

B-18



STATE OF NEW JERSEY

In the Matter of Briana Senger,
Department of Law and Public Safety

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2015-948

Classification Appeal

ISSUED: MAY 08 2015 (JET)

Briana Senger appeals the attached decisions of the former Division of Classification and Personnel Management (CPM)¹ that the proper classification of her position with the Department of Law and Public Safety is Forensic Scientist 1. The appellant seeks a Forensic Scientist 2 classification.

The record in the present matter establishes that at the time the appellant filed her request for a classification review, she was serving as a Forensic Scientist 1. The appellant's position is located in the East Regional Laboratory, Division of State Police and she does not have any supervisory duties. The appellant sought a reclassification contending that her position would be more appropriately classified as a Forensic Scientist 2. In support of her request, the appellant submitted a Position Classification Questionnaire (PCQ) detailing the different duties that she performed. CPM reviewed all documentation supplied by the appellant including her PCQ. Based on its review of the information provided, including the unit organization chart, CPM concluded that the appellant's position would be properly classified as a Forensic Scientist 1. However, CPM did indicate that some of her duties, such as training employees and peer reviews were out-of-title and should be removed.

It is noted that the appellant had previously sought reclassification of her position in 2010, arguing that it should be classified as a Forensic Scientist 2. In a

¹ Formerly, the Division of State and Local Operations (SLO) and now the Division of Agency Services (Agency Services).

determination dated June 11, 2010, SLO found that her position should be reclassified as Forensic Scientist 2 and the appellant was provisionally appointed to that title effective June 20, 2009. Subsequently, the appointing authority contacted this agency in November 2010 and requested that the job specification for Forensic Scientist 2 be revised in order to more clearly distinguish what constitutes complex cases, which would be inappropriate for an incumbent in the Forensic Scientist 1 title. Accordingly, the job specification was revised effective January 15, 2011. As a result of this revision to the job specification, the appointing authority removed the complex duties that the appellant had been assigned and returned her to her permanent title of Forensic Scientist 1 effective January 29, 2011. On February 1, 2012, SLO provided a PCQ to the appellant and asked her to provide specific instances where she performed the duties of a Forensic Scientist 2 since January 29, 2011, but it received no response. However, the appointing authority confirmed that it had not assigned her higher level duties since that time. Accordingly, SLO issued a determination dated March 23, 2012 indicating that the appellant's position was properly classified as a Forensic Scientist 1.²

On appeal, the appellant maintains that Forensic Scientist 2 is the appropriate classification of her position. Specifically, the appellant asserts that she is regularly assigned to complete complex and complicated work on an out-of-title basis that is usually performed by employees serving as a Forensic Scientist 2. The appellant adds that such work has been assigned to her from December 17, 2012 to May 14, 2014. In this regard, the appellant argues that she is currently responsible for training employees and reviewing reports for her peers which is consistent with the job specification for Forensic Scientist 2. The appellant states that the classification determination explains that "training forensic scientists, preparing and conducting official lectures, and reviewing reports of peer casework" are consistent with the duties performed by a Forensic Scientist 2. The appellant adds that the classification determination indicates that such duties do not appear on the job specification for Forensic Scientist 1. In addition, the appellant avers that she and her union representative were under the impression that an on-site desk audit would be conducted and SLO failed to conduct the desk audit. Moreover, the appellant argues that CPM "mishandled" the paperwork that was submitted for her classification review.

In support of her arguments, the appellant's supervisor, Toni Pettincki, Forensic Scientist 3, submits a letter which indicates that the appellant performed the work of a Forensic Scientist 2 on an out-of-title basis from December 17, 2012 to May 14, 2014 without additional compensation. Further, Ms. Pettincki states that the classification determination confirms that the appellant performed the duties of a Forensic Scientist 2 on an out-of-title basis. In this regard, it determined that she "trained forensic scientists in performing quantitative analysis of evidence,

² The appellant filed an appeal of the March 23, 2012 classification determination and it was administratively dismissed as untimely pursuant to *N.J.A.C.* 4A:3-3.9(e).

[completed] drug screening, solid phase extractions and identifications, and handl[ed] evidence while maintaining custody." It also indicated that the appellant "prepares and conducts official lectures to outside law enforcement agencies and other entities [and] reviews reports of peers' casework for accuracy according to scientific knowledge." She adds that such duties were removed on May 14, 2014 in accordance with the classification determination. Moreover, Ms. Pettincki states that the appellant is the only Forensic Scientist 1 in her unit who has experience with blood alcohol analysis and general toxicology work. In this regard, Ms. Pettincki confirms that the appellant's work as a Forensic Scientist 2 increased the productivity of the unit.

In response, Agency Services maintains that the classification determination is correct and the appropriate classification for the appellant's position is Forensic Scientist 1. Further, the appointing authority confirms that it has reassigned any out-of-title duties the appellant was performing.

CONCLUSION

The definition section of the job specification for Forensic Scientist 2 states:

Under the general direction of a Forensic Scientist 3 in the Department of Law and Public Safety, conducts the more difficult and specialized work involved in the chemical analysis of various matter, substances, specimens, and materials submitted to the laboratory by law enforcement agencies and Medical Examiners Offices for identification in connection with criminal investigations and prosecutions; may supervise or provide guidance to Forensic Scientist 1, Chemists, Laboratory Technicians, or other laboratory personnel; may function as a Laboratory Information Management System (LIMS) Coordinator, Laboratory Safety Representative/Coordinator, or Quality Assurance (QA) Coordinator of a discipline; performs related field and laboratory work as required.

The definition section of the job specification for Forensic Scientist 1 states:

Under the general direction of a Forensic Scientist 2 or 3 in the Department of Law and Public Safety, conducts the chemical analysis of various materials and evidence submitted to the laboratory by law enforcement agencies and Medical Examiners Offices for identification in connection with criminal investigations and prosecutions; performs related field and laboratory work as required.

Initially, the appellant indicated on her PCQ that 65% of her duties are related to some aspect of training Forensic Scientist 1s. The appellant's supervisor and Program Manager confirmed that she performed these duties. According to the job specification for Forensic Scientist 2, an incumbent can train Forensic Scientist 1s. Conversely, the job specification for Forensic Scientist 1 does not include the responsibility of training and reviewing peer reports. Thus, CPM properly found that the appellant was performing out-of-title duties. *N.J.A.C. 4A:3-3.9(c)8ii(2)* states that if a determination is made finding that the position is properly classified, but that out-of-title duties are being performed, this agency shall order the immediate removal of the inappropriate duties within a specified time. In this case, the appointing authority has confirmed that it removed the out-of-title duties effective March 21, 2014. Therefore, no basis exists to currently reclassify the appellant's position to Forensic Scientist 2.

However, the appointing authority's acknowledgment that it removed the duties was initially contained in the PCQ and confirmed in its response to this matter. In this regard, it cannot be ignored that the appellant's PCQ was signed by the appellant's Director on April 16, 2013, but it was not received by CPM until March 28, 2014. Thus, it is clear that almost one year had passed before the appointing authority submitted the completed PCQ to CPM for review. *N.J.A.C. 4A:3-3.9(c)7* requires the appointing authority submit an employee's classification appeal to this agency within 10 days of receipt of the appeal. This did not happen. Nonetheless, given that the appellant's supervisor confirms that the appellant performed out-of-title duties, and the appointing authority admits that the out-of-title duties were removed, albeit almost a year later, the Commission finds that the appellant is entitled to differential pay from May 4, 2013, the pay period immediately after 14 days from the date this agency should have received the initial classification appeal, to March 21, 2014, the beginning of the first pay period after the appointing authority removed the out-of-title duties. See *N.J.A.C. 4A:3-3.9(e)3i*.

The appellant is not entitled to any other differential pay prior to May 4, 2013. The foundation of position classification, as practiced in New Jersey, is the determination of duties and responsibilities being performed at a given point in time as verified by CPM through an audit or other formal study. Thus, classification reviews are based on a current review of assigned duties and any remedy derived therefrom is prospective in nature since duties which may have been performed in the past cannot be reviewed or verified. Given the evolving nature of duties and assignments, it is simply not possible to accurately review the duties an employee may have performed six months ago or a year ago or several years ago. This agency's established classification review procedures in this regard have been affirmed following judicial challenges. See *In the Matter of Community Service Aide/Senior Clerk (M6631A)*, *Program Monitor (M6278O)*, and *Code Enforcement Officer (M0041O)*, Docket No. A-3062-02T2 (App. Div. June 15, 2004) (Accepting policy that classification reviews are limited to auditing current duties

associated with a particular position because it cannot accurately verify duties performed by employees in the past).

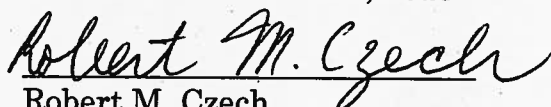
Finally, in regard to the appellant's request for an on-site "desk audit," there is no Civil Service law or rule which stipulates that a desk audit must be performed. In this regard, it is noted that this agency typically conducts classification reviews either by a paper review, based on the duties questionnaire completed by the employee and supervisor; an on-site audit with the employee and supervisor; or a formal telephone audit to obtain clarifying information. *See In the Matter of Richard Cook* (Commissioner of Personnel, decided August 22, 2006). In this particular case, as previously noted, CPM conducted a paper review of appellant's position in order to determine the appropriate classification. Moreover, the appellant has not established that the method of review was deficient.

ORDER

Therefore, it is ordered that this appeal be denied, but the appointing authority pay the appellant differential pay for performing duties of a Forensic Scientist 2 from May 4, 2013 to March 21, 2014.

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 6th DAY OF MAY, 2015



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries	Henry Maurer
and	Director
Correspondence	Division of Appeals
	& Regulatory Affairs
	Civil Service Commission
	Written Record Appeals Unit
	P.O. Box 312
	Trenton, New Jersey 08625-0312

Attachment

c: Briana Senger
Jessica Chianese
Mirella Bednar
Kenneth Connolly
Joseph Gambino



Chris Christie
Governor
Kim Guadagno
Lt. Governor

STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION
DIVISION OF CLASSIFICATION AND PERSONNEL MANAGEMENT
P. O. Box 313
Trenton, New Jersey 08625-0313

Robert M. Czech
Chair/Chief Executive Officer

September 9, 2014

Briana Senger
500 Sea Girt Avenue
Sea Girt, NJ 08750

**Re: Classification Appeal – Forensic Scientist 1, Department of Law and Public Safety (P25),
Position #956401, HRM Log #04140042, EID #000322448**

Dear Ms. Senger:

This is to inform you of our determination concerning the classification appeal referenced above. The determination is based upon a thorough review and analysis of the Position Classification Questionnaire submitted and the information and documentation submitted by you, your immediate supervisor, Toni Pettincki, and your Appointing Authority during the review process.

Issue:

You are serving permanently in the title, Forensic Scientist 1, Department of Law and Public Safety (25, P25, 01592) and contend you are performing duties and responsibilities commensurate with the title, Forensic Scientist 2, Department of Law and Public Safety (28, R28, 01593).

Organization:

Your position is assigned to the East Regional Laboratory, State Police of the Department of Law and Public Safety. You report directly to Antoinette Pettincki, Forensic Scientist 3, Department of Law and Public Safety (30, S30, 01594). Your position has no supervisory duties.

Findings of Fact:

The primary function of your position is to receive, test, analyze, and identify controlled dangerous substances and ethanol in blood, urine and or/liquid samples using chemical and instrumental testing.

You perform the following assigned duties and responsibilities:

- Perform the quantitative analysis of biological evidence submitted by law enforcement for the presence and concentration of ethyl alcohol using Headspace Gas Chromatography.

- Perform drug screening tests using the Enzyme Multiplied Immunoassay technique and the Enzyme-Linked Immunosorbent Assay.
- Perform solid phase extractions using Gas Chromatography-Mass Spectrometry and identify controlled dangerous substances.
- Train forensic scientist in performing quantitative analysis of biological evidence, drug screening, solid phase extractions and identification, and the handling of evidence while maintaining chain of custody.
- Prepares and conducts official lectures to outside law enforcement agencies and other entities.
- Review reports of peer's casework for accuracy according to scientific knowledge.

Review and Analysis:

Currently your position is classified in the title, Forensic Scientist 1, Department of Law and Public Safety (25, P25, 01592). The definition section of the job specification for the title, Forensic Scientist 1, Department of Law and Public Safety, states:

"Under the general direction of a Forensic Scientist 2 or 3 in the Department of Law and Public Safety, conducts the chemical analysis of various materials and evidence submitted to the laboratory by law enforcement agencies and Medical Examiners Offices for identification in connection with criminal investigations and prosecutions; performs related field and laboratory work as required."

The definition section of the job specification for the title, Forensic Scientist 2, Department of Law and Public Safety (28, R28, 01593), states:

"Under the general direction of a Forensic Scientist 3 in the Department of Law and Public Safety, conducts the more difficult and specialized work involved in the chemical analysis of various matter, substances, specimens and materials submitted to the laboratory by law enforcement agencies and Medical Examiners Offices for identification in connection with criminal investigations and prosecutions; May supervise or provide guidance to Forensic Scientists 1, Chemists, Laboratory Technicians, or other laboratory personnel; may function as a Laboratory Information Management System (LIMS) Coordinator, Laboratory Safety Representative/Coordinator, or Quality Assurance (QA) Coordinator of a discipline; performs related field and laboratory work as required."

The work performed by a Forensic Scientist 2, Department of Law and Public Safety consists of handling special and more complex cases involving multiple controls and/or sources. A Forensic Scientist 2, Department of Law and Public Safety is responsible for supervising and providing guidance to Forensic Scientist 1 and other laboratory personnel. Additionally, a Forensic Scientist 2, Department of Law and Public Safety is in the "R" bargaining unit and considered a first level supervisor. A first level supervisor is required to supervise lower level employees and/or an organizational unit. Your position does not have the authority to regularly supervise incumbents and work operations, as well as complete Performance Evaluation, and approve leaves and time sheets therefore; you are not working in the capacity or at the level of a first line supervisor.

Briana Senger
September 9, 2014
Page 3

The duties and responsibilities assigned to your position reflect the duties of a Forensic Scientist 1, Department of Law and Public Safety. Your position is responsible for analysis and identification of controlled substances and ethanol in the blood. Duties include maintaining the laboratory, instruments, and equipment in clean and good condition. In addition, you provide training to forensic scientist and other laboratory staff on drug screening test, extraction and identification, technique, and evidence handling. Furthermore, the responsibility of training and reviewing reports of peers does not appear on the Forensic Scientist 1, Department of Law and Public Safety job specification. Please be advised that these are out-of-title duties and should be removed from this position.

Determination:

Based upon the findings of fact cited above, it is my determination that the assigned duties and responsibilities performed by this position are consistent with your permanent title, Forensic Scientist 1, Department of Law and Public Safety (25, P25, 01592); therefore, your position is appropriately classified.

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 Record 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,



Kelly Glenn, Assistant Division Director
Classification and Personnel Management

KG/SLA
Cc: Mirella Bednar
Accommodation

