

consultant stated he would give her a favorable outcome. She stated that there have been false statements regarding her duties by her supervisor, there were errors in the prior decision, CPM's decision failed to identify what documents or investigatory records she bases her orders on, or where, how, and who maintains these records; CPM's decision omitted duties, and duties listed on her performance assessment reviews were not considered.

The Commission found that the CPM consultant explained that that he was communicating all potential outcomes, both favorable and unfavorable, and that preparing orders and assessing penalties is considered complex and technical work, but is not an investigative duty requiring ferreting out of facts. It noted that CPM explained that the incumbent's work begins when a surety bond cancellation is received, the petitioner's current supervisor indicated that the petitioner used readily available internal resources, such as the Oracle database, and did not provide any information regarding where she may obtain information from external sources. The Commission also listed that she assisted her supervisor with file creation, document management, template or routine correspondence, and performed special projects or assignments as needed. Ultimately, the Commission found that this position is properly classified as Technical Assistant 1, Insurance.

In her request for reconsideration, the petitioner again argues that she was not initially interviewed, the CPM consultant did not observe her working but relied on false statements from her supervisor, and that he promised she would be paid for out-of-title work and the review would have a positive outcome. As to her actual work, the petitioner maintains that receipt of a surety bond cancellation notice is not inherently a violation of State statutes, and that she must investigate when a case reaches the level of an Order. She states that Oracle is a tracking system which she does not rely on to gather information, but that she must conduct interviews with licensees, insurance company employees, compliance officers and attorneys to discover noncompliance issues and violations resulting in fines and penalties in an Order. She provides samples of documents from Oracle She also states that she searches databases and documents, including licensing and examination records. She states that her investigations result in discovery of violations which increase penalties imposed by her Orders, which are legal documents. She reiterates that she attends the same meetings and training as Investigators and is being held to a higher standard than other unnamed individuals in her unit who handle referrals. Further, she contends that another employee performs the duties of assisting her supervisor with file creation, document management, etc., as described above. She argues that both her current and prior supervisors inaccurately reported her duties, although they each provided a different set of incorrect duties. She states that her prior supervisor did not conduct performance reviews for the years 2010, 2011 and 2012, and he repeatedly lied about her duties in a deposition given on December 16, 2013 in the Superior Court regarding her lawsuit against the Department of Banking and Insurance.

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. She 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. First, regarding the audit, the petitioner repeats that she was not initially interviewed, the CPM consultant did not observe her working but relied on false statements from her supervisor, and that he promised she would be paid for out-of-title work and the review would have a positive outcome. These arguments have already been addressed by the Commission and nothing presented by the petitioner in this matter would change the outcome. It is noted that the petitioner's allegation that the CPM consultant told her it would be a favorable outcome prior to completion of the audit implies partiality and favoritism on the part of the consultant. Any personnel attempting such a deception or fraud would be subject to disciplinary procedures, and could lose his or her job. This allegation was made without proof and is specious.

As to actual duties, the petitioner argues that she conducts interviews with licensees, insurance company employees, compliance officers and attorneys to discover noncompliance issues and violations. The petitioner had indicated previously that she communicated with attorneys when assessing and negotiating penalties, and handled inquiries from licensees, insurance companies, attorneys and accountants. She also communicated with licensees, insurance companies and accountants when following up. While the petitioner did not provide an actual percentage of time that she was communicating with insurance company employees, compliance officers and attorneys to obtain information regarding violations, this is clearly not the primary focus of the position. Her prior supervisor indicated that she did not interview licensees in person or conduct field investigations. Her current supervisor indicated verbally at the audit that Ms. Williams does not have to perform investigative work for standardized templates. Performing an investigation is determining the facts such as going online, calling, visiting, determining if there is a violation, and determining who to talk to. It involves open-ended fact-finding and independent thinking, utilizing a variety of resources. He indicated that the petitioner's work is more straightforward and does not have to consider multiple permutations. He indicated that the petitioner does not have to correspond with licensees to cure the problem and prevent GAP

coverage. The petitioner maintains that both of these supervisors are untruthful as to her duties in order to prevent her from being paid for performing out-of-title work. This argument is unpersuasive, and the petitioner has provided no evidence that her prior and current supervisors provided incorrect information regarding these duties. Any inconsistencies in the petitioner's prior supervisor's deposition are unrelated to her duties. In any event, the classification of the position is based on a review of all information gathered in the audit, not on the basis of only a portion of information, such as the prior supervisor's comments.

She reiterates that she attends the same meetings and training as Investigators and is being held to a higher standard than other unnamed individuals in her unit who handle referrals. In this respect, 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).

Further, she does not agree that she performs the previously listed duties regarding assisting her supervisor and contends that another employee performs those duties. It is noted that the petitioner argued that duties as listed on her performance assessment reviews were not considered by CPM, although they match the work that she performs. She may take umbrage with this duty from her evaluation, but she signed it indicating that she reviewed the package in a face-to-face meeting with her supervisor and was aware of the criteria on which she would be rated. The major job responsibilities were listed in the Commission's decision, which concluded that the petitioner is not primarily performing investigatory duties involving alleged noncompliance with statutes and regulations. No error or additional information has been submitted to warrant reversing the previous decision.

ORDER

Therefore, it is ordered that this request for reconsideration 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 16th DAY OF JULY, 2014



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
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. Traci Williams
- John Walton
- Kenneth Connolly
- Joseph Gambino



STATE OF NEW JERSEY

DECISION OF THE
CIVIL SERVICE COMMISSION

In the Matter of Traci Williams,
Department of Banking and
Insurance

CSC Docket No. 2014-1001

Classification Appeal

ISSUED: APR 25 2014 (RE)

Traci Williams appeals the attached decision of the Division of Classification and Personnel Management (CPM) which found that her position with the Department of Banking and Insurance (DBI) is properly classified as Technical Assistant 1, Insurance. She seeks an Investigator 2 job classification in this proceeding.

Ms. Williams previously appealed her classification. In its decision *In the Matter of Traci Williams, Department of Banking and Insurance* (CSC, decided January 9, 2013), attached hereto and incorporated herein, the Commission outlined the background of this case and ordered CPM to re-review the classification of Traci Williams' position. As a result, CPM conducted a comprehensive audit, including interviews with the appellant and her current supervisor. CPM found that the appellant currently reports to a Government Representative 1, and does not have supervisory responsibilities.

CPM noted that the appellant works independently, under general supervision, and is recognized as the "Surety Bond Expert" in the Office of Consumer Finance. She handles cases dealing with surety bond cancellations, including receiving, processing and monitoring surety bond cancellations. In this respect, CPM indicated that since her original appeal in December 2011, there have been changes in organizational reporting relationships, and some adjustments to the work she performs, but the primary focus of her assignments has not changed. CPM indicated that some internal research was required, but information included in the Consent Orders and Orders to Show Cause, which she drafts in the course of

her surety bond cancellation work, was based upon documents or investigatory records maintained by DBI. It found that the appellant was not responsible for discovering this information through investigative techniques, but rather, she utilized established internal information resources. It indicated that the position had responsibility and accountability, but did not perform the duties commensurate with complex investigations. Thus, it concluded that the position was properly classified as Technical Assistant 1, Insurance.

On appeal, Ms. Williams states that the Human Resource Consultant performing the classification review indicated that the DBI would pay her for out-of-title work she had performed, that it was a positive meeting, and that it would have positive results. She states that the Consultant told her that she would receive a title above her current title but below her requested title. As to the audit findings, the appellant states that there have been false statements regarding her duties throughout the audit to prevent her from being paid for actual work. Specifically, she states that she does not recommend penalties to management,¹ but prepares orders and assesses the penalties herself; her previous supervisor stated that she did not handle cases; CPM's original decision of August 16, 2012 incorrectly stated that she prepared new files, tracked open and closed cases, received and logged complaints and distributed them to investigators, organized case files, updated the status of cases in databases, and sent form and template letters on behalf of Investigators; the Consultant did not interview her prior supervisor; CPM's decision² fails to identify what documents or investigatory records she bases her orders on, or where, how, and who maintains these records; CPM's decision omitted duties including her assessment of penalties, drafting orders, and investigating and discovering other noncompliance issues with a licensee; and duties as listed on her performance assessment reviews were not considered, although they match the work that she performs. She indicates and that there are problems between herself and management, and CPM believed management although it made false statements and provided no proof. She states that if she did not do the work, CPM failed to identify who did. The appellant provides a copy of her performance assessment review for calendar year 2011, various emails regarding her work, a sample Consent Order and a sample Order to Show Cause.

In reply, CPM responded that it clearly communicated all potential outcomes of her original classification review, both favorable and unfavorable. It indicated that it had said that processing and monitoring of surety bond cancellations is a complex and technical function, but also stated that the incumbent is not responsible for investigating whether a surety bond has been cancelled. The incumbent's work begins when a surety bond cancellation is received. Regarding

¹ She is referring to the third sentence in the third full paragraph on page 3 of CPM's September 11, 2013 decision.

² She is referring to the last sentence on page 3 of CPM's September 11, 2013 decision.

information included in the orders, CPM reiterates that the appellant is not responsible for discovering this information through investigative techniques, but uses documents or investigatory records maintained by the DBI. It states that this information is from the appellant's current supervisor, a Government Representative 1 with a functional title of Deputy Assistant Director. The supervisor is viewed as knowledgeable of the process and procedures for handling and processing surety bond cancellations, and eloquently explained procedures followed in the completion of surety bond cancellation work. It states that this process includes research, confirmation, and follow up with the involved parties, but does not rise to the level of investigative work.

CONCLUSION

The definition section of the job specification for Technical Assistant 1, Insurance states:

Under the direction of a supervisory official in the Department of the Banking and Insurance or the Department of Law and Public Safety is responsible for maintaining highly complex records, and the supervision of highly complex and technical paraprofessional functions; does other related duties.

The definition section of the job specification for Investigator 2 states:

Under limited supervision of a Supervisor of Investigations or other supervisory official, conducts complex investigations, in the field or from the central office, involving alleged noncompliance with State statutes and regulatory requirements; does other related duties.

At the outset, it must be noted that CPM explains audit procedures to incumbents but does not make promises or implications regarding the final outcome, which cannot be determined until all information is collected and analyzed. While the appellant may have believed that the Consultant was tending towards a possible favorable outcome, the Consultant explained that that he was communicating all potential outcomes, both favorable and unfavorable.

The core of this issue is whether or not the appellant's duties rise to the level of being professional in nature and involving conducting complex investigations involving alleged noncompliance with statutes and regulations. As stated by CPM, investigators utilize creative thinking skills to determine where answers to specific questions or hunches may be found, and make determinations regarding the facts. It indicated that processing and monitoring of surety bond cancellations was complex and technical, requiring monitoring the status of cases and corresponding with involved parties for resolutions which may include issuance of replacement

bonds and/or reinstatements, as well as issuance of penalties. CPM indicated that the appellant's supervisor has said that she recommends penalties to management, while the appellant says she prepares orders and assesses the penalties herself. Whichever is the case, this can be considered complex and technical work, but is not an investigative duty requiring ferreting out of facts.

The appellant stated that her previous supervisor said that she did not handle cases; nevertheless, another audit has been performed on the appellant's position and this audit included a review of documentation, an onsite audit, as well as an interview of the employee and her current supervisor. Her duties have been sufficiently described, regardless of statements from her previous supervisor. The appellant argued that CPM's original determination was incorrect, as it is untrue that she prepares new files, tracks open and closed cases, receives and logs complaints and distributes them to investigators, organizes case files, updates the status of cases in databases, and sends form and template letters on behalf of Investigators. A review of the original file indicated that this information appears to have been given by the appellant's prior supervisor. Although the appellant indicated that the consultant did not interview her prior supervisor, CPM's determination indicated that he had been questioned at the time of the original audit in a telephone interview. As CPM had already interviewed the appellant's prior supervisor, there was no necessity that he be re-interviewed regarding the appellant's duties while under his supervision. It is noted that classification reviews are based on a current review of assigned duties. At this point, all information given in CPM's original determination has been re-reviewed along with new information obtained from the second audit, including information from the appellant's current supervisor and the appellant. As such, the information in CPM's original determination was not solely relied upon to arrive at the position's classification as a Technical Assistant 1, Insurance.

The appellant claimed that CPM's decision of September 11, 2013 failed to identify what documents or investigatory records she bases her orders on, or where, how, and who maintains these records. CPM explained that the incumbent's work begins when a surety bond cancellation is received. Whether or not CPM made it clear, the appellant's current supervisor indicated that the appellant uses readily available internal resources, such as the Oracle database, to obtain current information. It is also noted that the appellant has not provided any information regarding where she may obtain information from external sources. Her supervisor also indicated that she drafts consent orders, but he reviews and forwards them to the Enforcement Section.

The appellant's performance evaluation for the rating cycle July 2013 through December 2013 was provided and was included in the making of the classification determination. The first major job responsibility is "surety bond cancellations." For this responsibility, the appellant logs in and docketts the case

upon receipt, corresponds promptly with the licensee and insurer, follows up as necessary, forwards documentation of any replacement and/or reinstatement notice to licensing, and may refer the matter to her supervisor with a recommendation for further action which also may include drafting an order, and maintaining appropriate documentation in retrievable files. For her second responsibility of "Requests for release of bond or LOC collateral," her evaluation indicates that she logs and then documents the assignment, reviews OFC records, may draft a letter to the licensee, and maintains appropriate documentation. For the responsibility of "Consumer Bond Claims," she logs and then documents the assignment, creates a spreadsheet for tracking consumer bond claim matters, drafts letters from an approved template, assembles necessary supporting documentation, and maintains documentation in files. She assists her supervisor with file creation, document management, template or routine correspondence, and performs as needed or special project assignments consistent with her title. A holistic view of these duties does not lead to the conclusion that the appellant is primarily performing investigatory duties involving alleged noncompliance with statutes and regulations.

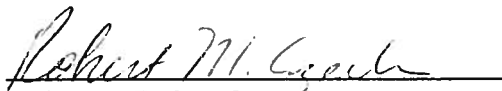
A thorough review of the information presented in the record establishes that Ms. Williams' position is properly classified as Technical Assistant 1, Insurance, and she has not presented a sufficient basis to establish that her position is improperly classified.

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
THE 23rd DAY OF APRIL, 2014



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

Enclosures

c: Traci Williams
John Walton
Kenneth Connolly
Joseph Gambino



Chris Christie
Governor
Kim Guadagno
Lt. Governor

STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION
DIVISION OF CLASSIFICATION AND PERSONNEL MANAGEMENT
P.O. Box 313
Trenton, New Jersey 08625-0313

Robert M. Czech
Chair/Chief Executive Officer

September 11, 2013

Ms. Lisa A. Joy
Manager 1, Human Resources
New Jersey Department of Banking and Insurance
PO Box 325
Trenton, New Jersey 08625-0325

Subject: Classification Determination – Ms. Traci Williams (000333786); New Jersey Department of Banking and Insurance; Office of Consumer Finance; CPM #01130204

Dear Ms. Joy:

On January 11, 2013, the Civil Service Commission issued the attached ruling (CSC Docket No. 2013-620) on the classification appeal determination of August 16, 2012 (CPM #12110260). The classification appeal determination concerned the position encumbered by Ms. Traci S. Williams. Specifically, the Commission ordered the Division of Classification and Personnel Management (CPM) to, "... have (Ms. Williams) complete a proper PCQ... and submit it to CPM for review." The decision continues to state, "CPM should also conduct, as necessary, any further proceedings and consider all information gathered or submitted to date. CPM should then reissue its determination regarding the classification of the appellant's position."

As a result, a comprehensive audit of the position encumbered by Ms. Traci Williams has been conducted. In addition to the information gathered from the previous review, CPM has subsequently received support documentation submitted by the appellant in regard to her appeal of the original determination of August 16, 2012; the requisite PCQ (Position Classification Questionnaire); a subsequent Performance Evaluation Statement (PES) signed by the appellant and her current supervisor; as well as an on-site audit and interview of the employee and her supervisor.

Organization:

Ms. Williams is currently serving with a permanent appointment (RAP) in the title of Technical Assistant 1, Insurance (52352 / R17). She is assigned to the Office of Consumer Finance (OCF) which is responsible for investigating many types of inquiries and complaints that fall within the jurisdiction of the Department of Banking and Insurance. Ms. Williams currently reports to Mr. Thomas Hunt, Government Representative 1 (55512). Mr. Hunt's "in-house" title is that of Deputy Assistant Director. Ms. Williams has no formal supervisory responsibilities.

At the time of the original Classification Appeal (received December 29, 2011), Ms. Williams was reporting to Mr. Stephen Case, Supervisor of Investigations (56793 / S28). Ms. Williams has subsequently been reassigned to report to Mr. Hunt.

Findings of Fact:

Working independently, under general supervision, Ms. Williams is recognized as the "Surety Bond Expert" in the Office of Consumer Finance. Surety bonds are formal contracts to pay one party (the insurer) a certain amount if a second party (the licensee) fails to meet their obligation. The surety bond protects the insurer against losses resulting from the licensee's failure to meet the obligation. Ms. Williams is assigned cases dealing with surety bond cancellations. In this role, the primary responsibilities of the incumbent include, but are not limited to the following:

- Process Surety Bond Cancellation Notices. Correspond with licensees and insurers to resolve issues before the expiration of a 30-day cure period. Forward bond replacement/reinstatement documentation to the Licensing Unit. Refer matters of "failure to cure within 30 days" to the Deputy Assistant Director. Draft recommendations of appropriate consent orders/penalties for supervisor's review/signature. Signed consent orders are forwarded to the Enforcement Unit.
- Process Requests for Release of Bonds or Letters of Credit. Review DOBI/OCF records to identify any open issues with licensees. Correspond, in writing, to licensees to resolve any open issues and, upon resolution of any open issues, advise licensees the Department does not object to the requested release. Inform the licensee of the legal/contractual obligations.
- Assist the Deputy Director of Consumer Finance. Track and respond to consumer bond claims as assigned. Establish files, manage documents, and prepare routine correspondence.

Since the original submission of Ms. William's classification appeal in December 2011, there have been changes in her organizational reporting relationships and some adjustments to the work she performs. But the heart of her assignments has not changed. The vast majority of time and responsibility for Ms. Williams was, and continues to be, spent receiving, processing, and monitoring surety bond cancellations. In the course of this process, Ms. Williams is to correspond with licensees and address the related issues therein.

Review and Analysis:

Ms. Williams has requested reclassification from her current title of Technical Assistant 1, Insurance (52352 / R17) to the title of Investigator 2. The definition section of the classification specification for the title of Investigator 2 (56783 / I22) states:

Under limited supervision of a Supervisor of Investigations or other supervisory official, conducts complex investigations, in the field or from the central office, involving alleged noncompliance with state statutes and regulatory requirements; does other related duties.

An incumbent serving in the title of Investigator 2 would perform complex investigations where it may or may not be clear that a violation has occurred. Investigators must utilize creative thinking skills to determine where answers to specific questions or hunches may be found. Investigators are called upon to determine facts, where in the day to day duties of the incumbent,

the facts present themselves. As such the title of Investigator 2 is not commensurate with the duties assigned to this position.

The definition section of the classification specification for the title of Technical Assistant 1, Insurance states:

Under the direction of a supervisory official in the Department of Banking and Insurance or the Department of Law and Public Safety is responsible for maintaining highly complex records, and the supervision of highly complex and technical paraprofessional functions; does other related duties.

An incumbent serving in the title of Technical Assistant 1, Insurance would be responsible for highly complex and technical para-professional functions. Such duties would include the oversight of a function within an agency where some critical thinking skills are utilized to determine appropriate action. An incumbent serving in the title of Technical Assistant 1, Insurance would not be expected to perceive, evaluate, analyze formulate hypothesis, and think in the abstract as an incumbent serving in a professional-level title. The attached determination of the CSC provides a nice synopsis of the distinguishing factors between "professional" and "para-professional" work (Docket # 2013-620; Page 3).

The processing and monitoring of surety bond cancellations is a complex and technical function of the Office of Consumer Finance. Performing the responsibilities of this function requires an incumbent capable of monitoring the status of cases and corresponding with involved parties to seek resolution. Such resolutions may include the issuance of replacement bonds and/or reinstatements. Resolutions may also include the issuance of penalties which the incumbent has been given occasion to recommend to management. Although the performance of the job may have some moments of technical complexity, the incumbent is not responsible for investigating whether a surety bond has been cancelled. The incumbent's work begins when a surety bond cancellation is received.

The Commission decision of January 11, 2013 (Docket #2013-620) ordered the re-review of the incumbent's position specifically to determine, "... whether or not the handling of surety bond cancellation cases, in tandem with the other duties of the position, rise to the level of investigative work." The determining factor, as further stated in the Commission decision, lies upon, "whether or not the appellant personally decides information which is then included in the orders, or whether she obtains this information from other documents or investigatory records, or is given this information from the Investigators to include in the documents.

While some internal research is required, the information which is included in the orders is based upon documents or investigatory records maintained by the Department of Banking and Insurance. This is not information for which the incumbent is responsible for discovering through investigative techniques. Rather, the incumbent utilizes established internal information resources.

Finally, the incumbent provided numerous examples of internal records indicating she is required to report her accomplishments in much the same manner as those employees who are classified as Investigators in her organization. The incumbent also provide numerous examples of internal records indicating she is included in meetings and distribution lists in much the same manner of those employees who are classified as Investigators in her organization. These examples of internal records demonstrate the employee is in a position of responsibility and accountability, but fail to demonstrate the actual duties performed are commensurate with the work of complex investigations. Therefore, the duties of Ms. Williams comport best to those of an employee serving in the title of Technical Assistant 1, Insurance (52352 / R17).

Determination:

The review revealed the current duties and responsibilities assigned to Ms. Traci Williams are commensurate with the attached job specification for the title of Technical Assistant 1, Insurance (52352 / R17). This specification is descriptive of the general nature and scope of the functions which may be performed by an incumbent in this position. Please note the examples of work are for illustrative purposes and are not intended to restrict or limit the performance of related tasks not specifically listed. The relevance of such specific tasks is determined by an overall evaluation of their relationship to the general classification factors listed in the specification.

Ms. Williams is considered to be present and properly classified as serving in the title of Technical Assistant 1, Insurance (52352 / R17).

According to the New Jersey Administrative Code (N.J.A.C. 4A:3-3.9), either the Appointing Authority or the affected employee may appeal this determination within 20 days of receipt of this notice. This appeal should be addressed to Written Record Appeals Unit, Division of Merit System Practices and Labor Relations, P.O. Box 312, Trenton, New Jersey 086225-0312. Please note the submission of an appeal must include written documentation and/or argument substantiating the portions of the determination being disputed and the basis for appeal.

Sincerely,



Mark B. Van Bruggen
HR Consultant Supervisor

Attachments

MVB

C: Traci Williams
NJCS/PMIS Unit
File

B-15



STATE OF NEW JERSEY

DECISION OF THE
CIVIL SERVICE COMMISSION

In the Matter of Traci Williams,
Department of Banking and
Insurance

CSC Docket No. 2013-620

Classification Appeal

ISSUED: **JAN 11 2013**

(RE)

Traci Williams appeals the attached decision of the Division of Classification and Personnel Management (CPM) which found that her position with the Department of Banking and Insurance is properly classified as Technical Assistant 1, Insurance. She seeks an Investigator 2 job classification in this proceeding.

Ms. Williams received a regular appointment to the title of Technical Assistant 1, Insurance on July 23, 2003. Subsequently, she requested a classification review of her position. An audit was conducted consisting of a review of all documents, and a telephone interview with the appellant's immediate supervisor, a Supervisor of Investigations. This position is located in the Office of Consumer Finance, Division of Insurance and does not have supervisory responsibilities.

The classification review found that Ms. William's assigned duties and responsibilities, as detailed in CPM's August 16, 2012 decision, were commensurate with the title of Technical Assistant 1, Insurance. On appeal, Ms. William argues that she was not contacted or interviewed during this classification review as she was out of work due to a disability. She provides supporting documentation which contradicts her supervisor's description of her duties. In support, she submits some examples of work, some internal emails between several individuals discussing in-person interviews and field visits, monthly reports, and weekly reports. She argues that the duties that her supervisor reported that she performs are actually the duties of the Secretary to the Manager, and that she does not do them. She states that she is assigned the same duties as Investigators and attends the same

meetings as they do, and that this is supported by the information in the attached emails and reports. She states that two support staff for the unit are not required to attend meetings or prepare weekly reports as they are not assigned cases.

Next, the appellant submits emails which she states indicate that she is assigned cases dealing with surety bond cancellations. She states that these emails show discussions regarding orders that she drafted and fines and penalties that she assessed, discussions regarding various docketed cases from her supervisor, negotiations with attorneys regarding fines and penalties, discussions with upper management, submissions of weekly reports regarding the total cases assigned to her, her projected plan of action in dealing with old cases from 2009 which includes drafting orders, and her supervisor's statement that he has seen these orders. She also provides copies of Investigator Summary Reports showing the number of outstanding cases, closed cases and assigned cases for various periods of time from 2008 to the end of 2011. Further, she provides copies of Consent Orders and Orders to Show Cause that she has drafted, various emails which discuss her cases, orders and penalties, monthly reports of caseloads, and action plans she had to submit to her supervisor.

As to the review, the appellant explains that she was out of work in January, 2012, and was hospitalized twice. She indicated that she notified CPM that she was in the hospital and left a number to be contacted, but did not hear from CPM. It is noted that the Position Classification Questionnaire (PCQ) that was provided by CPM was not signed by the appellant's supervisor or the appointing authority.

CONCLUSION

The definition section of the job specification for Technical Assistant 1, Insurance states:

Under the direction of a supervisory official in the Department of the Banking and Insurance or the Department of Law and Public Safety is responsible for maintaining highly complex records, and the supervision of highly complex and technical paraprofessional functions; does other related duties.

The definition section of the job specification for Investigator 2 states:

Under limited supervision of a Supervisor of Investigations or other supervisory official, conducts complex investigations, in the field or from the central office, involving alleged noncompliance with State statutes and regulatory requirements; does other related duties.

It is long-standing 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. It is noted that titles are categorized as professional, para-professional or non-professional. *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 predominantly intellectual in character, as opposed to routine mental, manual, mechanical or physical work, and it involves the consistent exercise of judgment. It 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 at an institution of higher learning or acquired through an in-depth grasp of cumulative experience. However, there must be thorough familiarity with all the information, theories and assumptions implicit in the chosen field. Persons involved in professional work should be able to perceive, evaluate, analyze, formulate hypothesis, and think in the abstract. Positions are considered professional when the work requires *application* of professional knowledge and abilities, as distinguished from either the desirability of such application or the simple possession of professional knowledge and abilities.

The Investigator 2 title is professional, requiring a Bachelor's degree, while the Technical Assistant 1, Insurance title is para-professional, requiring an Associate's degree or allowing for the possession of an Associate's degree in lieu of experience. Job specifications are descriptive and illustrative of the general nature and scope of functions that may be performed and are not meant to be restrictive or inclusive. Moreover, it is not uncommon for an employee to perform some duties which are above or below the level of work normally performed. The primary focus of the Investigator 2 title is to conduct investigations involving noncompliance with state statutes and regulatory requirements. Conducting investigations involves reviewing criminal history record information, maintaining records and files, preparing investigative reports, notifying appropriate agencies, reviewing and preparing correspondence, reviewing and analyzing information in records and documents, surveillance, conducting surveys, maintaining confidentiality, testifying in court or at proceedings, using investigative equipment, interviewing witnesses, and identifying, collecting, and preserving evidence.

In the instant matter, the appellant indicated on her Position Classification Questionnaire (PCQ) that for 51% of the time she performs investigatory duties on cases involving cancellation of surety bonds, release of collateral, misrepresentation or fraud. This includes reviewing correspondence related to inquiries and preparing replies based on a review of the documents and applicable laws, rules and regulations; communicating with attorneys, licensees, insurance companies, and accountants through the course of an investigation; interviewing licensees and

employees of insurance companies to obtain supporting documentation relevant to violations; interfacing with attorneys when assessing and negotiating penalties with licensees for companies found to be in violation; identifying, collecting and preserving evidence obtained during the course of an investigation; preparing reports of activities; preparing weekly reports relevant to investigatory matters; preparing correspondence; and maintaining confidentiality with investigations. The appellant indicated that for 13% of her time, she drafts Consent Orders for suspension of licenses for companies to be found in violation, communicates with attorneys with regard to Orders, and discusses the content of statutes and regulations and how they were applied to the Orders. For 12% of the time the appellant is responsible for handling inquiries from licensees, insurance companies, attorneys, and accountants who inquire about security bond requirements including proper wording of bonds, required amounts, and how to fully execute a bond. The remaining four tasks each were performed less than 10% of the time. These duties included training an Investigator 2 on how to handle surety bond cancellation cases, reviewing and analyzing information and documents submitted by licensees for authenticity and compliance; maintaining records and files; and researching laws, rules and regulations.

In addition, the appellant's performance evaluation for January 2011 to December 2011 indicates that the major goals of the ratee are to handle surety bond cancellation cases, and train and oversee the surety bond work of a Technical Assistant 2. This contradicts the information the appellant provided in the PCQ that she trains an Investigator 2. As no individual was named, this cannot be verified. Additional duties in the evaluation include handling Release of Collateral Requests, drafting Consent Orders and Orders to Show Cause, case management, preparation of memorandums to the Licensing Services Unit or to respond to other requests, and overseeing the surety bond work of a Technical Assistant 2. The performance evaluation provided was an interim one that was prepared, rated and signed by the Chief of Investigations.

The question before the Commission is whether or not handling surety bond cancellation cases, in tandem with the other duties of the position, rise to the level of investigative work. In this respect, the appellant has provided drafts of Consent Orders and Orders to Show Cause for various cases. A review of the material indicates that these documents are not form letters, but that Consent Orders are final administrative orders and Orders to Show Cause are legal documents providing information regarding noncompliance with statutes, requesting official responses regarding the matter, and informing a licensed lender of the right to request an administrative hearing, and if not, indicating that the matter will be disposed. What is unknown is whether or not the appellant personally decides information which is then included in the orders, or whether she obtains this information from other documents or investigatory records, or is given this information from the Investigators to include in the documents. For example, one

consent order supplied on appeal states indicates that the licensed mortgage banker made a material misstatement statement on several occasions and agreed to pay administrative penalties of a certain amount. It is unclear if the appellant determined on her own or was given the information regarding material misstatements and the amount of the administrative penalties.

In the weekly summary reports provided, the appellant's cases are listed along with the Investigators' cases, and those of an Adjuster 3. She submits multiple reports which provide the total cases assigned, the cases closed, and her progress for the next week's investigations. Her cases are included in outstanding case reports for the unit entitled Investigator Summary Reports. In one e-mail, the Chief of Investigations indicates to the appellant that she has over 200 cases, which are too many for one person, and he assigned some to an Investigator 1. The appellant supplied emails which indicate that she attended meetings with license lenders, then discussed the information provided by them, repeatedly made calls to garner information from lenders, and requested and received compliance information from lenders. She supplied a letter which indicates that she asked a third party for information regarding its investigation of the validity of a bond and Power of Attorney. In a January 2012 email, the appellant's supervisor indicates that her Consent Order was reviewed and approved, and he asked her to input data from that document into a database. In another, he asks her why she has not completed six files according to the action plan that she submitted. The appellant was included in an Enforcement Penalty Matrix meeting, requested approval regarding amounts of the penalties from the manager, received instructions about scheduling field investigations, and was considered for assignment of cases related to Bond Release Requests in addition to her current caseload. It appears that the appellant's casework is similar to the cases assigned to the Investigators of the unit. The appellant's duties match some of the examples of work of the Investigator 2 title, and the information provided contradicts some of the information provided by the appellant's supervisor.

Lastly, the appellant had been communicating with CPM by email from January 19 until January 25, 2012, and no further email information appears until February 27, 2012 when CPM indicates that the appellant had not responded in 30 days and must do so immediately or the review will proceed with the documents on hand. The appellant provided a reasonable explanation as to why she was not available to participate in the classification review of her position or provide documents. She stated that she went out on disability on January 28, 2012, was hospitalized twice, and provided contact information to CPM while she was out. She states she was not contacted after that.

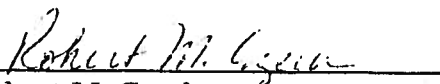
As such, the Commission does not have sufficient information at this time to support the finding that the appellant is properly classified as a Technical Assistant 1, Insurance. Therefore, the Commission directs CPM to have the appellant

complete a proper PCQ, which contains the required signatures and comments from the appellant's supervisor, and submit it to CPM for review. CPM should also conduct, as necessary, any further proceedings and consider all information gathered or submitted to date. CPM should then reissue its determination regarding the classification of the appellant's position.

ORDER

Therefore, it is ordered that CPM re-review the classification of the position encumbered by Traci Williams consistent with this decision on an expedited basis.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION
THE 9th DAY OF JANUARY, 2013



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

Enclosure

c: Traci Williams
John Walton
Kenneth Connolly
Joseph Gambino



Chris Christie
Governor
Kim Guadagno
Lt. Governor

STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION
DIVISION OF CLASSIFICATION AND PERSONNEL MANAGEMENT
P. O. Box 313
Trenton, New Jersey 08625-0313

Robert M. Czech
Chair/Chief Executive Office

August 16, 2012

Traci Williams
Department of Banking and Insurance
Office of Consumer Finance
20 West State Street
PO BOX 329
Trenton, New Jersey 08625-0329

Re: Out of Title Appeal – Traci Williams
EID - 000333786
SLO Log # 12110260
Position # 008252

Dear Ms. Williams:

A classification review of position number 008252 has been completed and the determination follows. This determination is based upon a thorough review and analysis of all information and documentation submitted by you and the Appointing Authority Representative, Dana Foraker, Manager, Human Resources and Employee Relations, and a telephone interview with your Unit Head, Stephen Case, Supervisor of Investigations (56793, S28), during the review process.

You believe that the duties of your position are out of scope of your current permanent title, Technical Assistant 1, Insurance (52352, R17), and are best described by the specifications for the title Investigator 2 (56783, I22).

This position is located in the Office of Consumer Finance in the Division of Insurance. The Office of Consumer Finance is responsible for investigating many types of insurance-related inquiries and complaints that fall within the jurisdiction of the Department of Banking and Insurance. Each inquiry or complaint is assigned to an investigator who reviews the case to ensure that the Department's rules and regulations have been followed.

Your unit is dedicated to surety bonds, which ensure that mortgage brokers have a valid surety bond to protect the state and/or consumers from financial harm in the case of non-compliance/fraud/misrepresentation committed by the broker. Once the review is complete, the investigator prepares a written report of the findings. Your role is to track the case status and send the appropriate form letter or template to the mortgage broker.

The definition for Technical Assistant 1, Insurance (52352, R17) is:

Under the direction of a supervisory official in the Department of Banking and Insurance or the Department of Law and Public Safety is responsible for maintaining highly complex records, and the supervision of highly complex and technical paraprofessional functions; does other related duties.

The definition for Investigator 2 (56783, I22) is:

Under limited supervision of a Supervisor of Investigations or other supervisory official, conducts complex investigations, in the field or from the central office, involving alleged noncompliance with state statutes and regulatory requirements; does other related duties.


You receive limited supervision from the Supervisor of Investigations, Mr. Stephen Case. Your position performs technical work involving the tracking of surety bonds' expirations, cancellations, and complaints. You prepare new files and track all open and closed cases; receive and log submitted complaints and distribute to the appropriate investigator; organize case files; and update the status of cases in databases. Additionally, you send form and template letters on behalf of investigators. Your position is the only one in the unit performing these functions.

An incumbent in the position does not perform field investigations, nor does the incumbent evaluate, analyze, and/or recommend fines, enforcement actions, or suspensions. The incumbent may provide information regarding the procedures and regulations of the process, but does not have the authority to modify sanctions or discuss the merits of a case with the mortgage broker or their agent.

The review revealed that the position's current duties and responsibilities are commensurate with the title Technical Assistant 1, Insurance (52352, R17); therefore, no change or reclassification of the position is warranted.

An appeal of this decision may be filed within twenty days of receipt of this letter. Since an appeal will be subject to final administrative review, all arguments that you wish considered should be submitted within the specified timeframe. Appeals should be addressed to the Written Records Appeal Unit, Merit Systems Practices and Labor Relations, NJ Civil Service Commission, P.O. Box 312, Trenton, New Jersey 08625-0312.

Sincerely,


Nora C. Koch, Assistant Director

MR/EMC

CC: Dana Foraker
John Walton