

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

Decision mailed: 5/6/11
Civil Service Commission 03

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

DENISE BOUDREAU,
Appellant

Case No.: C-10-233

v.

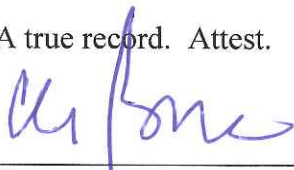
**DEPARTMENT OF
TRANSPORTATION,**
Respondent

DECISION

After careful review and consideration, the Civil Service Commission voted at an executive session on May 5, 2011 to acknowledge receipt of the report of the Administrative Law Magistrate dated March 25, 2011. Neither party submitted comments to 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*.

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, McDowell and Stein, Commissioners) on May 5, 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 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:

Scott C. Wrenn, Esq. (for Appellant)
John L. Casey, Esq. (for Appointing Authority)
John M. Marra, Esq. (HRD)
Richard C. Heidlage, Esq. (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

TEL: 617-727-7060
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March 25, 2011

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

Re: Denise Boudreau v. Massachusetts Department of Transportation
DALA Docket No. CS-10-777

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.

If either party files written objections to the recommended decision, the opposing party may file a response to the objections within 20 days of receipt of a copy of the objections

Sincerely,

Richard C. Heidlage, Esq.
Chief Administrative Magistrate

Enclosure

cc: Scott C. Wrenn, Esquire
John L. Casey, Esquire

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CIVIL SERVICE COMMISSION

THE COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Division of Administrative Law Appeals

Denise Boudreau,
Appellant

v.

Docket Nos. C-10-233

CS-10-777

DATED: March 25, 2011

Massachusetts Highway Department
Department of Transportation,
Appointing Authority

Appearance for Appellant:

Sean Wrenn, Esquire
Portnoy & Greene, P.C.
324 Grove Street, 2nd Floor
Worcester, MA 01605

Appearance for Appointing Authority:

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

Administrative Magistrate:

Judithann Burke

SUMMARY OF DECISION

The Appointing Authority was correct in denying the reclassification request of the Appellant from Accountant II, the position she currently holds, to that of Program Coordinator III. The duties she performs are those of an Accountant II.

RECOMMENDED DECISION

The Appellant, Denise Boudreau, is appealing from the August 4, 2010 decision

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CIVIL SERVICE COMMISSION

of the Human Resources Division (HRD) that Accountant II is the most appropriate job classification for her position. (Exhibits 1 and 4). She had requested that she be reclassified as a Program Coordinator III, then, after the filing of her appeal, as an Accountant IV. (Exhibits 1 and 2). The Appellant timely filed her appeal pursuant to M.G.L. c. 30 § 49. (Exhibit 5). A hearing was held on November 8, 2010 at the offices of the Division of Administrative Law Appeals, 98 North Washington Street, Boston, MA.

At the hearing, twelve (12) exhibits were marked. The Appellant testified in her own behalf. The Petitioner also presented the testimony of Bernard Plant, Administrative Manager in District III, and the Appellant's immediate supervisor. The Appointing Authority presented the testimony of Evelyn Smith, a Personnel Analyst in the Massachusetts Department of Transportation (MassDOT) Human Resources Department (HRD). Both parties stated their arguments for the record. One (1) audiocassette was made of the proceedings.

FINDINGS OF FACT

Based upon the testimony and documents submitted at the hearing in the above-entitled matter, I hereby render the following findings of fact:

1. The Appellant, Denise Boudreau, has been an employee of the Massachusetts Highway Department, now MassDOT, for twenty-five (25) years. She became an Accountant I in 1991. She was re-classified as an Accountant II effective April 13, 1997 after an internal audit. (Exhibit 5 and Testimony)

2. The Department of Personnel Administration (now HRD) Classification Specifications for the Accountant Series, as approved on July 1, 1987, provide in pertinent part:

III. ORGANIZATIONAL LEVELS:

Accountant I is the entry-level professional job in this series.

Accountant II is the first level supervisory job in this series.

Accountant III is the second level supervisory job in this series.

Accountant IV is the third level supervisory job in this series.

IV. EXAMPLES OF DUTIES COMMON TO ALL LEVELS IN SERIES:

1. Confers with agency personnel and outside agencies by telephone, writing or in person to resolve accounting discrepancies and/or obtain statistical data and documentation for various reports and projects.
2. Prepares financial statements and reports and maintains account records such as cash receipt registers, budgetary control, etc. reflect (*sic*) financial status.
3. Reconciles financial documents, records, transactions and statements to ensure conformance with established standards.
4. Reviews agency accounting procedures to ensure conformance with established reporting requirements, etc.
5. Reviews general and appropriation letters to check authorization and transfers and/or adjust out-of-balance ledgers.
6. Provides technical assistance to employees, clients, state agencies, legislators, municipal, district, and/or county officials, legislators and the general public to ensure compliance with agency laws, rules and regulations.
7. Performs related duties such as maintaining salary and payroll records; preparing receipt vouchers, contracts and purchase

requisitions; attending staff meetings and training sessions; responding to inquiries regarding assigned agency functions; reviewing and/or approving invoices for payment; and conferring with others concerning accounting-related matters.

V. DIFFERENCES BETWEEN LEVELS IN SERIES:

Accountant II:

Incumbents of positions at this level or higher also:

1. Interpret state and federal laws, regulations, guidelines and procedures for financial operations and accounting systems.
2. Confer with suppliers of goods and/or providers of services and their employees to explain state/agency rules, policies and accounting procedures governing payment and related financial transactions.
3. Compute amount of surplus funds to be returned to state and/or federal agencies.

Based on assignment, incumbents of positions at this level or higher may also:

1. Assign point value to specific services such as laboratory tests, x-ray, etc. for use in rate setting.
2. Determine scope and format for examination of books of account and/or programs of federal, state or other Massachusetts political subdivisions or agency grantees.
3. Review policies and procedures of financial institutions and/or political subdivisions to ensure their adherence to applicable laws, rules and regulations.

Accountant III:

Incumbents of positions at this level or higher also:

1. Review accounting procedures, reports, etc. for accuracy, updating and corrections and for recommending changes or improvements in agency accounting procedures or operations.

2. Review financial reports for trends in major programs to determine their effect on spending.

Based on assignment, incumbents of positions at this level or higher may also:

1. Review property tax rates of municipalities, checking assessor's records as necessary in order to ensure that such rates were computed properly.
2. Prepare and verify county budgets for legislative approval based on estimates submitted by county commissioner.
3. Make recommendations for certification of County Treasurer's records.
4. Examine contract awards and agreement investment procedures, etc. for compliance with agency laws, rules and regulations.
5. Evaluate requests for additional allotments and/or transfer of funds.

Accountant IV:

Incumbents of positions at this level or higher also:

1. Approve or recommend changes or improvements in agency accounting procedures.
2. Testify at hearings, grand jury sittings and court cases involving discrepancies, adjustments or other findings, corroboration of evidence, consumer issues, special investigations, etc.

Based on assignment, incumbents of positions at this level or higher may also:

1. Analyze project expenditure patterns in order to make recommendations or take appropriate action to control spending.
2. Compute "free cash" to be certified as available for appropriation by municipalities and districts.

VII. SUPERVISION RECEIVED:

Accountant I:

Incumbents of positions at this level receive direct supervision from Accountants or other employees of higher grade who provide instruction, assign work, and review performance through conferences and reports for effectiveness and conformance to laws, rules and regulations. Incumbents must exercise some independent judgment.

Accountant II:

Incumbents of positions at this level receive direct supervision from Accountants or other employees of higher grade who provide instruction, assign work, and review performance through conferences and reports for effectiveness and conformance to laws, rules and regulations. Incumbents must exercise some independent judgment.

Accountant III:

Incumbents of positions at this level receive general supervision from Accountants or other employees of higher grade who provide procedural guidance, assign work, and review performance through conferences and reports for effectiveness and conformance to laws, rules and regulations. Incumbents must exercise considerable independent judgment.

Accountant IV:

Incumbents of this position receive general supervision from Accountants or other employees of higher grade who provide policy guidance, assign work, and review performance through conferences and reports for effectiveness and conformance to laws, rules and regulations. Incumbents must exercise considerable independent judgment.

VIII. SUPERVISION EXERCISED:**Accountant I:**

Incumbents of positions at this level 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 and/clerical personnel.

Accountant II:

Incumbents 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 professional, technical and/or clerical personnel.

Accountant 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 professional, technical and/or clerical personnel; and indirect supervision (i.e., through an intermediate level supervisor over 6-15 professional, technical and/or clerical personnel.

Accountant IV:

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 6-15 professional and/or administrative personnel; and indirect supervision (i.e. through an intermediate level supervisor) over 6-15 professional, technical and/or clerical personnel.

(Exhibit 8)

3. The organizational chart for MassDOT District D-3 reflects that the Appellant's direct supervisor is E. Bernard Plante, the District Administrative Manager. There are two administrative staff members who appear to report directly to her. In October 2010, the Appellant signed the EPRS of one of those administrative employees, Tonya Johnson. (Exhibits 10 and 12)

4. In the section of the Appellant's Form 30 entitled "DETAILED STATEMENT OF DUTIES AND RESPONSIBILITIES", the duties listed are:

1. Supervises and participates in the activities of the Accounting Section to ensure effective operations.
2. Prepares financial statements and reports by obtaining necessary information for organizational units, public and other sources in order

- to prepare documents.
- 3. Maintains accounts and records as required by state accounting procedures and policies in order to reflect financial status.
- 4. Reviews the performance of employees in immediate reporting relationships by adhering to the guidelines of the EPRS in order to ensure increased communication and successful implementation of the system.

The Appellant included the following remarks concerning her duties:

My duties and responsibilities overseeing of District and Environmental Budgets. Including (*sic*) all encumbrances, CT's, IE's, PC's and GAE's ensuring that all guidelines and policies are adhered to.

Generate all reports regarding AARP, vehicle maintenance, equipment maintenance and budget.

Responsible for all 681's for CEPO allocations.

Create reports weekly and meet with manager to analyze and review all items to ensure quarterly allotments are within budget.

Work closely with other state agencies to reconcile billing for services that pertain to the District. Supervise others in the accounting area regarding project info, MMARS and payroll.

Oversee accounting department to ensure that all policies and procedures are used.

Work with outside vendors to reconcile discrepancies regarding payments. Work directly with outside vendors to explain contract material through OSD or department contract or misc.

Oversee that CEPO or operating accounts are used properly through policies and guidelines.

(Exhibit 6)

5. The MassDOT employees who are in the Program Coordinator III position supervise 1-5 employees in a higher grade than Accountant II. They manage entire programs and have a direct impact on agency policy-making. (Exhibit 9 and Testimony)

6. The MassDOT employees in the Accountant IV positions determine the need for disciplinary action when appropriate and follow MassDOT progressive disciplinary procedures. (Exhibit 11)

7. The Appellant refers disciplinary issues in her department to Mr. Plant. (Testimony)

8. The Appellant filed her initial appeal for reclassification on December 28, 2009. She indicated her belief that the classification title of Program Coordinator III appropriately described her duties and responsibilities. (Exhibit 1)

9. On March 5, 2010, Swee Wong-Wagner, MassDOT Director of Human Resources, informed the Appellant of the Appointing Authority's preliminary recommendation with respect to her classification appeal. Her request to be classified as a Program Coordinator III was denied. (Exhibit 2)

10. On April 20, 2010, following the Appellant's appeal from the preliminary recommendation, Ms. Wagner informed her that the Appointing Authority had determined that the duties she performed did not warrant reallocation of her position. (Exhibit 3)

11. On August 4, 2010, after the Appellant's appeal to the Human Resources Division (HRD), the Appellant was informed that the HRD had concluded that the Accountant II classification covered the duties that she was performing. (Exhibit 4)

12. In her August 13, 2010 initial letter of appeal to the Civil Service Commission, the Appellant claimed that she had been supervising people of a higher grade for years. Further, she wrote:

Initially, I may have proceeded with the incorrect job series. Perhaps I should have stayed within the Accountant series. My hope is that it can be determined here in the appeal process.

(Exhibit 5)

CONCLUSION AND RECOMMENDATION

After a careful review of the testimonial and documentary evidence in this case, I have concluded that the Appellant is not entitled to prevail in this appeal. She has not proven by a preponderance of the evidence that she has been improperly classified as an Accountant II.

The record reflects that the Appellant is a hardworking, well-respected, intelligent and capable Accountant who works well with co-employees of all classification levels as part of the DOT team in her District. She does not shy away from large and/or complex tasks and budgetary issues. She has acted as a supervisor to, and signed the EPRS form for one (1) administrative employee in D-3. However, she has failed to demonstrate that she supervises employees of a higher grade from other departments or that she directly supervises any persons other than the two administrative staff members whose names appear under hers on the organizational chart. Further, she does not set policy or manage entire programs within DOT, part of the criteria necessary to the Program Coordinator III position.

The Appointing Authority and the HRD correctly determined that the Appellant's duties are most closely aligned with the duties of an Accountant II. She confers with agency personnel and outside agencies to resolve accounting discrepancies and/or obtain statistical data and documentation for various reports and projects. She prepares financial

statements and reports such as cash register receipts, budgetary control, etc. She reconciles financial documents, records, transactions, and statements to ensure conformance with established standards. She provides technical assistance to employees, clients, state agencies, legislators, municipal, district and/or county officials to ensure compliance with agency laws and regulations. (It is this piece of her job that she contends is supervision over these individuals. The Appointing Authority has correctly concluded that she does not supervise those people with whom she interfaces.) She works on agency budgets and responds to inquiries regarding assigned agency functions while reviewing and/or approving invoices for payment and conferring with others concerning accounting related matters.

The Appellant's appeal is based on the denial by the Appointing Authority/HRD of her request to be reclassified as a Program Coordinator III. She herself admitted in her letter of appeal that the Program Coordinator category was most likely inapposite to her current position. Her request to be considered for reclassification to an Accountant IV position is not timely. Her "appeal" on that issue is not ripe for review at this time because her request was not considered by the Appointing Authority. There was no internal audit relative to her requesting reclassification to this position.

It is also worth noting here that the record reflects that she is not likely to prevail in any quest for reclassification to the position of Accountant IV. The Accountant IVs act as direct supervisors over several professional employees and generally do not work out of the DOT Districts. The Accountant IVs do not receive direct supervision

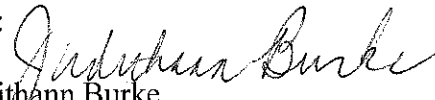
themselves. Rather, they receive general supervision from those in a higher grade.

Further, they work out of DOT headquarters in Boston.

In conclusion, I recommend that the decision of the Appointing Authority denying the Appellant's request to be classified as a Program Coordinator III be affirmed by the Civil Service Commission.

DIVISION OF ADMINISTRATIVE LAW APPEALS,

BY:


Judithann Burke
Administrative Magistrate

DATED: March 25, 2011