

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

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

NANCY HARAND,
Appellant,

v.

C-07-428

SOLDIERS' HOME IN
HOLYOKE,
Respondent,

**DECISION ON APPOINTING AUTHORITY'S
MOTION FOR RECONSIDERATION**

The Appointing Authority filed a Motion for Reconsideration of a decision of the Commission, dated April 11, 2008, allowing the Appellant's appeal.

A Motion for Reconsideration must identify a clerical or mechanical error in the decision or a significant factor the Commission or the presiding officer may have overlooked in deciding the case.

The Appointing Authority identified 6 instances which they believe warrant reconsideration of the Commission's decision. Those instances and the Commission's corresponding response are as follows:

1. "The Commission made its decision in part by accepting hearsay testimony from the Appellant: "that she was told by the RN IV that she is the nurse in charge ... over the direct testimony of the Director of Nursing and Human Resources Coordinator."

This instance does not amount to a significant factor that the hearing officer overlooked. In fact, the Appointing Authority correctly states that this Commissioner only relied *in part* on this hearsay testimony. This Commissioner gave weight to the entirety of the Appellant's testimony, which consisted primarily of the iteration of her duties and responsibilities, including whether or not she has "charge responsibility." This Commissioner considered the testimony of the Director of Nursing: but concluded that she had based her conclusions on good faith - albeit incorrect assumptions in regard to the duties and responsibilities performed by the Appellant.

2. "The Commission determined that the Appellant reports directly to the RN IV based on Joint Exhibit 14. Performance Review Form. This was an error since the RN IV completes the Performance Review Form for all staff under his organizational responsibilities including RN's, PNS's and CAN's. The fact that the RN IV does the Performance Review Form is not evidence that the staff member is a supervisor or reports directly to the RN IV."

This neither amounts to an error nor warrants reconsideration. This Commissioner relied primarily on the credible testimony of the Appellant in concluding that she reports directly to the RN IV. It is appropriate for the Commission to review who completes an employee's performance evaluation when determining reporting structures. The performance evaluation corroborated the Appellant's testimony.

3. "The Commission overlooked the Nursing Organizational chart Exhibit #10. Which clearly shows that the LPN's report to the RN's and the RN's report to the RN IV. See decision paragraph #27 and conclusion."

The hearing officer carefully reviewed all of the exhibits entered into the record, including Exhibit 10, the organizational chart. This Commissioner relied primarily on the credible testimony of the Appellant in concluding that she reports directly to the RN IV, contrary to what is supposed to be the reporting structure, as outlined in the organizational chart.

4. "The Commission relied on the Appellant's testimony that she provides on the job training to other employees rather than the fact she orientates new employees."

This is a finding well within the purview of the hearing officer and does not warrant reconsideration of the decision.

5. "The Commission concluded that the Appellant performs the two level duties of an LPNII more than 50% of the time, contrary to the Director of Nursing who testified that an RN is generally assigned as a charge nurse for the Care Center seven days a week except for periods of paid leave."

This is a finding well within the purview of the hearing officer and does no warrant reconsideration of the decision. This Commissioner gave weight to the entirety of the Appellant's testimony, which consisted primarily of the iteration of her duties and responsibilities, including whether or not she has "charge responsibility." This Commissioner considered the testimony of the Director of Nursing: but concluded that she had based her conclusions on good faith - albeit incorrect assumptions in regard to the duties and responsibilities performed by the Appellant.

6. "As expected for an LPN II, Appellant does not complete performance evaluation for any employees. Testimony of Appellant paragraph 31."

The standard used by the Commission is whether or not the Appellant performs the majority of duties of the higher position more than 50% of the time. Notwithstanding the above-referenced finding, the hearing officer found after considering the entirety of the Appellant's job duties and responsibilities, she does perform the majority of duties of an LPN II more than 50% of the time.

For all of the above reasons, the Appointing Authority's Motion for Reconsideration did not identify a clerical or mechanical error in the decision or a significant factor the Commission or the presiding officer may have overlooked in deciding the case.

Therefore, the Motion for Reconsideration is hereby *denied*.

Civil Service Commission

Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis and Taylor, Commissioners) on May 1, 2008

A true record. Attest:

Commissioner

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:
Nancy Harand (Appellant)
Donald Andrejczyk, Esq. (for Appointing Authority)
John Marra, Esq. (HRD)