

CSC
B-17



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Jason Hearon,
Department of Environmental
Protection

Classification Appeal

CSC Docket No. 2016-1259

ISSUED: DEC 17 2015 (SLK)

Jason Hearon appeals the attached decision of the Division of Agency Services (Agency Services) that the proper classification of his position with the Department of Environmental Protection is Principal Biologist, Fisheries. The appellant seeks a classification of Supervising Biologist, Fisheries.

The record in the present matter establishes that Mr. Hearon's permanent title is Principal Biologist, Fisheries. The appellant is assigned to Natural and Historic Resources, Division of Fish and Wildlife, Marine Fisheries, Bureau of Shellfisheries and reports to Russell Babb, Supervising Biologist, Fisheries. He directly supervises one Senior Biologist, Fisheries, one Technician 2, Fish, Game, and Wildlife, and one Agency Service Representative 1. Mr. Hearon sought a reclassification of his position, alleging that his duties are more closely aligned with the duties of a Supervising Biologist, Fisheries. In support of his request, the appellant submitted a Position Classification Questionnaire (PCQ) detailing the different duties he performs as a Principal Biologist, Fisheries. Agency Services reviewed and analyzed the PCQ completed by the appellant, the appellant's Performance Assessment Review (PAR), the appellant's statements, and statements from the appellant's supervisor, division director, and appointing authority. On May 15, 2015, Agency Services conducted a telephone audit. In its decision, Agency Services determined that the duties performed by the appellant were consistent with the definition and examples of work included in the job specification for Principal Biologist, Fisheries.

On appeal, Mr. Hearon contends that the Findings of Facts in Agency Service's decision did not clearly indicate that he solely manages a 30 million dollar

oyster fishery, manages 30,000 acres of leased grounds, manages a licensing office, and is personally responsible for 300 thousand dollars of cash without management oversight. Based on having these responsibilities, the appellant claims that in 2009 management promised him that he would be promoted to Supervising Biologist, Fisheries. The appellant asserts that others in his position have always had their titles classified as a Supervising Biologist, Fisheries including his supervisor when he held this position many years ago. The appellant states that the job description for Supervising Biologist, Fisheries changed during the time he alleges that he has been performing these duties out-of-title and he questions the Civil Service Commission's (Commission) authority to change the job specification without approval of the Marine Fisheries Administration Management. The appellant maintains that the requirement that a Supervising Biologist, Fisheries be a second level supervisor is a new development designed to stop career advancement and is not indicated in the job specification. The appellant highlights that Agency Services determined that his supervisor's position is misclassified as the Acting Chief as there are no "Acting" titles under Civil Service law. Therefore, the appellant claims that if his division had a Chief, there would be a management structure in place to support the promotion of his position. The appellant further states that he cannot control whether or not he is assigned second level supervisory responsibility; however, he reiterates that the manager of the Delaware Bay Office has always been a Supervising Biologist, Fisheries.

CONCLUSION

The definition section of the job specification for Principal Biologist, Fisheries states:

Under direction of a supervisory officer, supervises and coordinates on a Statewide basis surveys of streams and lakes, samplings of fish populations and fish foods, and disease treatment, and generally supervises fish cultural operations and other technical biological work within the fisheries management programs of the State; does other related duties as required.

The definition section of the job specification for Supervising Biologist, Fisheries states:

Under general direction, in the Division of Fish and Wildlife, Department of Environmental Protection, has responsibility for coordinating and implementing Statewide programs related to fisheries management; supervises staff involved in biological research and data analysis related to fisheries management; does related work as required.

The Commission agrees with Agency Services' determination that the appellant's position is properly classified as Principal Biologist, Fisheries. The appellant supervises one Senior Biologist, Fisheries, one Technician 2, Fish, Game, and Wildlife, and one Agency Service Representative 1. These are non-supervisory titles. The Principal Biologist, Fisheries title is a primary level supervisory title. Therefore, Mr. Hearon's supervision of three non-supervisory staff members does not evidence that his position is misclassified. Further, while the appellant claims that Agency Services' determination did not fully articulate the scope and magnitude of his duties in managing a 30 million dollar oyster fishery and the definition section of the job specification for Supervising Biologist, Fisheries indicates that an incumbent has responsibility for coordinating and implementing Statewide programs related to fisheries management, it cannot be ignored that this title is an "S" title used as a second level supervisory title. Titles in the "S" bargaining unit are for second level supervisors that are required to supervise at least one primary level supervisor. Therefore, incumbents in the Supervising Biologist, Fisheries title are typically required to both lead a staff as well as supervise employees who have supervisory responsibility. Thus, as the appellant supervised only staff members who are in non-supervisory titles, his position cannot be classified as a Supervising Biologist, Fisheries.

In regard to the appellant's assertion that the manager of the Delaware Bay Office, including his supervisor when he had that responsibility, has always been classified as a Supervising Biologist, Fisheries, 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 Carol Maita, Department of Labor* (Commissioner of Personnel, decided March 16, 1995); *In the Matter of Dennis Stover, Middletown Township* (Commissioner of Personnel, decided March 28, 1996). *See also, In the Matter of Lorraine Davis, Office of the Public Defender* (Commissioner of Personnel, decided February 20, 1997), *affirmed*, Docket No. A-5011-96T1 (App. Div. October 3, 1998). With respect to the appellant's comments that management promised in 2009 to promote him to Supervising Biologist, Fisheries based on the magnitude of his responsibility, even if true, a recommendation by appellant's management that he be promoted does not establish that the position he encumbers would be properly classified in the higher level title. *See In the Matter of Titus Osuagwu* (CSC, decided December 3, 2008). Also, in *In the Matter of Patricia Lightsey* (MSB, decided June 8, 2005), *aff'd on reconsideration* (MSB, decided November 22, 2005) (The outcome of position classification is not to provide a career path to the incumbent, but rather to ensure the position is classified in the most appropriate title available within the State's classification plan). Further, in reference to the appellant's contention that requiring incumbents in positions that are in "S" bargaining units to be second level supervisors is a new development designed to stop advancements, it is noted that this requirement is not new in the State's classification plan. *See In the Matter of Alvin Dyott* (MSB, decided September 21, 2005). With respect to changes to the job specification for

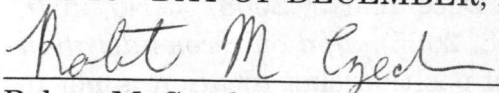
Supervising Biologist, Fisheries during the time period that he alleges he was performing out-of-title duties and the Commission's authority to make these changes without approval from the Marine Fisheries Administration Management, under *N.J.S.A. 11A:3-1*, the Commission has the authority to establish, administer, amend and continuously review a State classification plan governing all positions in State service and provide a specification for each title. Further, a review of the title history for this title indicates that the Commission did change the specifications in June 2014 in order to update outdated language. Both the appointing authority and the union were advised of the proposed changes in advance and had an opportunity to comment before the specifications were revised. As such, since these changes were made prior to the classification review, these changes were utilized in making the determination. However, it is noted that this title has consistently been an "S" bargaining unit title and there have not been any changes that impacted the requirement that incumbents in this title be second level supervisors. Additionally, the appellant's position cannot be reclassified to Supervising Biologist, Fisheries as his supervisor holds that same title and therefore this would be an improper reporting relationship. *See In the Matter of Gary Lipsius* (Commissioner of Personnel, decided June 27, 2005) (Affirming long-standing policy that a subordinate cannot be classified at the same class code as his or her immediate supervisor). Moreover, even if the appellant's supervisor was a Chief as he suggests or other appropriate higher title that would be a proper reporting relationship, the appellant's position still could not be reclassified to Supervising Biologist, Fisheries as he is not a second level supervisor.

ORDER

Therefore, the Civil Service Commission concludes that the position of Jason Hearon is properly classified as a Principal Biologist, Fisheries.

This is the final administrative determination in this matter. Any further review is to be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 16th DAY OF DECEMBER, 2015



Robert M. Czech

Chairperson

Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
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Attachment

c: Jason Hearon
Deni Gaskill
Kenneth Connolly
Joseph Gambino



CHRIS CHRISTIE
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KIM GUADAGINO
Lt. Governor

STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION
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ROBERT M. CZECH
Chair/Chief Executive Officer

August 26, 2015

Mr. Jason A. Hearon
[REDACTED]

Re: Classification Appeal
Principal Biologist, Fisheries
Position #059592
CPM #04150287
Employee ID #000373853

Dear Mr. Hearon:

This is to inform you, and the Department of Environmental Protection, of our determination concerning the classification appeal referenced above. Our review involved a detailed analysis of the Position Classification Questionnaire (DPF-44S); organization chart; your Performance Assessment Review (PAR); your statements; the statements of your supervisor, division director, and appointing authority; and a telephone audit that was conducted May 15, 2015.

Issue:

You are appealing the current classification of your position, Principal Biologist, Fisheries (R25, 01754D). You contend that your current duties and responsibilities are consistent with those of a Supervising Biologist, Fisheries (S27, 01758G).

Organization:

The position is located in Natural and Historic Resources, Division of Fish and Wildlife, Marine Fisheries, Bureau of Shellfisheries, Department of Environmental Protection. You are supervised by Russell Babb, Supervising Biologist, Fisheries (S27). While Mr. Babb is listed as "Acting" Manager 4, Natural Resources, Fisheries Bureau of Shellfisheries on the organization chart, the use of "acting" designations for positions is improper and in violation of N.J.A.C. 4A:3-3.4. No provision exists under Civil Service rules to recognize "acting" appointments. You

directly supervise, one (1) Senior Biologist, Fisheries, one (1) Technician 2, Fish, Game, and Wildlife, and one (1) Agency Service Representative 1.

Findings of Fact:

The position performs the following duties and responsibilities:

- Supervises the daily operations of the Delaware Bay Field Station facility including resource management, field monitoring, and commercial marine licensing and permitting.
- Acts as the Bureau representative to various state/federal organizations, advisory councils, and municipal groups concerned with fisheries or habitat planning, research, or habitat management.
- Project manager and State representative for the Delaware Bay Oyster Restoration and Enhancement Project.
- Organizes, plans, and conducts field sampling strategies associated with shellfish research and inventory programs.
- Oversees federally funded restoration programs and ensures compliance with federal requirements.
- Reviews and amends existing statutes and regulations, reports and materials on marine fisheries matters.
- Provides primary oversight of the Delaware Bay hydrographic survey program.
- Reviews and comments on various waterfront development activities and applications regarding their impact on the shellfish resources of the State.
- Prepares technical reports on the results of shellfish research/enhancement programs.
- Organizes and drafts annual reports related to the Bureau's major resource management projects.
- Analyzes and maintains records and reports of all field work, technical assistance, site delineations, commercial fish/shellfish landings and environmental reviews.

- Collects fish and shellfish harvest data and maintains various database systems.
- Oversees and schedules field sampling.

Review and Analysis:

The duties and responsibilities of the position were compared to those described within the class specification for Principal Biologist, Fisheries and Supervising Biologist, Fisheries.

The definition section of the specification for the title, Principal Biologist, Fisheries (R25, 01754D), states:

“Under direction of a supervisory officer, supervises and coordinates on a state-wide basis surveys of streams and lakes, samplings of fish populations and fish foods, and disease treatment, and generally supervises fish cultural operations and other technical biological work within the fisheries management programs of the State; does other related duties as required.”

A Principal Biologist, Fisheries supervises the use of federal aid-to-fisheries funds and the personnel assigned to such projects. A Principal Biologist, Fisheries recommends manipulations of season, size, bag limits, and changes in environment designed to ensure better fishing. Incumbents in this position may use biometrics in obtaining samples and in applying scientific knowledge derived from sampling activities to the problems of the whole fisheries population. In addition, incumbents in this title supervise work operations and/or functional programs and have responsibility for effectively recommending the hiring, firing, promoting, demoting, and/or disciplining of employees.

The definition section of the specification for the title, Supervising Biologist, Fisheries (S27, 01758G), states:

“Under general direction, in the Division of Fish and Wildlife, Department of Environmental Protection, has responsibility for coordinating and implementing Statewide programs related to fisheries management; supervises staff involved in biological research and data analysis related to fisheries management; does related work as required.”

A Supervising Biologist, Fisheries may coordinate scientific research, propagation, and other programs relating to fisheries management. A Supervising Biologist, Fisheries may organize assigned technical and supervisory work, analyze problems and the possible impacts of activities outside the program or installation, and develop appropriate and coordinated work schedules and procedures for staff. In addition, the title Supervising Biologist, Fisheries is assigned to the "S" bargaining unit. Titles assigned to the "S" bargaining unit are considered second-level supervisors with the responsibility for supervising primary-level supervisors.

Your position supervises and oversees all programs and operations of the Delaware Bay Field Station of the Bureau of Shellfisheries. Your position oversees the Oyster Resource Management Plan which includes stock assessment, setting season dates, and boundaries. Your position attends monthly meetings of the Delaware Bay Shellfish Council as the New Jersey representative. Your position oversees the Intermediate Transplant Program where oysters are harvested by a contractor and moved to locations of better water quality. Your position oversees contractors in oyster shell planting and restoration. Your position conducts reef surveys to identify new reefs, map existing reefs, and provide a general index documenting changes over time. Your position oversees and develops zones within Delaware Bay for aqua culture development. Your position participates in and oversees a diving program for dredging calibration and underwater resources. Your position oversees and conducts a mapping program to determine sediment build-up and to determine bio-resources using different parts of the Delaware Bay. Your position provides general oversight and management of State leased areas of the Bay. Your position provides GIS mapping of the shellfish grounds. Your position oversees the application review, sale, and issuance of commercial and individual licenses. Your position has overall responsibility for the development of all Delaware Bay shellfish regulations and aqua culture for the State. Your position prepares the budget and annual spending plan for the office. Your position researches and writes federal grant requests associated with shellfish.

A Supervising Biologist, Fisheries (S27, 01758G), is considered a second-level supervisor and is expected to directly supervise professional staff functioning as first-level supervisors. Such staff is responsible for biological research and data analysis. While your position supervises professional and technical staff engaged in fish cultural operations, your staff has no direct supervisory responsibility. As such, your position is not functioning as a second-level supervisor but instead as the first line of supervision.

In addition, you report directly to Russell Babb, whose position is classified as a Supervising Biologist, Fisheries (S27, 01758G). In a supervisor/subordinate reporting relationship, the supervisor's title must be assigned a higher class code

Name: Jason Hearon
Date: August 26, 2015

Page 5

and must be assigned to an appropriate and higher bargaining unit. A second-level supervisor may not directly supervise another second-level supervisor. A classification of your position to Supervising Biologist, Fisheries would create an improper reporting relationship.

Therefore, the Principal Biologist, Fisheries is the appropriate classification for a first-level supervisor responsible for technical biological work within fisheries management programs.

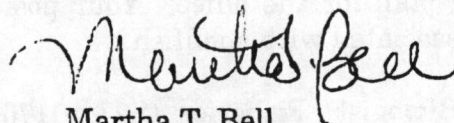
Determination:

By copy of this letter, the Appointing Authority is advised that your position is properly classified as Principal Biologist, Fisheries (R25, 01754D).

The Principal Biologist, Fisheries title is descriptive of the general nature and scope of the functions that may be performed by the incumbent in this position. However, the examples of work are for illustrative purposes and are not intended to restrict or limit performance of the related tasks not specifically listed.

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. The appeal should be addressed to the Written Records Appeals Unit, Division of Appeals and Regulatory Affairs, P.O. Box 312, Trenton, New Jersey 08625-0312. Please note that the submission of an appeal must include a copy of the determination being appealed as well as written documentation and/or argument substantiating the portions of the determination being disputed and the basis for the appeal.

Sincerely,



Martha T. Bell
Human Resource Consultant 5
Division of Agency Services

MTB/rej
C: Robin Liebeskind
Veronica Kirkham
CPM #04150287