

THE COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION
One Ashburton Place – Room 503
Boston, MA 02108
(617) 727 – 2293

GREGORY RAMSTINE,
Appellant

v.

C-08-104

MASSACHUSETTS HIGHWAY
DEPARTMENT,
Respondent

Attorney for the Appellant:

Appellant, Pro Se

Attorney for the Respondent:

John L. Casey, Esq.
Massachusetts Department of Transportation
10 Park Plaza – Suite 6620
Boston, MA 02116

Commissioner:

Daniel M. Henderson¹

DECISION

Pursuant to the provisions of G.L. c. 30 §49, the Appellant, Gregory Ramstine (hereinafter “Appellant”) is appealing the April 11, 2008 decision of the Human Resources Division (hereinafter “HRD”) denying his request for reclassification from the position of Civil Engineer II (“CE II”) to the position of Civil Engineer III (“CE III”) in the Massachusetts Department of

¹ The Commission gratefully acknowledges the assistance of Maimoona L. Sahi, Esq. in the drafting of this decision.

Transportation Highway Division² (hereinafter “Respondent”). A full hearing was held on July 1, 2008 at the offices of the Civil Service Commission (hereinafter “Commission”). The hearing was recorded on one (1) audio tape. The parties submitted Proposed Decisions on July 31, 2008.

FINDINGS OF FACT:

Ten (10) exhibits and a stipulation of facts were entered into evidence at the hearing. The record was left open in order for the Respondent to submit one additional exhibit at the request of the Commissioner. That document was received by the Commission on July 2, 2008, and was entered into the record as Exhibit 11.

Based on the documents submitted into evidence and the testimony of the Appellant I make the following findings of fact:

1. The Appellant, a seventeen (17) year employee with the Massachusetts Department of Transportation Highway Division, is a CE II and serves as a Resident Engineer in the District 4 Construction Division. (Stipulation of Fact)
2. He was assigned as the Resident Engineer on the Route 125 project located in Andover on August 16, 2005. (Exhibit 9)
3. The scope of the Rte. 125/Andover project consisted of reconstructing three (3) intersections. It was the Appellant’s first assignment as a Resident Engineer. There was no subordinate staff assigned to him on this project. (Exhibit 9 and Testimony of the Appellant)

² The Massachusetts Department of Transportation (“MassDOT”) was created on November 1, 2009 as a result of Chapter 25 of the Acts of 2009, commonly referred to as the Transportation Reform Act. MassDOT consists of 4 Divisions; Highway, Rail and Transit, Aeronautics Division, and a Registry of Motor Vehicles Division. The Highway Division is comprised of assets from the former Massachusetts Highway Department, the former Massachusetts Turnpike Authority, the Department of Conservation and Recreation, and the Massachusetts Port Authority. As such, former MassHighway employees became MassDOT – Highway Division employees via operation of law on November 1, 2009. For the purposes of this Decision, the Appellant’s Employer is the Highway Division of MassDOT.

4. After the completion of the Rte. 125/Andover project, the Appellant was assigned as the Resident Engineer on the Route 4 intersection project located in Chelmsford on September 26, 2006. (Exhibit 10)
5. The scope of the Route 4/Chelmsford project consisted of improvements to two (2) intersections, including adding a left-turn lane and a fully activated traffic signal. (Exhibit 10 and Testimony of the Appellant)
6. The Appellant supervised Peter Jodoin (hereinafter “Jodoin”), a General Construction Inspector I (“GCI I”), on this project. Jodoin was the only employee that the Appellant supervised. This was the first time the Appellant directly supervised an employee. (Exhibit 10 and Testimony of the Appellant)
7. On May 29, 2007, the Appellant filed an appeal with the Respondent seeking a reclassification from his position of CE II to CE III. (Stipulated Facts)
8. The Classification Specification for the Civil Engineer series as issued in 1989 (“Classification Specification”), states that a CE I position is the entry-level professional job in the series; the CE II position is the second-level professional job in the series; and the CE III position is the first-level supervisory job in the series.

EXAMPLES OF DUTIES COMMON TO ALL LEVELS IN SERIES:

- a. Prepares and/or reviews plans, designs, specifications, and cost estimates for elements for elements of engineering projects such as the construction or maintenance of highways, bridges or facilities.
- b. Provides engineering data for the preparation and review of engineering or environmental reports and studies.
- c. Performs calculations such as those related to survey traverses, traffic forecasting, soil capacity, groundwater flow, and quantity of materials by using calculators, computers and other instruments.
- d. Writes memoranda, letters and technical or general reports to supervisors concerning the status of engineering projects or problems.
- e. Analyzes changes in scope of work during design and/or construction of projects to recommend corrective action.
- f. Conducts field investigations such as those needed to gather information needed to resolves construction, maintenance, environmental or traffic problems.

- g. Recommends modifications to plans, specifications, and engineering agreements for elements of engineering projects.
- h. Reviews applications for licenses or permits for the transportation of materials and for the construction of projects in order to make recommendations to supervisors for approval.
- i. Approves construction and service contract payments estimates and/or invoices for materials, equipment and supplies.
- j. Inspects construction operations, such as drainage, steel placement, paving or concrete to ensure that work is being performed according to specifications.
- k. Inspects maintenance work, such as highway landscaping, repaving operations, and snow and ice removal.
- l. Acts as resident engineer on projects, such as intersection reconstruction and traffic signal installation.
- m. Performs engineering surveys, including the operation of transits, levels and other surveying instruments.
- n. Acts as Chief of Party in performing surveys for taking detail or laying out construction projects.
- o. Performs related duties, such as collecting, compiling and correlating engineering and environmental data; reading manufacturers' publications and meeting with manufacturers' representatives to keep abreast of latest technical advances, new products, product prices, safety hazards and specifications; maintaining records; providing information on such matters as department procedures and applicable standards; operating technical equipment and devices and attending meetings and conferences.

DIFFERENCES BETWEEN LEVELS IN SERIES:

Civil Engineer II: Incumbents of positions at this level or higher also:

- a. Prepare and /or review plans, specifications and cost estimates for engineering projects, such as intersection upgradings, repaving projects, box culverts and single span bridges.
- b. Prepare and/or review engineering or environmental reports and studies.
- c. Recommend alternate methods of construction and/or substitution of materials specified to resolve problems as they occur.
- d. Determine feasibility of proposed construction through on-site inspection, discussions and review of available data.
- e. Conduct field investigations to determine the necessity of repair or reconstruction of roads or structures.
- f. Act as resident engineer on projects such as multi-lane intersection reconstruction; traffic signal installation, including control loops and turn signals; two-lane highway construction or reconstruction in a rural setting.
- g. Inspect construction operations such as simple span bridges.
- h. Act as chief of a survey party in performing surveys of a high order.
- i. Supervise maintenance work such as highway landscaping, repairing operations and snow and ice removal
- j. Collect and analyze traffic flow data and make speed control studies.

Civil Engineer III: Incumbents of positions at this level or higher also:

- 1. Prepare and /or review plans, specifications and cost estimates for engineering projects, such as two-lane highway projects in a rural or suburban setting or multi-span bridges of standardized design.
- 2. Act as resident engineer on construction projects, such as interstate or multi-lane highway projects, including earthwork, drainage, bridge construction or reconstruction, waterworks, electrical or environmental operations.
- 3. Inspect construction operations such as indeterminate or curved-beam bridges.

4. Act as district or area materials engineer with local supervision of materials inspection.
5. Assist the district or area survey supervisor by assigning and checking the work of several survey parties.
6. Participate in the planning, design and technical review of capital budget building projects.
7. Review the work performed by contractors in the construction, maintenance or site development for small buildings or building-related projects.
8. Prepare state highway layoffs, including calculations and boundary descriptions; check land court petitions, orders of takings and easements and advise the Attorney General when a court appearance is required.
(Exhibit 3)

SUPERVISION EXERCISED:

Civil Engineer II

Based on assignment, incumbents of positions at this level may exercise direct supervision (i.e., not through an intermediate level supervisor) over, assign work to and review the performance of 1-5 technical or non-professional personnel; may exercise indirect supervision (i.e., through an intermediate level supervisor) over 6-15 technical or other personnel; and/or may exercise functional supervision (i.e., over certain but not all work activities, or over some or all work activities on a temporary basis) over 1-5 technical or non-professional personnel.

Civil Engineer III

Incumbents of positions at this level exercise direct supervision (i.e., not through an intermediate level supervisor) over, assign work to and review the performance of 1-5 technical or professional personnel; may exercise indirect supervision (i.e., through an intermediate level supervisor) over 6-15 technical and/or professional personnel; and/or may exercise functional supervision (i.e., over certain but not all work activities, or over some or all work activities on a temporary basis) over 1-5 technical or professional personnel. (Exhibit 3)

9. The Classification Specification for the General Construction Inspector Series states that a GCI I position is the entry-level technical job in the series. (Exhibit 11)
10. In the Interview Guide, under “Basis of Appeal”, the Appellant lists “Working as Resident Engineer, directly responsible for supervising personnel.” (Exhibit 1)
11. In response to “Basic Purpose of Position” in the Interview Guide, the Appellant responds “Acting as Resident Engineer with supervisory responsibilities pertaining to CE III position in Section III of the Classification Specification for Civil Engineers.” (Exhibit 1)
12. In response to “Job Changes” in the Interview Guide, the Appellant responds “Full time assistant assigned to me as of April 2006.” (Exhibit 1)
13. The Appellant also indicates on his Interview Guide that he performs the following:

- i. Res. Engineer. 2 projects currently active. Supervise one assistant assigned to me as of April 2006 - 10% of the time;
- ii. Monitor assistant's work for preparing daily reports, payslips for work performed by contractor, plus mentoring assistant in operations he may not be familiar with - 50% of the time;
- iii. Help assistant prepare payslips, collect field samples, and answer questions as to requirements for performing field inspections of contractor - 25% of the time;
- iv. Discuss, evaluate, review, and sign assistant's E.P.R.S. forms for performance - 10% of the time;
- v. Oversee, review, and sign assistant's weekly timesheet - 5% of the time. (Exhibit 1)

14. In response to "Supervisory Responsibility" in the Interview Guide, the Appellant responds "Peter R. Jodoin – GCI I. I review all field reports and payslips prepared by Peter for official records. Also discuss operations for pay items in field, plus working with Peter so he may become more proficient with computer as far as keeping records and learning to write payslips and help generate estimates using the SAM PROGRAM Version 8 (Site Application Module)." (Exhibit 1)

15. The Appellant appealed to HRD on March 7, 2008. In his appeal, he wrote "[m]y reclassification is strongly based on the fact that I have direct supervision of personnel, and as stated in the Classification Specification under Part III (Organizational levels), CE III is the first supervisory job in this series." (Exhibit 7)

16. HRD denied the appeal on April 11, 2008, finding that his duties were properly classified as a CE II. (Exhibit 8)

17. The Appellant appealed HRD's denial to the Commission on April 26, 2008. (Stipulation of Fact)

CONCLUSION

After careful review of the testimony and evidence presented in this appeal, I affirm the decision of the HRD. The Appellant has not met the burden of proving that he performs a majority of the distinguishing duties of a CE III more than 50% of the time. I base my conclusion on the documentary evidence and the testimony of the Appellant.

According to his Interview Guide and his appeal to HRD, the Appellant relies on a sole reason to support his reclassification to a CE III – that he supervises a single GCI I during the course of his work on the Route 4 project. While the Appellant correctly points out that the CE III title is the first-level supervisory job in the CE series under the Organizational Level section of the Classification Specification, his interpretation of this label is misplaced. The “first-level supervisory” distinction is a reflection of the fact that a CE III *must* directly supervise 1-5 technical or *professional personnel*, whereas both the CE I and CE II titles *may* directly supervise 1-5 technical or *non-professional personnel*. The mandatory requirement and the higher level of the personnel supervised by the CE III position are a significant level distinguishing duty characteristics.

Both the CE I and CE II titles may directly supervise personnel, although it is not a requirement of either position. Both positions may exercise direct supervision over 1-5 technical personnel. The Appellant’s supervision of a single GCI I – beginning with his assignment to the Route 4 project in September 26, 2006, falls within the specifications of a CE II – as well as a CE I. Within his CE II classification, the Appellant may supervise up to 5 GCI. Thus, the Appellant’s argument is unpersuasive.

The Appellant has also failed to show that his other duties rise to the level of performing a majority of the distinguishing duties of a CE III, more than 50% of the time. The duties of a CE III are the following: (1) Prepare and /or review plans, specifications and cost estimates for engineering projects, such as two-lane highway projects in a rural or suburban setting or multi-span bridges of standardized design; (2) Act as resident engineer on construction projects, such as interstate or multi-lane highway projects, including earthwork, drainage, bridge construction or reconstruction, waterworks, electrical or environmental operations; (3) Inspect construction

operations such as indeterminate or curved-beam bridges; (4) Act as district or area materials engineer with local supervision of materials inspection; (5) Assist the district or area survey supervisor by assigning and checking the work of several survey parties; (6) Participate in the planning, design and technical review of capital budget building projects; (7) Review the work performed by contractors in the construction, maintenance or site development for small buildings or building-related projects; and (8) Prepare state highway layoffs, including calculations and boundary descriptions; check land court petitions, orders of takings and easements and advise the Attorney General when a court appearance is required.

As a Resident Engineer on the Route 4 intersection project, the Appellant's duties clearly fall within the job specifications of a CE II. The Appellant testified to his duties on the Route 4 project in detail. The Route 4 project consisting of improving two intersections, including adding a left-turn lane and a fully activated traffic signal. It is clear from the Classification Specification that these duties are consistent with his current CE II title (“[a]cts as resident engineer on projects, such as intersection reconstruction and traffic signal installation”). *See Kurt v. Massachusetts Highway Dep’t*, Docket No. C-09-428 (2010); *Grzybowski v. University of Massachusetts at Amherst*, Docket No. C-09-388 (2010); *Cohen v. Massachusetts Highway Dep’t*, Docket No. C-09-268 (2010); *compare Harand v. Soldiers’ Home in Holyoke*, 21 MCSR 194 (2008).

The Appellant's job duties and supervisory responsibilities are properly classified as those of a CE II. The appeal must fail because the Appellant has failed to show by a preponderance of the evidence that he is performing the level distinguishing duties or a majority of the duties of a CE III more than fifty percent of the time. For all or the above stated reasons, the Appellant is

appropriately classified and his request to be reclassified to the higher CE III position is not warranted. The appeal filed under Docket No. C-08-104 is hereby *dismissed*.

Daniel M. Henderson
Commissioner

By a vote of the Civil Service Commission (Bowman, Chairman [absent]; Henderson, Marquis, McDowell and Stein, Commissioners) on May 20, 2010.

A true record. Attest:

Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of this decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(I), the motion must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

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

Notice to:
Appellant, *pro se*

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