

Stacey Stewart, Esq.
Deputy Attorney General
on behalf of the Department of
Labor

BRIEF SUMMARY OF THE EVIDENCE

Wanda Silva, the employee/grievant (“Grievant”) offered twenty (20) documents into evidence, of which seven (7) were admitted and marked as Grievant Exhibits 6, 13, 16-20.

The Department of Labor (“DOL” or “Agency”) offered six documents into evidence, marked as Exhibits A through F. All six documents were admitted into the record.

The Grievant testified on her own behalf and called DOL Information Systems Manager and Information Security Officer Erich Heintz as her witness.

The Agency called the Deputy Director of the Division of Unemployment Insurance James Billups, and the DOL Human Resources Administrator Tristan Press, (who was the Agency representative) to testify.

FINDINGS OF FACT

Ms. Silva began working for Department of Labor, Division of Unemployment Insurance (“DUI”) as a Management Analyst III (“MA III”)¹ on November 6, 2022.² The MA III position is responsible for collecting and analyzing statistical data for studies of management and operational programs to determine compliance with goals and objectives, as well as developing solutions, deciding on a course of action and making recommendations to management.³ Ms. Silva’s job duties included performing statistical analysis and interpretation of data related to policies and procedures; analyzing and evaluating effectiveness of operations; studying pertinent legislation, orders, and regulations; and documenting findings of studies and preparing

¹ Paygrade 16.

² Agency Exhibit A.

³ Agency Exhibit C.

recommendations for implementation of new systems.⁴

In early 2023, three DUI MA IIIs, including Ms. Silva, were designated as Information Security Officers (“ISO”). According to state and federal policies, ISOs are responsible for conducting risk assessments and audits, reviewing procedures, and conducting investigations of violations by DUI employees.⁵ The ISO is not a stand-alone merit position but rather a duty added to an already existing position.⁶ Finally, DUI is the only Division within DOL that maintains its own ISOs.⁷

The Agency recently added an Information Security and Compliance Officer.⁸ This position is a more in-depth role which is responsible for developing and implementing department-wide Information Technology (“IT”) security policies to secure departmental systems and data.⁹ This position provides technical expertise to management and ensures the integrity of systems related to access, storage, and transmission of data.¹⁰ The essential functions of the Information Security and Compliance Officer include:

- Develops, implements, and enforces information security policies, standards, best practices and procedures for complex systems and data including that which requires compliance with federal and state regulations *department-wide*.
- Conducts IT security risk assessments and gap analysis on systems and operational requirements to evaluate effectiveness and identify vulnerabilities and non-compliance.
- Makes recommendations on corrective action to IT security requirements and system designs to resolve issues; evaluates IT security solutions to confirm they meet *department, state and federal IT security requirements* for processing confidential and sensitive information.

⁴ *Id.*

⁵ Agency Exhibit F.

⁶ Grievant Exhibit 6.

⁷ *Id.* Transcript (“TR”), p. 16-17.

⁸ TR” p. 27-28. The Information Security and Compliance Officer is compensated at Paygrade 19. Agency Exhibit D.

⁹ Agency Exhibit D.

¹⁰ *Id.*

- Performs IT security and internal control reviews on sensitive systems and develops unique security tools and techniques for assessment of complex/non-standard systems and operational requirements.
- *Assists department staff on IT security policy and conducts IT security related training.*
- *Ensures compliance of department IT security operations with external entities such as but not limited to, the Center for Medicare and Medicaid Services, Internal Revenue Service (IRS), Payment Card Industry Data Security Standards (PCIDSS), Social Security Administration (SSA), State of Delaware Information Security Policy (DISP), and Delaware State Personally Identifiable Information (PII) data security requirements. Prepares policies and procedures to ensure the secure transmission of State data to external entities.*
- Supports a 24x7 operational environment. The operating environment *will require extended hours, including engagement outside normal working hours.*
- *May complete the Primary Information Security Officer (ISO) or Alternate Information Security Officer (ISO) duties, as outlined by DTI.¹¹*

Ms. Silva applied for this position but was not granted an interview.¹² The Information Security and Compliance Officer position currently exists in addition to the three MA IIIs in the Division of Unemployment Insurance to whom ISO duties have been assigned.

CONCLUSIONS OF LAW

Merit Rules 3.2 states:

3.2 Employees may be required to perform any of the duties described in the class specification, any other duties of a similar kind and difficulty, and any duties of similar or lower classes. Employees may be required to serve in a higher position; however, if such service continues beyond 30 calendar days, the Rules for promotion or temporary promotion shall apply, and they shall be compensated appropriately from the first day of service in the higher position.

An increase in the volume of work assigned to an employee in and of itself does not constitute working out of class.¹³ “An employee is working out of class when the duties assigned [her] are not those specified in the specification for the class in which [she] is incumbent. Rather

¹¹ *Id.* (italics added for emphasis).

¹² TR p. 53.

¹³ *Sharon Bertin v. DHSS/DDDS*, MERB Docket No. 20-10-789 at p.4 (September 23, 2021).

[she] is performing for an extended period the full range of duties enumerated in another class specification.”¹⁴ In order to prevail, Ms. Silva must establish that based upon a totality of the circumstances, her day-to-day job duties are more consistent with those enumerated for the Information Security and Compliance Officer, not the MA III position.¹⁵

Here, there is no dispute that within DUI and statewide, “ISO” is not a full-time position but rather a series of duties added to the responsibilities of other, pre-existing positions.¹⁶ Furthermore, Ms. Silva is one of three DUI MA IIIs with added ISO duties.¹⁷ Conversely, the Information Security and Compliance Officer is a stand-alone position and distinct from the Division ISOs. Most importantly, the Compliance Officer is a more in-depth agency-wide position.¹⁸

Ms. Silva focused on her reporting structure within DUI and argued that the ISO position is of paramount importance, handles highly sensitive information, and involves difficult enforcement duties. The Board does not disagree, but that is insufficient to establish Ms. Silva was fundamentally performing the duties of the Information Security and Compliance Officer. For example, Ms. Silva did not testify to or present documentary evidence that she was performing agency-wide duties or developing IT policies and standards, as is required of the Information Security and Compliance Officer.¹⁹ When asked if DUI ISOs are performing the duties

¹⁴ *Id.* citing to *Jenkins v. Del. Dept. of Health and Social Servs.*, MERB Docket No. 07-01-380 at p. 5 (May 15, 2008).

¹⁵ *Brabson v. Del. Dept. of Servs. for Children, Youth and Their Families*, MERB Docket No. 21-07-811 at p.5 (December 1, 2021).

¹⁶ Grievant Exhibit 6 and February 19, 2025 Transcript (“TR”) pp. 30-31, 92.

¹⁷ *Id.*

¹⁸ Agency Exhibit D and TR pp. 15, 35.

¹⁹ *Id.*

enumerated in the Information Security and Compliance Officer job description, Information Systems Manager Erich Heintz stated, “not wholly.”²⁰ Similarly, Ms. Silva did not establish that she is primarily or exclusively performing ISO duties, rather than the duties of an MA III. DUI Deputy Director Billups testified that the ISO duties are a portion of her job but are not 100% of what she “does all day long.”²¹

In addition to failing to establish that she functions primarily as an Information Security and Compliance Officer, Ms. Silva did not demonstrate that her ISO duties fell outside of the enumerated duties of a DUI MA III.²² Deputy Director Billups testified that the ISO responsibilities are encompassed within Ms. Silva’s MA III duties, and that none of the DUI ISOs have the technical expertise to perform the job of Information Security and Compliance Officer.²³ The Board does not find the fact that Ms. Silva may lack the requisite qualifications to hold the Information Security and Compliance Officer position dispositive of the question of whether she was being required to work in a higher class in violation of MR 3.2. The Board is, however, persuaded that the duties she is performing do not rise to the level of the Information Security and Compliance Officer, as she has alleged.

For the foregoing reasons, the Board concludes as a matter of law that Ms. Silva did not establish that she was performing the duties of an Information Security and Compliance Officer; therefore, the Agency did not violate Merit Rule 3.2.

²⁰ TR p. 41.

²¹ TR p. 92.

²² TR pp. 33, 43. Mr. Heintz testified that MA IIIs, not just the Compliance Officer, should have the capacity to investigate security violations, and Mr. Billups testified that the ISO responsibilities are encompassed within the MA III job description.

²³ TR pp. 95-96.

ORDER

It is this **23rd** day of **April 2025**, by a unanimous vote of 4-0, the Decision and Order of the Board to deny the grievance.



JENNIFER COHAN, MERB Chairperson



SHELDON N. SANDLER, ESQ., MEMBER



JOSEPH A. PIKA, III, PH.D., MEMBER



LESTER E. JOHNSON, JR., MERB Member