

**COMMONWEALTH OF MASSACHUSETTS**

**CIVIL SERVICE COMMISSION**  
One Ashburton Place: Room 503  
Boston, MA 02108  
(617) 979-1900

LORIE RUSTIC,  
*Appellant*

v.

C-22-110

MassDOT,  
*Respondent*

Appearance for Appellant:

*Pro Se*  
Lorie Rustic

Appearance for Respondent:

Patrick J. Atwell, Esq.  
MassDOT  
10 Park Plaza – Suite 3170  
Boston, MA 02116

Commissioner:

Christopher C. Bowman

**DECISION ON RESPONDENT’S MOTION TO DISMISS**

On July 27, 2022, the Appellant, Lorie Rustic (Appellant), pursuant to G.L. c. 30, § 49, filed an appeal with the Civil Service Commission (Commission), contesting the decision of the Massachusetts Department of Transportation (MassDOT) to deny her request for reclassification from Customer Service Representative (CSR) II to CSR III. On October 4, 2022, I held a remote pre-hearing conference, which was attended by the Appellant, counsel for MassDOT, and other MassDOT representatives. As part of the pre-hearing, the parties stipulated to the following:

- A. The Appellant has been employed by MassDOT / Registry of Motor Vehicles (RMV) for approximately 22 years.
- B. The Appellant has been classified as a CSR II for approximately 11 years.

- C. The Appellant is currently assigned to the RMV office in Pittsfield, MA.
- D. On April 7, 2022, the Appellant filed a request with MassDOT to be reclassified from CSR II to CSR III.
- E. On June 23, 2022, MassDOT denied the Appellant's appeal, but also notified the Appellant that "[i]t has been determined that you are entitled to retro compensation from April 3, 2022 through June 4, 2022, for the out of title duties you performed as a Customer Service Representative III."
- F. The Appellant appealed MassDOT's determination to the state's Human Resources Division (HRD) and HRD affirmed MassDOT's determination on July 19, 2022.
- G. On July 27, 2022, the Appellant filed a timely appeal with the Commission.

At the pre-hearing, the Appellant argued that: a) as a result of a transfer of personnel out of the Pittsfield RMV office on September 20, 2020, she assumed additional duties that were previously being performed by her supervisor; b) she chose not to file a reclassification appeal until April 2022; and c) shortly after filing her reclassification appeal, most of those additional duties (and the security clearance that came with them) were removed from her. Further, the Appellant was recently notified that she was not selected for promotional appointment to a vacant CSR IV position.

The Appellant acknowledged that she no longer spends a majority of her time performing the level-distinguishing duties of a CSR III. She questioned, however, why any retroactive "out-of-grade" pay is limited to April 2022, when, according to the Appellant, she began performing the additional duties in September 2020. MassDOT stated that out-of-grade pay is the subject of the relevant collective bargaining agreement (CBA) and any retroactive payments may not precede the employee's request for such pay. (MassDOT apparently deemed the Appellant's

reclassification request to also be a request for out-of-grade pay.) MassDOT, pursuant to a Procedural Order issued after the pre-hearing conference, filed a motion to dismiss the Appellant's appeal; the Appellant did not file an opposition.

#### *Motion for Summary Disposition Standard*

When a party is of the opinion there is no genuine issue of fact relating to all or part of a claim or defense and he or she is entitled to prevail as a matter of law, the party may move, with or without supporting affidavits, for summary decision on the claim or defense. 801 CMR 1.01(7)(h). These motions are decided under the well-recognized standards for summary disposition as a matter of law—i.e., "viewing the evidence in the light most favorable to the non-moving party", the substantial and credible evidence established that the non-moving party has "no reasonable expectation" of prevailing on at least one "essential element of the case", and has not rebutted this evidence by "plausibly suggesting" the existence of "specific facts" to raise "above the speculative level" the existence of a material factual dispute requiring an evidentiary hearing. See e.g., Lydon v. Massachusetts Parole Board, 18 MCSR 216 (2005). Accord Milliken & Co., v. Duro Textiles LLC, 451 Mass. 547, 550 n.6 (2008); Maimonides School v. Coles, 71 Mass. App. Ct. 240, 249 (2008). See also Iannacchino v. Ford Motor Company, 451 Mass. 623, 635-36 (2008) (discussing standard for deciding motions to dismiss); cf. R.J.A. v. K.A.V., 406 Mass. 698 (1990) (factual issues bearing on plaintiff's standing required denial of motion to dismiss).

#### *Applicable Law Regarding Reclassification Appeals*

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

“Any manager or employee of the commonwealth objecting to any provision of the classification of 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.”

The Appellant has the burden of proving that she is improperly classified as a CSR II and should be classified as a CSR III. To do so, she must show that she performs the duties of the CSR III title more than 50% of the time, on a regular basis. E.g., Gaffey v. Dep’t of Revenue, 24 MCSR 380, 381 (2011); 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 the duties encompassed within the higher-level position a majority of the time . . .”). In making this calculation, duties which fall within both the higher and lower title do not count as “distinguishing duties.” See Lannigan v. Dep’t of Developmental Services, 30 MCSR 494 (2017).

#### *Analysis*

The Commission’s jurisdiction in reclassification appeals is limited to determining whether the Appellant, as of the date the reclassification appeal was filed, and going forward, performs the level-distinguishing duties of the higher classification a majority of the time. When an employee agrees to work overtime or temporarily works “out-of-grade”, he or she may have some other claim (such as under a collective bargaining agreement) to receive a pay-differential for the time spent working in that capacity; but temporary, voluntary or overtime assignments are not, as a general rule, meant to be transformed into permanent promotions through the reclassification statute. See, e.g., Hartnett v. Department of Revenue, 30 MCSR 398 (2017); Baran v. Department of Conservation & Recreation, 18 MCSR 355 (2005).

Since there is no dispute that the Appellant does not currently perform those CSR III duties a majority of her time, or that she has received out-of-grade pay retroactive to the date of her reclassification appeal being filed with MassDOT, the Commission either lacks jurisdiction over the current appeal or is not empowered to grant further relief under the classification statutes, G.L. c. 30, §§ 45 *et seq.* Whether or not the Appellant has any course of action under the CBA is not a matter for the Commission to decide.

For all of the above reasons, and those cited in the Respondent's motion, the Appellant's appeal under Docket No. C-22-110 is hereby *dismissed*.

Civil Service Commission

/s/ Christopher Bowman  
Christopher C. Bowman  
Chair

By a vote of the Civil Service Commission (Bowman, Chair; Stein and Tivnan, Commissioners) on December 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 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:  
Lorie Rustic (Appellant)  
Patrick Atwell, Esq. (for Respondent)  
Eric Pike (for Respondent)