



STATE OF NEW JERSEY

In the Matter of Richard Flatch,
Department of the Treasury

**FINAL ADMINISTRATIVE
ACTION
OF THE
CIVIL SERVICE COMMISSION**

CSC Docket No. 2016-1605

Classification Appeal

ISSUED: NOV 30 2016 (CSM)

Richard Flatch appeals the attached decision of the Division of Agency Services (Agency Services) that the proper classification of his position with the Department of the Treasury is Investigator 2, Taxation. The appellant seeks an Investigator 1, Taxation classification.

The record in the present matter establishes that at the time the appellant filed his request for a classification review, he was serving as an Investigator 2, Taxation. The appellant's position is located in the Division of Taxation, Special Procedures Bankruptcy Section, Compliance and Enforcement Activity Unit and he is supervised by Valerie Walachy, Supervising Investigator, Taxation. The appellant sought a reclassification contending that his position would be more appropriately classified as an Investigator 1, Taxation. In support of his request, the appellant submitted a Position Classification Questionnaire (PCQ) detailing the different duties that he performed. Agency Services reviewed all documentation supplied by the appellant including his PCQ. Based on its review of the information provided, and confirmation of duties with his supervisor, Agency Services concluded that the appellant's position does not supervise employees and was properly classified as an Investigator 2, Taxation.

On appeal, the appellant states that he currently is assigned the direct supervisory responsibility of an Investigator 3, Taxation. In support of his position, the appellant provides a copy of his subordinate's ePAR for the rating period of September 1, 2014 to August 31, 2015 which he signed as Rater on September 28, 2015. He also provides a copy of his e-PAR for the rating period of September 1, 2015 to August 31, 2016 which indicates that one of his job responsibilities is to

evaluate work performance of subordinates. Therefore, since he has assumed the task of ePAR rater, the appellant maintains that his position should be reclassified as Investigator 1, Taxation.

CONCLUSION

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

Under the direction of an Investigator 1, Taxation, Supervising Investigator, Taxation or other supervisory official in the Division of Taxation, Department of the Treasury, performs investigations of a more complex nature as they relate to the collection of tax revenues, delinquent and/or deficient taxes, abatements, and enforcement of tax statutes administered by the Division of Taxation; takes the lead over investigative staff and assists in the training of subordinate investigators; may be assigned to either a field or central office location; does related work as required.

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

Under the direction of a Supervising Investigator or other higher level supervisory official in the Division of Taxation, Department of Treasury, supervises a team or unit of subordinate investigators; may be required to conduct independent investigations of a more complex nature as they relate to the collection of tax revenues, delinquent and/or deficient taxes, abatements, and enforcement of tax statutes administered by the Division of Taxation; trains new investigators; supervises staff and work activities and signs official performance evaluations for subordinate staff; may be assigned to either a field or central office location; does related work as required.

In the instant matter, at the time of the classification review, it is clear that the appellant's position was properly classified as Investigator 2, Taxation. The appellant's PAR for the rating period of September 1, 2014 to August 31, 2015 that was submitted by the appointing authority with the appellant's request for reclassification documents a number of "Fact Sheet of Significant Performance Events" occurring on April 23, 2015. One of these addendums to his job responsibilities indicated, "Perform the personnel functions necessary for the supervision of employees within the bankruptcy unit." The recommended action

specified that he was to provide continuing education and training to current and new employees, conduct counseling sessions when necessary with the guidance from the Supervising Investigator, complete performance evaluation agreements and evaluations, and evaluate performance of new employees during working test period and prepare timely reports. Since, in conjunction with the PCQ filed by the appellant, it was unclear if he actually rated subordinate performance at the time of the classification review, Agency Services contacted the appellant's supervisor on July 28, 2015 to determine if he rated and signed the evaluations as a rater at this time. In response, Agency Services was advised that while the appellant prepares the performance evaluation for the supervisor, he did not at that time sign the document as the rater. 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 this agency 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. Therefore, since at the time of the classification review, the appellant was not responsible as the rater for performance assessment reviews, his position could not be classified by a supervisory title. *See In the Matter of Harry Corey, et al.* (MSB, decided September 21, 2005) (Appellant who asserted that he performed PARs through an intermediary, in that he had substantial input on certain employees' final ratings, found not to have to have never been delegated actual, final rating authority).

With respect to the appellant's argument on appeal that he currently has supervisory authority, as evidenced by the completed ePAR he submitted on appeal, as indicated earlier, classification reviews are based on a current review of assigned duties. Therefore, the fact that he signed as a rater of a subordinate's performance more than five months after he submitted his initial classification appeal does not establish that he performed these duties when he requested that his position be audited. However, of more significant concern is the organizational structure of the appellant's work unit as evidenced by the organizational chart submitted by the appointing authority with the appellant's initial request for classification review. Specifically, the organizational chart indicates that the Bankruptcy Unit is composed of employees in the following titles: one Investigator 1, Taxation ("R," first level or primary level supervisor), one (appellant) Investigator 2, Taxation, ("P," professional level) three Investigator 3s, Taxation, ("P," professional level) and one Supervising Investigator, Taxation ("S," or second level supervisory title). Given that the organizational structure of the appellant's unit already consists of an incumbent in a first or primary level supervisory title, it is unclear why the appointing authority would assign out-of-title supervisory duties to the appellant, particularly when his permanent title, Investigator 2, Taxation, permits incumbents to do the bulk of the additional duties he has been assigned, *i.e.*, take the lead over investigative staff and assist in the training of subordinate investigators. Stated differently, if the appellant's position were to be reclassified as Investigator 1, Taxation, the Bankruptcy unit where he is assigned, which

consists of six employees, would have three employees in supervisory level titles and three employees in subordinate professional titles – or, one supervisor for every staff member in the unit. This is simply not acceptable.

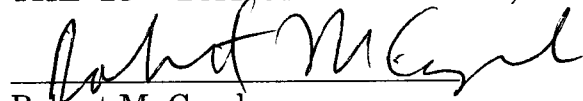
Therefore, if the Bankruptcy Unit where the appellant is assigned currently consists of an incumbent in the Investigator 1, Taxation title, in accordance with *N.J.A.C. 4A:3-9.8(a)(2)*, the appointing authority should immediately remove the out-of-title supervisory duties that have been assigned to the appellant. However, if the Bankruptcy Unit where the appellant is currently assigned has been restructured and is not assigned an incumbent in the Investigator 1, Taxation title, the appellant may submit a new classification appeal to Agency Services to determine the proper classification of his position. Further, any review of the appellant's position must also include reviews of positions encumbered by Investigator 1s, Taxation in the Bankruptcy-B unit and corrective action, if necessary, to ensure a consistent application of the classification plan.

ORDER

Therefore, it is ordered that this appeal be denied.

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 23RD DAY OF NOVEMBER, 2016



Robert M. Czech
Chairperson
Civil Service Commission

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and
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Attachment

c: Richard Flatch
Douglas Ianni
Kelly Glenn
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STATE OF NEW JERSEY
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October 13, 2015

Richard J. Flatch
Department of the Treasury
Division of Taxation
50 Barracks Street
PO Box 245
Trenton, NJ 08695-0245

**Re: Classification Appeal – Investigator 2, Taxation, Position # 046687
EID # 000371435, Log # 05150191**

Dear Mr. Flatch:

This is to inform you, and the Department of the Treasury, 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, and the Performance Assessment Review (PAR).

Issue:

You are currently serving permanently (RAP) in the title, Investigator 2, Taxation (51593; P22; 22) and contend you are performing duties and responsibilities commensurate with the title, Investigator 1, Taxation (51594; R25; 25).

Organization:

Your position is assigned to the Special Procedures Bankruptcy Section, Compliance & Enforcement Activity Unit, Division of Taxation, Department of the Treasury. Your supervisor is Valérie Walachy, Supervising Investigator, Taxation (51355; S28; 28), and 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:

- Maintain assigned caseload of complex and difficult case within the Bankruptcy Unit requiring independent research and investigation and a knowledge of State and Federal laws
- Serves as acting Section Supervising Investigator in the absence of the Supervising Investigator
- Operates as a Backup Supervising Investigator when Supervising Investigator is present by reviewing bankruptcy proof of claims, demand notices, certificates of debts, and release of lien requests
- Serves as an Expert Witness for the Division of Taxation in Bankruptcy Court at the request of the Deputy Attorney General
- Responsible for research, completion, and subsequent training related to the proof of claims of Assignment for the Benefits of Creditors and Receivership filings received by the bankruptcy section
- Reviews the Taxation Data Warehouse case list and determines billing based upon whether taxpayer is protected by bankruptcy stay provision
- Provides guidance based on his knowledge of bankruptcy rules and regulations to other employees within his workgroup, field investigations, and other state agencies
- Utilize mainframe databases, with supervisory access level, to manage, monitor and assign cases

Review and Analysis:

Currently, your position is classified by the title, Investigator 2, Taxation (51593; P22; 22). The definition section of the job specification for the title states:

“Under the direction of a Supervising Investigator or other higher level supervisory officer in the Division of Taxation, Department of the Treasury, performs investigations of a more complex nature as they relate to the collection of tax revenues, delinquent and/or deficient taxes, abatements, and enforcement of tax statutes administered by the Division of Taxation; assists in the training of subordinate investigators; may be assigned to either a field or central office location; does related work as required.”

An incumbent serving in a position classified by the title Investigator 2, Taxation is responsible for conducting investigations of a more complex nature; interpreting and explaining laws and regulations of the Division of Taxation; processing legal documents and/or preparing financial paperwork which will generate the filing of legal documents with the proper office of jurisdiction; assists in the training of other investigators, and may assign and review work and instruct other investigators, as directed by the supervisor. Incumbents serving in this title proceed on their own initiative while complying with policies, practices and procedures prescribed by the supervisor; the supervisor generally answers questions only on the more important phases of the work.

You contend that the title, Investigator 1, Taxation (51594; R25; 25), is the appropriate classification for your position. The definition section of the job specification for the title states:

"Under the direction of a Supervising Investigator or other higher level supervisory officer in the Division of Taxation, Department of Treasury, assists in the supervision of subordinate investigators; conducts independent investigations of a more complex nature as they relate to the collection of tax revenues, delinquent and/or deficient taxes, abatements, and enforcement of tax statutes administered by the Division of Taxation; trains new investigators; may be assigned to either a field or central office location; does related work as required."

An incumbent serving in a position classified by the title, Investigator 1, Taxation (51594; R25; 25) assists in the supervision of the unit by directly supervising subordinate investigators. In addition to the supervisory responsibility, an incumbent in this title performs duties similar to those of Investigator 2, Taxation, however, he/she may be required to exercise frequent independent judgment and tasks are primarily performed independently. An incumbent in this title seldom refers matters to the supervisor except for clarification of policy.

Additionally, the title Investigator 1, Taxation is assigned to the "R" Employee Relations Group (ERG), which is defined as a primary or first level supervisory position. It has been the long-standing policy of the Civil Service Commission that titles assigned to a supervisory ERG, must supervise employees. It has been well established that the essential component of supervision is the responsibility for the administration of formal Performance Assessment Reviews (PAR) for subordinate staff. Employees who assign and review work of other employees, train or impart knowledge of the job to other employees, and/or provide information to supervisory staff regarding the workflow progress of other employees, but who do not sign Performance Assessment Reviews (PARs) as the Rater, are considered lead workers rather than supervisory employees. Further, intermittently taking charge in the absence of the regular supervisor, without responsibility for employee performance evaluations which enable the effective hiring, firing, promoting or disciplining of subordinates, is considered a duty of a lead worker, not that of a supervisor.

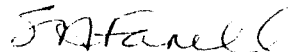
A review of your position indicates that you perform tasks under limited supervision and proceed on your own initiative. You are assigned a caseload considered more complex in nature; train and assist investigators; serve as a subject matter expert, and assist the supervisor in regard to conducting research, compiling reports and various administrative functions in the supervisor's absence. While you may make recommendations to the supervisor in regard to subordinate investigators' progress or performance, and you may assist your supervisor in preparing/drafting ePAR agreements, you are not considered the ePAR Rater and you do not directly supervise employees. The responsibility for employee evaluation currently rests with the Supervising Investigator, Taxation. Given that your position is not responsible for directly supervising, evaluating and rating employees, Investigator 1, Taxation is not an appropriate classification 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, Taxation (51593; P22; 22). 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/pp

C: Douglas J. Ianni
File
PMIS Unit
Nick Kanellis, Records Imaging Unit