

B-58



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Yang Cao,
Department of Environmental
Protection

Request for Reconsideration

CSC Docket No. 2015-3044

ISSUED: JUL 16 2015 (SLK)

Yang Cao requests reconsideration of the attached decision rendered on April 1, 2015, which upheld the determination of the Division of Classification and Personnel Management (CPM)¹ that the proper classification of her position with the Department of Environmental Protection is Program Specialist 3. The appellant seeks a classification of Research Scientist 1.

By way of background, the appellant sought a reclassification of her position, alleging that her duties were more closely aligned with the duties of a Research Scientist 1. In support of her request, the appellant submitted a Position Classification Questionnaire (PCQ) detailing the different duties she performed as a Research Scientist 2.² CPM reviewed and analyzed the PCQ completed by the appellant, an organization chart, her Performance Assessment Review (PAR), her statements, her supervisor's statements, and conducted a desk audit and determined that her position should be classified as Program Specialist 3. The appellant appealed CPM's determination to the Civil Service Commission (Commission), which found that her position would be properly classified as Program Specialist 3.

On reconsideration, the appellant presents that one of the major reasons given for the denial of her initial appeal was that her duties did not "primarily involve scientific investigations or experiments to identify breakthroughs." However, she argues that this is not a stated requirement under the job

¹ Now known as the Division of Agency Services.

² Ms. Cao's position was classified as a Research Scientist 2 at the time she submitted her PCQ.

specifications for the Research Scientist title series. Moreover, she contends that the benefit cost analysis (BCA) work that she performs, which includes research and reviewing documents or published papers, to develop a model to identify homes that are best suited for the Sandy buyout program, is scientific investigation. The appellant provides that she has identified major hurdles in the BCA process and has made important breakthroughs in creating innovative approaches to solve them. The appellant represents that if she had not been chosen to take the BCA leadership role for the State buyout program, the BCA work would have been performed at her previous employer, the Office of Economic Analysis (OEA), which is where it previously had been determined that she had been performing the duties of a Research Scientist 2. Further, the appellant highlights that Executive Order #2 indicates that cost/benefit analyses should be employed, which led to the creation of the OEA. The appellant maintains that the position of the only colleague that she has at the OEA is Research Scientist 1. Additionally, the appellant indicates that all members of the executive team at the Blue Acres program are called Program Managers even though their backgrounds and areas of expertise are different and that she was handpicked by management to perform the BCA.

CONCLUSION

N.J.A.C. 4A:2-1.6(b) sets forth the standards by which a prior decision may be reconsidered. This rule provides that a party must show that a clear material error has occurred or present new evidence or additional information not presented at the original proceeding which would change the outcome of the case and the reasons that such evidence was not presented at the original proceeding.

In the instant matter, the appellant has not met the standard for reconsideration. Initially, the appellant argues that the job specifications for the Research Scientist title series do not specify the requirement that an incumbent in this title perform work that “primarily involve[s] scientific investigations or experiments to identify breakthroughs.” However, this title series originated for chemistry, and evolved to include health in a laboratory setting, and then physical, environmental, microbiological, and biological sciences. Later, references to these specific fields were removed. Regardless, the intent is that the series remain in the scientific realm. See *In the Matter of Richard Castagna* (CSC, decided March 6, 2013). Additionally, the appellant argues that her BCA work for the Blue Acres program involves scientific investigation and that she has made major breakthroughs by identifying hurdles in the BCA process and creating solutions to these issues. However, it is clear that the appellant’s work in the buyout program is more appropriately characterized as being economic and not scientific in nature. Therefore, it is evident that the appellant’s duties do not fall under the Research Scientist title series.

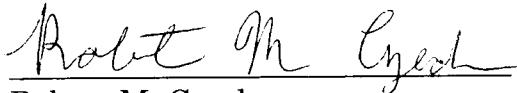
The appellant also indicates that her previous title while working at the OEA was Research Scientist 2 and that if she had not been chosen to take the BCA leadership role for the State buyout program, she would still be performing the same work at the OEA. The appellant asserts that her only colleague that performs similar work is an OEA employee whose position is classified as Research Scientist 1. Therefore, she argues that it would be inconsistent and inappropriate to not classify her position in the Research Scientist title series. However, a classification appeal cannot be based solely on a comparison to the duties of another position or the prior classification of her duties, especially if that other person's position or her duties have been 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). Additionally, the fact that the OEA may have been created pursuant to the Administration's Executive Order #2, that all members of the executive team for the Blue Acres program are called Program Managers even though they have different backgrounds and job duties, and that the appellant was handpicked by the Blue Acres management team to perform the BCA, does not mean that the appellant is performing duties that should be classified under the Research Scientist title series.

ORDER

Therefore, the Civil Service Commission concludes that the position of Yang Cao is properly classified as a Program Specialist 3.

This is the final administrative determination in this matter. Any further review is to be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 15th DAY OF JULY, 2015



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Attachment

c: Yang Cao
Deni Gaskill
Kenneth Connolly
Joseph Gambino



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Yang Cao,
Department of Environmental
Protection

Classification Appeal

CSC Docket No. 2015-1292

ISSUED: **APR 02 2015** (SLK)

Yang Cao, represented by David B. Beckett, Esq., appeals the attached decision of the Division of Classification and Personnel Management¹ (CPM) that the proper classification of her position with the Department of Environmental Protection (DEP) is Program Specialist 3. The appellant seeks a classification of Research Scientist 1.

By way of background, in March 2013, the appellant filed a classification appeal claiming that her position should be reclassified from Site Remediation Technical Specialist to Research Scientist 1. In October 2013, CPM issued a determination reclassifying her position to Research Scientist 2. Ms. Cao appealed CPM's determination contending that the proper classification of her position was Research Scientist 1. The Civil Service Commission (Commission) denied her appeal and ordered that CPM perform a further review of her position. *See In the Matter of Yang Cao* (CSC, decided April 23, 2014),

The record in the present matter establishes that the appellant's permanent title is Research Scientist 2. She is assigned to the Blue Acres Program, DEP, on a long-term temporary reassignment effective May 2013 and reports to Fawn McGee, Manager 4 Environmental Protection.² Ms. Cao supervises one Program Specialist 2 and one Program Specialist 1. The appellant sought a reclassification of her position, alleging that her duties are more closely aligned with the duties of a

¹ Now known as the Division of Agency Services.

² Ms. McGee's title was Consultant at the time of CPM's determination letter.

Research Scientist 1. In support of her request, the appellant submitted a Position Classification Questionnaire (PCQ) detailing the different duties she performs as a Research Scientist 2. CPM reviewed and analyzed the PCQ completed by the appellant, an organization chart, her Performance Assessment Review (PAR), her statements, and her supervisor's statements. On June 5, 2014, CPM conducted a desk audit. In its decision, CPM determined that the appellant's position should be classified as Program Specialist 3 effective November 29, 2014.

On appeal, the appellant asserts that her title should not be reclassified to Program Specialist 3 as the title does not accurately reflect her work and that the title is two pay ranges below her permanent title of Research Scientist 2. In this regard, she contends that she was assigned to the Blue Acres Program due to her skills and competencies and performs work that is at the highest level of responsibility. The appellant indicates she regularly meets with top officials performing duties on this priority project and all acknowledge that this is not a permanent assignment. Further, she argues that CPM's determination does not reflect the breadth or sophistication of her scientific and analytical responsibilities. Specifically, the appellant indicates that there has been a substantial increase in the percentage of time devoted to complex, analytical duties since September 2014. Additionally, she maintains that her primary duties fall within the Research Scientist title series and exceed those of a Research Scientist 2 because of the lead nature of her responsibilities in the Blue Acres Buyout Program. The appellant claims that the reclassification of her position to a Program Specialist 3 title is inconsistent with the lead scientific role she occupies in the Blue Acres program. For example, the percentage of time that she spends developing complex analytical programs for the Benefit Cost Analysis (BCA) has increased from the 40 percent listed on her PCQ to between 50 and 60 percent.

The appellant presents that even prior to working on the Blue Acres project, her primary responsibility was performing sophisticated analytical work and it had been determined that her position should be classified as a Research Scientific 2. However, she is now performing the same type of work with greater lead responsibility. The appellant contends that CPM's determination gave equal weight to her various responsibilities which is inconsistent with her actual work which primarily focuses on the independent development of the analytical program for the BCA, requires a high level of scientific work, and is highly complex. The appellant reiterates that this is a new program and that she "independently initiates, designs, coordinates, and implements research and/or analytical programs of a highly complex technical nature" which falls squarely within the definition of a Research Scientist 1 title. The appellant indicates that her primary focus is on developing complex and sophisticated research modules required to make sure that the Blue Acres program can comply with the federal requirements and provide the scientific analysis and research necessary to prove that FEMA monies invested in buying a specific property or group of properties will meet the strict requirement of the

program and are scientifically justified. Therefore, Ms. Cao maintains that her work fits the criteria of a lead scientific employee.

The appellant also argues that her work as a Research Scientist falls directly within the occupational group "Occupations in Physical Sciences and Statistics" and not within the "Occupations in Community Development and Social Sciences" where the Program Specialist series falls. The appellant contends that the Program Specialist titles focus on implementing existing programs whereas she is doing highly complex analytical work to develop programs. The appellant presents that when she left the Site Remediation area her position was reclassified to a Research Scientist 2 because she was performing economic research by evaluating the BCA. The appellant argues that she is still performing high level economic analysis and CPM's latest determination only focused on her supervision of technical staff and minimized her development of these highly complex analytical modules and programs. The appellant emphasizes that the buyout program is unprecedented in FEMA's history and that she initiated and independently developed this highly complex work as no one in FEMA's New Jersey office ever had to buy properties on this scale. The appellant describes in more detail the complex nature of the BCA that she developed that incorporates a variety of economic, engineering, and environmental factors within FEMA's criteria for the buyback program.

CONCLUSION

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

Under general supervision of a Research Scientist 1 or other supervisory official in a State department, institution, or agency, conducts and/or supervises a research or developed program in a specified professional field; assumes appropriate administrative and supervisory duties as delegated; supervises complex projects and makes recommendations to the supervisor; does related work.

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

Under general supervision of a division director or other supervisory official in a State department, institution, or agency, independently initiates and coordinates a research or developed program in a specified professional field; may Supervise lower levels of Research Scientists and other technical staff, manages high level technical projects and reports results to designated officials for inter- and intra-agency response; does related work.

The definition section of the job specification for Program Specialist 4 states:

Under the direction of a supervisory official in a State department or agency, supervises professional and/or technical staff engaged in program activities; performs the most difficult and sensitive professional, administrative and analytical work to promote the planning, operation, implementation, monitoring and/or evaluation of various programs and services administered by the Department of assignment; supervises and conducts the research and field work necessary to meet the needs of the appropriate state and/or local public or private agencies; does other related work.

The definition section of the job specification for Program Specialist 3 states:

Under the general supervision of a Program Specialist 4 or other supervisory officer in a State department, institution or agency, or in a local jurisdiction, may directly supervise professional and/or technical staff engaged in program activities, or performs the more complex and sensitive professional, administrative and analytical work to promote the planning, operation, implementation, monitoring and evaluation of various programs and services administered by the Department of assignment; conducts the research and field work necessary to meet the needs of the appropriate state and/or local public or private agencies; does other related work.

The Commission agrees with CPM's determination that the appellant's position is properly classified as Program Specialist 3. In reviewing the PCQ that the appellant submitted, she indicates that she spends 40 percent of her time coordinating technical professionals who collect and analyze data, work with FEMA, and develop the BCA methodologies and modules that are performed on each property to be purchased by FEMA. The appellant also presents that she spends 30 percent of her time overseeing many aspects of the buyout program, including monitoring the buyout program process, identifying areas for improvement, preparing and reviewing budgets, directing staff activities, ensuring the accuracy of reports for the Commissioner, and other related responsibilities. Moreover, the appellant indicated that she spends 30 percent of her time supervising two employees, a Program Specialist 2 and a Program Specialist 1 and is the lead buyout coordinator for Woodbridge Township. In other words, the appellant's primary responsibility is to oversee the staff performing the analytical work to promote the planning, operation, implementation, monitoring, and evaluation of the Blue Acres Buyback program. These duties clearly demonstrate that the appellant's position is appropriately classified in the Program Specialist title series.

Additionally, the appellant supervises two Program Specialists who do not supervise subordinate staff. The Program Specialist 3 title is classified as an "R", or primary level supervisory title. Therefore, the appellant's supervision of two non-supervisory staff members does not evidence that her position is misclassified. While the definition section of the job specification for Program Specialist 4 is similar to the Program Specialist 3 definition, it cannot be ignored that the title is classified as an "S," or second level supervisory title. Positions classified by titles assigned to the "S" bargaining unit are required to supervise at least one primary level supervisor. Therefore, incumbents in the Program Specialist 4 title are typically required to both lead a staff as well as supervise employees who have supervisory responsibility. Thus, as the appellant supervises only staff members who are in non-supervisory titles, her position cannot be classified as a Program Specialist 4.

With respect to the appellant's argument that her duties should be classified in the Research Scientist title series, incumbents in the Research Scientist title series typically perform scientific investigations and experiments, identify breakthroughs, and report on new discoveries. As the appellant is not performing scientific investigations and experiments to identify breakthroughs, the Research Scientist series is an inappropriate classification for the functions of her position. In response to the appellant's argument that her position should not be reclassified to a title that is two ranges lower than her current title of Research Scientific 2, the outcome of position classification is not to provide a career path to the incumbent, but rather to ensure the position is classified in the most appropriate title available within the State's classification plan. *See In the Matter of Patricia Lightsey* (MSB, decided June 8, 2005), *aff'd on reconsideration* (MSB, decided November 22, 2005),

Although the appellant argues that she is doing similar, but only more complex work as compared to when she had previously been classified as a Research Scientist 2, given the issues surrounding her duties that were raised in her previous appeal, the Commission ordered further review of her position to ensure that it was properly classified. Based on this review, as explained above, it was determined that the duties she performs do not primarily involve scientific investigation or experiments to identify breakthroughs. Thus, further review of her duties demonstrated that her position should not stay classified in the Research Scientist title series. Moreover, regarding the appellant's assertions regarding her qualifications, credentials of the incumbent, importance and volume of work 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, even if the appellant's duties have evolved to become more complex and her technical responsibilities are now taking over 50 percent of her time, the appellant has not demonstrated that these duties are related to scientific investigations and experiments to identify new breakthroughs, and therefore it does not appear that the appellant is currently performing duties to be considered under

the Research Scientist title series. Regardless, 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.

ORDER

Therefore, the Civil Service Commission concludes that the position of Yang Cao is properly classified as a Program Specialist 3.

This is the final administrative determination in this matter. Any further review is to be pursued in a judicial forum.

**DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 1st DAY OF APRIL, 2015**



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