



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of Vincent Buonanno,
Department of Law and Public Safety

CSC Docket No. 2021-291

Request for Reconsideration

ISSUED: OCTOBER 23, 2020 (RE)

Vincent Buonanno requests reconsideration of the attached decision rendered on August 19, 2020 which determined that the proper classification of his position with the Department of Law and Public Safety is Investigator 3, Law and Public Safety.

By way of background, the petitioner requested that the Division of Agency Services (Agency Services) review the classification of his position, alleging that he had been performing the duties and had the responsibilities of an Investigator 4, Law and Public Safety. Agency Services conducted a detailed analysis of his duties questionnaire and other documents, and found that the petitioner’s duties were those of an Investigator 3, Law and Public Safety. As the requested title requires responsibility for leading an investigative unit, or team, or coordinating an investigative program, Agency Services found that the requested title did not properly classify the position. The petitioner appealed Agency Service’s determination to the Civil Service Commission (Commission) which found that it was not apparent that the petitioner’s position involves leadership over other Investigators on a consistent, daily basis. The Commission also determined that although many of his duties are complex in nature, the petitioner does not coordinate an investigative program, conducting in-depth regulatory and administrative audits and inspections of licensed premises. As such, his position was properly classified as Investigator 3, Law and Public Safety.

In his request for reconsideration, the petitioner argues that it is not fair that the Commission relied on audit materials provided by Agency Services, and that it

ignored his supervisor's endorsement of a promotion. He states that the Commission is not impartial as it relied on Agency Service's file on the matter. He maintains that being a lead worker is not required for Investigator 4, Law and Public Safety position, and that the Department of Law and Public Safety has been announcing positions for this title without assigning supervisory responsibilities. He argues that he is a one-man unit, solely responsible for monitoring the public movers' industry, providing guidance to those who seek State licensure, and enforcing laws and regulations.

The petitioner contends that the Commission made a clear material error in the analysis of his position. Specifically, he argues that he works under the direction, not the general supervision, of the Chief Investigator. He maintains that for years he has been leading the investigative Movers program, an annual investigative team, and State Movers investigative operations. The petitioner states that he conducts investigations, monitors the fair marketing of moving and storage consumer products and services, performs regulatory analysis, recommends deployment of investigators, organizes and assigns the work of the annual Movers team, and is the only one authorized to enforce Department of Transportation rules and regulations regarding consumer protection. The petitioner states that his cases were developed as a result of the annual Unlicensed Movers Task Force, and therefore, he acts in the capacity of team leader and coordinator of an investigative program. He maintains that other individuals in the requested title have no supervisory responsibilities, and he requests documentation that those individuals are "performing appropriate duties." In support, the petitioner resubmits a memo from his supervisor regarding agreement or disagreement with his statements on his duties.

CONCLUSION

N.J.A.C. 4A:2-1.6(b) sets forth the standards by which the Civil Service Commission may reconsider a prior decision. This rule provides that a party must show that a clear material error has occurred, or present new evidence or additional information not presented at the original proceeding which would change the outcome of the case and the reasons that such evidence was not presented at the original proceeding.

At the outset, the petitioner has not met the reconsideration criteria. He has not shown a clear material error or presented new evidence or additional information not presented at the original proceeding which would change the outcome of the case.

Initially, the petitioner asks the Commission to provide him with a higher title in the series on the basis that other individuals in this title series, and in another title series, received the higher title without being lead workers. Nevertheless, the petitioner has not identified any of these individuals or presented any other evidence to substantiate his claim. A Notice of Job Vacancy posted by the appointing authority does not prove his claim. That notice copies the job definition in the job specification

for the title as duties of the position. It appropriately does not include supervisory duties, as this is not a supervisory title. The petitioner has the burden of proof, and it is not incumbent on the Commission to ascertain the employees who he believes have the title but are not lead workers. If the petitioner is certain that his duties matched those of other positions, he should have named the individuals involved. Even so, the petitioner's position stands on its own and is classified based on the duties he performs. The duties performed by other individuals, whether properly or improperly classified, are irrelevant in determining the proper classification of the petitioner's position. However, it cannot be ignored that the duties of a position may change over time due to such things as attrition or addition of staff members. Accordingly, when an employee requests a classification review of his and her position, it is done based on the duties currently assigned and being performed in that position and not those of other positions. Nevertheless, regardless if a position's duties have changed over time due to such things as attrition of subordinate staff or if a position was previously classified based on a different classification standard, this does not, by itself, provide a basis on which the Commission, *sua sponte*, would order a current classification review of positions utilizing a new classification standard. In any event, even if the petitioner's claims were true, this fact alone does not establish that his position was misclassified. In this regard, the petitioner does not provide proof or substantiation that any person performs identical duties to his own and is classified in a higher-level title.

Next, the Commission's review of Agency Service's file is not a clear, material error. It is the responsibility of the Commission to ensure that all final determinations are based on any and all pertinent information available. Moreover, upon independent review, the Commission finds no substance to the petitioner's allegation that there was no impartial review of the facts. A classification review addresses a specific incumbent or incumbents and their job duties, and the file provides information that was submitted for the review. The response to an appeal of Agency Services' determination would be incomplete if the Commission did not review the information provided, and the mere fact that this is necessary does not establish that the Commission is biased. For example, *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 if portions of the determination are being disputed, and the basis for appeal. *N.J.S.A.* 11A:3-1 and *N.J.A.C.* 4A:3-3.1(1) provide that each position in the career and unclassified services shall be assigned by the Civil Service Commission to a job title. Moreover, *N.J.A.C.* 4A:3-3.4 provides that no person shall be appointed or employed under a title not appropriate to the duties to be performed nor assigned to perform duties other than those properly pertaining to the assigned title which the employee holds. *N.J.S.A.* 11A:2-6(4)b gives the Commission the authority to render final administrative decisions after a review of the written record. As such, Agency Services has the authority to make classification determinations, and the

Commission has the authority to review their determination, including the file in the matter, to resolve an appeal.

Contrary to the petitioner's assertion, the requested title is a lead worker title. However, being the sole expert in a particular area did not establish that the petitioner's position should be classified by a lead worker title. See *In the Matter of Waldemar Mazurek* (CSC, decided September 19, 2012), *In the Matter of John Freise* (CSC, decided May 1, 2013), and *In the Matter of Henry Li* (CSC, decided March 26, 2014). If an employee does not function as a lead worker over employees in his title series, who perform the same kind of work on a consistent, daily basis, that employee is not a lead worker. The Commission found that the petitioner's leading of an annual sting operation was an intermittent duty as it did not lead an investigative unit or team on a consistent daily basis. The petitioner indicates that he organizes and assigns the work of the *annual* Movers team, again, once a year, but does not indicate that he mentors anyone else in the title series in the same work on a steady basis. The petitioner's reliance on his supervisor's agreement is misplaced. In *In the Matter of Titus Osuagwu* (CSC, decided December 3, 2008), the Commission found that a recommendation by petitioner's management that he be promoted did not establish that the position he encumbers would be properly classified in the higher-level title. Further, the supervisor's agreement with the duties performed lends credibility to the duties listed, but is not a basis for the classification of a position, which is based on the duties presented.

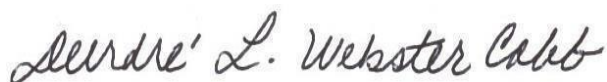
As found in the Commission's original determination, the petitioner's duties are more appropriately defined by the Investigator 3, Law and Public Safety title than the Investigator 4, Law and Public Safety title.

ORDER

Therefore, it is ordered that this request 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 21ST DAY OF OCTOBER 2020



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Attachment

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STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of Vincent Buonanno,
Department of Law and Public Safety

CSC Docket No. 2021-93

Classification Appeal

ISSUED: AUGUST 26, 2020 (RE)

Vincent Buonanno appeals the decision of the Division of Agency Services (Agency Services) that the proper classification of his position is Investigator 3, Law and Public Safety. The appellant seeks an Investigator 4, Law and Public Safety classification.

The record establishes that the appellant was permanent in the title of Investigator 3, Law and Public Safety and is assigned to work in the Office of Consumer Protection, Division of Consumer Affairs. The position is supervised by a Chief Investigator, Law and Public Safety, and has no supervisory responsibility. The appellant seeks a reclassification of his position to Investigator 4, Law and Public Safety. Agency Services performed an analysis of all information submitted, including a Position Classification Questionnaire (PCQ), organization chart, and the appellant's Performance Assessment Review (PAR).

As a result of that review, the appellant's position was found to be properly classified as Investigator 3, Law and Public Safety. In arriving at its conclusion, Agency Services indicated that the duties of the position include complex investigative work which is independently conducted without the oversight of an investigative unit or team. As the requested title requires responsibility for leading an investigative unit, or team, or coordinating an investigative program, Agency Services found that the requested title did not properly classify the position.

On appeal, the appellant argues that the reading of the job was too narrow, and his supervisor recommends the requested title for the position. He states that

he is the leader of the annual sting operation for unlicensed moving companies, which he has organized and led seven times. He argues that his experience in a Supervising Investigator title should be considered, he possesses professional contacts in federal agencies, and is ethical and conscientious. He argues that Agency Services issued a form letter with no specific points, and therefore is insufficient and baseless.

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 job specification for Investigator 3, Law and Public Safety states:

Under general supervision of a Supervising Investigator or other supervisory official in the Department of Law and Public Safety, conducts in-depth regulatory and administrative audits and inspections of licensed premises; reviews records, files, financial statements, and other transactions to determine compliance with rules or regulations governing consumer protection laws; conducts complex investigations, performs other confidential and sensitive civil and regulatory investigative activities or specialized investigations to detect alleged noncompliance with or violations of New Jersey State statutes, administrative codes, Professional Rules of Conduct, or consumer protection laws; performs other related duties required.

The definition section of the job specification for Investigator 4, Law and Public Safety states:

Under direction of a Supervising Investigator or other supervisory official in the Department of Law and Public Safety, leads an investigative unit or team or coordinates an investigative program, conducting in-depth regulatory and administrative audits and inspections of licensed premises; reviews records, files, financial statements, and other transactions to determine compliance with rules or regulations governing consumer protection laws; performs other confidential and sensitive civil and regulatory investigative activities or specialized investigations to detect alleged noncompliance with or violations of New Jersey State statutes, administrative codes,

Professional Rules of Conduct, or consumer protection laws; performs other related duties as required.

In the instant matter, Agency Services determined that the appellant's position was appropriately classified as an Investigator 3, Law and Public Safety, and the appellant does not dispute the duties listed in that determination. The classification of a position is determined based on the duties and responsibilities assigned to a position at the time the request for reclassification is received as verified by audit or other formal study. The outcome of position classification is not to provide a career path to the incumbents, but rather is to ensure that the position is classified in the most appropriate title available within the State's classification plan.¹ 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). Also, in *In the Matter of Titus Osuagwu* (CSC, Decided December 3, 2008), the Commission found that a recommendation by appellant's management that he be promoted did not establish that the position he encumbers would be properly classified in the higher-level title.

One of the primary determinants in the appellant's classification review was that he was not a lead worker of *an investigative unit or team*. A leadership role refers to those 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 a lower level than themselves. Duties and responsibilities would include training, assigning and reviewing work of other employees on a regular and recurring basis, such that the lead worker has contact with other employees in an advisory position. However, such duties are considered non-supervisory since they do not include the responsibility for the preparation of performance evaluations. Being a lead worker does not mean that the work is performed by only one person, but involves mentoring others in work of the title series. See *In the Matter of Henry Li* (CSC, decided March 26, 2014). The Investigator 4, Law and Public Safety is a lead worker title, and lead worker duties must be performed on a consistent and daily basis, not merely intermittently as needed.

In addition to conducting complex investigations to determine compliance with law enforcement professional standards, an employee serving in the title of Investigator 4 Law and Public Safety would be responsible for leading an investigative unit, or team, or coordinating an investigative program. Agency Services indicated that the duties of the position include complex investigative work which is independently conducted without the oversight of an investigative unit or team. The review identified several instances in which the incumbent was responsible for the coordination of complex investigations. However, this is not to

¹ See *In the Matter of Patricia Lightsey* (MSB, decided June 8, 2005), *aff'd* on reconsideration (MSB, decided November 22, 2005).

be confused with taking the lead of an investigative unit or the coordination of an investigative program. Coordination of an investigative program would involve the oversight and organization of investigative people and/or processes specific to an identified subject/area. While the appellant argues that he leads the annual sting operation for unlicensed moving companies, a duty performed annually is considered an intermittent duty as it is not leading an investigative unit or team on a consistent daily basis. The appellant also does not coordinate an investigative program, conducting in-depth regulatory and administrative audits and inspections of licensed premises. While many of his duties are complex in nature, the title of Investigator 4, Law and Public Safety is not the appropriate classification for this position.

Accordingly, the appellant has failed to establish that Agency Services' determination that his position was properly classified as an Investigator 3, Law and Public Safety was incorrect.

ORDER

Therefore, the Civil Service Commission concludes that the proper classification of the appellant's position is Investigator 3, Law and Public Safety.

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

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 19TH DAY OF AUGUST 2020

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