



B-20

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of John Kelly,
Department of the Treasury

CSC Docket No. 2015-2485

Classification Appeal

ISSUED: JUN 19 2015

(RE)

John Kelly, represented by Steven Blader, Esq., appeals the attached decision of the Division of Agency Services (DAS) which found that his position with the Department of the Treasury is properly classified as Legislative Liaison. He seeks a Chief of Operations, Treasury job classification in this proceeding.

Mr. Kelly received an appointment to the unclassified title Legislative Liaison on September 13, 2008, and was an Administrative Analyst 2 prior to that. This position is located in the Department of the Treasury, Division of Taxation, Counsel Services, Office of Legislative Analysis and Disclosure, and reports to Sheri Silverstein, Senior Executive Service. The position is responsible for direct supervision of a Regulatory Officer 3, an Administrative Analyst 2, and a Taxpayer Service Representative 3. He submitted a classification appeal arguing that his duties were in line with the title of Chief of Operations, Treasury.

The classification review found that Mr. Kelly's assigned duties and responsibilities, as detailed in DAS's decision, were commensurate with the title of Legislative Liaison. On appeal, Mr. Kelly argues that DAS's determination ignores the management structure of the Division of Taxation, thereby devaluing his reporting relationship; mischaracterizes his responsibilities; and ignores his managerial responsibilities. Specifically, as to the management structure of the Division, the appellant explains that the Director directly supervises five Deputy Directors, a Chief of Staff and a Special Agent In Charge. Additionally, he points out that there are six Assistant Directors (one vacant), one Deputy Chief of Staff and nineteen Chief positions (three vacant). A Deputy Director supervises the

Office of Counsel Services, and the appellant's supervisor is an Assistant Director to this Deputy Director. The appellant points out that two other Chiefs report to his supervisor, and he takes umbrage with the fact that she was referred to as "Senior Executive Service" rather than as an Assistant Director. He believes that this "avoids" proper organization and the reporting relationship.

Next, the appellant argues that his management duties as listed on his Position Classification Questionnaire (PCQ) were not acknowledged. He states that his management duties were reworded in the decision as liaising. He also states that the percentage of time on each duty was not taken into account. In particular, he maintains that the Administrative Analyst 2 under his supervision is the Open Public Records Act (OPRA) liaison, with a staff of four others, and that he spends 30% of his time managing the OPRA process. He assures timely responses and decisions are provided to appropriate parties, as well as assuring that work is completed, which he contends are managerial functions. Additionally, he argues that the 18% of his time spent managing grant credit review and approval, and the 22% of his time spent on other managerial duties are not direct legislative work, but are managerial functions in producing a unique work product from a small, productive group of subordinates.

The appellant summarizes his duties as follows:

<u>% of Time</u>	<u>Duty</u>
30%	managing the legislative analysis function;
30%	overseeing the OPRA liaison function;
18%	managing the output of the grant and credit monitoring unit;
8%	ensuring that the Tax Expenditure Report is produced properly and timely;
7%	ensuring that the production of Memoranda of Understanding is carried out by the Regulatory Officer 3;
7%	performing the duties that any other supervisor must do.

The appellant argues that he was not given credit for supervising the actual work entailed in the functions themselves, and that 70% of his time is spent supervising other unit activities which do not include the legislative function. He states that he modified the definition portion of the job specification for Chief of Operations, Treasury to align closely with his position, and included it on the transmittal letter that he sent with his PCQ. He points out that his supervisor agreed with his duties and indicated that he managed the branch independently. He states that his supervisor indicated that the most important duties of the position involve "...the review and monitoring of the nearly 1000 tax-related bills proposed each session. Each bill must be analyzed for its impact on Division operations and monitored. In addition Mr. Kelly is responsible for accurately explaining the Division's concerns regarding any legislation to the appropriate parties and working to obtain changes to address those concerns whenever

possible.” He indicates that she is referring to a duty performed 30% of the time, and reliance on this is a mischaracterization. He states that DAS failed to consider his supervisor’s indication that he must demonstrate the ability to communicate effectively, manage employees, and oversee units involved in diverse matters, as managerial responsibility. Further, he maintains that the Deputy Director agreed with his job duties and indicated that he operates as a Chief of the branch in every way except title, and has done so for several years. She also supports a reclassification to Chief of Operations, Treasury. Thus, he argues that he is a Chief of Operations, Treasury since the organizational structure of the division acknowledges him as the chief of his unit, and he exercises responsibilities and authorities therein. He suggests that the titles Chief, Legislative Analysis and Chief, Office of Tax Analysis would be appropriate for his position.

Lastly, the appellant states that it “stretches credulity” that a comprehensive review was performed, as the decision was sent two weeks after the interviews, and that the determination was “a rather hastily prepared rejection which appeared to be a matter of cutting and pasting in Civil Service justifications without adequate factual support.”

In DAS’s response to this appeal, it indicated that a Legislative Liaison typically prepares or directs the preparation of written and other communication with government officials in response to inquiries regarding specific department projects or programs; performs and/or directs the performance of research on federal and State legislation and regulations in connection with the department’s various programmatic needs, and reports to department executive staff on laws passed, their effects upon the department’s activities, and the manner in which the department should utilize its resources; directs the coordination of inter and intra-departmental staffs in strategic planning efforts related to the legislative liaison function; and prepares or directs the preparation of confidential and sensitive correspondence in the course of official duties.

DAS clarified that the core function of Mr. Kelly’s position is to review and monitor tax related legislation. DAS states that this assertion is supported by the appellant’s supervisor’s statement on the PCQ that this legislative function is the most important task assigned to the position. This function is also described in the appellant’s PAR as a job responsibility, with the other functions of the position serving as essential criteria encompassed within this job responsibility. DAS states that the core function of a position is an integral component in the classification of a position. Mr. Kelly has been assigned additional duties since his appointment to this position, including other liaison functions, and the Legislative Liaison title best describes his position in its entirety.

As to the appellant’s supervisor’s title, DAS explains that it is practice to use official Civil Service titles to describe positions in the issuance of a determination

letter, not functional titles or “in-house” titles that may be used by an agency. The appellant’s supervisor’s title is appropriately described as “Senior Executive Service.” It clarifies, as well, that only one Chief reports to this supervisor.

As to organizational structure, DAS indicates that, at the time the telephone audit was conducted, the Office of Legislative Analysis was comprised of one Regulatory Officer 3, and three Taxpayer Service Representative 3 positions. The Disclosure Officer/OPRA Liaison section was comprised of one Administrative Analyst 2 position, one Technical Assistant 2, Treasury position, one Technical Assistant 3 position, and two Tax Representative Trainee positions.

DAS states that each of the chief-level titles noted by the appellant in his appeal are titles that are considered managerial titles. Incumbents in managerial titles typically supervise higher level supervisors. The appellant’s position clearly does not supervise higher level supervisors, but supervises primary level supervisors who directly supervise lower level staff. Therefore, the organizational structure of the branch does not support a chief-level title.

As to duties, DAS found that the position is not responsible for formulating management policies and practices, does not have responsibility of effectuation of such management policies and practices, and does not develop an operating budget.

Lastly, the appellant’s underlying regular appointment in the career service is Administrative Analyst 2. DAS points out that that the appellant was appointed to the Legislative Liaison title via a Request to appoint confidential, SES, and/or Unclassified Employee (DPF-10) on September 13, 2008. Since that time, the Department of the Treasury has continually requested to extend a leave of absence for Mr. Kelly to retain this unclassified appointment. Most notably, on August 21, 2014 the Department of the Treasury again requested to retain this unclassified appointment. The justification given for this request was for Mr. Kelly “To continue serving as Legislative Liaison.” This request was sent after Mr. Kelly submitted his classification appeal, which implies that the Department views the assigned duties and responsibilities of the position to be functioning as a Legislative Liaison.

CONCLUSION

The definition section of the job specification for of the Chief of Operations, Treasury job description states:

Under direction of a supervisory official in the Department of the Treasury in a major revenue generating, collection or enforcement operation, or support program, is directly responsible for the management, supervision, and control of work programs, operations, and staff of such areas as: Processing Operations, Taxpayer

Accounting, Taxpayer Registration, Technical Services, Property Administration, Revenue Management, and any other major program support area; does other related work.

The definition section of the job specification for Legislative Liaison job description states:

Under general direction of a Commissioner, has charge of all programs related to the maintenance of an active, effective, liaison with the State legislature and other federal, state, and local government officials with regard to regulations and legislation; does related work as required.

It is long-standing policy that upon review of a request for position classification, when it is found that the majority of an incumbent's duties and responsibilities relate to the examples of work found in a particular job specification, that title is deemed the appropriate title for the position. Moreover, it is permissible for employees to be assigned some work duties above or below the proper level of their titles.

The Chief of Operations, Treasury job description indicates that this title is directly responsible for the management, supervision, and control of work programs, operations, and staff. These work operations are in the areas of revenue generating, collection or enforcement operations, or support. The Office of Legislative Analysis and Disclosure is not a work operations area, or support in the area of operations. As described by the appellant, this Office is responsible for reviewing and monitoring an average of 1,000 pieces of legislation which impact State and federal taxes; protecting the confidentiality of taxpayer information; warehousing OPRA requests for the Division; housing the Sales and Use Tax Review Commission; executing the State's Tax Expenditure Report; overseeing the incentive grants under the Tax Credit Review Unit; and interfacing with the Governor's office and the Office of Legislative Services. This is not operations, which are the activities that contribute *directly* to the purpose of the Department, nor is it support of operations, which falls under the control of operations. For example, document preparation or data processing are supportive of operations.

Further, DAS determined that the position is not at the managerial level, but is a supervisory position. Managerial responsibility involves formulating and implementing directives, directing work toward specific goals and objectives, authority over employees, budgets and equipment, planning overall work operations, establishing priorities and deadlines, setting performance standards, and devising and planning methods and procedures. Supervisory responsibilities involve seeing that tasks are carried out, assigning and distributing work, passing on instructions, maintaining the flow and quality of work to fulfill objectives, making available or obtaining necessary material, equipment, and supplies,

providing training and preparing employee evaluations. See *In the Matter of Joseph Blusnavage* (CSC, decided January 27, 2010). A review of the appellant's duties does not support that the position is primarily functioning at the managerial level. Assuring timely responses and decisions are provided to appropriate parties, and assuring that work is completed, are supervisory functions. The appellant supervises nine individuals, and none is a second level supervisor.

Next, the mere fact that the appellant used words such as "manages" and "directs" on his PCQ does not establish that he is in a managerial position. Rather, a holistic view of the duties and descriptions is used to make this determination. With that in mind, it is noted that the appellant states that his unit receives 20 OPRA requests a month, which is approximately one per work day. He has a staff of five devoted to this function, and he oversees compliance of OPRA for 30% of his time. On the other hand, he stated that two-year legislative sessions result in 1,000 tax-related proposals. This equates to 500 a year, or approximately two a day. He has a staff of four devoted to this function, and coordinating this activity also consumes 30% of his time. The appellant explained on his PCQ that a significant amount of interaction is required with various functional unit management in the Division of Taxation and senior management with regard to the legislative activities. He reviews proposed legislation and provides advice to senior management of potential impacts and monitors the progress of proposals through the legislative process. Based on the appellant's description, both of these functions involve extensive communication with others and establishing mutual understanding and cooperation, *i.e.*, they involve a heavy reliance on liaison activity.

For 8% of the time, the appellant manages participation in the production of the annual Tax Expenditure Report along with the Office of Revenue and Economic Analysis. This requires the production of written narrative, the identification of tax expenditures for which estimates have not been provided, and the continuing review of such expenditures and the document as a whole. For 7% of the time, he oversees the creation and acceptance of Memorandums of Understanding and Memorandums of Agreement, which are prepared by the appellant's staff and which describe the form and manner of sharing confidential tax data with other entities. These functions involve written communication with others, as well as other knowledge and abilities.

For 18% of the time, the appellant interprets applicable laws, policies, rules, and regulations in the oversight of the approval of disbursements of claims, and oversees business incentive program responsibilities. This involves extensive information management and review to verify that the applicants are eligible for the grants and/or tax credits being claimed and to ensure that the proper amounts are paid, and involves monitoring on a long-term basis. For the remaining 7% of his

time, the appellant performs administrative supervisory duties and attends conferences.

The appellant suggests the titles Chief, Legislative Analysis and Chief, Office of Tax Analysis as appropriate for his position. The Chief, Office of Tax Analysis directs the work programs and staff performing tax analysis; conducts research in the broad field of taxation and with specific emphasis on New Jersey tax problems, procedures, and policies; prepares estimates of tax revenue and the total effect of proposed new tax measures; prepares statistical analyses. The focus of the appellant's position is not on tax analysis. The appellant did not indicate that he was responsible for research in taxation, preparing estimates of revenues, and preparing statistical analyses. This title is clearly oriented to a different set of tasks which are focused on tax analysis, not legislative analysis.

The title of Chief, Legislative Analysis is defined as, "Under the general direction of a Director or higher level supervisory official in a State department, institution or agency, is responsible for the preparation, review and analysis, of State and federal legislation and regulations affecting Department programs Statewide; performs general project/program management duties associated with the preparation of complicated analytical reports and recommendations, and supervises assigned staff; does related work as required." A review of the appellant's duties indicates that the first duty, performed 30% of the time, matches this definition, and possibly the duty of overseeing the creation and acceptance of Memorandums of Understanding and Memorandums of Agreement. The majority of his duties are not reflected in this definition. This definition is specific. While both Legislative Liaison and Chief, Legislative Analysis have duties related to the State legislature, the Chief, Legislative Analysis performs specific analysis and reports related to legislation. The Legislative Liaison title is more general, with having charge of all programs related to the maintenance of an active, effective, liaison with the State legislature and government officials with regard to regulations and legislation. In addition, the appellant has not established that his duties rise to the level and scope of managerial duties. As such, Legislative Liaison is the best fit with the appellant's duties.

With regard to appellant's criticism that this agency's staff did a cursory audit of his position, it is departmental policy that all audits are reviewed by supervisory and managerial staff prior to a decision being finalized. Additionally, by signing the PCQ, the appellant certified that his duties were accurate and complete. DAS's determination recognized the primary focus of the position and a title was assigned accordingly. *N.J.A.C. 4A:3-3.9(c)8* states that staff shall review the appeal filed, request additional information if needed, order a desk audit where warranted, and issue a written decision letter within 180 days of receipt of the appeal and all completed documentation. This appeal was received August 14, 2014, and the determination was issued on January 30, 2015, within that deadline.

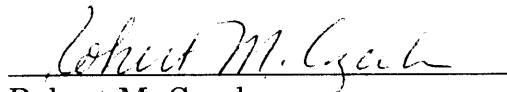
The appellant's assertion that the audit was not comprehensive due to the issuance of a determination within the deadline is specious. Regardless, the Civil Service Commission has now thoroughly reviewed all of the information provided previously and on appeal. It is also noted that the appellant's supervisor's title is properly referred to as Senior Executive Service, the official classification of the position. Such positions have substantial managerial, policy influencing, or policy executing responsibilities not included in the career or unclassified services. Lastly, a recommendation to promote the appellant or change his classification by his supervisors or colleagues does not establish that the position he encumbers would be properly classified as in the recommended title.

ORDER

Therefore, the position of John Kelly is properly classified as Legislative Liaison.

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
THE 17th DAY OF JUNE, 2015



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
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Enclosure

c: John Kelly
Steven Blader, Esq.
Douglas Ianni
Kenneth Connolly
Joseph Gambino



Chris Christie
Governor
Kim Guadagno
Lt. Governor

STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION
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Robert M. Czech
Chair/Chief Executive Officer

January 30, 2015

Mr. John Kelly
Department of the Treasury
Division of Taxation
50 Barrack Street
P.O. Box 269
Trenton, New Jersey 08695-0269

RE: Classification Appeal, Legislative Liaison
AS LOG #08140343, Position #007503, EID #000338118

Dear Mr. Kelly:

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, Sheri Silverstein, on January 22, 2015.

Issue:

You are appealing that your current title of Legislative Liaison (X98) is not consistent with your current assigned duties and responsibilities. You contend that the title of Chief of Operations, Treasury (&32) is an appropriate title for your position.

Organization:

Your position is located in the Department of the Treasury, Division of Taxation, Counsel Services, Office of Legislative Analysis and Disclosure and you report directly to Sheri Silverstein, Senior Executive Service (M98). Your position is responsible for the direct supervision of three (3) positions consisting of one (1)

Mr. John Kelly
Page 2
January 30, 2015

Regulatory Officer 3 (P29), one (1) Administrative Analyst 2 (P26), and one (1) Taxpayer Service Representative 3 (P18).

Finding of Fact:

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

- Liaising with Division of Taxation management and senior management to ensure that proposed and enacted legislation are accurately communicated and that the expectations of the Treasurer's Office are met. Reviewing proposed tax-related legislation, providing advice to senior management of potential impacts, and monitoring progress of proposals throughout the Legislative process.
- Overseeing compliance with Open Public Records Act (OPRA) by ensuring that time sensitive and statutorily required matters regarding adherence to OPRA are completed and maintained as required.
- Interpreting applicable laws, policies, and regulations in the oversight of the approval of claims to the public, vendors, and government agencies. Ensuring that applications are eligible for grants or tax credits being claimed and that proper amounts are paid.
- Consulting with the Office of the Chief Economist and managing the Division of Taxation's participation in the production of the annual Tax Expenditure Report.
- Overseeing the creation and acceptance of Memorandums of Understanding and Memorandums of Agreement. The agreements describe the form and manner of sharing confidential tax data with other entities.
- Managing work operations and having responsibility for employee evaluations and for effectively recommending the hiring, firing, promoting, demoting and/or disciplining of employees.

Mr. John Kelly
Page 3
January 30, 2015

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 classification appeal submission indicates that you believe the title Chief of Operations, Treasury (61427-&32) is an appropriate title for your position. The definition section for this title states:

“Under direction of a supervisory official in the Department of the Treasury in a major revenue generating, collection or enforcement operation or support program, is directly responsible for the management, supervision, and control of work programs, operations, and staff of such areas as: Processing Operations, Taxpayer Accounting, Taxpayer Registration, Technical Services, Property Administration, Revenue Management, and any other major program support area; does other related work.”

Your position is currently classified by the title, Legislative Liaison (99981-X98). The definition section of the job specification for this title states:

“Under general direction of a Commissioner, has charge of all programs related to the maintenance of an active, effective, liaison with the State legislature and other federal, state, and local government officials with regard to regulations and legislation; does related work as required.”

A review of your job duties and responsibilities finds that the primary function of your position is to manage the Office of Legislative Analysis and Disclosure. Your position oversees an office consisting of nine (9) employees that are responsible for performing both legislative analysis and ensuring the appropriate release of public information.

The assigned duties and responsibilities of your position include performing and directing the performance of research on state legislation and regulations in connection with the department's various programmatic needs, and reporting to

Mr. John Kelly
Page 4
January 30, 2015

department executive staff on laws passed, their effects upon the department's activities, and the manner in which the department should utilize its resources; preparing and directing the preparation of confidential and sensitive correspondence in the course of official duties; preparing and directing the preparation of written and other communication with government officials in response to inquiries regarding specific department projects or programs; directing the coordination of inter and intra-departmental staffs in strategic planning efforts related to the legislative liaison function; and in coordination with other departmental units, directing the tracking state legislation with potential impact on department programs. The preponderance of assigned duties and responsibilities of your position are descriptive of tasks typically assigned to a Legislative Liaison.

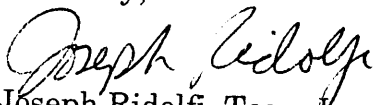
A comprehensive review and analysis of your position finds that the assigned duties and responsibilities of your position are encompassed within the title of Legislative Liaison (X98).

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 Legislative Liaison (99981-X98).

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: Laura Budzinski, Treasury Human Resources