

B-43



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Bruce Hurlburt,
Department of Law and Public Safety

CSC Docket No. 2014-2496 and
2015-2659

Administrative and
Classification Appeals

ISSUED: **AUG 21 2015** (DASV)

Bruce Hurlburt challenges the processing of his request for position classification review by the Department of Law and Public Safety. Additionally, the appellant appeals the determination of the Division of Agency Services (Agency Services) that his position is properly classified as an Investigator 3, Law and Public Safety. The appellant seeks an Investigator 2, Law and Public Safety classification in this proceeding.

By way of background, the appellant is permanent in the title of Investigator 3, Law and Public Safety in the Division of Consumer Affairs, Legalized Games of Chance Control Commission, but contended that the duties of his position were commensurate with the duties of an Investigator 2, Law and Public Safety. The appellant indicated that he submitted his request for reclassification to his human resource department in August 2012 and was then told in November 2012 that his request was forwarded to the appointing authority. However, on January 15, 2014, the appellant's supervisor advised him that his request "never reached [the] Commission" and he was not given a reason why. It is noted that the appellant's Position Classification Questionnaire (PCQ) was signed by the appellant, his supervisor, and Deputy Director on August 23, 2012, November 28, 2012, and December 5, 2012, respectively. The appellant's supervisor and Deputy Director agreed with the appellant's listed duties. The appointing authority rejected the appellant's request and indicated on the PCQ that representatives of the appointing authority met with the appellant on January 15, 2014 and advised him that out-of-title duties would be removed from his position "effective immediately." The appointing authority also indicated that a revised PCQ would be submitted to this

agency. The appointing authority's counsel signed the PCQ on March 20, 2014. By letter, dated April 7, 2014, the appellant filed an appeal, requesting that his PCQ be submitted and considered by the Commission. However, the revised PCQ was then prepared and signed by the appellant and his supervisor on May 27, 2014 and November 10, 2014, respectively. The appellant's supervisor agreed with the listed duties and stated that the duties of an Investigator 2, Law and Public Safety were removed, although he maintained that that an incumbent in the position still must have the "[a]bility to operate with limited supervision, a team leader." The Chief of Staff and the appointing authority's representatives signed the revised PCQ on November 20, 2014 and December 1, 2014, respectively, indicating that higher level duties were removed after the aforementioned January 15, 2014 meeting.

Thereafter, Agency Services conducted a review of the appellant's position and found that the preponderance of the duties and responsibilities of the appellant's position was significantly descriptive of tasks assigned to an Investigator 3, Law and Public Safety. It evaluated the job specifications for Investigator 3, Law and Public Safety and Investigator 2, Law and Public Safety and indicated that certain duties are intrinsic to both titles. Agency Services noted, however, that assisting the supervisor with training of lower level investigators or providing support to the supervisor with administrative tasks would provide some distinction between the two titles. Nevertheless, it determined that these types of duties were not evident in the appellant's responsibilities or performed for a significant portion of time by the appellant to warrant a change in classification.

It is noted that the duties listed by Agency Services in its determination were compiled from the revised PCQ signed by the appellant on May 27, 2014. Notably, Agency Services found that the appellant conducts complex and sensitive investigations, but he also performs routine and covert inspections and surveillance of licensed and non-licensed premises. The appellant's revised PCQ indicated that he performed these duties 25% and 10% percent of the time, among a set of other duties within that time frame. He also assists in the training of investigators 5% of the time. In addition to several duties listed in the revised PCQ, the original PCQ signed by the appellant on August 23, 2012¹ indicated that he assisted his "Supervising Investigator during emergent situations to minimize back log, including day to day operation." He provided investigators with investigations surrounding matters and disseminated decisions to all investigators, advising them on the course of action to be taken and the type of legal documents to be prepared. Moreover, the appellant was the "[l]ead investigator of forensic audits on organizations, and businesses to determine fraudulent, and inappropriate utilization of funds." Additionally, the appellant's supervisor stated that the most

¹ There are two versions of the August 23, 2012 PCQ: one copy has handwritten comments and was submitted on appeal by the appellant and the other copy has typewritten comments of the appellant's supervisor and was signed by all concerned parties. Any reference to the August 23, 2012 PCQ refers to the latter.

important duty of the appellant's position was to "[a]ct as a liaison between the supervising investigator and members of the investigation unit" and noted that an incumbent in the position must have the "[a]bility to operate with limited supervision, a team leader."

On appeal, the appellant explains that he filed his original PCQ in 2012 with supporting documentation, demonstrating that his duties were consistent with the duties of an Investigator 2, Law and Public Safety. He disagrees with Agency Services' determination, given the "subjective review" and the "lack of any real facts disclosed" by the Team Leader who signed the determination. The appellant asserts that during the January 15, 2014 meeting, two representatives of the appointing authority stated that "the facts were compelling for reclassification" of his position. However, his supervisor was advised that the appointing authority would not approve the request for reclassification and the appellant should abstain from performing out-of-title duties. The appellant notes that one of the representatives advised that she would provide him with a formal letter detailing her determination and advice, but she failed to do so. He questions how the Team Leader could have arrived at a different conclusion than the two representatives at the meeting. Moreover, the appellant emphasizes that, according to the Team Leader, the appellant's responsibilities are "distinctive" between an Investigator 3, Law and Public Safety and Investigator 2, Law and Public Safety. However, the Team Leader then states that these are "not evident." The appellant questions how responsibilities can be rendered "distinctive" but then "not evident."

Furthermore, the appellant points out that the Team Leader did not state what percentage of time is necessary to be considered significant. He argues that his "distinctive daily responsibilities equate to 55%." In addition, the appellant asserts that the job specifications for the subject titles are identical, except that an Investigator 2, Law and Public Safety "conducts in depth regulatory and administrative audits" and "performs other confidential and sensitive civil and regulatory investigative activities or specialized investigations" and an Investigator 3, Law and Public Safety "performs regulatory audits" and "conducts, under guidance of a team leader, civil and regulatory investigative activities or specialized investigations." The appellant asserts that the PCQ he submitted demonstrates that he conducts complex and sensitive investigations and his supervisor states that he operates under limited supervision and is a team leader. He maintains that he does not work under a team leader. Rather, the appellant reiterates that he is a lead investigator and other investigators report to him on all special assignments throughout the year. As confirmation, the appellant submits a memorandum, dated November 16, 2012, from his supervisor, stating that all investigators report to her, but investigators who conduct special assignments, which are coordinated by the appellant, report directly to him. The appellant also submits his interim performance evaluation for the 2011 to 2012 rating cycle, which states in the Justification section of the evaluation that the appellant "has accepted [an]

additional work load to assist the unit with case tracking and other tasks without sacrificing the completion of his case load and inspections. He works with limited supervision and is a team leader. He is assigned complex investigations." In addition, the appellant asserts that he trains and re-trains, when applicable, investigators regarding trends associated with changes in business practices and established procedures for investigations and inspections.

In response, Agency Services initially notes that although the appellant submits a PCQ, dated August 23, 2012, and a performance evaluation for the 2011 to 2012 rating cycle, it only considered the May 27, 2014 PCQ and a performance evaluation for the 2014 to 2015 rating cycle, as the documents submitted by the appellant were not included in the initial submission at the time of the audit. Moreover, Agency Services states that while the appellant on appeal indicates that he trains investigators, his May 27, 2014 PCQ lists that this duty is performed on an infrequent basis, only 5% of the time, and is rated number 9 out of 10 tasks in order of difficulty (with 1 as the most difficult task). In addition, it indicates that this duty is not listed in the Job Expectations section of the appellant's 2014 to 2015 performance evaluation. It is noted that while the duty of training investigators comprises only 5% of the appellant's time as listed in the May 27, 2014 PCQ, the duty was included with the appellant's inspection of game systems and other duties and ranked 8 in the order of difficulty. Agency Services was referring to another duty in which the appellant conducts training seminars for government agencies, organizations, licensees, and consumers. This responsibility of providing "education to the public and government agencies" was included as a job responsibility in the appellant's 2014 to 2015 performance evaluation. Furthermore, Agency Services contends that the organizational chart does not support the appellant functioning as a lead worker since there is one Supervising Investigator, Law and Public Safety, three Investigators 2, Law and Public Safety, and two Investigators 3, Law and Public Safety in his unit. Therefore, Agency Services maintains that the appellant's position is properly classified as an Investigator 3, Law and Public Safety.

CONCLUSION

The definition section of the job specification for Investigator 3, Law and Public Safety states:

Under supervision of a Supervising Investigator or under the guidance of an Investigator 1 or other supervisory official in the Department of Law and Public Safety, performs regulatory audits and inspections of licensed premises; reviews records, files, financial statements, and other transactions to determine compliance with rules or regulations governing consumer protection laws; conducts, under guidance of a team leader, civil and regulatory investigative activities or specialized investigations to detect alleged

noncompliance with or violations of New Jersey State statutes, administrative codes, or Professional Rules of Conduct or consumer protection laws; performs other related duties required.

The definition section of the job specification for Investigator 2, Law and Public Safety states:

Under supervision of a Supervising Investigator or other supervisory official in the Department of Law and Public Safety, conducts in depth regulatory and administrative audits and inspections of licensed premises; reviews records, files, financial statements, and other transactions to determine compliance with rules or regulations governing consumer protection laws; performs other confidential and sensitive civil and regulatory investigative activities or specialized investigations to detect alleged noncompliance with or violations of New Jersey State statutes, administrative codes, Professional Rules of Conduct, or consumer protection laws; performs other related duties required.

The Examples of Work for both titles are similar except that an Investigator 3, Law and Public Safety may catalog evidence for storage; assist in providing justification for requested subpoenas, citations, or summonses; and assist superior in determining when there is a need to file charges against alleged perpetrators based on evidence. In contrast, an Investigator 2, Law and Public Safety may catalog evidence for presentation to supervisors and legal counsel; provide supervisors with justification for requested subpoenas, citations, or summonses; recommend to supervisors when to file charges against alleged perpetrators based on evidence; and assist supervisors in the training of lower level investigators in investigative duties and techniques.

However, 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. In making classification determinations, emphasis is placed on the Definition section to distinguish one class of positions from another. The Definition portion of a job specification is a brief statement of the kind and level of work being performed in a title series and is relied on to distinguish one class from another. On the other hand, the Examples of Work portion of a job specification provides typical work assignments which are descriptive and illustrative and are not meant to be restrictive or inclusive. See *In the Matter of Darlene M. O'Connell* (Commissioner of Personnel, decided April 10, 1992).

Thus, while performing lead worker² duties and assisting the supervisor in various tasks are consistent with the Examples of Work for an Investigator 2, Law and Public Safety and would properly classify a position if such duties were performed, a position need not perform such duties since by definition the distinguishing responsibility of an Investigator 2, Law and Public Safety is that the incumbent “conducts in depth regulatory and administrative audits and inspections of licensed premises” and “performs other confidential and sensitive civil and regulatory investigative activities or specialized investigations.” As long as the position performs these responsibilities a majority of the time, the classification of the position as an Investigator 2, Law and Public Safety would be appropriate.

In the appellant’s case, he was clearly performing the duties of an Investigator 2, Law and Public Safety at the time he completed the August 23, 2012 PCQ. The appellant was a lead worker. He assisted his Supervising Investigator; provided investigators with investigations surrounding matters; disseminated decisions to all investigators, advising them on the course of action to be taken; and was the lead investigator of forensic audits. The appellant’s supervisor and Deputy Director agreed with the appellant’s listed duties. Furthermore, the appointing authority acknowledged the performance of these duties when it indicated on the August 23, 2012 PCQ that, as of January 15, 2014, the appellant’s out-of-title duties would be removed from his position “effective immediately.” It is noted that *N.J.A.C. 4A:3-3.9(c)7* requires that the appointing authority submit an employee’s classification appeal to this agency within 10 days of receipt of the appeal. This obviously did not happen in this case. The appointing authority’s counsel did not even sign the original PCQ until March 20, 2014. Given that the appellant’s supervisors confirmed that the appellant performed out-of-title duties, and the appointing authority admitted that the out-of-title duties were removed, the Commission finds that the appellant is entitled to differential pay from December 29, 2012³ to January 25, 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.*

² A leadership role refers to those persons whose titles are non-supervisory in nature, but are required to act as a leader of a group of employees in titles at the same or a lower level than themselves. Duties and responsibilities would include training, assigning and reviewing work of other employees on a regular and recurring basis, such that the lead worker has contact with other employees in an advisory position. However, such duties are considered non-supervisory since they do not include the responsibility for the preparation of performance evaluations. Being a lead worker does not mean that the work is performed by only one person, but involves mentoring others in work of the title series. *See In the Matter of Henry Li* (CSC, decided March 26, 2014).

³ *N.J.A.C. 4A:3-3.9(e)3i* provides that if an appeal is granted by the Commission, the effective date of implementation shall be, in State service, the pay period immediately after 14 days from the date an appropriate Commission representative first received the appeal or reclassification request, or at such earlier date as directed by the Commission. Given the inexplicable delay in this matter and for equitable reasons, the effective date of reclassification will be based on the date that the Deputy Director signed the appellant’s original PCQ, which was on December 5, 2012. As such, considering the 10-day and 14-day periods set forth in *N.J.A.C. 4A:3-3.9(c)7* and *N.J.A.C. 4A:3-3.9(e)3i*,

The appellant is not entitled to any other differential pay. While the Commission has indicated that removing duties *only* in response to an employee's request for classification review prior to this agency's review of the duties of the position could be considered arbitrary and may result in an unjust consequence for an employee, the remedy for such a situation is to provide the employee with differential back pay if found that he or she was performing duties of a higher title based on an initial PCQ. See *In the Matter of Allison Ketchum* (CSC, decided July 15, 2015). In this case, the Commission has found that the appellant was performing higher level duties and has awarded him differential pay.

However, the Commission cannot ignore that higher level duties were in fact removed and Agency Services reviewed the revised May 27, 2014 PCQ and found that the appellant's position was properly classified as an Investigator 3, Law and Public Safety. In this regard, *N.J.A.C. 4A:3-3.5* states in part that no person shall be appointed or employed under a title not appropriate to the duties to be performed nor assigned to perform duties other than those properly pertaining to the assigned title which the employee holds. Moreover, 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 Agency Service through an audit or other formal study. Thus, classification reviews are based on a current review of assigned duties. While the appellant presents evidence that he performed duties at the level of an Investigator 2, Law and Public Safety, the information he provides dates back to 2011 and 2012. A review of his current duties does not demonstrate that he "conducts in depth regulatory and administrative audits and inspections of licensed premises" and "performs other confidential and sensitive civil and regulatory investigative activities or specialized investigations" a majority of the time. While the appellant conducts complex and sensitive investigations and assists in the training of investigators, these duties are performed, at most, 25% and 5% of the time, respectively. Reclassification of the appellant's position is therefore not warranted as these duties do not represent a preponderance of the appellant's duties. The appellant also performs routine and covert inspections and surveillance and other duties as found by Agency Services, which are commensurate with the duties of an Investigator 3, Law and Public Safety. It is noted that it is not uncommon for an employee to perform some duties which are above or below the level of work which is ordinarily performed. As noted above, 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. Accordingly, based on the foregoing, the appellant is no longer performing the duties of an Investigator 2, Law and Public Safety and the record amply supports that his position is currently appropriately classified as an Investigator 3, Law and Public Safety.

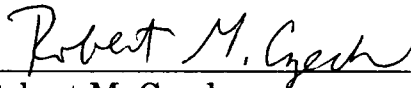
respectively, the appropriate effective date is December 29, 2012, which is the beginning of the pay period after the foregoing time periods.

ORDER

Therefore, it is ordered that the appellant's appeals be granted in part, and the appointing authority pay the appellant differential pay for performing the duties of an Investigator 2, Law and Public Safety from December 29, 2012 to January 25, 2014.

This is the final administrative action in the matter. Any further review should be pursued in a judicial forum.

**DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 19TH DAY OF AUGUST, 2015**



Robert M. Czech
Chairperson
Civil Service Commission

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and
Correspondence**

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Attachment

**c: Bruce Hurlburt
Mirella Bednar
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Chair/Chief Executive Officer

February 25, 2015

Mr. Bruce Hurlburt
Department of Law & Public Safety
Division of Consumer Affairs
124 Halsey Street
Newark, New Jersey 07101

**RE: Classification Appeal - Investigator 3 Law & Public Safety,
AS Log # 12140024; EID # [REDACTED]**

Dear Mr. Hurlburt:

This is to inform you and the Department of Law & Public Safety of our determination concerning your classification appeal. This determination is based upon a thorough review and analysis of all information submitted on your Position Classification Questionnaire (DPF-44S) and supporting documentation and comments.

Issue:

You contend that the duties of your position are inconsistent with your current title of Investigator 3 Law and Public Safety (P20) and the title Investigator 2 Law and Public Safety (P23) is an appropriate title for the position.

Organization:

Your position is located in the Department of Law & Public Safety, Division of Consumer Affairs, Legalized Games of Chance Control Commission; you report to Mr. Martin Silva, Supervising Investigator Law and Public Safety (R29). Your position has no supervisory responsibility.

The Department of Law & Public Safety, Division of Consumer Affairs, Legalized Games of Chance Control Commission effectively carries out the duties by the

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Legalized Games of Chance Control Commission under the Bingo, Raffles and Amusement Games Licensing Laws and the Rules and Regulations promulgated there under.

Finding of Fact:

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

- Securing credit history, financial assets, judgments, deeds, and criminal records; reviewing financial records, bank statements, invoices, receipts, contracts, agreements, advertisement materials, bill of lading, and other record and supporting documentation; conducting complex and sensitive investigations.
- Reviewing complaints to determine improper methods of operation, alleged illegal/fraud activity, negligence, misrepresentation, abuse, and license issues; enforcing compliance of statutes and regulations concerning the laws and regulations; maintaining cases in appropriate stages and finalizing cases for prosecution.
- Preparing investigative reports and cataloging evidence into evidence room; attaching copies of various evidence as exhibits for review by Supervising Investigator; preparing and serving subpoenas, Uniform Penalty Letters, Warning Letters, Letters of Advice, Provisional and Final Order Discipline, Certificate of Debts, orders and other legal documents pursuant to the Commission's determination.
- Conducting thorough routine and covert inspections and surveillance of licensed and non-licensed premises to determine compliance of statuses and regulations; participating in the conduct task force inspections and joint investigations; completing inspections reports.
- Investigating forensic audits on organizations and businesses to determine fraudulent and inappropriate utilization of funds towards unauthorized purposes and expenses; determining accurate reporting of gambling revenue by examining gambling inventory levels; conducting thorough audits on

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Municipal Clerk Offices to ensure compliance with the maintenance of their docket books and cross-reference with the issuance of their municipal licenses.

Review and Analysis:

Your position is currently classified by the title Investigator 3 Law and Public Safety (P20-33856) the definition section of this job title states:

“Under supervision of a Supervising Investigator or under the guidance of an Investigator 1 or other supervisory official in the Department of Law and Public Safety, performs regulatory audits and inspections of licensed premises; reviews records, files , financial statements , and other transactions to determine compliance with rules or regulations governing consumer protection laws conducts , under guidance of a team leader , civil and regulatory investigative activities or specialized investigations to detect alleged noncompliance with or violations of New Jersey state statutes, administrative codes, or Professional Rules of Conduct or consumer protection laws; performs other related duties required.”

You contend that the title Investigator 2 Law and Public Safety (P22-33857) is an appropriate title for your position. The definition section of the job specification states:

“Under supervision of a Supervising Investigator or other supervisory official in the Department of Law And Public Safety, conducts in-depth regulatory and administrative audits and inspection of licensed premises; reviews records, files financial statements, and other transactions to determine compliance with rules or regulations governing consumer protection laws; performs other confidential and sensitive civil and regulatory investigative activities or specialized investigations to detect alleged noncompliance with or violations of New Jersey state statutes, administrative codes, Professional Rules of Conduct, or consumer protection laws; performs other related duties required.”

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A review of the duties and responsibilities for this position finds that this position gathers evidence and supporting documentation relevant to investigations; renders analysis of possible violations; secures credit history, financial assets, judgments, deeds, and criminal records; reviews financial records, bank statements, invoices, receipts, contracts, agreements, advertisements materials, bill of lading, and other records; reviews complaints; enforces statutes and regulations concerning laws and regulations; maintains cases in appropriate stages; finalizes cases for prosecution; conducts routine and covert inspections and surveillance of licensed and non-licensed premises to determine compliance of statutes and regulations; participates in conduct task force inspections and joint investigations; completes inspection reports; catalogs evidence for evidence room and attach copies of various evidence as exhibits for supervisor review; prepares and serves subpoenas, Uniform Penalty Letters(UPL), Warning Letters, Letters of Advise, Provisional and Final Order Discipline, Certificates of Debts, and other orders and legal documentation; initiates new investigations; reviews and investigates Bingo and Raffle Municipal License applications; records charitable gaming onto spreadsheet for investigate staff inspection; inspects electronic Bingo game systems to determine if systems are operating with New Jersey certified software; investigates various databases and generate monthly spreadsheets of all organizations; and conducts training seminars.

While the position does perform regulatory audits and inspections of licensed premises; reviews records, files, financial statements, and other transactions to determine compliance with rules or regulations governing consumer protection laws; these responsibilities are intrinsic to both the Investigator 2 Law and Public Safety and Investigator 3 Law and Public Safety. Furthermore, aspects, such as assisting the supervisor with training lower level Investigators or providing support to the supervisor with administrative tasks within the unit, provide some distinction between an Investigator 2 and 3. At present, these types' duties are not evident or are not performed for a significant portion of time to warrant a change in classification.

The preponderance of your duties and responsibilities are significantly descriptive of tasks assigned to the title Investigator 3 Law and Public Safety (P20-33856).

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Determination:

Based on the findings of fact above, it is my determination that the assigned duties and responsibilities performed by the position are best classified by the title Investigator 3 Law and Public Safety (P20-33856). Therefore, the classification of your position will remain unchanged.

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 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 written documentation and/or argument substantiating the portions of the determination being disputed and the basis for the appeal.

Sincerely,



Joseph Ridolfi, Team Leader
Agency Services

JR/ts

c: Ms. Margret Pillar, Law and Public Safety
Dulce Sulit-Villamor, Civil Service Commission

