



STATE OF NEW JERSEY

In the Matter of Lois Semmel,
Department of Labor and Workforce
Development

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

CSC Docket No. 2016-1630

Classification Appeal

ISSUED: NOV 30 2016 (CSM)

Lois Semmel appeals the attached decision of the Division of Agency Services (Agency Services) that the proper classification of her position with the Department of Labor and Workforce Development is Senior Examiner, Unemployment Tax. The appellant seeks a Principal Examiner, Unemployment Tax 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 Senior Examiner, Unemployment Tax. The appellant's position is located in the Division of Employer Accounts, Employer Status and Experience Rating Section and is supervised by Dennis King, Principal Examiner, Unemployment Tax. The appellant supervises one Examiner, Unemployment Tax. The appellant sought a reclassification contending that her position would be more appropriately classified as a Principal Examiner, Unemployment Tax. In support of her request, the appellant submitted a Position Classification Questionnaire (PCQ) detailing the different duties that she performed. Agency Services reviewed all documentation supplied by the appellant including her PCQ. Based on its review of the information provided, Agency Services concluded that the appellant's position is properly classified as Senior Examiner, Unemployment Tax.

On appeal, the appellant states that Agency Services' decision indicated that supervisory duties constitute out-of-title work for incumbents in the Senior Examiner, Unemployment Tax title, but the job specification indicates that an incumbent may be required to supervise a group of examiners. She also notes that supervisory responsibilities are included on her PAR. Further, the appellant states that Agency Services should have considered her responsibilities as part of the

Unemployment Insurance and Disability Insurance Modernization Project even though this temporary assignment lasted an extended period of time as she was never compensated for these extra responsibilities. Additionally, the appellant states that she has been completing Partial Transfers for an extended period of time and these duties are typically assigned to incumbents in the Principal Examiner, Unemployment Tax title. Finally, she presents that she has years of experience and her duties force her to fill an “unofficial” role as a Principal Examiner and the fact that the Principal Examiner is unwilling or unable to complete certain rate duties does not mean that she should be forced to complete out-of-title work.

CONCLUSION

The definition section of the job specification for Senior Examiner, Unemployment Tax states:

Under direction of a Principal Examiner or other supervisory official in a State department or agency, personally makes tax computations and legal/financial analyses and determinations of a complex nature; may supervise a group of examiners or other subordinate staff engaged in similar tasks; does other related duties as required.

The definition section of the job specification for Principal Examiner, Unemployment Tax states:

Under the direction of a Supervising Examiner, Unemployment Tax or other supervisory official in the Department of Labor and Workforce Development, makes tax computations and legal/financial analyses and determinations of a complex nature; supervises a group of examiners or other subordinate staff engaged in similar tasks; does related work as required.

As the appellant correctly notes, the job specification for Senior Examiner, Unemployment Tax indicates that incumbents may supervise a group of examiners or other subordinate staff. Initially, it must be emphasized that titles are assigned to Employee Relations Groups (ERGs) based on the classification of the position by the 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 position based on job definition, duties, and inclusion in the “R” ERG). However, in light of changes made to the ERG assigned to the Principal Examiner, Unemployment Tax title in March 2015, it is clear that supervisory duties are not appropriate for the Senior Examiner, Unemployment Tax

classification. Prior to March 2015, according to the State Classification Plan, the Examiner, Unemployment Tax title series consisted of the following titles:

Examiner, Unemployment Tax (P17)
Senior Examiner, Unemployment Tax (P21)
Principal Examiner, Unemployment Tax (S24)
Supervising Examiner, Unemployment Tax (S27)

As such, prior to March 21, 2015, the Supervising Examiner, Unemployment Tax and Principal Examiner, Unemployment Tax titles were assigned to the "S," or second level supervisory ERG. In order for a title to be included in the "S" ERG, incumbents are required to supervise positions in the "R," or primary/first level ERG.

Based on a review of the title series in January 2015, the Governor's Office of Employee Relations determined that the Principal Examiner, Unemployment Tax title should have been assigned to the "R," *not* the "S" ERG since the title series did not include a primary/first level supervisory title in the appropriate ERG. When the ERG for Principal Examiner, Unemployment Tax was changed to "R," the job specification for Senior Examiner, Unemployment Tax should have been revised to remove supervisory responsibilities. Without a revision to the job specification for Senior Examiner, Unemployment Tax, the four-level Examiner, Unemployment Tax title series would consist of three supervisory level titles. In other words, it is inappropriate for a four-level title series to contain three supervisory level titles. Regardless of the ERG changes, the appellant's position could not be reclassified since it would create an inappropriate reporting relationship with her supervisor, whose position is classified as Principal Examiner, Unemployment Tax. *i.e.* a class code 24 cannot report to another class code 24. *See In the Matter of Timothy Stewart* (CSC, decided February 26, 2014) (A supervisor and a subordinate cannot hold titles when they are both in the "R" employee relations group) and *In the Matter of Celia D. Chee-Wah* (CSC, decided April 18, 2012) (Appellant's position could not be reclassified since it would result in an inappropriate reporting relationship, *i.e.*, a class code 29 cannot report to a class code 29). Based on all of these factors, the appellant's supervisory responsibilities should be removed, and the job specification for Senior Examiner, Unemployment Tax, should be revised.

In regard to the appellant's argument that she performs higher level duties, the fact that some of an employee's assigned duties may compare favorably with some examples of work found in a given job specification is not determinative for classification purposes, since, by nature, examples of work are utilized for illustrative purposes only. Moreover, 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 specification purposes, the definition portion of the job

specification is appropriately utilized. With respect to her assertion that she is performing the duties of a incumbent in a position classified as Principal Examiner, Unemployment Tax, 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).

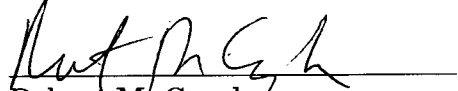
However, the foundation of position classification, as practiced in New Jersey, is the determination of duties and responsibilities being performed at a given point in time as verified by this agency through an audit or other formal study. Thus, classification reviews are based on a current review of assigned duties and any remedy derived therefrom is prospective in nature since duties which may have been performed in the past cannot be reviewed or verified, while newly assigned duties must be verified by a new audit. This agency's established classification review procedures in this regard have been affirmed following formal Civil Service Commission review and judicial challenges. See *In the Matter of Community Service Aide/Senior Clerk (M6631A), Program Monitor (M62780), and Code Enforcement Officer (M00410)*, 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). As noted above, Agency Services has confirmed that the appellant was assigned supervisory duties. Therefore, since the appellant performed out-of-title duties, the Commission finds that the appellant is entitled to differential pay from May 2, 2015, the pay period immediately after 14 days from the date this agency received the initial classification appeal, to the beginning of the first pay period after the appointing authority removed her out-of-title duties. See *N.J.A.C. 4A:3-3.9(e)3i*.

ORDER

Therefore, it is ordered that this appeal be denied but the appellant be granted differential pay in accordance with this decision. It is also ordered that the Division of Agency Services revise the job specification for Senior Examiner, Unemployment Tax and make any changes it deems necessary.

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

Inquiries

and
Correspondence

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

Attachment

c: Lois Semmel
Mary Fitzgerald
Kelly Glenn
Records Center



STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION
DIVISION OF AGENCY SERVICES
P. O. Box 313
Trenton, New Jersey 08625-0313

Chris Christie
Governor
Kim Guadagno
Lt. Governor

Robert M. Czech
Chair/Chief Executive Officer

October 14, 2015

Lois Semmel



Please Copy
& send to
DARA

**Re: Classification Appeal – Senior Examiner, Unemployment Tax (P2
CPM Log #04150372, EID #000212256**

Dear Ms. Semmel:

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, Dennis King, and your Appointing Authority during the review process.

Issue:

You are serving permanently in the title, Senior Examiner, Unemployment Tax (22, P21, 56193) and contend you are performing duties and responsibilities commensurate with the title, Principal Examiner, Unemployment Tax (25, R24, 56194).

Organization:

Your position is assigned to the Employer Status and Experience Rating Section, Division of Employer Accounts of the Department of Labor and Workforce Development. You report directly to Dennis King, Principal Examiner, Unemployment Tax (25, R24, 56194). Your position is responsible for the supervision of Angela Sample-Davis, Examiner, Unemployment Tax (18, P17, 51692).

Findings of Fact:

The primary function of your position is to examine the records and reports involved in the determination, establishment and verification of the tax liability of employers.

You perform the following assigned duties and responsibilities:

- Act as a Subject Matter Expert (SME) as a participant in the Unemployment Insurance and Disability Insurance Modernization Project. Develop, review, and approve use cases by applying Federal and State Laws and department regulations regarding unemployment and disability tax. Attend teleconference meetings with SMEs from New York and business analysts.

- Supervise a subordinate in the processing Power of Attorney and Authorized Agents applications. Complete Performance Evaluations and approve leaves of absence and timesheets.
- Handle problematic accounts by identifying and analyzing issues and developing solutions. Gather evidence, recast rates and adjust the status of accounts.
- Train new employees serving in the title, Examiner, Unemployment Tax, in unemployment tax laws and the calculation of experience rates for employers.

Review and Analysis:

Currently your position is classified in the title, Senior Examiner, Unemployment Tax (22, P21, 56193). The definition section of the job specification for the title, Senior Examiner, Unemployment Tax, states:

“Under direction of a Principal Examiner or other supervisory official in a state department or agency, personally makes tax computations and legal/financial analyses and determinations of a complex nature; may supervise a group of examiners or other subordinate staff engaged in similar tasks; does other related duties as required.”

The definition section of the job specification for the title, Principal Examiner, Unemployment Tax (25, R24, 56194), states:

“Under the direction of a Supervising Examiner, Unemployment Tax or other supervisory official in the Department of Labor and Workforce Development, makes tax computations and legal/financial analyses and determinations of a complex nature; supervises a group of examiners or other subordinate staff engaged in similar tasks; does related work as required.”

An incumbent properly classified in this title performs duties and responsibilities primarily focused on supervising a group of subordinates serving in the title, Examiner, Unemployment Tax. A Principal Examiner, Unemployment Tax is responsible for supervising work operations and maintaining work programs and procedures. Additionally, a Principal Examiner, Unemployment Tax is assigned to the “R” bargaining unit and is considered a first level supervisor. A first level supervisor is required to supervise lower level employees and/or an organizational unit. Your position is assigned to the “P” bargaining unit. Therefore, your position cannot supervise incumbents and/or work operations or evaluate the work performance of subordinates.

A review of the job duties and responsibilities assigned to your position revealed your position acts as a Subject Matter Expert (SME) as a participant in the Unemployment Insurance and Disability Insurance Modernization Project. The duties performed as part of the Unemployment Insurance and Disability Insurance Modernization Project are temporary and cannot be considered in classifying the position. Your position is also tasked with handling problematic accounts by gathering evidence, recasting rates and adjusting the status of accounts. In addition, your position is responsible for supervising a subordinate in the processing Power of Attorney and Authorized Agents applications. You do not supervise a group of examiners or staff. The duties and responsibilities assigned to your position are consistent with those assigned to the title, Senior Examiner, Unemployment Tax. Furthermore, the responsibilities of regularly supervising an incumbent and/or work operations, completing Performance Evaluations, and approving leaves and time sheets are not duties consistent with the title, Senior Examiner, Unemployment Tax. Please be advised that these are out-of-title duties and should be removed from this position.

Lois Semmel
October 14, 2015
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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 the title, **Senior Examiner, Unemployment Tax (22, P21, 56193)**; 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,



Cheryl Legg, Human Resource Consultant
Division of Agency Services

CL/slr
Cc: Mary Fitzgerald