

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

CIVIL SERVICE COMMISSION

One Ashburton Place – Room 503

Boston, MA 02108

(617) 727-2293

ROBERT ANZALONE,
Appellant

v.

C - 09 - 375

MASS. HIGHWAY DEPARTMENT,
Respondent

Appellant:

Paul K. Donohue, Atty.
M.O.S.E.S.
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Respondent:

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Massachusetts Department of
Transportation
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Commissioner:

Daniel M. Henderson

DECISION

Pursuant to the provisions of G.L. c. 30, S. 49, the Appellant (“Anzalone” or “Appellant”) is appealing the September 4, 2009 decision of the Human Resources Division (“HRD”) of the Commonwealth of Massachusetts denying his request for reclassification from the position of Environmental Analyst I (“EA I”) to the position of

Civil Engineer II (“CE II”). The appeal was timely filed with the Civil Service Commission (“Commission”) on September 21, 2009. A full hearing was held regarding the appeal on January 5, 2010 at the offices of the Civil Service Commission. The hearing was digitally recorded. Both parties filed post-hearing proposed decisions.

FINDINGS OF FACT

Twenty-one (21) exhibits and a stipulation of facts were entered into evidence at the hearing. Based on the documents submitted into evidence and the testimony of:

For the Appointing Authority:

- Donald Pettey, Civil Engineer V, District 5 Assistant Maintenance Engineer;

For the Appellant:

- Wallace McCarroll, Civil Engineer V, Head of District 5 Permits Section;
- Robert Anzalone, Environmental Analyst I;

I make the following findings of fact:

1. The Appellant is employed and classified as an Environmental Analyst I (“EA I”) in the Permits section of the Highway Division of the Massachusetts Department of Transportation (“MassDOT” or “Department”). (Stipulated fact)
2. The Appellant has a Bachelor’s degree in Environmental Engineering from Wentworth Institute of Technology. (Testimony of Appellant)
3. The Appellant has been employed by the former Massachusetts Highway Department¹ since February 22, 2000. (Testimony of Appellant; Exhibit 6)

¹ Effective November 1, 2009, the Massachusetts Highway Department became part of the newly created Highway Division of the Massachusetts Department of Transportation. This was the result of Chapter 25 of the Acts of 2009, commonly referred to as the Transportation Reform Act. For the purposes of this proposed decision, the name “MassHighway” will be used to identify Mr. Anzalone’s Employer.

4. The Appellant is currently employed in the Permits Section of District 5 since having been reassigned there in December 2007. (Testimony of Appellant)
5. Before being assigned to the Permits Section, he was assigned to the Environmental Section in Boston and then reassigned to the District 5 Construction Section. He has had a total of 13 years engineering experience at the time of this hearing. (Testimony of Appellant).
6. The function of the Permits Section is to issue “access permits” to public and private entities for access to the State Highway Layout (Commonwealth property under the custody and control of MassHighway being used and laid out for highway purposes). (Testimony of Pettey; Exhibit 8)
7. The permit process is governed collectively by G.L. c. 81 §21 and 720 CMR 13.00 – 13.06 (Hereinafter “Permit Regulations”). The CMR’s or “Permit Regulations” are new, having been implemented in 2007. (Testimony of Pettey)
8. The Permit Regulations process is broken down into two main steps, by application for a permit: The initial Completeness Review of the application and the final Application Review when the work is completed. (Testimony of Pettey).
9. The Completeness Review entails ensuring that the applicant has filled out the Permit Application properly according to the applicable CMR’s and Department policy. (Testimony of Pettey)
10. The full Application Review also entails sending out the application for engineering review to various other sections within the District for signature or “sign-off”, such as Traffic Engineering or Projects sections, to review for engineering specification compliance. Pettey is District 5 Assistant Maintenance

Engineer and as such he reviews all permits and “signs-off” on them before sending them on to the District Highway Director for final signature. (Testimony of Pettey).

11. The CMR permit regulations are aimed at conformity to time lines by category of permit applications. Permit approval is usually time sensitive. Categories are divided first into vehicular or non-vehicular. Then next divided by complexity: Category I, II and III with category I being the simplest or least impact, such a driveway and category III being the most complex such as permits with right of way issues. (Testimony of Pettey)
12. The permits section uses mostly “standard stipulations” in its permits. The permit is mostly “boiler plate” with some “cut and pasting”. The first paragraph of the permit contains most of the specific identifying information with the body of the permit containing standard language. The applicant provides the technical or engineering data including plans. The permit section uses a “check-off sheet” for each inspection. The permit section processes up to 700-800 permit applications per year and the average is 600 per year. (Testimony of Pettey)
13. The permits section is 3-4 years old. In addition to the Appellant, the District 5 Permits Section is staffed by the following individuals: Wallace McCarroll as Head, Permits Engineer (Civil Engineer V), Adetoyin Olaoye (Civil Engineer II), Florice St. Fleur (Civil Engineer I), Paul Fiola, (General Construction Inspector I), Geraldine Buchanan, (Word Processor I). (Testimony of Pettey)

14. McCarroll testified that the Administrative Assistant [Geraldine Buchanan], who has been there for eighteen years, is the most valuable member of the permit team. (Testimony of McCarroll)
15. McCarroll testified that he believes that all of the CE I, EA I and GC I positions should be at least a CE II. The title of CE I was only used at "MassHighway" and accounted for 383 of the 385 CE I positions state wide. (Testimony of McCarroll)
16. Wallace McCarroll, the District 5 Permits Section Head, is the Appellant's current direct supervisor and gives out the assignments in the permit section. (Testimony of McCarroll)
17. In the absence of McCarroll, Ms. Olaoye a CE II acts as the Permits Engineer in McCarroll's place. (Testimony of McCarroll)
18. The Appellant does not directly supervise any other employees. However, he does not have the opportunity to supervise others due to: the small number of employees, the assignment of projects for permits and the organizational structure of individual responsibility for assigned projects on a team approach in that Permits section. (Testimony of Pettey, McCarroll and Exhibit 6)
19. The implementation of the new CMR's in November, 2007 made the permit applications process more complex and more expansive of work input; the application went from 2 pages to 7 pages. It is now a "project management" model and a "team effort", with McCarroll as the "team leader". McCarroll believes that the more eyes reviewing a permit-application, the better the resulting product. Each permit is assigned to an engineer, and that engineer becomes the project manager for that permit and coordinates or circulates it through the

different sections or divisions, depending on the complexity. Some of the more complex changes in the new CMR's deal with water drainage and environmental standards. Although other divisions are responsible for this, the permits section has to be aware of it and review for it. If a conflict or problem arises, the permit section works as a team to resolve it. (Testimony of McCarroll)

20. Each person in the permits section is responsible for coordinating the estimation of cost for the project contained in each of their assigned permit applications per the CMR's. This estimate is used to calculate the amount of the bond required of the applicant for the project, to protect the state from financial loss. (Testimony of McCarroll)

21. The Appellant spends at least 50% of his time doing inspections, including final inspections for others. Each initial permit application is assigned to someone in the permits section and that person is assigned for the initial inspection. The Appellant does the vast majority of the final inspections for the permits section. He is the main inspection person. The Appellant has had category I inspections but no category III inspections. (Testimony of McCarroll)

22. The engineer doing the final inspection must have comprehension of all aspects of the project, a good overview and ability to multi-task. The Appellant has these abilities, including the ability to comprehend all of the aspects of the project. (Testimony of McCarroll)

23. In December, 2007, the Appellant came to Permits without prior permit experience; he has improved greatly since being there. (Testimony of McCarroll)

24. The Appellant's EPRS for both 2008 and 2009 show the highest rating of "Exceeds" in all job performance categories with notations of good improvement, work ethic and contribution to the work unit from his supervisors. However, both of these evaluations were for the position of EA I and dated after the appeal of his denied reclassification request. (Exhibits 10, 11, 12, testimony of McCarroll)
25. The Appellant spends 50% of his time in the field doing inspections. He performs 93% of all of the final inspections for the permits section. He assigns himself to the extra work for time compliance and to stay busy. He does the "rush" applications like utility applications which are time sensitive. McCarroll assigns him to the rush applications because he is quick and efficient. He must re-review the permit when it comes back from the other sections to complete the process. Since the change in the CMR's in 2007, reorganization of the different divisions and sections based on "specialization" has occurred. He does not now have the opportunity to perform some of the duties of the CE II listed in the 1989 HRD specifications due to his assignment to the permits section. He believes that he is performing some of the #1 to #10 level distinguishing duties listed in the HRD specifications for the CE II position, for 100 % of the time and that should qualify him for the reclassification. (Testimony of Appellant)
26. The Department's specialized sections since the new CMR's are: Traffic Operations, Bridges, Permits-highway and Survey. (Testimony of Appellant)
27. 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: (15 duties)

- 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: (LEVEL DISTINGUISHING DUTIES OF CIVIL ENGINEER II- DUTIES #1- #10)

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

1. Prepare and /or review plans, specifications and cost estimates for engineering projects, such as intersection upgradings, repaving projects, box culverts and single span bridges.

2. Prepare and/or review engineering or environmental reports and studies.
3. Recommend alternate methods of construction and/or substitution of materials specified to resolve problems as they occur.
4. Determine feasibility of proposed construction through on-site inspection, discussions and review of available data.
5. Conduct field investigations to determine the necessity of repair or reconstruction of roads or structures.
6. 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.
7. Inspect construction operations such as simple span bridges.
8. Act as chief of a survey party in performing surveys of a high order.
9. Supervise maintenance work such as highway landscaping, repairing operations and snow and ice removal
10. Collect and analyze traffic flow data and make speed control studies. (Exhibit 7)

28. The following are level distinguishing duties of the position of Civil Engineer II

or higher as listed in the HRD (1989) specifications, which the Appellant does *not* perform;

Duty # 6- Act as resident engineer on projects such as multi-lane intersection reconstruction; etc.

Duty # 7-Inspect construction operations such as simple span bridges.

Duty # 8- Acts as chief of survey party by performing surveys of a higher order (now performed by consultants.

Duty # 9- Supervise maintenance work such as highway landscaping, repairing operations and snow and ice removal.

Duty # 10- Collect and analyze traffic flow data and make speed control studies.

Duty #8, #9 and #10 are specialist position duties that describe what individuals do in their assignment in other specialized sections of the Department. Typically individuals who perform these functions do not perform any of the other duties as listed for Civil Engineer II. (Exhibit 7 and testimony of McCarroll and Appellant.)

29. Duty #1 & #2- The Appellant only reviews, but does not prepare.

Duty #3 – Performed by other Sections.

Duty #4 – Appellant only performs for Category I projects.

Duty # 5 – Appellant not perform for Category II and III.

Duties #6 - #10 – Appellant not perform. (Testimony of Pettey)

30. On April 28, 2008, the Appellant appealed his classification as an EA I (Job Grade 19C) to the Massachusetts Highway Department, requesting that he be reclassified as a CE II (Grade 21E). (Exhibit 1; Stipulated fact)
31. In his interview guide, signed by the Appellant on August 26, 2008, the Appellant states that the basis of his appeal was that he no longer performs any of the duties of an EA I since transferring from Environmental to District 5 Construction.
(Exhibit 6)
32. On February 9, 2009, the Executive Office of Transportation and Public Works (EOT) made a preliminary recommendation that the Appellant's appeal to be reclassified as a CE II be denied, but that his appeal to be reclassified as a Civil Engineer I ("CE I") (Grade 19B) be approved. (Exhibit 2; Stipulated fact)
33. On February 16, 2009, the Appellant submitted a rebuttal to the preliminary recommendation, stating that the downgrade, (salary) from a Grade 19C position to a Grade 19B position "defeats my purpose of the reclassification." (Exhibit 3)
34. The Appointing Authority conducted an appeal audit and reviewed the Appellant's rebuttal. On May 1, 2009, the Appointing Authority informed the Appellant that his appeal was denied. (Exhibit 4; Stipulated fact)
35. The May 1, 2009 letter from the Appointing Authority to the Appellant informed him that "[w]hereas you currently hold the title of Environmental Analyst I (Grade 19C, Unit 9), which is a higher title than CE I (Grade 19B, Unit9), you

will continue to occupy and receive the Environmental Analyst I pay rate.

MassHighway will flag your position #00057791 in account #6033-0417. Once this position is vacated, MassHighway will downgrade the title to Civil Engineer I.” The Appellant’s salary would thus not be affected by his downgrade to the CE I position. (Exhibit 4)

36. On September 4, 2009, the Human Resources Department of the Commonwealth (“HRD”) concurred with the finding that the most appropriate classification for the appellant’s position was a CE I. (Exhibit 5; Stipulated fact)

37. The Classification Specifications for the Civil Engineer position series was approved by HRD on May 1, 1989. The specifications describe the organizational levels of Civil Engineer I through Civil Engineer VI, (CE I –CE VI). Fifteen (#1 to #15) examples of duties common to all levels are given. The entry level CE I specifications indicate that the duties of that position generally include preparing and/or reviewing plans, designs, specifications for elements of engineering projects such as the construction or maintenance of highways, bridges, and facilities; conducting field investigations to resolve traffic problems; and reviewing applications for permits for the construction of projects in order to make recommendations to supervisors for approval. (Exhibit 7, Duties Common to All Levels in Series #s 1, 6, 8)

38. The differences between levels in the CE series or the level distinguishing duties for the CE II position or higher lists #1 to #10 incumbents or duties. The parties stipulated that the Appellant did not perform duties #6, #8 and #9 of these level distinguishing duties of the CE II position or higher. Donald Pettey testified that

the Appellant did not perform duties #6, #7, #8, #9 and #10 of these level distinguishing duties and performed only limited duties in Duty #1 - #5. The Appellant substantially confirmed Pettey's testimony on this issue. (Exhibit 7-sec. V, testimony of Pettey and Appellant)

39. The Classification Specifications for the Civil Engineer II position under VII Supervision received-indicates the incumbent of direct supervision received from Civil Engineers or other employees of higher grade. However, the evidence here shows that the Appellant receives only general supervision in the normal course. This is due to the assignment of projects, time deadlines, and the project management and team approach employed at the District 5 Permits section. The Appellant effectually is self supervised, except for the administrative hierarchy of this specialized section. It is also noted that the receiving of general supervision is an incumbent of the Civil Engineer III position. (Exhibit 7, testimony and exhibits)
40. Classification Specifications for the Civil Engineer II position, under XII Minimum Entrance Requirements: states that applicants must have at least three years of full-time or equivalent part-time, technical or professional experience in civil engineering work in such areas as construction, ...environmental,...highway, and etc. The specifications go on to allow for the substitution of an Associates degree in civil engineering technology for one year of required experience and a Bachelor's degree for two years of the required experience. The Civil Engineer III classification specifications calls for four years of relevant experience with the same education substitution for relevant experience. (Exhibit 7) The Appellant

claims approximately eleven (11) years of qualifying experience and a Bachelor's degree at the time that his reclassification request was denied by the appointing authority. (Testimony of Appellant)

41. Final inspections performed by the Permits section involve reviewing the sketch or plans of the project and going into the field to take photos both before and after, take measurements, and ensure that features of the road, such as pavement markings, have not been disturbed by the project. This task involves checking on completeness and conformity to regulations and may involve looking for problems such as settlements (i.e., potholes) in the road following a project.

(Testimony of Pettey, Appellant, and McCarroll)

42. There are three categories of permits. Category I permits, known as Minor Vehicular Access Permits, have the most limited requirements and involve the most basic projects. Category I permits would require no alteration to the road. These permits require fewer peer reviews and are composed of approximately 80 percent boilerplate language, but require that the inspector fill in the name, town, and road names. Examples of Category I permits include utility work, parades, and road races. Approximately 70 to 80 percent of the Appellant's projects involve Category I projects. (Testimony of Pettey; Exhibit 8)

43. Exhibits 14 and 15 are examples of Category I projects. (Testimony of Pettey)

44. Category II permits, known as Major Vehicular Access Permits, are more complicated, involving projects that may alter the operating characteristics of traffic where a residential or commercial driveway interacts with State Highway

- Layout. An example of a project requiring a Category II permit would be one involving roadway improvements. (Testimony of Pettey; Exhibit 8)
45. For a Category II or III permit, the District 5 Traffic Operations section must perform a separate inspection in addition to that performed by the Permits section. (Testimony of Pettey)
46. Category III permits, know as Complex Vehicular Access Permits, are the most complicated, involving projects that require a new or altered State Highway Layout. These projects may involve a right of way issue or a taking. (Testimony of Pettey; Exhibit 8)
47. The Appellant's permit applications are assigned by Mr. McCarroll. (Testimony of McCarroll)
48. The Appellant has been involved with some Category II projects. (Testimony of McCarroll)
49. The Appellant has not been involved with a Category III project. (Testimony of McCarroll and Pettey)
50. The vast majority of the Appellant's time is spent performing final inspections after permits are sent out for review by other sections. The Appellant also performs initial inspections as assigned to him. (Testimony of McCarroll; Exhibit 21)
51. In addition to his permit duties, the Appellant performs currier duties approximately four (4) hours per week, as a courtesy and to stay busy. (Testimony of McCarroll and Appellant)

CONCLUSION

After careful review of the testimony and documentation presented in this appeal, it is found that the Appellant has failed to demonstrate by a preponderance of the evidence that he performs a majority the duties of a CE II, on a regular basis more than 50 percent of the time. The differences between levels in the CE series or the level distinguishing duties for the CE II position or higher lists #1 to #10 incumbents or duties. The parties stipulated that the Appellant did not perform duties #6, #8 and #9 of these level distinguishing duties of the CE II position or higher. Donald Pettey testified that the Appellant did not perform five of the ten duties, duties #6, #7, #8, #9 and #10 of these level distinguishing duties. Pettey pointed out that duty #10 is performed by the Traffic Operations section. Pettey also testified that the Appellant performed only a limited portion of the duties described in duties #1 through #5. The Appellant substantially confirmed Pettey's testimony on this issue. The Appellant technically is not performing 50% of the level distinguishing duties of A CE II on a regular basis, a majority or more than 50 % of the time. However, he is performing all of the duties or assignments given to him by the Permits Section Head McCarroll. The Appellant goes beyond his assigned duties and voluntarily performs other employees' final inspections or approximately 93% of the Permits Section's total final inspections. The Appellant also voluntarily performs courier duties 4 hours per week as a courtesy and to stay busy. McCarroll, the Section Head and the Appellant's direct supervisor is very satisfied with the Appellant's capability and performance and believes that he like all of his Section employees should be classified at least as CE II's. The consensus seems to be that the Appellant is a capable, hardworking and dedicated Civil Engineer. However, McCarroll failed to explain why he did not assign the Appellant to the most complex group of permit

applications, the Category III applications. The Appellant was generally assigned the simplest permit applications, Category I applications.

The Appellant's request for reclassification or promotion is also harmed by the November, 2007 Department reorganization, accompanying the adoption of new CMR's as related to functions such as permit applications. The state is divided into geographic Districts, each containing specialized sections, with each section performing limited particular functions or duties.

The Appellant appears to be more than qualified as exceeding the minimum entrance requirements of relevant experience and/or education to be hired as a Civil Engineer II or III. However, it is important to note that the Appellant came to the District 5 Permits Section in December, 2007 with no actual experience in the permitting process and filed his reclassification request a mere four months later in April, 2008. Yet, according to the Section Head McCarroll, his direct supervisor, the Appellant has a good civil engineering knowledge base and a good overview which are needed in the permits review process.

While there is consensus that the Appellant is not performing job duties consistent with his current title of EA I, the Appellant is most properly classified as a CE I. In its preliminary recommendation, the Appointing Authority acknowledged that Mr. Anzalone is not performing EA I duties, but also acknowledged that the proper classification for his position would be a CE I and not a CE II.

The primary purpose and function of the Permits Section is to ensure that all applications for permits are in compliance with the applicable regulation, 720 CMR 13.00. In practice, this compliance function is broken into two components: application

completeness preview and completeness of application. The application completeness review is to ensure that the Application is filled out properly and is performed by the Permits Engineer, Mr. McCarroll. McCarroll then assigns the application to a member of the Permits staff who then coordinates the technical/engineering review of the application. Assuming a permit application is complete and conforms to applicable engineering standards, the permit is then issued to the applying party, typically a municipality, utility company, or a private developer.

The Appellant's job duties in the Permits Section are best captured by job duty #8 in the Duties Common to All Levels which reads "[r]eviews 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." The Appellant does not prepare the engineering plans or reports but only reviews what the Applicant has submitted with the application. The Permits Section uses a team approach to resolve any problem or difficulty which may arise thereby eliminating individual responsibility. According to McCarroll, the Permits Section operates under a "Project Manager" model, in that the employees in the Permits Section coordinate the internal technical and engineering review of a permit application with other personnel and supervisors or other specialized sections. Most complex engineering reviews are sent out to other specialized sections for review and "sign-off". The Appellant is almost exclusively involved in the minor application or Category I projects. He has never been assigned the most complex Category III projects.

In support of his appeal, the Appellant repeatedly emphasizes the field inspection portion of his job duties, alleging that this job duty is best reflected in duty #5 in the

distinguishing duties of the CE II title (Conduct field investigations to determine the necessity of repair or reconstruction of roads or structures). However, a closer examination of this claim reveals that this argument must fail. The field inspection duty is not unique to the CE II title, as the CE I title also performs field inspections in job duty #8 (Conducts field investigations such as those needed to gather information needed to resolve construction, maintenance, environmental or traffic problems). The nature of the Appellant's field inspections is more closely aligned with resolving traffic issues than with determining the necessity of repair or reconstruction of roads or structures. However, the Appellant does not determine the need or necessity for the applied for repair or reconstruction. He reviews the application mainly for conformity to the CMR's and Departmental policy. In addition, the CE I job duty #8 (Reviews applications for licenses or permits...for the construction of projects in order to make recommendations to supervisors for approval) is precisely what the Appellant does in the Permits section. Coupled together, this is overwhelming evidence that the job duties of the Appellant are wholly consistent with the CE I title as previously acknowledged by the Appointing Authority.

The Appellant does not directly nor indirectly supervise any subordinates in the normal course of his duties.

While the analysis of the job duties is the primary – and controlling – element in classification appeals, other factors can also be persuasive. In the instant appeal, it cannot be overlooked that the Appellant came to the Permits Section in December 2007 with no actual experience in the permitting process and filed his appeal approximately four months later, in April 2008. That was an insufficient period to perform the duties

and be effectively evaluated for it. It is realistic to assume that he would continue to be assigned to basic permit (Category I) applications. The evidence supports this inference, as the Appellant was primarily assigned Category I permits, the simplest kind, the vast majority of the time. Furthermore, the hierarchy of the Permits staffing plan provides that all members of the Permits Section hold the title of CE I or lower (General Construction Inspector I, Word Processor II), other than the Permits Engineer, who holds the title of Civil Engineer V, and the individual who covers for the Permits Engineer in his absence, who holds the title of CE II. Placing the Appellant in a CE II position in the Permits Section would seem to affect the administrative or organizational structure; despite the fact of him having the least amount of experience in the section and this could be disruptive. It is found that the Appellant has failed to demonstrate by a preponderance of the evidence that he performs a majority the duties of a CE II, on a regular basis more than 50 percent of the time.

For all of the above reasons, the appeal under Docket No. C-09-375 is hereby

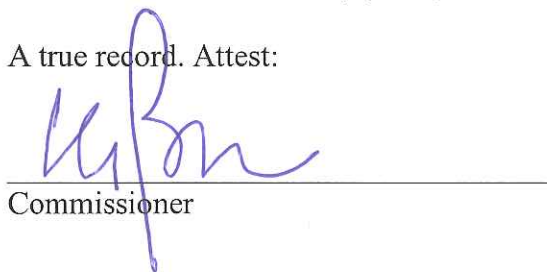
dismissed.



Daniel M. Henderson,
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, McDowell and Stein, Commissioners) [Marquis absent] on February 10, 2011.

A true record. Attest:


Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of a Commission order or decision. 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:

Paul K. Donohue, Atty.

John L. Casey, Atty.

John Marra, Atty. - HRD