

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

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

STEPHEN CRAWFORD,
Appellant

v.

Case No.: C-14-234

**DEPARTMENT OF
REVENUE,**
Respondent

DECISION

Pursuant to G.L. c. 31, § 2(b) and/or G.L. c. 7, § 4H, a Magistrate from the Division of Administrative Law Appeals (DALA), was assigned to conduct a full evidentiary hearing regarding this matter on behalf of the Civil Service Commission (Commission).

Pursuant to 801 CMR 1.01 (11) (c), the Magistrate issued the attached Tentative Decision to the Commission. The parties had thirty (30) days to provide written objections to the Commission. The Appellant submitted written objections and the Respondent submitted a response to those objections for review and consideration by the Commission.

After careful review and consideration, the Commission voted to affirm and adopt the Tentative Decision of the Magistrate in whole, thus making this the Final Decision of the Commission.

The decision of the Department of Revenue to deny Mr. Crawford's request for reclassification is affirmed and Mr. Crawford's appeal under Docket No. C-14-234 is hereby *denied*.

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell and Stein, Commissioners) on October 1, 2015.

Civil Service Commission

/s/ Christopher C. Bowman
Christopher C. Bowman
Chairman

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)(l), 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. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d).

Notice to:

Laurie Jejoian, Esq. (for Appellant)

Elisabeth Baker, Esq. (for Respondent)

Edward B. McGrath, Esq. (Chief Administrative Magistrate, DALA)

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Division of Administrative Law Appeals

Stephen M. Crawford,
Petitioner

v.

Docket No. C-14-234
DALA No. CS-14-807

Department of Revenue,
Respondent

Appearance for Petitioner:

Laurie J. Bejoian, Esq.
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Appearance for Respondent:

Elisabeth M. Baker
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Commonwealth of Massachusetts
Department of Revenue
P.O. Box 9553
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Administrative Magistrate:

James Rooney, Esq.

Summary

An appeal of the Department of Revenue's decision denying an employee's request for reclassification should be dismissed for failure to state a claim for relief under the Department's 2001 Tax Auditor classification specification. The employee has not shown that he is performing the duties that distinguish a Tax Auditor I from a Tax Auditor II under the 2001 specification.

RECOMMENDED DECISION

Stephen M. Crawford appealed timely, under M.G.L. c. 30, § 49, the February 21, 2013 decision of the Department of Revenue (DOR) denying his request for reclassification from the

position of Tax Auditor I to Tax Auditor II, which was affirmed by the state Human Resources Division on August 29, 2014. I held a hearing on

December 19, 2014 at the Division of Administrative Law Appeals, One Congress Street, Boston, Massachusetts and recorded it digitally.

I admitted twenty-four joint exhibits and a joint stipulation of facts. Mr. Crawford also submitted exhibits numbered A2, 5, 7, 8, 9, 19, 20, and 24. He testified on his own behalf and called Teresa McGoldrick, the President of the National Association of Government Employees (NAGE) Unit 6, Local 207, Anne Marie Chamberlain, a Tax Auditor III in the same unit in which Mr. Crawford works, John Schlosstein, a tax Auditor I in the miscellaneous excise tax unit, and Alexandra McGinnis, a Personnel Analyst III in the state's Human Resources Division. The Department were Geralyn Page, a Personnel III Analyst with the DOR, Sandra Antonucci, a Program Coordinator III in the DOR's Human Resources Bureau, Steven Adamek, Mr. Crawford's supervisor, and Alexandra McIntyre, a Personnel Analyst III in the state's Human Resources Division.

At the hearing, the DOR filed a motion to dismiss on the ground that Mr. Crawford cannot show he was improperly classified. Following the hearing, both parties filed closing briefs and Mr. Crawford filed an opposition to the motion to dismiss.

Findings of Fact

Based on the testimony and evidence presented and reasonable inferences drawn from them, I make the following findings of fact:

1. The Department of Revenue hired Stephen M. Crawford on January 2, 1985 as an Intermittent Senior Voucher Examiner in the Criminal Investigations Bureau. He became a Tax Examiner I, a civil service position, on November 3, 1996. (Stipulation.)

2. In 2001, as a consequence of an overlap in the Tax Examiner and Tax Auditor positions, employees filed 200 classification appeals with the DOR. The DOR worked with the state Human Resources Division to update these classifications. (Page testimony.) On September 14, 2001, the Human Resources Division approved the revised classifications noting that “the level distinguishing characteristics for the Tax Auditor and Tax Examiner series are in concert with the official job specifications.” (Joint Ex. 3.) As a consequence of this change, Mr. Crawford was reclassified as a Tax Auditor I on February 13, 2002. (Stipulation; Joint Ex. 5.)

3. The Human Resources Division had previously approved a Tax Auditor classification specification in 1987. This specification provided that all tax auditors conducted “examinations and audits of tax returns by analyzing financial reports, records and documents . . . to determine compliance with established laws, regulations and procedures.” It listed the duties that distinguished a Tax Auditor II from a Tax Auditor I as follows:

1. Conducts training seminars regarding audit selections and audit techniques.
2. Coordinate the activities of tax auditors involved in team audits.
3. Provide on-the-job training and orientation of new employees.

The classification did not require that Tax Auditor IIs be supervisors, but stated that “[i]ncumbents in this position may exercise functional supervisor (i.e., over certain but not all work activities, or over some of all work activities on a temporary basis) over 1-5 professional personnel.” (Joint Ex. 2.)

4. The 2001 Tax Auditor specification (sometimes referred to as the 2008 specification) continued to provide that the level distinguishing duties of Tax Auditor IIs included the three duties listed in the 1987 specification. It also provided that as to the DOR's New England Audit Bureau, a Tax Auditor II would be a "[f]irst level field supervisor of a unit charged with the completion of field audits of taxpayers located in New England." (Joint Ex. 4.)¹

5. In 2001, Mr. Crawford joined a unit of the western region of the New England Audit Bureau dealing with the International Fuel Tax Agreement for Motor Carriers (IFTA). This federally mandated program addresses the fuel tax to be paid by trucking companies that operate trucks that travel from state to state or to Canada. The role of the Massachusetts DOR's IFTA unit is to audit trucking companies based in Massachusetts to determine compliance with the International Fuel Tax Agreement. (Stipulation; Chamberlain testimony.)

6. In October 2013, the IFTA unit was made up of seven employees. All were Tax Auditor Is, except for two Tax Auditor IIs – Steve Adamek, the unit supervisor who spent all of his time supervising, and Anne Marie Chamberlain, who had been with the unit since 1998 and performed the duties of a tax Auditor I, but was reclassified as a Tax Auditor II as the

¹ On March 4, 2014, NAGE President Theresa McGoldrick emailed Mr. Crawford and another a Tax Auditor that the union "did not agree to the specs in 2008." She noted, however, that "the commonwealth approved them and the civil service commission has routinely upheld the level distinguishers in reclass appeals and bypass appeals." (Stipulation.)

result of a settlement of a discrimination suit. (Crawford, Adamek, and Chamberlain testimony; Joint Ex. 7.)²

7. In 2013, Mr. Crawford spent 90-95% of his time conducting field audits and performing duties related to field audits, such as explaining the audit process to taxpayers. He spent 5-10% of his time providing on-the-job training to less experienced auditors. During Mr. Crawford's tenure with the IFTA unit, only one new auditor had been hired. The DOR denied Mr. Crawford's requests to conduct training seminars in response to queries from taxpayers. Mr. Crawford neither conducted nor supervised a team audit. Indeed, the IFTA unit does not perform team audits. (Crawford and Page testimony; Joint Ex. 6.)

8. On October 22, 2013, Mr. Crawford appealed his classification to the DOR's Human Resources Bureau and asked to be reclassified as a Tax Auditor II. He noted that his group included a person classified as a Tax Auditor II who performed the same duties as he did. (Stipulation; Joint Ex. 1.)

9. Sandra Antonucci, a Program Coordinator III in the DOR's Human Resources Bureau, interviewed Mr. Crawford. In the interview, he stated that he should be reclassified because his work "involves significant corporations and the extent of some audits is over \$100,000 due (the average audit is \$200 to \$300 due)." (Joint Ex. 8.)

10. On January 22, 2014, the DOR issued a preliminary decision denying Mr. Crawford's reclassification request because he did not conduct training seminars, coordinate auditors during team audits, or serve as a first level supervisor. (Joint Ex. 10.)

² Mr. Adamek was hired as the unit supervisor in 2013. Mr. Crawford did not apply for the position because he believed it should go to Ms. Chamberlain. (Adamek and Crawford testimony.)

11. Mr. Crawford submitted a rebuttal. He urged that the “conduct training seminars” standards should not apply to the IFTA unit because the only appropriate training came from IFTA, Inc. Within the last five years, the DOR had not allowed auditors to attend this annual out-of-state training, except on their own time and at their own expense, and hence no auditors had a recent opportunity to take the training and pass on the information to their fellow auditors. Mr. Crawford maintained that the team audit standard should not apply because the IFTA unit does not conduct team audits. He also objected to the inclusion of the supervision as a standard because, in his view, the 2008 specifications had not been approved by the state Human Resources Division or by the National Association of Government Employees. (Joint Ex. 11 and Exs. A19 and A20.) Mr. Crawford assumed the 2001 specification had not been approved by the Human Resources Division based on a conversation and email exchange with Alexandra McGinnis, a Human Resources Division Personnel Analyst III. He asked her what specification would apply; she told him the 1987 Tax Auditor specification would apply. She was unaware at the time of the 2001 specification. (Stipulation; Crawford and McGinnis testimony.)

12. On February 21, 2014, the DOR sent Mr. Crawford a final denial of his reclassification request. (Joint Ex. 12.) He appealed this to the state Human Resources Division. (Stipulation.) On August 29, 2014, the Human Resources Division denied the appeal because “the classification of Tax Auditor I covers the duties being performed by you.” (Joint Ex. 13.)

Discussion

I recommend that the Department of Revenue’s decision denying Stephen M. Crawford’s request to be reclassified as a Tax Auditor II be affirmed and that the DOR’s motion to dismiss be granted.

The initial issue to be resolved is whether the 1987 or the 2001 Tax Auditor specification applies. Mr. Crawford argues that the 1987 specification should apply because the 2001 Tax Auditor series specification has not been properly approved by the Human Resources Division or the union, and he was told initially that the 1987 specification applied. The record establishes that the state Human Resources Division approved the specification in 2001. (Finding of Fact 2.) There is no evidence that in October 2013, when Mr. Crawford requested reclassification, union agreement was needed before the DOR could use the 2001 specification. Mr. Crawford submitted a memorandum of understanding between the state and NAGE that would allow the state to implement revised job specifications unless the revision changed the minimum entrance requirements for a position or contained more restrictive level distinguishing duties; in these situations, the matter would be submitted to expedited arbitration. (Ex. A4.) By its terms, this memorandum modified the terms of the 2011-2014 collective bargaining agreement and was to be effective from July 1, 2014 to July 30, 2017. It thus applies to a later period than of concern here, and is consequently irrelevant to this case. As it had the authority to do, the DOR based its decision on the 2001 specifications. The DOR was not bound to use the 1987 specification because Mr. Crawford received erroneous information from the state Human Resources Division. *See, e.g., Williams v. Town of Wellfleet*, 7 MCSR 7 (Jan. 6, 1994) (past failure of town to comply with tenure procedures did not estop the town from requiring strict compliance with the statute).

Under the 2001 specification, a Tax Auditor II in the New England Audit Bureau where Mr. Crawford works must be a first level supervisor. Mr. Crawford is not a supervisor. When one of the level distinguishing duties is that the person in the job acts as a supervisor, the lack of supervisory responsibilities is itself sufficient ground for denying reclassification. *See MacLean*

v. Department of Conservation and Recreation, 24 MCSR 573, 575 (Nov. 8, 2011). Thus, the DOR properly denied Mr. Crawford's reclassification request because he is not a supervisor.

Insofar as the other level distinguishing duties are concerned, they are the same under the 1987 and 2001 specifications. An employee seeking reclassification must demonstrate that he performs the majority of the level distinguishing duties more than 50% of the time. *See Bowen v. Department of Conservation and Recreation*, 24 MCSR 603, 604 (Dec. 16, 2011). Of the three level distinguishing duties listed in the two specifications, Mr. Crawford has not conducted training seminars or coordinated other tax audits in team audits. He has trained newer tax auditors in his unit, but he estimated that takes up only 5 - 10% of his time. Thus, even if the supervisory requirement was inapplicable, Mr. Crawford has not demonstrated that he spends more than 50% of his time performing the other level distinguishing duties of a Tax Auditor II, which serves as sufficient grounds to deny reclassification. *See Ross-Cut v. Department of Revenue*, 16 MCSR 32 (Jul. 24, 2003) (request for reclassification to Tax Auditor II denied when auditor did not conduct training seminars or coordinate team audits and spent no more than 10% of her time providing on-the-job training).³

I understand Mr. Crawford's frustration with having to demonstrate that he performs level distinguishing duties that no one performs in the IFTA unit. That circumstance does not give the Civil Service Commission (or DALA) the authority to waive the requirement that the level distinguishing characteristics be performed more than 50% of the time in his small unit, as he requests.

³ Mr. Crawford's stated reason for seeking reclassification – that someone else in his unit was performing the same work as he did, but was classified as a Tax Auditor II – is not relevant. Reclassification decisions are based on the work done by the employee, not the work performed by his co-workers. *Gaffey v. Department of Revenue*, Docket No. C-11-126, Decision at 6 (Mass. Civ. Serv. Commn., July 15, 2011).

Mr. Crawford's situation is likely not unique. Any change to the classification of experienced Tax Auditor Is who do not conduct training seminars or coordinate team audits will have to come from a change in the specification or a reallocation of a class of employees, matters that are beyond the jurisdiction of the Civil Service Commission. *See Guimond v. Department of Correction*, Docket No. C-13-3 (Mass. Civ. Serv. Commn., May 30, 2014).

On this score, I note that on November 25, 2013, the Human Resources Division promulgated new specifications for the Tax Auditor series. (Ex. A5). The new specification changes the level distinguishing duties of a Tax Auditor II. The training seminar and team audit characteristics have been deleted. Instead, the new level distinguishing duties are described thus:

This is a fully competent professional level classification in this series. Incumbents have solid knowledge of audit principles and practices and working knowledge of the governing laws, rules, regulations, and policies. At this level, incumbents independently perform standard audits described for the Tax Auditor Level I and have more expertise in specific areas of tax accounting/auditing and a greater role in audit section. Incumbents may assign work to, and review cases performed by the Tax Auditor Level I or other staff.

Id.

What impact this change in the specifications will have on Mr. Crawford's classification is beyond the scope of this appeal, which is governed by the 2001 specification. Because Mr. Crawford is not a supervisor and does not perform the level distinguishing duties set forth in the 2001 specification more than 50% of the time, his request for reclassification was properly denied, and he cannot thus state a claim under the 2001 specification for reclassification as a Tax Auditor II. The Department of Revenue's motion to dismiss should therefore be granted.

DIVISION OF ADMINISTRATIVE LAW APPEALS

James P. Rooney
First Administrative Magistrate

Dated: August 6, 2015