



STATE OF NEW JERSEY

In the Matter of Emilio Aviles,
Department of Law and Public Safety

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

CSC Docket No. 2024-1932

Classification Appeal

ISSUED: July 10, 2024 (HS)

Emilio Aviles appeals the determination of the Division of Agency Services (Agency Services) that his position with the Department of Law and Public Safety was properly classified as a Technical Assistant 2 (class code 17). The appellant seeks a Management Assistant (class code 19) job classification in this proceeding.

The record in the present matter establishes that at the time of the request for a position review, the appellant was serving permanently in the title of Agency Services Representative 4 (class code 19). His position was located in the Division of Consumer Affairs. The appellant reported to Charles Kirk, Investigator 4 Law and Public Safety and “Acting Executive Director” according to the organizational chart. Agency Services received the request on March 23, 2023 and reviewed the appellant’s Position Classification Questionnaire; Performance Assessment Review form for the November 1, 2021 to October 31, 2022 rating period; and organizational chart.

In its February 29, 2024 determination, Agency Services found that the primary responsibilities of the appellant’s position included, but were not limited to, overseeing the workflow of the processing of applications; reviewing for completeness that proper procedures have been followed and are within the rules and regulations of the unit; processing complaints received by preparing files, maintaining confidential records, conducting preliminary investigations, and compiling and preparing preliminary reports for State Real Estate Appraiser Board (Board) review; entering all data into the corresponding databases; interpreting and applying proper rules, regulations, policies, and procedures; explaining services and giving

instructions for the completion of forms; resolving the more complex issues and problems on a daily basis; gathering information and preparing reports, memos, and correspondence that may be of a sensitive nature; and assisting lower-level staff in the application of rules, policies, and procedures within the Board. Agency Services highlighted that the duties of the appellant's position were technical and specific to the continuous work performed within the assigned licensing area/unit. The duties were not project-based and the position was not responsible for recommending changes to policies and procedures. Agency Services did find that the duties of the appellant's position required him to work independently, and the position was responsible for conducting the more complex technical duties within the assigned licensing unit. The position ensured compliance with rules and regulations; provided guidance; determined appropriate procedures to be applied; prepared reports, memos, and other ad hoc reports; maintained and prepared files and tracked complaints; and performed preliminary investigations for Board review. As such, Agency Services determined that the assigned duties and responsibilities of the appellant's position were properly classified by the title Technical Assistant 2, effective April 8, 2023, and that supervisory duties were to be removed immediately. Agency Services also noted that the title of Investigator 4 Law and Public Safety is not a supervisory title, and therefore, Kirk's position should not have supervisory responsibilities. Agency records indicate that, to date, the appellant remains an Agency Services Representative 4.

On appeal, the appellant argues that his hard work, dedication, loyalty, and duties reflect a promotion, not a demotion.

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 Agency Services Representative 4 states:

Under the direction of a supervisory official in a State department, agency, or institution, provides front-line and behind the scenes customer and other support services involving the review, processing, and issuance of agency documents; provides varied information to customers regarding department/agency programs and services; handles the most complex and/or sensitive customer issues, requests, and complaints; functions in a lead worker capacity; does other related work as required.

The definition section of the job specification for Management Assistant states:

Under the direction of a manager in a State department, institution, or agency, or within a local government jurisdiction, provides a wide range of administrative services in support of a manager(s) within the area of assignment; assists in the coordination of management/administrative activities of an assigned unit or work area; does other related duties.

The definition section of the job specification for Technical Assistant 2 states:

Under the limited supervision of a supervisory official in a State department, institution, or agency, performs complex technical duties and functions as an independent worker for prescribed technical projects or programs requiring the independent application of rules, regulations, policies, and procedures to varying situations within the particular area of assignment; does other related duties as required.

At the outset, it must be noted that factors such as how well or efficiently an employee does his or her job, length of service, 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). Further, the outcome of position classification is not to provide a career path to the incumbent but rather to ensure the position is classified in the most appropriate title available within the State's classification plan. *In the Matter of Patricia Lightsey* (MSB, decided June 8, 2005), *aff'd on reconsideration* (MSB, decided November 22, 2005).

It is longstanding policy that upon review of a request for position classification, when it is found that the majority of an incumbent's duties and responsibilities are related to the examples of work found in a particular job specification, that title is deemed the appropriate title for the position. In the instant matter, a review of the duties of the appellant's position indicates that they closely matched the job description for Technical Assistant 2. The Management Assistant title is not a "super-clerical" or paraprofessional title. The focus of the duties of a Management Assistant is to assist in the coordination of management or administrative activities of an assigned unit or work area. An incumbent acts as an assistant to a Manager, not in a supportive or secretarial function, but rather, relieves the Manager of detail-oriented and time-consuming professional tasks in order to improve efficiency and productivity. On the other hand, incumbents in the Technical Assistant 2 title review the more difficult and involved contractual, financial, programmatic documents, or other documents for accuracy, appropriateness, and completeness, identifying and resolving sensitive problem areas and processing them in accordance with rules, regulations, and laws of the assigned unit; independently determine the appropriate application of specific rules, regulations, policies, and

procedures to varying situations in the unit, which may be explained and interpreted to the public or others; maintain essential records and files; participate with professional staff in conducting of surveys, investigations, task forces, special studies, and innovative projects and, when required, prepare reports containing findings, conclusions, and recommendations; assist in coordinating, gathering, compiling, assembling, analyzing, and interpreting data required by the supervisory official or professional staff in completing assigned tasks; compile statistical data and information pertaining to the work of the unit; and may guide lower-level employees in the appropriate application of specific rules, regulations, policies, and procedures to varying situations in the unit. The primary focus of the appellant's duties was clearly of a technical nature.

Additionally, the position encumbered by the appellant's supervisor, Kirk, is classified by the title Investigator 4 Law and Public Safety. Investigator 4 Law and Public Safety is neither a supervisory nor managerial title. In this regard, 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.

The job specification also does not otherwise indicate that an incumbent has the authority to recommend hiring, firing, and disciplining employees or has the responsibility for the administration of performance evaluations for subordinate staff. Thus, as long as Kirk's position is classified by the title Investigator 4 Law and Public Safety, the position should not be performing supervisory – let alone managerial – activities. The record also reflects that Kirk has apparently been appointed "Acting Executive Director." The Commission notes that 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 regular, provisional, interim, temporary, emergency, senior executive service, and unclassified appointments. See *In the Matter of Russell Davis* (MSB, decided August 10, 2005); *In the Matter of Michael Shaffery* (MSB, decided September 20, 2006). While it is permissible for an employee to act in a position to cover for a short-term leave of

absence, the appointing authority is cautioned not to use “acting” appointments on a full-time basis when an individual’s appointment can be recognized under any one of the above designations.

Lastly, Agency Services issued its decision on February 29, 2024 and ordered that the appellant be considered to be serving in the title Technical Assistant 2; however, the appellant’s record indicates that he is still serving as an Agency Services Representative 4. The appointing authority should correct the appellant’s record within 30 days to reflect the correct classification of his position with an effective date of April 8, 2023.¹

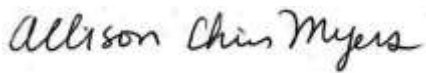
Accordingly, a thorough review of the entire record fails to establish that the appellant has presented a sufficient basis to warrant a Management Assistant classification of his position.

ORDER

Therefore, the position of Emilio Aviles is properly classified as a Technical Assistant 2.

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

DECISION RENDERED ON
THE 9TH DAY OF JULY, 2024



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¹ Upon receipt of this decision, the appointing authority could assign duties and responsibilities commensurate with the appellant’s permanent title of Agency Services Representative 4. In that case, the appointing authority shall submit a revised Position Classification Questionnaire to Agency Services within 30 days. *See N.J.A.C. 4A:3-3.5(c)1.*

c: Emilio Aviles
Danielle Amari
Division of Agency Services
Records Center