

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

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

KATHLEEN P. BOUCHARD,

Appellant

v.

CASE NO: C-09-51

CHELSEA SOLDIERS' HOME,

Respondent

Appellant's Representative:

Richard W. Kendall, Esq.
348 Park Street, Suite 203
North Reading, MA 01864

Appointing Authority's Representative:

Claudia B. McKelway
General Counsel
Chelsea Soldiers' Home
91 Crest Avenue
Chelsea, MA 02150

Commissioner:

Paul M. Stein

DECISION

The Appellant, Kathleen P. Bouchard, brought this appeal pursuant to G.L.c.30, §49, seeking reclassification of her position at Chelsea Soldiers' Home from Buyer III to Buyer IV. At hearings on July 7, 2009, October 6, 2009 and October 21, 2009, the Human Resources Division ("HRD") presented evidence through three witnesses, Michael Resca, Debra Antonelli, and Deborah Callinan, and the Appellant testified on her own behalf. 30 Exhibits, including an Affidavit of John Cronin, submitted in lieu of live testimony, were received in evidence. A digital recording was made of the hearing.

FINDINGS OF FACT

Based upon the Exhibits and the testimony of Ms. Bouchard, Mr. Resca, Ms. Antonelli, Mr. Cronin and Ms. Callinan, and the inferences reasonably drawn from that evidence, I make the findings of fact set forth below.

Procedural History

1. Appellant is employed at the Chelsea Soldiers' Home ("the Home"), in Chelsea, Massachusetts, in the position of Buyer III in the Home's Central Services Department ("CSD"). (Testimony of Appellant)
2. Appellant has been continuously employed at the Home for 32 years. (Testimony of Appellant)
3. The Home falls under the jurisdiction of the Executive Office of Health and Human Services ("EOHHS"). (Testimony of Appellant)
4. CSD is part of the Home's Nursing Department, located in the long-term care facility of the Quigley Building. (Testimony of Appellant, Antonelli, Callinan; Exhibit 21)
5. The Home is a retirement and long-term care facility for eligible Massachusetts veterans. It houses approximately 300 beds in its residential buildings, which are located on an 18-acre campus, and 160 beds in its long-term care facility, located in the Quigley building. (Testimony of Resca; Cronin Affidavit)
6. The Home's 2009 budget was approximately \$26 million, of which \$425,000 was appropriated to Central Services. (Cronin Affidavit)
7. In her position as Buyer III at the Home, Appellant has been directly supervised by the Home's Assistant Director of Nursing, Debra Callinan ("Callinan") and

Director of Nursing, Debra Antonelli (“Antonelli”) from 2000 to the present.

(Testimony of Antonelli)

8. Antonelli was appointed Assistant Director of Nursing in 2000, and was named Director of Nursing in 2007. (Testimony of Antonelli; Exhibits 20, 21 & 22)
9. Prior to July 1999, Appellant was employed at the Home as an LPN II, holding the functional title of Central Service Supervisor. (Testimony of Appellant)
10. On or about July 7, 1999, Appellant requested a review of her classification as LPN II. (Exhibit 26)
11. On July 12, 1999, Appellant was reclassified from LPN II to Buyer IV by the Interim Commandant of the Home, Francis Thomson. (Exhibit 26)
12. Thomson served as Interim Commandant of the Home from June 6, 1999 to August 28, 1999. (Testimony of Resca)
13. Following Thomson’s brief tenure, Michael Resca was appointed Commandant of the Home. (Testimony of Resca)
14. Based on several complaints that he had received regarding Appellant’s reclassification to Buyer, Commandant Resca reviewed Thomson’s decision to reclassify Appellant to the Buyer IV position. (Testimony of Resca)
15. Commandant Resca determined that Appellant’s reclassification to Buyer IV was not merited and thus rescinded her reclassification, returning her to the LPN II position. (Testimony of Resca)
16. Appellant objected to the Commandant’s decision to rescind her reclassification to Buyer IV and initiated a grievance proceeding. (Testimony of Resca)

17. On May 1, 2001, Appellant and the Home entered into a Settlement Agreement in which Appellant was reclassified as a Buyer III. (Exhibit 23)
18. Following the entry of the Settlement Agreement, the Appointing Authority filed two separate “Position Description, Form 30 - State” (“Form 30”) documents regarding Appellant’s position as Buyer III.
19. One of the Form 30 documents, dated May 1, 2001, states that Appellant will be supervised by the Home’s Director of Nursing. (Exhibit 3)
20. The other Form 30, also dated May 1, 2001, states that Appellant will be supervised by the Home’s Assistant Superintendent of Financial Management. (Exhibit 4)
21. The Appointing Authority was unable to credibly explain the existence of two district Form 30’s for appointment of Appellant to the Buyer III position on May 1, 2001.
22. On August 6, 2008, Appellant made a written request with EOHHS to be reclassified from Buyer III to Buyer IV. (Exhibit 1)
23. John Cronin, the Home’s Chief Financial Officer, was delegated the authority to evaluate Appellant’s request for reclassification. (Testimony of Resca, Cronin Affidavit)
24. By memorandum of August 28, 2008, Cronin recommended against reclassifying Appellant from Buyer III to Buyer IV based on his determination that Appellant did not satisfy the criteria for the Buyer IV position. (Exhibit 10)

25. On December 1, 2008, Appellant timely filed an appeal with the Human Resources Department, requesting reversal of the Appointing Authority's denial of her reclassification request. (Exhibit 14)
26. By letter of January 15, 2009, HRD denied the Appellant's request to reverse the Appointing Authority's decision. (Exhibit 16)
27. On February 11, 2009, Appellant filed a Reclassification Appeal with the Massachusetts Civil Service Commission, requesting review of the HRD's decision. (Exhibit 18)

Ms. Bouchard's Work Unit

28. Central Services currently comprises three personnel: the Supervisor, Ms. Bouchard, a Nurse Assistant I, and a Facility Service Worker. (Exhibits 2 & 21)
29. Appellant supervises the Central Services Department, which is one of several departments within the Home. Central Services is charged with purchasing medical supplies and equipment, most of which are used in the Home's Nursing Department. (Cronin Affidavit)
30. In her current position of Buyer III, Appellant submits orders for medical supplies and equipment to the Buyer IV for review and approval. (Cronin Affidavit)
31. The majority of the supplies, such as gloves, masks, and personal protection supplies, purchased by Appellant are directed to the Nursing Department. A small portion of these same supplies are also purchased for the Dietary and Housekeeping Department. (Exhibit 10)
32. According to Appellant, the "overall basic purpose" of her current position as Buyer III is to "procure supplies, equipment [and] services needed by the [Home]

- in its mission to provide comprehensive health [c]are to Veterans of the Commonwealth.” (Exhibit 2)
33. Appellant is also authorized to solicit bids from vendors for various services. (Cronin Affidavit, Testimony of Appellant)
34. Appellant does not have authority to review or approve payments for purchase orders at the Home. (Testimony of Appellant; Cronin Affidavit)
35. Appellant submits her purchase orders to the Finance Department, where the orders are reviewed and evaluated by Perry in his capacity as Buyer IV. (Cronin Affidavit)
36. The Appellant directly supervises two other employees within Central Services: Nursing Assistant I and Facility Service Worker. (Exhibit 2)
37. The Appellant does not exercise any indirect supervision over any subordinates of either the Nursing Assistant I or the Facility Service Worker. (Exhibit 2)
38. Appellant claims to exercise indirect supervision over the entire Nursing Department because she instructs the department on the proper use of the medical supplies that she orders. (Testimony of Appellant; Exhibit 2)
39. Appellant further asserts that she meets and confers with management to provide it with information and assistance in accomplishing the Home’s objectives. (Exhibit 2)

Evaluation of Reclassification

40. John Cronin, the Home’s Chief Financial Officer, was delegated the authority to evaluate Appellant’s request for reclassification. (Testimony of Resca, Cronin Affidavit)

41. Cronin reviewed the HRD Buyer Series Classification Specification (Exhibit 7), Ms. Bouchard's Interview Guide (Exhibit 2), Ms. Bouchard's Form 30 and the Form 30 for the Buyer IV position (Exhibit 24).
42. The Buyer IV position at the Home is an agency-wide position with broad oversight over ordering, purchasing, and budgeting. (Cronin Affidavit)
43. There is presently one employee, Mark Perry, in the Buyer IV position at the Home. Perry is supervised by Cronin within the Home's Finance Department. (Cronin Affidavit)
44. The current Form 30 for Buyer IV sets forth the General Statement of Duties and Responsibilities of the Buyer IV position as follows:
- Supervise the procurement of supplies, equipment and services including the preparation, processing and monitoring of service contracts as needed for agency operations; reviews requests for the purchase of supplies and equipment; obtains information concerning availability, appropriateness, etc. of products; provides technical assistance and advice to agency personnel, vendors and others; prepares written documents describing goods and services to be provided; assists in the fiscal/financial operation of the agency; maintains records and performs related duties as required.
- (Exhibit 24)
45. The Detailed Statement of Duties and Responsibilities for the current Buyer IV Form 30 sets forth additional duties of a Buyer IV at the Home, stating in pertinent part that the Buyer IV is responsible for:
- reviewing purchase requests submitted by agency personnel for the purchase of supplies and equipment in order to determine compliance with established procedures;

- analyzing contract proposals and related documents in order to determine compliance with established criteria and procedures and to recommend the awarding of contracts for goods or services;
- monitoring the execution of such contracts and contract-related activities
- conferring with agency staff, vendors and potential contractors in order to exchange information and resolve problems relative to the negotiation and execution of contracts;
- preparing special projects for the CFO including financial analysis as well as charts and graphs;
- assisting in the agency's fiscal/financial operations, including overseeing MMARS transactions (encumbrances, payments, EDI, reports); and
- assisting in the preparation of the agency budget and related financial reports. (Exhibit 24)

46. Although Appellant is responsible for ordering equipment and supplies and soliciting bids for Central Services, she failed to present any credible evidence that she has assumed responsibility for reviewing purchase requests from other departments, or for analyzing or monitoring contract proposals on an agency-wide basis. Nor has Appellant offered any evidence demonstrating that she assists in the agency's financial operations or in the preparation of an agency-wide budget. All of her activity is confined to Central Services.

47. In contrast, the current Buyer IV at the Home is responsible for evaluating and approving all orders for supplies and equipment before they are entered into the Massachusetts Management Accounting Reporting System ("MMARS"), which is

an accounting and recording system used by the Commonwealth to manage its transactions with vendors. Appellant does not have access to MMARS. (Cronin Affidavit)

48. The current Buyer IV at the Home receives, evaluates, and ensures the accuracy of all orders made throughout all departments of the Home, including Central Services. (Cronin Affidavit)
49. The current Buyer IV is the only Buyer at the Home who is certified to access and use the Commonwealth's COMPASS system, which is a procurement and solicitation system for sealed bid purchases by the Home. (Cronin Affidavit)
- Appellant does not have authority to access or use the COMPASS system. (Cronin Affidavit, Testimony of Appellant)

50. Pursuant to the Human Resources Division's Class Specification for the Buyer Series, a Buyer IV is responsible for:

1. Coordinat[ing] assigned unit activities to ensure effective operations, compliance with established standards and [recommending] changes in procedure to improve the quality of service.
2. Confer[ring] with management staff and others in order to provide information concerning assigned unit activities and [determining] work requirements and availability of resources to accomplish goals and objectives.
3. Review[ing] reports and documents for accuracy, completeness and content and [taking] appropriate action to resolve problems.

(Exhibit 7)

51. With respect to supervision over other employees, the Class Specification also sets forth that the: "[Buyer IV position] 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 professional and other personnel; *and* exercise indirect supervision (i.e., through an intermediate level supervisor) over 5-10 professional and other personnel.” (Exhibit 7) (emphasis added)
52. The HRD’s Class Specification for the Buyer Series also sets forth that “incumbents of the [Buyer III position] 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 professional and other personnel; and *may* exercise indirect supervision (i.e., through an intermediate level supervisor) over 5-10 clerical and other personnel.” (Exhibit 7) (emphasis added)
53. While the Appellant has satisfied the first element of direct supervision, I do not concur with Appellant’s interpretation of “indirect supervision” in the context of her duties as a Buyer III. I find that Appellant exercises direct supervision over two subordinate employees in Central Services, but does not indirectly supervise any other agency employees as required by the Class Specifications for the Buyer IV position. Her claim that she exercises indirect supervision over the entire nursing staff, because she provides training on the proper use of certain medical supplies and equipment, is not persuasive. This certainly is not what was intended by the term “indirect” supervision.
54. In sum, while Ms. Bouchard is responsible for ordering medical supplies and directly supervising two employees within Central Services, she does not perform duties at the level of Buyer IV on a regular basis and certainly does not do so at least 51% of the time. (Exhibits 2 & 24; Affidavit of Cronin)

CONCLUSION

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.

Ms. Bouchard asserts several reasons why she should be properly classified as an Buyer IV: (a) her job duties and responsibilities have evolved and expanded over the past six years; (b) she has assumed many non-nursing specific, agency-wide responsibilities at the Home; and (c) she exercises indirect supervision over much of the agency's staff based on her training on the use of certain medical supplies which she is responsible for purchasing (Exhibit 2; Testimony of Appellant). Appellant, however, has not satisfied the criteria for reclassification within the Buyer series.

The primary issue is whether, in her current position, Ms. Bouchard performs the duties of a Buyer IV as that position is currently specified in the Buyer Series Classification Specification. A comparison with other employees within her work group or in other units who hold the title of Buyer IV, although helpful in providing a practical understanding of what the level distinguishing duties of a position are, cannot, alone, establish the basis for reclassification if it is not otherwise warranted. Similarly, an increase in the complexity or volume of the work does not warrant reclassification to a higher title. HRD is "warranted" to reclassify a position only when the job an appellant currently performs matches the Classification Specification for such a higher title.

In this case, due to lack of supervisory duties and absence of sufficient evidence that Ms. Bouchard performed the level-distinguishing duties of a Buyer IV more than 50% of

the time, and the evidence that her job remained closer to the duties of a Buyer III, she has not met her burden to establish that reclassification of her job is warranted. The fact that she orders medical supplies that are used by other departments at the Home, such as Dietary and Housekeeping, does not, by itself, go far enough to establish the necessary agency-wide responsibility required of the Buyer IV position. The strong weight of the evidence demonstrated that the scope of her purchasing and ordering duties do not extend beyond Central Services. Moreover, although Appellant skillfully supervises two employees within Central Services, she was unable to show that she performed any of the indirect supervision required of the desired position.

The Commission notes that, as often true in most classification appeals, Ms. Bouchard is, by all accounts, an outstanding public servant who works hard and is respected by her peers and supervisors at the Home. Ms. Bouchard presented herself at the hearing as a skilled professional and person with much pride of service who is, more likely than not, quite capable of aspiring to a higher title. 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 her current position. That simply cannot be said from the evidence here.

Therefore, for the reasons stated herein, Ms. Bouchard's appeal is hereby *dismissed*.

Civil Service Commission

Paul M. Stein
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, McDowell and Stein, Commissioners) on September 23, 2010.

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. 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 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: Richard W. Kendall, Esq.
Claudia B. McKelway, Esq. (CSH)
John Marra, Esq. (HRD)