STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Gregory Davis,
Department of Environmental
Protection

Classification Appeal

CSC Docket No. 2016-694

ISSUED: NOV 19 2015 (SLK)

Gregory Davis, represented by Michael L. Prigoff, Esq., appeals the attached decision of the Division of Agency Services (Agency Services) that the proper classification of his position with the Department of Environmental Protection is Environmental Specialist 2. The appellant seeks a classification of Environmental Specialist 3.

The record in the present matter establishes that Mr. Davis' permanent title is Environmental Specialist 2. He is assigned to Compliance and Enforcement, Division of Air and Hazardous Enforcement, Bureau of Hazardous Waste and UST Compliance and Enforcement and reports to Michael Hollis, Environmental Specialist 3. The appellant does not have direct supervisory responsibility. The appellant sought a reclassification of his position, alleging that his duties are more closely aligned with the duties of an Environmental Specialist 3. In support of his request, the appellant submitted a Position Classification Questionnaire (PCQ) detailing the different duties he performs as an Environmental Specialist 2. Agency Services reviewed and analyzed the PCQ completed by the appellant as well as an organization chart, his Performance Assessment Review (PAR), his statements, and the statements of his supervisor, division director, and the appointing authority. Agency Services conducted a desk audit of Mr. Davis' job duties on June 10, 2015. In its decision, Agency Services determined that the duties performed by the appellant were consistent with the definition and examples of work included in the job specification for Environmental Specialist 2.

On appeal, Mr. Davis states that the determination letter indicated that his appeal was denied since he does not complete performance evaluations for

subordinate staff, he reports to an Environmental Specialist 3, and he cannot report to a supervisor in the same title. The appellant asserts that a significant number of other Environmental Specialist 2s have been reclassified and permanently appointed as Environmental Specialist 3s and that none of these individuals had the responsibility of completing performance evaluations of subordinate staff and all of these individuals were supervised by Environmental Specialist 3s after their positions were reclassified.

CONCLUSION

The definition section of the job specification for Environmental Specialist 2 states:

> Under the limited supervision of a supervisory official in a State department or agency performs technical or scientific work, including field and office studies, surveys, inspections or investigations associated with the enforcement of laws and/or regulations and environmental review and control work or organizes and carries out programs/projects designed to study and evaluate environmental impact of specific projects on the environment; organizes and makes tests and reports to assess environmental impacts and investigates environmental complaints concerning projects; conducts contract, grant and/or loan processing; does related work as required.

The definition section of the job specification Environmental Specialist 3 states:

> Under the general supervision of a supervisory official in a State department or agency takes the lead or may supervise, organize and assign technical or scientific work, including field and office studies, surveys, inspections or investigations associated with the enforcement of laws and/or regulations and environmental review and control work, organizes and makes tests and reports to assess environmental impacts and investigates environmental complaints concerning projects; conducts or supervises the processing of contract, grant and/or loan applications; does related work as required.

The Commission agrees with Agency Services' determination that the appellant's position is properly classified as Environmental Specialist 2. A review of the appellant's PCQ indicates that approximately 65% of his duties involve interpreting rules, regulations, and statutes associated with various environmental protection acts, conducting inspections to enforce these environmental protection acts, collecting scientifically accurate evidence for civil or criminal action, reviewing testing reports required by environmental regulations and for environmental

permits and registrations, and preparing enforcement documents, managing case files, and negotiating settlements in matters where environmental statutes or regulations have been violated. These duties are consistent with an Environmental Specialist 2 classification. Further, the Environmental Specialist 3 title requires that an incumbent either be a lead worker or a supervisor. The appellant is clearly not a supervisor as he is not responsible for performing performance evaluations. Performance evaluation authority is a reasonable standard because it is the means by which it can be demonstrated that a supervisor can exercise his or her authority to recommend hiring, firing, and disciplining of subordinate employees. Simply stated, the actual authority and exercise of performance evaluation of subordinate staff is what makes a supervisor a supervisor. *See In the Matter of Alexander Borovskis, et al.* (MSB, decided July 27, 2005).

Moreover, the appellant is also not primarily acting as a lead worker. An incumbent in a leadership role refers 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). The appellant's PCQ does not clearly demonstrate that he spends 50 percent or more of his time in this capacity. *See In the Matter of Lawrence Craig and Louis Muzyka* (CSC, decided February 11, 2009) (Commission determined that Police Sergeants who were serving in an acting capacity of Police Lieutenant less than 50% of the time should not be reclassified as Police Lieutenants). A review of the appellant's PCQ does not indicate that he is regularly and on a recurring basis acting as a lead worker for any specific employees on a daily basis. Instead, his PCQ indicates that he assigns work *when taking the lead position* on an inspection. Additionally, the appellant has stated on his PCQ that he assigns and reviews work from new inspectors, *as needed*, which he indicates is five percent of his time, he reviews work from CEHA inspectors requiring Administrative Orders and Delivery Bans *as required*, which he indicates is five percent of his time, and he assigns and reviews work from the Hurricane Sandy Debris Management Team, which he indicates is one percent of his time. In other words, the appellant has not clearly indicated on his PCQ or by any other evidence, that he spends the majority of his time acting as a lead worker. The fact that some of an employee's assigned duties may compare favorably with some examples of work found in a given job specification is not determinative for classification purposes, since, by nature, examples of work are utilized for illustrative purposes only. Moreover, it is not uncommon for an employee to perform some duties which are above or below the level of work which is ordinarily performed. For purposes of determining the appropriate level within a given class, and for overall job specification purposes, the definition portion of the job specification is appropriately utilized.

Regardless, even if the appellant was primarily acting as a lead worker, his position still cannot be classified as an Environmental Specialist 3 as the appellant cannot report to a supervisor who has the same title, and his supervisor is an Environmental Specialist 3. *See In the Matter of Gary Lipsius* (Commissioner of Personnel, decided June 27, 2005) (Affirming long-standing policy that a subordinate cannot be classified at the same class code as his or her immediate supervisor). With respect to the appellant's claim that a significant number of Environmental Specialist 2s from his Division have been reclassified to Environmental Specialist 3s and none of these employees had the responsibilities for the completion of performance evaluations of subordinate staff and all of these Environmental Specialist 3s were supervised by Environmental Specialist 3s[1] after they were reclassified, a classification appeal cannot be based solely on a comparison to the duties of another position, especially if that position is misclassified. *See In the Matter of Carol Maita, Department of Labor* (Commissioner of Personnel, decided March 16, 1995); *In the Matter of Dennis Stover, Middletown Township* (Commissioner of Personnel, decided March 28, 1996). *See also, In the Matter of Lorraine Davis, Office of the Public Defender* (Commissioner of Personnel, decided February 20, 1997), *affirmed,* Docket No. A-5011-96T1 (App. Div. October 3, 1998).

ORDER

Therefore, the Civil Service Commission concludes that the position of Gregory Davis is properly classified as an Environmental Specialist 2.

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

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 18th DAY OF NOVEMBER, 2015

Robert M. Czech
Chairperson
Civil Service Commission

[1] It is also noted that the organization chart that the appointing authority submitted does not indicate that there are any Environmental Specialist 3s in the appellant's Division that are reporting to other Environmental Specialist 3s.

Inquiries
and
Correspondence

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Civil Service Commission
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Attachment

c: Gregory Davis
Michael L. Prigoff, Esq.
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CHRIS CHRISTIE
Governor
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STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION
Division of Agency Services
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ROBERT M. CZECH
Chair/Chief Executive Officer

July 9, 2015

Mr. Gregory J. Davis
New Jersey Department of Environmental Protection
Compliance and Enforcement
[redacted]

Re: Classification Appeal
Environmental Specialist 2
Position #657158
CPM #[redacted]
Employee ID #[redacted]

Dear Mr. Davis:

This is to inform you, and the Department of Environmental Protection, of our determination concerning the classification appeal referenced above. Our review involved a detailed analysis of the Position Classification Questionnaire (DPF-44S); organization chart; your Performance Assessment Review (PAR); your statements; the statements of your supervisor, division director, and appointing authority; and a desk audit that was conducted June 10, 2015.

Issue:

You are appealing the current classification of your position, Environmental Specialist 2. You contend that your current duties and responsibilities are consistent with those of an Environmental Specialist 3.

Organization:

The position is located in Compliance and Enforcement, Division of Air and Hazardous Materials Enforcement, Bureau of Hazardous Waste and UST Compliance and Enforcement, Department of Environmental Protection. You are supervised by Michael Hollis, Environmental Specialist 3 (R25) and you have no direct supervisory responsibility.

Finding of Fact:

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

- Plans, executes, and coordinates compliance assistance and enforcement inspections associated with UST rules and regulations.
- Enters inspection information and results into NJEMS.
- Collects and secures evidence, prepares technically sound, scientifically accurate, and comprehensive reports of air pollution and UST matters for use in civil or criminal actions.
- Uses and maintains assigned testing equipment.
- Plans, performs, and coordinates investigations of incidents, releases, and malfunctions to identify the cause and determine compliance with appropriate statutes and regulations.
- Coordinates and trains new State and CEHA inspectors to perform standard compliance inspections.
- Coordinates with CEHA inspectors and issues Administrative Orders and Delivery Bans as appropriate.
- Reviews testing reports required by regulations, permits, and registration.
- Prepares enforcement documents upon evidence of violation of statutes or regulations and acts as the case manager in negotiations and settlement of enforcement cases.
- Interprets rules and regulations associated with UST and air pollution in the performance of duties.

Review and Analysis:

The duties and responsibilities of the position were compared to those described within the class specification for Environmental Specialist 2 and Environmental Specialist 3.

The definition section of the specification for the title, Environmental Specialist 2 (P22, 15853), states:

> "Under the limited supervision of a supervisory official in a state department or agency performs technical or scientific work, including field and office studies, surveys, inspections or investigations associated with the enforcement of laws and/or regulations and environmental review and control work or organizes and carries out programs/projects designed to study and evaluate environmental impact of specific projects on the environment; organizes and makes tests and reports to assess environmental impacts and investigates environmental complaints concerning projects; conducts contract, grant and/or loan processing; does related work as required."

An Environmental Specialist 2 conducts investigations/inspections utilizing all available sources and other parameters necessary to evaluate a facility and ensure compliance with permit requirements. Incumbents in this title may provide direction and technical guidance to environmental consultants and other interested parties. An Environmental Specialist 2 investigates complaints of violations and prepares reports. An incumbent in this title reviews and comments on technical reports and other environmental documents. An Environmental Specialist 2 meets with citizens, public officials and others on environmental matters.

The definition section of the specification for the title, Environmental Specialist 3, (R25, 15854), states:

> "Under the general supervision of a supervisory official in a state department or agency takes the lead or may supervise, organize and assign technical or scientific work, including field and office studies, surveys, inspections or investigations associated with the enforcement of laws and/or regulations and environmental review and control work, organizes and makes tests and reports to assess Environmental impacts and investigates environmental complaints concerning projects; conducts or supervises the processing of

contract, grant and/or loan applications; does related work as required."

An Environmental Specialist 3 is expected to instruct, assign, and organize the work of the organizational unit on a regular and recurring basis which includes the direct supervision of subordinate professional staff performing environmental specialist work. An Environmental Specialist 3 is assigned to the "R" bargaining unit and considered the first-level of supervision with responsibility for the completion of performance evaluations.

Your position coordinates and performs UST inspections on regulated storage tanks in assigned counties. Your inspections include reviewing the release response plan, compliance testing, site remediation rules, records, and monitoring systems. All UST inspections are done in pairs with one inspector serving in a lead role for the facility. Your position provides follow-up on all violations and enforcement documents issued and has the authority to offer settlement agreements if appropriate. Your position has the authority to issue Cease Use or Delivery Bans if the nature of the violation requires issuance. Your position trains new CEHA inspectors and contributes to UST test development to ensure competency and knowledge of the appropriate rules and regulations. Your position provides oversight on inspections performed by CEHA personnel. Your position maintains and calibrates all assigned equipment as required. Your position serves as UST program lead for air pollution/quality participating in general meetings and outreach sessions with the regulated community. Your position serves as the UST program lead for ultrasonic tank testing designed to determine the thickness of a steel storage tank. Your position responds to incidents and complaints received via the Department hotline. Your positon participates in Department wide projects as required.

While your position performs technical environmental work related to compliance and enforcement of UST regulations and statutes, your position has no responsibility for the completion of performance evaluations of subordinate staff. Environmental Specialist 3 is an inappropriate classification for the functions of this position.

In addition, you report directly to Michael Hollis, whose position is classified as an Environmental Specialist 3 (R25, 15854). Titles assigned to the "R" bargaining unit are considered first-level supervisors. In a supervisor/subordinate reporting relationship, the supervisor's title must be assigned a higher class code and must be assigned to an appropriate and higher bargaining unit. A first-level supervisor may not directly supervise another first-level supervisor. A classification of your

position to Environmental Specialist 3 would create an improper reporting relationship.

Determination:

By copy of this letter, the Appointing Authority is advised that your position is properly classified as Environmental Specialist 2 (P22, 15853).

The class specification for Environmental Specialist 2 title is descriptive of the general nature and scope of the functions that may be performed by the incumbent in this position. However, the examples of work are for illustrative purposes and are not intended to restrict or limit performance of the related tasks not specifically listed.

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. The appeal should be addressed to the 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,

Martha T. Bell
Human Resource Consultant 5
Division of Agency Services

MTB/rej
C: Robin Liebeskind
Veronica Kirkham
CPM #[redacted]