



STATE OF NEW JERSEY

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

In the Matter of John Tomasone,
Department of Community Affairs

CSC Docket No. 2018-3416

Request for Reconsideration

ISSUED: OCTOBER 22, 2018

John Tomasone requests reconsideration of the attached decision rendered on April 18, 2018, which found that his position with the Department of Community Affairs should be classified as Sub-Code Official.

By way of background, the petitioner, requested a classification review of his position, contending that his position should be reclassified by the title of Supervisor of Enforcement. The Division of Agency Services (Agency Services) conducted a review of the appellant’s position and determined that it should be classified as Construction Official. The petitioner appealed that determination to the Civil Service Commission (Commission), which found that the position should be classified as Sub-Code Official effective November 27, 2016.

On reconsideration, the petitioner states that in June 2017, the Department of Community Services (DCA) and Agency Services reviewed the job specification for Sub-Code Official and determined that since incumbents in that title were not supervising subordinate staff, it was necessary to create a new, non-supervisory title. Therefore, the non-supervisory Subcode Official title was created in October 2017. Additionally, the existing Sub-Code Official title, to which it was determined that his position was properly classified, was inactivated in October 2017, but existing incumbents were permitted to be retained in the title until they left their positions. Since he continues to supervise staff in the Division of Codes and Standards, Liquified Petroleum Gas Unit, the petitioner maintains that his position cannot be reclassified to a title that does not allow supervision. Therefore, the

petitioner requests that he be permitted to remain in his current title of Construction Official as determined by Agency Services in its initial determination.

CONCLUSION

N.J.A.C. 4A:2-1.6(b) sets forth the standards by which a prior decision may be reconsidered. 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.

In the present matter, the petitioner has satisfied the standard for reconsideration. In its April 18, 2018 determination, the Commission noted that the Sub-Code Official is a primary level supervisory title. However, on October 4, 2017, the primary level supervisory title of Sub-Code Official was made archaic. When a title is made archaic in the State Classification Plan, it is no longer available for use to classify positions. However, existing incumbents serving in the archaic title are permitted to remain in the title until such time as the position is vacated. Therefore, since the petitioner was supervising subordinate staff, his position should not be reclassified to a title that was made archaic.

However, it cannot be ignored that the petitioner's supervisor remains in the Supervisor of Enforcement title, which is a second-level supervisory title, as is the petitioner's permanent title of Construction Official. Nevertheless, the position does supervise three Construction Code Inspector 2s and one clerical title that is classified by a primary level supervisory title. Given the restructuring of the State Classification Plan, which eliminated the primary level supervisory Sub-Code Official title, Agency Services' determination that the position should remain classified as Construction Official, but for the appointing authority to review its organizational structure to ensure that primary and secondary level supervisors are functioning as appropriate is reasonable. Accordingly, the petitioner's position should remain classified as Construction Official and, if it has not done so already, the appointing authority is directed to review its organizational structure to ensure proper reporting relationships.

ORDER

Therefore, it is ordered that this request for reconsideration be granted.

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
17TH DAY OF OCTOBER, 2018



Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

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Attachment

c: John Tomasone
Jodi Evangelista
Kelly Glenn
Records Center



STATE OF NEW JERSEY

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

In the Matter of John Tomasone,
Department of Community Affairs

CSC Docket No. 2017-4071

Classification Appeal

ISSUED: April 23, 2018 (RE)

John Tomasone appeals the decision of the Division of Agency Services (Agency Services) which found that his position with the Department of Community Affairs is properly classified as Construction Official. He seeks a Supervisor of Enforcement job classification in this proceeding.

The record in the present matter establishes that the appellant is permanent in the title of Construction Official. Subsequently, he requested a classification review of his position. An audit was conducted consisting of a review of all documents, including the Position Classification Questionnaire (PCQ) filled out by the appellant, and an interview with the appellant. This position is located in the Division of Codes and Standards, Bureau of Code Services, Liquid Petroleum (LP) Gas Unit. The position is supervised by a Supervisor of Enforcement, and has supervisory responsibility for three Construction Code Inspector 2s and one Principal Clerk.

The classification review found that Mr. Tomasone’s assigned duties and responsibilities, as detailed in Agency Services’ determination were commensurate with the title of Construction Official. Agency Services found that the appellant’s primary duties and responsibilities entailed, among other things, supervising the operations of the Liquefied Petroleum Gas programs, assigning and overseeing the work of Code Inspectors, preparing and issuing notifications and violations of the Uniform Construction Code, reviewing project plans involving LP Gas installations, an overseeing the maintenance of databases and files.

On appeal to the Civil Service Commission (Commission), Mr. Tomasone argues that his supervisor has been working out-of-title as a Bureau Chief for eleven years, and that he has assumed his supervisor's prior duties. He explains that work for the State was bifurcated, north and south, and he originally had the southern area. When the supervisor assumed increased duties, the appellant was responsible for the work for the entire State, and no Subcode Officials have been appointed in the LP Gas Unit. The appellant indicates that three Supervisors of Enforcement report to his supervisor so, in effect, there are other inappropriate reporting relationships in the unit and he maintains that he performs the same duties as these three Supervisors of Enforcement. He indicates that his duties align with several examples of work from the job specification for the requested title.

CONCLUSION

N.J.A.C. 4A:3-3.9(e) states that in classification appeals, the appellant shall provide copies of all materials submitted, the determination received from the lower level, statements as to which portions of the determination are being disputed, and the basis for appeal. Information and/or argument which was not presented at the prior level of appeal shall not be considered.

The definition section of the class specification for the title Construction Official states:

Under the general supervision of a supervisory official in a State department, institution, or agency, performs work involving the enforcement and administration of the New Jersey Uniform Construction Code Act and Regulations including the supervision and conduct of complex plan reviews and/or inspection of structures in the Class 1, 2 and 3 categories; or per *N.J.A.C.* 5:18, supervises Liquefied Petroleum Gas inspections and/or plan review; does related work as required.

The definition section of the class specification for the title Supervisor of Enforcement states:

Under general direction of a supervisory officer within the Department of Community Affairs, is responsible for administrative enforcement remedies aimed at securing abatement of violations of the regulations, codes, and standards; does other related duties as required.

The definition section of the class specification for the title Sub-code Official states:

Under the general supervision of a Construction Official or other supervisory official in a State department, institution, or agency, ensures conformance with the assigned sub-code; may supervise inspectors; serves as a subcode official in assigned units performing duties in the least one of the following areas:

1. conducts plan review, inspection and compliance functions for high-rise and hazardous structures; elevators sub-code officials may conduct operational amusement ride inspections in accordance with *N.J.A.C. 5:23-5.5*;
2. conducts field audit investigation, conducts and/or supervises field inspections and plan review work for amusement rides; Amusement Ride Subcode Officials may conduct routine six-month elevator inspections in accordance with *N.J.A.C. 5:23-5.5*;
3. Per *N.J.A.C. 5:18*, may supervise and/or conduct Liquefied Petroleum Gas inspections and/or plan review;

Performs other related duties as required.

The primary basis of the appellant's argument pertains to out-of-title work performed on a long-term basis. In that regard, Agency Service's determination indicated that there was an inappropriate reporting relationship within the subject unit, and advised the appointing authority to review the organizational structure to ensure the positions are not reporting to positions classified the titles having the same bargaining unit assignment. To date, the appellant's supervisor remains in the Supervisor of Enforcement title, which is a second-level supervisory title, as is Construction Official. For this reason alone, the appellant cannot be placed in that title, as a supervisor and a subordinate cannot hold the same title.

The appellant indicates that, "the LP-Gas Safety Unit, for some strange reason, has never been permitted to have Subcode Officials, which would have spread the workload." A review of the appellant's PCQ indicates that, aside from second-level supervisory responsibilities, his duties fall squarely in the realm of Sub-code Official, as this is a primary-level supervisory title and the appellant does not have second-level supervisory responsibilities. The Construction Code Inspector 2 is not a primary-level supervisory title. The Principal Clerk is a primary-level supervisory title, but for clericals, and even so, the organizational chart does not indicate that this incumbent supervises. The appellant's duties increased in volume as he supervised duties of the unit for the entire State, rather than half of it. Nevertheless, how well or efficiently an employee does his or her job, length of service, volume of work and qualifications have no effect on the classification of a position currently occupied, as *positions*, not employees are classified. See *In the Matter of Debra DiCello* (CSC, decided June 24, 2009). As such, an increase in

volume of work does not justify the higher-level title. In fact, the appellant has been working out-of-title at the higher-level, since he is not performing secondary-level supervisory duties. As the appellant is not assigned the required supervisory duties, his position is to be appropriately reclassified. In this case, Agency Services found that the appellant was appropriately classified, and took issue with the supervisor's title. This is not correct as, since the appellant is not performing duties appropriate to Construction Official, and the organization structure indicates that the appellant's supervisor's position is still classified as Supervisor of Enforcement. Therefore, as the appointing authority has not adhered to the reporting relationship as required by Agency Services' determination of June 8, 2017, the appellant's position is properly classified as Subcode Official, effective November 27, 2016.

ORDER

Therefore, the position of John Tomasone is properly classified as Sub-code Official, effective November 27, 2016.

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 18TH DAY OF APRIL, 2018



Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

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