

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

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

GARY PALMIERI,
Appellant

v.

Case No.: C-12-276

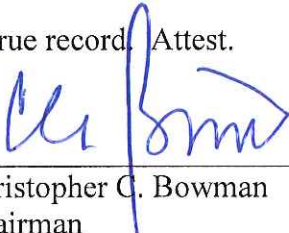
**DEPARTMENT OF
REVENUE,**
Respondent

DECISION

The Civil Service Commission (Commission) voted at an executive session on April 18, 2013 to acknowledge receipt of the Recommended Decision of the Administrative Law Magistrate dated February 28, 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, McDowell and Stein, Commissioners) on April 18, 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 Palmieri (Appellant)
Judyane M. Lazar, Esq. (for Respondent)
John Marra, Esq. (HRD)
Richard C. Heidlage, Esq. (Chief Administrative Magistrate, DALA)



THE COMMONWEALTH OF MASSACHUSETTS

DIVISION OF ADMINISTRATIVE LAW APPEALS

ONE CONGRESS STREET, 11TH FLOOR

BOSTON, MA 02114

RICHARD C. HEIDLAGE
CHIEF ADMINISTRATIVE MAGISTRATE

TEL: 617-626-7200
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February 28, 2013

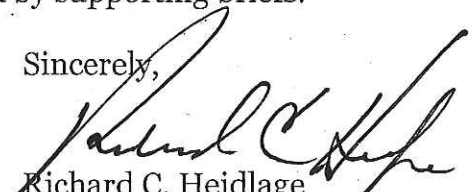
Christopher C. Bowman, Chairman
Civil Service Commission
One Ashburton Place, Room 503
Boston, MA 02108

Re: Gary Palmieri v. Department of Revenue
DALA Docket No. CS-12-635
CSC Docket No. C-12-276

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 Palmieri
Julyane M. Lazar, Esq.

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COMMONWEALTH OF MASSACHUSETTS

Division of Administrative Law Appeals
1 Congress Street, 11th Floor
Boston, MA 02114
www.mass.gov/dala

Gary Palmieri,
Appellant

v.

Docket No. C-12-276
DALA Docket No. CS-12-635

Department of Revenue,
Appointing Authority

Appearance for Appellant:

Gary Palmieri

Appearance for Appointing Authority:

Julayne M. Lazar, Esq.
Director, Office of Labor Relations
Department of Revenue
100 Cambridge Street
P.O. Box 9553
Boston, MA 02114-9553

Administrative Magistrate:

Kenneth Bresler

SUMMARY OF RECOMMENDED DECISION

The Appellant has not met his burden of proving that he is improperly classified as a Program Coordinator II. He has not shown by a preponderance of the evidence that he is performing the majority of the duties of a Management Analyst III more than 50% of the time.

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CIVIL SERVICE COMMISSION

RECOMMENDED DECISION

The appellant, Gary Palmieri, appeals, under G.L. c. 30, § 49, the decision of the Human Resources Division to reallocate him from a Management Analyst II position to Program Coordinator II position, instead of promoting him to the Management Analyst III position that he had sought.

I held a hearing on November 26, 2012, which I recorded digitally, at the Division of Administrative Law Appeals, One Congress Street, Boston. Mr. Palmieri testified, and called no other witness. The Appointing Authority called two witnesses: Raymond A. Piccinni, the Deputy Bureau Chief of the Data Center Management Bureau, which is part of the Information Services Organization, which in turn is part of the Executive Office for Administration and Finance; and Geralyn Page, a manager and personnel analyst, who, during her 11 years of work in human resources supervised Civil Service classification, among other things.

I accepted into evidence 17 exhibits, including 1 through 15 during the hearing. I left the record open to receive Exhibits 16 and 17, which Mr. Palmieri mailed after the hearing, as I gave him permission to do during the hearing.

Both parties submitted proposed decisions. To the extent that Mr. Palmieri proposed that I find facts not in evidence, and consider the attachments to his proposed decision, I did not consider the proposed facts or attachments.

Findings of Fact

1. The Department of Revenue (DOR) hired Mr. Palmieri on May 20, 1990. (Stipulation, Palmieri testimony.)
2. On February 26, 1995, Mr. Palmieri was appointed to a Management Analyst (MA) II position. (Stipulation, Palmieri testimony.)

3. Under Executive Order 510 and Information Technology (IT) consolidation, Mr. Palmieri became an employee of the Executive Office for Administration and Finance. (Stipulation, Piccinni testimony.)

4. Mr. Palmieri now works in Data Center Management Bureau, Information Services Organization, Administration and Finance. (Stipulation, Piccinni and Palmieri testimony, Ex. 3.)

5. The Bureau's general work is to make sure that printed data from DOR, including correspondence, demands, bills, and reports, are properly produced, including printed, and properly distributed, including mailed. (Piccinni testimony.)

6. On November 29, 2011, Mr. Palmieri described the "basic purpose" of his position as "oversee[ing] all production output from the Data Center Management Bureau computer room"; responsibility for "the quality control, processing and delivery or mailing of over 38 million [pieces of] printed material," including checks, notices, [and] forms"; responsibility "for all correspondence" with banks; and responsibility for "all ordering." (Ex. 8.)

7. Also on November 29, 2011, Mr. Palmieri described his "Specific Duties," listing the "most important first" and "the percentage of time spent on each." (Ex. 8.) The first six entries, accounting for 50% of his time, follow:

- A. Perform or monitor the folding and sealing of checks, 10%.
- B. Perform or monitor the verification, inspection, and processing of notices and forms, 12%.
- C. Perform or monitor the daily accounting worksheet for refunds and offsets, 3%.
- D. Perform or monitor the daily verification of file transfers to banks, 5%.

E. Perform or monitor the ordering of supplies, 10%.

F. Perform or monitor the inventorying of supplies and equipment, 10%.

(Ex. 8.)

8. Mr. Palmieri's description of his job and percentages was largely accurate.

(Piccinni testimony.)

9. Mr. Palmieri is an effective, efficient, and conscientious employee in an important position. He is given responsibility and handles it well. He is trusted to supervise employees with workplace issues, some of whom are transferred to his bureau because of his ability to supervise them. (Palmieri and Piccinni testimony.)

10. Mr. Palmieri oversees reports whose production and delivery generate billions of dollars for the Commonwealth. (Piccinni and Palmieri testimony; Exs. 16, 17.)

11. Mr. Palmieri orders hundreds of thousands of dollars of supplies every year, which represents the largest supply budget in DOR. (Piccinni testimony.)

12. On November 14, 2011, Mr. Palmieri began the process of seeking reclassification to become a Management Analyst III, and to raise his grade from 11 to 14 under the National Association of Government Employees (NAGE) contract for Unit 6. (Stipulation, Palmieri testimony, Exs. 5, 7.)

12. To justify reclassification, Mr. Palmieri stated that he had been supervising three employees, two of whom were more highly paid, and that his predecessor had been in Grade 14. (Stipulation, Palmieri testimony, Ex 5.)

13. On January 6, 2012, Sandra Antonucci, an analyst from Administration and Finance's Human Resources Bureau (HRB), e-mailed Mr. Palmieri's supervisor, Mr. Piccinni, stating that she "feel[s]" that Mr. Palmieri was performing the duties of a Management Analyst III; if he

were reclassified, his grade would be 14; and he was supervising an EDP Systems Analyst II with a grade of 12 and a Tax Examiner V with a grade of 16. (Stipulation; Ex. 9.)

14. Ms. Antonucci's e-mail further reported that "HRB is a little concerned about the staff that Gary supervises," namely, their grades; asked if the tax examiner would still report to Mr. Palmieri; asked if Mr. Piccinni "feel[s] comfortable with HRB's recommendation of placing Gary at the MA III level"; and stated, "I see no reason to deny this request." (Ex. 9.)

15. Ms. Antonucci's e-mail was not a decision to reclassify Mr. Palmieri to MA III.

16. Ms. Page, a more senior analyst in the Human Resources Bureau, later determined that Mr. Palmieri should be classified, not as a Management Analyst II or III, but as a Program Coordinator (PC) II. (Stipulation; Page testimony; Ex. 10.)

17. "The basic purpose" of the work of Management Analysts working for the Commonwealth, I through III, is in part

to analyze and review organizational structures, agency policies and practices and management systems in order to recommend changes in organization, programs, methods, policies, procedures and practices.

(Ex. 1.)

18. In contrast, the summary job description for Program Coordinators working for the Commonwealth, I through III, is to

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. 2.)

19. The Management Analyst position tends to be a strategic one; the Program Coordinator position tends to be an operational one. (Page testimony.)

20. Between analyzing policies and practices and making recommendations, on one hand, and, on the other hand, implementing policies and practices and making sure that output is produced in the Data Center Management Bureau, Mr. Palmieri spends 70% of his time on the second function. (Palmieri testimony.)

21. In February 2012, HRB sent Mr. Palmieri a preliminary decision reclassifying him as a Program Coordinator II with a grade of 12, and increasing his annual salary from \$62,906 to \$65,933.66. (Stipulation; Ex. 11 (includes dates of Feb. 10 and Feb. 14, 2012).)

22. HRB justified its preliminary decision by stating that Mr. Palmieri does not regularly perform four duties:

A. Plans and implements “studies to determine the effectiveness of methods, systems, procedures, etc.”

B. “Coordinates assigned unit activities to ensure effective operation and compliance with established standards.”

C. “Reviews reports, memoranda, etc. for completeness, accuracy, and content.”

D. Directly supervises one to five “professional personnel.”

(Ex. 11.)

23. The four duties in the preliminary decision are drawn from the description of a Management Analyst III’s duties. (Ex. 1, pp. 2, 3.)

24. Mr. Palmieri performs duty B as envisioned by the classification specification. He does not perform duty C as envisioned by the classification specification; the documents that he reviews are not strategic ones. He does not perform duty A. It is unclear whether the three

employees he supervises are “professional personnel,” especially because they may be under discipline (Piccinni testimony), and thus unclear whether he performs duty D.

25. Mr. Palmieri’s duties match those of a Program Coordinator II (Ex. 2).

26. However, the preliminary decision did not describe a Program Coordinator II’s duties. (Ex. 11.) Thus, the preliminary decision did not present Mr. Palmieri with the explicit issue of whether he performed an MA II’s duties as opposed to a PC II’s duties. This apparently framed for Mr. Palmieri the issue of whether he performed an MA II’s duties as opposed to an MA III’s duties.

27. In March 2012, Mr. Palmieri appealed the preliminary decision within HRB. (Stipulation; Ex. 12.)

28. In his appeal, Mr. Palmieri argued, among other things, that he “performed regularly” the four duties in the preliminary decision, without specifying what percentage of his time he spent on them; he supervised three employees; two of whom were at a higher grade; the two employees had workplace problems and Mr. Palmieri should be “compensated correctly” for successfully supervising them; and he interacts with banks on transactions worth millions of dollars to the Commonwealth. (Ex. 12.)

29. On March 6, 2012, Mr. Palmieri’s appeal to HRB was denied. In a final decision, he was “reallocated” from Management Analyst II to Program Coordinator II, with a grade of 12, retroactive to November 14, 2011, when he first requested reclassification. (Ex. 13.)

30. Mr. Palmieri appealed the denial of his reclassification, this time to the Human Resources Division (HRD), which is separate from the Human Resources Bureau (HRB).

31. On September 6, 2012, HRD denied Mr. Palmieri’s appeal, stating that it agreed with the determination that Mr. Palmieri was performing the duties of a PC II. (Stipulation; Ex. 14.)

32. On September 28, 2012, Mr. Palmieri filed an appeal with the Civil Service Commission. (Stipulation; Ex. 15.)

33. Mr. Palmieri explicitly appeals his reallocation from MA II to PC II, and implicitly appeals the denial of his promotion from MA II to MA III.

Discussion

Mr. Palmieri was properly reallocated from an MA II to a PC II position. The MA position tends to be a strategic one; the PC position tends to be an operational one (Page testimony); and Mr. Palmieri spends 70% of his time on operations. (Palmieri testimony.) The description of the PC series accurately describes Mr. Palmieri's duties and does so more accurately than does the description of the MA series.

Mr. Palmieri has not shown by a preponderance of the evidence that he is performing the majority of the duties of an MA III more than 50% of the time. *Gina Hankerson v. Department of Revenue*, CSC No. C-08-96 at 8 (2008).

The fact that Mr. Palmieri successfully looks for ways to improve the bureau's efficient operation (Palmieri and Piccinni testimony) does not change his position from operational to strategic. The fact that Mr. Palmieri is intimately familiar with the policies and practices of the bureau does not change his position from operational to strategic.

Some facts are not relevant to my decision, such as Mr. Palmieri being an effective, efficient, and conscientious employee in an important position.

Some factors and possible factors appear to complicate Mr. Palmieri's situation and may be unfortunate, but are ultimately not relevant to my decision. Among the factors and possible factors are these:

1. Mr. Palmieri was misclassified as a Management Analyst, rather than classified as a Program Coordinator. He was evaluated as a Management Analyst. (Ex. 4.) That is, his supervisor appeared to agree that he was performing the duties of a Management Analyst. (Ex. 4.). However, the evaluation form was general and near-generic (Piccinni testimony), and that form should not and cannot lock in the Appointing Authority into keeping Mr. Palmieri classified as a Management Analyst.

2. Mr. Palmieri's misclassification as an MA was not detected until he applied for reclassification from MA II to MA III. However, I am aware of no bar on the Appointing Authority correcting its misclassification. Common sense certainly permits the Appointing Authority to correct its misclassification and reallocate Mr. Palmieri from Management Analyst to Program Coordinator.

3. Mr. Palmieri testified that: his predecessor, Carl Bowman, held a grade of 14; before assuming his grade of 11, Mr. Palmieri's grade was 6; and Mr. Bowman told Mr. Palmieri that going from Grade of 6 to Grade 11 was too large an increase, but in a few years, Mr. Palmieri would achieve Grade 14. (Palmieri testimony.) Even if Mr. Palmieri's testimony is true (and I do not need to rule on it), the ultimate issue before me is still whether Mr. Palmieri was properly reallocated from MA II to PC II with a new grade of 12. He was.

4. Mr. Palmieri supervises employees with higher grades. However, "when reviewing reclassification appeals, the employer only looks at the duties of the Appellant." *Gaffney v. Department of Revenue*, CSC No. C-11-126 at 6 (2011). The classification of Mr. Palmieri's two supervisees with higher grades "does not entitle the Appellant to the reclassification request." *Id.* The possibility that some employees "are misclassified could be attributed to other preexisting factors, including collective bargaining considerations." *Hankerson*, CSC No. C-08-

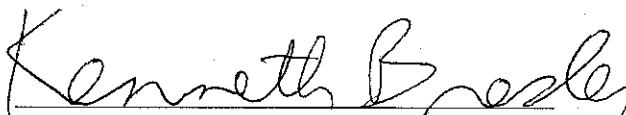
96 at 7 (2008). In this instance, the preexisting factors could be that Mr. Palmieri's two supervisees with higher grades are being disciplined. "That fact does not entitle the Appellant to a reclassification." *Id.*

If one employee's misclassification could or should lead to other employees' misclassification, then one misclassification error could undo all or most of the civil service system: One employee's misclassification could become the basis for a second employee's misclassification, and so on.

Conclusion and Order

I recommend that the decision of HRD affirming the determination that Mr. Palmieri was performing the duties of a PC II in turn be affirmed. Mr. Palmieri has not met his burden of proving that he is improperly classified. He has not shown by a preponderance of the evidence that he is performing the majority of the duties of an MA III more than 50% of the time.

DIVISION OF ADMINISTRATIVE LAW APPEALS



Kenneth Bresler
Administrative Magistrate

Dated: **FEB 28 2013**