

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

CORALINE DAVIDSON,
Appellant

v.

C-06-225

DEPARTMENT OF MENTAL HEALTH,
Respondent

Appellant's Representative:

Coraline Davidson
Pro se

Respondent's Representative:

Peter M. Schur
Director of Labor Relations
Westborough State Hospital
P.O. Box 288, Lyman Street
Westborough, MA 01581

Commissioner:

John J. Guerin, Jr.

DECISION

Pursuant to the provisions of G.L. c. 30, § 49, the Appellant, Coraline Davidson (hereafter "Appellant"), is appealing the August 10, 2006 decision of the Human Resources Division (hereafter "HRD") denying her request for reclassification from the position of Recreation Therapist I to the position of Qualified Vocational Rehabilitation Counselor A/B. The appeal was timely filed and a hearing was held on June 5, 2007 at the offices of the Civil Service Commission (hereafter "Commission"). One tape was made of the hearing. The record was left open for the submission by the Appointing

Authority, Department of Mental Health (hereafter “DMH”), of information regarding the effective date of non-management reclassification appeals per G.L. c. 30, § 49. The information was received, administrative notice was taken of same by the Commission on June 6, 2007 and the record was closed that day.

FINDINGS OF FACT:

Based on the documents submitted into evidence (Joint Exhibits 1 – 12) and the testimony of the Appellant and Ms. Donna M. Shetler, DMH Employment Services Manager, I make the following findings of fact:

1. The Appellant has a Civil Service seniority date of October 26, 1983. (Exhibit 3)
2. The Appellant has, at all times pertinent to this matter, been employed by the DMH which is currently an agency under the auspices of the Executive Office of Health and Human Services. She has specifically been assigned to the Westborough State Hospital. (Exhibit 3 and Testimony of Appellant and Shetler)
3. The Appellant states that she was bumped into her Recreation Therapist I title from her previous title of Vocational Instructor A/B on March 3, 2003 following layoffs at the facility. The Appellant further asserts that, despite bumping to the Recreation Therapist I title, she continued to perform Vocational Instructor A/B duties until the Clark Workshop closed in 2006. The Clark Workshop was the area at Westborough State Hospital where the Appellant actually performed her duties. (Exhibit 3)

4. According to the HRD, the Appellant was bumped into her current title of Recreational Therapist I on March 30, 2003. (Exhibit 12)
5. Both the DMH and the HRD agreed that the Appellant's current "Position Description – Form 30" (hereafter "Form 30"), dated February 13, 2006, reflects duties which are consistent with those performed by a Recreation Therapist I. Both agencies also agreed that the Appellant's previous Form 30, dated February 22, 2002, reflected duties which were consistent with her previous title of Vocational Instructor A/B. (Exhibits 3 & 12)
6. The Appellant signed as accepting the current Form 30 which describes her current title on February 13, 2006. She did not sign the February 22, 2002 Form 30. (Exhibits 3 & 4)
7. In a letter dated April 4, 2006 from Lynn Hoffman, Area Operations Manager for the DMH's Metro Suburban Area (hereafter "MSA") Office located at Westborough State Hospital, to Evelyn Luna, DMH Employment and Staffing Coordinator, the MSA informs Ms. Luna, in pertinent part, of the following:

"The Area has completed the appeal process by gathering and researching the paperwork, meeting with the employee and communicating with the department manager and chief operating officer.

The Rehabilitation Department was recently reorganized and employees reassigned to new duties. Based on our interview with the employee and her department manager, review of Ms. Davidson's Interview Guide, Org Chart, the old unsigned Form 30 dated February 22, 2002 and the new Form 30 that was signed on February 13, 2006, it is recommended of the MSA that Ms. Davidson be reallocated to a Vocational Instructor A/B for a closed period of time.

The duties listed on the old Form 30 are in line with the duties of a Vocational Instructor A/B, not a Vocational Rehabilitation Counselor.

As mentioned above, the [MSA] recommends that this position be reallocated for the period of October 5, 2005 through February 12, 2006 only. Beginning February 13, 2006, Ms. Davidson's new Form 30 accurately reflects to the duties of her existing title of Recreational Therapist I."

(Exhibit 5)

8. In the May 17, 2006 letter from Ms. Luna to the Appellant denying the reclassification request as indicated, the Appellant was informed, in pertinent part:

"An appeal audit was conducted and we have concluded that the duties performed by you do not meet job specifications of a Vocational Rehabilitation Counselor as you requested. The duties reflected in your current Form 30 are consistent with those of a Recreation Therapist I. The duties listed on your old Form 30 are consistent with a Vocational Instructor A/B and therefore, it is our recommendation to pay you for a closed period of time from October 5, 2005 through February 12, 2006, during which time you were performing duties that were out of class."

(Exhibit 3)

9. Ms. Shetler testified that the agency could only provide the Appellant with retroactive pay for her reallocation back to October 5, 2005 because that was the date upon which the Appellant filed her reclassification appeal. (Testimony of Shetler)
10. The Appellant contends that she "think[s] it only fair that if you not grant me the Vocational Rehabilitation Counselor title, that I at least be paid for working out of class as a Vocational Instructor A/B for the entire time I did this, not just from Oct. 5, 2005." (Exhibit 3)

11. I find that there is no dispute to the end date of the retroactive, out-of-class payment to the Appellant as being February 12, 2006.
12. I find that the Appellant, according to her own testimony, was “not looking for an actual reclassification” to the position of Qualified Vocational Rehabilitation Counselor. She was seeking a retroactive pay date of March 30, 2003 – rather than October 5, 2005 - for her reallocation payment. (Testimony of Appellant)
13. The DMH Retroactive Payment Form, dated June 4, 2007, shows that the Appellant did receive a retroactive payment of \$546.18. In the “Comments” section of the form is written: “Paid retro for appeal filed and awarded payment for closed period from October 5, 2005 through February 13, 2006 as Voc. Instructor A/B.” (Exhibit 7)
14. The section of the Collective Bargaining Agreement (“CBA”) that was represented as that which the Appellant works under was provided by the DMH on June 6, 2007 and administrative notice was taken of the document. Under the heading NON-MANAGEMENT CLASSIFICATION APPEALS is Section I titled “Definition”. In that section, the DMH underlined the following: “Under the agency classification appeals process, the effective date of an appeal is considered to be the date the appeal is received at the agency, such date being rolled back to the previous Sunday for pay purposes.”
15. I find that all parties to this appeal are in agreement that the Appellant’s current job duties do not merit a reclassification to the position of Qualified Vocational Rehabilitation Counselor. The only issue in dispute is that of a retroactive payment date which was proffered by the DMH and concurred in by the HRD.

16. The concurrence of the HRD related to the DMH decision to reallocate the Appellant to the title of Vocational Instructor A/B for the closed period of October 5, 2005 through February 13, 2006. The next sentence in the section of the CBA provided for the Commission's administrative notice reads: "A class reallocation, which is the allocation of a class title to a different, usually higher job group in its respective salary schedule, may not be appealed under Chapter 30, Section 49; it can only be addressed through the collective bargaining process."
17. I also take administrative notice of Section 2 of Article 16 of the CBA which addresses out of title work and, specifically, working in a higher classification. I take note that the plain language of this section appears to be in conflict with the language in the "Definition" section. Be that as it may, the Commission does not have jurisdiction and cannot make any findings regarding controversies arising from agreements that are collectively bargained pursuant to the provisions of G.L. c. 150E.
18. I further find that the Appellant is, by all accounts, a hard-working and dedicated employee of the DMH. She has done a difficult and demanding job which is critical to the care of the patients at Westborough State Hospital and throughout the Commonwealth's mental health system. She appeared sincere in the pursuit of her appeal and understandably frustrated by the process. Ms. Shetler was professional in her explanation of the DMH's policies and procedures in personnel matters and appeared to be understanding of the Appellant's frustration. (Demeanor of Appellant and Shetler)

CONCLUSION:

After careful review of the testimony and based on a preponderance of the credible evidence presented in this appeal, the Commission concludes that the decision of the Human Resources Division to deny Ms. Davidson's reclassification request should be affirmed.

The Appellant has not met her burden of proof to demonstrate that she is improperly classified as a Recreational Therapist I. It is clear that her Form 30 reflects duties that are consistent with the Recreational Therapist I title. Based on a preponderance of the credible evidence at hand, the Appellant's duties do not reflect those performed by employees in the Qualified Vocational Rehabilitation Counselor title to which she seeks reclassification.

At the hearing before the Commission, the Appellant testified that, indeed, she was "not looking for an actual reclassification" to the position of Qualified Vocational Rehabilitation Counselor. She was seeking a retroactive pay date of March 30, 2003 – rather than October 5, 2005 - for her reallocation payment. The Commission recognizes that a retroactive payment for a temporary reallocation is not within its jurisdiction to decide and can only be addressed through the collective bargaining process.

As a mental healthcare provider, the Appellant, Coraline Davidson, performs a difficult job and vital service to the people of our Commonwealth. The Commission takes this opportunity to thank her and all of her colleagues throughout the state.

However, the fact that the Appellant's duties are properly classified is not in dispute according to the credible testimony and evidence presented at the hearing and classification is the only issue appropriately before this Commission.

Therefore, for all the reasons stated herein, the appeal under Docket No. C-06-225 is hereby *dismissed*.

Civil Service Commission

John J. Guerin, Jr.
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Guerin, Marquis and Taylor, Commissioners) on September 27, 2007.

A true record. Attest:

Commissioner

A motion for reconsideration may be filed by either Party within ten days of the receipt of a Commission order or decision. 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.

Any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under section 14 of chapter 30A 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:
Coraline Davidson
Peter M. Schur

