



STATE OF NEW JERSEY

In the Matter of Joy Farber,
Department of Transportation

CSC Docket No. 2023-1376

**FINAL ADMINISTRATIVE ACTION
OF THE CHAIR/
CHIEF EXECUTIVE OFFICER
CIVIL SERVICE COMMISSION**

Classification Appeal

ISSUED: April 19, 2023 (SLK)

Joy Farber appeals the determination of the Division of Agency Services (Agency Services) that the proper classification of her position with the Department of Transportation (DOT) is Research Analyst 3 (RA3). The appellant seeks a Regulatory Officer 2 (RO2) classification.

The record in the present matter establishes that the appellant's permanent title is RA3. The appellant sought reclassification of her position, alleging that her duties were more closely aligned with the duties of a RO2. The appellant reported to Paul Sprewell, a former Manager 2, DOT¹, at the time of the classification review. In support of her request, the appellant submitted a Position Classification Questionnaire (PCQ) detailing the duties that she performs as a RA3. Agency Services reviewed and analyzed the PCQ and all information and documentation submitted. Agency Services found that the appellant's primary duties and responsibilities entailed, among other things: reviewing policies and revising drafts to ensure adherence to legislative and internal policies; researching to identify the requirements of legislation and rules as they pertain to DOT administrative procedures; assisting the subject matter experts to draft policy recommendations for final draft approval; and reviewing State and federal statutory revisions as it pertains to DOT programs and functions. In its decision, Agency Services determined that the

¹ Sprewell resigned effective September 23, 2022. He is now a Legal Specialist with the Office of Information Technology.

duties performed by the appellant were consistent with the definition and examples of work included in the job specification for RA3.

On appeal, the appellant presents that the practice of law may only be performed by a member of the State bar. She indicates that she prepares administrative policies which is work that involves researching, reviewing, and revising draft policy documents to comply with the law. The appellant states that these duties are the performance of legal work and are considered the practice of law. She contends that it is a crime for someone who is not admitted to the State bar to perform legal work in New Jersey. She notes that her coworkers who work on DOT administrative policies are not admitted to practice law and she is the only one who is assigned duties and has the credentials to determine legal sufficiency prior to routing administrative procedures to the Commissioner for consideration and signature.

The appellant provides that she drafts the language necessary for policies to comply with legal requirements based on her legal research. She contends that the determination letter parsed words from the documentation she submitted in support of her position classification review by indicating that her work involves “helping draft policies” and she “cooperate[s] with operating units to ensure their compliance,” which reduces the nature of her work to a support role by creating a presumption that someone else performs the Regulatory Officer-level legal work involved in writing policies. The appellant states that the fact that the drafting process is a cooperative effort does not signify that someone else is doing the legal research or other legal work. She highlights that other drafters are not authorized to revise legal advice language to ensure that the policies meet legal requirements and she performs this duty alone. The appellant reiterates that she makes the final determination on whether any proposed revisions adequately reflect how to comply with the legal requirements before routing the final administrative policies up the chain-of-command for approval.

The appellant contends that the determination did not indicate other legal work that she performs. She states that she is routinely asked to perform legal research and write up findings, which many times are assignments to prepare legal opinions. For example, the appellant provides that she was asked to analyze potential impacts of legislation changing regulations of cannabis use in New Jersey on DOT policies. She initially prepared a 10-page responsive document and then she was directed by her then-manager to prepare a one-page document and instructed to add at the bottom, “This memo should not be construed as a legal opinion.” The appellant states that she found this directive to be suspect as a disclaimer cannot render a legal opinion something other than a legal opinion. She emphasizes that her assignments involve providing legal advice and she is not provided any assistance on relatively complex policy and procedure matters. She asserts that if the Civil Service Commission were to compel her to discontinue rendering legal advice, but

still move policies up the chain-of-command, this would put both herself and the DOT acting in furtherance of a crime by allowing individuals not admitted to the State bar to practice law without a license.

CONCLUSION

N.J.A.C. 4A:3-3.9(e) states that in classification appeals, the appellant shall provide copies of all materials submitted, the determination received from the lower level, statements as to which portions of the determination are being disputed, and the basis for appeal. Information and/or argument which was not presented at the prior level of appeal shall not be considered.

The definition section of the RA3 (P25) job specification states:

Under direction of a supervisory official in a state department or agency, performs legislative research in connection with department programs and prepares reports, summaries, and recommendations on the impact/scope of legislation or regulations; does other related work.

The definition section of the RO2 (P29) job specification states:

Under limited supervision of a supervisory official or other designated official in a state department, institution, or agency, functions independently on routine issues, and assists with respect to complex regulatory matters, formal and informal, both legislative and quasi-judicial in nature, including matters related directly to administrative procedure and policy matters considered by the agency; does related work as required.

In this present matter, a review of the job specification definition sections indicates that the distinguishing characteristic between the two titles is that RO2s, in addition to legislative duties, perform duties that are quasi-judicial in nature while RA3s do not. A review of the appellant's PCQ, as well as her appeal, indicates that she researches, writes, and analyzes law and regulations so that the DOT can develop administrative policies for its programs that comply with the law or so that it can understand the impact of legislation and regulation on its existing policies for programs and she has not indicated that her work involves matters that are quasi-judicial in nature, such as drafting and issuing administrative decisions or assisting with or participating in administrative hearings or proceedings.

Concerning the appellant's assertion that her position needs to be reclassified to RO2 because she believes that she is engaging in the practice of law, Executive Order # 6 (Florio, March 14, 1990) prohibits the practice of law in State government except by the Attorney General's Office, or those authorized to do so by the Attorney

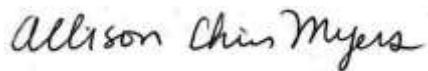
General. Further, Executive Order #6 states that attorneys may be employed State entities to provide guidance on the nature and substance of various statutes and regulations. As such, contrary to the appellant's belief, while she is providing guidance on the nature and substance of various statutes and regulations, these duties while employed by a State agency are not considered the practice of law. Therefore, her position does not need to be reclassified to avoid the unauthorized practice of law. In this regard, RO2s are not engaging in the practice of law under Executive Order #6. Further, even if it is true that the appellant regularly performs these duties alone without any "legal substance" supervision or that others who are involved in the developing administrative policies do not possess legal backgrounds and do not make substantive legal changes to her work, how well or efficiently an employee does his or her job, length of service, volume of work and qualifications have no effect on the classification of a position currently occupied, as *positions*, not employees are classified. See *In the Matter of Debra DiCello* (CSC, decided June 24, 2009). Accordingly, the appellant is properly classified as a RA3.

ORDER

Therefore, it is ordered that this appeal be denied.

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

DECISION RENDERED ON
THE 19TH DAY OF April, 2023



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