

B-15



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Anthony Carl,
Department of Environmental
Protection

CSC Docket No. 2015-389

Classification Appeal

ISSUED: MAY 08 2015

(RE)

Anthony Carl appeals the attached decision of the Division of Classification and Personnel Management¹ (CPM) which found that his position with the Department of Environmental Protection is properly classified as Emergency Response Specialist (ERS) 3. He seeks an Emergency Response Specialist 2 job classification in this proceeding.

Mr. Carl received a regular appointment to the title of Emergency Response Specialist 3 on June 28, 2012. Subsequently, he requested a classification review of his position. An audit was conducted consisting of a review of all documents, and an interview with the appellant, his supervisor, the Division Director and the appointing authority. This position is located in the Bureau of Emergency Response, Department of Environmental Protection. The position is supervised by an Emergency Response Specialist 1, and has no supervisory responsibility.

The classification review found that Mr. Carl's assigned duties and responsibilities, as detailed in CPM's July 16, 2014 decision, were commensurate with the title of Emergency Response Specialist 3.

On appeal, Mr. Carl argues that the Review and Analysis Section of CPM's letter fails to take into account that the ERS 2 Job Specification definition indicates that this position functions as "senior departmental On-Scene Coordinator." He states that he performs those duties by arriving first on scene, working the case by

¹ Currently the Division of Agency Services.

himself, and supervising other responders, including those in the ERS 2 title. For example, he states that he is currently in charge as the lead/senior On Scene Coordinator of an oil spill in Washington Township, Gloucester County where, despite having an ERS 2 on site, he is in charge of all aspects of the case including budgeting, supervision of the contractor, decisions regarding cleanup methods, etc. He states that not being in charge on one of the spills he is assigned is the exception rather than the norm.

Next, he states that he has responsibility for special projects of higher level complexity. He states that he is responsible for the yearly development of a list of specialized equipment and supplies necessary to support Bureau functions and subsequent purchasing of those materials. This task is concurrently assigned to an Emergency Response Specialist 2 in the Northern Region. In accomplishing this project, he works with the Northern Region counterpart to assess Bureau needs and supply a list to management. He states that he is consulted on anything of a technical nature such as the purchase of new field monitoring equipment or the purchase of consumables to support currently utilized field monitoring equipment. In addition, he is required to conduct an assessment of the Bureau's monitoring equipment to ensure it meets manufacturer recommendations regarding calibration and functionality as well as ensuring it adheres to the manufacturer's recommendation regarding regular maintenance. Once the assessment is conducted, he contacts vendors and supplies quotes for purchasing, calibration, and maintenance. He reviews equipment that has yet to be purchased and provides input to management in support of purchasing that equipment. For example, when management saw an opportunity to replace an aging and out of service mercury vapor analyzer, he was consulted and given the task of assessing available technologies and recommending the appropriate solution. In doing so, he wrote bid specification and provided vendor quotes in support of the purchase through a federal grant. Further, he performs research and technical review in supporting the efforts to fill the need for a system to allow the Bureau to perform particulate monitoring for responses to fires involving hazardous materials.

As to supervision, the appellant argues that there are no employees in the ERS 2 title that have ever completed a performance evaluation at any point in their careers. He states that performance evaluations are completed by the Assistant Director in the Northern Region, and an ERS 1 in the Southern Region. None of the individuals in the ERS 2 title either write performance evaluations or provide input for them, or have been certified to do so. He maintains that the ERS 2 can best be described as a "field supervisor," as he is often in a position where he is supervising contractors, as well as being in charge of all site activities including those performed by other Emergency Responders. In this capacity, he has responsibility to ensure site activities are being performed appropriately to accomplish site objectives and acting as the single point of contact to provide status updates back to management. Additionally, in the case of contractors, he has responsibility to

initiate the disciplinary process under their contract as per the Hazardous Site Mitigation Operations Manual (HSMOM).

Next, the appellant contends that he is required to review reports of other responders for technical accuracy and compliance with State environmental laws and regulations prior to being finalized, and reviews invoices and approves expenditures submitted by contractors based upon these reports. He also supervises the use of field monitoring equipment. During a case involving a catastrophic release of Vinyl Chloride from a rail car in Paulsboro, New Jersey, he led the air monitoring group which was comprised of Federal contractors, private contractors, county employees, and ERSs 2 and 3. He gave safety briefings and specific instructions to all responders on how to utilize field monitoring equipment for detection of this specific chemical. He fielded all questions related to the air monitoring program and he provided a comprehensive briefing to the local mayor and assemblyman as well as the Commissioner of the Department. At a fire involving chemicals at a PSE&G facility in Burlington City, and during a major oil spill at Motiva in Woodbridge, New Jersey, he implemented and supervised air monitoring programs specific to the event. He has been required to provide training to other Emergency Responders and participates in meetings, hearings, conferences, seminars, training sessions, and other gatherings associated with assigned duties, and occasionally in the absence of his supervisor.

CONCLUSION

The definition section of the class specification for the title Emergency Response Specialist 3 states:

Under the limited supervision of an Emergency Response Specialist 1, or other higher level supervisory official in the Emergency Management Response Element within the Site Remediation Program, Department of Environmental Protection, responds to environmental emergencies for the purpose of assessing environmental impacts including hazardous substances, materials and chemical, biological, radiological, nuclear, explosive (CBRNE), acts of terrorism, and acts of nature (snow, floods, droughts, etc.) as well as functioning as departmental On-Scene Coordinator and National Incident Management System (NIMS) Incident Command Representative during activation of the State Emergency Operations Center with other responding agencies; performs special projects related to the bureau's goals, missions, and needs; coordinates with other Chemical, Biological, Radiological, Nuclear, Explosive (CBRNE) teams as assigned; functions as the Departmental Incident Command representative within a general staff section; (and is) responsible for the issuance of complete and comprehensive incident reports; provides emergency services for people, water, land and structures within the State; does related work as required.

The definition section of the class specification for the title Emergency Response Specialist 2 states:

Under the limited supervision of an Emergency Response Specialist 1, or other higher level supervisory official in the Emergency Management Element within the Site Remediation Program, Department of Environmental Protection, responds to environmental emergencies for the purpose of assessing environmental impacts including hazardous substances, materials and chemical, biological or radiological, nuclear, explosive (CBRNE), acts of terrorism, and acts of nature (*i.e.* snow, floods, droughts, etc.) as well as functioning as the senior departmental On-Scene Coordinator and National Incident Management System (NIMS) Incident Command Representative during activation of the State Emergency Operations Center with other responding agencies; coordinates with other Chemical, Biological, Radiological, Nuclear, Explosive (CBRNE) teams as assigned; may be required to supervise staff in the course of official duties; functions as the Departmental Incident Command representative at the General staff level; responsible for special projects of higher level complexity; responsible for the issuance of complete and comprehensive incident reports; provides emergency services for people, water, land and structures within the State; does related work as required.

Based upon a thorough review of the information presented in the record, it is clear that the appellant's position is properly classified as ERS 2. In this regard, it is noted that all levels in the title series are expected to perform the breadth of duties. The difference in the levels is denoted by the level of expertise acquired by the incumbent, which is objectively delineated by the level of function required on scene during the activation of emergency operations, and the complexity of work for special projects. Further, the supervisor of the position has indicated on the appellant's Position Classification Questionnaire that the most important duties of the position include applying technical knowledge, making decisions on an emergency basis with sound judgment, and operating within the Department's database management system. The appellant clearly has responsibility for functioning as the Departmental Incident Command representative when arriving first on scene, and for completing special projects of higher level complexity. The supervisor assigns work and projects, but the appellant works on his own when at an incident. He has worked on special projects such as the boat removal from Bader Field and landfill projects. He assists in purchasing equipment and other items, and in maintaining and calibrating field monitoring equipment for use by all Bureau responders. In effect, his duties match the definition of the job specification for ERS 2.

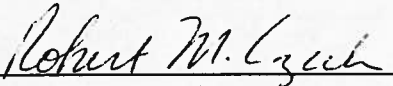
The Commission notes that the Emergency Response Specialist 2 title is in the "R" Employee Relations Group (ERG). Each ERG is distinctly defined, and the "R" ERG is defined as those titles used in the primary or first level of supervision. First level may be assigned the responsibility for effectively recommending the hiring, firing, promoting, demoting and/or disciplining of employees in non-supervisory titles. In contrast, the "S" ERG is considered second level supervision and is defined as supervising the work operations and/or functional programs which includes having responsibility for effectively recommend the hiring, firing, promoting, demoting and or disciplining of employees. In other words, the "R," or primary level supervisory ERG does not necessarily require an incumbent to perform all supervisory responsibilities since incumbents at that level *may* be responsible for the hiring, firing, promoting, demoting and or disciplining of employees. In this regard, for titles where the performance of *all* supervisory duties is required, the Commission has found that 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 16, 2001). As such, incumbents in the ERS 2 title are not necessarily required to perform all of the functions of a supervisor, but the job specification does permit this function if so required by the organizational unit. Generally, reliance *solely* on the ERG to determine the proper classification of the position is inappropriate. It is long-standing policy that upon review of a request for position classification, when it is found that the majority of an incumbent's duties and responsibilities match the definition of the title, and relate to the examples of work found in a particular job specification, that title is deemed the appropriate title for the position. Accordingly, the record establishes that the proper classification of the appellant's position is ERS 2.

ORDER

Therefore, the position of Anthony Carl is properly classified as an Emergency Response Specialist 2, effective December 28, 2013.

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 6th DAY OF MAY, 2015


Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
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Enclosure

c: Anthony Carl
Deni Gaskill
Kenneth Connolly
Joseph Gambino



CHRIS CHRISTIE
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Lt. Governor

STATE OF NEW JERSEY
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ROBERT M. CZECH
Chair/Chief Executive Officer

July 16, 2014

Mr. Anthony T. Carl
New Jersey Department of Environmental Protection
Bureau of Emergency Response
PO Box 420 Mail Code 33-01
Trenton, New Jersey 08625-0420

Re: Classification Appeal
Emergency Response Specialist 3
Position #083305
CPM #12130017
Employee ID #000051656

Dear Mr. Carl:

This is to inform you, and the Department of Environmental Protection, of our determination concerning the classification appeal referenced above. Our review involved a detailed analysis of the Position Classification Questionnaire (DPF-44S); organization chart; your Performance Evaluation System (PES); your statements; the statements of your supervisor, division director, and appointing authority; and a desk audit that was conducted June 12, 2014.

Issue:

You requested that your position be audited to determine if you are performing out-of-title work for your title of Emergency Response Specialist 3. You have indicated that you believe your current duties and responsibilities are more in-line with the Emergency Response Specialist 2 title. The Bureau of Human Resources Operations agreed that an audit should be conducted in order to determine the appropriate classification of your position.

Organization:

The position is located in the Office of the Deputy Commissioner, Emergency Management, Bureau of Emergency Response, Department of Environmental Protection. You are supervised by James Manuel, Emergency Response Specialist 1 (S31) and you have no direct supervisory responsibility.

Finding of Fact:

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

- Administers and monitors the emergency use of State Spill Fund monies for the mitigation of discharges of hazardous material and pollutants.
- Hires and oversees the remediation contractor and documents all site activities including maintaining a project budget.
- Responds to environmental emergencies and conducts on-site assessments of the impacts of the discharge of hazardous material to public health, property, and the environment.
- Serves as State On-Scene Coordinator by overseeing and acting as liaison with contractor personnel, county and municipal agencies, and other responders.
- Serves as the Emergency Response Region 2 Duty Officer on a rotational basis.
- Utilizes field monitoring equipment to assess the impacts of discharged hazardous material
- Conducts maintenance and calibration on all field equipment and personal protective equipment to ensure proper functioning in an emergency situation.
- Prepares concise and comprehensive incident reports regarding activities conducted during the response to environmental emergencies.
- Assists in the purchasing of equipment to support the Bureau's activities including obtaining quotes, and serving as liaison with contractors and vendors.

Review and Analysis:

The duties and responsibilities of the position were compared to those described within the class specification for Emergency Response Specialist 3 and Emergency Response Specialist 2.

The definition section of the specification for the title, Emergency Response Specialist 3 (P25, 15863), states:

“Under the limited supervision of an Emergency Response Specialist I, or other higher level supervisory official in the Emergency Management Response Element within the Site Remediation Program, Department of Environmental Protection, responds to environmental emergencies for the purpose of assessing environmental impacts including hazardous substances, materials and chemical, biological, radiological, nuclear, explosive (CBRNE), acts of terrorism and acts of nature (snow, floods, droughts, etc.) as well as functioning as departmental On-Scene Coordinator and National Incident Management System (NIMS) Incident Command Representative during activation of the State Emergency Operations Center with other responding agencies; performs special projects related to the bureau's goals, missions and needs; coordinates with other Chemical, Biological, Radiological, Nuclear, Explosive (CBRNE) teams as assigned; functions as the Departmental Incident Command representative within a general staff section; (and is) responsible for the issuance of complete and comprehensive incident reports; provides emergency services for people, water, land, and structures within the State; does related work as required.”

The definition section of the specification for the title, Emergency Response Specialist 2 (R28, 15864), states:

“Under the limited supervision of an Emergency Response Specialist I, or other higher level supervisory official in the Emergency Management Element within the Site Remediation Program, Department of Environmental Protection, responds to environmental emergencies for the purpose of assessing environmental impacts including hazardous substances, materials and chemical, biological or radiological, nuclear, explosive (CBRNE), acts of terrorism, and acts of nature (i.e. snow, floods, droughts, etc.) as well as functioning as the senior departmental

On-Scene Coordinator and National Incident Management System (NIMS) Incident Command Representative during activation of the State Emergency Operations Center with other responding agencies; coordinates with other Chemical, Biological, Radiological, Nuclear, Explosive (CBRNE) teams as assigned; may be required to supervise staff in the course of official duties; functions as the Departmental Incident Command representative at the General staff level; responsible for special projects of higher level complexity; responsible for the issuance of complete and comprehensive incident reports; provides emergency services for people, water, land, and structures within the State; does related work as required."

An Emergency Response Specialist 3 and an Emergency Response Specialist 2 share specific duties and responsibilities. Both function as the Department On-Scene Coordinator during emergency situations, prepare technically accurate reports regarding responses to discharge and/or release of hazardous substances, perform special projects related to the Bureau's goals, mission, and needs, and work alone or as a member of a team responding to emergency situations. The significant distinction between the Emergency Response Specialist 3 and Emergency Response Specialist 2 titles is that an Emergency Response Specialist 2 is expected to function as a first-level supervisor. This title is assigned to the employee relations group "R" and is considered the primary level of supervision.

Your position responds to reports of emergency situations serving as a member of a team or as On-Scene Coordinator making decisions on the course of action to be taken to remediate the emergency and provide direction on the clean-up. Your position prepares an incident report documenting the scope of the emergency and actions accomplished to remediate the situation. Your position coordinates with counties and municipalities to determine the extent of the emergency and provides advice and assistance in remediation. Your position performs maintenance and calibration on emergency response equipment located within the southern region. Your position serves as Regional Duty Officer one week per month receiving reports from the dispatch center and determining the facts of the situation upon which to make a decision on the appropriate course of action. Your position functions as Department representative during activation of the State Emergency Operations Center and facilitates agency actions during emergencies of any type. Your position oversees the utilization of State Spill Fund monies and expenditures in the remediation of the emergency situation. Your position coordinates the activities of contractors and other responders to the emergency situation when serving as On-Scene Coordinator. Your position does not supervise staff. The essential component of supervision is the completion of employee performance evaluations.

Name: Anthony Carl
Date: July 16, 2014

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Taking the aforementioned into consideration, your position aligns with the professional expectations of the Emergency Response Specialist 3 title.

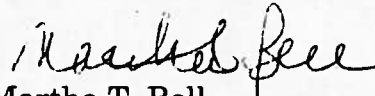
Determination:

By copy of this letter, the Appointing Authority is advised that your position is properly classified as Emergency Response Specialist 3 (P25, 15863).

The class specification for Emergency Response Specialist 3 is descriptive of the general nature and scope of the functions that may be performed by the incumbent in this position. However, the examples of work are for illustrative purposes and are not intended to restrict or limit performance of the related tasks not specifically listed.

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. The appeal should be addressed to the Written Records 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,



Martha T. Bell
Human Resource Consultant 5
Classification and Personnel Management

MTB/rej
C: Robin Liebeskind
Joseph Siracusa
CPM #12130017