



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Aziza Salikhova,
Department of Law and Public
Safety, Division of Consumer Affairs

Classification Appeal

CSC Docket No. 2016-4287

ISSUED: **DEC 23 2016** (RE)

Aziza Salikhova appeals the attached decision of the Division of Agency Services (DAS) which found that her position with the Department of Law and Public Safety's Division of Consumer Affairs is properly classified as Investigator 4, Law and Public Safety. She seeks a Supervising Investigator, Law and Public Safety job classification in this proceeding.

Ms. Salikhova received a regular appointment to the title Investigator 3, Law and Public Safety on April 2, 2005.¹ She requested a classification review of her position as she believed that she was working out-of-title. Accordingly, all relevant documentation was reviewed, including the completed Position Classification Questionnaire (PCQ). This position is located in the Department of Law and Public Safety's Division of Consumer Affairs, reports to a Chief Investigator, Law and Public Safety, and does not have supervisory responsibilities. The classification review found that Ms. Salikhova's assigned duties and responsibilities, as detailed in DAS' attached decision, were commensurate with the title of Investigator 4, Law and Public Safety.

On appeal, Ms. Salikhova argues that the Supervising Investigator, Law and Public Safety job specification did not reference completion of performance evaluation reviews (PARs) until April 16, 2016. She states that she plans, organizes and assigns the work of subordinate staff and has done so since May

¹ On April 16, 2016, the title series was inverted, and Investigator 2, Law and Public Safety became Investigator 3, Law and Public Safety, while Investigator 1, Law and Public Safety became Investigator 4, Law and Public Safety. For consistency, the new titles will be used herein.

2014. She states that she has met the requirements in the prior job specification for Supervising Investigator, Law and Public Safety. She argues that PAR user guides indicate that the supervisor assigns work, trains, and imparts information to subordinates, which she does; and therefore, she is a "rater" for PAR purposes. She indicates that she has signatory responsibility for official forms. She maintains that requiring her to sign PARS in order to be a Supervising Investigator, Law and Public Safety is meaningless, as only Supervising Investigators, Law and Public Safety can sign them. She further argues that it is not axiomatic that an individual responsible for the oversight of a program necessarily is responsible for the ultimate supervision, performance and evaluation of employees in that program, as there is a complete lack of support for this proposition in any State or federal issued policies, procedures, rules, regulations, or laws. She argues that her skills as a "team leader" are being taken advantage of without remuneration. The appellant indicates that her PARs from 2014 to 2016 indicate that she plans, organizes, assigns, prioritizes, and leads the work of the unit. In 2014, it also indicated that she evaluated the skills of personnel and recommended training. Additionally, she names seven Supervising Investigators who she claims do not supervise.

The appellant accuses the Civil Service Commission (Commission) with that of being a "façade for the agenda of the four part-time members,² each appointed to a four-year term by the Governor, who have the Governor's interests in mind, and not the NJ civil employees, who are also NJ residents." She maintains that the Commission's lack of a quorum is an abuse of power and a strategy to prevent employees from exercising their rights under the law.³ She argues that there has been agency abuse of discretion as administrative decisions are tainted with bad faith, and the Commission's actions or lack thereof have created a tort liability for a corrupt exercise of its discretion. She requests reclassification of her position to prevent an injustice and a massive influx of tort claims alleging fraud and injustice.

CONCLUSION

The definition section of the job specification for Supervising Investigator, Law and Public Safety states:

Under direction of a Chief Investigator or other supervisory official in the Department of Law and Public Safety, plans, organizes, and supervises investigative teams or specialized investigators conducting in-depth regulatory and administrative audits and inspections of licensed premises; reviews records, files, financial statements, and other transactions to determine compliance with rules or regulations

² The Commission currently consists of three members.

³ The lack of a quorum for over 10 months was neither created by the Commission, nor within the Commission's ability to remedy, and in no way abridged the rights of civil service employees to exercise their rights to request job classification reviews, or to challenge the results.

governing consumer protection laws; performs other confidential and sensitive civil and regulatory investigative activities or specialized investigations to detect alleged noncompliance with or violations of New Jersey state statutes, administrative codes, or Professional Rules of Conduct, or consumer protection laws; supervises staff and work activities; prepares and signs official performance evaluations for subordinate staff;⁴ performs other related duties as required.

The definition section of the job specification for Investigator 4, Law and Public Safety states:

Under direction of a Supervising Investigator or other supervisory official in the Department of Law and Public Safety, leads an investigative unit or team or coordinates an investigative program, conducting in depth regulatory and administrative audits and inspections of licensed premises; reviews records, files, financial statements, and other transactions to determine compliance with rules or regulations governing consumer protection laws; performs other confidential and sensitive civil and regulatory investigative activities or specialized investigations to detect alleged noncompliance with or violations of New Jersey state statutes, administrative codes, Professional Rules of Conduct, or consumer protection laws; performs other related duties as required.

A review of the duties of Ms. Salikhova's position indicates that they fall within the parameters of the job description for Investigator 4, Law and Public Safety. The Supervising Investigator, Law and Public Safety job specification *requires* an incumbent to supervise other investigative teams or specialized investigators conducting in-depth regulatory and administrative audits and inspections. Ms. Salikhova's position is not responsible for the performance of those duties. It is uncontested that the appellant does not have the responsibility for administering formal performance evaluations. However, it is well established that supervisory duties include responsibility for seeing that tasks assigned to subordinates are efficiently accomplished. It involves independent assignment and distribution of work to employees, with oral or written task instructions, and maintenance of the flow and quality of work within a unit in order to ensure timely and effective fulfillment of objectives. Supervisors are responsible for making available or obtaining materials, supplies, equipment, and/or plans necessary for particular tasks. They provide on-the-job training to subordinates when needed,

⁴ While the job specification did not contain this language prior to April 16, 2016, it is clear that this is a first-level supervisory title, as evidenced by the examples of duties in the job specification and in its inclusion in the "E" Employee Relations Group. Regardless, as found in innumerable previous Commission decisions, the responsibility for performance evaluations is the essential component of supervision.

and make employee evaluations based on their own judgment. In fact, the Civil Service Commission has found that the essential component of supervision is the responsibility for formal performance evaluation of subordinate staff. *See In the Matter of Timothy Teel* (MSB, decided November 8, 2001). They have the authority to recommend hiring, firing, and disciplining employees. *See In the Matter of Julie Petix* (MSB, decided January 12, 2005). To be considered a supervisor, the individual must be the person actually administering and signing off on the evaluation as the subordinate's supervisor. She was told that only the individual who signs the evaluation as the supervisor can be considered to have the ultimate decision-making responsibility for that subordinate's rating. Supervision or coordination of a program or area is insufficient without being responsible for the above-stated duties. In the absence of supervisory duties over personnel, including the ultimate responsibility for conducting and signing formal performance evaluations of subordinate staff, the position is not properly classified as a Supervising Investigator, Law and Public Safety.

The difficulty in the current matter is that classification to the higher title requires supervision. The appellant indicated on the PCQ that she "supervised" two Investigator 4s.⁵ She indicated she was responsible for the preparation of performance evaluations, assigned work, and reviewed completed work of supervised employees. However, DAS determined that she does not perform performance evaluations. If the appointing authority denies the appellant the responsibility of formally evaluating subordinate employees, it should refrain from assigning the appellant the typical work of a supervisor. This includes assigning work, reviewing work, providing input on evaluations, and developing training. The appellant can lead and provide guidance to lower level staff, but should not be discussing performance evaluation reviews with subordinates. Those duties and responsibilities belong to the appellant's supervisor, who also supervises these staff. If the appellant is performing these duties, she has been inappropriately assigned tasks by her supervisor, who should be responsible for those tasks in the absence of a Supervising Investigator, Law and Public Safety. The Chief Investigator should assume these duties if the appointing authority chooses not to promote an individual to the Supervising Investigator, Law and Public Safety title in the appellant's unit. The Chief has not claimed responsibility for assigning supervisory duties to the appellant, and no explanation is given as to why this was allowed to continue. It is simply unfair to allow the appellant to bear responsibility for higher level tasks specific to supervision, yet classify the position based on the fact that she does not conduct formal performance evaluations. It is, at the very least, management's duty and responsibility to ensure that supervisory tasks are performed by supervisors.

⁵An organizational chart dated December 2013 shows two positions assigned under the appellant, although one was vacant at the time.

The Commission is not persuaded by the appellant's argument regarding the classification of seven colleagues in the title Supervising Investigator, Law and Public Safety who she alleges are not supervising. Initially, 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 Dennis Stover*, Docket No. A-5011-96T1 (App. Div. October 3, 1998); *In the Matter of Carol Maita, Department of Labor* (Commissioner of Personnel, decided March 16, 1995). Moreover, even if those positions are misclassified, the remedy for the appellant would not be to perpetuate *her* misclassification. Nevertheless, the Department of Law and Public Safety is directed to ensure that **any** employee in the title of Supervising Investigator, Law and Public Safety is currently assigned appropriate supervisory duties as described above.

As to the appellant's comments about the Commission, 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 by this agency through an audit or other formal study. The appellant's arguments regarding the Commission are not germane to a classification appeal. In any event, the classification of the appellant's position was determined based solely on a comparison of the duties of the position to the available job specifications.

Accordingly, a thorough review of the entire record fails to establish that Aziza Salikhova has presented a sufficient basis to warrant a Supervising Investigator, Law and Public Safety classification of her position.

ORDER

Therefore, the position of Aziza Salikhova is properly classified as an Investigator 4, Law and Public Safety.

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 21st DAY OF DECEMBER, 2016


Robert M. Czech
Chairperson
Civil Service Commission

**Inquiries
and
Correspondence**

**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: Aziza Salikhova
Mirella Bednar
Kelly Glenn
Records Center**



Chris Christie
Governor
Kim Guadagno
Lt. Governor

STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION
AGENCY SERVICES
P. O. Box 313
Trenton, New Jersey 08625-0313

Robert M. Czech
Chair/Chief Executive Officer

May 25, 2016

Aziza Salikhova
Division of Consumer Affairs
Office of Consumer Protection
124 Halsey Street – 7th Floor
Newark, New Jersey 07102

Re: **Classification Appeal – Investigator 2*, Law and Public Safety**
Position # 005004, EID # 000345032, Log # 01160247

Dear Ms. Salikhova:

This is to inform you, and the Department of Law and Public Safety, of our determination concerning the classification appeal referenced above. This determination is based on a thorough review and analysis of documents submitted, including the Position Classification Questionnaire (DPF-44S), organizational chart, and Performance Assessment Review (PAR).

Issue:

You are currently serving permanently (RAN) in the title, Investigator 2*, Law and Public Safety (23, P23, 33857) and contend you are performing duties and responsibilities commensurate with the title, Supervising Investigator, Law and Public Safety (29, R29, 33859).

Organization:

Your position is assigned to the Office of Consumer Protection, Division of Consumer Affairs, Department of Law and Public Safety. Your supervisor is Laurie Goodman, Chief Investigator, Law and Public Safety (32, &32, 61418). You presently have no direct supervisory responsibility.

Findings of Fact:

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

- Act as the lead worker of a team of investigators in the Cyber Fraud Unit; oversee and review investigative reports, provide recommendations regarding violations, penalties, restitutions, etc.; ensure work production of the unit; coordinate activities and functions of unit staff and provide instruction and guidance.
- Recommend administrative action to supervisor
- Develop new investigative procedures to improve efficiency
- Act as a liaison and coordinate efforts with other agencies in cases of mutual interest

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- Perform investigations and conduct investigative research

Review and Analysis:

Currently, your position is classified by the title, Investigator 2*, Law and Public Safety (23, P23, 33857). The definition section of the job specification for the title states:

"Under supervision of a Supervising Investigator or other supervisory official in the Department of Law and Public Safety, conducts in depth regulatory and administrative audits and inspections of licensed premises; reviews records, files, financial statements, and other transactions to determine compliance with rules or regulations governing consumer protection laws; performs other confidential and sensitive civil and regulatory investigative activities or specialized investigations to detect alleged noncompliance with or violations of New Jersey state statutes, administrative codes, Professional Rules of Conduct, or consumer protection laws; performs other related duties as required."

An incumbent serving in a position classified by the title, Investigator 2, Law and Public Safety conducts complex investigations of alleged violations or non-compliance with State statutes, administrative codes, or rules and regulations; performs duties related to the audit, investigation, and inspection of licensed premises; conducts investigations toward determining the compliance of such entities with established regulations; and performs other functions related to consumer protection laws. In addition, an incumbent in the title Investigator 2, Law and Public Safety has significant familiarity with the rules, policies, procedures, and practices of his/her organization; and often work independently with minimal guidance from the supervisor. Matters are not often referred to the supervisor, except for clarification of policy.

You contend the title Supervising Investigator, Law and Public Safety (29, R29, 33859) is the appropriate classification for your position. The definition section of the job specification for the title states:

"Under direction of a Chief Investigator or other supervisory official in the Department of Law and Public Safety, plans, organizes, and supervises investigative teams or specialized investigators conduction in depth regulatory and administrative audits and inspections of licensed premises; reviews records, files, financial statements, and other transactions to determine compliance with rules or regulations governing consumer protection laws; performs other confidential and sensitive civil and regulatory investigative activities or specialized investigations to detect alleged noncompliance with or violations of New Jersey state statutes, administrative codes, or Professional Rules of Conduct, or consumer protection laws; performs other related duties as required."

While utilizing a significant level of independent judgement and considerable authority, an incumbent serving in a position classified by the title Supervising Investigator, Law and Public Safety has supervisory responsibilities over investigative teams or investigators, in addition to performing other regulatory investigative activities related to consumer protection laws.

The review also included a comparison of other titles within the Investigator, Law and Public Safety title series.

The definition section of the job specification for the title Investigator 1*, Law and Public Safety (26, P26, 33858) states:

“Under direction of a Supervising Investigator or other supervisory official in the Department of Law and Public Safety, leads an investigative unit or team or coordinates an investigative program, conducting in depth regulatory and administrative audits and inspections of licensed premises; reviews records, files, financial statements, and other transactions to determine compliance with rules or regulations governing consumer protection law; performs other confidential and sensitive civil and regulatory investigative activities or specialized investigations to detect alleged noncompliance with or violations of New Jersey state statutes, administrative codes, Professional Rules of Conduct, or consumer protection laws; performs other related duties as required.”

An incumbent serving in a position classified by the title Investigator 1, Law and Public Safety leads an investigative team or coordinates an investigative program, which involves systematically organizing the activities or function of staff to achieve program goals and objectives; investigates alleged negligence, incompetence, and misrepresentation of state statutes, regulations and Professional Rules of Conduct; reviews and investigates consumer complaints; collects evidence and writes investigative reports.

While the titles Investigator 1*, Law and Public Safety and Supervising Investigator, Law and Public Safety encompass similar duties, supervisory responsibility over subordinate staff is the key distinguishing factor between the two titles. An incumbent serving in a position classified by the title Supervising Investigator, Law and Public Safety functions as a primary or first level supervisor. Further, the title Supervising Investigator, Law and Public Safety is assigned to the “R” Employee Relations Group (ERG), which is defined as a primary or first level supervisory position. It has been the long-standing policy of the Civil Service Commission that the titles assigned to a supervisory ERG, must supervise employees. It has been well established that the essential component of supervision is the responsibility for the administration of formal Performance Assessment Reviews (PAR) for subordinate staff, which includes being designated and signing PARs as the Rater. Employees, who assign and/or review work of other employees, train or impart knowledge of the job to other employees, and/or provide information to supervisory staff regarding the workflow progress of other employees, but who do not sign Performance Assessment Reviews (PARs) as the Rater, are considered lead workers rather than supervisory employees.

A review of your current duties reveals that your primary responsibility is taking the lead over unit Investigators in the Cyber Fraud Unit. You assist and train subordinate Investigators as well as recommend administrative action to your supervisor. While you function as a lead worker as described above, you do not sign PARs as the Rater for subordinate staff. Therefore, the title Supervising Investigator, Law and Public Safety is not an appropriate classification for your position. You serve as a lead worker and exercise a level of independent judgement and scope of responsibility that are considered above the classification of Investigator 2*, Law and Public Safety; therefore, the title Investigator 2*, Law and Public Safety is not an appropriate classification of your position.

Determination:

Based on the findings of fact stated above, it is our determination that the current duties and responsibilities assigned to the position are commensurate with the title, Investigator 1*, Law and Public Safety (26, P26, 33858). This action shall be effective February 20, 2016.

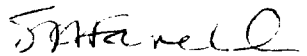
**Note: Effective April 16, 2016, the Investigator, Law and Public Safety title series was re-numbered; as such, Investigator 1, Law and Public Safety (26, P26, 33858) is now named Investigator 4, Law and Public Safety. Investigator 2, Law and Public Safety (23, P23, 33857) is now named Investigator 3, Law and Public Safety.*

New Jersey Administrative Code 4A:3-3.5(c)1 states, "Within 30 days of receipt of the reclassification determination, unless extended by the Chairperson or designee in a particular case for good cause, the appointing authority shall either effect the required change in the classification of an employee's position; assign duties and responsibilities commensurate with the employee's current title; or reassign the employee to the duties and responsibilities to which the employee has permanent rights. Any change in the classification of a permanent employee's position, whether promotional, demotional, or lateral, shall be effected in accordance with all applicable rules.

Within 30 days of receipt of this letter, we will proceed with reclassifying the position to Investigator 1, Law and Public Safety, effective February 20, 2016, unless we are advised by the Appointing Authority that the duties and responsibilities commensurate with the incumbent's current title will be assigned. If duties are reassigned commensurate with the current title, the Appointing Authority must submit a current Position Classification Questionnaire and organizational chart documenting the change.

Please be advised that in accordance with N.J.A.C. 4A:3-3.9, the incumbent may appeal this decision within twenty (20) days of receipt of this letter. 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,



Staci Fanelli
Human Resource Consultant 5

SF/st

C: Mirella Bednar
File
Nick Kanellis, Records Imaging Center