

B-25



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Fred DeVoe,
Department of the Treasury

CSC Docket No. 2017-898

Classification Appeal

ISSUED: **JAN 23 2017**

(RE)

Fred DeVoe 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 Auditor 2, Taxation. He seeks an Auditor 1, Taxation job classification in this proceeding.

By way of background, Mr. DeVoe received a regular appointment to the title Auditor 2, Taxation on June 14, 2003. This position is located in the Division of Taxation, Audit Activity, Field Audit Branch, Newark H, and does not have supervisory responsibilities. Mr. DeVoe's position reports to a Supervising Auditor, Taxation. Mr. DeVoe submitted a request for a classification review, and a classification review of his Position Classification Questionnaire (PCQ) and related documentation was performed.

This classification review found that Mr. DeVoe's assigned duties and responsibilities, as detailed in DAS' decision, were commensurate with the title of Auditor 2, Taxation. On appeal, Mr. DeVoe asserts that he is performing duties in accordance with the Auditor 1, Taxation title. Specifically, he claims he is an "acting" Auditor 1, Taxation, and performs supervisory duties. He states that he reviews audit reports, assigns audits, trains new members, reviews eCATs submissions, reviews expense vouchers, writes expectations and the ePARs of subordinates, conducts complex audits and assists other auditors as requested by the supervisor. He submits an undated ePAR which indicates that he supervises a subordinate.

In support of this appeal, the Assistant Chief, Audit Activity, Treasury, indicated that the appellant prepares and signs ePARs of an Auditor 3, Taxation, and assigns and reviews the work of three other employees. He also works in a highly specialized team, performing only extremely large and complex casework.

CONCLUSION

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

Under direction of a Supervising Auditor, Taxation, or Auditor 1, Taxation, Division of Taxation, Department of Treasury, takes the lead in (1) a group of auditors of lower grades engaged in field or office audits and/or examining and verifying of accounts and records, both internally and of taxpayers, with respect to various taxes administered by the division, or (2) independently handles field or office auditing or accounting work of considerable complexity and importance; may be assigned to either field or central office location as required; does related work as required.

The definition section of the job specification for Auditor 1, Taxation states:

Under direction of a Supervising Auditor, Taxation in the Division of Taxation, Department of Treasury, assists in supervising the field or office auditing work and/or examining and verifying of accounts and records, both internally and of taxpayers, with respect to various taxes administered by the division; may be assigned to either field or central office location as required; does related work as required.

In the instant matter, the appellant's position is properly classified as an Auditor 2, Taxation as the primary focus of his duties is conducting financial investigations and audits of considerable complexity. Incumbents in the Auditor 2, Taxation, title may either work as lead workers or handle independent work of considerable complexity and importance. In the present case, the appellant has the responsibility of acting as a lead worker by advising and assisting other auditors. In that regard, leadership roles refer 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). Although the appellant argues on appeal that he assists in supervising the auditors, it is noted that in the Civil Service system, the line of demarcation established to determine if one possesses supervisory duties has uniformly been if he or she has actual performance evaluation authority over subordinate staff. Actual authority is evidenced by being named the rater on the performance evaluation document. *See In the Matter of*

Harry Corey, et al. (MSB, decided September 21, 2005). Moreover, supervisory experience is defined in the appropriate job specifications for supervisory titles as supervising work operations and/or functional programs and having responsibility for employee evaluation and for effectively recommending the hiring, firing, promoting, demoting, and/or disciplining of employees. See *In the Matter of Sadie Hamer, et al.* (MSB, decided February 22, 2006). In the present case, the appellant does not have the responsibility of supervising staff as he does not complete employee evaluations or recommend the hiring, firing, promoting, demoting, and/or disciplining of employees. At the time of the audit, the ePAR of the Auditor 3, Taxation was signed by the Supervising Auditor, Taxation. The undated ePAR submitted by the appellant does not support that he was supervising in August 2016.

Furthermore, there is no such designation as an “acting” appointment under Civil Service rules. *N.J.S.A.* 11A:4-13 and *N.J.A.C.* 4A:4-1 *et seq.* provide for regular, conditional, provisional, interim, temporary, and emergency appointments. See *In the Matter of Russell Davis* (MSB, decided August 10, 2005); *In the Matter of Michael Shaffery* (MSB, decided September 20, 2006). Therefore, the Department of the Treasury is precluded from appointing an individual in an acting capacity when the individual’s appointment can be recognized under any one of the above classifications.

In reviewing the examples of work listed by the appellant, they are consistent with an employee in the title of Auditor 2, Taxation. The appellant has not shown that the duties he currently performs are not properly performed by an incumbent in the Auditor 2, Taxation, title. Nevertheless, if the appointing authority denies the appellant the responsibility of evaluating ePARs, it should refrain from assigning the appellant the typical work of a supervisor over the Auditor 3, Taxation position. This includes assigning work, reviewing work, and providing input on evaluations. Such duties should fall to his supervisor, who should be responsible for those tasks. It is simply unfair to allow the appellant to bear responsibility for higher level tasks specific to supervision, yet classify the position based on the fact that he does not technically supervise. In this regard, if the appointing authority chooses to allow Mr. DeVoe to continue with these duties, it should provide him with ePAR evaluation responsibilities and appoint him as a provisional Auditor 1, Taxation. Otherwise, supervisory duties over other employees should be removed from the appellant and performed by his supervisor.

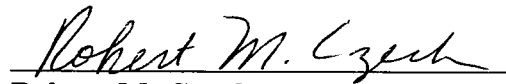
Accordingly, based on the foregoing, the record amply supports an Auditor 2, Taxation, classification for the appellant’s position.

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 BY THE
CIVIL SERVICE COMMISSION
ON THE 18th DAY OF JANUARY, 2017



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

Attachment

c: Fred DeVoe
Douglas Ianni
Kelly Glenn
Records Center



Chris Christie
Governor
Kim Guadagno
Lt. Governor

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

Robert M. Czech
Chair/Chief Executive Officer

August 31, 2016

Mr. Frederick DeVoe
[REDACTED]
[REDACTED]

RE: Classification Appeal - Auditor 2, Taxation
AS Log# 04160256, Position# [REDACTED] EID# [REDACTED]

Dear Mr. DeVoe:

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; your statements; and the statements of your immediate supervisor, Luba Olijnyk during a telephone audit.

Issue:

You are appealing your current title of Auditor 2, Taxation (P25- 50816) is not consistent with your current assigned duties and responsibilities. You contend that Auditor 1, Taxation (R28- 50818) is consistent with the duties that you currently perform.

Organization:

Your position is located in the Division of Taxation, Audit Activity, Field Audit Branch, Newark H. You report directly to Luba Olijnyk, Supervising Auditor, Taxation. Your position does not possess supervisory responsibilities.

Finding of Fact:

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

- Conducting large and complex audits of accounts and records, independently, of Fortune 500 companies located in New Jersey, out of state, and internationally.
- Interpreting and applying New Jersey and federal tax laws as required for tax examination; keeping current with NJ legislative changes to tax statutes, Internal Revenue Codes, and NJ court decisions and explaining to taxpayers as appropriate.
- Assigning and reviewing audit cases as instructed by the supervisor.
- Training newly appointed members of the unit.

Review and Analysis:

Your position is currently classified by the title Auditor 2, Taxation (P25- 50816). The definition section of the job specification for this title states:

“Under direction of a Supervising Auditor, Taxation, or Auditor I, Taxation, Division of Taxation, Department of the Treasury, takes the lead in (1) a group of auditors of lower grades engaged in field or office audits and/or examining and verifying of accounts and records, both internally and of taxpayers, with respect to various taxes administered by the division, or (2) independently handles field or office auditing or accounting work of considerable complexity and importance; may be assigned to either field or central office location as required; does related work as required.”

The Examples of Work include: independently performing audits and/ or examination and verification of internal and external accounts and records of considerable complexity and importance; may advise or assist one or more auditors of a lower grade engaged in field audits or office audits and/ or examining and verifying internal and external accounts and records of various taxes administered by the division; training personnel in appropriate auditing procedures and/ or examination and verification methods for the various taxes administered by the division.

You contend that the title Auditor 1, Taxation (R28- 50818) is an appropriate title for your position. The definition section of the job specification for this title states:

“Under direction of a Supervising Auditor, Taxation, in the Division of Taxation, Department of the Treasury, assists in supervising the field or office auditing work and/or examining and verifying of accounts and

Mr. Frederick DeVoe

Page 3

August 31, 2016

records, both internally and of taxpayers, with respect to various taxes administered by the division; may be assigned to either field or central office location as required; does related work as required."

The title Auditor 1, Taxation is included in the "R" Employee Relations Group, which is comprised of titles responsible for the primary or first level supervisors. As such, incumbents of those titles are responsible for preparing and signing Performance Assessment Reviews (PARs) in the evaluation of subordinate, professional personnel. A review of your position finds that it does not possess the supervisory responsibility associated with titles in the "R" Employee Relations Group, and therefore, the title Auditor 1, Taxation is not appropriate for your position.

The assigned duties and responsibilities of your position are significantly descriptive and commensurate with the tasks assigned to the title Auditor 2, Taxation.

Determination:

Based upon the finding above, it is my determination that the assigned duties and responsibilities of your position are properly classified by your current title Auditor 2, Taxation (P25- 50816). Therefore, the classification of your position will remain unchanged.

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/io

c: Ms. Laura Budzinski, Treasury, Human Resources

