

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

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

JULIE PEASE,
Appellant

v.

C-17-144

MASSACHUSETTS PAROLE BOARD,
Respondent

Appearance for Appellant:

Joseph Donnellan, Esq.
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100 River Ridge Drive, Suite 203
Norwood, MA 02062

Appearance for Respondent:

Spencer Lord, Esq.
Deputy General Counsel
Massachusetts Parole Board
12 Mercer Road
Natick, MA 01760

Commissioner:

Christopher C. Bowman

DECISION

On July 17, 2017, the Appellant, Julie Pease (Ms. Pease), pursuant to the provisions of G.L. c. 30, s. 49, filed an appeal with the Civil Service Commission (Commission), appealing the June 21, 2017 decision of the state's Human Resources Division (HRD) in which HRD affirmed the Massachusetts Parole Board (Parole Board)'s denial of her request to be reclassified from Program Coordinator II (PC II) to Program Coordinator III (PC III).

On August 29, 2017, a pre-hearing was held at the offices of the Commission and a full hearing was held at the same location on November 3, 2017¹. The hearing was digitally recorded and one CD was made of the hearing.²

FINDINGS OF FACT:

Fifteen (15) exhibits were entered into evidence. Based on the documents submitted into evidence and the testimony of:

For MPB:

- Denise Saro, Senior Human Resources Manager, Department of State Police;
- Michael Callahan, Executive Director, Parole Board;
- Gloriann Moroney, General Counsel, Parole Board;

For Parole Board:

- Julie Pease, Appellant;
- Timothy Dooling, former General Counsel of Parole Board;

and taking administrative notice of all matters filed in the case, and pertinent statutes, regulations, policies, and reasonable inferences from the credible evidence, I make the following findings of fact:

Background

1. Ms. Pease began her employment with the Parole Board in 1996 as a Paralegal Specialist.

(Testimony of Appellant) She has been a Program Coordinator II (PC II) since 2006.

(Testimony of Appellant)

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.

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, this CD should be used by the plaintiff in the judicial appeal to transcribe the recording into a written transcript.

2. The Parole Board grants parole, supervises the parolee, and makes pardon and commutation recommendations to the Governor. The Parole Board conducts face-to-face parole release hearings, supervising parolees in the community, providing notice and assistance to victims, and providing reentry services to offenders leaving custody with no mandated post-release supervision. (Administrative Notice: <https://www.mass.gov/orgs/massachusetts-parole-board>)
3. The Parole Board's Central Office includes the General Counsel's Office and the Administrative Services Division. (Testimony of Mr. Callahan)
4. Until December 12, 2016, Ms. Pease was assigned to the General Counsel's Office. (Testimony of Mr. Callahan & Ms. Pease)
5. Ms. Pease, as part of her duties and responsibilities, serves as the Clemency Program Coordinator. (Testimony of Mr. Callahan) Ms. Pease has been performing those duties since at least 2006. (Testimony of Ms. Pease and Exhibit 11)
6. The Clemency Program involves the granting of pardons and commutations. (Testimony of Mr. Callahan)
7. Requests for pardons and commutations are received by the Parole Board. Ms. Pease is responsible for receiving the petitions and requesting required documentation from various agencies (i.e. – local police departments, district attorneys' offices, etc.) (Testimony of Mr. Callahan & Ms. Pease; Exhibit 1)
8. Ms. Pease, after reviewing the documentation, prepares a written summary, providing the Parole Board with a factual summary of the various documents. (Testimony of Mr. Callahan)
9. Ms. Pease tracks all petitions and respond to inquiries about them. (Exhibit 1)

10. When necessary, Ms. Pease schedules and coordinates any clemency hearings before the Parole Board. (Exhibit 1)
11. Ms. Pease provides assistance to the Firearms Licensing Review Board (FLRB) and other agencies regarding individuals who have received pardons. (Exhibit 1)
12. Ms. Pease responds to inquiries from Petitioners and others regarding the clemency process. (Exhibit 1)
13. The Clemency Program operates under guidelines issued by the Governor's Office. (Testimony of Mr. Callahan)
14. For most of 2015, new guidelines regarding the Clemency Program were being developed by the Governor's Office. (Testimony of Mr. Callahan)
15. During this time period, petitions were received, but were effectively "frozen" awaiting the new guidelines. (Testimony of Mr. Callahan)
16. During this "freeze" period, Ms. Pease spent approximately 10% of her time on duties related to the Clemency Program. (Testimony of Mr. Callahan)
17. In January 2016, after new guidelines were issued, Ms. Pease participated in a project that included notifying all Petitioners of the new guidelines and determining whether the Petitioner wanted to go forward with his/her request for a pardon or commutation. (Testimony of Mr. Callahan)
18. The issuance of the letters took approximately 2-3 weeks and required at least 50% of Ms. Pease's time. (Testimony of Ms. Callahan)
19. The Petitioners had 90-120 days to respond to the letters, creating a "pause" as the Parole Board awaited the responses. (Testimony of Mr. Callahan)

20. Prior to December 12, 2016, Mr. Pease also performed other duties including the following:
 - a) receive incoming calls and mail; b) answer questions regarding the parole process; c) refer matters to counsel as necessary; c) litigation tracking. (Testimony of Ms. Pease)
21. Starting in September 2015, Ms. Pease performed “executive assistant” duties to the Chairman of the Parole Board, such as maintaining the Chairman’s schedule, booking meetings, etc. (Exhibit 1)
22. On November 21, 2016, Ms. Pease spoke with her supervisor and orally requested to be reclassified to the title of Program Coordinator III (PC III). (Testimony of Ms. Moroney & Exhibit 13h)
23. Ms. Pease’s supervisor summarized that conversation in an email dated November 22, 2016. According to the email, Ms. Pease, among other things, told her supervisor that: a) she had been requesting a reclassification to PC III for many years; b) she did not understand why other employees had been reclassified, including to PC III; and c) “ ... the only reason she [Ms. Pease] can come up with as to why she has not received an upgrade is because of her race ...” (Exhibit 13h)
24. On November 28, 2016, Ms. Pease was notified that she was being reassigned from the General Counsel’s Office to the Administrative Services Division, effective December 12, 2016. (Exhibit 13i)
25. Ms. Pease was “shocked” to learn of the reassignment. (Testimony of Ms. Pease)
26. In her new role, Ms. Pease is primarily assigned to working on human resource issues. Specifically, she is assigned to working on employee benefits. Ms. Pease has no prior experience in employee benefits. (Testimony of Mr. Callahan)

27. I kept the record open for the Parole Board to submit any correspondence related to this reassignment, including when the Parole Board first considered making this reassignment.
28. The Parole Board provided email communication to and from the Executive Director, which appears to show that: a) filling a Program Coordinator II position in the Human Resources Division was considered as early as August 18, 2016; and b) the re-assignment of an “existing PC II in Legal to Administrative Services as PC II” was discussed as early as November 13, 2016, eight (8) days prior to Ms. Pease’s conversation with her supervisor. (Exhibits 13b – 13g)
29. Ms. Pease still performs her Executive Clemency Coordinator duties, working for the General Counsel’s Office one (1) day per week. (Testimony of Mr. Callahan, Ms. Moroney & Ms. Pease)
30. Ms. Pease does not supervise any employees. (Testimony of Mr. Callahan)
31. On or about December 14, 2016, Ms. Pease completed an “interview guide” as part of a written request to be reclassified to the title of PC III. (Exhibit 1)
32. Denise Sarro is a Senior Human Resources Manager in the Massachusetts State Police, the Department of Criminal Justice Information Services, and the Municipal Police Training Council. In December 2016, Ms. Sarro was temporarily assigned to the Parole Board to assist with human resources related matters, including requests for reclassification submitted by employees of the Parole Board. In regard to the instant appeal, Ms. Sarro was asked to review the request for reclassification submitted by the Appellant. (Testimony of Ms. Sarro)
33. On or about January 4, 2017, Ms. Sarro met with Ms. Pease for the purpose of completing a desk audit. During the meeting Ms. Pease and Ms. Sarro reviewed the specific job duties Ms. Pease claimed to be responsible for in her current position as a PC II and which she included

in her written request for reclassification that she submitted on December 14, 2016. Ms. Pease also submitted work product documents she felt supported her request for reclassification, and which Ms. Sarro agreed to review and take under consideration.

(Testimony of Ms. Sarro & Ms. Pease; Exhibits 1 & 2)

34. In addition to meeting with Ms. Pease, Ms. Sarro reviewed the Form 30 for the Appellant's current position as a PC II, the HRD Classification Specifications for the PC Series I-III, and met with Executive Director Callahan and General Counsel Moroney to determine which of the job duties Appellant included in her written request for reclassification were being performed by her on a routine basis. (Testimony of Ms. Sarro; Exhibit 2)

35. On or about March 8, 2017, Ms. Sarro submitted her written findings to Executive Director Callahan. (Testimony of Ms. Sarro; Exhibit 2)

36. Ms. Sarro's written findings identified the representative routine duties of Ms. Pease's position as a PC II assigned to the General Counsel's Office and compared those duties to the job duties listed in the Classification Specification for the position of PC II. Ms. Sarro's written findings also identified the level distinguishing duties of a PC III and compared those duties to the representative routine job duties of Ms. Pease's current position as a PC II. (Exhibit 2)

37. Ms. Sarro's written findings included the following, among other relevant statements:

"I found that the duties and responsibilities assigned to Ms. Pease are not reflected in any of the differences that are depicted above for a Program Coordinator III but rather are accurately depicted in the level of Program Coordinator II of which she is currently classified. She is not responsible for the development or implementation of standards used to monitor or evaluate a program. She is not responsible for overseeing or monitoring the activities of assigned unit nor does she confer with management staff and others concerning program implementation, evaluation and monitoring. These are all duties that are the responsibility of the General Counsel and/or Deputy General Counsel within the Legal Unit of the Parole Board. Although Ms. Pease is responsible for processing and coordinating all requests for Executive

Clemency, she does so under the direction and final approval of the General Counsel. The Executive Clemency duty is administrative coordination in nature requiring her to compile documents, review them for accuracy and maintain files and databases to reflect accurate data. It was clearly evident, based on my comparison of her duties, that all of Ms. Pease's assigned duties and responsibilities are accurately reflected in her current position title Classification of Program Coordinator II." (Exhibit 2)

38. Mr. Callahan reviewed and adopted Ms. Sarro's written findings and denied Ms. Pease's request for reclassification to the position of PC III. (Testimony of Mr. Callahan)

Legal Standard

"Any manager or employee of the commonwealth objecting to any provision of the classification affecting 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.

Ms. Pease must show that she performs the distinguishing duties of the PC III title more than 50% of the time. See Gaffey v. Dept. of Revenue, C-11-126 (July 18, 2011); see also 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 duties encompassed within the higher level position the majority of the time. . .").

Analysis

I am concerned about the timing of events here. Seven (7) days after Ms. Pease effectively raised allegations of racial discrimination regarding why she had not received a reclassification or upgrade allegedly received by other employees, she was reassigned from the General Counsel's Office to the Administrative Services Division. According to Ms. Pease, she was "shocked" by the reassignment. Her reaction was understandable, considering that she had no

prior experience regarding her new job duties which related to the employee benefits of the one hundred seventy-four (174) employees of the Parole Board; and she was told to “go online” to educate herself on the topic.

I reviewed the relevant testimony and exhibits regarding whether the Parole Board’s actions here were retaliatory in nature. The testimony that Ms. Pease was reassigned because she had a skill set well-suited for this employee benefits position was not persuasive. However, it does appear that the Parole Board, unbeknownst to Ms. Pease, was already contemplating her reassignment prior to her claim of racial discrimination, suggesting that the reassignment was not retaliatory. Even if this is the case, a far more prudent course of action here would have been to put a hold on any personnel actions related to Ms. Pease until her allegations of racial discrimination were fully investigated. Processing Ms. Pease’s *reclassification* request does not get to the core of the allegations she raised with her supervisor. The Parole Board, if it has not already done so, should take all appropriate steps to investigate the allegations of racial discrimination raised by Ms. Pease.

As referenced above, the Civil Service Commission’s role here, under G.L. c. 30, § 49, is limited to determining whether Ms. Pease should be reclassified to a PC III. To determine that, the Commission must determine whether Ms. Pease spends more than 50% of her time performing the duties and responsibilities of a PC III. She does not.

First, Ms. Pease is not a third-level supervisor. Rather, she does not supervise any employees.

Second, Ms. Pease does not develop and implement *standards* to be used in program monitoring and/or evaluation, as required of a PC III. The development and implementation of standards for the Clemency Program rests with the Governor’s Office, the Parole Board and the Parole Board’s General Counsel. The role of Ms. Pease is to develop and implement *procedures*

and guidelines to accomplish assigned agency program [the Clemency Program's objectives and goals, which is a job duty explicitly referenced under PC II, Ms. Pease's current classification.

Third, Ms. Pease does not confer with management *to define the purpose and scope of the [Clemency] program*, as required of a PC III. Rather, she appears to confer with management to determine program requirements and availability of resources and, possibly, develop standards for program evaluation, another duty referenced under PC II.

Fourth, while Ms. Pease arguably oversees and monitors activities of the assigned unit, this duty is common to Program Coordinators at all levels and, ultimately, the General Counsel is accountable for overseeing this program.

Finally, Ms. Pease was unable to show that she consistently spent 50% or more of her time coordinating this program. With the exception of a brief, 2-3 week period of time, when a large batch of letters was sent to Petitioners, the evidence did not show that she spent the majority of her time working on the Clemency Program. Rather, it appears that she spent the majority of her time on other duties that don't fall under the PC III level-distinguishing duties, including performing tasks such as handling incoming calls and scheduling.

Conclusion

For all of the above reasons, Ms. Pease's appeal under Docket No. C-17-144 is hereby ***denied.***

Civil Service Commission

/s/ Christopher C. Bowman
Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on December 20, 2018.

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. 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:

Joseph Donnellan, Esq. (for Appellant)

Spencer Lord, Esq. (for Respondent)