

The Commonwealth of Massachusetts

SUFFOLK, ss.

CIVIL SERVICE COMMISSION
One Ashburton Place – Room 503
Boston, MA 02108
(617) 727 – 2293

GINA HANKERSON,
Appellant

v.

C-08-96

DEPARTMENT OF REVENUE,
Respondent

Attorney for the Appellant:

Appellant, Pro Se

Attorney for the Respondent:

Suzanne Quersher, Esq.
100 Cambridge Street
P.O. Box 9557
Boston, MA 02114

Commissioner:

Daniel M. Henderson¹

DECISION

Pursuant to the provisions of G.L. c. 30 §49, the Appellant, Gina Hankerson (hereinafter “Appellant”) is appealing the February 1, 2008 decision of the Human Resources Division (hereinafter “HRD”) denying her request for reclassification from the position of Program Coordinator II (“PC II”) to the position of Program Coordinator III (“PC III”) in the Department of Revenue (hereinafter “DOR” or “Appointing Authority”). A full hearing was held on May 6, 2008 at the offices of the Civil Service Commission (hereinafter “Commission”). The hearing was recorded on (1) audio tape. The parties submitted Proposed Decisions on May 30, 2008.

¹ The Commission gratefully acknowledges the assistance of Maimoona L. Sahi, Esq. in the drafting of this decision.

FINDINGS OF FACT:

Nineteen (19) exhibits and a stipulation of facts were entered into evidence at the hearing.

Based on the documents submitted into evidence and the testimony of:

For the Appellant:

- Gina Hankerson, PC II, Department of Revenue, the Appellant

For the Respondent:

- Sandra Antonucci (“Antonucci”), PC III, Department of Revenue

I make the following findings of fact:

1. The Appellant began working for the DOR on March 14, 1985. At the time of her appeal, she was employed as a PC II in the Legal Division Rulings and Regulations Bureau.
(Testimony of the Appellant; Exhibit 3)
2. Although the Appellant’s official job title was PC II, her functional title was Office Manager, which is a PC II position. (Exhibit 9)
3. The Appellant is an exceptional employee and has performed an outstanding job for the DOR. She has undertaken increasing responsibility and has exceeded expectations.
(Testimony of Antonucci; Exhibit 10)
4. In the 2007 Employee Performance Review Form, the Appellant’s duties are listed as follows: “Oversees entire operation of Bureau, organizes and oversees proper distribution of Bureau products, assists Bureau managers in updating and monitoring all R&R materials posted on the DOR website, prepares and coordinates, forms, letters, notices and hearings necessary for regulation promulgation, teaches other administrative staff to perform all the duties required to run the office, assists taxpayers with requests for information, oversees and

organizes work flow of support staff, oversees and organizes administrative support for Bureau, oversees and administers the R&R email account.” (Exhibit 9)

5. The Form 30 official job description for the PC II position states that the general statement of duties and responsibilities are: “Participates in coordinating work flow and distribution of Bureau products; prepares rulings and regulations for public comment, distribution and permanent filing; coordinates daily operation of Bureau; performs related work as required. Reviews and analyzes, Bureau data, including operating procedures; confers with DOR managers, professionals and administrative staff to help identify problems and needs in operations and reporting or sharing of information relative to Bureau products; determines the need for (and methodology) and conducts studies as needed; recommends changes in bureau operations, methods, policies, procedures and practices; compiles information for management use using the legal division document tracking system and the oracle database system; and performs related work as required such as preparing monthly managerial report of bureau activities with statistics and analysis, responding to inquiries, maintaining liaison with Taxpayers, practitioners, DOR Managers, Commissioner’s Office, Governor’s Office, State Secretary’s Office, human resources, finance, records management and facilities.” (Exhibit 10)

6. The Appellant filed an appeal for reclassification to a PC III with the Appointing Authority on July 5, 2007. (Exhibit 2)
7. The Classification Specification for the Program Coordinator Series as issued in 1987 (“Classification Specification”) states that the PC I position is the first-level supervisory job in the series; the PC II position is the second-level supervisory job in the series; and the PC III position is the third-level supervisory job in the series.

EXAMPLES OF DUTIES COMMON TO ALL LEVELS IN SERIES:

1. Coordinates and monitors assigned program activities to ensure effective operations and compliance with established standards.
2. Reviews and analyzes data concerning assigned agency programs to determine progress and effectiveness, to make recommendations for changes in procedures, guidelines, etc, and to devise methods of accomplishing program objectives.
3. Provides technical assistance and advice to agency personnel and others concerning assigned programs to exchange information and resolve problems and to ensure compliance with established policies, procedures and standards.
4. Responds to inquiries from agency staff and others to provide information concerning assigned agency programs.
5. Maintains liaison with various private, local, state and federal agencies and others to exchange information and/or to resolve problems.
6. Performs related duties such as attending meetings and conferences; maintaining records; and preparing reports.

DIFFERENCES BETWEEN LEVELS IN SERIES:

Program Coordinator II: Incumbents of positions at this level or higher also:

1. Provide on-the-job training and orientation for employees.
2. Develop and implement procedures and guidelines to accomplish assigned agency program objectives and goals.
3. Review reports, memoranda, etc, for completeness, accuracy and content.
4. Confer with management staff and other agency personnel in order to determine program requirements and availability of resources and to develop the criteria and standards for program evaluation.
5. Evaluate program activities in order to determine prognosis and effectiveness and to make recommendations concerning changes as needed.

Program Coordinator III: Incumbents of positions at this level or higher also:

1. Develop and implement standards to be used in program monitoring and/or evaluation.
2. Oversee and monitor activities of the assigned unit.
3. Confer with management staff and others in order to provide information concerning program implementation, evaluation and monitoring and to define the purpose and scope of proposed programs.

SUPERVISION EXERCISED:

Program Coordinator II:

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, or administrative personnel; and indirect supervision (i.e., through an intermediate level supervisor) over 1-5 professional, technical, administrative and/or other personnel.

Program Coordinator 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 personnel; and indirect supervision (i.e., through an intermediate level supervisor) over 8-15 professional, administrative, technical and/or other personnel. (Exhibit 1)

8. In the Appellant's Interview Guide, under "Basis of Appeal", she stated "Since my appointment as a PC II I have been assigned and have been performing more complex duties and my program supervisory and management role has become more complex and broader in scope. For example, my role in the recent "portalization" project reflects this increased level of responsibility. I am responsible for developing, implementing and monitoring standards for the preparation and posting of all DOR legal documents to the Web. I also believe that, as the technologies change I have been given more responsibility for the oversight and monitoring of all activities relative to technology and legal support for a bureau of 18 lawyers. I manage the preparation and coordination of the documentation necessary to promulgate regulations, and the electronic distribution of all legal documents within statutory timeframes and confer with management and legal staff for the purpose of monitoring and evaluating these processes". (Exhibit 3)
9. The Appellant indicated in her Interview Guide that she performs the following:
 1. Oversees entire operations of Bureau (Oversees and organizes work flow of support staff; oversees and organizes administrative support for Bureau; teaches other administrative staff to perform all the duties required to run the office) – 25%
 2. Organizes and oversees proper distribution of Bureau products – 20%
 3. Updates and monitors all R&R materials posted on the DOR website – 20%
 4. Prepares and coordinates documentation for hearings and regulation promulgation and organization of permanent regulation files – 20%
 5. Oversees and administers the R&R email account – 10%
 6. Assists taxpayers with requests for information – 5% (Exhibit 3)
10. Although the Legal Division Rules and Regulations Bureau Organizational Chart, as well as the Appellant's Form 30 indicate that one person reports to the Appellant, the Appellant testified that she does not formally supervise any employees. The Appellant does not directly supervise, assign work to and review the performance of 1-5 professional personnel nor does she indirectly supervise 8-15 professional, administrative, technical and/or other personnel. (Testimony of the Appellant and Antonucci; Exhibits 1, 10 and 11)

11. The PC III is the highest title in the series and a key level distinguishing duty is supervision, as outlined above. The Appellant does not supervise anyone. (Testimony of the Appellant and Antonucci; Exhibit 1)
12. The Appellant testified that there are at least two PC IIIs in the Legal Division Rules and Regulations Bureau that either did not supervise or are brand new supervisors. However, the fact that some employees are working below grade or are misclassified could be attributed to other preexisting factors, including collective bargaining considerations. That fact does not entitle the Appellant to a reclassification. (Testimony of the Appellant and Antonucci)
13. On October 10, 2007, the Appointing Authority issued a preliminary decision, stating that the Appellant's duties were properly classified as those of a PC II. (Exhibit 4)
14. On November 1, 2007, the Appointing Authority issued its final decision, denying the appeal. The Appellant was informed that she could appeal the decision to HRD. (Exhibit 6)
15. Finding that her duties were properly classified as those of a PC II, HRD denied the appeal on February 1, 2008. (Exhibit 7)
16. The Appellant appealed HRD's denial to the Commission on April 18, 2008. (Stipulation of Fact)

CONCLUSION

After careful review of the testimony and evidence presented in this appeal, I affirm the decision of HRD. The Appellant has not met the burden of proving that she performs a majority of the distinguishing duties of a PC III more than 50% of the time. I base my conclusion on the documentary evidence and the testimony of the Appellant and other witnesses.

The Classification Specification for the Program Coordinator series lists PC III as a supervisory position such that incumbents of that position exercise direct supervision of 1-5

professional personnel and indirect supervision over 8-15 professional, administrative, technical and/or other personnel.

Sandra Antonucci, a PC III, testified that the Appellant did not formally supervise any departmental personnel. Although a Management Analyst II reports to her, the Appellant acknowledges that it was not a formally recognized supervisory role. The Appellant noted that there are at least two PC IIIs in the Legal Division that either did not supervise or are brand new supervisors. However, the fact that some employees are working below grade or are misclassified could be attributed to other preexisting factors, including collective bargaining considerations. That fact does not entitle the Appellant to a reclassification.

There is no dispute that the Appellant has performed an outstanding job as an employee of the DOR, and that she has undertaken increasing responsibility and exceeded expectations. There is also no dispute that other employees held the position of PC III without having any supervisory functions or recently acquired supervisory functions. Notwithstanding that fact, the Classification Specification clearly provides that a PC III develop and implement standards to be used in program monitoring and/or evaluation, oversee and monitor the activities of the assigned unit, confer with management staff and others to provide information concerning program implementation, evaluation, and monitoring and to define the purpose and scope of the proposed programs, and exercise supervisory functions. Since the Appellant did not perform a majority of these duties more than 50% of the time, and she did not exercise direct supervision of 1-5 professional personnel and indirect supervision over 8-15 professional, administrative, technical and/or other personnel, she failed to establish that she performed a majority of the level distinguishing functions of a PC III more than 50% of the time. All of the duties performed by the Appellant are more closely reflected in the description of a PC II. See Kurt v. Massachusetts

Highway Dep't, Docket No. C-09-428 (2010); Grzybowski v. University of Massachusetts at Amherst, Docket No. C-09-388 (2010); Cohen v. Massachusetts Highway Dep't, Docket No. C-09-268 (2010); *compare* Harand v. Soldiers' Home in Holyoke, 21 MCSR 194 (2008).

Thus the appeal must fail because the Appellant has failed to show by a preponderance of the evidence that she is performing a majority of the duties of a PC III more than 50% of the time.

For these reasons, the appeal filed under Docket No. C-08-96 is hereby **dismissed**.

Daniel M. Henderson
Commissioner

By a vote of the Civil Service Commission (Bowman, Chairman, Henderson, Marquis, McDowell and Stein Commissioners) on June 3, 2010.

A true record. Attest:

Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of this 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 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:
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