

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

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

RICHARD PERRY,
Appellant

v.

C-18-172

DEPARTMENT OF CORRECTION,
Respondent

Appearance for Appellant:

Pro Se
Richard Perry

Appearance for Respondent:

Joseph Santoro
Norman Chalupka, Esq.
Department of Correction
P.O. Box 946: Industries Drive
Norfolk, MA 02056

Commissioner:

Christopher C. Bowman

DECISION

On September 4, 2018, the Appellant, Richard Perry (Mr. Perry), pursuant to the provisions of G.L. c. 30, s. 49, filed an appeal with the Civil Service Commission (Commission), appealing the August 7, 2018 decision of the state's Human Resources Division (HRD) in which HRD affirmed the decision of the Department of Correction (DOC) to deny his request to be reclassified from Storekeeper III to Storekeeper IV.

On October 16, 2018, I held a pre-hearing at the offices of the Commission and a full hearing was held at the same location on December 11, 2018¹. The hearing was digitally recorded and one CD was made of the hearing.²

FINDINGS OF FACT:

Forty-one (41) exhibits were entered into evidence (Respondent Exhibits 1-15 (R1 – R15) and Appellant Exhibits 1-13 (A1 – A26)). Based on the documents submitted into evidence and the testimony of:

For DOC:

- Sara Parmenter, Director of Payroll and Personnel, DOC;

For Mr. Perry:

- Eugene Munroe, Assistant Institution Steward, DOC (Mr. Perry’s Supervisor);
- Richard Perry, Appellant;

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. Mr. Perry has been employed by DOC for approximately six (6) years. (Stipulated Fact) He has an Associate’s degree from Fisher College. Prior to working for DOC, he worked for a furniture inventory warehouse and a company that installs floor boards. (Testimony of Mr. Perry)

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. In March 2014, Mr. Perry began working on the second floor of DOC's Bridgewater Kitchen Warehouse, reporting to SB, who was a Storekeeper IV. (Testimony of Mr. Perry)
3. SB retired on June 30, 2015. (Testimony of Mr. Perry)
4. At the time of SB's retirement, there was a statewide hiring freeze in place, limiting what, if any, jobs could be posted. (Testimony of Mr. Perry & Ms. Parmenter; Exhibit A2)
5. The Storekeeper IV position previously filled by SB has never been posted. (Testimony of Ms. Parmenter)
6. On July 1, 2015, the day after SB's retirement, Mr. Perry's supervisor (Mr. Munroe) sent an email stating: "As of today, July 1, 2015, Rick Perry will assume the duties and responsibilities for the upstairs institution supplies. Any questions concerning this area can be directed to Rick or myself." Duties for the cage and hot tool area will be expertly dispatched by [another employee] and myself. (Exhibit A7)
7. Part of the statewide hiring freeze guidelines stated that non-management classification appeals could go forward and that "it is critical to ensure ... that duties must be assigned consistent with class specifications so that positions do not need to be reallocated. Any position reallocations have to be accomplished within an agency's spending plan and all delegation agreements with HRD." (Exhibit A2)
8. On February 15, 2018, Mr. Perry filed a request with DOC to be reclassified from Storekeeper III to Storekeeper IV. (Stipulated Fact)
9. On April 26, 2018, DOC denied Mr. Perry's request for reclassification. (Stipulated Fact)
10. On August 7, 2018, HRD denied Mr. Perry's appeal of DOC's determination. (Stipulated Fact)

HRD Job Specifications (Last Updated in 1987)

11. Incumbents of positions in the Storekeeper Series unpack and examine incoming goods; purchase supplies and equipment; store goods, supplies and equipment; mark identifying code, etc. on articles; issue supplies, materials and equipment; maintain records; take inventories; and perform related work as required. The basic purpose of this work is to receive, store, issue, ship and purchase supplies, materials and equipment for agency use. (Exhibit R13)
12. A Storekeeper III is the second-level supervisory job in the series. (Exhibit R13)
13. A Storekeeper IV is the third-level supervisory job in the series. (Exhibit R13)
14. A Storekeeper III: 1) determines space requirements and methods of storage for storeroom articles; 2) provides technical assistance to employees on the methods to be used for storing, receiving, shipping and handling storeroom items.; and 3) recommends methods and procedures to be used in handling, storing, issuing and shipping storeroom items. (Exhibit R13)
15. A Storekeeper IV: 1) coordinates activities of workers engaged in storekeeping activities to ensure effective operations and compliance with established standards; 2) evaluates storekeeping activities in order to determine effectiveness and to make recommendations concerning changes as needed; 3) confers with superiors in order to provide information and resolve problems. (Exhibit R13)

Mr. Perry's Job Duties and Responsibilities

16. Mr. Perry is a first-level supervisor, providing supervision to a Storekeeper II, a Storekeeper I and two (2) inmates. (Testimony of Mr. Perry) Until he began the process of filing an appeal for reclassification, Mr. Perry did not complete the performance evaluations of the

Storekeeper II and Storekeeper I. After learning the supervisory requirements of the Storekeeper series, it was decided that Mr. Perry would begin completing those evaluations.

(Testimony of Mr. Munroe)

17. Mr. Perry is responsible for receipt, storage and distribution of inventory on the second floor of the kitchen warehouse. This includes such items as paper products and chemicals as well as other non-kitchen inventory stored on the second floor such as clothes and mattresses.

(Testimony of Mr. Perry)

18. Mr. Perry has ensured that storage racks are well organized and clearly marked on the second floor. (Testimony of Mr. Perry)

19. Prior to SB's retirement, Mr. Perry and SB would jointly conduct a monthly inventory of all products on the second floor. After SB's retirement, Mr. Perry and a Storekeeper II would jointly conduct the monthly inventory. (Testimony of Mr. Perry)

20. Mr. Perry ensures that the inventory is maintained on DOC's shared network. (Exhibit R6)

21. Mr. Perry supervises the loading and unloading of trucks. He makes recommendations regarding the proper method to load trucks to ensure maximum efficiency. (Testimony of Mr. Perry and Exhibit R6)

22. Mr. Perry schedules the monthly delivery of products to four (4) different institutions.

(Testimony of Mr. Perry and Exhibit R6)

23. Mr. Perry ensures that all material handling procedures are maintained (i.e. – handling of chemicals properly, etc.). (Testimony of Mr. Perry and Exhibit R6)

24. Mr. Perry prepares weekly health and safety inspection reports. (Testimony of Mr. Munroe and Exhibit R6)

25. Mr. Perry ensures that only authorized individuals (i.e. – properly assigned inmates) have access to the second floor of the kitchen warehouse. (Testimony of Mr. Munroe & Mr. Perry; Exhibit R6)

26. Mr. Perry is responsible for operating or overseeing those who operate a forklift, an electric pallet jack, the dock plate and a delivery truck. (Exhibit R6)

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.

Mr. Perry must show that he performs the distinguishing duties of the Storekeeper IV 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

The genesis of Mr. Perry’s appeal was the retirement of SB, a Storekeeper IV who served as Mr. Perry’s supervisor. In short, Mr. Perry argues that since he has been assigned to perform all of the duties of SB upon his retirement, he should be reclassified to the title held by SB: Storekeeper IV. I credit Mr. Perry’s testimony that he performs all the job duties previously performed by his former supervisor. The evidence, including Mr. Perry’s own testimony,

however, does not show that those job duties fall under the classification specifications of a Storekeeper IV. Rather, Mr. Perry's job duties fall squarely under the specifications of a Storekeeper II or III. He is a first-level supervisor who determines space requirements and methods of storage for storeroom articles; provides technical assistance to employees on the methods to be used for storing, receiving, shipping and handling storeroom items; and recommends methods and procedures to be used in handling, storing, issuing and shipping storeroom items.

Mr. Perry's successful efforts to label and organize all inventory on the second floor is an example of determining space requirements and methods of storage for storeroom articles. His recommendations regarding how to best load the delivery truck is an example of providing technical assistance to employees on the methods to be used for storing, receiving, shipping and handling storeroom items. His guidance on ensuring the proper handling and storage of chemicals is an example of recommending methods and procedures to be used in handling, storing, issuing and shipping storeroom items. His duties, however, do not entail the higher level coordination and evaluation included in the job specifications of a Storekeeper IV.

Although this appeal must be denied, it should not be viewed as a negative reflection on Mr. Perry or his work. Mr. Perry's commitment, organization skills and dedication were evident in the documents submitted as well as his professional presentation to the Commission. DOC is fortunate to have someone with his skill set in this mission-critical position.

Conclusion

Mr. Perry's re-classification appeal under Docket No. C-18-172 is hereby *denied*.

Civil Service Commission

/s/ Christopher C. Bowman

Christopher C. Bowman
Chairman

By a 4-1 vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman and Stein, Commissioners [Tivnan, Commissioner – No]³) on May 23, 2019.

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:

Richard Perry (Appellant)

Joseph Santoro (for Respondent)

Norman Chalupka, Esq. (for Respondent)

³ Commissioner Tivnan voted no as he believes the appeal should be allowed.