

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

**One Ashburton Place - Room 503
Boston, MA 02108
(617) 727-2293**

PAUL GUIMOND,
Appellant

v.

CASE NO: C-13-3

**DEPARTMENT OF CORRECTION
and MASSACHUSETTS HUMAN
RESOURCES DIVISION,**
Respondents

Appearance for Appellant:

Gary S. Brackett, Esquire
Brackett & Lucas
19 Cedar Street
Worcester, MA 01609

Appearance for DOC:

Jeffrey S. Bolger
Division of Human Resources
Department of Correction
P.O. Box 946, Industries Drive
Norfolk, MA 02056

Appearance for HRD:

George Bibilos
Human Resources Division
One Ashburton Place
Boston, MA 02108

Commissioner:

Paul M. Stein

DECISION ON MOTION FOR SUMMARY DECISION

The Appellant, Paul Guimond, appealed to the Civil Service Commission (Commission) pursuant to G.L.c.30,§49, from the denial of the Massachusetts Human Resources Division (HRD) of his request for reclassification of his position at the Department of Correction (DOC) from Correctional Program Officer A/B to Parole Officer C. On January 24, 2013, DOC moved for Summary Decision seeking to dismiss the appeal for lack of jurisdiction, which the Appellant opposed. By Procedural Order on March 6, 2013, HRD was added as a party. A motion hearing was held on May 6, 2013,

which was digitally recorded. Both the Appellant and DOC submitted additional documentation after the hearing requested by the Commission.

FINDINGS OF FACT

Based upon the arguments and submissions of the parties, I find the following facts to be undisputed:

1. The Appellant, Paul Guimond, is a tenured DOC employee who holds the title of Correction Program Officer A/B, which is the entry-level, non-supervisory position within the Correctional Program Officer (CPO) Class Specification. DOC employs in excess of one hundred CPOs at DOC institutions throughout the Commonwealth. (*DOC Motion, Exh. 4; Undisputed Representation of Facts*)

2. The essential duties of a CPO involve providing non-therapeutic counseling, rehabilitation and custodial care of DOC inmates. (*DOC Motion, Exh. 4*)

3. The position of Parole Officer C is the second-level position in the Parole Officer (PO) Class Specification. The position includes Field Parole Officers (FPOs) who work with parolees in the community and Institutional Parole Officers (IPOs) who are based in a DOC institution. IPOs serve as the primary support to the Parole Board in decisions and facilitate re-entry of individuals placed on parole. (*DOC Post-Hearing Submission dated May 10, 2013; Appellant's Post-Hearing Submission, dated May 16, 2013*)

4. The incumbent in a PO-C position is either a first-level supervisor or performs in a non-supervisory position “at a level of complexity and responsibility equivalent to that of a first-level supervisor and which require exceptional mastery of technical job content beyond the usual competency level”, such as a Polygrapher, as determined by HRD. (*DOC Post-Hearing Submission, dated May 10, 2013*)

5. In or about 2004, as a result of a departmental reorganization, DOC's Re-entry Unit was abolished. This unit had been staffed by Parole Officers who were tasked with assisting the Parole Board with investigations and hearings for individuals eligible for parole consideration and facilitating the individual's reentry into the community as a parolee. (*Appellant's Claim of Appeal; DOC Motion, Exh. 7; Appellant's Opposition, Cutting Aff't*)

6. When the Re-entry unit was abolished, many of the duties formerly performed by the Parole Officers in that unit were reassigned to CPOs at certain DOC facilities. Mr. Guimond was one of the many CPOs who assumed these additional duties. (*Appellant's Claim of Appeal; DOC Motion; Appellant's Opposition; Undisputed Representations of Fact*)

7. The assignment of additional duties to the DOC CPOs resulted in extensive negotiations and impact bargaining grievances between the CPO's union, SEIU Local 509/SEIU-NAGE Local 5000, that ultimately resulted in a Memorandum of Understanding (MOU) that provided, among other things, that the union and DOC agreed to support a request to upgrade the CPO position to accommodate the additional increase in duties. HRD indicated that this request would be approved provided that DOC paid for the upgrade out of its existing budget without additional appropriation, which it could not afford. Thus, the upgrade was never implemented. (*Claim of Appeal; Appellant's Opposition, Cutting Aff't; Undisputed Representations of Fact*)

8. As a result of subsequent changes in the job duties of CPOs and IPOs made in or about 2011, some, but not all of the additional re-entry related duties initially transferred to the CPOs were reassigned. (*DOC Motion; Undisputed Representation of Fact*)

9. As of June 2012, Mr. Grimond continued to perform certain institutional IPO-type re-entry duties. These duties involve, primarily, generating and checking inmate CJIS packets for individuals who are scheduled for a Parole Board hearing. This includes checks of numerous law enforcement databases as well as, on occasion, contacting courts, police departments and other sources of information. Mr. Guimond estimated that he devotes about 25% to 30% of his time on a day-to-day basis on these IPO-type parole duties. (*Appellant's Interview Guide*)

10. On December 27, 2012, HRD denied Mr. Guimond's appeal requesting his reclassification from CPO A/B to Parole Officer C. Mr. Guimond thereafter timely filed this appeal with the Commission on January 7, 2013. (*Appellant's Claim of Appeal*)

CONCLUSION

Standard of Review

The party moving for summary disposition pursuant to 801 C.M.R. 1.01(7)(g)(3) or (h) in an appeal before the Commission is entitled to dismissal as a matter of law under the well-recognized standards for summary disposition, i.e., if, "viewing the evidence in the light most favorable to the non-moving party [i.e. Mr. Guimond]," the DOC has presented substantial and credible evidence that Mr. Guimond has "no reasonable expectation" of prevailing on at least one "essential element of the case", and that he has not produced sufficient "specific facts" to rebut this conclusion. See, e.g., Lydon v. Massachusetts Parole Board, 18 MCSR 216 (2005); cf. Milliken & Co., v. Duro Textiles LLC, 451 Mass. 547, 550n (2008); Maimonides School v. Coles, 71 Mass.App. Ct. 240, 249 (2008)

Applicable Civil Service Law

G.L.c. 30, §49 provides:

Any manager or employee of the commonwealth objecting to any provision of the classification affecting his office or position may appeal in writing to the personnel administrator and shall be entitled to a hearing upon such appeal. . . . Any manager or employee or group of employees further aggrieved after appeal to the personnel administrator may appeal to the civil service commission. Said commission shall hear all appeals as if said appeals were originally entered before it. If said commission finds that the office or position of the person appealing warrants a different position reallocation . . . it shall be effective as of the date of appeal . . .

As a general rule: “The determining factor of a reclassification is the distribution of time that an individual spends performing the function of a job classification.” Roscoe v. Department of Environmental Protection, 15 MCSR 47 (2002). In order to justify a reclassification, an employee must establish that she is performing duties encompassed within the higher level position the majority (i.e., at least 50% or more) of the time. See, e.g., Pellegrino v. Department of State Police, 18 MCSR 261 (2005) (at least 51%); Morawski v. Department of Revenue, 14 MCSR 188 (2001) (more than 50%); Madison v. Department of Public Health, 12 MCSR 49 (1999) (at least 50%); Kennedy v. Holyoke Community College, 11 MCSR 302 (1998) (at least 50%).

Analysis

As often true in most classification appeals, Mr. Guimond is, by all accounts, a dedicated public servant who works hard and is respected by his peers and supervisors at DOC. He presented himself at the hearing and in his submissions as a skilled professional with much pride of service. However, reclassification of a position requires proof that the specified duties of the higher title are, in fact, actually being performed as the major part of his current position. Accordingly, the issue before the Commission is limited to that specific question.

The undisputed evidence establishes that Mr. Guimond's job duties do not fit the classification specification for a Parole Officer C, since he is clearly not a supervisor as required and he does not perform duties that HRD has determined to be of the complexity and technical nature to come within the definition of that job specification. Moreover, Mr. Guimond, himself, acknowledges that only 25% to 30% of his job involves Parole Officer duties, and the remainder of his job duties (70% to 75%) involve tasks that are included within his current CPO job specification. Thus, under the well-established standards for a position reclassification, there is no factual dispute that HRD was correct in denying Mr. Guimond's request.

That said, it remains quite unsettling that Mr. Guimond, and apparently more than a hundred of his peers, were obliged to perform for many years, and apparently still continue to perform, additional duties without any adjustment in pay that were not part of the job description when they were hired. All parties here – the employees, the union, DOC and HRD – seem to agree this situation was inequitable. Unfortunately, however, the solution to this problem would require a “class reallocation” of an entire job group, as opposed to a “position relocation” of one individual's position, and the former is the exclusive purview of collective bargaining and is beyond the jurisdiction of the Commission to entertain under the limited authority granted to the Commission in G.L.c.30, §49. See, e.g., Derosa v. Department of Revenue, 23 MCSR 686 (2010), aff'd sub nom, Derosa v. Massachusetts Civil Service Comm'n, SUCV2010-04679 (Mass. Sup. Ct. 2012) (Brassard, J.); Gaillard v. Department of Correction, 11 MCSR 334 (1998).

In sum, since there is no factual dispute that HRD correctly determined that Mr. Guimond performs the assigned duties of a CPO A/B more than 51% of the time as that

job is currently described in the CPO job specification, and does not meet the skill or supervisory qualifications for a PO-C or perform more than half of the duties of that job, reclassification of his position by the Commission is not warranted. While Mr. Guimond and others may have had good reason to contest such job grade status, the proper forum, if any, in which to challenge that concern lies elsewhere.

Accordingly, for the reasons stated above, DOC's Motion for Summary Decision is allowed and the appeal of the Appellant, Paul Guimond, is *dismissed*.

Civil Service Commission

Paul M. Stein
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman & Stein, Commissioners; McDowell, Commissioner not participating) on May 29, 2014.

A True Record. Attest:

Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision.

Notice to:

Gary S. Brackett, Esq. (for Appellant)
Jeffrey S. Bolger, (for Respondent)
John Marra, Esq. (HRD)