

B-60



STATE OF NEW JERSEY

In the Matter of Timothy Sullivan,  
Department of Law and Public Safety

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

CSC Docket No. 2015-1201

Classification Appeal

ISSUED: MAY 08 2015 (JET)

Timothy Sullivan appeals the attached decision of the former Division of Classification and Personnel Management (CPM)<sup>1</sup> that the proper classification of his position with the Department of Law and Public Safety is Forensic Scientist 1. The appellant seeks a Forensic Scientist 2 classification.

The record in the present matter establishes that at the time the appellant filed her request for a classification review, he was serving as a Forensic Scientist 1. The appellant's position is located in the Central Regional Laboratory, Division of State Police and he does not have any supervisory duties. The appellant sought a reclassification contending that his position would be more appropriately classified as Forensic Scientist 2. In support of his request, the appellant submitted a Position Classification Questionnaire (PCQ) detailing the different duties that he performed. CPM reviewed all documentation supplied by the appellant including her PCQ. Based on its review of the information provided, including the unit organization chart, CPM concluded that the appellant's position would be properly classified as Forensic Scientist 1. However, CPM did indicate that some the duty of training employees was out-of-title and should be removed.

It is noted that the appellant had previously sought reclassification of his position in 2010, arguing that it should be classified as Forensic Scientist 2. In a determination dated April 9, 2010, SLO found that his position should be

<sup>1</sup> Formerly, the Division of State and Local Operations (SLO) and now the Division of Agency Services (Agency Services).

reclassified as Forensic Scientist 2. Subsequently, the appointing authority contacted this agency in November 2010 and requested that the job specification for Forensic Scientist 2 be revised in order to more clearly distinguish what constitutes complex cases, which would be inappropriate for an incumbent in the Forensic Scientist 1 title. Accordingly, the job specification was revised effective January 15, 2011. As a result of this revision to the job specification, the appointing authority removed the complex duties that the appellant had been assigned and returned him to his permanent title of Forensic Scientist 1 effective January 29, 2011. Moreover, the appointing authority confirmed with this agency that it had not assigned him higher level duties since that time.

On appeal, the appellant maintains that Forensic Scientist 2 is the appropriate classification of his position. Specifically, the appellant asserts that he was routinely assigned to complete complex and complicated work for the period of time indicated on his PCQ. Further, the appellant notes that these duties were removed over one year after they were assigned to him and six months after he completed his PCQ.

In response, Agency Services (Agency Services) maintains that the classification determination is correct and the appropriate classification for the appellant's position is Forensic Scientist 1. Further, the appointing authority confirms that it has reassigned any out-of-title duties the appellant was performing.

## CONCLUSION

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

Under the general direction of a Forensic Scientist 3 in the Department of Law and Public Safety, conducts the more difficult and specialized work involved in the chemical analysis of various matter, substances, specimens, and materials submitted to the laboratory by law enforcement agencies and Medical Examiners Offices for identification in connection with criminal investigations and prosecutions; may supervise or provide guidance to Forensic Scientist 1, Chemists, Laboratory Technicians, or other laboratory personnel; may function as a Laboratory Information Management System (LIMS) Coordinator, Laboratory Safety Representative/Coordinator, or Quality Assurance (QA) Coordinator of a discipline; performs related field and laboratory work as required.

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

Under the general direction of a Forensic Scientist 2 or 3 in the Department of Law and Public Safety, conducts the chemical analysis of various materials and evidence submitted to the laboratory by law enforcement agencies and Medical Examiners Offices for identification in connection with criminal investigations and prosecutions; performs related field and laboratory work as required.

Initially, the appellant indicated on his PCQ that 20% of his duties are related to some aspect of training Forensic Scientist 1s, 25% of his duties include analyzing evidence by utilizing complex and complicated testing procedures, 10% of his duties include analyzing more complex and high profile cases involving multiple victims and suspects. The appellant's supervisor and Director confirmed that he performed these duties. According to the job specification for Forensic Scientist 2, an incumbent can train Forensic Scientist 1s; conducts more difficult and specialized work involved in the chemical analysis of various matter, substances, specimens and materials . . . in connection with criminal investigations and prosecutions; and may function as a Laboratory Information Management System Coordinator, Laboratory Safety Representative/Coordinator, or Quality Assurance Coordinator of a discipline. Conversely, the job specification for Forensic Scientist 1 does not include the responsibility of training and reviewing peer reports, performing more difficult and specialized work in chemical analysis; and functioning as a Safety Representative/Coordinator or Quality Assurance Coordinator of a discipline. Thus, CPM properly found that the appellant was performing out-of-title duties. *N.J.A.C. 4A:3-3.9(c)8ii(2)* states that if a determination is made finding that the position is properly classified, but that out-of-title duties are being performed, this agency shall order the immediate removal of the inappropriate duties within a specified time. In this case, the appointing authority has confirmed that it removed the out-of-title duties effective March 21, 2014. Therefore, no basis exists to currently reclassify his position to Forensic Scientist 2.

However, the appointing authority's acknowledgment that it removed the duties was initially contained in the PCQ and confirmed when it submitted the appellant's reclassification request to CPM. The appellant's PCQ was signed by his immediate supervisor on September 5, 2013 but the appellant's Director did not sign it until January 14, 2014, more than four months later. Additionally, the PCQ was not received by CPM until March 28, 2014. Thus, it is clear that more than seven months had passed before this matter was submitted to CPM. *N.J.A.C. 4A:3-3.9(c)7* requires the appointing authority submit an employee's classification appeal to this agency within 10 days of receipt of the appeal. This did not happen. Nonetheless, given that the appellant's Director and supervisor confirms that the appellant performed out-of-title duties, and the appointing authority admits that the out-of-title duties were removed, the Commission finds that the appellant is

entitled to differential pay from September 21, 2013 the pay period immediately after 14 days from the date this agency should have received the initial classification appeal, to March 21, 2014, the beginning of the first pay period after the appointing authority removed the out-of-title duties. See *N.J.A.C. 4A:3-3.9(e)3i*.

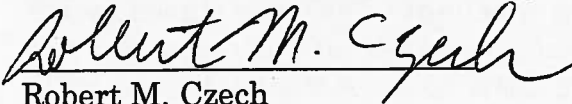
The appellant is not entitled to any other differential pay prior to September 21, 2013. The foundation of position classification, as practiced in New Jersey, is the determination of duties and responsibilities being performed at a given point in time as verified by CPM through an audit or other formal 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 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).

### ORDER

Therefore, it is ordered that this appeal be denied, but the appointing authority pay the appellant differential pay for performing duties of a Forensic Scientist 2 from September 21, 2013 to March 21, 2014.

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 6<sup>th</sup> DAY OF MAY, 2015



Robert M. Czech

Chairperson

Civil Service Commission

Inquiries  
and  
Correspondence

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

**Attachment**

c: Timothy Sullivan  
Jessica Chianese  
Mirella Bednar  
Kenneth Connolly  
Joseph Gambino



Chris Christie  
Governor  
Kim Guadagno  
Lt. Governor

STATE OF NEW JERSEY  
CIVIL SERVICE COMMISSION  
DIVISION OF CLASSIFICATION AND PERSONNEL MANAGEMENT  
P. O. Box 313  
Trenton, New Jersey 08625-0313

Robert M. Czech  
Chair/Chief Executive Officer

September 19, 2014

Timothy Sullivan  
Office of Forensic Sciences  
1200 Negron Drive  
Hamilton, NJ 08691

**Re: Classification Appeal – Forensic Scientist 1, Department of Law and Public Safety (P25),  
Position #051455, HRM Log #04140039, EID #000489711**

Dear Mr. Sullivan:

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, Jacki Mancilla, Assistant Chief Forensic Scientist, Department of Law and Public Safety and your Appointing Authority during the review process.

Issue:

You are serving permanently in the title, Forensic Scientist 1, Department of Law and Public Safety (25, P25, 01592) and contend you are performing duties and responsibilities commensurate with the title, Forensic Scientist 2, Department of Law and Public Safety (28, R28, 01593).

Organization:

Your position is assigned to the Central Regional Laboratory, State Police of the Department of Law and Public Safety. You report directly to Deborah Cole, Forensic Scientist 3, Department of Law and Public Safety (30, S30, 01594). Your position has no supervisory duties.

Findings of Fact:

The primary function of your position is to analyze evidence for controlled dangerous substances.

You perform the following assigned duties and responsibilities:

- Analyze evidence for controlled dangerous substance by performing microscopic examination, color tests, crystal tests, and drug extraction. Maintain proper chain of custody of all analyzed evidence.

- Complete laboratory report for each case to be used in Municipal and Superior Courts. Reports include determined facts and conclusions, pictures, and graphs to be used as testimony in a court of law.
- Train forensic scientist in procedures and protocols of the Office of Forensic Science and Forensic Drug Unit.

Review and Analysis:

Currently your position is classified in the title, Forensic Scientist 1, Department of Law and Public Safety (25, P25, 01592). The definition section of the job specification for the title, Forensic Scientist 1, Department of Law and Public Safety, states:

“Under the general direction of a Forensic Scientist 2 or 3 in the Department of Law and Public Safety, conducts the chemical analysis of various materials and evidence submitted to the laboratory by law enforcement agencies and Medical Examiners Offices for identification in connection with criminal investigations and prosecutions; performs related field and laboratory work as required.”

The definition section of the job specification for the title, Forensic Scientist 2, Department of Law and Public Safety (28, R28, 01593), states:

“Under the general direction of a Forensic Scientist 3 in the Department of Law and Public Safety, conducts the more difficult and specialized work involved in the chemical analysis of various matter, substances, specimens and materials submitted to the laboratory by law enforcement agencies and Medical Examiners Offices for identification in connection with criminal investigations and prosecutions; May supervise or provide guidance to Forensic Scientists 1, Chemists, Laboratory Technicians, or other laboratory personnel; may function as a Laboratory Information Management System (LIMS) Coordinator, Laboratory Safety Representative/Coordinator, or Quality Assurance (QA) Coordinator of a discipline; performs related field and laboratory work as required.”

The majority of the work performed by a Forensic Scientist 2, Department of Law and Public Safety consists of handling special and more complex cases involving multiple controls and/or sources. A Forensic Scientist 2, Department of Law and Public Safety is responsible for supervising and providing guidance to Forensic Scientist 1 and other laboratory personnel. Additionally, a Forensic Scientist 2, Department of Law and Public Safety is in the “R” bargaining unit and considered a first level supervisor. A first level supervisor is required to supervise lower level employees and/or an organizational unit. Your position does not have the authority to regularly supervise incumbents and work operations, as well as complete Performance Evaluation, and approve leaves and time sheets therefore; you are not working in the capacity or at the level of a first line supervisor.

The duties and responsibilities assigned to your position reflect the duties of a Forensic Scientist 1, Department of Law and Public Safety. Your position is responsible for the analysis of evidence and identification of controlled substances. Duties include maintaining and operating the laboratory instruments and equipment. Your position is tasked with testifying in court as an expert witness in the area of forensic drug analysis. In addition, you provide training to Forensic Scientist 1's in procedures and protocols of the Office of Forensic Science and Forensic Drug Unit. Furthermore, the responsibility of training forensic scientist does not appear on the Forensic Scientist 1, Department of Law and Public Safety job specification. Please be advised that this is an out-of-title duty and should be removed from this position.

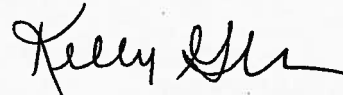
Timothy Sullivan  
September 19, 2014  
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Determination:

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 your permanent title, **Forensic Scientist 1, Department of Law and Public Safety (25, P25, 01592)**; 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,

A handwritten signature in black ink, appearing to read "Kelly Glenn", with a stylized flourish at the end.

Kelly Glenn, Assistant Division Director  
Classification and Personnel Management

KG/SLA

Cc: Mirella Bednar