



staff and the hiring of two Investigators 1.<sup>1</sup> The appellant points out that the job definition indicates that incumbents “may” supervise, rather than must supervise. She states that she supervised subordinates from 2003 to 2008 while serving as an Administrative Coordinator Investigator,<sup>2</sup> surpasses the requirements for the requested title, and is more qualified to supervise than new hires. She states that no Investigator 1 has supervised, but that supervision is performed by the Supervisors of Investigations, and she believes it is unfair that Investigators 2 are not promoted to the Investigator 1 title regardless of their lack of supervisory responsibilities. She argues that she simultaneously works on sensitive and complex cases, is very productive, brings high profile cases to successful conclusions, gets the highest performance ratings, is trained in medical billing and coding, and mentors new employees. She believes that there are vacant Investigator 1 positions which have not been filled, there is a morale problem among the Investigators in DOBI, part-time Investigators have been hired who do not have investigative caseloads, her pension will be affected if she is not promoted, and that promotion and hiring practices in DOBI have not been fair.

### CONCLUSION

The definition section of the job specification for Investigator 1 at the time of the appellant’s request for a classification review states:

Under general direction of a Supervisor of Investigations or other supervisory official, independently conducts sensitive, complex investigations, in the field or from the central office, involving alleged noncompliance with State statutes and regulatory requirements; may be responsible for supervision of a unit or team of investigators; does other related duties.

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

Under limited supervision of a Supervisor of Investigations or other supervisory official, conducts complex investigations, in the field or from the central office, involving alleged noncompliance with State statutes and regulatory requirements; does other related duties.

In the instant matter, DAS appropriately found that the appellant’s position was properly classified as Investigator 2. While the definition of Investigator 1 provided above is not the paragon of clarity, it is clear that the title is at the supervisory level. In this regard, in addition to the inclusion of such language in the definition, several examples of work listed in the job specification confirm that

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<sup>1</sup> It is noted that the Investigator title series at DOBI is in the unclassified service.

<sup>2</sup> Official records indicate that from 2003 to 2008 the appellant was in the title Senior Investigator Insurance Fraud Prevention, which was changed to Investigator 2 on October 23, 2010.

individuals in this title function as supervisors. For example, and most illustrative, one example of work in the job specification states that an incumbent: "Supervises work operations and/or functional programs and has responsibility for employee evaluations, and for effectively recommending the hiring, firing, promoting, demoting, and/or disciplining of employees." As discussed below, the inclusion of this duty alone transforms a title to supervisory in nature.

Further evidence that the Investigator 1 title is at the supervisory level is its inclusion in the "R" ERG. In this respect, titles are assigned to ERGs based on the classification of the position by this 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 title based on job definition, duties and inclusion in "R" ERG). This is not a reflection of or justification for past employment practices of DOBI.

Moreover, when a title is supervisory in nature, the Commission has found that, along with the myriad of other supervisory duties that must be performed, the essential component of supervision is the responsibility for formal performance evaluation of subordinate staff. *See In the Matter of Timothy Teel* (MSB, decided November 8, 2001). As such, in order to be classified at the level of Investigator 1, an incumbent must supervise subordinate staff, including having the responsibility for conducting formal performance evaluations. Merely making recommendations regarding a subordinate's performance, or even assisting in the preparation of a performance evaluation is not sufficient. Rather, to be considered a supervisor, the individual must be the person actually administering and signing off on the evaluation as the subordinate's supervisor. A review of the record does not establish that the appellant performs such duties.

Further, it is undisputed that, while the appellant is performing complex investigations and associated duties, such duties fall squarely within the job definition for Investigator 2.

Additionally, the Commission rejects the appellant's argument regarding purported past supervisory duties. In this regard, 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. 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 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). *See also, In the Matter of Engineering Technician and Construction and Maintenance Technician Title Series, Department of Transportation*, Docket No. A-277-90T1 (App. Div. January 22, 1992). *See also, In the Matter of Theresa Cortina* (Commissioner of Personnel, decided May 19, 1993). Also, 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).

Further, how the office is organized or how often the office is reorganized is not under the jurisdiction of the Commission or reviewable in the context of a classification appeal. Moreover, the Commission cannot require an appointing authority to fill any vacancies. *See In the Matter of Gertrude Remsen, Department of Human Services*, A-1126-96T3 (App. Div. January 17, 1997).

Regarding the appellant's argument that incumbent Investigators 1 do not supervise subordinate staff or complete employee PARs, 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 Dennis Stover*, Docket No. A-5011-96T1 (App. Div. October 3, 1998), *affirming In the Matter of Dennis Stover, Middletown Township* (Commissioner of Personnel, decided February 20, 1997). *See also, In the Matter of Carol Maita, Department of Labor* (Commissioner of Personnel, decided March 16, 1995). Regardless, a thorough review of the entire record fails to establish that the appellant has presented a sufficient basis to warrant an Investigator 1 classification of her position.

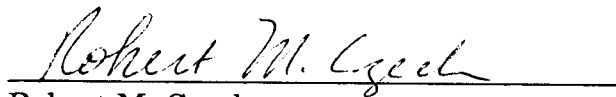
Finally, the Commission notes that, effective October 31, 2015, in response to the Commission's concerns with titles in the "R" ERG, DAS has made appropriate modifications to the Investigator 1 job specification regarding the issue of supervision. *See e.g., In the Matter of Alan Handler, Supra; In the Matter of Dana Basile, et al.*, (CSC, decided November 5, 2015).

#### ORDER

Therefore, the position of Elizabeth Polster is properly classified as an Investigator 2.

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  
THE 18<sup>th</sup> DAY OF NOVEMBER, 2015



Robert M. Czech  
Chairperson  
Civil Service Commission

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and  
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Enclosure

c: Elizabeth Polster  
John Walton  
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[ COPY ]

Chris Christie  
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Robert M. Czech  
Chair/Chief Executive Officer

May 29, 2015

Ms. Elizabeth Polster  
[REDACTED]  
[REDACTED]

**Subject:** Classification Determination – Elizabeth Polster (000321188); New Jersey Department of Banking and Insurance; Bureau of Fraud Deterrence (Central Region); Position #102221; Log #09140332

Dear Ms. Polster:

This is in response to the classification appeal received January 7, 2015 submitted to this office on your behalf by Ms. Lisa Joy, Manager 1, Human Resources. The package indicates you are appealing your current unclassified title of Investigator 2 (56783/I22) and you believe the appropriate classification of your position is either that of an Investigator 1 (56774/R25).

This office has conducted a thorough review of the information received. This information included the State Position Classification Questionnaire you prepared and signed; a recent performance evaluation (PES); statements from your immediate supervisor (Mr. Douglas Graham, Supervisor of Investigations); statements from the Assistant Insurance Commissioner (Mr. Gary Heuer) and a Table of Organization provided by the Appointing Authority.

**Organization:**

Your position is located in the Department of Banking and Insurance, Bureau of Fraud Deterrence, Central Region (Trenton, New Jersey). Your immediate supervisor is Mr. Douglas Graham, Supervisor of Investigations. The position does not involve the direct supervision of other employees.

**Findings of Fact:**

The primary responsibility of the position includes the conduction of complex investigations and surveillance relative to allegations of insurance fraud pertaining to the New Jersey Insurance Fraud Prevention Act (N.J.S.A. 17:33A-1). These investigations include State-wide Personal Injury Protection (PIP) investigations involving vast networks of medical professionals; medical providers, and attorneys. Other duties and responsibilities include, but are not limited to:

- Designing investigative plans and methods.
- Preparing reports of investigation activities, findings, conclusions and recommendations
- Interviewing witnesses, insurance company personnel and obtaining background information.

- Conducting comprehensive technical research requiring a specialized medical and health insurance background.

**Review and Analysis:**

The requested title of your position is that of an Investigator 1 (56774/R25). The title of Investigator 1 is assigned to the "R" Bargaining Unit. Titles in the "R" Bargaining Unit are considered to be primary, or first-level, supervisor titles. As such, incumbents in these titles supervise by directing the activities of subordinate staff (including evaluating employee performance) and assigning the work of the organizational unit.

Since your current duties and assignments do not include the supervision of subordinate staff, it would be inappropriate to reclassify your title to that of Investigator 1.

The current title of your position is that of Investigator 2 (56783/I22). According to the classification specification, an Investigator 2 is defined as follows:

Under limited supervision of a Supervisor of Investigations or other supervisory official, conducts complex investigations, in the field or from the central office, involving alleged noncompliance with statutes and regulatory requirements; does other related duties.

An employee serving in the title of Investigator 2 is responsible for complex investigation work and may be required to take the lead over the work of other employees. Taking the lead over the work of other employees may include mentoring or training employees but does not include the direct supervision and evaluation of employee performance.

The description of your current duties and assignments clearly substantiates the complexity of your work including the investigation of highly complex cases involving a great deal of technical research. As a result, the duties of this position are deemed to be commensurate with those of an employee serving in the title of Investigator 2.

**Determination:**

The review has revealed the current duties and responsibilities assigned to the position are commensurate with the enclosed job specification for the title of Investigator 2 (56783/I22). This specification is descriptive of the general nature and scope of the functions which may be performed by an incumbent in this position. Please note, the examples of work are for illustrative purposes and are not intended to restrict or limit the performance of related tasks not specifically listed. The relevance of such specific tasks is determined by an overall evaluation of their relationship to the general classification factors listed in the specification.

Therefore, the appropriate classification of your position is the title of Investigator 2 (56783/I22). Since you are currently serving with an appointment in the title of Investigator 2, your position is appropriately classified.

In accordance with the New Jersey Administrative Code (N.J.A.C. 4A:3-3.5), Within 30 days of receipt of the reclassification determination, unless extended by the Commissioner in a particular

Ms. Elizabeth Polster  
May 29, 2015

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case for good cause, the appointing authority shall either effect the required change in the classification of the employee's position; assign duties and responsibilities commensurate with the employee's current title; or reassign the employee to the duties and responsibilities to which the employee has permanent rights. Any change in the classification of a permanent employee's position, whether promotional, demotional or lateral, shall be effected in accordance with all applicable rules.

According to the New Jersey Administrative Code (N.J.A.C. 4A:3-3.9), the affected employee or an authorized employee representative may appeal this determination within 20 days of receipt of this notice. 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 the submission of an appeal must include written documentation and/or argument substantiating the portions of the determination being disputed and the basis for appeal.

Sincerely,



Mark B. Van Bruggen  
Supervising HR Consultant

Enclosure  
MVB

C: Ms. Lisa Joy, Appointing Authority  
File