



STATE OF WASHINGTON
OFFICE OF FINANCIAL MANAGEMENT
STATE HUMAN RESOURCES | DIRECTOR'S REVIEW PROGRAM
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January 30, 2015

TO: Janell Kearin

FROM: Holly Platz, SPHR
Director's Review Program Investigator

SUBJECT: Janell Kearin v. Department of Licensing (DOL)
Allocation Review Request ALLO-14-075

The Director's review of DOL's allocation determination of your position has been completed. The review was based on written documentation provided by you and by DOL. A list of the documents reviewed is attached.

As the Director's Review Investigator, I carefully considered all of the documentation submitted by you and by DOL in this matter. In addition, I considered the guidance provided in the State Human Resources Glossary of Classification Terms, prior Director's review determinations and Personnel Resources Board appeal decisions. Based on my review and analysis of your assigned duties and responsibilities, I conclude your position is properly allocated to the Investigator 1 classification.

Background

On March 20, 2014, DOL Human Resources (DOL HR) received your Position Review Request (PRR), asking that your Investigator 1 position be reallocated to the Investigator 2 classification. (Exhibit B-4)

DOL HR conducted a position review and notified you on June 24, 2014, that your position was properly allocated to the Investigator 1 class. (Exhibit B-1)

On July 11, 2014, State Human Resources office received your request for a Director's review of DOL's allocation determination. (Exhibit A-1)

This position review was based on the work performed for the six-month period prior to March 20, 2014, the date DOL HR received your request for a position review. I note that some of the exhibits you provided, such as emails and meeting minutes, are outside this timeframe. Nonetheless, I reviewed the documents and considered them as illustrative of the type of work you performed during the relevant timeframe.

Duties and Responsibilities

Your position is assigned to the Drivers Special Investigations (DSI) unit within the Programs and Services Division of DOL. You report to Ashley Palmer, Investigator 3, who reports to Mike Turcott, License Integrity Administrator.

Your position primarily conducts investigations into driver license fraud. You use information and data obtained from the agency's Facial Recognition System (FRS) to identify potential fraud. If fraud is found, you create files with the information which is reviewed by higher level investigators for case assignment. You also conduct investigations related to internal and external misconduct regarding Personal Driver Licenses (PDL). In addition, you reconcile and audit driver records and you assist other DOL staff with license plate searches for full and partial plates, in-state and out-of-state vehicle registration checks, reports of vehicles sales and vehicle history requests.

When conducting investigations, you gather information from multiple electronic sources such as the FRS, the Washington Crime Information Center/National Crime Information Center, the Jail and Booking Report System, TLO, LinX, and the Driver and Plate System. You also have contact with other agencies such as Social Security Administration, the Federal Department of State, Department of Social and Health Services, Department of Revenue and County Assessors.

Your major job duties are described in detail in your PRR (Exhibit B-4). In addition, the duties you perform that you feel are outside of the Investigator 1 classification are described in detail in your PRR. In your PRR, you categorized your duties as follows:

- 15% Conduct scrub investigations in the Biometric Facial Recognition System (FRS) to substantiate allegations of fraud
- 20% Conduct daily automated investigations in the Biometric Facial Recognition System to substantiate allegations of fraud and create case filed for assignment
- 40% Case research, case write up and law enforcement collaboration and referrals
- 15% Records Management and auditing records
- 10% Vehicle investigations/records searches/law enforcement assistance on vehicles

Supervisors' Comments

Your supervisor, Ashley Palmer, completed the PRR Supervisor Portion on April 10, 2014. (Exhibit B-5) Ms. Palmer disagreed with your description of your duties in which you referred to yourself as lead investigator. She clarified that she was not aware of you participating in an Administrative Interview with the Hearings Section and that you are not authorized to document Enhanced Driver License (EDL) reviews. Ms. Palmer also disagreed with your description of your decision making authority. She clarified that you may make suggestions on peer review reports but you do not have the authority to make changes on the reports. She also clarified that you do not determine which cases to work rather cases are assigned to you and that you do not have the authority to make case referrals to law enforcement. Ms. Palmer explained that you work under general direction and that you utilize the Investigative Checklist for databases and tools that licensing has developed over the years to assist in the thoroughness of investigations. Ms. Palmer further explained that the complexity of a case is "determined by the fraud that has occurred (multiple identities, multiple jurisdictions, EDL, CDL), the

amount of effort and digging by the investigator and the determination by the supervisor when assigning cases." Ms. Palmer argued that since becoming your supervisor, she has not read a case that she considers complex and she has not referred any cases to the Washington State Patrol for criminal consideration. Ms. Palmer felt that the cases assigned to you do not meet the criteria of a complex case.

Mike Turcott, License Integrity Administrator, also provided comments on your PRR. He did not support reallocation of your position. Mr. Turcott agreed with the comments provided by Ms. Palmer and provided further explanation in Exhibit B-6. Mr. Turcott explained that FRS cases typically follow established procedures and are single issues with little controversy. He also explained that the Investigative Checklist is a tool to assist in the standardization of investigations and to remind investigators to consider all resources. Mr. Turcott agrees that you access resources at partner agencies and databases but contends that it is the complexity of an investigation, not the resources or tools used that determine whether a position should be an Investigator 2. Mr. Turcott further contends that the complexity of a case is determined by the number of subjects or issues involved.

Summary of Your Perspective

As stated above, you described your job duties in detail in your PRR. (Exhibit B-4) In summary, you argue that the duties you perform at DOL as an Investigator 1 are duties that Investigator 2s and 3s perform at the Department of Social and Health Services. You assert that the investigations you conduct are complex with multiple subjects committing fraud on one record, unknown subjects, multiple victims and multiple aliases. You further assert that following the checklist and running all of the searches, queries and outreach to federal, state and local law enforcement agencies makes every case complex. You contend that these cases are criminal in nature, multifaceted and time consuming. You explain that the duties of your position have changed over time, that additional duties have been added due to the departure of staff and that, when you submitted your review request, you anticipated that you would soon begin training to conduct vehicle investigations as a regular part of your job. You argue that the duties and responsibilities of your position and the positions occupied by other Investigator 1s at DOL are more in line with the duties of an Investigator 2.

Summary of DOL's reasoning

DOL contends that your position does not meet the definition of the Investigator 2 classification and does not perform complex work as defined by the Glossary of Classification Terms. DOL argues that the majority of the cases assigned to your position are single issue cases and are investigated/completed using specific systems and established procedures such as the Investigative Checklist. DOL acknowledges that there may be times that an investigation uncovers multiple names or issues but asserts that this occurs on an infrequent basis and does not equate to a majority of your work. DOL explains that Investigator 2 positions also investigate violations in the vehicle and vessel industry which are more complex due to the multiple suspects and issues. DOL contends that you are not assigned vehicle and vessel investigations though you may assist others by performing non-complex vehicle searches. DOL asserts that the preponderance of your work best fits the Investigator 1 classification.

Rationale for Director's Determination

The purpose of a position review is to determine which classification best describes the overall duties and responsibilities of a position. A position review is neither a measurement of the volume of work performed, nor an evaluation of the expertise with which that work is performed. A position review is a comparison of the duties and responsibilities of a particular position to the

available classification specifications. This review results in a determination of the class that best describes the overall duties and responsibilities of the position. Liddle-Stamper v. Washington State University, PAB Case No. 3722-A2 (1994). (Emphasis added.)

In this case, I recognize that your duties have changed and that you have taken on additional duties. However, when determining the appropriate classification for a specific position, the duties and responsibilities of that position must be considered in their entirety and the position must be allocated to the classification that provides the best fit overall for the majority of the position's duties and responsibilities. Dudley v. Dept. of Labor and Industries, PRB Case No. R-ALLO-07-007 (2007).

You argue that Department of Social and Health Services positions that perform work similar to the work you perform are allocated to the Investigator 2 and 3 classifications. However, in Byrnes v. Dept's of Personnel and Corrections, PRB No. R-ALLO-06-005 (2006), the Personnel Resources Board held that "[w]hile a comparison of one position to another similar position may be useful in gaining a better understanding of the duties performed by and the level of responsibility assigned to an incumbent, allocation of a position must be based on the overall duties and responsibilities assigned to an individual position compared to the existing classifications. The allocation or misallocation of a similar position is not a determining factor in the appropriate allocation of a position." Citing to Flahaut v. Dept's of Personnel and Labor and Industries, PAB No. ALLO 96-0009 (1996). Therefore, the allocation or misallocation of other positions is not a determining factor in the appropriate allocation of your position.

Comparison of Duties

When comparing the assignment of work and level of responsibility to the available class specifications, the Class Series Concept (if one exists) followed by the Definition and Distinguishing Characteristics are primary considerations. While examples of typical work identified in a class specification do not form the basis for an allocation, they lend support to the work envisioned within a classification.

Comparison of Duties to Investigator series

There is no dispute that your position fits within the Class Series Concept for the Investigator series. The issue is whether your position best fits within the 1 or the 2 level of the series.

The Definition for the Investigator 1 class states:

Conducts civil or criminal investigations in order to substantiate allegations of fraud, misconduct, discrimination, fraudulent and unfair business practices, or other claims under state jurisdiction.

The Distinguishing Characteristics for this class state:

This is the first level of the series. Positions work with little supervision under the general guidance of an operations manager or higher-level Investigator. Positions conduct the more routine investigations characterized by: established precedent and procedures, little controversy, single issues, individual claims, or other investigations of similar scope.

The Definition for the Investigator 2 class states:

Conducts complex investigations in order to substantiate allegations of fraud, misconduct, discrimination, fraudulent and unfair business practices, or other claims under state jurisdiction.

The State Human Resources Glossary of Classification terms defines complex as:

Independently uses a wide variety of rules, processes, materials and equipment to complete work assignments that require specialized knowledge or skills. Decisions are made independently regarding which rules, processes, materials, and equipment to use in order to effectively accomplish work assignments.

The Distinguishing Characteristics for the Investigator 2 class state:

Positions work independently to investigate and resolve complex civil or criminal cases which are characterized by: multiple claimants; internal personnel investigations; fraud or collusion among claimants, employers and providers; alleged violations within the vehicle/vessel industry; or allegations of welfare fraud.

Positions may receive limited guidance from senior level Investigators, possessing advanced knowledge, in unique situations. This guidance will be infrequent.

The Class Series Concept for this series states that Investigator positions conduct civil and/or criminal investigations in variety of subject areas.

The primary criteria for allocation to the Investigator 2 level were discussed by the Director's review investigator in Wallace v. Dept. of Licensing, Director's Review Case No. ALLO-13-090 (2014). In that case, the Director's investigator determined the employee's position was properly allocated to the Investigator 1 classification. The Director's investigator found that: "[p]ositions at the Investigator 2 level conduct complex investigations and work independently to investigate and resolve complex civil or criminal cases. Cases at this level are often characterized by fraud or collusion among multiple claimants, etc. The scope of this work involves gathering facts and developing evidence. In order to meet the primary allocating criteria of this series, incumbents are responsible for developing the complete case from the original claim or allegation through preparing the final report for presentation in court or administrative hearing."

Here, as in Wallace, the majority of your work involves following established precedent and procedures to perform single-issue investigative work involving identity fraud. During the investigative process you research information and make appropriate notes by using various databases and information systems. You contact different agencies, search and use secured websites, and make phone calls to appropriate agencies. You analyze, gather evidence, and write investigative reports for review by your supervisor. You follow standard procedures and the Investigative Checklist to complete your work.

In addition, you perform records management and auditing functions and assist other staff with license plate and vehicle registration searches. This portion of your work is focused on performing administrative license processing functions rather than performing investigative duties consistent with Investigator series.

The overall focus and depth of your duties are consistent with the Definition of the Investigator 1 class. You work with little supervision under the general guidance of a higher-level Investigator and the thrust of the majority of your duties consists of conducting routine, single-issue fraud investigation work.

The Investigator 1 classification accurately describes your position and is the best fit for the majority of your duties and responsibilities. Your position should remain allocated to this class.

Appeal Rights

RCW 41.06.170 governs the right to appeal. RCW 41.06.170(4) provides, in relevant part, the following:

An employee incumbent in a position at the time of its allocation or reallocation, or the agency utilizing the position, may appeal the allocation or reallocation to the Washington personnel resources board. Notice of such appeal must be filed in writing within thirty days of the action from which appeal is taken.

The mailing address for the Personnel Resources Board (PRB) is P.O. Box 40911, Olympia, Washington, 98504-0911. The PRB Office is located on the 3rd floor of the Raad Building, 128 10th Avenue SW, Olympia, Washington. The main telephone number is (360) 407-4101, and the fax number is (360) 586-4694.

If no further action is taken, the Director's determination becomes final.

c: Janell Kearin
 Brett Alongi, DOL
 Lisa Skriletz, OFM

Enclosure: List of Exhibits

A. Janel Kearin Exhibits

1. Director Review Request date stamped July 11, 2014 (1 page)
2. Allocation decision dated June 24, 2014 (5 pages)
3. Copy of LIU Investigator 1 Position Description form signed November 15, 2007 (5 pages)
4. DSI expectations for Investigator 1's, dated January 19, 2010 (2 pages)
5. LIU expectations for Investigator 1's, dated February 4, 2014 (2 pages)
6. Staff meeting notes dated July 14, 2011, describing Fred Bjornberg's new expectations of minimum requirements for facial recognition scrub searches, report writing, new checklist and stat sheets (1 page)
7. Staff meeting notes dated September 22, 2011, detailing new duties and procedures for investigations on ID cards within the scrub list in the Facial Recognition System (FRS). A new procedure where all closed cases are added to a law enforcement spreadsheet that is distributed to local and federal law enforcement for prosecution. A new duty reverting addresses on records. (2 pages)
8. Staff meeting notes dated October 6, 2011, detailing the new duty and expectation for address abuse/fraud cases stemming from a directive from upper management. New expectation of minimum of one new address case assigned each month. (1 page)
9. Staff meeting notes dated February 9, 2012, explaining how law enforcement requests case reports through a point of contact at LIU. This law enforcement spreadsheet is sent to law enforcement which results in daily requests for LIU cases for further investigation and prosecution. (1 page)
10. Staff meeting notes dated May 31, 2012, describing new duties to handle cheating customers in office. Additional new duties for daily FRS procedures. Dennis acknowledged the extra workload the new duties create. (1 page)
11. Staff meeting notes dated June 28, 2012, referencing the law enforcement spread sheet. Fred Bjornberg creating new process to cross train Investigator 1's with the Vehicle Investigator 2's. Additional duties related to the daily automated list in the Facial Recognition System. New duty of tracking Licensing Services Representatives (LSR') errors for possible internal investigations and LSR misconduct. (3 pages)
12. Staff meeting notes dated January 10, 2013, detailing new duties for subjects committing fraud to be 21, contacting customers to get identity documents back. Additional duty of running out of state checks through WACIC/NCIC (Washington Crime Information Center and National Crime Information Center) on our own ACCESS terminals. Each Investigator was required to become certified by taking a class through the Washington State Patrol and got fingerprinted as well as background checked. (1 page)
13. Email from JoAnna Shanafelt dated January 22, 2013, detailing new expectations for Investigator 1's. Additional requirements of minimum facial recognition scrub system work, daily issuances (daily automated) facial recognition systems work, one line message (OLM) requirements to assist LSR's with subjects in the office. JoAnna acknowledges expectations are constantly changing to fit business needs. (1 page)
14. Staff meeting notes dated April 11, 2013, where Fred Bjornberg acknowledges that LIU cases often turn into complex and serious cases and use of the entire investigative checklist is to be completed for each investigation to increase the likelihood of complex and serious investigations. (1 page)
15. Email from Mike Turcott dated March 6, 2014, requesting all staff to notify him of all vehicle title fraud alerts we receive each week. (1 page)

16. Email sent to JoAnna Shanafelt, Ashley Palmer and Mike Turcott explaining my best facial recognition system success story – proof that they were aware of this case even though they claim otherwise. (1 page)
17. Email sent to me with a carbon copy to Ashley Palmer, dated March 13, 2014, from Brett Alongi advising me the DOL HR office has received my position reallocation request. (1 page)
18. Email from Ashley Palmer dated March 18, 2014 at 7:43am advising me that I would be taking over the duties of a retiring CSS2 employee, Duane Hume, who did vehicle communications. The email continues through 10:15am, and details my concern for the workload problem this would create. I did NOT volunteer to do the CSS2 duties. I was asked by my previous supervisor, Dennis O'Bryan to learn the duties to assist while LIU transitioned a new employee on board (3 pages)
19. Email from Ashley Palmer dated March 18, 2014 at 9:13am requesting to discuss my position reallocation before she started her portion of the review. I declined the one on one meeting as I felt uncomfortable after being told to work under my position class directly after submitting a position reallocation request. (1 page)
20. Staff meeting dated March 20, 2014, where new Administrator Mike Turcott spoke forcefully about staff getting along, new public disclosure requests coming into LIU and coincidentally wanting to discuss LIU job criteria and to understand the difference between Investigator 1's and 2's. Additionally, JoAnna Shanafelt was going review our positions and develop the procedures to see what is complex and what is not. Later in the meeting Justin describes his cross training with Vehicle Investigator 2, Katie Sprengel. (3 pages)
21. Email from JoAnna Shanafelt sent to all Investigator 1's dated March 20 at 2:59, requesting input of what we think Investigator 1 work is and what Investigator 2 work is. JoAnna Shanafelt and Mike Turcott were going to go through a backlog of cases so Investigator 1's would no longer be assigned cases that were Investigator 2 work. (2 pages)
22. Meeting minutes dates April 10, 2014, where Mike Turcott acknowledges LIU is receiving more subpoenas and set up training with the Assistant Attorney General for case preparation, report writing and testifying in court.
23. Email dated May 1, 2014, sent to all Investigator 1's asking for anyone willing to learn the EDL Investigator 2 duties of FRS review, I responded with my interest. (1 page)
24. Email to Ashley Palmer dated June 26, 2014 as a follow up email to the meeting with JoAnna Shanafelt, Ashley Palmer, and Mike Turcott airing frustrations for the extra CSS2 vehicle communication duties. Frustrations and claims of high workload were discounted in the meeting so I requested further means of relief. Other employee's workload concerns have been addressed which adds to the feeling of retaliation for submitting a reallocation request. (3 pages)
25. Email from JoAnna Shanafelt dated July 23, 2014 requesting title fraud alerts be sent to her so she can assign them out. (1 page)
26. Email sent to Brett Alongi on August 19, 2014, discounting statements made by Mike Turcott about CSS2 workload issues being resolved in his response to my position reallocation request. (1 page)
27. Required Investigative checklist detailing minimum expectation searches on each assigned case (1 page)
28. Required checklist for fraud found in the Facial Recognition System during the daily issuances of licenses and identification cards (1 page)
29. Vehicle Communications (CSS2) stat sheet to tally duties throughout a normal work day (1 page)

30. Investigator 1 stat sheet to tally duties throughout a normal work day (1 page)
31. Janell Kearin final argument with attached DOL job announcement

B. DOL Exhibits

1. Allocation Determination Letter, dated June 24, 2014 (5 pages)
2. Position Description Form, dated November 15, 2007 (5 pages)
3. Organization Chart, DOL, License Integrity Section (1 page)
4. Position Review Request – Employee Portion, dated March 10, 2014 (8 pages)
5. Position Review Request – Supervisor Portion, dated April 24, 2014 (3 pages)
6. Information provided by administrator regarding employee portion, dated April 14, 2014 (10 pages)
7. Desk Audit questions and responses, dated March 29, 2014 (4 pages)
8. Documentation of Follow-up conversation with supervisor – Ashley Palmer, dated June 12, 2014 (1 page)
9. Email correspondence with Janell Kearin (2 pages)
10. Email correspondence with Ashley Palmer (2 pages)
11. Investigator 1 Class Specification (1 page)
12. Investigator 2 Class Specification (2 pages)
13. Glossary of Classification Terms, OSHRD/OFM (5 pages)

C. Class Specifications

1. Investigator 1 Class Specification 427P
2. Investigator 2 Class Specification 427Q