



**STATE OF NEW JERSEY**

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

In the Matter of Sherita Whetstone,  
Department of Community Affairs

CSC Docket No. 2022-985

Classification Appeal

**ISSUED: FEBRUARY 18, 2022 (RE)**

Sherita Whetstone appeals the decision of the Division of Agency Services (Agency Services) which found that her position with the Department of Community Affairs is correctly classified as Program Specialist 3, Regulatory Programs. She seeks a Program Specialist 4, Regulatory Programs classification in this proceeding.

By way of background, the appellant had been regularly appointed to the title Program Specialist 3, Regulatory Programs on February 2, 2015. The appellant requested a review of the classification of her position to determine whether he was properly classified, contending that she was functioning as a Program Specialist 4, Regulatory Programs. An audit was performed including a thorough review of the documents submitted, including a Position Classification Questionnaire (PCQ), and an email audit. The position is located in the Department of Community Affairs, Division of Codes and Standards, Bureau of Homeowner Protection Claims/Builder Registration Units, is supervised by a Bureau Chief, and at the time of the audit supervised six employees: one Construction Code Inspector 1, one Subcode Official, one Technical Assistant 1, one Agency Services Representative 1, and two Agency Services Representative Trainees. It is noted that the first two subordinates are in the Claims Investigation Unit, while the remaining subordinates are in the Builder Registration Unit. A third unit exists, "MSD/Investigation Program," but the one Subcode Official position assigned to that unit is vacant. Agency Services found that the appellant's position is properly classified as Program Specialist 3, Regulatory Programs.

Specifically, Agency Services found that the preponderance of the duties performed were appropriate to Program Specialist 3, Regulatory Programs. Additionally, Agency Services noted that Program Specialist 4, Regulatory Programs is assigned to the “S” Employee Relations Group (ERG), and therefore, should supervise first-level supervisors in the “R” ERG. Also, Agency Services indicated that as a first-level supervisor, it was appropriate for the Program Specialist 3, Regulatory Programs to supervise staff serving in the “A” and “P” ERGs. The Technical Assistant 1 is the sole supervisor under the appellant’s supervision; however, the Technical Assistant 1 title is in the “A” ERG.

On appeal, the appellant argues that she supervises a Technical Assistant 1, who is a first level supervisor. She states that she supervises professional, technical, administrative and clerical staff. She argues that the Technical Assistant 1 was promoted from Principal Clerk Typist, a position in the “R” ERG, and had that promotion not happened, she would be supervising a title in the “R” ERG. She relies on *In the Matter of Virginia Stemler, Department of Health* (CSC, Decided June 4, 2014), wherein the Civil Service Commission (Commission) granted the appellant a lead worker position on the basis that, although her unit consisted solely of temporary employees and it was required that she lead permanent employees, the function of the unit was ongoing and she continually was doing lead worker duties. She states that the functions of her subordinate Technical Assistant 1 are substantially the same as those of a lead worker over other employees. Thus, she concludes that since *Stemler* was granted outside of the assignment of an ERG, that precedent is not the sole basis in classification determinations.

## CONCLUSION

*N.J.A.C. 4A:3-3.9(e)* states that appeals from the decision of the Commission representative to the Commission ... may be made by an employee, authorized employee representative, or local appointing authority. The appeal shall be submitted in writing within 20 days of receipt of the decision letter and include 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. When new information and/or argument is presented, the appeal may be remanded to the prior level.

The definition section of the job specification for the title Program Specialist 3, Regulatory Programs states:

Under the direction of a Program Specialist 4, Regulatory Programs, or other supervisory officer in a State department or agency, directly supervises professional and/or technical staff engaged in program activities, or performs the more complex and sensitive professional,

administrative and analytical work to promote the planning, operation, implementation, monitoring and/or evaluation of regulatory programs designed to ensure public safety, health and welfare, and/or to protect the environment; prepares and signs official performance evaluations for subordinate staff; does related work as required.

The definition section of the job specification for the title Program Specialist 4, Regulatory Programs states:

Under the direction of a supervisory official in a State department or agency, supervises professional and/or technical staff engaged in program activities; prepares and signs official performance evaluations for subordinate staff; performs the most difficult and sensitive professional, administrative and analytical work to promote the planning, operation, implementation, monitoring and/or evaluation of regulatory programs designed to ensure public safety, health and welfare, and/or to protect the environment.

First, in making classification determinations, emphasis is placed on the definition section of the job specification to distinguish one class of positions from another. The definition portion of a job specification is a brief statement of the kind and level of work being performed in a title series and is relied on to distinguish one class from another. Agency Services found that the appellant's position was properly classified as an Program Specialist 3, Regulatory Programs on the basis that she is not performing the duties of a second-level supervisor, *i.e.*, she is not supervising a first-level supervisor. This is not to say that the remaining duties match the definition of the requested title, but first the reporting relationship must be addressed.

Because of numerous position classification challenges, it became necessary for this agency to consider the legality of having supervisory and non-supervisory incumbents classified by the same title that is included in either a primary-level or secondary-level employee relations group. Therefore, in 2015, the Commission determined that classifying employees in titles assigned to primary-level and secondary-level supervisory employee relations groups who do not have formal performance evaluations responsibility for subordinate staff members could create a conflict of interest between incumbents who are required to supervise staff serving in the same title. *See West Orange Board of Education v. Wilton*, 57 N.J. 417 (1971). In addition, it was found that a major factor in this agency's setting of the compensation levels (*i.e.*, class codes) for titles assigned to secondary-level supervisory employee relations group is that incumbents in these bargaining units all have the authority to recommend the hiring, firing, and disciplining of employees who supervise subordinate employees. Therefore, since October 2015, the Commission has upheld the classification standard that in order for a position

to be classified in a title assigned the primary-level or secondary-level employee relations group, incumbents are required to be the rater of employee, or subordinate-level supervisory employee, performance using a formal performance evaluation system. *See In the Matter of Alan Handler, et al.*, (CSC, decided October 7, 2015); *In the Matter of Marc Barkowski, et al.*, (CSC, decided October 19, 2016); and *In the Matter of David Bobal, et al.*, (CSC, decided November 23, 2016).

Initially, it is note that the title of Technical Assistant 1 is not a supervisory title. As the Technical Assistant 1 does not have supervisory duties, and the appellant confirms that this subordinate has lead worker duties, the appellant is properly classified as a first-level supervisor. The appellant's reliance on *Stemler, supra* is misplaced as the circumstances of that decision were regarding lead worker duties over temporary employees, and was not a determination that ERG assignments were not the sole basis in determining position classification. The only discussion of ERGs in that decision was that lead worker duties are not indicative of supervisory responsibility.

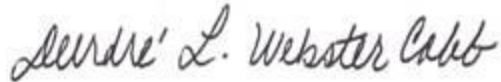
Further, as noted in the definition, incumbent Program Specialists 4, Regulatory Programs, are required to supervise professional and/or technical staff engaged in program activities. *N.J.A.C. 4A:4-2.5(a)1* states that professional titles require at least a Bachelor's or higher level degree, with or without a clause to substitute experience. Professional work is basically interpretive, evaluative, analytical and/or creative requiring knowledge or expertise in a specialized field of knowledge. This is generally acquired by a course of intellectual or technical instruction, study and/or research. *See In the Matter of Lewis Gordon* (Commissioner of Personnel, decided September 27, 1997) (Youth Worker title series not considered to be at a level and scope consistent with professional experience). Conversely, *N.J.A.C. 4A:4-2.5(a)2* states that para-professional titles require at least 60 general college credits or 12 or more specific college credits, with or without a clause to substitute experience. Also, *N.J.A.C. 4A:4-2.5(a)3* states that non-professional titles require less than 60 general college credits or less than 12 specific college credits. The Principal Clerk Typist title is a clerical title, not a professional or technical title. As such, even if the appellant's subordinate Technical Assistant 1 were classified as a Principal Clerk Typist, a title in the "R" ERG, the classification of the appellant's position would not warrant the higher title. There is nothing in the record establishing that the appellant provided evidence that she was supervising a first-level supervisor at time of Agency Services' review. Based on reporting relationships, the appellant is clearly not performing duties at the level of Program Specialist 4, Regulatory Programs.

**ORDER**

Therefore, the position of Sherita Whetstone was properly classified as Program Specialist 3, Regulatory Programs.

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 16<sup>TH</sup> DAY OF FEBRUARY, 2022



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