

**COMMONWEALTH OF MASSACHUSETTS  
CIVIL SERVICE COMMISSION**

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

**GARY LEMOINE,**  
*Appellant*

v.

**Case No.: C-12-257**

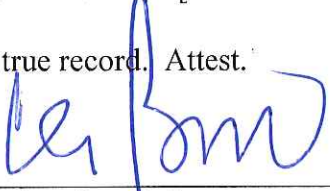
**DEPARTMENT OF  
CHILDREN, YOUTH  
AND FAMILIES,**  
*Respondent*

**DECISION**

The Civil Service Commission (Commission) voted at an executive session on March 21, 2013 to acknowledge receipt of the Recommended Decision of the Administrative Law Magistrate dated January 10, 2013. After careful review and consideration, the Commission voted to adopt the findings of fact and the Recommended Decision of the Magistrate therein. A copy of the Magistrate's Recommended Decision is enclosed herewith. The Appellant's appeal is hereby *dismissed*.

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Marquis and Stein, Commissioners [McDowell – Not Participating]) on March 21, 2013.

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:

Gary Lemoine (Appellant)  
Patrick G. Butler, Esq. (for Respondent)  
Richard C. Heidlage, Esq. (Chief Administrative Magistrate, DALA)



THE COMMONWEALTH OF MASSACHUSETTS

DIVISION OF ADMINISTRATIVE LAW APPEALS

ONE CONGRESS STREET, 11<sup>TH</sup> FLOOR

BOSTON, MA 02114

RICHARD C. HEIDLAGE  
CHIEF ADMINISTRATIVE MAGISTRATE

TEL: 617-626-7200  
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January 10, 2013

Christopher C. Bowman, Chairman  
Civil Service Commission  
One Ashburton Place, Room 503  
Boston, MA 02108

**Re: Gary Lemoine v. Department of Youth Services**  
**DALA Docket No. CS-12-602**  
**CSC Docket No. C-12-257**

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DIVISION OF ADMINISTRATIVE LAW APPEALS  
CIVIL SERVICE COMMISSION

Dear Chairman Bowman:

Enclosed please find the Recommended Decision that is being issued today. The parties are advised that, pursuant to 801 CMR 1.01(11)(c)(1), they have thirty days to file written objections to the decision with the Civil Service Commission. The written objections may be accompanied by supporting briefs.

Sincerely,

  
Richard C. Heidlage  
Chief Administrative Magistrate

RCH/mbf

Enclosure

cc: Gary Lemoine  
Patrick G. Butler

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Division of Administrative Law Appeals


**Gary Lemoine,**  
**Petitioner (Appellant)**

v.

Docket Nos. **C-12-257** (Civil Service  
Commission)/  
**CS-12-602** (DALA)

**Dept. of Youth Services of**  
**Executive Office of Health and**  
**Human Services,**  
**Respondent (Appointing Authority)**

**Appearance for Petitioner (Appellant):**

**Gary Lemoine, *pro se***  


**Appearance for Respondent (Appointing Authority):**

**Patrick Butler**  
Labor Relations Specialist  
Exec. Office of Health and Human Services  
600 Washington Street  
Boston, MA 02111

**Administrative Magistrate:**

**Sarah H. Luick, Esq.**  
**Administrative Magistrate**

**Summary of Recommended Decision**

Mr. Lemoine is not currently performing all the essential duties of a Program Coordinator II to be entitled to this change in his job classification from Program Coordinator I. He has not proven he is doing the direct and indirect supervision that a Program Coordinator II performs. This is because the people he provides direction to on many different program matters are mostly employees of vendors working at his job site or are state employees outside his chain of command for whom he does not assign job tasks and complete job performance evaluations.

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COMMISSION

**RECOMMENDED DECISION**

The Petitioner (Appellant), Gary Lemoine, timely appealed to the Civil Service Commission ("CSC") pursuant to G. L. c. 30, § 49, the failure of the Respondent (Appointing Authority), the Department of Youth Services of the Executive Office of Health and Human Services ("DYS-EOHHS"), to change his job classification from Program Coordinator I to Program Coordinator II. Mr. Lemoine works at the Western Regional Youth Service Center Campus operated by DYS-EOHHS. A hearing was held October 22, 2012 for the CSC at the offices of the Division of Administrative Law Appeals ("DALA") at One Congress Street, 11th Floor, Boston, MA 02114, following a CSC pre-hearing conference on September 25, 2012.

At the DALA hearing, various documents were admitted into evidence. (Exs. 1 – 11.). The hearing was digitally recorded. DYS-EOHHS presented the testimony of Joan Bishop Fallon, Staffing Manager of EOHHS's Human Resources Department whose office reviews EOHHS employees' re-classification requests. Mr. Lemoine testified in his own behalf and presented the testimony of Edward Acciardo, the Maintenance Supervisor for EYS-EOHHS at the Western Regional Youth Service Center Campus. Both parties made arguments on the record. Exhibit 12 was admitted post-hearing and is Mr. Lemoine's April 24, 2012 letter to the state's Human Resources Division. Exhibit 13 was admitted post-hearing and is the DYS-EOHHS response to a post-hearing order to secure Mr. Lemoine's Form 30 job description for Program Coordinator I. Administrative Notice was taken of a prior classification appeal before the CSC and Commissioner Paul M. Stein where Mr. Lemoine's request to change his job classification to Program Coordinator III from Program Coordinator I was denied: *Gary Lemoine v. DYS-EOHHS*, C-09-420 (CSC Decision, 10/21/2010).

### **FINDINGS OF FACT**

Based upon the exhibits, the prior classification appeal decision (C-09-420), the testimony taken at the October 22, 2012 hearing, and the reasonable inferences drawn therefrom, I make the following findings of fact:

1. Gary Lemoine is employed by DYS-EOHHS, working at the Western Regional Youth Service Center and campus in Springfield. He has continuously worked there full time since 1985. He started as an Institution Protection Man/Campus Police Officer. In 1999, he was promoted to a Caseworker position with DYS-EOHHS, but performed duties more closely aligned with the work of a Program Coordinator I. He was promoted to the position of Program Coordinator I in 2004. He has continued in this position since then. (C-09-420. Ex. 5. Testimony.)

2. In February 2008, Mr. Lemoine sought to reclassify his Program Coordinator I job. He received a temporary reclassification to Program Coordinator II for a closed time period running from January 27 – June 29, 2008. He received that temporary reclassification primarily due to supervisory work over DYS-EOHHS employees in the Kitchen Department and in the Maintenance Department at the DYS-EOHHS campus where he worked. He reverted to the Program Coordinator I position once he stopped doing this supervisory work. (C-09-420. Testimony.)

3. After ending the supervisory work, Mr. Lemoine was under the direct supervision of Melvin Washington, the DYS-EOHHS Regional Youth Service Center's Facilities Manager, a newly created position. In the chain of command, Mr. Washington reported to John Zablocki, the Director of Residential Services for the DYS-EOHHS Western Region. Mr. Washington took over supervision of the Kitchen and Maintenance Departments. (C-09-420. Ex. 7.

Testimony.)

4. In June 2009, Mr. Lemoine again requested a change in his job classification from Program Coordinator I to Program Coordinator III. Joan Bishop Fallon, Staffing Manager within the EOHHS Human Resources Office, reviews with her support staff and then determines reclassification requests. She has had over twenty years of experience doing this work and most of the requests she had decided have involved requests to upgrade within the Program Coordinator job series. She denied Mr. Lemoine's request. He appealed for a CSC hearing which was held on January 5, 2010 before CSC Commissioner Paul M. Stein. By CSC decision of October 21, 2010, Mr. Lemoine's reclassification request was denied. (C-09-420.)

5. Since this last CSC hearing, Mr. Lemoine's Program Coordinator job has not changed in nature, but he had taken on more work across a number of programs and special projects at the DYS-EOHHS's western region campus which has five buildings and includes a secure detention facility for juveniles. His direct supervisor/manager, Mr. Washington, left his job in and around July 2011. Since that time, Mr. Lemoine's direct supervisor/manager has been John Zablocki, the Director of Residential Services for the DYS-EOHHS western region, who even before Mr. Washington left had management supervisory authority over both Mr. Washington and Mr. Lemoine in the chain of command at this facility. There is no Acting Facilities Manager at the western region campus. The position has remained vacant. (Ex. 7. Testimony.)

6. In April 2011, Mr. Lemoine again requested a change in his job classification, this time to Program Coordinator II. By this time, he was working very independently to address both existing and new program areas, and to address new projects at the DYS-EOHHS western region campus. He receives general directives from his supervisor with instructions. He

routinely copies Mr. Zablocki and Mr. Washington before he left on reports about the work he is doing. If his supervisor felt it was needed, Mr. Lemoine makes further revisions, takes different approaches, or adds further instructions. No response from his supervisor can signal approval of his work progress and results. He often has monthly scheduled in-person meetings with Mr. Zablocki now and before that with Mr. Washington. He routinely emails with his supervisor and has brief visit communications with him. Mr. Lemoine spends much of his time investigating, monitoring, collecting data, conducting trainings on procedures involving various program and project areas he has or is addressing. He also communicates directives to outside state agency personnel and to vendors working at the DYS-EOHHS campus. He works closely on various issues that involve maintenance and repairs with Edward Acciardo, the Maintenance Supervisor at the western region campus. He proposes directives about program and project work that are forwarded to Mr. Zablocki and before to Mr. Washington for a chance to have changes made to them before he gives out these directives to numerous people working at the western region campus. He explains the directives to them. (Exs. 5, 6 & 8.<sup>1</sup> Testimony.)

7. Since there has been the Facilities Manager position, Mr. Lemoine has not had direct supervision over DYS-EOHHS or other state agency employees working at the western region facility other than "two (2) security personnel who ... [were] temporarily charged with physically monitoring the campus building while the sprinkler system remains inoperable." This has not been an ongoing or permanent job duty for Mr. Lemoine. He is not assigning routine work tasks to any DYS-EOHHS employees and does not review any job performances by completing any Employee Performance Review forms. He does not determine the routine duties to be performed by any state employees either directly or indirectly. For his supervisors, Mr.

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<sup>1</sup> Exhibit 8 is a Form 30 form filled in only by Mr. Lemoine and not used by his supervisors.

Zablocki and Mr. Washington, Mr. Lemoine has filed reports and discussed the work of other employees at the western region facility to aid in the performance evaluation of such employees. (C-09-420, Finding of Fact # 26. Exs. 6 & 7. Testimony.)

8. Mr. Lemoine makes recommendations to do problem solving regarding program areas and special projects he works on that are more often than not followed without any changes by Mr. Zablocki. With his detailed knowledge of programs and project areas within the DYS-EOHHS facility where he works and his attention to details, Mr. Lemoine is considered a "Jack-of-all Trades" and go-to resource. (C-09-420. Exs. 6, 7 & 10. Testimony.)

9. Mr. Lemoine routinely communicates directly with the many vendors' employees and with the outside state agency personnel who are working at the DYS-EOHHS facility providing many directives as a result of his work on various program areas and special projects including as a result of his monitoring and problem solving work, all of which he is expected to do. This work is very important and necessary to do on a routine basis to ensure the proper functioning of the facility. (Exs. 5 & 10. Testimony.)

10. In his Program Coordinator I position, Mr. Lemoine has never worked pursuant to a Form 30 job description. He has routinely had his job performance reviewed by Mr. Washington and Mr. Zablocki via the Employee Performance Review form process that includes a listing of an employee's essential duties for the particular Fiscal Year involved and the ratings made on how well an employee is performing each essential duty as assessed by the employee's supervisors. The Maintenance Supervisor at the western region campus, Mr. Acciardo, has also worked in this position since 1999 with no Form 30 job description. Mr. Acciardo directly supervises a few maintenance department employees, including doing their Employee Performance Review forms, and has never helped create and has never used any Form 30 job



descriptions for these workers. (Exs. 10, 11 & 13. Testimony.)

11. The program areas Mr. Lemoine works on include public safety, security, and fire and other emergency evacuations that involve following requirements imposed on the DYS-EOHHS facility by the state's Department of Public Safety, requirements imposed on the operation of the facility by the state's Department of Public Health, working with the state's Division of Capital Asset Management ("DCAM")<sup>2</sup> on capital improvement construction projects at the DYS-EOHHS facility, monitoring the Fleet Program involving vehicles used and their maintenance records, helping to set up and organize a Greenhouse program, ensuring the Key Program requirements are followed, and dealing with state agencies and their licensing requirements for this facility including the Early Education and Care Department within EOHHS. Besides working with the employees of the various private vendors on-site on their program and project work at the western region campus, Mr. Lemoine frequently works alongside Mr. Acciardo with the two of them doing walk-throughs of the construction projects on the campus to address various deficiencies that need correction and that may or may not be able to be addressed by the Maintenance Department DYS-EOHHS employees at the facility. Mr. Lemoine will often send along to the DYS-EOHHS western region's Fiscal Administrator, Linda Shipmon, the cost figures involved in securing the correction of deficiencies. (Exs. 5, 6 & 10. Testimony.)

12. Mr. Lemoine has established working protocols and procedures to do effective monitoring in a number of program areas and to keep track of issues involving projects assigned to him. He works primarily alone in setting up useful protocols to have effective workable program monitoring after gathering data from many persons, vendors and agencies involved in

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<sup>2</sup> Mr. Lemoine abbreviated this state agency as DECAMM in his documents.

the programs. Some of his protocols and procedures are needed to ensure compliance with laws, rules and regulations, including licensing, security and public safety requirements. As a result of his work, he sets up training sessions that he gives to all who work within the DYS-EOHHS campus, often to large numbers of employees of vendors having contracts with DYS-EOHHS. Because many of the program areas Mr. Lemoine works on are very established and his duties about them are well understood by him, his procedures to do monitoring about them and his proposed solutions to issues that arise, have routinely been accepted by Mr. Washington or Mr. Zablocki. (Exs. 6 & 10. Testimony.)

13. Mr. Washington and Mr. Zablocki both signed-off on Mr. Lemoine's Employee Performance Review forms for Fiscal Year July 1, 2010-June 30, 2011. His overall performance was an exceeds/excels rating. Duty 1 covered "Campus and Facility Security and Environmental Safety." He was rated exceeds/excels for the following duties:

- a.) Perform safety and environmental checks about and within the facility in conjunction with contracted vendor staff. Meet bi-monthly with facility administrator and maintenance supervisor in developing a plan a timeline of action based on findings; submit monthly report.
- b.) Provide oversight and coordination for telephone lines and communications that result in the smooth operation of this component throughout the campus.
- c.) Monitor monthly fire drills as performed by fire watch and evaluate the readiness and response of staff, submit findings and recommendations to the Facility Administrator.
- d.) Continue to develop and expand the recycling of wastes and byproducts at the facility.
- e.) Manage and oversight of key control inventory.

(Ex. 10.) Duty 2 involved Mr. Lemoine's work on "Fleet Management." He received a rating of exceeds/excels. The duties involved were:

- a.) Gathers all mileage from the WDC and WYSC facilities.
- b.) Gathers all fuel receipts from the WDC and WYSC facilities
- c.) Maintains all maintenance and inspection stickers for the WYAC.
- d.) Submit monthly report to business office and copy to Facility Administrator.

- e.) Serve as the liaison between DYS western region and Fleet Response at request of Fiscal Manager; addressing all inquiries and concerns.
- f.) Provide oversight to vehicles for OVM audits and monthly inspection of fleet vehicles.
- g.) Under directions of Fiscal, report the unsafe and unsecure operation of vehicles.
- h.) Conduct safety review of vehicular operation with DYS staff as requested by Fiscal.

(Ex. 10.) Duty 3 involved Mr. Lemoine's work to; "Provide logistical and technical support for special duties/projects as determined by Executive administration and directed by the Facility Administrator." He received a rating of exceeds/excels. The duties involved were:

- a.) Maintain minutes/notes with regard to the development/implementation/operation of special projects.
- b.) Provide data/information as needed in the development/implementation/operation of special projects.
- c.) Meet with contractors, vendors, technicians in the scheduling and coordination of special project tasks.
- d.) Report to immediate supervisor on the progress and completion of projects.  
(examples)
  - Installation of boilers
  - Installation/addition of security fencing/surveillance cameras
  - Cooling/heating/ventilation of main building
  - Greenhouse building

(Ex. 10.) Mr. Lemoine felt he had more essential duties than those listed on his Employee Performance Review form. (Ex. 10.)

14. Mr. Washington produced an addendum to the Employee Performance Review form for Mr. Lemoine for Fiscal Year 2010-2011. On July 27, 2011 he noted the following:

Duty 1

Gary has done a good job in addressing issues that pertain to this duty ... has met items a-c in assuring that the facility remains compliant with environmental safety issues. Key control duties have recently been re-assigned to Gary. Key inventory has been completed for Fiscal 2011. **Exceeds**

Duty 2

Gary continued to meet all items under this duty. Gary maintains a good rapport with Fiscal in meeting fleet maintenance and safety criteria. **Exceeds**

Duty 3

Gary has met and exceeded expectations for this duty. His recordkeeping and follow through is very good. He has greatly improved in his communications with vendors in obtaining their follow through in this duty. Will continue to work with Gary in refining communications between vendors and contractors. **Exceeds**

**Overall, in addressing the needs of the facility, Gary has improved in taking the necessary steps to ... keep the facility operational. As stated above will continue to work with Gary in refining his communication style to further encourage dialogue among and between participants.**

(Ex. 10.)

15. For Fiscal Year July 1, 2011 – June 30, 2012, Mr. Lemoine was evaluated by Mr. Zablocki in July 2012. He found Mr. Lemoine to be,

an outstanding employee whose detail is second to none ... is quick to respond to all requests ... deserves exceeds on all five objectives in this review.

(Ex. 10.) The Duty 1 was the same for this Employee Performance Review form as it was in the prior Fiscal Year. Mr. Zablocki found Mr. Lemoine exceeds/excels. He found this duty to be,

[a] very strong area for Gary. His attention to detail is key in this very important objective. Very nice job!!

(Ex. 10.) The Duty 2 was the same as it was in the prior Fiscal Year. Mr. Zablocki found Mr. Lemoine exceeds/excels. He found:

Gary does a very nice job working with Linda Shipmon on ensuring all performance criteria of this objective is met. Once again, Gary's attention to detail is key in making this a successful objective.

(Ex. 10.) The Duty 3 was the same as it was in the prior Fiscal Year. Mr. Zablocki found Mr. Lemoine exceeds/excels. He concluded:

Over the past four years Gary played a major role working as one of the liaisons

on any entire campus upgrade which included the construction of several buildings, renovations, and demolition. His organizational skills, attention to detail were key.

(Ex. 10.)

16. Duty 4 on the Fiscal Year 2011-2012 Employee Performance Review form for Mr. Lemoine completed by Mr. Zablocki contained the following duties: "Licensure of Facility. In conjunction with the maintenance supervisor and collaboration with state inspectors:"

- a.) Respond to state inspections; meet with contracting vendors to address concerns per contract; coordinate work with maintenance supervisor; compile results for review by Facility Administrator prior to submitting to State Inspector.
- b.) Develop a timeline of work.
- c.) Coordinate all licensing of the facility. (Example: Health, Public Safety, Fire)

(Ex. 10.) Mr. Zablocki rated Mr. Lemoine with exceeds/excels and added:

Another very strong area for Gary. He is the campus's liaison with all licensing agencies ... Again follow through and attention to detail are key.

(Ex. 10.) A Duty 5 was also included for Fiscal Year 2011-2012 on Mr. Lemoine's Employee Performance Review form: "Key Control: Oversight of issuance, distribution and return of keys to personnel staff." Mr. Zablocki rated Mr. Lemoine with exceeds/excels, and added:

Great job w/objective #5. Gary's inventory system is very well organized. All broken keys are replaced immediately w/Gary ensuring a well written report accompanies the request for replacement.

(Ex. 10.)

17. The Commonwealth's Human Resources Division approved the classification specification for the Program Coordinator Series on July 1, 1987 with some revisions made in February 1990. There are three positions in the job series, I, II and III. The general nature of the work of a Program Coordinator is set forth as:

Incumbents ... coordinate and monitor assigned program activities; review and analyze data concerning agency programs; provide technical assistance and

advice to agency personnel and others; respond to inquiries; maintain liaison with various agencies; and perform related work as required.

The basic purpose of this work is to coordinate, monitor, develop and implement programs for an assigned agency.

(Ex. 9.) In terms of organizational levels the Program Coordinator I is the "first-level supervisory job in this series," the II is the "second-level supervisory job in this series," and the III is the "third-level supervisory job in this series." The Program Coordinator I receives,

direct supervision from employees of higher grade who provide training and instruction, assign work and review performance for effectiveness and conformance to laws, rules, regulations, policy and procedures.

(Ex. 9.) The Program Coordinator I has,

direct supervision ... over, assign work to and review the performance of 1-5 professional, technical, administrative and/or other personnel; and may exercise functional supervision ... over 1-5 professional, technical, administrative and/or other personnel.

(Ex. 9.) The Program Coordinator II receives,

general supervision from employees of higher grade who provide guidance on policy and procedure, assign work and review performance for effectiveness and conformance to laws, rules, regulations, policy and procedures.

(Ex. 9.) The Program Coordinator II has,

direct supervision ... over, assign work to and review the performance of 1-5 professional, technical, or administrative personnel; and indirect supervision ... over 1-5 professional, technical, administrative and/or other personnel.

(Ex. 9.) The Program Coordinator III receives,

general supervision from employees of higher grade who provide policy guidance, assign work and review performance for effectiveness and conformance to laws, rules, regulations, policy and procedures.

(Ex. 9.) The Program Coordinator III has,

direct supervision ... over, assign work to and review the performance of 1-5 professional personnel; and indirect supervision ... over 6-15 professional, administrative, technical and/or other personnel.

(Ex. 9.)

18. Under the Program Coordinator job series, all Program Coordinators need to have:

Knowledge of the principles, practices and techniques of supervision ... the organizational structure and functions of the assigned agency ... the types and uses of agency forms ... state budgetary procedures relating to positions, salaries and personnel services ... state procedures governing purchasing and requisitioning of supplies and equipment ... state accounting and budgetary procedures including terminology.

(Ex. 9.) Qualification all levels of Program Coordinators need include:

Knowledge of the principles and practices of human resource management including behavioral techniques, planning, forecasting, organizational development ... work simplification methods ... methods used in the preparation of charts, graphs and tables ... methods of general report writing ... Ability to understand, explain and apply the laws, rules, regulations, policies, procedures, etc. governing assigned unit activities ... analyze and determine the applicability of data, to draw conclusions and make appropriate recommendations ... gather information by examining records and documents and by questioning individuals ... assemble items of information in accordance with established procedures ... determine proper format and procedure for assembling items of information ... maintain accurate records ... prepare and use charts, graphs and tables ... prepare general reports ... write concisely, to express thoughts clearly and to develop ideas in logical sequence ... follow written and oral instructions ... give written and oral instructions in a precise, understandable manner ... communicate effectively in oral expression ... supervise, including planning and assigning work according to the nature of the job to be accomplished, the capabilities of subordinates and available resources; controlling work through periodic reviews and/or evaluations; determining subordinates' training needs and providing or arranging for such training; motivating subordinates to work effectively; determining the need for disciplinary action and either recommending or initiating disciplinary action ... establish rapport with others ... establish and maintain harmonious working relationships with others ... deal tactfully with others ... adjust to varying or changing situations to meet emergency or changing program requirements ... exercise sound judgment ... exercise discretion in handling confidential information.

(Ex. 9.)

19. The Program Coordinator job series lists differences in work among the I, II and III level positions. A Program Coordinators II can be expected to do the following:

Provide on-the-job trainings and orientation for employees ... Develop and implement procedures and guidelines to accomplish assigned agency program objectives and goals ... Review reports, memoranda, etc. for completeness, accuracy and content ... 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 ... Evaluate program activities in order to determine progress and effectiveness and to make recommendations concerning changes as needed.

(Ex. 9.) The Program Coordinator III can be expected to do the following:

Develop and implement standards to be used in program monitoring and/or evaluation ... Oversee and monitor activities of the assigned unit ... 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.

(Ex. 9.)

20. In his Interview Guide dated April 29, 2011, Mr. Lemoine claims he has two immediate supervisors, Melvin Washington and Linda Shipmon. He finds the purpose of his job to be the following:

It has been my job to develop and implement procedures and standards to be used in program monitoring. Once implemented, I oversee and monitor the programs to ensure success. I confer with management, staff, and others after implementation, evaluations, and monitoring to give verbal and written recommendations to change and define the program. I provide on the job trainings and orientation to many personnel from many departments and programs.

(Ex. 5.) He claims that he provides "recommendations, trainings," and defines "the end product [based on model plans and best practices]for the facility as well as the Western Region." Mr. Lemoine claims that he receives,

work assignments from several components on any given day ... from request and inquiries from, the Western Region Administration, Central DYS, Program Administrations, Education Administration, Clinical, Kitchen, Maintenance, Line Staff, and outside State Departments. A substantial amount of times, assignments are created by needs that are recognized by me as daily work is completed.

(Ex. 5.) Although claiming he is directly supervised by Mr. Washington and Ms. Shipmon, Mr.



Lemoine also claims he works independently, sharing his results via reports and emails:

I am responsible for governing a great percentage of my own work, then share information through reports ... may even complete work directed by outside State Departments with their approval upon completion.

(Ex. 5.)

21. By memorandum of April 4, 2012, Joan Bishop Fallon of the EOHHS Human Resources Office informed Mr. Lemoine that his request for reclassification to Program Coordinator II was preliminarily denied. He was given until April 18, 2012 to "submit a rebuttal in writing ... with any additional information you think is applicable." On April 9, 2012, Mr. Lemoine formally declined the option to provide further information about his request, and the denial became final. He was provided with information on how to appeal to the state's Human Resources Division. By letter of August 20, 2012, the Human Resources Division denied his request. He was provided with information on how to appeal to the CSC. Mr. Lemoine timely appealed to the CSC by filing his appeal form on September 11, 2012. (Exs. 1, 2, 3 & 4.)

### **Conclusion and Recommendation**

Mr. Lemoine has shown that he is an outstanding worker and that his superiors recognize his important contributions to the operations of the DYS-EOHHS western region facility. He presented himself at the hearing as a committed and effective professional who is proud of his accomplishments. However, being capable of working in a higher classified position, or being worthy of a promotion are not the standards to employ in a M.G.L. c. 30, § 49 appeal that determines whether you are working the duties of a position other than the one you are in. What Mr. Lemoine carries a burden of proof to show is that he is currently and routinely performing the specific duties of a Program Coordinator II for 51% of the time so that he is improperly classified as a Program Coordinator I. See, *Kurt v. Massachusetts Highway Dept.*, C-09-428 (CSC, 2010); *Wilson v. University of Massachusetts at Amherst*, C-08-287 (CSC, 2010); *Costa v.*

*Dept. of Revenue, C-07-285 (CSC, 2008); Goodridge v. Dept. of Revenue, C-07-186 (CSC, 2008); and, Gaffey v. Dept. of Revenue, C-07-137 (CSC, 2008).*

Unfortunately for Mr. Lemoine, the determination made by the CSC and Commissioner Stein in C-09-420 can be adopted and for the same reasons in this instant request for reclassification to Program Coordinator II. His claim fails because he does not engage in the supervisory duties that are essential duties of a Program Coordinator II. In C-09-420, Mr. Lemoine was found to have directly supervised at finding of fact #26, "two (2) security personnel who are temporarily charged with physically monitoring the campus building while the sprinkler system remains inoperable." No evidence from the current hearing showed this situation has been ongoing. Rather, the evidence shows that Mr. Lemoine does not directly supervise any DYS-EOHHS employee. Mr. Lemoine argues that he does direct supervision when he is instructing, guiding, overseeing, and training a variety of personnel to adhere to required procedures within program areas and special projects, including employees in higher grades than himself within DYS-EOHHS or within other state agencies, and employees of vendors working at the western region campus. I disagree that this is performing the essential duties in regard to supervision exercised by a Program Coordinator II. I was persuaded by the informed testimony of Ms. Bishop Fallon that direct supervision within the Program Coordinator job series means direct supervision covering assigning job tasks to DYS-EOHHS employees within the western region's approved organizational chart, including evaluating their job performances using the Employee Performance Review forms that contain the employee's essential duties for the fiscal year involved. The detailed information in the Program Coordinator job series supports this conclusion regarding what is meant by supervision duties. Obviously, the employees of vendors cannot be governed by Mr. Lemoine this way as they are

employees of independent contractors and not even state employees. The same can be concluded as to state employees in outside agencies, or employees at DYS-EOHHS who are in grades higher than Mr. Lemoine, or are DYS-EOHHS employees in positions directly reporting to other positions within the western region campus's chain of command as shown in the approved organizational chart. (Ex. 7.)

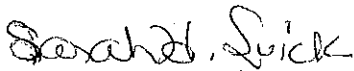
At this point, although the nature of his work does fit within the confines of the Program Coordinator job series, in light of his having no direct supervisory work, it is hard now to fit him into the job description of a Program Coordinator II as he lacks even an assistant below him in the organization chart to directly supervise to help him carry out his duties covering a wide range of programs and projects. In C-09-420, the CSC found Mr. Lemoine was performing for the majority of his time, work that fit within the four corners of a Program Coordinator I. But, I find that for the majority of the time, the nature of Mr. Lemoine's work fits within the Program Coordinator II job series description. This is because the record shows that he works with independence as a self-starter, direct problem solver, and original developer, implementer, and trainer of procedures over numerous program areas and special projects. I found he credibly explained this aspect of how he works, including that he receives more general than direct task supervision from his supervisor for both his program areas and project work. I found this aspect of how he works was bolstered by Mr. Acciardo's testimony and by the comments of his supervisors in his Employee Performance Review forms for the time frame of the Fiscal Years 2010-2011 and 2011-2012. If it were not for his lack of supervisory work over DYS-EOHHS employees within his work unit as previously explained, Mr. Lemoine's essential duties appear akin to Program Coordinator II work.

Unfortunately, through this appeal route, there is no authority for the CSC to provide Mr.

Lemoine with a Program Coordinator II job classification because of the lack of any supervision he is performing as supervisory work is viewed within the job classification series to include assigning tasks to employees in the same working unit and evaluating their regular work performance. No proof has been shown that he is right now performing the work of some other job than the one he has even if Program Coordinator I may not reflect the great responsibility and autonomy he has in performing his present regular work duties.

For these reasons, I recommend that the CSC deny Mr. Lemoine's reclassification request.

**DIVISION OF ADMINISTRATIVE  
LAW APPEALS**



**Sarah H. Luick, Esq.**  
**Administrative Magistrate**  
Dated: **JAN 10 2013**