



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Krista Tracey,
Department of the Treasury

Classification Appeal

CSC Docket No. 2016-2536

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

Krista Tracey appeals the attached determination of the Division of Agency Services (Agency Services) that her position with the Department of the Treasury is 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 her request for classification review, the appellant was serving permanently in the title of Special Agent 3. Her position is located in the Division of Taxation, Office of the Director, Office of Criminal Investigation/Internal Security Administration (OCI). Agency Services received the request on July 21, 2015; performed a detailed analysis of the appellant's Position Classification Questionnaire (PCQ) and other materials submitted in conjunction with her classification review request; and conducted a telephone audit. On the PCQ, the appellant indicated that for 50% of the time, she conducted in-depth, multi-tiered undercover investigations and/or surveillances of complex cases where violations of civil and criminal statutes of the law are suspected; developed and controlled confidential informants and cooperating witnesses; made legal determinations regarding the preparation of affidavits for search and seizure warrants, arrest warrants, probable cause statements and all other related legal documents; collected and maintained evidence; interviewed, interrogated and took statements from suspected actors; appeared at administrative, criminal and civil proceedings as a witness or complainant and presented evidence in grand jury or trial settings; and effected arrest and search warrants. For 40% of the time, she established and maintained continuing cooperation with local and federal law enforcement agencies; acted as

the lead special agent on business "sweeps" (the synchronized inspection of numerous business in a geographic area requiring the coordination of multiple law enforcement agencies), which involved the responsibility for assigning all duties/functions of personnel from both OCI and the outside/assisting agencies; assumed the lead role on surveillance operations, which required organizing, preparing and compiling tactical operations plans and overseeing a productive rolling surveillance over the course of a day; handled extremely complex assignments; and developed investigative plans of action on multi-level cases. For 10% of the time, she acted as the Financial Crimes Enforcement Network coordinator/liaison. The appellant's supervisor stated that the appellant was successful in coordinating sweeps and vehicle surveillances that involved several law enforcement agencies; noted "complex investigative skills with results that sustain convictions" among the most important duties of the position; and noted "complexity of investigations" and "significant coordination of multi-agency/multi-jurisdiction operations" 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 her duties, the cited percentages of time and the proposed Special Agent 2 classification.

In its determination, Agency Services noted that the appellant reports to a Special Agent 1 and does not have supervisory responsibilities. Agency Services' review also found that the appellant: conducted investigations for cigarette smuggling, counterfeiting tax indicia and counterfeit products including foreign manufacturing, motor fuels, alcoholic beverage smuggling and other taxed commodities; made legal determinations regarding the preparation of case specific affidavits for search and seizure warrants, arrest warrants, probable cause statements and all other legal documents according to directives from the Attorney General's Office; collected and maintained evidence related to investigations of tax law violations including background data, conviction records and judgment records using various reports and software available to the unit; collected and analyzed information about financial transactions in order to combat domestic and international money laundering, terrorist financing and other crimes; 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; and acted as the Financial Crimes Enforcement Network coordinator/liaison for OCI. 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 she conducts intra and interstate investigations of varying complexity to determine whether a criminal or civil statute of the New Jersey tax code was violated. She maintains that she works with greater independence in the construction and development of investigations; that several types of offenses are involved in every one of her cases; that the taxpayers involved are always of the "criminal" type; that many of her investigations cross State lines; and that a "great deal" of her investigations have involved federal, local and other State enforcement agencies. The appellant also contends that the list of her primary duties in Agency Services' determination represents only a fraction of her duties. For instance, she states that she also interrogates perpetrators and witnesses and takes statements while ensuring that constitutional rights of those questioned are upheld and conducts in-depth surveillance of varied complexity in cases where violations of criminal and civil statutes of the tax laws are suspected. She states that she was the lead Special Agent in the analysis of complex financial records related to an investigation that she could not disclose at the time of the classification review. The appellant states that she is required to not only handle her day-to-day investigations but also take on the responsibilities of a particular discipline or area of expertise that has complex requirements and knowledge, skills and abilities. 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 she performed such duties.¹

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

¹ 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 15, 2016 was received by the Division of Appeals and Regulatory Affairs on January 19, 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)*.

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.

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 constitutes more complex work than that typically performed by a Special Agent 3. For the following reasons, reclassification is justified. On the PCQ, the appellant indicated that she conducted in-depth, multi-tiered undercover investigations and/or surveillances of complex cases; acted as the lead special agent on business "sweeps," which required the coordination of multiple law enforcement agencies; handled extremely complex assignments; made legal determinations regarding the preparation of affidavits for search and seizure warrants, arrest warrants, probable cause statements and all other related legal documents; and

interviewed, interrogated and took statements from suspected actors. She clarifies on appeal that she conducted intra and interstate investigations and in-depth surveillances of varying complexity. The appellant's supervisor confirmed that the appellant was successful in coordinating sweeps and vehicle surveillances that involved several law enforcement agencies; noted "complex investigative skills with results that sustain convictions" among the most important duties of the position; and noted "complexity of investigations" and "significant coordination of multi-agency/multi-jurisdiction operations" among the necessary knowledge and abilities. The appellant's supervisor and program manager both agreed with the appellant's description of her 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 her position. The foregoing factors support a Special Agent 2 classification of the appellant's position, and no other information in the record would dispute such a finding.

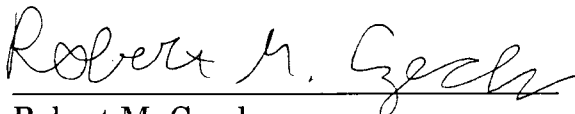
N.J.A.C. 4A:3-3.9(e)3i states that the effective date of a position reclassification shall be the pay period immediately after 14 days from the date an appropriate Commission representative received the appeal or reclassification request, or at such earlier date as directed by the Commission. As Agency Services received the appellant's request on July 21, 2015, the appropriate effective date of reclassification is August 8, 2015.

ORDER

Therefore, it is ordered that this appeal be granted and the position of Krista Tracey be reclassified to Special Agent 2 with an effective date of August 8, 2015.

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. Krista Tracey
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

Ms. Krista Tracey
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# 07150206, Position# 097827, EID# [REDACTED]

Dear Ms. Tracy:

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.

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Finding of Fact:

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

- Conducting investigations for cigarette smuggling, counterfeiting tax indicia, and counterfeit products including: foreign manufacturing, motor fuels, alcoholic beverage smuggling, and other taxed commodities.
- Making legal determinations regarding the preparation of case specific affidavits for search and seizure warrants, arrest warrants, probable cause statements, and all other legal documents according to directives from the Attorney General's Office.
- Collecting and maintaining evidence related to investigations of tax law violations including: background data, conviction records and judgment records using various reports and software available to the unit.
- Collecting and analyzing information about financial transactions in order to combat domestic and international money laundering, terrorist financing and other financial crimes.
- 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.
- Acting as the Financial Crimes Enforcement Network (FinCEN) coordinator/liaison for the Office of Criminal Investigation.

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.”

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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:

“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.”

A Special Agent 2 is 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 position 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. The investigation 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: Conducting investigations for cigarette smuggling.

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counterfeiting tax indicia, and counterfeit products including: foreign manufacturing, motor fuels, alcoholic beverage smuggling, and other taxed commodities; 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; acting as the Financial Crimes Enforcement Network (FinCen) coordinator/liaison for the Office of Criminal Investigation.

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