

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

CIVIL SERVICE COMMISSION

One Ashburton Place: Room 503
Boston, MA 02108
(617) 979-1900

MELISSA PAGLIA-HURLEY,
Appellant

v.

C-20-057

MASSACHUSETTS REHABILITATION
COMMISSION,
Respondent

Appearance for Appellant:

Pro Se
Melissa Paglia-Hurley

Appearance for Respondent:

Molly Karp, Esq.
Massachusetts Rehabilitation
Commission
600 Washington Street
Boston, MA 02111

Commissioner:

Cynthia A. Ittleman

DECISION

On May 19, 2019, the Appellant, Melissa Paglia-Hurley (Appellant), pursuant to G.L. c. 30, § 49, filed an appeal with the Civil Service Commission (Commission) contesting the decision of the state's Human Resources Division (HRD) to deny her request for reclassification from a Compliance Officer III position (CO III) to a Program Coordinator III position (PC III) at the Massachusetts Rehabilitation Commission. (MRC). On May 26, 2020, a pre-hearing conference was held remotely via Webex. I held a full hearing remotely via Webex on August 3, 2020.¹ The hearing was digitally recorded and recorded through Webex, and both parties were provided

¹ The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§ 1.00 (formal rules), apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

with the recording of the hearing.² The parties filed post-hearing briefs. For the reasons stated herein, the appeal is denied.

FINDINGS OF FACT:

The Respondent's eleven (11) exhibits (Resp. Ex. A-K) and Appellant's fifteen (15) exhibits (App. Ex. A-O) were entered into evidence at the hearing. The Respondent and the Appellant submitted post-hearing exhibits (Resp. PH 1-5 and App. PH 1-5). Based on these exhibits and stipulated facts; the testimony of the following witnesses:

Called by the MRC:

- Cyndie Smey, Classification and Compensation Analyst, Executive Office of Health and Human Services (EOHHS)

Called by the Appellant:

- Melissa Paglia-Hurley, Appellant
- Patricia Cody, Director of Medical Contract Management, Disability Determination Services, Massachusetts Rehabilitation Commission (MRC);

taking administrative notice of all pertinent rules, statutes, regulations, case law, and policies; and drawing reasonable inferences from the credible evidence; a preponderance of evidence establishes the following facts:

1. The Appellant is employed as a Medical/Professional Relations Officer in the Disability Determination Services division (DDS) with the MRC. Her job classification is Compliance Officer III (CO III). (Stip. Facts).
2. The Appellant has been employed by the MRC since 2002. She has worked in her current classification since 2008. (Stip. Facts).

² If there is a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to supply the court with a transcript of this hearing to the extent that he/she wishes to challenge the decision as unsupported by substantial evidence, arbitrary or capricious, or an abuse of discretion. In such cases, the recording should be used by the plaintiff in the judicial appeal to transcribe the recording into a written transcript.

3. The Disability Determinations Services division of the MRC hires disability examiners and medical consultants to determine eligibility of Massachusetts applicants for Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI). (Appellant Testimony).
4. The Appellant has won two personal awards and two awards as a member of a team during her employment with the MRC: the Commissioner's Award for Outstanding Performance in 2013 and 2014; the Social Security Administration Regional Commissioners Team Award in 2013; and the Commonwealth Citation for Outstanding Performance in 2015 for "attainment of high priority agency objectives, exceptional managerial, organizational and/or communications achievements, exemplary leadership, achievement of significant improvements in productivity and/or cost savings in agency operations". (App. PH 1; Appellant Testimony).
5. On May 19, 2019, the Appellant submitted a classification appeal to the agency's Human Resources Bureau seeking the title of Program Coordinator III (PC III). (Stip. Facts).
6. Classification Analyst Cindy Smey handled the Appellant's appeal. Ms. Smey provided the Interview Guide to the Appellant and once the Appellant completed it, sent the document to the management team for review. Ms. Smey also reviewed the Appellant's Form 30, job duties on her EPRS and compared the job specification for the PC III and CO III titles. (Resp. Ex. G; App. Ex. A; Smey Testimony).
7. The Form 30 for a Compliance Officer III states that the incumbent in this position will perform the following duties:
 - Serve as the liaison between the DDS and medical consultants, service providers, federal and state agencies, public and private entities on issues related to contracts;
 - Serve as liaison between the DDS and medical consultants, attorneys, claimants and the Social Security Administration on legal issues such as subpoenas, depositions, and other legal documents;

- Oversee claimant satisfaction surveys regarding consultative examinations, analyzes data, prepares reports and makes recommendations to the director of Medical Contracts, Management and Professional Relations.
- Be responsible for the effective oversight of relations with the medical community at large, consultative examiners, outside interpreters and photocopy services in order to ensure compliance with the need to provide timely, effective receipt of medical information needed to adjudicate Social Security disability claims.
(Resp. Ex. H).

8. The duties listed on the Appellant's EPRS are as follows:

Duty 1: Identify area of need in which to recruit medical, psychiatric and psychological consultants for the purpose of performing consultative examinations.

Duty 2: Oversee consultative examiners' performance to ensure contracted services are delivered.

Duty 3: Monitor medical community providers of Medical Evidence of Record (MER) to ensure timely, effective compliance with requests for evidence needed to document disability claims.

Duty 4: Handle contracts for In-House Consultants and CE Doctors.

Duty 5: Function as back up supervisor for policy and operations of CE Placement and Invoice Verification units for compliance with Social Security Administration requirements and Agency needs.

Duty 6: Establish and maintain a respectful and harmonious working relationship with others.
(Resp. Ex. I).

9. The classification specification for the Compliance Officer series states that employees in this series monitor, *for compliance purposes*, various activities, services or functions for an assigned agency program area; review complaints, documents and pertinent information concerning alleged violations of laws, rules and regulations; maintain liaison with assigned agency personnel; obtain evidence and establish facts concerning complaints and cases of alleged non-compliance with laws, rules and regulations; confer with parties to complaints; prepare reports; and perform related work as required. (Resp. Ex. J) (emphasis added).

10. The CO III position is the first level supervisory job in this series. It is distinguished from CO I and CO II in that the CO III: (1) oversees and coordinates assigned *unit* activities in order to ensure effective operations and compliance with laws, rules, regulations, and polices; (2) provides on-the-job training for employees; (3) reviews and analyzes reports and memoranda for accuracy, completeness, and to take appropriate action to resolve problems; and (4) confers with management staff and other agency personnel in order to provide information to resolve problems and/or to recommend changes in policies and procedures. (Resp. Ex. J) (emphasis added).
11. The classification specification for the Program Coordinator (PC) series states that employees in this series “ ... coordinate and monitor assigned program activities; review and analyze data concerning agency program; 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.” (App. Ex. A).
12. In addition to the duties incumbent upon all three levels within the PC series, a PC III is also required to “ ... 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.” (Id.) There is insufficient information in the record to establish that the Appellant performs these duties.
13. The PC III is the third-level supervisory job in this series. Specifically, PC IIIs “ ... 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

... over 6-15 professional, administrative, technical, and/or other personnel.” (Id.) There is no indication in the record that the Appellant exercises direct supervision of 1 to 5 professional personnel and indirect supervision of 6 to 15 personnel.

14. The minimum entrance requirements of a PC III are: “...(A) four years of full-time, or equivalent part-time, professional, administrative or managerial experience in business administration, business management or public administration the duties of which involved program management, program administration, program coordination, program planning and/or program analysis, and (B) of which at least one year must have been in a supervisory capacity, or (C) any equivalent combination of the required experience and the substitutions below.” (App. Ex. A) The substitutions are a Bachelor’s degree or graduate degree in business administration, business management or public administration (which may be substituted for a maximum of three years of the required (A) experience) or other related Bachelor’s or graduate degree. (Id.). There is insufficient information in the record to establish that the Appellant satisfies the supervisory requirements of the PC III position. Similarly, there is insufficient information in the record indicating that the Appellant has program management, program administration, program coordination, program planning and/or program analysis experience.

15. Several Form 30s for a variety of PC III positions list some common or similar responsibilities of that position, such as the following:

- Design, coordinate, and monitor assigned program activities.
- Develop, review and analyze data concerning agency training needs.
- Conduct statewide training programs in order to meet the specific needs of managerial, supervisory counseling and clerical staff.
- Provide technical assistance, training, consultation, and problem-solving assistance to agency personnel at all levels, as appropriate.
- Respond to inquiries regarding agency training policies, procedures and programs, and specific operations.

- Confer with all agency administrators, managers and staff in order to provide information concerning program recommendations, implementation, evaluation, and monitoring.
- Maintain liaison with various community agencies, educational institutions, service providers, vendors, consultants and facilities.
- Supervise and assign work activities to unit support staff, as appropriate to program goals.

(Resp. PH 4).

16. The Appellant is seeking a change in classification because she saw a job opening for a Program Coordinator III at MRC that she asserts has duties similar or equal to her own.

(Appellant Testimony).

17. On her Interview Guide, the Appellant wrote that the purpose of her job was to “initiate initial contracts and amend contracts for in-house medical consultant[s] and those providing consultative examinations, as well as taxis, interpreters, and translation services, this includes posting RFP’s...,” reviewing bids, and ensuring all adherence to all rules and regulations and making recommendations to managers. She also wrote, “I am also responsible for recruiting and overseeing medical consultants and providing technical support to the medical community.” (Resp. Ex. G).

18. In her Interview Guide, the Appellant asserted that more than 51% of her job duties were in line with the duties of a Program Coordinator III because she coordinates and monitors program activities relating to contracts and provides technical assistance and training. Additionally, she asserted that she investigates and responds to complaints, a responsibility of a Compliance Officer III, but stated that complaints do not constitute the majority of work that she performs. (Resp. Ex. G; Appellant Testimony).

19. The Appellant asserts that she allots the following percentages to her job functions:

- 60% - Hiring and overseeing consultative examiners including activities such as recruitment, posting Requests For Response (“RFR”) and compliance related tasks such as verifying medical licensure, reviewing contract awards, training examiners,

investigating and responding to complaints, ensuring forms are current and acting as a liaison between the agency and examiner/providers.

- 10% - Training and technical support for providers on use of the medical records exchange platform, SSA Electronic Records Express.
- 10% - Generate and review reports related to response time from vendors, analyze complaint patterns and make recommendations relating to timely submission and program requirements.
- 10% - Engage with disability examiners and provide guidance regarding policies related to requesting records from medical providers.
- 10% - Various other duties.

(Resp. Ex. G; Appellant Testimony).

20. The Appellant believes that communicating with the vendors (disability examiners) whom she trains to adhere to agency procedures, and verifying the content and format of reports for use in disability determinations, are more “program-related” than compliance-related because, without her work the program would not be able to run effectively. (Appellant Testimony).

21. Job changes that the Appellant asserted in her Interview Guide included being involved with annual federal and state requests, reporting and use of medical codes; assisting with the Federal Annual Oversight Report; preparing information for audits; updating the CPT list; Freedom of Information requests; maintaining provider information (reviewing credentialing and debarred status of disability examiners), and contract matters (posting RFRs, functioning as the point of contact, tracking hiring dates and pay, entering contracts and amendments into databases, and ensuring proper forms for hiring protocols). (Resp. Ex. G).

22. The Appellant trains contracted employees to receive and send paperwork regarding disability determinations using a federal database. In this role, she communicates with vendors and the Social Security Administration concerning technical assistance. She reviews the vendors’ reports to make sure they are complete; provides incentives to vendors to timely submit records to the MRC; and ensures that the organization and its disability examiners complete their functions according to pertinent regulations. (Appellant Testimony).

23. The Appellant's supervisor and Director of Medical Contract Management, Pat Cody, believes that the Appellant should be reclassified because some of the duties she is performing, particularly the technical training to vendors about the Social Security online database, are outside of the enumerated duties of a CO III. (Cody Testimony).
24. Ms. Cody values the Appellant's performance and expertise, especially the Appellant's excellent computer skills. Ms. Cody asserted that the website and technical expertise now required for the Appellant's position is an addition to the position's former responsibilities. (Cody Testimony).
25. The agency's Human Resources office considers the Program Coordinator III to be a position that generally oversees an entire program, not a part or narrow piece of a larger program. For example, on the Form 30s of PC IIIs, it states that the incumbent in the PC III position will "develop, review and analyze data concerning Agency training needs," including developing a State-wide computer skills training"; be responsible for administering a grant to develop a grant to, among other things, improve the national impact of the program through national coordination of and collaboration with other grantees; and be responsible to "assist in overseeing all aspects of the human resources function for the agency." (Resp. PH Ex. 4; (Smey Testimony).
26. Ms. Smey, a Personnel Analyst with EOHHS who has reviewed over 200 classification appeals, examined the Appellant's job duties and reviewed the Appellant's appeal for a reclassification. (Resp. Ex. F; Smey Testimony).
27. In the Appeal Audit Report Form. Ms. Smey indicated that the Appellant's duties fall within the Compliance Officer series, and therefore, a reclassification was not warranted. Ms. Smey explained that because the tasks described in the Interview Guide, duties listed on the Appellant's EPRS, and the duties listed on the Form 30, pertain to a particular part of a

program, they are within the Compliance Officer Specifications. (Resp. Ex. F; Smey Testimony).

28. On July 1, 2019, Ms. Smey informed the Appellant that the Appellant's request for reclassification was denied. (Resp. Ex. D).

29. The Appellant appealed EOHHS's decision to HRD. This appeal was denied on February 20, 2020. (Resp. Ex. D).

30. The Appellant duly filed this appeal. (Administrative Notice)

Legal Standard

“Any manager or employee of the commonwealth objecting to any provision of the classification of his office or position may appeal in writing to the personnel administrator and shall be entitled to a hearing upon such appeal Any manager or employee or group of employees further aggrieved after appeal to the personnel administrator may appeal to the civil service commission. Said commission shall hear all appeals as if said appeals were originally entered before it.” G.L. c. 30, § 49.

The Appellant has the burden of proving that she is improperly classified. To do so, she must show that she performs the duties of the title she seeks more than 50% of the time. Gaffey v. Dep't of Revenue, 24 MCSR 380, 381 (2011); Bhandari v. Exec. Office of Admin. and Finance, 28 MCSR 9 (2015) (finding that “in order to justify a reclassification, an employee must establish that he is performing the duties encompassed within the higher level position a majority of the time . . .”).

Parties' Positions

The MRC argues that the primary nature of the Appellant's job is to advertise for contractors and train contractors once hired, as well as to investigate complaints related thereto and that the Appellant's job duties fall within the scope of a CO III. The purpose of the position is to recruit

vendors, initiate contracts, and make amendments to those contracts for in-house medical consultants and other vendors to enable individuals to be evaluated for determinations of medical disabilities. Further, MRC asserts that, as a CO III, the Appellant ensures that the procurement process and performance on contracts related to consultative examinations comply with state and federal regulations and policies, which are functions within a compliance series. Further, MRC argues that the Appellant's role in the overall program of Disability Determination Services directly involves compliance activities. In all, MRC avers, the Appellant is correctly classified as a CO III.

The Appellant argues that she has new job duties of advertising for and training medical consultants and other vendors, which are "program-related," as opposed to relating to compliance. Additionally, she asserts that her expertise with the Social Security Administration's website makes her the "go-to" person for troubleshooting technical issues. Because these functions are essential to the program, she maintains, these duties constitute "program-related" responsibilities. The Social Security Administration Program relies on the SSA website to request and receive medical records and consultative examination reports, which she reviews, and are an integral part of the Disability Program. The Appellant finally argues that compliance generally relates to only a small part of her duties, especially as only a small part of what she does on a daily basis involves investigating complaints.

Analysis

The Appellant has not shown that she performs the duties of a PC III more than 50 % of the time.

It is true that the word "compliance" connotes complaint resolution and, in this sense, the Appellant does work on complaints. Importantly, however, the HRD Classification Specification series for Compliance Officers provides that their primary purpose is to perform particular duties

for compliance purposes, including “various activities, services or functions”. As the CO series indicates, these functions are performed “for an assigned agency program *area*.”

The Appellant is performing some of the overlapping duties of a PC III. She has designed a database to evaluate providers; she provides technical assistance to agency personnel; and confers with agency administrators, managers and staff to provide information concerning program monitoring, such as when she checks for vendor licensing requirements. Another overlapping duty between the PC III and the CO III is to participate in agency projects, which the Appellant has done by participating in committee work and engaging in pilot projects with the federal government.

The Appellant’s assertion that many of her job duties do not fall under the compliance officer categorization is not accurate. That the Appellant monitors the hiring, training, and reports of the vendors who contract for the specific purpose of evaluating candidates for disability determinations, and that this represents a change from her previous duties, does not mean that the new duties are those belonging to a different classification specification.

The bottom-line purpose of the job responsibilities at issue here may be the most overt difference between the Appellant’s responsibilities as a CO and the responsibilities for program oversight as specified in the Form 30s of PC IIIs. The Appellant’s work is conducted so that the Commonwealth’s procedures and determinations regarding Social Security benefits are in alignment with state and federal law. This includes the Appellant’s troubleshooting and training of vendors on the Social Security’s website/database, which the disability examiners utilize, being a liaison to assigned agency personnel, and preparing reports. The Appellant performs these duties for the program area of Disability Determination Services—not for an entire program.

The Appellant's job functions, even though they assist in maintaining a part of the larger program of disability determination, are in place because of the MRC's need to comply with Social Security policies and procedures, as well as the Commonwealth's policies established to align with those federal guidelines. The agency's reports ultimately must fall in line with federal and state guidelines to determine whether candidates are eligible for the federal programs abbreviated as SSDI or SSI. That is not to say that all job responsibilities that primarily administer federal guidelines fall under the "compliance umbrella"; but here the discrete duties of advertising, reviewing, and running license checks on vendors do not constitute running a program or overseeing all aspects of an agency's functions.

In her Interview Guide, the Appellant listed the reasons she thought that the classification of Program Coordinator III was better suited to her job duties. These duties, such as hiring and overseeing consultative examiners, conducting training about the Social Security Administration's database, generating and reviewing reports about complaint patterns, and ensuring timely submission of data, are the same as the duties listed on her own Form 30. These duties match up with the duties of a CO III: (1) oversees and coordinates assigned *unit* activities in order to ensure effective operations and compliance with laws, rules, regulations, and polices; (2) provides on-the-job- training for employees; (3) reviews and analyzes reports and memoranda for accuracy, completeness, and to take appropriate action to resolve problems; and (4) confers with management staff and other agency personnel in order to provide information to resolve problems and/or to recommend changes in policies and procedures.

In all, the Appellant does not provide oversight of, or coordinate a program. Rather, she performs work specific to a unit function, which is to primarily work with vendors in the processing of disability determinations. It is clear the Appellant contributes a great deal to the Disability Determination Services division of the MRC. However, the Appellant has not shown

that in performing her valuable duties she is performing the job duties of a PC III at least 51% of the time. Therefore, the reclassification to a PC III is not warranted. In addition, the Appellant has not established that she performs the supervisory functions of a PC III or that she satisfies the minimum entrance requirements of a PC III.

Conclusion

For all of the above reasons, the Appellant's appeal under Docket No. C-20-057 is hereby

denied.

Civil Service Commission

/s/ Cynthia A. Ittleman

Cynthia A. Ittleman

Commissioner

By a vote of the Civil Service Commission (Bowman, Chair; Camuso, Ittleman, Tivnan, and Stein, Commissioners) on July 1, 2021

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)(I), 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 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. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his/her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d).

Notice to:

Melissa Paglia-Hurley (Appellant)

Molly Karp, Esq. (for Appointing Authority)

Michele Heffernan, Esq. (HRD)