



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Matthew Henderson,
Department of the Treasury

Classification Appeal

CSC Docket No. 2016-2470

ISSUED: **NOV 16 2016** (HS)

Matthew Henderson appeals the attached determination of the Division of Agency Services (Agency Services) that his position with the Department of the Treasury was properly classified as Special Agent 3. The appellant seeks a Special Agent 2 classification in this proceeding.

The record in the present matter establishes that at the time of his request for classification review, the appellant was serving permanently in the title of Special Agent 3. His position was located in the Division of Taxation, Office of the Director, Office of Criminal Investigation/Internal Security Administration.¹ Agency Services received the request on July 15, 2015; performed a detailed analysis of the appellant's Position Classification Questionnaire (PCQ) and other materials submitted in conjunction with his classification review request; and conducted a telephone audit. On the PCQ, the appellant indicated that for 30% of the time, he conducted investigations related to various civil and criminal violations of the New Jersey tax laws; conducted compliance inspections on various businesses; made arrests; interviewed subjects to identify extent of involvement in smuggling using advanced interviewing/interrogation techniques; and participated in joint investigations in cooperation with many different law enforcement agencies on the municipal, State and federal level. The appellant indicated that he investigated highly complex cases. For 20% of the time, he assisted field auditors with civil seizures. For 20% of the time, he filed charges against individuals; served summonses; and went to court. For 30% of the time, he conducted in-depth

¹ It is noted that the appellant separated from State service effective June 14, 2016.

investigations to find the suppliers and transporters of contraband untaxed goods; signed up and registered individuals as confidential informants; generated Tactical Operations Plans when serving as the case agent on controlled buys, arrests or "sweeps" (inspecting a group of businesses consecutively or at the same time); and utilized electronic surveillance equipment for which a court order was needed. The appellant indicated that he was performing and assisting in complex, in-depth investigations exceeding the scope of the Special Agent 3 title. The appellant's supervisor concurred that the appellant was exceeding the requirements of the Special Agent 3 title and was performing at the skill level of a Special Agent 2 and that the appellant had proved himself in meeting the requirements and demands of the Special Agent 2 title by working complex investigations, among other responsibilities. The appellant's supervisor also noted advanced investigative and interview/interrogation techniques among the knowledge and abilities necessary for standard performance of the job to be done by an incumbent. The appellant's supervisor and program manager both agreed with the appellant's description of his duties, the cited percentages of time and the proposed Special Agent 2 classification.

In its determination, Agency Services noted that the appellant reported to a Special Agent 1 and did not have supervisory responsibilities. Agency Services' review also found that the appellant: identified and investigated allegations of violations of the Cigarette Act Tax, Sales & Use Tax Act and/or other tax laws administered by the Division of Taxation; identified counterfeit Cigarette Tax stamps; assisted in the coordination of Tactical Operations Plans, which included compiling background information, objectives and/or specific instructions as to what the operation entails, address for nearest hospital and contact information for all agents involved in the operation; participated in joint investigations, which included long range surveillances, filing criminal charges against violators who have failed to comply with the established tax laws, assisting in making arrests and researching taxes and/or financial information necessary for trial; assisted field auditors with business seizures and/or closures; and acted as a witness in court, administrative and/or other hearings. Agency Services noted that a Special Agent 2 primarily performs duties of greater difficulty and sensitivity than those performed by a Special Agent 3; makes determinations on arrest procedures as well as interviews witnesses and perpetrators; and works with greater independence but possesses autonomy in the construction and development of investigations. Agency Services also noted that the types of cases assigned to a Special Agent 2 are characterized by any combination of the following: several taxpayers are involved; several types of offenses are involved; and taxpayers are of the "criminal" type. These investigations may cross several State lines or other State enforcement agencies and, in some cases, federal enforcement agencies are involved. Agency Services further noted that a Special Agent 2 is assigned to provide on-the-job training on a continuous basis to new Special Agents and to oversee their work as an assistant on cases. Based on the foregoing, Agency Services found that the appellant's assigned duties and responsibilities were commensurate with the title of Special Agent 3.

On appeal to the Civil Service Commission (Commission), the appellant argues that he conducted intra and interstate investigations of varying complexity to determine whether a criminal or civil statute of the New Jersey tax code was violated and worked with greater independence in the construction and development of investigations. He maintains that several types of offenses were involved in every one of his cases; that the taxpayers involved were all of the "criminal" type; that many of his investigations crossed State lines; and that many of his investigations also involved federal enforcement agencies. The appellant also contends that the list of his primary duties in Agency Services' determination is incomplete. For instance, he states that he also conducted in-depth undercover investigations of varied complexity in cases where violations of criminal and civil statutes of the tax laws are suspected; conducted in-depth surveillances of varied complexity in cases where violations of criminal and civil statutes of the tax laws are suspected; made legal determinations regarding the preparation of affidavits for search and seizure warrants and related documents involving apprehension and arrest procedures; and interrogated perpetrators and witnesses and took statements while ensuring that constitutional rights of those questioned are upheld. In addition, the appellant argues that a Special Agent 2 is not required to provide on-the-job training on a continuous basis to new Special Agents and to oversee their work as an assistant on cases since these duties are absent from the job specification. Thus, the appellant maintains that Agency Services should not have relied on whether he performed such duties.²

In response, Agency Services reiterates that a Special Agent 2 primarily performs work of greater difficulty and sensitivity than that performed by a Special Agent 3; makes determinations on arrest procedures; interviews witnesses and perpetrators; works with greater independence but possesses autonomy in the construction and development of investigations; and provides on-the-job training on a continuous basis to new Special Agents and oversees their work as an assistant on cases. It also reiterates that the types of cases assigned to a Special Agent 2 are characterized by any combination of the following: several taxpayers are involved; several types of offenses are involved; and taxpayers are of the "criminal" type. The investigations may cross several State lines or other State enforcement agencies and, in some cases, federal enforcement agencies are involved. Agency Services maintains that the level of complexity for the investigations conducted by the appellant warranting reclassification had not been demonstrated during the telephone audit.

² The appellant's program manager indicates that Agency Services' determination, dated December 29, 2015, was received in the appellant's unit on January 12, 2016 and urges the Commission to take mail delivery time into account in assessing the timeliness of this appeal. It is noted that the appellant's appeal dated January 13, 2016 was received by the Division of Appeals and Regulatory Affairs on January 15, 2016. As such, there is no substantive basis in the record to doubt the timeliness of the appellant's appeal, and the Commission accepts the appeal as timely filed within 20 days of receipt of Agency Services' determination. See *N.J.A.C.* 4A:3-3.9(e).

CONCLUSION

The definition section of the job specification for Special Agent 2 states:

Under the direction of a Supervising Special Agent, or other supervisory official in the Department of Treasury, conducts intra and interstate investigation functions related to criminal and civil violations of New Jersey tax laws administered by the Division of Taxation; recommends and initiates legal proceedings against violators and assists in the preparation of legal documentation and presentment of evidence for the prosecution in criminal and civil proceedings; does other related work.

The definition section of the job specification for Special Agent 3 states: Under direction of the Supervising Special Agent, or other supervisory official, in the Department of Treasury, conducts the less complex intra and interstate investigation functions related to criminal and civil violations of all New Jersey tax laws administered by the Division of Taxation; recommends and initiates legal proceedings against violators and assists in the preparation of legal documentation and presentment of evidence for the prosecution in criminal and civil proceedings; does related work as required.

A Special Agent 2 is expected to conduct intra and interstate investigation functions related to criminal and civil violations of New Jersey tax laws. A Special Agent 3 performs the less complex functions. The issue herein is whether the appellant's work constituted more complex work than that typically performed by a Special Agent 3. For the following reasons, reclassification is justified. On the PCQ, the appellant described his investigations as highly complex and exceeding the scope of the Special Agent 3 title; indicated that he participated in joint investigations in cooperation with many different law enforcement agencies on the municipal, State and federal level; and indicated that he interviewed subjects to identify extent of involvement in smuggling using advanced interviewing/interrogation techniques. He clarifies on appeal that he conducted intra and interstate investigations and in-depth surveillances of varying complexity. The appellant's supervisor concurred that the appellant was exceeding the requirements of the Special Agent 3 title and was performing at the skill level of a Special Agent 2 and that the appellant had proved himself in meeting the requirements and demands of the Special Agent 2 title by working complex investigations, among other responsibilities. The appellant's supervisor also noted advanced investigative and interview/interrogation techniques among the knowledge and abilities necessary for standard performance of the job to be done by an incumbent. The appellant's supervisor and program manager both agreed with the appellant's description of his duties and that reclassification to Special Agent 2

was warranted. Further, a Special Agent 2 is not required to provide on-the-job training on a continuous basis to new Special Agents and to oversee their work as an assistant on cases since such responsibilities do not appear in the job specification. As such, it was not necessary for the appellant to demonstrate performance of such duties in order to establish a Special Agent 2 classification of his position. The foregoing factors support a Special Agent 2 classification of the appellant's former position, and no other information in the record would dispute such a finding.

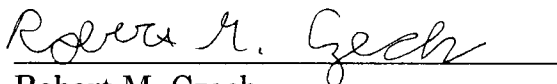
N.J.A.C. 4A:3-3.9(e)3i states that the effective date of a position reclassification shall be the pay period immediately after 14 days from the date an appropriate Commission representative received the appeal or reclassification request, or at such earlier date as directed by the Commission. As Agency Services received the appellant's request on July 15, 2015, the appropriate effective date of reclassification is August 8, 2015.

ORDER

Therefore, it is ordered that this appeal be granted and the former position of Matthew Henderson be reclassified to Special Agent 2 with an effective date of August 8, 2015. It is further ordered that the appointing authority pay Henderson differential back pay from August 8, 2015 until the date of his separation.

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 10TH DAY OF NOVEMBER, 2016



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

Attachment

- c. Matthew Henderson
Douglas Ianni
Kelly Glenn
Records Center



STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION
AGENCY SERVICES
P. O. Box 313
Trenton, New Jersey 08625-0313

Chris Christie
Governor
Kim Guadagno
Lt. Governor

Robert M. Czech
Chair Chief Executive Officer

December 29, 2015

Mr. Matthew Henderson
Department of the Treasury
Division of Taxation
50 Barrack Street
PO Box 284
Trenton, New Jersey 08695-0284

RE: Classification Appeal – Special Agent 3
AS Log# 07150204, Position# 074702, EID# [REDACTED]

Dear Mr. Henderson:

This is to inform you, and the Department of the Treasury, of our determination concerning your classification appeal. This determination is based upon a thorough review and analysis of all information and documentation submitted and a telephone audit conducted with you, and your immediate supervisor, Russell Glenn.

Issue:

You are appealing your current title of Special Agent 3 (FA18) is not consistent your current assigned duties and responsibilities. You contend that the title Special Agent 2 (FA21) is consistent with the duties that you currently perform.

Organization:

Your position is located in the Division of Taxation, Office of the Director, Office of Criminal Investigation/Internal Security Administration. You report directly to Russell Glenn, Special Agent 1 (K24) and you do not possess supervisory responsibility.

Finding of Fact:

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

- Identifying and investigating allegations of violations of the Cigarette Act Tax, Sales & Use Tax Act and/or other tax laws administered by the Division of Taxation.
- Identifying counterfeit Cigarette Tax stamps.
- Assisting in the coordination of Tactical Operations Plans which includes: compiling background information, objectives and/or specific instructions as to what the operation entails, address for nearest hospital, and contact information for all agents involved in the operation.
- Participating in joint investigations which includes: long range surveillances, filing criminal charges against violators who have failed to comply with the established tax laws, assisting in making arrests, and researching taxes and/or financial information necessary for trial.
- Assisting field Auditors with business seizures and/or closures.
- Acting as a witness in court, administrative and/or other hearings.

Review and Analysis:

Your position is currently classified by the title Special Agent 3 (FA18-51343). The definition section of the job specification for this title states:

“Under direction of the Supervising Special Agent, or other supervisory official, in the Department of Treasury, conducts the less complex intra and interstate investigation functions related to criminal and civil violations of all New Jersey tax laws administered by the Division of Taxation; recommends and initiates legal proceedings against violators and assists in the preparation of legal documentation and presentment of evidence for the prosecution in criminal and civil proceedings; does related work as required.”

You contend that the title Special Agent 2 (FA21-51344) is an appropriate title for your position. The definition section of the job specification for the title, Special Agent 2 (FA21-51344) states:

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“Under the direction of a Supervising Special Agent, or other supervisory official in the Department of Treasury, conducts intra and interstate investigation functions related to criminal and civil violations of New Jersey tax laws administrated by the Division of Taxation; recommends and initiates legal proceedings against violators and assists in the preparation of legal documentation and presentment of evidence for the prosecution in criminal and civil proceedings; does other related work.”

A Special Agent 2 primarily performs duties of greater difficulty and sensitivity than a Special Agent 3. They make determinations on arrest procedures as well as interview witnesses and perpetrators. Incumbents in this title work with greater independence but possess autonomy in the construction and development of investigations. The types of cases assigned are characterized by any combination of the following: several taxpayers are involved; several types of offenses are involved; taxpayers are of the “criminal” type, etc. These investigations may cross several state lines or other state enforcement agencies and, in some cases, Federal enforcement agencies are involved.

Also, the Special Agent 2 is assigned to provide on-the-job training on a continuous basis to new Special Agents and to oversee their work as an assistant on cases. Such training includes a variety of tasks including: conducting in-depth financial crime analysis and investigations, undercover investigations and various complex surveillance methods in cases where criminal violations of state laws are suspected; reviewing and analyzing complex financial statements and apply the findings to their own investigations; performing business inspections, arrest and process perpetrators and to develop and control confidential informants and cooperating witness; instructing on the preparation of investigative reports, subpoenas, affidavits and search warrants; and appearing with Special Agents in court and teach them how to present evidence and provide testimony.

A review of your primary job duties and responsibilities finds that this position is primarily responsible for: assisting in the coordination of Tactical Operation Plans which includes: compiling background information on the case, objectives and/or specific instructions as to what the operation entails, address of nearest hospital, and contact information on all agents involved in the operation; participating in joint investigations which includes: long range surveillances, filing criminal charges against violators who have failed to comply with the established tax law, assisting

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in making arrests, and researching tax and/or financial information necessary for trial; and assisting field Auditors with business seizures and/or closures.

Further, during the telephone audit it was stated the major change in your duties and/or responsibilities is the volume of work as a result of the unit being short staffed. Volume of work is not a factor in the classification of a position.

A comprehensive review and analysis of the assigned duties and responsibilities of your position find that they are significantly descriptive and commensurate with the tasks assigned to the title, Special Agent 3.

Determination:

Based upon the findings of fact above, it is my determination that the assigned duties and responsibilities of your position are properly classified by your current title, Special Agent 3 (FA18-51343).

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, PO 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,



Joseph Ridolfi, Team Leader
Agency Services

JR/rmd

c: Ms. Laura Budzinski, Treasury, Human Resources