

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

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

REBECCA GUARENTE,
Appellant

v.

UMASS Lowell,
Respondent

Case No.: C-13-135

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).

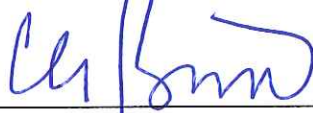
Pursuant to 801 CMR 1.01 (11) (c), the Magistrate issued the attached Tentative Decision to the Commission. The parties had thirty (30) days to provide written objections to the Commission. No written objections were received.

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 Human Resources Division upholding UMASS Lowell's decision to deny Ms. Guarente's request for reclassification is affirmed and the Appellant's appeal is *denied*.

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Marquis, McDowell and Stein, Commissioners) on February 6, 2014.

A true record. Attest.



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.

Notice to:

Jamie Goodwin, Esq. (for Appellant)

Michal Rutherford, Esq. (for Respondent)

Richard C. Heidlage, Esq. (Chief Administrative Magistrate, DALA)

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Division of Administrative Law Appeals

Rebecca Guarente,
Petitioner

Docket No. C-13-135
(CS-13-475)

v.

University of Massachusetts Lowell,
Respondent

Appearance for Petitioner:

Jamie Goodwin, Esq.
Sandulli Grace, P.C.
44 School Street, Suite 1100
Boston, MA 02108

Appearance for Respondent:

Michael C. Rutherford
Director of Employee and Labor Relations
University of Massachusetts Lowell
Wannalancit Mills
600 Suffolk Street, Suite 301
Lowell, MA 01854

Administrative Magistrate:

Bonney Cashin

Summary of Recommended Decision

The decision of the Commonwealth's Human Resources Division denying an employee's request for reclassification should be affirmed. The duties of the employee, who seeks to be reclassified from a Clerk IV to an Administrative Assistant I, are consistent with her current classification.

RECEIVED
2013 DEC 12 P 2:58
COMMONWEALTH OF MASS
CIVIL SERVICE COMMISSION

RECOMMENDED DECISION*Introduction*

The Petitioner, Rebecca Guarente, appealed a May 17, 2013, decision of the Commonwealth's Human Resources Division that sustained the University of Massachusetts Lowell's (UMASS Lowell) denial of her request for reclassification from the position of Clerk IV to the position of Administrative Assistant I. UMASS Lowell denied her application because the specifications of her current position cover the duties actually being performed by Ms. Guarente. I held a hearing at the Division of Administrative Law Appeals, One Congress Street, Boston, Massachusetts, on September 23, 2013.

At the beginning of the hearing, I admitted ten documents into evidence. (Exs. 1-10). Ms. Guarente testified on her own behalf and presented the testimony of Cristo Protonotarius, President of UMASS Lowell MTA Classified/ Technical Unit. Ms. Guarente maintains that her job duties changed when she started working for Liana Cheney, Ph.D., and she should be reclassified as an Administrative Assistant I. UMASS Lowell presented the testimony of Kimberley Casey, Director of Compensation and Benefits, Liana Cheney, Ph. D., former Cultural Studies Department Chair, now retired, and Marie Frank, Ph.D. also former Cultural Studies Department Chair, now on sabbatical. UMASS Lowell argues that Ms. Guarente is properly classified as a Clerk IV because she does not perform the required job duties of an Administrative Assistant I, which include analyzing and reviewing data and exercising discretion over daily tasks.

I made a digital recording of the hearing. The record closed on October 28, 2013, when the parties filed their proposed decisions.

Findings of Fact

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

A. Background

1. On January 27, 1985, Ms. Guarente was hired by UMASS Lowell. (Guarente Test., Stipulation).
2. Initially, Ms. Guarente was a typist in the Economics Department and in the Environmental Earth and Atmosphere Science Department, and she was classified as a Clerk IV. (Guarente Test.).
3. Ms. Guarente's job duties as a typist included: distributing the mail; duplicating documents; answering students' questions; assisting faculty members; typing exams and syllabi; and answering phones. (Guarente Test.).
4. From 2002 through October 2008 Ms. Guarente worked in the Coburn Hall Service Center, again as a Clerk IV. (Guarente Test.).
5. While working in Coburn Hall, Ms. Guarente's job duties included: interacting with students, including answering their questions and directing them to faculty offices for office hours; and retrieving and distributing mail.
6. In October 2008, Ms. Guarente began work in the Cultural Studies Department as a Clerk IV. (Guarente Test.; Stipulation).
7. Ms. Guarente continues to work in the Cultural Studies Department as a Clerk IV. (Guarente Test.; Stipulation).
8. Ms. Guarente seeks to be reclassified as an Administrative Assistant I. (Stipulation).

9. The department chair, Dr. Liana Cheney, supervised Ms. Guarente from October 2008 through May 2013, when she retired. (Guarente Test.; Cheney Test.).
10. Ms. Guarente's duties when working for Dr. Cheney included: inputting information into spreadsheets; maintaining an updated graduation list; pulling student records when Dr. Cheney requested them; ordering supplies that Dr. Cheney determined were needed; preparing adjunct professors' contracts; helping students with forms; distributing and collecting student evaluations of professors; preparing folders to be distributed to incoming students during orientation; completing work order forms for faculty members; filling out time sheets; and answering questions for faculty and staff. (Guarente Test.; Cheney Test.).
11. Ms. Guarente compiled the student graduation list for the fall, spring and summer and sometimes pointed out inaccuracies or inconsistencies in the data, but Dr. Cheney ultimately determined what information should be included in the list. (Guarente Test.; Cheney Test.).
12. Each semester a work-study student was assigned to Ms. Guarente's office, but Dr. Cheney assigned the student his or her work. (Guarente Test.).
13. Ms. Guarente did not have discretion over any aspect of tenure decisions or faculty contracts; rather, she prepared the contracts based on information Dr. Cheney provided to her. (Guarente Test.; Cheney Test.).
14. Dr. Cheney drafted letters; and Ms. Guarente copied them to appropriate recipients. (Guarente Test.; Cheney Test.).
15. Dr. Cheney maintained her own calendar. (Cheney Test.).
16. Ms. Guarente reserved rooms for meetings. (Cheney Test.).

17. Ms. Guarente did not attend faculty meetings. (Cheney Test.).
18. On July 2, 2012, Ms. Guarente appealed her current classification title to UMASS Lowell, as the Appointing Authority, and requested that her job title be reclassified from Clerk IV to Administrative Assistant I. (Ex. 1; Stipulation).
19. In her appeal, Ms. Guarente stated she should be reclassified because, since she began working in the Cultural Studies Department, her job duties included those beyond the duties described in the Clerk IV job description; specifically, she used the ISIS student record program to track grades and to generate graduation lists, e*mpac to track the Department's budget and the Chair's Procard account, and PeopleAdmin Tracking to assist with Department hiring. (Ex. 1; Guarente Test.).
20. As part of the reclassification appeal process, Ms. Guarente responded to questions posed in an Interview Guide. (Ex. 1).
21. Ms. Guarente spends 80% of her time on duties including assisting Dr. Cheney, other full-time faculty and adjunct faculty, typing adjunct contracts, distributing mail; creating student folders and downloading transcript information for use by faculty during summer orientation, preparing spreadsheets for graduation lists, and preparing packages for student evaluations of faculty. (Ex. 1).
22. Ms. Guarente spends 10% of her time delivering and picking up copies, duplicating, delivering confidential letters and memos to the dean's office, ordering office supplies, and organizing receipts from Dr. Cheney's Procard and reconciling monthly statements. (Ex. 1)

23. Ms. Guarente spends the remaining 10% of her time downloading student transcripts, signing for UPS packages, receiving and distributing office supplies and books, and drafting facilities work orders.
24. Kimberley Casey, director of compensation and benefits reviewed Ms. Guarente's application materials, observed her in the workplace, interviewed her, and spoke with the Associate Dean of the Department and Robyn Lessard, administrative coordinator for the Department, regarding Ms. Guarente's duties. (Casey Test.).
25. Ms. Casey recognized that some of the duties performed by Ms. Guarente are duties common to the Clerk IV and Administrative Assistant I positions, such as typing standard faculty contracts, distributing mail, signing for packages, creating folders and lists, ordering supplies, duplicating material, and organizing Procard receipts. (Casey Test.).
26. On October 5, 2012, UMASS Lowell denied Ms. Guarente's request for reclassification. (Ex. 2).
27. The denial stated that the state specifications support Ms. Guarente's classification in her current level based on her current duties and explained that she was not performing many of the duties listed in the Administrative Assistant I description, including reviewing and analyzing data, preparing reports using charts or graphs, or preparing other detailed reports. (Ex. 2; Casey Test.).
28. On December 11, 2012 Ms. Guarente appealed the denial to the Commonwealth's personnel administrator in the Human Resources Department. (Stipulation).

29. On May 17, 2013, Commonwealth's Human Resources Department denied Ms. Guarente's appeal of the denial of her job classification, because it concluded that the classification of Clerk IV covers the duties she performs. (Ex. 3; Stipulation).

30. On November 2, 2012, Ms. Guarente appealed to the Civil Service Commission, and her appeal was assigned for hearing to the Division of Administrative Law Appeals on May 23, 2013. (Stipulation).

B. Job Descriptions

31. The basic purpose of a clerk is to provide clerical support to the assigned unit or agency. (Ex. 7).

32. The core duties established by the Commonwealth's Human Resources Division in its class specification for the Clerk Series are as follows: file materials, answer telephones, prepare standardized forms, receive and distribute mail and packages, retrieve records from files, locate and withdraw information from records in order to respond to inquiries from a supervisor, post information to logs or records according to a prescribed procedure, operate standard office machines and equipment, and review forms, lists, and documents for accuracy and completeness. (Ex. 7).

33. In addition to the duties of a Clerk I-III, Clerk IV job duties include: explaining provisions and contents of documents, interviewing applicants for clerical positions, preparing and/or processing personnel actions for forwarding approval, exercising direct supervision over, assigning work to and reviewing performance of 1-5 clerical personnel. (Ex. 7).

34. Incumbents of the Clerk III position or higher may "[c]ompile statistical information to be included in reports of agency activities." (Ex. 7).

35. Incumbents of the Clerk IV position or higher may “[p]repare and/or process personnel actions such as promotions, appointments, demotions, terminations, transfers and leaves of absence by recording such actions and completing forms for forwarding for approval.” (Ex. 7).
36. Entry requirements for a Clerk IV are: (A) three years of full-time, or equivalent part-time, experience in office work, or (B) any equivalent combination of required experience and the substitutions listed in the Clerk Series class specifications. (Ex. 7).
37. The basic purpose of an administrative assistant is to provide administrative support in connection with assigned unit activities. (Ex. 8).
38. The core duties established by the Commonwealth’s Human Resource Division in its class specifications for the Administrative Assistant series are as follows: monitor assigned unit activities to ensure effective operations; confer with agency staff to exchange and obtain information and to coordinate efforts; maintain liaisons with others to exchange information, resolve problems and coordinate activities; review and analyze data concerning assigned unit activities to improve work methods, determine progress, revise procedures and provide information to superiors; prepare reports to furnish information and make recommendations; respond to inquiries to provide information; compile data for use in reporting activities; compose letters and review documents; and perform related duties as required. (Ex. 8).
39. Administrative Assistant I duties include: exercising direct supervision over, assigning work to, and reviewing the performance of 1-5 clerical personnel. (Ex. 8).
40. Entry requirements for an Administrative Assistant I are listed in the Human Resources Division class specification as follows:

applicants must have at least (A) two years of full-time, or equivalent part-time, experience in office management, office administration, business administration or business management, the major duties of which included one or more of the following functions: purchasing, personnel management, budgeting, accounting, records management, work simplification, grants management, contract administration or program management, (B) any equivalent combination of the required experience and the substitutions below.

(Ex. 8).

41. The Clerk IV and Administrative Assistant I positions are possible supervisory positions. (Exs. 7, 8).

Discussion

A preponderance of the evidence supports the decision of the Commonwealth's Human Resources Division to deny Ms. Guarente's application for reclassification. Ms. Guarente maintains that her job duties increased when she started working for Dr. Cheney. She argues that she satisfied the requirements to be reclassified from a Clerk IV to an Administrative Assistant I at that time. UMASS Lowell responds that Ms. Guarente's job duties did not change and she did not exercise sufficient direct supervision and control required to be an Administrative Assistant I.

The duties of a Clerk IV and an Administrative Assistant I overlap. Ms. Guarente must show, however, that she is currently and routinely performing the specific duties of an Administrative Assistant I more than 50% of the time. *Bowen v. Dept. of Conservation and Recreation*, 24 Mass. Civ. Serv. Rept. 603; 604 (2011). Ms. Guarente has failed to show this.

The main differences between the two positions are in the amount of supervision and level of responsibility the employee exercises, the manner and degree in which data

analysis is called for, and discretion to make recommendations. Employees classified as an Administrative Assistant I exert more control over their daily tasks.

Employees in either position may supervise other employees, a duty Ms. Guarente does not exercise as a Clerk IV. Ms. Guarente assisted one work-study student each semester and answered her questions. Dr. Cheney assigned the students their work and supervised their performance. Ms. Guarente was responsible only for answering the work-study students' questions, not supervising or assigning work to them.

Ms. Guarente did not have responsibility and control over her daily tasks. Dr. Cheney assigned her work. Dr. Cheney provided Ms. Guarente with information, which she typed into standard contracts, spreadsheets, lists, and other documents. Ms. Guarente did not develop, administer, or approve budgets, contracts, or grant decisions. She did not independently analyze data or make recommendations on Dr. Cheney's behalf. To the extent her review of information from student records that she compiled into the graduation lists involved analysis, Ms. Guarente failed to prove that she performs this duty more than 50% of the time.

Ms. Guarente accessed confidential student records when she began to work in the Cultural Studies Department. No evidence established that she analyzed data in these records. Her ability to access confidential records shows her employer's trust in her. It does not elevate her duties to those of an Administrative Assistant I. She retrieved the records that Dr. Cheney requested. She did not determine which records were "pulled" or why.

Ms. Guarente did not have the authority to make recommendations relating to the budget or the supply orders. Ms. Guarente did not have her own Procard to purchase

supplies; Dr. Cheney told her what supplies should be ordered and Ms. Guarente ordered them.

Ms. Guarente did not recommend which professors should receive tenure positions. Nor did she sit in on interviews. Ms. Guarente did not negotiate contracts or have any input into professor's salary.

Additionally, Ms. Guarente performed similar duties when she was a typist and classified as a Clerk IV at Coburn Hall and when she worked for Dr. Cheney. Ms. Guarente interacted with students, answered phones, distributed mail, duplicated documents, and assisted faculty members.

Ms. Guarente's case is similar to one in which the Civil Service Commission denied an application for reclassification from a Clerk IV to an Administrative Assistant I, because the applicant did not perform the duties of an Administrative Assistant I more than 50% of the time. *Farinha v. University of Massachusetts at Dartmouth*, 23 Mass. Civ. Serv. Rept. 21, 22 (2010). Ms. Farinha was employed in the Physics Department at UMASS Dartmouth. *Id.* at 21. She did not develop the budgets or grants, but instead made sure all of the documents were in order before she passed the application on to the department chair. *Id.* at 22. The Commission stated that her role did not constitute "review and analysis of unit activities," which is required of an Administrative Assistant I. *Id.* She did not supervise any clerical staff, but instead supervised one student employee each semester. The rest of her time was spent assisting the department chair. She would advise him of upcoming meetings, order food for meetings, assemble folders, and assist professors with the use of copying and fax machines. The Commission stated

that although some duties overlapped between the two titles, the majority of the applicant's duties were consistent with a Clerk IV position.

Ms. Guarente's circumstances are distinguishable from those in which the Civil Service Commission granted a request for reclassification, because that applicant had more control over her daily tasks than Ms. Guarente does. In *Emanuello v. University of Massachusetts Dartmouth*, 21 Mass. Civ. Serv. Rept. 64 (2008), Ms. Emanuello sought to be reclassified from a Clerk IV to an Administrative Assistant I. The Commission found that she exercised independent discretion and did not need specific oversight from her supervisor. *Id.* at 66. The applicant compiled and analyzed data for grants with a value of \$1.7 million for her department, provided input at Department Advisory Board Meetings, required little supervision, and performed a greater volume of tasks because the department did not have clerical support staff. *Id.*

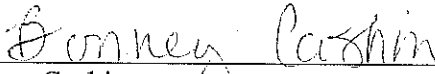
In contrast, Ms. Guarente does not make independent decisions. She does not analyze data, nor does she draw conclusions relating to it. Ms. Guarente is not in charge of analyzing the budget nor does she give input during meetings. Ms. Guarente does not attend faculty meetings. The current department chair assigns Ms. Guarente her work and reserves the discretion to review it.

While it is evident, based on Ms. Guarente's performance evaluation (Ex. 5), that Ms. Guarente is a hard worker and a valued employee, the evidence does not establish that she performed the duties of an Administrative Assistant I more than 50% of the time. Her application for reclassification should be denied.

Conclusion and Recommendation

Accordingly, for the foregoing reasons, I conclude that the decision of the Commonwealth's Human Resources Division sustaining UMASS Lowell's denial of Ms. Guarente's request to be reclassified as an Administrative Assistant I should be affirmed.

DIVISION OF ADMINISTRATIVE LAW APPEALS



Bonney Cashin
Administrative Magistrate

DATED: **DEC 11 2013**