



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Vincent Buonanno,
Department of Law and Public Safety

CSC Docket No. 2015-3302

Classification Appeal

ISSUED: **OCT 24 2016** (DASV)

Vincent Buonanno appeals the determination of the Division of Agency Services (Agency Services) that his position with the Department of Law and Public Safety was properly classified as an Investigator 2, Law and Public Safety.¹ The appellant sought an Investigator 1, Law and Public Safety (Specialized Credentials) job classification.

The record establishes that the appellant was permanent in the title of Investigator 2, Law and Public Safety and was assigned to work in the Regulated Business Unit of the Office of Consumer Protection, Division of Consumer Affairs. He reported to Edward George, Chief Investigator, Law and Public Safety, and had no supervisory responsibility. The appellant sought a reclassification of his position to Investigator 1, Law and Public Safety (Specialized Credentials). Agency Services performed an analysis of all information submitted, including a Position Classification Questionnaire (PCQ), organization chart, and the appellant's Performance Assessment Review (PAR). It also conducted a telephone audit on May 7, 2015.

Upon its review, Agency Services found that the appellant's primary duties and responsibilities entailed, among other things, reviewing and investigating

¹ It is noted that effective April 16, 2016, the Investigator, Law and Public Safety title series was renumbered. The Investigator 2, Law and Public Safety is now Investigator 3, Law and Public Safety. The Investigator 1, Law and Public Safety is now Investigator 4, Law and Public Safety. In this decision, the prior titles will be used to refer to actions which took place prior to April 16, 2016.

consumer complaints; planning and organizing field inspections; reviewing and maintaining tariffs for the moving and storage sector; establishing and maintaining liaison with organizations and contacts; utilizing various tools to conduct investigations; and conducting and generating various reports and documents. Agency Services determined that the preponderance of the appellant's duties and responsibilities compared favorably with the job definition of an Investigator 2, Law and Public Safety. It indicated that the appellant was not required to possess specialized credentials (such as a license, certification, or registration issued by the State of New Jersey), nor did he lead a team or serve as a unit leader over other investigators with or without specialized credentials. Agency Services noted that the responsibility for determining if such specialized credentials are required for the work area and ensuring that the appointee has the appropriate credentials rests on the appointing authority. Accordingly, it concluded that the variant and non-variant Investigator 1, Law and Public Safety classifications were inappropriate for the appellant's position. It is noted that the appellant's supervisor reviewed the appellant's PCQ and agreed that the appellant spends a great percentage of his day on work relating to the public movers and warehousemen sector. However, he indicated that "moving tariffs" is no different than any other specific work area enforced by the division. The supervisor also stated that the appellant receives oversight from his Team Leader and he was appropriately classified as an Investigator 2, Law and Public Safety.

On appeal to the Civil Service Commission (Commission), the appellant asserts that the appointing authority and Human Resources staff members did not initially forward his 14 exhibits² to Agency Services, which he considers "a serious breach of administrative procedure, whether accidental or deliberate, which manifests either gross incompetence or tampering." The exhibits were later e-

² The appellant's "Original Desk Audit w/ Exhibits" include a letter from the appellant requesting a promotion; a PCQ draft; a Personnel Management Information System record page; the appellant's PAR for the 2013 to 2014 rating cycle with a rating of "2-successful;" his resume; blank complaint, inspection, and public movers audit forms; an Office of Consumer Protection Frequently Asked Questions web page for public movers and warehousemen; an informational sheet issued by the Division of Consumer Affairs for public movers and warehousemen; a manual for drafting public moving and storage tariffs; an operations manual for the Division of Consumer Affairs, Office of Consumer Protection, Public Movers and Warehousemen; certificates of appreciation; letters from the Executive Director of the New Jersey Warehousemen and Movers Association thanking the appellant for speaking at the association's 2011 and 2012 annual conventions and announcement for the 2014 annual convention which reflects the appellant as one of the speakers; a response from the Director, Division of Consumer Affairs, to the Executive Director regarding the 2011 annual convention and the appellant's participation; articles regarding the "Operation Mother's Attic" stings; various letters, e-mails, and memoranda from complainants, supervisory personnel, and a Deputy Attorney General acknowledging their gratitude towards the appellant and his work; a 2013 Memorandum of Agreement of State enforcement of federal laws and regulations with respect to transportation of household goods, noting the appellant as the Investigator to contact and Murat Bota, currently an Investigator 1, Law and Public Safety, as the Team Leader; a certificate from the Federal Motor Carrier Safety Administration that the appellant successfully completed a course in Household Goods Compliance and Enforcement in 2014; and tables of organization.

mailed to Agency Services. The appellant "feel[s] this seriously prejudiced" his position classification review, as he emphasizes that the exhibits were not noted in Agency Services' determination. Furthermore, the appellant states that he did not request a supervisory position,³ but his responsibilities include coordination of investigative programs, which is set forth in the job definition of an Investigator 1, Law and Public Safety (Specialized Credentials) and involve coordination and overseeing of several federal and State agencies. As evidence of performing such duty, the appellant submits an Operation Plan for "Operation Mother's Attic," which details a multi-agency undercover initiative to identify and take enforcement action against unlicensed movers. It is noted that the appellant states in his original request for position classification review that he conducted three major covert operations in the past 16 years and was an acting supervisor in 2011.

Additionally, the appellant claims that he is the only investigator in the entire State who performs the duties required in monitoring and regulating the public moving and warehouse industry, which involve the drafting and reviewing of tariffs. He argues that other states have whole units devoted to this task. Further, the appellant indicates that his "specialized expertise" and tariff work is recognized by the New Jersey Warehousemen and Movers Association. He believes that "[i]f this isn't considered specialized credentials, then Human Resources needs an in-depth re-write of its job title." Moreover, since the responsibility for determining if specialized credentials are required rests with the appointing authority, the appellant maintains that the "matter is open to interpretation." Nonetheless, he challenges the competency and impartiality of the appointing authority considering that it "refused to review" his exhibits and "even apparently" removed them when it forwarded his request for reclassification to Agency Services. The appellant also indicates that the requirement that the specialized credentials be issued by the State of New Jersey is "irrelevant" because there are no formal degrees or credentials issued within the moving industry. He argues that the "moving and storage industry is an occupation, not a profession" with specialized schools or degrees. Further, the appellant emphasizes that he was the Assistant to the Director of the Board of Public Movers and Warehousemen. When the Board was abolished in 1999, he was retained by the Office of Consumer Protection to continue the Board's institutional memory and provide administrative continuity.

Lastly, the appellant questions why the Chief of Staff of the Division of Consumer Affairs signed his PCQ, not the Director of the Division, but offered no

³ In the appellant's original request for position classification review, he indicates that he was an "acting supervisor" in 2011. In that regard, it is noted that that 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 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 generally cannot be reviewed or verified.

reason for disagreement; why his PCQ was signed by Counsel to the Attorney General instead of the appointing authority; and whether his position classification request was reviewed "extraordinarily quickly" or predetermined given that he received an e-mail from Agency Services about exhibits that belonged to another investigator's desk audit on the same date that his determination letter was signed and mailed. In regard to the latter, Agency Services informed the appellant that the e-mail was sent in error and was intended for another recipient. The appellant also identifies six employees who were serving in the title of Investigator 1, Law and Public Safety in the Division of Consumer Affairs that he claims had "no staff under their control."⁴ In support of his appeal, the appellant submits the aforementioned exhibits; job specifications; his PCQ; e-mails from the Assistant Director, Division of Consumer Affairs, acknowledging his hard work; a news release from the Office of the Attorney General regarding one of his investigations; and various e-mails regarding his position classification review.

CONCLUSION

The definition section of the former job specification for Investigator 2, Law and Public Safety stated:

Under supervision of a Supervising Investigator or other supervisory official in the Department of Law and Public Safety, conducts in depth regulatory and administrative audits and inspections of licensed premises; reviews records, files, financial statements, and other transactions to determine compliance with rules or regulations governing consumer protection laws; performs other confidential and sensitive civil and regulatory investigative activities or specialized investigations to detect alleged noncompliance with or violations of New Jersey State statutes, administrative codes, Professional Rules of Conduct, or consumer protection laws; performs other related duties required.

The definition section of the former job specification for Investigator 1, Law and Public Safety (Specialized Credentials) stated:

Under direction of a Supervising Investigator or other supervisory official in the Department of Law and Public Safety, leads an investigative unit requiring specialized credentials, or team, or coordinates an investigative program conducting in depth regulatory and administrative audits and inspections of licensed premises; reviews records, files, financial statements, and other transactions to determine compliance with rules or regulations governing consumer protection laws; performs other confidential and sensitive civil and

⁴ One of the identified employees retired effective October 30, 2015.

regulatory investigative activities or required specialized credentials investigations to detect alleged noncompliance with or violations of New Jersey state statutes, administrative codes, Professional Rules of Conduct, or consumer protection laws; performs other related duties as required.

The definition section of the former job specification for Investigator 1, Law and Public Safety stated:

Under direction of a Supervising Investigator or other supervisory official in the Department of Law and Public Safety, leads an investigative unit or team or coordinates an investigative program, conducting in depth regulatory and administrative audits and inspections of licensed premises; reviews records, files, financial statements, and other transactions to determine compliance with rules or regulations governing consumer protection laws; performs other confidential and sensitive civil and regulatory investigative activities or specialized investigations to detect alleged noncompliance with or violations of New Jersey State statutes, administrative codes, Professional Rules of Conduct, or consumer protection laws; performs other related duties as required.

First, it is noted that although Agency Services did not receive the appellant's exhibits initially, it was e-mailed the information. Thus, Agency Services had a complete record to make a determination. It is noted that classification determinations list only those duties which are considered to be the primary focus of an employee's duties and responsibilities that are performed on a regular, recurring basis. *See In the Matter of David Baldasari* (Commissioner of Personnel, decided August 22, 2006). In other words, not all duties are listed or submissions noted in Agency Services' determination. Thus, the appellant's argument in that regard is moot. Moreover, apart from the appellant's claims, nothing in the record demonstrates that his position classification request was reviewed "extraordinarily quickly" or predetermined. In that regard, it is emphasized that this agency's staff do not conduct a cursory audit of a position since it is agency policy that all audits are reviewed by supervisory and managerial staff prior to a decision being finalized. *See In the Matter of Eleanor Derry* (Commissioner of Personnel, decided January 17, 2006). Accordingly, the appellant's arguments in that regard are without merit. Moreover, it is emphasized that the Commission's evaluation of this matter is *de novo*. The Commission reviews the entire record, including all of the information presented by the appellant in the initial proceeding as well as on appeal. Upon its review, the Commission finds no basis to disturb the determination of Agency Services.

Agency Services determined that the appellant's position was appropriately classified as an Investigator 2, Law and Public Safety at the time of the audit.

Specifically, Agency Services concluded that the appellant's duties were in accord with the job definition for Investigator 2, Law and Public Safety since his duties primarily involved, among other things, reviewing and investigating consumer complaints; planning and organizing field inspections; and reviewing and maintaining tariffs for the moving and storage sector. Further, Agency Services found that the appellant's position did not lead an investigative unit or team or coordinate an investigative unit to warrant a reclassification to Investigator 1, Law and Public Safety. The appellant disagrees with this finding and asserts that his position should have been classified as an Investigator 1, Law and Public Safety (Specialized Credentials) since his work in "Operation Mother's Attic" demonstrates the foregoing responsibility. However, for a position to be properly classified in the former variant or non-variant title of Investigator 1, Law and Public Safety, it must primarily perform at the level described in the job definition. In the appellant's case, he did not consistently act in the capacity of a leader of an investigative unit or team or as a coordinator of an investigative program. Nonetheless, it is not uncommon for an employee to perform some duties which are above or below the level of work which is ordinarily performed. For purposes of determining the appropriate level within a given class, and for overall job classification purposes, the definition portion of the job specification is appropriately utilized. The appellant's primary duties are comparable with the former job definition for Investigator 2, Law and Public Safety.

In addition, the appellant indicates that he is the only investigator with "specialized expertise" in his area as he is the only investigator assigned to monitoring and regulating the public moving and warehouse industry. However, the appellant's supervisor indicated that "moving tariffs" is no different than any other specific work area enforced by the division. Moreover, it is emphasized that how well or efficiently an employee does his or her job, length of service, volume of work and qualifications have no effect on the classification of a position currently occupied, as *positions*, not employees are classified. See *In the Matter of Debra DiCello* (CSC, decided June 24, 2009). Furthermore, the appellant submits that his tariff work is recognized by the New Jersey Warehousemen and Movers Association and such recognition should be deemed as "specialized credentials." The former job specification for Investigator 1, Law and Public Safety (Specialized Credentials) is clear in that regard. It stated that:

Appointee will be required to possess a valid license, certificate, or registration issued by the State of New Jersey to engage in practices relevant to the professional or occupational specialties of the assigned position.

Thus, recognition by the New Jersey Warehousemen and Movers Association is insufficient. Accordingly, since the appellant's position does not require that he possess "a valid license, certificate, or registration issued by the State of New Jersey," the variant title would not be appropriate for his position. In addition, the

appellant raises issues regarding his PCQ, namely, that the Chief of Staff and the Counsel to the Attorney General signed the PCQ instead of the Director of his Division and the appointing authority, respectively. However, appropriate designees may sign a PCQ. Regardless, these issues do not affect the proper classification of the appellant's position in this instance.

Lastly, in support of his appeal, the appellant claims that several employees who were serving in the title of Investigator 1, Law and Public Safety in the Division of Consumer Affairs had "no staff under their control." However, 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). The remedy for misclassification of another position is not to perpetuate the misuse of the higher title by reclassifying the appellant's position to that title, but rather, to review the position classifications of the positions encumbered by the named employees to ensure that they are properly classified. *See In the Matter of Stephen Berezny* (CSC, decided July 27, 2011). However, it is not readily apparent based solely on the information provided in the record whether the identified individuals are performing appropriate duties. Accordingly, the appointing authority is directed to ensure that the individuals, indicated by separate cover, as well as any other Investigator, Law and Public Safety are performing appropriate duties.

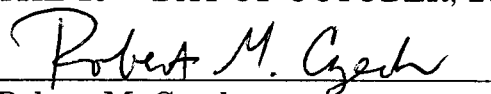
Therefore, based on the foregoing, the record amply supports that the appellant's position was appropriately classified as an Investigator 2, Law and Public Safety.

ORDER

Therefore, it is ordered that this appeal be denied.

This is the final administrative action in the matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 19TH DAY OF OCTOBER, 2016



Robert M. Czech

Chairperson

Civil Service Commission

Inquiries
and
Correspondence

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

Attachment

c: Vincent Buonanno
Mirella Bednar
Kelly Glenn
Records Center



STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION
AGENCY SERVICES
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Trenton, New Jersey 08625-0313

Chris Christie
Governor
Kim Guadagno
Lt. Governor

Robert M. Czech
Chair/Chief Executive Officer

June 1, 2015

Vincent Buonanno
[REDACTED]

Re: **Classification Appeal – Investigator 2, Law and Public Safety**
Position # 083967, EID # [REDACTED] Log # 03150365

Dear Mr. Buonanno:

This is to inform you, and the Department of Law and Public Safety, of our determination concerning the classification appeal referenced above. This determination is based on a thorough review and analysis of documents submitted, including the Position Classification Questionnaire (DPF-44S), organization chart, Performance Assessment Review (PAR), as well as a telephone audit conducted with you on May 7, 2015.

Issue:

You are currently serving permanently (RAN) in the title, Investigator 2, Law and Public Safety (33857; P23; 23) and contend you are performing duties and responsibilities commensurate with the title, Investigator 1, Law and Public Safety (Specialized Credentials) (33858G; P26; 26).

Organization:

Your position is assigned to the Regulated Business Unit of the Office of Consumer Protection (OCP), Division of Consumer Affairs, Department of Law and Public Safety. Your supervisor is Edward George, Chief Investigator, Law and Public Safety (61418; &32; 32). You presently have no direct employee supervisory responsibility.

Findings of Fact:

The primary responsibilities of the position include, but are not limited to, the following:

- Reviews and investigates consumer complaints involving the movement and storage of household and commercial goods, locally and internationally
- Plans and organizes field inspections as necessary; this may include annual sting operations, site visits prior to approving new moving/storage applications, etc.

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- Reviews and maintains tariffs for the moving and storage sector in New Jersey.
- Establishes and maintains liaison with organizations and contacts that are resourceful in the implementation of assigned tasks
- Utilizes an array of available tools to conduct investigations on businesses, organizations and individuals; conducts telephone and face-to-face interviews to obtain pertinent information as necessary
- Creates and generates various reports and documents (e.g., Reports of Investigations, operational plans, case profiles, SOPs, violation notices, etc.)

Review and Analysis:

Currently, your position is classified by the title, Investigator 2, Law and Public Safety (33857; P23; 23). The definition section of the job specification for the title states:

“Under supervision of a Supervising Investigator or other supervisory official in the Department of Law and Public Safety, conducts in-depth regulatory and administrative audits and inspections of licensed premises; reviews records, files, financial statements, and other transactions to determine compliance with rules or regulations governing consumer protection laws; performs other confidential and sensitive civil and regulatory investigative activities or specialized investigations to detect alleged noncompliance with or violations of New Jersey state statutes, administrative codes, Professional Rules of Conduct, or consumer protection laws; performs other related duties required.”

An incumbent serving in a position classified by the title Investigator 2, Law and Public Safety conducts investigations of alleged violations or non-compliance with State statutes, administrative codes, or rules and regulations; performs duties related to the audit, investigation, and inspection of licensed premises; conducts investigations toward determining the compliance of such entities with established regulations; and performs other functions related to consumer protection laws.

You contend that the title, Investigator 1, Law and Public Safety (Specialized Credentials) (33858G; P26; 26) is the appropriate classification for your position. The definition section of the job specification for the title states:

“Under direction of a Supervising Investigator or other supervisory official in the Department of Law and Public Safety, leads an investigative unit requiring specialized credentials, or team, or coordinates an investigative program conducting in-depth regulatory and administrative audits and inspections of licensed premises; reviews records, files, financial statements, and other transactions to determine compliance with rules or regulations governing consumer protection laws; performs other confidential and sensitive civil and regulatory investigative activities or required specialized credentials investigations to detect alleged noncompliance with or violations of New Jersey

state statutes, administrative codes, Professional Rules of Conduct, or consumer protection laws; performs other related duties as required.”

An incumbent serving in a position classified by the title Investigator 1, Law and Public Safety (Specialized Credentials) leads a team or investigative unit requiring specialized credentials, or coordinates an investigative program, which involves systematically organizing the activities or functions of staff requiring specialized credentials in order to achieve program goals and objectives; performs duties related to the audit, investigation, and inspection of entities with licensed premises; conducts investigations toward determining the compliance of such entities with established regulations; and performs other functions related to consumer protection laws.

In addition, the title Investigator 1, Law and Public Safety (Specialized Credentials), requires the possession of a valid license, certificate, or registration issued by the State of New Jersey to engage in practices relevant to the professional or occupational specialties of the assigned position. The responsibility for determining if such specialized credentials are required for the function and content of an assigned work area and ensuring that appointees possess the appropriate license, certificate, or registration rests with the Appointing Authority.

The review also included a comparison of the title Investigator 1, Law and Public Safety (33858; P26; 26). The definition section of the job specification for the title states:

“Under direction of a Supervising Investigator or other supervisory official in the Department of Law and Public Safety, leads an investigative unit or team or coordinates an investigative program, conducting indepth regulatory and administrative audits and inspections of licensed premises; reviews records, files, financial statements, and other transactions to determine compliance with rules or regulations governing consumer protection laws; performs other confidential and sensitive civil and regulatory investigative activities or specialized investigations to detect alleged noncompliance with or violations of New Jersey state statutes, administrative codes, Professional Rules of Conduct, or consumer protection laws; performs other related duties as required.”

An incumbent serving in a position classified by the title Investigator 1, Law and Public Safety is responsible for leading a team or investigative unit, in performing assigned tasks; or, coordinating an investigative program, which involves systematically organizing the activities or functions of staff to achieve program goals and objectives.

The review of your position did not reveal the need for an incumbent to possess specialized credentials issued by the State of New Jersey. While an incumbent may attend, with supervisory approval, workshops and training sessions in order to augment related knowledge and skills, such training is not a requirement of your position. Additionally, you currently do not function as a team or unit leader over other Investigators – either with or without the “Specialized Credentials” variant. Therefore, based on a review of the information obtained during the audit process, Investigator 1, Law and Public Safety (Specialized Credentials) (33858G; P26; 26), and

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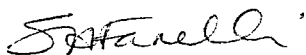
Investigator 1, Law and Public Safety (33858; P26; 26) are not appropriate classifications for your position.

Determination:

Based on the findings of fact stated above, it is our determination that your current duties and responsibilities are commensurate with the title Investigator 2, Law and Public Safety (33857; P23; 23). By copy of this letter, the appointing authority is advised that your position is presently properly 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 documentation being disputed and the basis for the appeal.

Sincerely,



Staci Fanelli
Human Resource Consultant 5

SF/so

C: Mirella Bednar, *Appointing Authority, LPS*
Saheed Olushi
Team Files
PMIS Unit
Nick Kanellis, *Records Imaging Center*