

COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION

Decision mailed: 12/5/11
Civil Service Commission
CB

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

DAVID BLODGETT,
Appellant

v.

**MASSACHUSETTS
HIGHWAY
DEPARTMENT,**
Respondent

Case No.: C-10-256

DECISION

After careful review and consideration, the Civil Service Commission voted at an executive session on December 1, 2011 to acknowledge receipt of the report of the Administrative Law Magistrate dated October 18, 2011. A copy of the Magistrate's report is enclosed herewith. The Appellant's appeal is hereby *dismissed*.

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, McDowell and Stein [Marquis, absent], Commissioners) on December 1, 2011.

A true record. Attest.

Christopher C. Bowman
Chairman

Either party may file a motion for reconsideration within ten days of the receipt of a Commission order or 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)(1), 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.

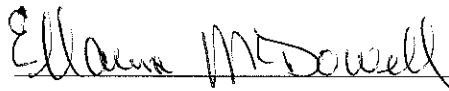
Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless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

Notice to:

Michelle S. Gates, Esq. (for Appellant)
John L. Casey, Esq. (for Appointing Authority)
John M. Marra, Esq. (HRD)
Richard C. Heidlage, Esq. (DALA)

Concurring Statement of Commissioner McDowell

I agree that the Appellant has failed to prove he performs 51% or more of the job duties of the position of Civil Engineer IV to which he seeks to be reclassified, and that the Appellant's appeal must be dismissed. However, it is my belief that the recommended decision placed undue dependence on the lack of supervisory functions, which, alone, would not have been sufficient to warrant rejection of the reclassification appeal in this matter.

 _____

Ellaina McDowell, Commissioner



THE COMMONWEALTH OF MASSACHUSETTS

DIVISION OF ADMINISTRATIVE LAW APPEALS

98 NORTH WASHINGTON STREET, 4TH FLOOR

BOSTON, MA 02114

RICHARD C. HEIDLAGE
CHIEF ADMINISTRATIVE MAGISTRATE

TEL: 617-727-7060

FAX: 617-727-7248

WEBSITE: www.mass.gov/dala

October 18, 2011

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


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2011 OCT 24 A 10:26
COMMONWEALTH OF MASS
CIVIL SERVICE COMMISSION

Re: David Blodgett v. Massachusetts Highway Department
DALA Docket No. CS-11-31
CSC Docket No. C-10-256

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: Michelle S. Gates, Esq.
John L. Casey, Esq.

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Division of Administrative Law Appeals

David Blodgett,
Appellant

v.

Docket No.: C-10-256/CS-11-31

Department of Transportation,
Respondent

Appearance for Petitioner:

Michelle S. Gates, Esq.
Massachusetts Organization of
State Engineers and Scientists
90 N. Washington St.
Boston, MA 02114

Appearance for Respondent:

John L. Casey, Esq.
Department of Transportation
10 Park Plaza
Boston, MA 02116

Administrative Magistrate:

Kenneth J. Forton, Esq.

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CIVIL SERVICE COMMISSION

SUMMARY OF RECOMMENDED DECISION

The Appellant is properly classified as a Civil Engineer III because he does not directly supervise anyone and exercises only functional supervision over five employees; whereas, his desired classification, Civil Engineer IV, must exercise some amount of direct supervision and should functionally supervise at least six employees.

RECOMMENDED DECISION

The Appellant, David Blodgett, appealed his classification as a Civil Engineer III after requesting reclassification to Civil Engineer IV, pursuant to G.L. c. 30, § 49.

Pursuant to the Civil Service Commission's hearing order, I held a hearing on January 28, 2011 at the office of the Division of Administrative Law Appeals, 98 North Washington Street, Boston. I admitted fifteen documents into evidence. (Exs. 1-15.) The Petitioner testified on his own behalf. The Respondent called Marc Chavanne, a MassDOT human resources employee, and Paul Brown, the Department's Director of Snow and Ice Operations (Mr. Blodgett's supervisor), as witnesses. There are two cassette tapes of the hearing.

The Respondent submitted its proposed decision on March 10, 2011, and the Appellant submitted his proposed decision on March 11, 2011, 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, David Blodgett, is currently employed as a Civil Engineer III in the Department of Transportation. His functional title is Snow and Ice Engineer.

(Appellant's Testimony; Ex. 8.)

2. Mr. Blodgett began working for the Highway Department (the Department of Transportation's predecessor agency) in 1982. (Appellant's Testimony.)

3. In 2008, the Executive Office of Transportation asked Mr. Blodgett if he would transfer from a district snow and ice position in Worcester, where he was classified as a Civil Engineer II, to the statewide Snow and Ice Operations position in Boston. Mr. Blodgett accepted the transfer, and was duly promoted to Civil Engineer III.

(Appellant's Testimony; Ex. 15.)

4. The Department's Snow and Ice Operations unit handles the removal of snow and ice throughout the Commonwealth. The unit is divided into five districts, each of which is overseen by a District Snow and Ice Engineer. The District Snow and Ice Engineers report directly to their respective District Highway Directors or Maintenance Engineers. (Appellant's Testimony; *see* Ex. 8.)

5. Mr. Blodgett's supervisor is Paul Brown, the Director of Snow and Ice Operations (classified as an Administrator VI). Mr. Blodgett and Mr. Brown work in the Department's Boston headquarters as "advisors" or "liaisons" to the District Snow and Ice Engineers, developing new methods of ice removal and ensuring that these methods are properly implemented. (*See* Appellant's Testimony; Brown Testimony; Ex. 8.)

6. Some of Mr. Blodgett's specific duties include: (1) overseeing the enforcement of terms in de-icing material contracts; (2) researching new ice removal techniques; (3) ensuring that the District Snow and Ice Engineers properly implement these techniques; (4) serving on the Department's salt committee; (5) reconfiguring snow plowing routes; (6) working in the Department's Highway Operations Center to monitor highways during storms; (7) submitting reports to Department management about the unit's budget, the number of employees currently working on a given project, and the financial impact that any given storm has on the Department; (8) overseeing and compiling reports on all materials used for snow and ice control; and (9) training Department employees on emergency snow and ice operations. (Appellant's Testimony; Brown Testimony; Ex. 8.)

7. Mr. Blodgett does not directly supervise anyone. (Appellant's Testimony; Brown Testimony; Ex. 7.)

8. On November 25, 2009, Mr. Blodgett appealed his classification to the Department's Human Resources office; he requested reclassification from Civil Engineer III to Civil Engineer IV. He completed an Appeal Audit Interview Guide, outlining his duties and the reason for his appeal. (Exs. 1, 8.)

9. While the Civil Engineer classification series is the most appropriate series for a Snow and Ice Engineer, there is still a tenuous relationship between the listed duties of the Civil Engineer series and the actual duties of a Snow and Ice Engineer. (Appellant's Testimony; Chavanne Testimony; Brown Testimony; see Ex. 9.)

10. Incumbents in Appellant's position were classified as Civil Engineer IVs, but they had duties in addition to those performed by Appellant, such as overseeing the construction of salt sheds and directly supervising five employees. (Brown Testimony; Exs. 11, 12, 13.)

11. Some of the listed duties of a Civil Engineer III, contained in the Civil Engineer classification series, are: (1) "[p]repare and/or review plans, specifications and cost estimates for engineering projects such as two-lane highway projects in a rural or suburban setting;" (2) "[a]ct as district or area materials engineer with local supervision of materials inspect;" (3) "[a]ct 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;" and (4) "[r]eview the work performed by contractors in the construction, maintenance or site development for small buildings or building-related projects." (Ex. 9.)

12. Some of the listed duties of a Civil Engineer IV, contained in the Civil Engineer classification series, are: (1) "[p]repare and/or review plans, specifications and

cost estimates for engineering projects such as multi-lane projects in a suburban or urban setting or multi-span bridges of unique design;" (2) "[a]ssist the layout engineer by supervising the preparation of state highway layouts;" (3) "[a]ct as resident engineer on construction projects such as interstate or multi-lane highways in urban or suburban areas, including difficult traffic, utility or environmental conditions;" and (4) "[r]eview the work performed by contractors in the construction, maintenance or site development for large buildings or building-related projects." (*Id.*)

13. Civil Engineer III is listed as the first-level supervisory position in the series and Civil Engineer IV is listed as the second-level supervisory position in the series. (*Id.*)

14. A Civil Engineer III exercises direct supervision over one-to-five professional personnel, and may exercise functional supervision (e.g., over certain, but not all, work activities) over one to five professional personnel. (*Id.*)

15. A Civil Engineer IV exercises direct supervision over one to five professional personnel, and may exercise functional supervision over six to fifteen professional personnel. (*Id.*)

16. On February 23, 2010, the Department's Human Resources office denied Mr. Blodgett's appeal, reasoning that Mr. Blodgett's daily duties are appropriately described under the duties of Civil Engineer III. (Exs. 2, 3.)

17. On March 12, 2010, Mr. Blodgett appealed his reclassification to the Commonwealth's Human Resources Division. (Ex. 4.)

18. On August 6, 2010, the Commonwealth's Human Resources Division denied Mr. Blodgett's appeal for reclassification, reasoning that the classification of Civil Engineer III appropriately covered Mr. Blodgett's duties. (Ex. 5.)

19. On September 22, 2010, Mr. Blodgett appealed his reclassification to the Civil Service Commission. (Ex. 6.)

CONCLUSION AND RECOMMENDATION

After carefully reviewing the evidence presented in this appeal, I recommend that the Appellant remain classified as a Civil Engineer III and that his request for reclassification as a Civil Engineer IV be denied.

When evaluating reclassification, the primary issue is whether the employee's duties fit with the listed duties of his desired classification. *See Anazlone v. Highway Dep't*, C-09-375 (CSC 2010). However, the Commission is not bound always to apply the classification specifications literally. *See Lefebvre v. Dep't of Early Educ. & Care*, 22 MCSR 149 (2009) (holding that reclassification to a level within a *different* series was proper where there was a large disconnect between the employee's duties in her current series classification and a large overlap with employee's duties and the duties of a coworker who was classified in another series).

In order to meet his evidentiary burden for reclassification, Appellant must also prove that he meets the supervision requirements of the position he is seeking. *See Kology v. Dep't of Cons. & Rec.*, 21 MCSR 475 (2008) (holding that a request for reclassification was properly denied where employee did not perform certain duties of the requested classification and did not meet its supervisory requirements); *Giangregorio v. Highway Dep't*, 19 MCSR 140 (2006) (same). Even if he performed some or most of the duties contained in the desired classification, failing to meet the supervisory

requirements—by itself—is enough to defeat reclassification. *See Perusse v. Highway Dep't*, 21 MCSR 11 (2008) (holding that a request for reclassification was properly denied where employee did not supervise any other employees but instead merely “assisted” others); *Begley v. Highway Dep't*, 20 MCSR 510 (2007) (holding that a request for reclassification was properly denied where employee exercised only minimal supervisory functions, except in the absence of her superior).

Even though the Civil Engineer classification series is the most appropriate place for a Snow and Ice Engineer to be classified, comparing the actual duties of a Snow and Ice Engineer to the duties listed under each Civil Engineer position reminds one of round pegs and square holes. But this is what must be done when there is no other classification series that more closely tracks the Appellant’s job duties.

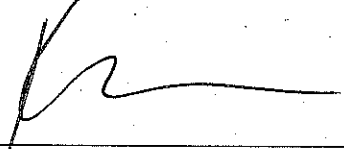
It seems to me that there are two ways to look at the facts in this case. If one examines the general difference that a promotion from Civil Engineer III to Civil Engineer IV entails, rather than the specific duties of a Civil Engineer IV literally construed, the analysis points toward reclassification as a Civil Engineer IV. Generally speaking, a promotion from a Civil Engineer III to a Civil Engineer IV involves moving from small or local projects to large or state-wide projects, as the Appellant has done. Rather than preparing plans for two-lane highways in rural or suburban settings, a Civil Engineer IV prepares plans for multi-lane highways in suburban or urban settings. And, rather than reviewing the work of contractors on small buildings or building-related projects, a Civil Engineer IV reviews the work of contractors on large buildings or building-related projects. When viewed in this way, Mr. Blodgett may be considered as having moved closer to a Civil Engineer IV when he transferred from district snow and

ice operations in Worcester to state-wide snow and ice operations in Boston. He should be commended for taking on the additional duties, especially because he filled the post in an emergency.

However, if one examines the supervision requirements of the two positions, it is clear that a Civil Engineer IV exercises more supervision than a Civil Engineer III. Both positions directly supervise one to five personnel; but, a Civil Engineer III functionally supervises one to five personnel, while a Civil Engineer IV functionally supervises six to fifteen personnel. This aspect of the Appellant's duties, unlike his job functions, can be directly compared to the classification series' listed duties. While he arguably functionally supervises five employees, just short of the six required for a Civil Engineer IV, he does not directly supervise anyone. Even his current classification as a Civil Engineer III requires at least some direct supervisory responsibility. It should also be noted that Civil Engineer III and IV are both labeled "supervisory positions" in the series, implying that the supervision exercised is more important when assessing classification at this level. *See Perusse, Begley, supra.* When viewed in this way, the supervision that he exercises still falls well short of the supervision requirements of a Civil Engineer IV.

For the foregoing reasons, I recommend that the Commission deny the Appellant's request for reclassification to the position of Civil Engineer IV.

DIVISION OF ADMINISTRATIVE LAW APPEALS



Kenneth J. Forton
Administrative Magistrate

DATED: **OCT 18 2011**