

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

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

CARMINA DELL'ANNO,
Appellant

CASE NO: C-18-083

v.

**MASSACHUSETTS DEPARTMENT
OF REVENUE,**

Respondent

Appearance for Appellant:

Carmina Dell'Anno, Pro Se

Appearance for Respondent:

Richard V. Gello, Esq.
Counsel, Office of Labor Relations
Department of Revenue – P.O. Box 9553
Boston, MA 02114-9553

Commissioner:

Paul M. Stein

DECISION

The Appellant, Carmina Dell'Anno, appealed to the Civil Service Commission (Commission) pursuant to G.L.c.30,§49,¹ from the denial of the Massachusetts Human Resources Division (HRD) of a request to reclassify her position at the Department of Revenue (DOR) from her current title of Child Support Enforcement Specialist I (CSES-I) to the title of Child Support Enforcement Specialist II (CSES-II). The Commission held a pre-hearing conference at the Commission's offices in Boston on June 5, 2018 and a full hearing at that location on July 23, 2019, which was digitally recorded.² Sixteen (16) exhibits (*Exhs. 1 through 16*) were taken into evidence. The DOR filed a Proposed Decision on August 24, 2018.³

¹ The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§ 1.00, *et seq.*, apply to adjudications before the Commission with and conflicting provisions of G.L. c.30,§49, or Commission rules, taking precedence.

² Copies of a CD of the full hearing were provided to the parties. If there is a judicial appeal of this decision, the plaintiff in the judicial appeal becomes obligated to use the CDs to supply the court with the written transcript of the hearing to the extent that he/she wishes to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion.

³ After the close of the hearing, the Appellant submitted certain unsolicited additional documents to the Commission on August 3, 2018 which, for reasons described in the Commission's e-mail dated August 16, 2018, were not accepted for inclusion in the Commission's record..

FINDINGS OF FACT

Based on the Exhibits entered into evidence and the testimony of the following witnesses:

Called by DOR:

- Diane Obear, Deputy Director, Metro Region, DOR Child Support Enforcement Division
- Sandra Antonucci, Classification Analyst, DOR Human Resources Bureau
- Geralyn Page, Classification and Hiring Manager, DOR Human Resources Bureau

Called by the Appellant:

- Carmina Dell'Anno, Appellant

and taking administrative notice of all matters filed in the case, pertinent law and reasonable inferences from the credible evidence, a preponderance of evidence establishes these facts:

1. The Appellant, Carmina Dell'Anno, has been employed since 1999 in the DOR's Metro Region, Child Support Enforcement Division (CSE). Originally classified as an entry-level Child Support Enforcement Worker A/B (CSEW A/B) assigned to the CSE Customer Service Bureau and later in the CSE Initiate Unit, her job title was reclassified from a CSEW A/B to the equivalent entry-level position of CSES-I when the prior Child Support Enforcement Worker Series was replaced by the current Child Support Enforcement Specialist Series in April 2015. She was transferred to her current assignment in the Establishment Unit in December 2015.

(Exhs. 1, 10 through 14; Testimony of Appellant & Obear)

2. Ms. Dell'Anno received her Bachelor of Arts from Salem State College in 1996. She is multi-lingual (Spanish, Portuguese, Cape Verdean & Italian) and is assigned to Spanish intake and translation duties for which she receives separate compensation. In 2017, she became a Notary Public. She has completed dozens of DOR in-house training courses. *(Exhs. 3, 4, 7, 14*

through 16; Testimony of Appellant, Page & Obear)

3. The basic mission of the CSE is to "support the establishment and enforcement of child support agreements and court orders, including collection of money owed to the government and to families and to enhance the well-being of children." This work includes services to

parents (customers) who pay child support and parents and caretakers who receive child support to establish paternity and to procure, enforce, or modify a child support order. (*Exh.10; Administrative Notice [https://www.mass.gov/orgs/child-support-enforcement-division]*)

4. The processing of a child support case begins with a referral from a state agency (e.g., Department of Transitional Assistance (DTA) or an application submitted by a custodial parent. The “Initiate Unit” (aka “Create Unit”), performs the initial intake and enters the case into the CSE database, after which it is forwarded to the “Establishment Unit” which performs additional research to verify the information about the custodial and non-custodial parents needed to establish paternity, including flagging any “safety issues”, prior to further referral to an attorney or others who are responsible for obtaining the necessary paternity tests, seeking court orders and implementing any appropriate measures to secure and enforce the safety of the parents and children involved. (*Exhs. 3, 11 through 14; Testimony of Appellant & Obear*)

5. There are two CSE Case Establishment Units, each managed by a CSES-III, who report to Ms. Diane Obear, Regional Deputy Director, and supervise from three to four CSES-Is. Ms. Dell’Anno is assigned to the unit managed by Stephen La Verde. (*Exh. 1*)

6. Ms. Dell’Anno’s essential duties in the Case Establishment Unit include:

- Duty 1 – Conduct initial research on data bases and confer with parents, DTA, DCF, and Division of Medical Assistance and local courts to locate and verify identity of non-custodial parents responsible for the support of the children.
- Duty 2 – Verify and work toward establishing legal paternity by obtaining necessary documentation, updating paternity status codes, and referring cases to establish legal paternity via the courts.

- Duty 3 – Initiate and respond to telephone and written inquiries from parents, legal representatives, employers and others. She presents a monthly one-hour workshop at the New Market DTA office.
- Duty 4 – Monitor and maintain the regional “DTAN Report” which requires weekly review and updating the inventory of referrals from three DTA offices in the region.
- Duty 5 – Support agency efforts to promote safer child support enforcement, which entails sending out packets to parents to identify whether there would be any safety concerns with pursuing an enforcement case, following up to ensure the information is returned and referring the packet to another appropriate CSE unit to handle the safety issues that are flagged.
- Each of these duties are performed pursuant to “established policies and procedures”, with “critical issues” brought to the immediate attention of a supervisor.

(Exhs. 3 & 11; Testimony of Appellant, Obear & Page)

7. In addition to her core duties, Ms. Dell’Anno was one of approximately 20 employees involved as a volunteer in a four to six week test of a newly developed data base system called Comets HD. She helped to “debug” the system before it was formally rolled out. *(Exhs. 3 through 5; Testimony of Appellant & Obear)*

8. The CSES Series Classification Specification establishes three levels of work:

- CSES-I is the “entry-level professional classification” in the series. Incumbents “seek guidance and advice from more experienced colleagues.” Examples of the duties performed at the CSES-I level:
 - Communicate with customers, attorneys, employers and others to explain proposed or completed child support enforcement activities and facilitate understanding of federal and state laws, rules, regulations and agency policies;
 - Identify, define and diagnose child support enforcement issues, develop and prioritize steps for resolution and execute corrective action as necessary;

- Review, collect, verify, confirm, audit and make necessary adjustments to customer data information and documentation related to case records to ensure accuracy and confidentiality of financial, customer profile and other data;
 - Assist in enforcement of court orders, makes determinations to exempt cases from enforcement and evaluate options such as lottery and tax intervention, insurance settlement interception and referral for litigation to collect arrearages owed to families or the Commonwealth;
 - Review applications for services and referrals from other state agencies and collect information through on-line research, contacts with parents, referring agencies, court and other records to determine eligibility, initiate and close cases and prepare active cases for establishment of paternity and child support orders;
 - Collaborate with other state or international child support enforcement agencies to initiate child support enforcement actions when one or more parties are located outside the Commonwealth or when any out-of-state agency seeks assistance to establish, enforce or modify child support orders of a party residing within the Commonwealth; and
 - Elevate complex issues, customer conflicts and safety issues to higher level employees.
- CSES-II is the “full competent professional classification” in the series. Incumbents “perform work of greater complexity, exercise greater independence in making decisions and handle most cases independently.” While incumbents also may perform the duties of a CSES-I, they are expected to be “highly skilled in one or more areas of child support to handle more complex cases.” Examples of the duties performed at the CSES-II level:
 - Resolve complex or protracted customer issues and tasks to advance cases to establish paternity or modify or enforce court orders;
 - Provide experienced assistance and review the work of others and encourage appropriate case management;
 - Provide technical consultation on complex case processing issues, complex financial audits or complex customer inquiries requiring, among other things, data analytics and risk-based scoring methods to forecast payment behaviors;
 - Conduct technical reviews through case sampling to measure compliance with state and federal standards;
 - Coordinate parentage testing services by scheduling and follow-up with parties for genetic marker testing, working with test vendors and statistical recordkeeping of results;
 - Assist in the preparation and presentation of court cases, including support of attorneys, court personnel, judges, preparation of court orders and testimony.
 - CSES-III is the “first-level supervisory position” in the series. Incumbents “exercise direct supervision over, assign cases to and review the performance of CSES-Is and CSES-IIs.

(Exh. 10)

9. On or about February 1, 2017, Ms. Dell'Anno filed a request with the DOR Human Resources Bureau to be reclassified from a CSES-I to CSES-II. (*Exh.2*)

10. At the time of her reclassification request, Ms. Dell'Anno's transition from her assignment in the Initiate Unit to the Establishment Unit was substantially complete. Accordingly, the Commission focuses exclusively on the assessment of her duties in the Establishment Unit to determine whether she is performing a majority of her time as a CSES-I or in the higher title of CSES-II. (*Exhs. 3, 4, 11 & 13; Testimony of Appellant*)⁴

11. As part of her reclassification request, Ms. Dell'Anno estimated in her "Interview Guide" that most of her day-to-day activity in the Establishment Unit was devoted to working on "reports" (70 to 80 percent) and "domestic violence cases", i.e., work as the "Safety Liaison" responsible to send out safety packets to parents, follow-up with them, and code the files for "safety watch".(20 to 30 percent) (*Exhs. 3 & 4; Testimony of Appellant, Obear & Page*)

12. Ms. Dell'Anno acknowledged that her duties did not include data analytics, early intervention, preparation and presentation of court cases, quality assurance review of the work of other employees (other than ensuring the accuracy of data entered in the computer system) or genetic testing (other than preparing cases for referral to a genetic marker test coordinator and/or scheduling paternity testing for clients who are in jail), or preparation and presentation of court cases. (*Exhs. 3 & 4; Testimony of Appellant & Page*)

13. After reviewing Ms. Dell'Anno's request and obtaining input from her supervisors, by letter dated December 14, 2017, DOR Human Resources Bureau Director Melissa Diorio denied her request for classification. The core reason for denying the request turned on the DOR's

⁴ Including consideration of Ms. Dell'Anno's transitional work for the Initiate Unit would not enhance, and would probably detract from, her reclassification claim, as those duties included the processing of initial applications for services, creating the agency file and data entry, all of which fit the CSES-I job title as described below. (*See Exh.13 [EPRS, Duty 1]*)

conclusion that the duties performed by Ms. Dell'Anno were substantially routine, repetitive and administrative activities that relied on standard operating procedures and "check lists", rather than the "complex" case-handling decisions and problem-solving work that distinguishes the higher position of a CSES-II. (*Exhs. 6 through 8; Testimony of Obear & Page*)

14. Ms. Dell'Anno duly appealed the DOR's decision to HRD which, by letter dated February 20, 2018 denied her appeal. (*Exh. 9*)

15. This appeal to the Commission duly ensued. (*Claim of Appeal*)

APPLICABLE CIVIL SERVICE LAW

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. . . 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. If said commission finds that the office or position of the person appealing warrants a different position reallocation . . . it shall be effective as of the date of appeal . . .

"The determining factor of a reclassification is the distribution of time that an individual spends performing the function of a job classification." Roscoe v. Department of Environmental Protection, 15 MCSR 47 (2002). In order to justify a reclassification, an employee must establish that she is performing distinguishing duties encompassed within the higher level position the majority (i.e., at least 50% or more) of the time. See, e.g., Pellegrino v. Department of State Police, 18 MCSR 261 (2005) (at least 51%); Morawski v. Department of Revenue, 14 MCSR 188 (2001) (more than 50%); Madison v. Department of Public Health, 12 MCSR 49 (1999) (at least 50%); Kennedy v. Holyoke Community College, 11 MCSR 302 (1998) (at least 50%). What must be shown is that Ms. Dell'Anno performs the "distinguishing duties" of the RN-III position at least 50% of the time and, in making this calculation, duties which fall within

both the higher and lower title do not count as “distinguishing duties.” See Lannigan v Department of Developmental Services, 30 MCSR 494 (2017)

ANALYSIS

Ms. Dell’Anno is well-regarded by her colleagues and supervisors in the CSE as a dedicated public servant who is a reliable and experienced CSES-I. With eighteen years of service with the CSE, there is certainly something to her point that she should no longer be considered an “entry-level” employee. However, reclassification of her position to a CSES-II by the Commission requires proof that the specified distinguishing duties at the higher title are, in fact, actually being performed as the major part of her current work (i.e. more than 50 percent of her time is spent on these distinguishing duties). Accordingly, the issue before the Commission is limited to that narrow question.

The evidence establishes that substantially all of Ms. Dell’Anno’s job duties appropriately fit squarely within her current level of CSES-I. Although she is clearly “fully competent” in her duties, that is not sufficient to establish that that she performs at the CSES-II level more than 50% of the time, which is the Commission’s core requirement to allow a reclassification.

First, the preponderance of the evidence established that DOR and HRD correctly determined that substantially all of the duties regularly performed by Ms. Dell’Anno are not distinguishing duties of a CSES-II. Indeed, they largely fall well within the duties expected of a CSES-I, namely, researching, tracking and recording information, processing cases for financial audit, legal proceedings and/or paternity testing (other than those incarcerated), and flagging safety issues, all for substantive, further handling by others. Moreover, even if some part of this work could be considered more complex than the work that a CSES-I typically does, the record

simply does not show that such work comprises any quantifiable regular part of her job, let alone, show that it occupies more of her time than her core CSES-I level duties.

Second, as defined in the Classification Specification, while a CSES-II may, in part, also perform duties at the CSES-I level, the fact that there is some overlap in the two jobs does not bear on whether a reclassification is appropriate. Where duties are common to both the lower and higher titles, they are not considered “distinguishing” duties for purposes of applying the Commission’s 50% test. That test looks only at the duties prescribed in the Classification Specification for the higher title, i.e., the “complex” work of a CSES-II. Examples of this more “complex” work, none of which is a part of Ms. Dell’Anno’s regular duties, include: (1) technical consultation on complex case processing issues, complex financial audits or complex customer inquiries requiring, among other things, data analytics and risk-based scoring methods to forecast payment behaviors; (2) technical reviews through case sampling to measure compliance with state and federal standards; and (3) assist in the preparation and presentation of court cases, including support of attorneys, court personnel, judges, preparation of court orders and testimony.

Third, the work that Ms. Dell’Anno references as one of the staff assigned to assist with the analysis and “debugging” of the CSE’s new Comets HD data system falls short of meeting the preponderance of evidence test. That work was a temporary, voluntary special assignment that lasted for only four to six weeks and has long been completed. See Hartnett v. Dep’t of Revenue, 30 MCSR 498 (2017) (temporary, voluntary assignment cannot form the basis for reclassification); Carfagulian v. University of Mass. Amherst, 18 MCSR 207 (2005) (same)

Fourth, Ms. Dell’Anno contends that other employees in the CSE that have been promoted to CSES-II over the past ten years are doing substantially the same level of work as she

performs. As the Commission has repeatedly noted, when reviewing reclassification appeals, the Commission must look “only at the duties of the Appellant” and the classification of other employees who held those positions prior to being transferred to their current job, or promoted by the Appointing Authority to the position, have no bearing on the issue before the Commission as to whether the Appellant meets the preponderance of the evidence test that the Appellant is performing a majority of the time at the higher level. See McBride v. Dep’t of Industrial Accidents, 28 MCSR 242 (2015); Palmieri v. Department of Revenue, 26 MCSR 180 (2013).

Fifth, I can fully appreciate that Ms. Dell’Anno believes that she is just as “fully competent” a CSES professional as many of her peers, and has been overlooked for promotions that she deserved. The Commission, however, may not use the statutory authority granted to reclassify an employee as a substitute for an appointing authority’s prerogative to make promotions in compliance with the civil service law and rules.

In sum, Ms. Dell’Anno did not meet her burden to establish that she performs the duties of a CSES-II more than half of her time. Therefore, the Commission is not authorized to recommend that her position be reclassified to a CSES-II.

Accordingly, for the reasons stated above, the appeal of the Appellant, Carmina Dell’Anno, under Docket No. C-18-083, is *denied*.

Civil Service Commission

/s/ Paul M. Stein

Paul M. Stein
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman [absent]; Camuso, Ittleman, Tivnan & Stein, Commissioners) on January 16, 2020.

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)(I), 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 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. 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:

Carmina Dell'Anno (Appellant)

Richard V. Gello, Esq. (for Respondent)