



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION

In the Matter of Elizabeth Hartmann and Damian Ward, Department of the Treasury

CSC Docket Nos. 2016-1423 and 2016-1498

Classification Appeals

ISSUED: NOV 30 2016 (CSM)

Elizabeth Hartmann and Damian Ward appeal the attached decisions of the Division of Agency Services (Agency Services) that the proper classification of their positions with the Department of the Treasury is Investigator 2, Taxation. The appellants seek Investigator 1, Taxation classifications. These appeals have been consolidated due to common issues presented.

The record in the present matter establishes that at the time the appellants filed their requests for classification review, they were serving as Investigator 2s, Taxation. The appellants' positions are located in the Division of Taxation. Hartmann is supervised by John Shetler, Supervising Investigator, Taxation and Ward is supervised by Robert Egan, Supervising Investigator, Taxation. The appellants sought reclassification, contending that their positions would be more appropriately classified as Investigator 1, Taxation. In support of their requests, the appellants submitted Position Classification Questionnaires (PCQs) detailing the different duties that they performed. Agency Services reviewed all documentation supplied by the appellants including their PCQs and organizational charts of their work units. Based on its review of the information provided, Agency Services concluded that the appellants' positions do not supervise professional employees and were properly classified as Investigator 2, Taxation.

On appeal, Hartmann states that the Investigator 1, Taxation title does not have the responsibility for signing PARs. Rather, incumbents in the title are only required to assist in the supervision of subordinate investigators. Therefore, given that her duties include but are not limited to monitoring and approving attendance requests, attending meetings in the absence of the regular supervisor, and assisting

in the formulation and evaluation of subordinate PARs, Hartmann contends that her position assists in the supervision of subordinate investigators. Further, Hartmann claims that Agency Services reclassified the positions of three other employees to Investigator 1, Taxation even though those individuals never signed PARs. As additional evidence, Hartmann emphasizes that Agency Services reclassified another employee's position to Supervising Investigator, Taxation, a second level supervisory title. She notes that in *In the Matter of Michael McSloy* (CSC, decided February 4, 2015), the Commission stated that titles assigned to the second level supervisory unit are required to supervise at least one primary level supervisor. Thus, since that position was reclassified to a second level supervisory title, Hartmann contends that Agency Services must have realized at the time of that action that the positions under him "(all of whom were and still are Investigator 2s, Taxation), were performing the duties of Investigator 1, Taxation." If this were not the case, that position could not have been reclassified to Supervising Investigator, Taxation.

In a supplemental submission, Hartmann provides a copy of a memorandum dated October 19, 2015 from the Director, Division of Agency Services, regarding the Investigator 1, Taxation title and states that it has been unknown to management, her union representatives, nor cited in the Primary Level Supervisors Unit contract manual, that titles assigned to a supervisory bargaining unit must supervise employees. Thus, since the job specification for Investigator 1, Taxation makes no direct or inferred reference whatsoever to the requirement of signing PARs, local management consistently approved numerous PCQs in cases where the incumbent did not sign PARs. Thus, since the job specification only indicates that an incumbent "assists in the supervision of subordinate investigators" but not the signing of PARs, her position should be reclassified.

Ward asserts that nowhere in the job definition does it directly address or even infer that an incumbent is required to have PAR responsibility in order for the position to be classified as Investigator 1, Taxation. In this regard, he notes that key distinction between the Investigator 1, Taxation and Supervising Investigator, Taxation title is supervision. Further, Ward asserts that Agency Services, in addition to the individuals specified by Hartmann, reclassified the positions of two additional individuals to Investigator 1, Taxation, even though they do not conduct and sign PARs.

CONCLUSION

At the time of the classification review, the definition section of the job specification for Investigator 1, Taxation states:

Under direction of a Supervising Investigator, Taxation, or other higher level supervisory officer in the Division of Taxation,

Department of Treasury, assists in the supervision of subordinate investigators; conducts independent investigations of a more complex nature as they relate to the collection of tax revenues, delinquent and/or deficient taxes, abatements, and enforcement of tax statutes administered by the Division of Taxation; trains new investigators; may be assigned to either a field or central office location; does related work as required.

However, as a result of these appeals, Agency Services conducted an exhaustive review of the title history for Investigator 1, Taxation. As a result of this review, clarifications were made to the job specification for Investigator 1, Taxation to ensure that it clearly reflected the supervisory nature of this classification. Thus, the definition portion of the job specification for Investigator 1, Taxation, now states:

Under the direction of a Supervising Investigator or other higher level supervisory official in the Division of Taxation, Department of Treasury, supervises a team or unit of subordinate investigators; may be required to conduct independent investigations of a more complex nature as they relate to the collection of tax revenues, delinquent and/or deficient taxes, abatements, and enforcement of tax statutes administered by the Division of Taxation; trains new investigators; supervises staff and work activities and signs official performance evaluations for subordinate staff; may be assigned to either a field or central office location; does related work as required.

The definition section of the job specification for Investigator 2, Taxation states:

Under direction of a Supervising Investigator, Taxation, or other higher level supervisory officer in the Division of Taxation, Department of Treasury, performs investigation of a more complex nature as they relate to the collection of tax revenues, delinquent and/or deficient taxes, abatements, and enforcement of tax statutes administered by the Division of Taxation; assists in the training of subordinate investigators; may be assigned to either a field or central office location; does related work as required.

Based upon a thorough review of the information presented in the record, it is clear that the appellants' positions are properly classified as Investigator 2, Taxation. The Investigator 1, Taxation title is assigned to the "R" Employee Relations Group (ERG). In this respect, titles are assigned to ERGs based on the classification of the position by this agency. *See N.J.S.A. 11A:3-1.* Each ERG is distinctly defined, and the "R" ERG is defined as those titles used in the primary or

first level of supervision. A factor in the Commission's setting the compensation for "R" titles is that employees in this bargaining unit all have the authority to recommend hiring, firing, and disciplining of employees who supervise subordinate employees. *See In the Matter of Alan Handler, et al.* (CSC, decided October 7, 2015 (Commission found that Auditor 1 was a supervisory level position based on job definition, duties, and inclusion in the "R" ERG). Additionally, classifying employees in a title in the "R" ERG without performance evaluation responsibility for staff members could create a conflict of interest between incumbents in the title who do not supervise subordinate staff and those in the same title who are required to supervise subordinate staff. Therefore, in order for a position to be classified as a primary level supervisory title, incumbents are required to be the rater of employee performance using a formal performance evaluation system.

A review of the Investigator, Taxation title series indicates that the Investigator Trainee, Taxation, Investigator 3, Taxation, and Investigator 2, Taxation titles are assigned to the professional, or "P" ERG. Titles assigned to the "P" ERG are non-supervisory titles. The Investigator 1, Taxation title is assigned to the primary or first level supervisory, or "R" ERG. Titles assigned to the "R" ERG are first level supervisory titles and incumbents have the responsibility for effectively recommending the hiring, firing, promoting, demoting, and/or disciplining employees in non-supervisory titles. Indeed, as well as the job definition section, the job specification for Investigator 1, Taxation supports the position that it is a supervisory title given that incumbents must have the:

Ability to supervise the work of subordinate investigators engaged in routine and special investigations of taxpayers.

The Commission has long defined a supervisor as an incumbent who is responsible for performing performance evaluations of subordinate staff. Performance evaluation authority is a reasonable standard because it is the means by which it can be demonstrated that a supervisor can exercise his or her authority to recommend hiring, firing, and disciplining of subordinate employees. Simply stated, the actual authority and exercise of performance evaluation of subordinate staff is what makes a supervisor a supervisor. *See In the Matter of Alexander Borovskis, et al.* (MSB, decided July 27, 2005). *See also In the Matter of Timothy Teel* (MSB, decided November 8, 2001) (It was determined that the **essential component** of supervision is the responsibility for formal performance evaluation of subordinate staff). Merely making recommendations regarding a subordinate's performance, or even assisting in the preparation of a performance evaluation is not sufficient. Rather, to be considered a supervisor, the individual must be the person actually administering and signing off on the evaluation as the subordinate's supervisor. In this regard, only the individual who signs the evaluation as the supervisor can be considered to have the ultimate decision-making responsibility for that subordinate's rating. Therefore, as the appellants do not sign subordinate

ePARs, they cannot be considered primary level supervisors. *See In the Matter of Joshua Brown, et al.* (CSC, decided November 18, 2015). *See also In the Matter of Dana Basile, et al.* (CSC November 5, 2015). Instead, what the appellants describe is that they have lead worker responsibilities as they are responsible for the oversight and assistance of staff members at the same or lower levels in the title series but do not have performance evaluation authority over subordinate staff.

Moreover, notwithstanding the fact that these, as well as other "R" job specifications that contain similar language, may be in effect at the time an individual files a classification appeal, the Commission would be remiss in its statutory obligations by permitting the continued misapplication as it would result in the never-ending misclassification of positions. In this regard, the Commission, *not* the Division of Taxation, nor any other State or local government appointing authority, nor any recognized employee collective bargaining agent, has the final authority to administer the State Classification Plan and to assign and reassign titles to appropriate positions. *See N.J.S.A. 11A:3-1.* While this agency may rely on impacted appointing authorities and other affected parties for input regarding potential changes, the Legislature has clearly delegated final authority for all issues surrounding *position classification* with this agency. Thus, while Hartmann and local management may not be aware of this agency's policy requiring an incumbent to sign PARs of subordinate staff, this does not preclude the Commission from taking corrective action in cases such as this where there has been a gross misapplication of the State Classification Plan. Further, due to ongoing concerns with the job specification for the title, the Commission determined it would be unfair to classify the appellant's position to a title that will misclassify her duties.

In these cases, based on the information presented in the record, it is clear that the appellants' positions are properly classified as Investigator 1, Taxation. Hartmann essentially argues that she performs higher level duties, consistent with supervisory level duties, given that she supervises in the absence of the regular supervisor and her direct input and work handling her team's work-related issues on a continuous and regular basis. However, Hartmann does not supervise lower level staff in the context of the State Classification Plan. As noted above, it is well established that supervisory duties include responsibility for seeing that tasks assigned to subordinates are efficiently accomplished. It involves independent assignment and distribution of work to employees, with oral or written task instructions, and maintenance of the flow and quality of work within a unit in order to ensure timely and effective fulfillment of objectives. Supervisors are responsible for making available or obtaining materials, supplies, equipment, and/or plans necessary for particular tasks. They provide on-the-job training to subordinates when needed, and make employee evaluations based on their own judgment. They have the authority to recommend hiring, firing, and disciplining employees. *See In the Matter of Julie Petix* (MSB, decided January 12, 2005). In the present matter, neither appellant is responsible for the preparation of performance evaluations. As

noted earlier, the duties described by the appellants are those of a lead worker. Taking the lead is not considered a supervisory responsibility. An incumbent in a leadership role refers to 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 lower level than themselves and perform the same kind of work as that performed by the group being led. *See In the Matter of Catherine Santangelo* (Commissioner of Personnel, decided December 5, 2005). The performance of lead worker duties is consistent with an Investigator 2, Taxation classification because it is a non-supervisory duty assigned to a non-supervisory title.

In regard to the appellants' arguments that they perform higher level duties, the fact that some of an employee's assigned duties may compare favorably with some examples of work found in a given job specification is not determinative for classification purposes, since, by nature, examples of work are utilized for illustrative purposes only. Moreover, it is not uncommon for an employee to perform some duties which are above or below the level of work which is ordinarily performed. 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. Additionally, a classification appeal cannot be based solely on a comparison to the duties of another position, *especially if that position is misclassified*. *See In the Matter of Carol Maita, Department of Labor* (Commissioner of Personnel, decided March 16, 1995). Therefore, because the Investigator 1, Taxation job definition and examples of work so require, as well as its inclusion in the "R" ERG, incumbents in the classification must prepare formal performance evaluations. Accordingly, since the appellants do not have this responsibility, their positions cannot be classified Investigator 1, Taxation.

Some additional matters warrant comment. As part of both appellants' submissions, they claimed that other individuals had their positions reclassified by Agency Services to Investigator 1, Taxation even though those individuals never signed PARs. Further, Hartmann states that another position was reclassified to a second level supervisory title at a time when the positions under him "(all of whom were and still are Investigator 2s, Taxation), were performing the duties of Investigator 1, Taxation." Notwithstanding these allegations, it cannot be ignored that the Commission reviews each appeal on the specific facts and circumstances presented in that situation. Regardless, as earlier noted, Agency Services extensively reviewed the State Classification plan and determined that it was improper to classify a non-supervisory position with a title that is primarily supervisory in nature. The Commission sustained this policy change in subsequent challenges made well after Agency Services' 2012 decisions in the matters referenced by the appellants. *See Handler, et al., Brown, et al., and Basile, et al., supra*. However, in light of the information concerning the utilization of the Investigator 1, Taxation title provided in these appeals, the Department of the

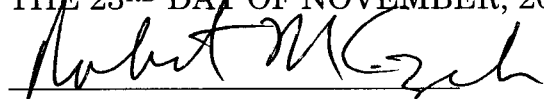
Treasury is directed to ensure that **any** employee in a primary level supervisory title is currently assigned appropriate supervisory duties as described above.

ORDER

Therefore, it is ordered that these appeals be denied. It is further ordered that the Department of the Treasury ensure that **any** employee in the primary level supervisory title of Investigator 1, Taxation, is assigned appropriate supervisory duties.

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 23RD DAY OF NOVEMBER, 2016



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Director
Division of Appeals
& Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
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Attachments

c: Elizabeth Hartmann
Damian Ward
Douglas Ianni
Kelly Glenn
Records Center



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Robert M. Czech
Chair Chief Executive Officer

September 10, 2015

Ms. Elizabeth Hartmann
[REDACTED]
[REDACTED]

**RE: Classification Appeal, Investigator 2, Taxation,
AS LOG# 03150202, Position# 006769, EID# 000666583**

Dear Ms. Hartmann:

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 interview conducted with your immediate supervisor, Jon Shetler, on September 1, 2015.

Issue:

You are appealing that your current title of Investigator 2, Taxation (P22) is not consistent with your current assigned duties and responsibilities. You contend that the title of Investigator 1, Taxation (R25) is an appropriate title for your position.

Organization:

Your position is located in the Department of the Treasury, Division of Taxation, Compliance Services, Bulk Sales B, and you report directly to Jon Shetler, Supervising Investigator, Taxation (S28). Your position does not possess supervisory responsibility.

Finding of Fact:

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

Ms. Elizabeth Hartmann

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- Assigning and reviewing the work of Investigators in the Bulk Sales B section and approving or denying refund requests. Assisting Investigators with questions that may arise.
- Reviewing, analyzing, and processing complex and high liability cases received by the Bulk Sales B section. Conferring with members of the public and their representatives to resolve complex issues.
- Approving clearance letters, demand letters, and warrants of satisfaction in the absence of the supervisor.
- Attending weekly meetings to review, analyze, and determine Bulk Sales B section objectives.
- Compiling and recording statistics for the Bulk Sales B section for monthly reports.
- Reviewing case inventory of personnel and reporting to the supervisor any Investigators that are not in compliance with set standards.
- Mentors new Investigators assigned to the Bulk Sales B section on a continuing basis.

Review and Analysis:

In reviewing your request, various titles were examined in relation to the overall duties being performed by your position to determine the appropriate classification for the tasks described by you and your supervisor.

Your position is currently classified by the title, Investigator 2, Taxation (51593-P22). The definition section of the job specification for this title states:

“Under the direction of a Supervising Investigator or other higher level supervisory officer in the Division of Taxation, Department of the Treasury, performs investigations of a more complex nature as they relate to the collection of tax revenues, delinquent and/or deficient

Ms. Elizabeth Hartmann

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taxes, abatements, and enforcement of tax statutes administered by the Division of Taxation; assists in the training of subordinate investigators; may be assigned to either a field or central office location; does related work as required”.

Your classification appeal submission indicates that you believe the title Investigator 1, Taxation (51594-R25) is an appropriate title for your position. The definition section for this title states:

“Under the direction of a Supervising Investigator or other higher level supervisory officer in the Division of Taxation, Department of Treasury, assists in the supervision of subordinate investigators; conducts independent investigations of a more complex nature as they relate to the collection of tax revenues, delinquent and/or deficient taxes, abatements, and enforcement of tax statutes administered by the Division of Taxation; trains new investigators; may be assigned to either a field or central office location; does related work as required”.

The Investigator 2, Taxation and Investigator 1, Taxation titles are similar in nature as they are part of the same title series. However, the Investigator 1, Taxation title is considered a primary level supervisor, and thus incumbents are responsible for preparing and signing Performance Assessment Reviews (PARs) in the evaluation of subordinate personnel. Your position does not possess this responsibility; therefore, the Investigator 1, Taxation title is not appropriate for this position.

A review of your position finds that it is responsible for assigning and reviewing the work of lower level Investigators, independently processing high liability cases, mentoring new Investigators, and performing other related duties as a functioning lead worker. However, your position does not have the responsibility of conducting PARs, which is a key distinction between the two titles of this series.

A comprehensive review and analysis of your position finds that the assigned duties and responsibilities of this position are best classified by the title of Investigator 2, Taxation (P22).

Ms. Elizabeth Hartmann
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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 the title Investigator 2, Taxation (51593-P22).

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 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/tc

c: Ms. Laura Budzinski, Treasury Human Resources



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Robert M. Czech
Chair, Chief Executive Officer

September 21, 2015

Mr. Damian Ward
[REDACTED]
[REDACTED]

**RE: Classification Appeal, Investigator 2, Taxation,
AS LOG# 03150392, Position# 006483, EID# 000349290**

Dear Mr. Ward:

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, Robert Egan, on September 3, 2015.

Issue:

You are appealing that your current title of Investigator 2, Taxation (P22) is not consistent with your current assigned duties and responsibilities. You contend that the title of Investigator 1, Taxation (R25) is an appropriate title for your position.

Organization:

Your position is located in the Department of the Treasury, Division of Taxation, Compliance Services, Bulk Sales A, and you report directly to Robert Egan, Supervising Investigator, Taxation (S28). Your position does not possess supervisory responsibility.

Finding of Fact:

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

Mr. Damian Ward
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- Assigning and reviewing the work of Investigators in the Bulk Sales A section. Assisting other Investigators with questions that may arise.
- Reviewing and approving Clearance, Transfer, and Denial letters, Notice of Demand letters, Certificates of Debt and Warrants of Satisfaction from other Investigators.
- Analyzing business and individual tax accounts of a more complex nature and high liability cases. Calculating the appropriate amount of money to hold at the time of closing to ensure taxpayer compliance with State tax laws.
- Compiling and recording pertinent statistics for Bulk Sales A monthly reports.
- Mentoring new Investigators assigned to the Bulk Sales A section and continuing to assist beyond the training period.
- Referring unpaid cases to appropriate field offices for further collection within 5 days of the issuance of the Certificate of Debt.

Review and Analysis:

In reviewing your request, various titles were examined in relation to the overall duties being performed by your position to determine the appropriate classification for the tasks described by you and your supervisor.

Your position is currently classified by the title, Investigator 2, Taxation (51593-P22). The definition section of the job specification for this title states:

“Under the direction of a Supervising Investigator or other higher level supervisory officer in the Division of Taxation, Department of the Treasury, performs investigations of a more complex nature as they relate to the collection of tax revenues, delinquent and/or deficient taxes, abatements, and enforcement of tax statutes administered by the Division of Taxation; assists in the training of subordinate investigators; may be assigned to either a field or central office location; does related work as required.”

Mr. Damian Ward
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Your classification appeal submission indicates that you believe the title Investigator 1, Taxation (51594-R25) is an appropriate title for your position. The definition section for this title states:

“Under the direction of a Supervising Investigator or other higher level supervisory officer in the Division of Taxation, Department of Treasury, assists in the supervision of subordinate investigators; conducts independent investigations of a more complex nature as they relate to the collection of tax revenues, delinquent and/or deficient taxes, abatements, and enforcement of tax statutes administered by the Division of Taxation; trains new investigators; may be assigned to either a field or central office location; does related work as required.”

The Investigator 2, Taxation and Investigator 1, Taxation titles are similar in nature as they are part of the same title series. However, the Investigator 1, Taxation title is considered a primary level supervisor, and thus incumbents are responsible for preparing and signing Performance Assessment Reviews (PARs) in the evaluation of subordinate personnel. Your position does not possess this responsibility; therefore, the Investigator 1, Taxation title is not appropriate for this position.

A review of your position finds that your position is responsible for assigning and reviewing the cases of other Investigators, independently processing complex and high liability cases, mentoring new Investigators, compiling monthly statistics, and performing other related duties as a functioning lead worker. However, this position does not have the responsibility of conducting PARs, which is a key distinction between the two titles of the series.

A comprehensive review and analysis of your position finds that the assigned duties and responsibilities of this position are best classified by the title of Investigator 2, Taxation (P22).

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 the title Investigator 2, Taxation (51593-P22).

Mr. Damian Ward
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September 21, 2015

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 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/tc

c: Ms. Laura Budzinski, Treasury Human Resources