

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

One Ashburton Place - Room 503

Boston, MA 02108

(617) 979-1900

LARRAINE POPE,

Appellant

v.

C-21-048

DEPARTMENT OF REVENUE,

Respondent

Appearance for Appellant:

Lorraine Pope, Pro Se

Appearance for Respondent:

Joshua J. Prada, Esq.

Massachusetts Department of Revenue

100 Cambridge Street, Suite 800

Boston, Massachusetts 02114

Commissioner:

Paul M. Stein

Summary of Decision

The Civil Service Commission denied the Appellant's appeal to be reclassified from Program Coordinator II to Program Coordinator III as she failed to show that she performed the level distinguishing duties of the higher classification a majority of the time.

DECISION

On March 2, 2021, the Appellant, Lorraine Pope, filed an appeal with the Civil Service Commission (Commission) pursuant to G.L. c. 30, § 49,¹ contesting the decision of the state's Human Resources Division (HRD) to uphold the decision of the Massachusetts Department of Revenue (DOR) to deny her request for reclassification from her current title of Program Coordinator II (PC-II) to the title of Program Coordinator III (PC-III). A pre-hearing conference was held via video conference through Webex on April 6, 2021, and I held a full hearing in the

¹ The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§ 1.00, *et seq.*, apply to adjudications before the Commission with and conflicting provisions of G.L. c. 30, § 49, or Commission rules, taking precedence.

same manner on July 13, 2021, which was recorded via Webex.² Twenty-one (21) exhibits (*Exhs. 1 through 21*) were introduced into evidence. Each party submitted a post-hearing Proposed Decision. For the reasons stated, the appeal is denied.

FINDINGS OF FACT

Based on the Exhibits entered into evidence and the testimony of the following witnesses:

Called by DOR:

- Geralyn Page, Classification Unit Manager, DOR Human Resources Bureau
- Karen Melkonian, Attorney, DOR Office of the General Counsel, Supervisor, Child Support Enforcement

Called by the Appellant:

- Lorraine Pope, Appellant

and taking administrative notice of all matters filed in the case, pertinent law and reasonable inferences from the credible evidence, a preponderance of evidence establishes these facts:

1. The Appellant, Lorraine Pope, has been employed by DOR's Child Support Enforcement Division since 2003. She began in the position of Program Coordinator I (PC-I) and was promoted in 2009 to the position of PC-II, a position she continues to hold. (*Testimony of Appellant*)

2. Ms. Pope received a B.S. degree in Criminal Justice from Boston University in 2015 and earlier earned an Associate's degree in Criminal Justice from Roxbury Community College in 2010. She earned both degrees while working for DOR. She is a Notary Public. (*Testimony of Appellant; Exh. 11*)

3. Prior to her employment with DOR, Ms. Pope held positions as a Data Entry Specialist with the then-Department of Education (1997-1998), as an Administrative Assistant with the

² A link to the recording of the full hearing were provided to the parties. If there is a judicial appeal of this decision, the plaintiff in the judicial appeal becomes obligated to use the recording to supply the court with the written transcript of the hearing to the extent that he/she wishes to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion.

Department of Mental Health (1998-1999), and as an Administrative Assistant with Massachusetts Port Authority (1999-2000). (*Exh. 11*)

4. Also prior to her formal employment with DOR's Child Support Enforcement Division, Ms. Pope held a position with the Federal government in which she acted as a consultant to the Child Support Enforcement Division at DOR from 2000-2003. Her title was Data Entry Specialist and Research Consultant. She updated and prepared child support cases for support specialists, sent letters to custodial parents, organized and distributed customer inquiry forms to team members, and merged new files with existing ones. She also assisted with research by updating genetic marking test data and extracting data on support, payment patterns, and earnings. (*Testimony of Appellant; Exh. 11*)

5. In 2003, Ms. Pope was hired by the DOR's Child Support Enforcement Division and assigned to work on the Criminal Justice Initiative. Her functional title was Correctional Facility Outreach Coordinator; with a corresponding classification title of PC-I. She was assigned to the Suffolk County House of Correction, where she met with inmates who were non-custodial parents to advise them about the child support laws and how to meet their obligations. She coordinated her work with institutional case workers and the financial department, mediated discussions between inmates and custodial parents, and encouraged the inmates to participate in genetic marker testing for paternity. Ms. Pope received a performance recognition award in 2004. (*Testimony of Appellant; Ex. 11*)

6. In 2012, Ms. Pope began her current assignment in the re-entry program of the Child Support Enforcement Division, Criminal Justice Initiative. She provides outreach and education at multiple facilities, such as residential halfway houses and rehabilitation programs, from which individuals re-enter the community. Ms. Pope gives group presentations concerning the child support system and how non-custodial parents can manage their responsibilities. She also meets

with each individual who identifies as having a support or paternity case, helps them understand their responsibilities and possible consequences, and assists with filing requests for modification. If she does not have time to meet with each individual, she schedules another visit to complete the interviews. She then returns the modification paperwork to the correct region and enters the case information into the Commonwealth's tracking system. In doing this work, Ms. Pope emphasizes that these individuals come from "all walks of life," and that she must listen to them and be respectful in order to win their trust. (*Testimony of Appellant, Melkonian; Exhs. 3, 4, 11, 12*)

7. Ms. Pope does not supervise any other employees; she has no direct reports. She provides a weekly report to her supervisor, Attorney Karen Melkonian, which details which locations she has visited, the number of participants, and the time involved. She also meets with Ms. Melkonian a few times a month to review any complicated issues and provide status updates. (*Testimony of Pope, Melkonian; Exhs. 13, 15*)

8. Over time, Ms. Pope's workload has increased. She is currently providing, or has provided, services to individuals in a large number of facilities, including Askia Academy, Boston Medical Center, Boston Pre-Release Center, Common Purpose (Day and Night programs), Dimock Center, East Boston Drug Court, three Garvin Houses, Hamilton House, Hope House, John Flowers Recovery Home, Salvation Army, Sober House, St. Francis/Map Program, Veterans Program, two Victory Houses, and Wyman Re-entry Center. At one point she was working with seventy-two men involved in domestic violence cases. She also provides recommendations to judges at their request and helps individuals seek reinstatement of their drivers' licenses. Some of her presentations are to large groups, including one at Florian Hall in Dorchester. Many of the individuals she assists are not permitted to enter their residence until 5:00 p.m., so she must schedule some visits for the evening, sometimes seeking permission to work until 8:00 p.m. (*Testimony of Appellant; Exhs. 3, 4, 11, 12*)

9. In 2015, Ms. Pope's supervisor left and she received a new supervisor, who has since retired. Her old supervisor had scheduled Ms. Pope's visits to facilities, entered her schedule into the database, and was available to look up details concerning individual cases if Ms. Pope called from a facility, so that Ms. Pope did not have to wait until she returned to the office to get updated case information, then return to the facility to meet again with the individual. Ms. Pope's new supervisor assigned her to schedule her own visits, do her own data entry, and look up case information on her own. He also assigned her to sort and distribute the unit's mail. Additionally, Ms. Pope often receives requests from new facilities who would like her to come give a presentation and assist individuals with their child support issues. She adds those locations and individuals to her schedule. Although Ms. Pope has no problem with working hard, because of the increase in her workload, everything is "rush, rush." (*Testimony of Appellant; Exhs. 3, 4*)

10. Ms. Pope is a valued employee. She works largely independently, although she stays in touch with her current supervisor, Ms. Melkonian, and is always available to her for questions. Ms. Pope is highly knowledgeable about child support enforcement laws, regulations, and procedures such as requests for modification. She received an excellence award from Hope House for dedication to child support and received a strong letter of support from an officer and case manager at the Boston Pre-Release Center. This case manager described how Ms. Pope goes "above and beyond expectations" to help incarcerated felons, to an extent he has never seen in his twenty-three year career at the Department of Correction. He noted that she had found a way to keep the inmates' support cases on track, despite new DOR policies limiting her visit times, by working with him to interview inmates by telephone and transmit paperwork by email. One of her EPRS reports also noted that several years ago Ms. Pope had to overcome significant institutional resistance to bring the Boston Pre-Release Center into her program, and stated that Ms. Pope had received "some very specific and effusive thank-yous for her work from parents." (*Testimony of*

Melkonian; Exhs. 3, 4, 12, 17, 18)

11. Ms. Pope previously filed a classification appeal on November 16, 2015, seeking reclassification to PC-III. The DOR's then-Human Capital Development division denied that appeal on March 25, 2016. It does not appear Ms. Pope appealed that denial to HRD or to the Civil Service Commission. (*Exh. 1*)

12. On April 11, 2019, Ms. Pope submitted the instant classification appeal to the DOR's Human Resources Bureau ("HRB"), again seeking the title of PC III. (*Exh. 2*)

13. HRB Personnel Classification Reviewer Sandra Antonucci acknowledged receipt of the classification appeal and provided Ms. Pope with an interview guide and a list of documentation needed for the reclassification review. (*Exh. 2; Testimony of Page*)

14. Ms. Pope completed and signed the Interview Guide on September 1, 2019. Her then-supervisor signed the Guide on September 12, 2019. (*Exh. 3*)

15. Ms. Antonucci interviewed Ms. Pope on September 24, 2019. (*Testimony of Page; Exh. 4*)

16. The Department notified Ms. Pope of its preliminary decision to deny the appeal and notified her of her right to submit a rebuttal for consideration by letter dated March 4, 2020. The letter informed Ms. Pope that the denial was based on the following reasons:

- Must supervise staff.
- Must develop and implement standards to be used in program monitoring and/or evaluation.
- Must oversee and monitor activities of the assigned unit.
- Must 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.

(*Testimony of Page; Exh. 5*)

17. By letter dated May 6, 2020, the Department notified Ms. Pope that her appeal was denied and notified her of her right to appeal to HRD. (*Testimony of Page; Exh. 6*)

18. Ms. Pope appealed the decision to HRD, which denied the appeal by letter dated January 29, 2021. The letter explained: “We find the classification of Program Coordinator II covers the duties being performed by you.” (*Exh. 7*)

19. Ms. Pope filed her appeal with the Civil Service Commission on March 2, 2021. (*Exh. 8*)

20. The duties of a Program Coordinator III are set out in Exhibit 9, the Classification Specification for the Program Coordinator series.

21. The series Summary describes the function of a Program Coordinator as follows:

Incumbents of positions in this series 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.

(*Exh. 9*)

22. The PC Classification Specification lists the following under “Examples of duties common to all levels of the Program Coordinator series”:

1. Coordinates and monitors assigned program activities to ensure effective operations and compliance with established standards.
2. Reviews and analyzes data concerning assigned agency programs to determine progress and effectiveness, to make recommendations for changes in procedures, guidelines, etc. and to devise methods of accomplishing program objectives.
3. Provides technical assistance and advice to agency personnel and others concerning assigned programs to exchange information, resolve problems and to ensure compliance with established policies, procedures and standards.
4. Responds to inquiries from agency staff and others to provide information concerning assigned agency programs.
5. Maintains liaison with various private, local, state and federal agencies and others to exchange information and/or to resolve problems.
6. Performs related duties such as attending meetings and conferences; maintaining records; and preparing reports.

(*Exh. 9*)

23. Under “Differences in Levels in Series” the PC Classification Specification states that those in the following levels, and those in higher levels, perform the following duties:

Program Coordinator II:

1. Provide on-the-job training and orientation for employees.
2. Develop and implement procedures and guidelines to accomplish assigned agency program objectives and goals.
3. Review reports, memoranda, etc. for completeness, accuracy and content.
4. Confer with management staff and other agency personnel in order to determine program requirements and availability of resources and to develop the criteria and standards for program evaluation.
5. Evaluate program activities in order to determine progress and effectiveness and to make recommendations concerning changes as needed.

Program Coordinator III:

1. Develop and implement standards to be used in program monitoring and/or evaluation.
2. Oversee and monitor activities of the assigned unit.
3. 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.

(Exh. 9)

24. Under “Supervision Received” the PC Classification Specification provides for those at each level, including PC III:

Incumbents of positions at this level receive general supervision from employees of higher grade who provide guidance on policy and procedure, assign work and review performance for effectiveness and conformance to laws, rules, regulations, policy and procedures.

(Exh. 9)

25. The PC Classification Specification provides under “Supervision Exercised”:

Program Coordinator I:

Incumbents of positions at this level exercise direct supervision (i.e., not through an Intermediate level supervisor) over, assign work to and review the performance of 1-5 professional, technical, administrative and/or other personnel; and may exercise functional supervision (i.e., over certain but not all work activities, or over some or all work activities on a temporary basis) over 1-5 professional, technical, administrative and/or other personnel.

Program Coordinator II:

Incumbents of positions at this level exercise direct supervision (i.e., not through an Intermediate level supervisor) over, assign work to and review the performance of 1-5 professional, technical, or administrative personnel; and indirect supervision (i.e., through an Intermediate level supervisor) over 1-5 professional, technical, administrative and/or other personnel.

Program Coordinator III:

Incumbents of positions at this level 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 (i.e., through an Intermediate level supervisor) over 6-15 professional, administrative, technical and/or other personnel.

(*Exh. 9*)

26. Ms. Pope believes that the primary reason that she was denied reclassification to a PC-III was that she does not supervise other employees. She noted that there are PC-III employees at DOR who have no direct reports. As Geralyn Page, Classification Unit Manager in the DOR Human Resources Bureau, explained, when an employee with a PC-III title is transferred to a position in which he or she no longer has direct reports, the employee is permitted to retain his or her existing title. Then, when the position becomes vacant and is reposted, it is posted at the correct title. Additionally, DOR's Executive Secretaries are PC-III's because the position includes direct supports in some units, so all holding the same position receive the same title, although only some supervise staff. (*Testimony of Appellant, Page; Exh. 9*)

27. As Ms. Page further explained, the PC series was written over thirty years ago, in 1987, before the DOR became highly automated, and when the agency had thousands of employees, many more than the approximately 1400 today. Because at the time there were many more staff members who required supervision, the PC series was written to include supervisory responsibilities at each title level. To apply the specifications to today's much smaller workforce, it has been the regular practice of DOR's Human Resources Bureau to apply the supervision requirement at the top level, PC-III, and to allow employees to work individually at the PC-I and

PC-II level. As Ms. Page and Ms. Melkonian also noted, unlike the PC-I and PC-II titles, the PC-III title pairs its supervision requirement with other management functions, such as implementing evaluation standards, overseeing unit activities, and participating with management staff in defining program scope. (*Testimony of Page, Melkonian; Exh. 9*)

28. Ms. Pope believes that she is performing all the level-distinguishing duties of a PC-III, apart from supervision. In particular, she believes that her work bringing new facilities into the program falls within the first level-distinguishing duty of a PC-III: the development and implementation of program monitoring or evaluation standards. (*Testimony of Appellant; Exh.9*)

29. However, regarding the first duty under PC-III, standards used to monitor and evaluate the criminal justice outreach program, it was Ms. Melkonian who primarily developed those standards, with input from the deputy commissioner. Regarding the second duty under PC-III, oversight and monitoring, Ms. Melkonian manages the criminal justice team and its programs. Regarding the third level-distinguishing duty under PC-III, defining the purpose and scope of the program, the program's purpose is already well-defined. If modifications to its scope are needed, Ms. Melkonian confers with the deputy commissioner. (*Testimony of Melkonian; Exhs. 9, 13*)

30. The duties of a PC-II involve performing the work required for the program, whereas the duties of a PC-III involve managing the program. Ms. Pope is doing a good job in her work on the program, but is not managing the program. (*Testimony of Melkonian*)

APPLICABLE LAW

Section 49 of G.L. c. 30 provides:

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. . . . 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. If said commission finds that the office or position of the person appealing warrants a different position reallocation . . . it shall be effective as of the date of appeal

“The determining factor of a reclassification is the distribution of time that an individual spends performing the function of a job classification.” Roscoe v. Department of Environmental Protection, 15 MCSR 47 (2002). In order to justify a reclassification, an employee must establish that she is performing distinguishing duties encompassed within the higher-level position the majority of the time. See, e.g., Gaffey v. Dept. of Revenue, 24 MCSR 380, 381 (2011) (more than 50%); Morawski v. Department of Revenue, 14 MCSR 188 (2001) (same). What must be shown is that Ms. Pope performs the “distinguishing duties” of a PC-III a majority of her time. In making this calculation, duties which fall within both the higher and lower title do not count as “distinguishing duties.” Lannigan v Department of Developmental Services, 30 MCSR 494 (2017).

ANALYSIS

As is often the case in reclassification appeals, Ms. Pope comes before the Commission as an earnest and dedicated public servant. She has a long history of working hard to accomplish her job and has received praise from her supervisor, from custodial parents, and from facility staff. However, in order to show that she is entitled to reclassification as a PC-III, Ms. Pope must show that she is *actually performing the specified distinguishing duties of a PC-III as the major part of her current work* (i.e., that more than 50 percent of her time is spent on these distinguishing duties). Thus, the issue before the Commission is limited to that narrow question.

After a careful review of the evidence, I conclude that Ms. Pope has not met her burden to show that she is entitled to reclassification as a PC-III. First, I accept the testimony of GERALYN PAGE, DOR’s Classification Unit Manager, that, with two narrow exceptions, the agency consistently requires those holding the PC-III title to supervise other employees. Ms. Pope does not fall into either the exception of having been transferred from a supervisory PC-III position or

holding a position as an Executive Secretary. Thus, as Ms. Pope correctly claims, her lack of supervisory duties precludes her from holding the PC-III position. See Pease v. Mass Parole Bd., 31 MCSR 389, 392 (2018) (PC-III is a third-level supervisory position).

Moreover, Ms. Pope's duties do not meet any of the other three distinguishing duties of a PC- III. Ms. Pope does not "Develop and implement standards to be used in program monitoring and/or evaluation." Those standards are developed and utilized by her supervisor, Ms. Melkonian. Ms. Pope correctly points out that she prepares reports that form part of the data that is used in monitoring and evaluating the child support enforcement outreach program. But providing information is not the same as developing and implementing evaluation standards.

Nor does Ms. Pope "Oversee and monitor activities of the assigned unit." She works with a great deal of autonomy and initiative; however, the management and oversight of her program rests with her supervisor and those at higher levels.

Finally, Ms. Pope also does not confer with management to "define the purpose and scope of proposed programs." By meeting with her supervisor and filing reports detailing her work, Ms. Pope does "Confer with management staff and others in order to provide information concerning program implementation, evaluation and monitoring." This portion of the classification specification, however, is also a PC-II duty, and providing reports to one's supervisor is a duty common to all levels of the Program Coordinator series. The level-distinguishing portion of the PC-III duty is the work of defining program purposes and scope. This function is not part of Ms. Pope's duties but rather is the responsibility of Ms. Pope's supervisor and the deputy commissioner.

Because Ms. Pope has not shown that she is performing the duties of a PC-III more than 50% of the time, she is not entitled to reclassification into that position. That other employees may be misclassified, or may hold a PC-III title without having supervisory duties, does not entitle Ms.

Pope to reclassification. See Dell’Anno v. Massachusetts Dept’s of Revenue, CSC No. C-18-083, 2020 DALA Lexis 6 (2020); McBride v. Dep’t of Industrial Accidents, 28 MCSR 242 (2015); Palmieri v. Department of Revenue, 26 MCSR 180 (2013). Additionally, although Ms. Pope’s workload may have increased, her duties remain within those listed in her Form 30 and EPRS and do not include any level-distinguishing duties of a PC-III. See Gaffey v. Dept. of Revenue, *supra*.

Accordingly, for the reasons stated above, the appeal of the Appellant, Lorraine Pope, under Docket No. C-21-048, is *denied*.

Civil Service Commission

/s/ Paul M. Stein

Paul M. Stein
Commissioner

By vote of the Civil Service Commission (Bowman, Chair; Stein, and Tivnan, Commissioners) on June 15, 2022.

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 a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the Commission’s 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:

Lorraine Pope (Appellant)
Joshua J. Prada, Esq. (for Respondent)