



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 a signed 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 18<sup>TH</sup> DAY OF APRIL, 2018



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