



B-6

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Jeffrey Brown,  
Department of Law and Public Safety

CSC Docket No. 2015-1088 and  
2015-1826

Classification and  
Administrative Appeals

ISSUED: SEP 16 2015 (DASV)

Jeffrey Brown appeals the attached decision of the Division of Classification and Personnel Management (CPM)<sup>1</sup> that the proper classification of his position with the Department of Law and Public Safety is Building Management Services Specialist 2. The appellant seeks a Building Management Services Specialist 1 classification in this proceeding. Additionally, the appellant appeals his failure to be appointed as an Administrative Analyst 1.

The record establishes that the appellant has been serving in the title of Building Management Services Specialist 2 (salary range R24) since July 1, 2000. He is assigned to work in the Facilities Management Unit, Office of the Attorney General. The appellant appealed the classification of his position, requesting an Administrative Analyst 2 (salary range P26) classification at that time.<sup>2</sup>

As indicated in the attached decision, CPM noted the duties listed by the appellant in his Position Classification Questionnaire (PCQ), which included maintaining a database and all records for a large fleet of vehicles, creating reports and logs regarding the vehicles, issuing certain license plates and ensuring that inspections and registrations of the vehicles are current, performing an analysis of

<sup>1</sup> CPM is now known as the Division of Agency Services.

<sup>2</sup> The appellant indicates that he initially believed that an Administrative Analyst 2 title would be more appropriate for his position, but since he is "not a classification expert," he may "have failed to demonstrate and meet the criteria for the title." Thus, on appeal, he is requesting that the Building Management Services Specialist 1 title, rather than the Administrative Analyst 2 title, be approved for his position.

the fleet size in order to recommend whether additional vehicles are needed, monitoring the operations of the telephone network and lines, making recommendations for upgrades and problem resolution, and supervising and conducting performance evaluations of three staff members in the fleet management and telecommunications units. CPM found that the primary function of the appellant's position at the time he completed the PCQ was the management of a large motor vehicle fleet. It is noted that the appellant and his supervisor signed the PCQ on December 17, 2013 and December 23, 2013, respectively. The Director, Support Services, then signed the PCQ on January 2, 2014. Both the appellant's supervisor and the Director agreed with the appellant's listed duties. However, the appointing authority rejected the request for reclassification, noting on the PCQ that the Human Resources Director met with the appellant on February 3, 2014 and advised him that out-of-title duties were going to be removed effective that day. Additionally, duties consistent with the appellant's title of Building Management Services Specialist 2 would be assigned to him and a revised PCQ would be submitted. The appointing authority's counsel signed the PCQ on February 7, 2014. Thereafter, a new PCQ was prepared, which the appellant refused to sign. Although the appellant's supervisor and the Director signed the PCQ on March 4, 2014, they did not take a position regarding the appellant's duties. The appointing authority's counsel signed the revised PCQ on March 6, 2014.

CPM found that the appellant's duties on the revised PCQ included providing supervision and assigning work to 10 staff members involved in the delivery of support services, receiving requests for support services and overseeing work activities, and monitoring operations of the telephone network and lines and making recommendations to improve the delivery of support services. CPM indicated that the primary function of these duties was managing staff involved in the provision of building maintenance support services and overseeing telephone equipment and services. Thus, upon its review of the job specifications for Building Management Services Specialist 2 and Administrative Analyst 2, CPM concluded that the appellant's position was properly classified as a Building Management Services Specialist 2. It is noted that, although not reflected in the determination, CPM also considered the Building Management Services Specialist 1 (salary range S27) title.

On appeal to the Civil Service Commission (Commission), the appellant indicates that he has direct responsibility for supervising three staff members (of the current 10 employees he supervises) who are serving in titles designated in the employee relations group "R-Primary Level Supervisors Unit." He states that he cannot supervise these employees since his current title is in the same group. The appellant also asserts that CPM failed to recognize that he supervises, plans, organizes, and assigns work to these three staff members. He also directly oversees work activities and facilitates problem resolution. Further, he argues that the job specification for Building Management Services Specialist 2 states that the

employee works under the direction of a Building Management Services Specialist 1. However, he reports to Jack Smith, who is the Deputy Director, Support Services. Moreover, the appellant contends that he monitors operations to assess the efficiency of services and prepares reports and makes recommendations to improve the services. He also receives requests for support services. Thus, he submits that his position should be reclassified to Building Management Services Specialist 1. In support of his appeal, the appellant submits CPM's September 25, 2014 determination for another employee, whose position was found to be properly classified as a Building Management Services Specialist 1. In that case, the employee had been serving in the Building Management Services Specialist 2 title prior to her request for classification review. The appellant maintains that he performs identical duties as his co-worker.

The appellant also appeals his failure to be appointed to an Administrative Analyst 1 position as announced in a job vacancy posting. Further, he challenges the appointment of Peter Leland, an Administrative Analyst 1. The appellant indicates that, in April 2013, the appointing authority posted the job vacancy in the Motor Vehicle Fleet Management Unit. In May 2013, he was interviewed, but the vacancy was not filled. The appellant states that he filed the above request for position classification review in January 2014 and was performing out-of-title work since 2007. However, he had the meeting with the appointing authority in February 2014 and was advised that his job duties as the fleet manager would be removed. He notes that he never received this information in writing. It is noted that agency records do not indicate that the appellant requested a prior audit of his position. The appellant further explains that, in April 2014, Leland was reassigned from Financial Operations where his work involved purchasing and budget issues to Support Services in the Motor Vehicle Fleet Management Unit. Seven months later, the appellant contends that Leland was announcing his promotion to Administrative Analyst 1. The appellant asserts that this occurred after the unit was informed that the reassignment was a lateral move for Leland. However, Leland was actually being promoted from Administrative Analyst 3 to Administrative Analyst 1. The appellant alleges that the removal of his duties and refusal to grant him "the title after 7 years of working in that position with no title was retaliation on the part of management." It is noted that agency records confirm that Leland was appointed to the title of Administrative Analyst 1, effective November 29, 2014. He previously served in the title of Administrative Analyst 3.

### CONCLUSION

The definition section of the job specification for Building Management Services Specialist 2 states:

Under direction of a Building Management Services Specialist 1 or other supervisory officer in a State department, institution, or agency,

completes complex analytical or professional work of considerable difficulty required to provide or support the provision of building management, operation, service, maintenance, and renovation, or supervises the operation, maintenance, and/or delivery of building services for a State building or a series of smaller buildings; does related work as required.

The definition section of the job specification for Building Management Services Specialist 1 states:

Under general direction of a supervisory officer in a State department, institution, or agency, completes and/or supervises the completion of highly complex analytical or unusually difficult administrative work required to provide or support the provision of building management, operation, maintenance, service and renovation, or supervises the operation, maintenance, and delivery of building services for a large building complex; does related work as required.

The definition section of the job specification for Administrative Analyst 2 states:

Under general supervision of an Administrative Analyst 1 or other supervisor in a State department, institution, or agency, performs the review, analysis, and appraisal of current department administrative procedures, organization, and performance and helps to prepare recommendations for changes and/or revisions; does other related duties.

Initially, it is clear that the appellant was performing out-of-title duties at the time of the original PCQ, which he signed on December 17, 2013. The appellant's supervisor and the Director, Support Services agreed with the appellant's listed duties and signed the PCQ on December 23, 2013 and January 2, 2014, respectively. However, the appointing authority removed the out-of-title duties, effective February 3, 2014, which, in essence, was its acknowledgment that the duties were performed. Nonetheless, under the circumstances of this case, no relief can be provided to the appellant for the performance of such out-of-title duties. In that regard, *N.J.A.C. 4A:3-3.9(c)7* requires that the appointing authority submit an employee's classification appeal to this agency within 10 days of receipt of the appeal. Additionally, *N.J.A.C. 4A:3-3.9(e)3i* provides that if an appeal is granted by the Commission, the effective date of implementation shall be, in State service, the pay period immediately after 14 days from the date an appropriate Commission representative first received the appeal or reclassification request, or at such earlier date as directed by the Commission. Therefore, the earliest effective date for reclassification would have been based on the date that the Director,

Support Services agreed and signed the appellant's original PCQ. As such, considering the 10-day and 14-day periods set forth in *N.J.A.C.* 4A:3-3.9(c)7 and *N.J.A.C.* 4A:3-3.9(e)3i, respectively, the effective date would have been February 8, 2014, **after** the out-of-title duties were already removed. *Compare, In the Matter of Bruce Hurlburt* (CSC, decided August 19, 2015) (In light of the inexplicable delay of the appointing authority in processing appellant's classification request and the confirmation that appellant was performing out-of-title duties, the Commission granted appellant differential pay from approximately two years from the date that the program manager representative signed the PCQ to the time the appointing authority removed higher level duties from appellant's position). It is noted that although the appellant claims that he was performing out-of-title duties since 2007, he did not file a request for classification review until December 2013. In that regard, it is emphasized that the foundation of position classification, as practiced in New Jersey, is the determination of duties and responsibilities being performed at a given point in time as verified through an audit or other formal study. Thus, classification reviews are based on a current review of assigned duties and any remedy derived therefrom is prospective in nature since duties which may have been performed in the past cannot be reviewed or verified. Accordingly, any change to the position classification would be a result of a review of the appellant's current duties, as indicated on the new PCQ and as found by CPM.

CPM found that the primary function of the appellant's current duties was to manage 10 staff members involved in the provision of building maintenance support services and oversee telephone equipment and services. CPM concluded that, based on the job definition of the title and the duties of the appellant's position, his position was properly classified as a Building Management Services Specialist 2. On appeal, the appellant seeks a Building Management Services Specialist 1 job classification and maintains that he performs identical duties as his co-worker whose position was reclassified to Building Management Services Specialist 1. However, a classification appeal cannot be based solely on a comparison to the duties of another position. Nonetheless, a review of CPM's determination in that case reveals that the employee is supervising a higher level of activity than the appellant's position, which warranted a reclassification of her position. For instance, although the appellant indicates on appeal that he facilitates problem resolution, CPM found that the other employee facilitates problem resolution between the department and vendors. Therefore, while the appellant completes complex analytical or professional work of considerable difficulty required to provide or support the provision of building management, his duties are not highly complex or unusually difficult to warrant a reclassification to the higher title in his job series. Furthermore, the appellant argues that he works under a Deputy Director and not a Building Management Services Specialist 1. However, the Building Management Services Specialist 2 job definition states that an incumbent performs duties "[u]nder direction of a Building Management Services Specialist 1 or other supervisory officer in a State department, institution, or agency"

(emphasis added). Thus, the appellant's argument is unpersuasive. Accordingly, the appellant's position is currently properly classified as a Building Management Services Specialist 2.

Furthermore, it is clear that the appellant's duties are not at the level of an Administrative Analyst 2. His work involves building maintenance support services. His position does not undertake, as its primary focus, the review, analysis, or appraisal of current department administrative procedures, organization, or assist in the preparation of recommendations for changes and/or revisions. It is noted that applicants for Administrative Analyst titles must have primary experience being involved in the *overall* operational analysis of a specialized area in the organization with the direct responsibility for the recommendation, planning, or implementation of improvements for the agency as a result of such analysis. See *In the Matter of Maria Jacobi* (MSB, decided June 8, 2005). The preponderance of the appellant's duties are not those described above.

As for the issue of the appellant's reporting relationships, it is well established that a primary or first-level supervisor cannot supervise an individual in a first-level supervisory title. See *In the Matter of Timothy Stewart* (CSC, decided February 26, 2014) (A supervisor and a subordinate cannot hold titles when they are both in the "R" employee relations group). However, even if that occurred, it does not necessarily result in a position's upward classification, since it is the duties of a position which govern the outcome of any classification review. As indicated above, the duties of the appellant's position are commensurate with the job definition of a Building Management Services Specialist 2. Thus, the appropriate course of action is to correct the reporting relationship. Accordingly, the appointing authority is directed to address any inappropriate reporting relationships in regard to the appellant's position and make the necessary reassignments.

The appellant also appeals his failure to be appointed to an Administrative Analyst 1 vacancy and he objects to the appointment of Leland. He further alleges that the removal of his duties and refusal to grant his request for reclassification was "retaliation on the part of management." Initially, it is noted that there is no legal obligation to fill a vacant position. See *e.g., In the Matter of Institutional Fire Chief* (MSB, decided January 12, 2005) (Appointing authority that did not intend to fill the recently vacated position of Institutional Fire Chief was not compelled by law to fill position). Further, there is nothing in the record that indicates that the appellant's failure to be appointed as an Administrative Analyst 1 was motivated by invidious reasons. Likewise, regardless of whether an announcement was made that Leland's appointment was a lateral move, there is nothing to suggest that Leland's appointment to a higher title was invalid or somehow in retaliation against the appellant. Moreover, the appellant has not presented any evidence whatsoever that the removal of his duties was retaliatory. *N.J.A.C. 4A:3-3.4* states that no person shall be appointed or employed under a title not appropriate to the duties to

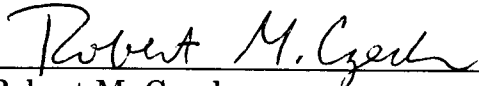
be performed nor assigned to perform duties other than those properly pertaining to the assigned title which the employee holds, unless otherwise provided by law or these rules. In that regard, the Commission is mindful that administrative agencies have wide discretion in selecting the means to fulfill the duties that have been delegated to them. Deference is normally given to an agency's choice in organizing its functions, considering its expertise, so long as the selection is responsive to the purpose and function of the agency. *See In the Matter of Gloria Iachio*, Docket No. A-3216-89T3 (App. Div., January 10, 1992); *See In the Matter of Correction Major, Department of Corrections* (CSC, decided October 5, 2011), *aff'd on reconsideration* (CSC, decided December 21, 2011), *aff'd on appeal*, Docket No. A-2697-11T4 (App. Div. August 15, 2013). Thus, when classifying the kinds of employment and in providing designations for those engaged in various classifications, the only requirement for the Commission when it exercises its broad reclassification powers is to ensure that such action is not arbitrary, capricious, or unreasonable. *See Mullin v. Ringle*, 27 N.J. 250 (1958); *Carls v. Civil Service Commission*, 17 N.J. 215, 223 (1955). While the Commission has indicated that removing duties *only* in response to an employee's request for classification review prior to this agency's review of the duties of the position could be considered arbitrary and may result in an unjust consequence for an employee, the remedy for such a situation is to provide the employee with differential back pay if found that he or she was performing duties of a higher title based on an initial PCQ. *See In the Matter of Allison Ketchum* (CSC, decided July 15, 2015). However, as previously found by the Commission, differential back pay cannot be awarded to the appellant given the regulatory time frames governing this matter and the circumstances of the case. Accordingly, there is not a sufficient basis to grant the appellant relief.

### ORDER

Therefore, it is ordered that these appeals be denied. It is further ordered that the appointing authority address any inappropriate reporting relationships in regard to the appellant's position and make the necessary reassignments.

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 16<sup>TH</sup> DAY OF SEPTEMBER, 2015

  
\_\_\_\_\_  
Robert M. Czech  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Henry Maurer  
Director  
Division of Appeals  
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Civil Service Commission  
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Attachment

c: Jeffrey Brown  
Mirella Bednar  
Kenneth Connolly  
Joseph Gambino





Chris Christie  
Governor  
Kim Guadagno  
Lt. Governor

STATE OF NEW JERSEY  
CIVIL SERVICE COMMISSION  
Classification and Personnel Management  
P. O. Box 313  
Trenton, New Jersey 08625-0313

Robert M. Czech  
Chair/Chief Executive Officer

October 1, 2014

Jeffrey Brown

**Re: Classification Appeal – Building Management Services Specialist 2,  
Position # 004556, EID # [REDACTED], Log # 02140120**

Dear Mr. Brown:

This is to inform you of our determination concerning the classification appeal referenced above. The determination is based upon a thorough review and analysis of the Position Classification Questionnaire (DPF-44S), organization chart, Performance Assessment Review (PAR), and information obtained from your immediate supervisor.

**Issue:**

You are serving in the unclassified title, Building Management Services Specialist 2 (24, R24, 52576) and contend you are performing duties and responsibilities commensurate with the title, Administrative Analyst 2 (26, P26, 50075).

**Organization:**

Your position is currently assigned to the Facilities Management Unit, Office of the Attorney General, Department of Law and Public Safety. Your supervisor is Jack Smith (88, Q88, 96058). At the time you completed the DPF-44S, you were responsible for the supervision of three (3) subordinate personnel.

**Findings of Fact:**

The DPF-44S you completed indicates you were performing the following assigned duties and responsibilities:

- Maintaining a database and all records for a large fleet of vehicles.

- Creating reports and logs detailing taxability for drivers, business and commuting mileage, vehicle maintenance, fuel and EZ Pass usage, accidents/incidents, and assignment of vehicles.
- Issuing confidential and VIP license plates and ensuring that inspections and registrations were current.
- Performing analysis of fleet size and usage to recommend the purchase of additional vehicles.
- Monitoring the operations of an ISDN telephone network and analog telephone lines (fax and modem) including connections for staff, relocations, making recommendations for upgrading technology and problem resolution.
- Supervising and assigning duties and performing performance evaluations for three (3) staff members employed in the fleet management and telecommunications units.

**Review and Analysis:**

Currently, your position is classified in the title, Building Management Services Specialist 2 (24, R24, 52576). The definition section of the job specification for the title states:

*“Under direction of a Building Management Services Specialist 1 or other supervisory officer in a state department, institution, or agency, completes complex analytical or professional work of considerable difficulty required to provide or support the provision of building management, operation, service, maintenance, and renovation, or supervises the operation, maintenance, and/or delivery of building services for a state building or a series of smaller buildings; does related work as required.”*

You contend your position should be reclassified to the title, Administrative Analyst 2 (26, P26, 50075). The definition section of the job specification for the title states:

*“Under general supervision of an Administrative Analyst 1 or other supervisor in a state department, institution, or agency, performs the review, analysis, and appraisal of current department administrative procedures, organization, and performance and helps to prepare recommendations for changes and/or revisions; does other related duties.”*

The primary function of your position at the time you completed the DPF-44S was the management of a large motor vehicle fleet. However, the appointing authority indicates that all out-of-title duties related to fleet management were removed and reassigned, effective February 3, 2014. It is further noted that the appointing authority submitted a revised DPF-44S, outlining the following duties and responsibilities currently assigned to your position:

- Provide supervision and plan, organize and assign work to ten (10) staff members involved in the delivery of support services.
- Receive requests for support services and oversee work activities.
- Monitor operations to assess the efficiency of services being provided, prepare reports of findings and make recommendations to improve the delivery of support services.

The primary duties of your position are managing staff involved in the provision of building maintenance support services and overseeing telephone equipment and services for the unit. Therefore, it is our determination that your position is currently properly classified in the title, Building Management Services Specialist 2 (24, R24, 52576).

**Determination:**

In accordance with the Civil Service Commission's standards, your position does not meet the criteria established for the title, Administrative Analyst 2 (26, P26, 50075). By copy of this letter, the appointing authority is advised that based on the duties currently assigned, your position is presently properly classified in the title, Building Management Services Specialist 2 (24, R24, 52576).

According to the New Jersey Administrative Code 4A:3-3.9, you may appeal this determination within twenty (20) days of receipt of this notice. This appeal should be addressed to Written Record 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 appeal.

Sincerely,



Kelly Glenn, Assistant Director  
Classification and Personnel Management

KG/sr

C: Mirella Bednar  
File

