

The Commonwealth of Massachusetts

SUFFOLK, ss.

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

MARK MacLEAN,
Appellant

v.

**DEPARTMENT OF
CONSERVATION and
RECREATION,**
Respondent

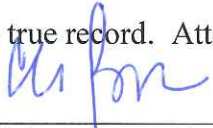
Case No.: C-11-162

DECISION

After careful review and consideration, the Civil Service Commission voted at an executive session on November 3, 2011 to acknowledge receipt of the report of the Administrative Law Magistrate dated September 29, 2011. A copy of the Magistrate's report is enclosed herewith. The Appellant's appeal is hereby *dismissed*.

By 4:1 vote of the Civil Service Commission (Bowman, Chairman – yes; Henderson – yes, Marquis – yes, McDowell – no and Stein – yes, Commissioners) on November 3, 2011.

A true record. Attest.

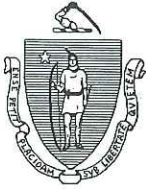


Christopher C. Bowman
Chairman

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. See Curley v. Lynn, 408 Mass 39, 41-42 (1990).

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:
Michelle Gates, Esq. (for Appellant)
Frank Hartig, Esq. (for Appointing Authority)
Richard C. Heidlage, Esq. (DALA)



THE COMMONWEALTH OF MASSACHUSETTS

DIVISION OF ADMINISTRATIVE LAW APPEALS

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RICHARD C. HEIDLAGE
CHIEF ADMINISTRATIVE MAGISTRATE

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September 29, 2011

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

Re: Mark MacLean v. Department of Conservation and Recreation
DALA Docket No. CS-11-349
CSC Docket No. C-11-162

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: Frank Hartig, Esq.
Michelle Gates, Esq.

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CIVIL SERVICE COMMISSION

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Division of Administrative Law Appeals

Mark MacLean,
Appellant

v.

Docket No.: C-11-162/CS-11-349

**Department of Conservation
and Recreation,**
Respondent

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CIVIL SERVICE COMMISSION

Appearance for Petitioner:

Michele S. Gates, Esq.
Massachusetts Organization of State Engineers and Scientists
90 N. Washington St.
Boston, MA 02114

Appearance for Respondent:

Frank Hartig, Esq.
Department of Conservation and Recreation
251 Causeway St., Suite 900
Boston, MA 02114

Administrative Magistrate:

Kenneth J. Forton, Esq.

SUMMARY OF RECOMMENDED DECISION

The Appellant is properly classified as a Civil Engineer V because he only supervises one other position; whereas, his desired classification, Civil Engineer VI, must supervise at least six.

DECISION

The Appellant, Mark MacLean, appealed his classification as a Civil Engineer V after requesting reclassification to Civil Engineer VI pursuant to G.L. c. 30, § 49.

Pursuant to the Civil Service Commission's hearing order, I held a hearing on September 23, 2011 at the office of the Division of Administrative Law Appeals, 98 North Washington Street, Boston.

I admitted sixteen documents into evidence. (Exs. 1-16.) The Petitioner testified on his own behalf. The Respondent called Harry Pierre-Mike, a Department of Conservation and Recreation Workforce Management employee, as a witness. There is one cassette tape of the hearing.

The administrative record closed at the conclusion of the hearing.

FINDINGS OF FACT

Based on the evidence presented by the parties, I make the following findings of fact:

1. The Appellant is currently employed as a Civil Engineer V in the Department of Conservation and Recreation, Bureau of Engineering, and acts as the Parkway Section Head. His work generally involves the maintenance of parkways and other state infrastructures. (Appellant's Testimony; Ex. 11.)
2. Mr. MacLean holds a Bachelor of Science degree in Civil Engineering and a state certification as a Professional Engineer. (Appellant's Testimony; Exs. 6, 14.)
3. Mr. MacLean began working for the Department in 2001 as a Civil Engineer III. (Appellant's Testimony; Ex. 13.)
4. In October of 2003, shortly after the Department's merger with the Department of Environmental Management, the previous Parkway Section Head, Bob Carrigan, retired. Mr. Carrigan was classified as a Civil Engineer V, and Mr. MacLean assumed all of Mr. Carrigan's duties. Mr. MacLean received a raise to the pay grade of a

Civil Engineer V in May of 2005, and he was officially promoted to Civil Engineer V in May of 2007. (Appellant's Testimony; Ex. 13.)

5. In May of 2005, Mr. MacLean began directly supervising a Civil Engineer IV, Frank Machado. Mr. Machado retired in December of 2009, and his position has remained vacant ever since. (Appellant's Testimony; Exs. 9, 11.)

6. Mr. MacLean is directly supervised by David Lenhardt, a Civil Engineer VI. Mr. MacLean is also frequently supervised by Michael Misslin, a Program Manager VII. Mr. Lenhardt supervises six civil engineers, including Mr. MacLean: 3 Civil Engineer Vs, 2 Civil Engineer IVs, and one Civil Engineer III. (Appellant's Testimony; Exs. 6, 11.)

7. Mr. MacLean manages an annual budget of between four and five million dollars, approximately half of the Department's total maintenance budget. (Appellant's Testimony; Ex. 7.)

8. Mr. MacLean's primary duties involve the planning and managing of five recurring maintenance contracts (Resurfacing, Sidewalks, Fence/Guardrail and Gates, Catchbasin/Manhole Rebuilding, and Tennis/Basketball Court Rehabilitation). When the contracts renew every other year, Mr. MacLean drafts a proposed maintenance plan, solicits bids from pre-approved contractors, reviews the bids, submits the bids to the financial department, and provides the contractors with technical specifications and special instructions as necessary. (Appellant's Testimony; Ex. 7.)

9. Mr. MacLean's less frequent duties include: (1) reviewing and establishing conditions for Department permits; (2) overseeing complex construction projects; (3) contacting politicians and town officials regarding his work; and (4) using

surpluses in his budget to absorb work from other sections in the Department.

(Appellant's Testimony; Exs. 7, 9, 12, 15, 16.)

10. The two complex construction projects that Mr. MacLean oversaw were projects in Saugus and on Storrow Drive/Soldiers Field Road, both completed in 2009, that extended beyond mere maintenance into full construction projects. (Appellant's Testimony; Exs. 15, 16.)

11. Since the merger with the Department of Environmental Management, three of Mr. MacLean's five recurring contracts have become statewide (whereas they previously only covered maintenance for infrastructure in part of the state, generally within the Route 128 beltway) and the other two have expanded in territory. In addition, budgetary constraints over the last couple of years have caused an increase in Mr. MacLean's workload. (Appellant's Testimony.)

12. On June 22, 2010, Mr. MacLean filed an appeal with the Department's Office of Human Resources to have his title reclassified from Civil Engineer V to Civil Engineer VI. (Appellant's Testimony; Exs. 8, 9.)

13. According to the most recent Civil Engineer Classification Specification, which was last updated and approved in 1989, the duties of a Civil Engineer VI that differ from that of a Civil Engineer V are:

- "1. Serve as assistant to the District Highway Engineer in administering all operations and supervise a major district division such as projects, maintenance, or construction.
2. Direct the preparation and/or review of plans, specifications, and cost estimates for complex highway, bridge or building projects.
3. Supervise the operations of a major unit of a department, such as construction, highway or bridge design, maintenance, environmental, traffic, state aid, or specifications.
4. Supervise data processing operations for the solution of engineering projects."

Ex. 10.

14. The Civil Engineer Classification Specification provides that a Civil Engineer V directly supervises between one and five professional personnel and indirectly supervises between six and fifteen professional personnel. A Civil Engineer VI directly supervises between six and fifteen professional personnel and indirectly supervises between six and fifteen professional personnel. (Pierre-Mike Testimony; Ex. 10.)

15. Mr. MacLean completed an Appeal Audit Interview Guide and received an audit interview from Mr. Pierre-Mike and Cheryl Ferrando, the DCR Classification Coordinator, on August 13, 2010. Mr. MacLean explained his then current duties and why he thought that he should be reclassified as a Civil Engineer VI. (Pierre-Mike Testimony; Ex. 6.)

16. On November 9, 2010, the Department's Office of Human Resources denied Mr. MacLean's appeal for reclassification. The appeal was denied because Mr. MacLean does not supervise enough personnel and because the scope of his duties has not significantly changed since his last reclassification. (Pierre-Mike Testimony; Exs. 4, 5.)

17. On November 16, 2010, Mr. MacLean appealed his reclassification to the Executive Office for Administration and Finance Human Resources Division. The Human Resources Division agreed with the Department that Mr. MacLean was properly classified as a Civil Engineer V and denied Mr. MacLean's request on November 30, 2010. (Exs. 2, 3.)

18. On May 5, 2011, Mr. MacLean filed a timely appeal of the Department's decision with the Civil Service Commission. (Ex. 1.)

CONCLUSION AND RECOMMENDATION

After carefully reviewing the evidence presented in this appeal, I recommend that the Appellant remain classified as a Civil Engineer V and that his request to be reclassified as a Civil Engineer VI be denied.

In coming to this decision, I have largely looked to the Civil Engineer Classification Specification for the job duties of a Civil Engineer V and Civil Engineer VI. Mr. MacLean also produced two Form-30 job descriptions for a Civil Engineer V: one signed by himself and Mr. Lenhardt in 2006 and another similarly signed in 2010. Neither of the Form 30s was signed by the Appointing Authority; instead the Form 30s were composed by Mr. Lenhardt in conjunction with Mr. MacLean. This fact makes the Form 30s unreliable as evidence of the duties that DCR as an organization expected from a Civil Engineer V or from Mr. MacLean. Although the Civil Engineer Classification Specification is now 22 years old, it still largely describes the duties of the civil engineers at DCR and, more specifically, Mr. MacLean's duties.

In order to meet his evidentiary burden for reclassification, Appellant must prove that he meets the supervisory requirements of the position he is seeking. *See Kology v. Dep't of Cons. & Rec.*, 21 MCSR 475 (2008) (holding that a request for reclassification was properly denied where employee did not perform certain duties and did not meet the supervisory requirements of the desired job classification); *Conkey v. Dep't of Cons. & Rec.*, 20 MCSR 520 (2007) (holding that a request for reclassification was properly denied where employee did not have certain budget responsibilities and did not supervise anyone). Even if he performed some or most of the duties contained in the desired

classification, failing to meet the supervisory requirements—by itself—is enough to defeat reclassification. *See Dempster v. Dep't of Children, Youth & Families*, 22 MCSR 460 (2009) (holding that a request for reclassification was properly denied where desired classification required supervision of personnel and appellant did not supervise anyone, even where job duties otherwise substantially conformed to desired classification's duties); *Kowalski v. Dep't of Cons. & Rec.*, 21 MCSR 468 (2008) (holding that request for reclassification was properly denied where employee did not exercise direct supervision over personnel as required in the desired job classification); *Dziczek v. Dep't of Cons. & Rec.*, 20 MCSR 200 (2007) (holding that a request for reclassification was properly denied because employee only supervised a summer intern).


Mr. MacLean is no doubt a dedicated and passionate employee who has served Massachusetts well for many years. His workload has clearly increased since his reclassification as a Civil Engineer V (even causing some of his duties to overlap with those of a Civil Engineer VI), but he does not directly supervise enough personnel to warrant further reclassification at this time. While Mr. MacLean has taken on a fair amount of extra work over the years without any extra remuneration, his exemplary performance as a Civil Engineer V does not by itself entitle him to reclassification; he must also meet the specified requirements in the description of a Civil Engineer VI. No amount of hard work can make up for the fact that he only directly supervises one other position (and that position is currently vacant); a Civil Engineer VI directly supervises between six and fifteen positions.

I take Mr. MacLean's point that the numbers of supervisees that a Civil Engineer VI should be supervising, as listed in Classification Specification, may be more

representative of the department and state government during better economic times, but it is still clear that a Civil Engineer VI should be supervising many people, and not just one or two, as the Civil Engineer VI is the highest level Civil Engineer in the series. Perhaps when the dust of recession settles, HRD, DCR and any other interested departments can re-visit the Classification Series and revise the supervisory expectations for each level, if they deem it appropriate in the current economic climate.

For the foregoing reasons, I recommend that the Commission deny the Appellant's request for reclassification to the position of Civil Engineer VI.

DIVISION OF ADMINISTRATIVE LAW APPEALS



Kenneth J. Forton
Administrative Magistrate

DATED: **SEP 29 2011**