

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

SUSAN PIZZI,
Appellant

C-16-45

v.

DEPARTMENT OF PUBLIC HEALTH,
Respondent

Appearance for Appellant:

Pro Se
Susan Pizzi

Appearance for Respondent:

T. Martin Roach, Jr., Esq.
Department of Public Health
250 Washington Street, Room 6073
Boston, MA 02201

Commissioner:

Christopher C. Bowman

DECISION ON RESPONDENT’S MOTION TO DISMISS

By letter dated February 4, 2016, the state’s Human Resources Division (HRD) affirmed the decision of the Department of Public Health (DPH) and denied Susan Pizzi (Ms. Pizzi)’s appeal in which she was seeking to be reclassified from Research Analyst II (RA II) to Research Analyst III (RA III).

HRD’s denial letter stated, in part:

“As provided in the Massachusetts General Laws, Chapter 30, Section 49, you may appeal HRD’s classification decision to the Civil Service Commission (CSC). The CSC has a form that should be used in filing a job reclassification appeal. The reclassification form is available at the CSC web site, at <http://www.mass.gov/csc> and at the CSC offices, located at One Ashburton Place, Room 503, Boston, Massachusetts 02108-1517. Other CSC filing requirements are indicated on the reclassification form, so it is important that you obtain a copy of this form before filing your appeal.”

The Commission’s reclassification appeal form states in part:

“Mail or hand-deliver this appeal form to the Civil Service Commission at One Ashburton Place: Room 503, Boston, MA 02108 **within thirty (30) calendar**

days of receiving the denial letter from HRD. (For those appeals received via mail, the postmark date will be used to determine if the appeal is timely.)”
(emphasis in original)

On March 10, 2016, the Civil Service Commission (Commission) received an appeal from Ms. Pizzi. The appeal was received in a DPH envelope (return address: 250 Washington Street, 7th Floor) with no postage or postmark. Thus, I infer it arrived at the offices of the Commission via inter-office mail. It was date-stamped as received on March 10, 2016.

In response to a question on the appeal form which asks: “Date you received denial letter from the state’s Human Resources Division”, Ms. Pizzi responded: “2/4/16”.

On March 22, 2016, I held a pre-hearing conference which was attended by Ms. Pizzi and counsel for DPH. After advising Ms. Pizzi of the relevance of the date that she actually received the written notification from HRD that was dated February 4th she stated that she may have received it a few days after February 4th. If I were to exclude Saturday and Sunday, three (3) days after February 4th is February 9, 2016. Thirty (30) days after February 9th is March 10, 2016, the day upon which the Commission received the appeal form.

Based on Ms. Pizzi’s written response on the appeal form, in which she stated that she received HRD’s denial letter on February 4, 2016, DPH filed a Motion to Dismiss the Appellant’s appeal, arguing that it was not timely. Ms. Pizzi filed a response. Accepting that Ms. Pizzi did not receive HRD’s denial letter until February 9th, the appeal to the Commission is timely for the reasons referenced above.

During the pre-hearing conference, however, Ms. Pizzi acknowledged that she does not perform a majority of the duties of a RA III more than 50% of the time and that she does not perform any supervisory duties, a requirement of the RA III position..

The basis of Ms. Pizzi’s appeal is that two (2) other employees, who she believes perform the same duties and responsibilities as her, are classified in positions higher than RA II.

DPH did not dispute that this may be the case, but suggested that medical reasons may be a factor regarding the duties and responsibilities performed by at least one (1) of the employees referenced by Ms. Pizzi.

Analysis

“When reviewing reclassification appeals, the [Appointing Authority] only looks at the duties of the Appellant.” Palmieri v. Department of Revenue, 26 MCSR 180 (2013), citing Gaffney v. Department of Revenue, 24 MCSR 380 (2011). “The possibility that some employees ‘are misclassified could be attributed to other preexisting factors’” Palmieri citing Hankerson v. Department of Revenue, C-08-96 (2010). “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.” Palmieri at 183.

Since Ms. Pizzi does not argue that she performs the majority of the duties of a RA III more than 50% of the time and because the alleged misclassification of other employees cannot form the basis for a classification appeal, Ms. Pizzi's appeal must be dismissed.

Conclusion

For the reasons stated above, DPH's Motion to Dismiss is allowed and Ms. Pizzi's appeal is hereby *dismissed*.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell and Stein, Commissioners) on April 14, 2016.

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:

Susan Pizzi (Appellant)
T. Martin Roach, Jr., Esq. (for Respondent)
John Marra, Esq. (HRD)