricks:

This is to inform you and the Civil Service Commission, Division of Equal Employment Opportunity/Affirmative Action (EEO/AA), of my determination concerning your classification review. This determination has been established based on a thorough review and analysis of all information and documentation submitted to this office, and a position audit conducted with you on August 26, 2014, and with your supervisor, Mamta Patel, on September 5, 2014.

ISSUE:

Your current title is Legislative Liaison (X98-99981).

A review of the duties assigned to your position has been requested for the purpose of determining the most appropriate title classification.

Your immediate supervisor agrees with the description of duties listed on your DPF-44, and the percentages of time you have indicated that you spend performing them.

ORGANIZATION:

The position (644977) is located in the Civil Service Commission (CSC), Division of EEO/AA. The position reports directly to Mamta Patel, Division Director.

The position is assigned to the Investigations unit, and provides support to the Operations/Administrative unit as needed. Both units report to the Division Director.

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The Investigations unit is responsible for investigating alleged violations of the State Policy Prohibiting Discrimination in the Workplace. It consists of two staff members; one (1) Legislative Liaison; and one (1) Investigator 1.

The position does not supervise or take the lead over staff.

FINDING OF FACTS:

The following duties and responsibilities, as listed on your DPF-44, were discussed during the course of the audit conducted with you on August 26, 2014:

- Investigates assigned discrimination, harassment, and retaliation complaints from state employees, applicants for employment, and vendors doing business with the state; coordinates all aspects of the investigation process
- Monitors and maintains the complaint tracking system (database); recommends enhancements when necessary
- Produces statistical and other reports from source data
- Provides technical assistance and guidance to agency EEO/AA Officers
- Reviews and comments on internal investigative reports and appeal responses to DARA

DISCUSSION:

According to New Jersey State Model Procedures for Internal Complaints Alleging Discrimination in the Workforce, complaints of prohibited discrimination/harassment are to be reported to the EEO/AA Officer or a supervisory official at the state agency where the alleged violation took place. If reporting a complaint to these persons represents a conflict of interest, meaning one or more individual partaking in the investigation or decision making process is the subject of the complaint, it may be filed directly with the Division of EEO/AA. Complaints filed at agencies with no EEO/AA Officer may also be filed with the division. The complaints received by the division are assigned to investigative staff for their review and recommendation. At the conclusion of the investigation process, a determination letter including a recommended course of action is sent to the agency where the violation took place.

Your DPF-44 indicates you spend a large majority of your work time (approximately 80%) performing investigative work. This involves coordinating all aspects of the investigation process from intake to determination.

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The steps taken to resolve a complaint as described by you at the audit are as follows; initial review of the complaint; determine allegations; draft acknowledgement letters for the director's signature; schedule and conduct interviews; gather and analyze all pertinent documentation (fact finding); prepare a detailed report outlining findings (draft determination letter); and submission of the report to the director for final review and signature. Your supervisor was asked to confirm your response and she indicated that your description of duties and estimated time performing the work is accurate.

You were asked at the audit if any staff member performs work duties similar to yours, and if so, what criteria are used to assign work. You indicated that two staff members other than yourself, Ryan Mistichelli and Ruth Mathis, perform investigatory work involving EEO/AA matters. Your supervisor was asked to confirm your response and indicated it was accurate. Your supervisor also confirmed that complaints are assigned to investigative staff based on workload and/or the skill sets of the employee.

You confirmed at the audit that you perform, to a lesser extent, non-investigative work such as updating and maintaining the complaint tracking system, producing statistical and other reports from source data, providing technical assistance and guidance to agency EEO/AA Officers, and reviewing and commenting on internal investigative reports and appeal responses to DARA. Your supervisor was asked to confirm your response and has indicated that approximately 20% of your time is spent performing non-investigative work. She has confirmed that you are solely responsible for maintaining the complaint tracking system, which is a database that contains information (names, dates, agency, etc.) on all complaints filed with the division. Reports are generated from the data in the system. It was also confirmed that you are the sole person responsible for reviewing and commenting on appeal responses to DARA. Your supervisor has indicated that this is a rare occurrence, representing a small percentage of time spent performing this task.

The DPF-44 you prepared indicates your work is performed under general supervisory oversight. For clarification purposes, the three types of supervision were defined and explained to you at the audit. The types of supervision are defined as follows; general supervision- work is performed independently. The incumbent seldom refers matters to supervisor except for clarification of policy; limited supervision- incumbent proceeds on her own initiative while complying with policies, practices, and procedures prescribed by the supervisor. The supervisor generally answers questions on the more important phases of work; close supervision- work is performed according to detailed instructions and supervision is available on short notice. After a brief discussion on the matter you decided the type of supervision received by you probably falls somewhere in the middle of limited and general. Your supervisor was asked to confirm your response and indicated you perform your work under limited supervision.

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She explained that you proceed on your own initiative but guidance and oversight is frequently required on the more difficult phases of work.

REVIEW AND ANALYSIS:

The purpose of this review is to classify the duties presented on your DPF-44, and those discussed with you and your supervisor. That being said, several title classifications were considered for further analysis.

Your position is currently classified by the title Legislative Liaison (X98-99981). The definition section of the job specification for this title states:

"Under general direction of a Commissioner, has charge of all programs related to the maintenance of an active, effective, liaison with the State legislature and other federal, state, and local government officials with regard to regulations and legislation; does related work as required."

A legislative liaison is a person who represents an executive branch department before the legislature with technical expertise and information about the department. You do not perform this function, and therefore are inappropriately classified in your current title.

As specified above, the objective of this review is to appropriately classify your position. To do so it is imperative to identify the core function of your position, which has been determined to be investigative (fact finding). As discussed at the audit, and confirmed by you and your supervisor, you spend a large majority of your work time investigating complaints involving EEO/AA matters.

Positions assigned to the investigator title series are primarily responsible for conducting investigations in the area of assignment. Based on the finding of facts, and the discussion dialogue specified above, your duties most closely resemble the work performed in the investigator title series. Two titles have been identified as potential candidates to best classify your position; Investigator 2 and Investigator 1.

The definition for Investigator 2 (I22 - 56783) states;

"Under the limited supervision of a Supervisor of Investigations or other supervisory official, conducts complex investigations, in the field or from the central office, involving alleged noncompliance with state statutes and regulatory requirements; does other related duties."

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The definition for Investigator 1 (R25 - 56774) states;

"Under the general direction of a Supervisor of Investigations or other supervisory official, independently conducts sensitive, complex investigations, in the field or in the central office, involving alleged noncompliance with state statutes and regulatory requirements; may be responsible for supervision of a unit or team of investigators; does other related duties."

Investigator 2 is the second working level in the investigator title series. It is assigned to the "P" bargaining unit, Professional, Non-supervisory. Investigations are more complex than those performed at the entry level, and incumbents are responsible for independently planning and conducting investigations while complying with policies, practices and procedures prescribed by the supervisor. Supervisory guidance is available if needed on unusual, unique and/or sensitive cases. Investigations may become involved and complex at this level.

Investigator 1 is the first supervisory level in the investigator title series. It is assigned to the "R" bargaining unit, Primary Level Supervisory. Positions at this level supervise professional staff performing investigations at the trainee or working levels. Positions conduct the most complex, varied, and sensitive investigations in the area of assignment. Employees must frequently exercise independent judgment and make decisions concerning processes to be followed, the appropriateness of the information to be processed, and the actions to be taken. Work is performed independently requiring minimal review upon completion.

Please note classification determinations are based on the duties and responsibilities required of the job, not on the credentials or skill sets of the incumbent.

DETERMINATION:

As a result of the duties information provided on your DPF-44, the tasks discussed during the course of the audit with you, and the conversation held with your supervisor, it has been determined that the duties of your position are most closely aligned with the title of Investigator 2 (I22-56783). This determination is effective October 18, 2014 (pay period 23/14). The decision was based on the fact that your position is primarily responsible for performing investigatory work, the level of supervision received by your position, and the absence of supervisory duties and responsibilities.

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The New Jersey Administrative Code 4A:3-3.5(c) 1 states that: "within 30 days of receipt of the reclassification determination, unless extended by the Chair in a particular case for good cause, the Appointing Authority shall either effect the required change in the classification of an employee's position; assign duties and responsibilities commensurate with the employee's current title; or reassign the employee to duties and responsibilities to which the employee has permanent rights. Any change in the classification of a permanent employee's position, whether promotional, demotional or lateral, shall be effected in accordance with all applicable rules".

Please be advised that in accordance with N.J.A.C. 4A:3-3.9, you may appeal this decision within twenty (20) days of receipt of this letter. This appeal should be addressed to Written Records Appeal Unit, Division of Appeals and Regulatory Affairs, P.O. Box 312, Trenton, New Jersey 08625-1312. Please note that the submission of an appeal must include written documentation and/or argument substantiating the portions of the determination being disputed and the basis for the appeal.

Sincerely,



John Teubner
Deputy Director
Division of Classification & Compensation

c: Ann McClaskey, Manager HR
Kenneth Connolly, Director CPM

