

COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION

Decision mailed: 12/3/10
Civil Service Commission

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

RODOLFO AGUILAR,
Appellant

v.

**DEPARTMENT of
WORFORCE
DEVELOPMENT,**
Respondent

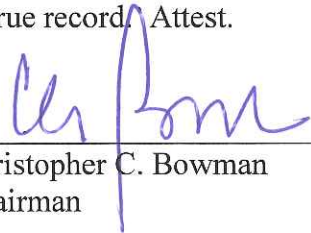
Case No.: C-10-32

DECISION

After careful review and consideration, the Civil Service Commission voted at an executive session on December 2, 2010 to acknowledge receipt of the report of the Administrative Law Magistrate dated October 27, 2010. Neither party filed comments with the Commission. The Commission voted to adopt the findings of fact and the recommended decision of the Magistrate therein. A copy of the Magistrate's report is enclosed herewith. The Appellant's appeal is hereby **dismissed** because the Commission has no jurisdiction to hear an appeal for reclassification under G.L. c. 30, § 49 in the absence of the employee first filing a request with the state's Human Resources Division (HRD). In this case, the Appellant failed to file an appeal with HRD before filing his appeal with the Commission. We concur with the Magistrate. Even if the Commission had jurisdiction to hear this appeal, and the case were heard on the merits, the Appellant has failed to show that a reclassification is warranted, as he does not perform the majority of the duties of the requested higher classification more than 50% of time.

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, Stein and McDowell, Commissioners) on December 2, 2010.

A true record. Attest.


Christopher C. Bowman
Chairman

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)(1), 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:
Rodolfo Aguilar (for Appellant)
Michael Williams, Esq. (for Appointing Authority)
Richard C. Heidlage, Esq. (Chief Administrative Magistrate, DALA)



THE COMMONWEALTH OF MASSACHUSETTS

DIVISION OF ADMINISTRATIVE LAW APPEALS

98 NORTH WASHINGTON STREET, 4TH FLOOR

BOSTON, MA 02114

RICHARD C. HEIDLAGE
CHIEF ADMINISTRATIVE MAGISTRATE

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COMMONWEALTH OF MASS
CIVIL SERVICE COMMISSION
TEL: 617-727-7060
FAX: 617-727-7248

October 27, 2010

Christopher C. Bowman, Chairman
Civil Service Commission
One Ashburton Place, Room 503
Boston, MA 02108

Re: Rodolfo Aguilar v. Department of Workforce Development
DALA Docket No. CS-10-756
CSC Docket No. C-10-32

Dear Chairman Bowman:

Enclosed please find the Recommended Decision that is being issued today. The parties are advised that, pursuant to 801 CMR 1.01(11)(c)(1), they have thirty days to file written objections to the decision with the Civil Service Commission. The written objections may be accompanied by supporting briefs.

Sincerely,


Richard C. Heidlage
Chief Administrative Magistrate

RCH/mbf

Enclosure

cc: Rodolfo Aguilar
Michael Williams

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Division of Administrative Law Appeals

Rodolfo Aguilar,
Petitioner

v.

Docket No.: C-10-32/CS-10-756

**Department of Labor and
Workforce Development,**
Respondent

Appearance for Petitioner:
Rodolfo Aguilar, *pro se*

Appearance for Respondent:
Michael Williams
Director of Labor Relations
Executive Office of Labor and Workforce Development
19 Staniford St., 5th floor
Boston, MA 02114

Administrative Magistrate:

Kenneth J. Forton, Esq.

SUMMARY OF RECOMMENDED DECISION

The Civil Service Commission likely does not have jurisdiction over this appeal because the Appellant failed to appeal his department's decision to the Personnel Administrator before filing the instant appeal with the Commission. In the event that the Commission decides that it does have jurisdiction, then I recommend that the appeal be denied because the Appellant does not supervise any employees, a prerequisite to the Management Analyst III classification that the Appellant wishes to be reclassified to, and because his duties more closely match his current classification, Labor Market Analyst III..

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CIVIL SERVICE COMMISSION

RECOMMENDED DECISION

The Petitioner, Rodolfo Aguilar, appealed pursuant to G.L. c. 30, § 49, his classification as a Labor Economist III after requesting reclassification to Management Analyst III. Exs. A, K.

Pursuant to the Civil Service Commission's hearing order, I held a hearing on March 1, 2010 at the office of the Division of Administrative Law Appeals, 98 North Washington Street, Boston.

I admitted fourteen documents into evidence. Exs. A-N. The Petitioner testified on his own behalf, and called Harry Van Geenhoven, Buyer III, Department of Labor and Workforce Development, Division of Finance, as a witness. The Respondent was absent from the hearing. There is one cassette tape of the hearing.

On March 1, 2010, I ordered the parties to submit proposed decisions by May 3, 2010. I informed the Department that the tape of the hearing was available for review at DALA's offices. The Petitioner submitted his proposed decision on April 2, 2010, while the Respondent filed a brief late on May 10, 2010, whereupon the administrative record was closed.

FINDINGS OF FACT

Based on the evidence presented by the parties, I make the following findings of fact:

1. The appellant is currently employed as a Labor Market Economist III in the Department of Labor and Workforce Development, Division of Unemployment Assistance. Appellant's Testimony.

2. Mr. Aguilar began working for the Department on January 4, 1988 as a Labor Market Economist I. Appellant's Testimony.

3. Mr. Aguilar was promoted to Labor Market Economist II in 1990. Appellant's Testimony.

4. Mr. Aguilar was promoted to Labor Market Economist III in 1991, when he worked in the ES202 Program, Classification for Industry. Appellant's Testimony.

5. Ron Maranian was Mr. Aguilar's supervisor when he worked in the ES202 Program and when he worked in the Mass. Layoffs Program. Appellant's Testimony.

6. On December 22, 2008, Mr. Aguilar was laterally transferred to work under the supervision of Rena Kottcamp in the Unemployment Insurance Reports Program. Exs. A, N.

7. Rena Kottcamp is an Administrator VIII, and Deputy Director of the operation of the Unemployment Insurance Reports. Ex. A.

8. On January 29, 2010, Mr. Aguilar filed an appeal for civil service reclassification from Labor Market Economist III to Management Analyst III with his Department. Ex. F.

9. On February 10, 2010, Mr. Aguilar filed an appeal with the Civil Service Commission. Ex. K.

10. By February 10, 2010, Mr. Aguilar had not received a decision on his reclassification from his Department. Appellant's Testimony.

11. Mr. Aguilar forwarded notice of his appeal for reclassification to Harry Van Geenhoven, Union Steward, Unit no. 6; Lynette Fields, Staffing and Classification Unit; and Lois Shaevel, Human Resources Office. Ex. F.

12. The current Labor Market Economist III Form 30 lists the following duties and responsibilities: "Works under the general direction of an Research Administrator in the Administrative operation of the Unemployment Insurance (UI) reporting by accessing and preparing weekly, monthly, and quarterly reports and files. Weekly, monthly and quarterly reports are prepared using the data from the designated reports and files, data are reviewed prior to entering in federal agency formats; data are verified from source documents and reports for accuracy in reporting; and any reporting issues are identified and reviewed with manager prior to submitting reports. Maintains agency documentation, source documents, files, reports and data in hardcopy and electronic media for access by others, auditing, validation and historical use. Federally required UI reports are data entered into the Sun system and verified for accurate data entry. Any edits or discrepancies are reviewed with manager prior to submission. Transmits reports through the UIRR system. Prepares reports, graphs and charts for distribution for agency and for customer needs. Performs related duties as required." Ex. B.

13. The duties of a Management Analyst III include reviewing and analyzing data including operating procedures, in order to devise efficient methods of accomplishing work, to recommend organizational changes and/or to integrate functions thereby providing more effective and efficient agency operations; conferring with agency staff to identify problems and needs in the provision of reviews; determining in consultation with management the need for special studies; determining the methods to be used in conducting studies; recommending changes in agency operations, methods procedures and programs; compiling information for management use; and performing related work as required. Exs. C, D.

14. Management Analyst III is the second-level supervisory job in the Management Analyst series. A Management Analyst III is required to “exercise direct supervision (i.e., not through an intermediate level supervisor) over, assign work to and review the performance of 1-5 professional personnel; and indirect supervision (i.e., through an intermediate level supervisor) over 6-15 professional, administrative, and/or clerical personnel.” Exs. C, D.

15. Mr. Aguilar’s actual duties are to work under the general direction of Rena Kottcamp in order to collect, prepare, review, and update records with verified information. Mr. Aguilar does this by communicating with and requesting files from IT and the Board of Review in order to prepare the reports, and communicating via email with various departments within the Division of Unemployment Assistance for the purpose of verifying report data. Mr. Aguilar uses software applications such as Excel, Access, and SUN Systems to collect, review, analyze, generate, update, and distribute daily, weekly, monthly, and quarterly Unemployment Insurance Reports, Tables, and Charts. Mr. Aguilar sends these reports to various units within the Division of Workforce Development, the US Department of Labor, and to Washington DC. Mr. Aguilar also updates and maintains an archive of historical data related to Unemployment Insurance Reports. Ex. A.

16. Currently, Mr. Aguilar does not supervise anyone. Appellant’s Testimony.

17. On March 31, 2010, after Mr. Aguilar had already filed this appeal, the Department of Labor and Workforce Development denied Mr. Aguilar’s request for reclassification. Ex. H.

18. Mr. Aguilar has not appealed the Department's denial to the Personnel Administrator.

CONCLUSION AND RECOMMENDATION

Jurisdiction

It appears that the Civil Service Commission does not have jurisdiction over this appeal.

G.L. c. 3, § 49 provides, in pertinent part:

"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."

Thus, to object to a civil service classification and request reclassification, an employee must first appeal to the Personnel Administrator (more commonly known as the Human Resources Division), where the employee is entitled to a hearing. If the Personnel Administrator denies the reclassification, then the employee may appeal to the Civil Service Commission, where a *de novo* appeal will be conducted.

In the instant appeal, Mr. Aguilar filed a request for reclassification with his Department, waited only ten days for a response, and then filed an appeal directly with the Civil Service Commission without waiting for a decision from his Department or appealing the Department's denial first with the Personnel Administrator.

Subsequent to filing his appeal with the Civil Service Commission, the Department of Labor and Workforce Development conducted an audit and determined that Mr. Aguilar is properly classified as a Labor Economist III. The next step for Mr.

Aguilar should have been an appeal of that denial to the Personnel Administrator.

Without a decision from the Personnel Administrator to appeal from, it is doubtful that The Civil Service Commission has jurisdiction over this appeal.

Nonetheless, since the parties have argued the merits, the Appellant in the hearing and both parties in post-hearing briefs, I recommend the following decision on the merits.

Merits

After a careful review of the evidence presented in this appeal, I recommend that the Appellant remain classified as a Labor Economist III and that his request to be reclassified as a Management Analyst III be denied.

The Appellant has not proven that he was improperly classified as a Labor Economist III during the period covered by this appeal because he has not shown that he performed the duties of a Management Analyst III more than fifty percent of the time.

Arguing on his own behalf, Mr. Aguilar appears to base his request mostly on the fact that he was asked by his current supervisor, Rena Kottcamp, to begin working for her generating reports regarding the unemployment trust fund, among other duties. In return for working for her, Mr. Aguilar testified, Ms. Kottcamp agreed to reclassify him, but did not specify to what classification. When Ms. Kottcamp failed to reclassify him, Mr. Aguilar instituted this appeal.

The Classification Specification for the Management Analyst series states that the employees holding the position of Management Analyst III exercise direct supervision over one to five professional personnel, as well as indirect supervision over six to fifteen personnel. Mr. Aguilar readily admits that he does not currently supervise any personnel, professional or otherwise. This fact alone is enough to defeat the Appellant's request for

reclassification to Management Analyst III. *See Dempster v. Dep't of Children, Youth and Families*, 22 MCSR 460 (2009) (request for reclassification denied where desired classification required supervision of personnel and appellant did not supervise anyone, even where job duties otherwise substantially conformed to desired classification's duties); *Kowalski v. Dep't of Conservation and Recreation*, 21 MCSR 468 (2008) (request for reclassification properly denied where employee did not exercise *direct* supervision over personnel, as required in desired job classification).

Mr. Aguilar's current job duties do not conform to those of a Management Analyst III in other ways, as well. For instance, he does not "review and analyze operating procedures, agency structures, agency policies and practices." Exs. C, D. Rather, Mr. Aguilar reviews and analyzes reports for accuracy and performs related work as needed to prepare and distribute the reports. He also reviews, analyzes, and suggests changes in the procedure for making the reports to IT. Ex. A. These duties are consistent with the duties of a Labor Market Economist III. Ex. B.

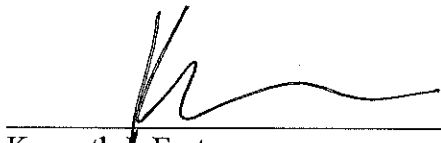
Mr. Aguilar spends most of his time at work reviewing and analyzing unemployment data, compiling information and generating reports. Ex. L. He is responsible for data which is subjected to audit. Appellant's Testimony, Ex. A. These duties are also consistent with the Labor Market Economist III classification. Ex. B.

Although Mr. Aguilar is to be commended for his dedication to the Department of Labor and Workforce Development, nonetheless his primary duties and responsibilities more substantially conform to the duties of a Labor Market Economist III. He does not supervise any personnel, as is clearly required to be classified as a Management Analyst III.

Conclusion

For the foregoing reasons, I recommend to the Commission that it dismiss the appeal for lack of jurisdiction. If the Commission decides that it has jurisdiction, then I recommend that the Commission deny the Appellant's request for reclassification to the position of Management Analyst III.

DIVISION OF ADMINISTRATIVE LAW APPEALS



Kenneth J. Forton
Administrative Magistrate

DATED: **OCT 27 2010**