

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

Decision mailed: 4/8/11
Civil Service Commission
CS

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

PUNITA SAINI,
Appellant

v.

**MASSACHUSETTS
HIGHWAY
DEPARTMENT,**
Respondent

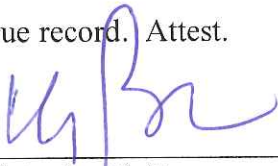
Case No.: C-10-222

DECISION

After careful review and consideration, the Civil Service Commission voted at an executive session on April 7, 2011 to acknowledge receipt of the report of the Administrative Law Magistrate dated March 2, 2011. No comments were received by the Commission from either party. The Commission voted to adopt the findings of fact and the recommended decision of the Magistrate therein. A copy of the Magistrate's report is enclosed herewith. The Appellant's appeal is hereby *dismissed*.

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis and Stein [McDowell - absent] Commissioners) on April 7, 2011)

A true record. Attest.



Christopher C. Bowman
Chairman

**Commissioner Marquis was
absent on April 7, 2011**

Either party may file a motion for reconsideration within ten days of the receipt of a 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 the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

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.

Notice to:

Michelle S. Gates, Esq. (for Appellant)
John L. Casey, Esq. (for Appointing Authority)
Richard Heidlage, Esq. (DALA)



THE COMMONWEALTH OF MASSACHUSETTS

DIVISION OF ADMINISTRATIVE LAW APPEALS

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RICHARD C. HEIDLAGE
CHIEF ADMINISTRATIVE MAGISTRATE

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March 2, 2011

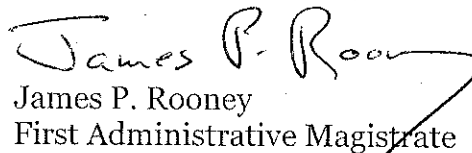
Christopher C. Bowman, Chairman
Civil Service Commission
One Ashburton Place, Room 503
Boston, MA 02108

Re: Punita Saini v. Mass. Highway Department
DALA Docket No. CS-10-726
CSC Docket No. C-10-222

Dear Chairman Bowman:

Enclosed please find the Recommended Decision that is being issued today. The parties are advised that, pursuant to 801 CMR 1.01(11)(c)(1), they have thirty days to file written objections to the decision with the Civil Service Commission. The written objections may be accompanied by supporting briefs.

Sincerely,


James P. Rooney
First Administrative Magistrate

JPR/mbf

Enclosure

cc: Michelle Gates, Esq.
John L. Casey, Esq.

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Division of Administrative Law Appeals

Punita Saini,
Appellant

v.

Docket No. C-10-222
DALA No. CS-10-726

Massachusetts
Highway Department,
Respondent

Appearance for Appellant:

Michelle S. Gates, Esq.
MOSES
90 North Washington Street
Boston, MA 02114

Appearance for Respondent:

John L. Casey, Esq.
MassDOT
Ten Park Plaza, Suite 4160
Boston, MA 02116

Administrative Magistrate:

Maria A. Imparato

SUMMARY OF RECOMMENDED DECISION

The Appellant has not met her burden of proving that she is improperly classified as a Civil Engineer I. She has not shown by a preponderance of the evidence that she is performing the majority of the duties of a Civil Engineer II more than 50% of the time.

RECOMMENDED DECISION

Punita Saini is appealing under the provisions of M.G.L. c. 30, s. 49 the September 17, 2009 decision of the Human Resources Division (HRD) to deny her request to be reclassified from the position of Civil Engineer I (CE I) to Civil Engineer II

(CE II) in the Highway Department of the Massachusetts Department of Transportation (MassDOT). (Exs. 1, 2, 3, 4.)

I held a hearing on October 8, 2010 at the office of the Division of Administrative Law Appeals, 98 North Washington Street, Boston, MA. I admitted seventeen (17) exhibits into evidence. The parties also submitted a Stipulated Facts Guide.

Ms. Saini testified on her own behalf, as did Thomas Donnelly, Ms. Saini's direct supervisor. Mr. Donnelly is a Civil Engineer IV and Area Engineer of District 3 in the Highway Department.

The record closed on December 6, 2009 with the filing of proposed decisions.

FINDINGS OF FACT

1. Punita Saini has worked as a CE I for the Highway Department of MassDOT since November 2003. Ms. Saini has a B.A. in Civil Engineering, is certified as an Engineer in Training (EIT), and is certified by the Board of Professional Engineers and Land Surveyors as a Professional Engineer (PE). (Testimony, Saini.)
2. The Highway Division has three sections: Construction; Project Development; and Maintenance. Ms. Saini works in the Construction section of District 3. (Testimony, Donnelly.)
3. The function of the Construction section is to build new highway projects and to refurbish existing highways, including bridge construction. (Testimony, Donnelly.)

4. The function of the Project Development section is to design proposed projects and develop cost estimates for what the job will cost. (Testimony, Donnelly.)
5. Ms. Saini's primary duties as a CE I are: 1) to prepare monthly progress reports which include work performed and/or completed and to record all pertinent information for supervisors to receive; 2) to prepare initial databases and spreadsheets by utilizing computer programs for use by department personnel; 3) to oversee the proper completion or procurement of all reports, documents, and estimates required during the construction of a contract project; and 4) to recommend alternative methods of construction and/or substitutions of materials used during construction to resolve problems as they occur. (Ex. 7, FY 2009 EPRS.)
6. From 2007 to 2009, Ms. Saini was assigned to work on the Shrewsbury-Route 9 project which involved roadway resurfacing, roadside improvements, upgrading traffic signals at Route 9/Harrington Avenue, and installing proposed traffic signals at Route 9/Maple Street. She worked under the supervision of Thomas Donnelly, Resident Engineer, who was then a CE III.¹ (Testimony, Donnelly; Ex. 8.)
7. Ms. Saini's duties on the Shrewsbury-Route 9 project were the same duties that appear in her FY 2009 EPRS. (Compare, Ex. 7 and Ex. 8.)
8. On the Shrewsbury project, Ms. Saini was responsible for the project ledger, also known as a diary, which outlines everything that happened on the project each day. The ledger recorded who worked on the project, where the work

¹ Mr. Donnelly is currently a CE IV.

was performed, all of the contractor's employees and equipment, and all of the sub-contractor's employees and equipment. (Testimony, Donnelly.)

9. Ms. Saini was also responsible for preparing "cost estimates" on the Shrewsbury project. The term "cost estimate" has two meanings: it means what a project is projected to cost in the future; and it means what a contractor is entitled to be paid every two weeks for the work he performed in the previous two weeks. Ms. Saini was responsible to prepare the second type of "cost estimate" on the Shrewsbury project. (Testimony, Donnelly.)
10. To produce "cost estimates," Ms. Saini had to track and calculate all quantities of materials used by the contractor (e. g. linear feet of curbing, square feet of concrete) to quantify what the contractor did in the previous two weeks. The measurements were either taken in the field, or taken from the plans. The measurements were provided to Ms. Saini who double-checked the measurements for accuracy. Ms. Saini then entered the information into a computer program known as SAM that produced the estimate on a document entitled Contract Quantity Estimate. (Testimony, Donnelly, Saini; Ex. 11.)
11. Ms. Saini prepared a document called Record of Design, also known as a CSD-688, the purpose of which is to close out a project when it is completed. Ms. Saini filled in the information on the form using project documents, the daily ledger, and the contract. (Testimony, Saini; Ex. 12.)
12. Ms. Saini prepared a document called Extra Work Order to cover the cost of work not specified in the contract for the Shrewsbury project. The contractor requested authorization to backfill the trenches crossing the road with

flowable fill. Ms. Saini recommended three different kinds of flowable fill to the contractor. She does not know whether the contractor chose to use one of the flowable fills that she recommended. Ms. Saini has not made any other recommendations to contractors on any other projects. (Testimony, Saini; Ex. 13.)

13. Ms. Saini prepared a document called Resident Engineer's Report of Changes in Design, Specifications or Preliminary Estimate Features, also known as CSD-683. Ms. Saini entered the reason for the changes and cost overrun on the form. The item number and the cost of the item come from the SAM program. (Testimony, Saini; Ex. 14.)
14. When the Shrewsbury project was 50-75% complete, Ms. Saini prepared a Balance and Excess (B + E) estimate which indicated that additional funding was needed to complete the project. (Testimony, Saini; Ex. 15.)
15. During the Shrewsbury project, Ms. Saini spent about 90% of her time doing office work, and 10% of her time doing field inspections. (Testimony, Donnelly.)
16. The Classification Specifications for the Civil Engineer Series approved in 1989 defines the CE I position as the entry-level professional job in the series, the CE II as the second-level professional job in the series, and the CE III is the first-level supervisory job in the series. (Ex. 9, p. 1.)
17. The examples of duties common to all levels in the series are:

- a. Prepares and/or reviews plans, designs, specifications, and cost estimates for elements of engineering projects such as the construction or maintenance of highways, bridges or facilities.
- b. Provides engineering data for the preparation and review of engineering or environmental reports and studies.
- c. Performs calculations such as those related to survey traverses, traffic forecasting, soil capacity, groundwater flow, and quantity of materials by using calculators, computers and other instruments.
- d. Writes memoranda, letters and technical or general reports to supervisors concerning the status of engineering projects or problems.
- e. Analyzes changes in scope of work during design and/or construction of projects to recommend corrective action.
- f. Conducts field investigations such as those needed to gather information needed to resolve construction, maintenance, environmental or traffic problems.
- g. Recommends modifications to plans, specifications, and engineering agreements for elements of engineering projects.
- h. Reviews applications for licenses or permits for the transportation of materials and for the construction of projects in order to make recommendations to supervisors for approval.

- i. Approves construction and service contract payment estimates and/or invoices for materials, equipment and supplies.
- j. Inspects construction operations, such as drainage, steel placement, paving or concrete to ensure that work is being performed according to specifications.
- k. Inspects maintenance work, such as highway landscaping, repaving operations, and snow and ice removal.
- l. Acts as resident engineer on projects, such as intersections reconstruction and traffic signal installation.
- m. Performs engineering surveys, including the operation of transits, levels and other surveying instruments.
- n. Acts as Chief of Party in performing surveys for taking detail or laying out constructions projects.
- o. Performs related duties, such as collecting, compiling and correlating engineering and environmental data; reading manufacturers' publications and meeting with manufacturers' representatives to keep abreast of latest technical advances, new products, product prices, safety hazards and specification; maintaining records; providing information on such matters as department procedures and applicable standards; operating technical equipment and devices and attending meetings and conferences. (Ex. 9, pp. 1-2.)

18. The Classification Specifications indicate in the section called Differences Between Levels in Series that a CE II performs ten additional duties. A CE II in the Construction division would perform the first six of those duties:
- a. Prepare and/or review plans, specifications and cost estimates for engineering projects, such as intersection upgrading, repaving projects, box culverts and single span bridges.
 - b. Prepare and/or review engineering or environmental reports and studies.
 - c. Recommend alternate methods of construction and/or substitution of materials specified to resolve problems as they occur.
 - d. Determine feasibility of proposed construction through on-site inspection, discussions and review of available data.
 - e. Conduct field investigations to determine the necessity of repair or reconstruction of roads or structures.
 - f. Act as resident engineer on projects such as multi-lane intersection reconstruction; traffic signal installation, including control loops and turn signals; two-lane highway construction or reconstruction in a rural setting. (Testimony, Donnelly; Ex. 9. pp. 2-3.)
19. Ms. Saini made a written request for reclassification on January 9, 2009, citing as general reasons for her appeal: Registered Professional Engineer; preparing cost estimates for 2 lane highway project; write CSD 683

- overruns/under runs; and worked in Finals reviewing project submitted by Resident Engineers. (Ex. 1.)
20. In her Interview Guide, Ms. Saini listed her current duties as: 1) prepare cost estimates for highway projects, 21%; 2) prepare initial data bases and spreadsheets by utilizing computer programs for use by department personnel, 21%; 3) oversee the proper completion of all reports, documents and estimates during the construction of a contract project, 21%; 4) recommend alternative methods of construction and or substitutions of materials used during construction to resolve problems as they occur, 15%; 5) prepare and keep log of CSD-683, 10%; and 6) prepare balance and excess estimate request for additional funding, 10%. (Ex. 6, p. 4.)
21. The Classification Specifications for Civil Engineer do not require any specific degree or certification. An Associate's degree or a Bachelor's degree in Civil Engineering may be used as a substitute for required professional experience. (Ex. 9, pp. 11-12.)
22. By letter of April 2, 2009, the Executive Office of Transportation and Public Works issued a preliminary recommendation of denial of reclassification to the position of CE II because "the title of Civil Engineer I duties and responsibilities appropriately describe what you perform on a daily basis." (Ex. 2.)
23. By letter of May 18, 2009, the Executive Office of Transportation informed Ms. Saini that an appeal audit was conducted and her rebuttal was reviewed.

“Accordingly, we find that the duties being performed by you do not warrant the reallocation of your position.” (Ex. 3.)

24. Ms. Saini appealed to the Human Resources Division (HRD). By letter of September 17, 2009, HRD denied Ms. Saini’s appeal because “the classification of Civil Engineer I covers the duties being performed by you.” (Ex. 4.)

25. Ms. Saini appealed to the Civil Service Commission by letter of August 19, 2010. (Ex. 5.)

CONCLUSION

I recommend that the decision of HRD denying Ms. Saini’s request to be reclassified from a Civil Engineer I to a Civil Engineer II be affirmed. Ms. Saini has not met her burden of proving that she is improperly classified. She has not shown by a preponderance of the evidence that she is performing the majority of the duties of a CE II more than 50% of the time.

According to Mr. Donnelly, the duties of a CE II in the Construction division comprise the first six duties enumerated in the level distinguishing duties of a CE II in the Classification Specifications.

The first of those duties is to “Prepare and/or review plans, specifications and cost estimates for engineering projects ...” The words “cost estimate” in this context refers to the forecast of what a project will cost in the future. This work is done in the Project Development section. Ms. Saini does not perform this duty. The “cost estimates” that Ms. Saini performs refers to payments due to a contractor every two weeks based on the work performed by the contractor during the previous two weeks.

This function is found in duty #9 listed in the examples of duties common to all levels in the series, "Approves construction and service contract payment estimates and/or invoices for materials, equipment and supplies," and job duty #3, "Performs calculations such as those related to ... quantity of materials by using calculators, computers and other instruments."

Ms. Saini does not perform the second distinguishing duty of a CE II, "Prepare and/or review engineering ... reports and studies." The computer forms that she generated for the Shrewsbury project (Contract Quantity Estimate, Record of Design, Extra Work Order, Resident Engineer's Report of Changes in Design, Balance and Excess Estimate) fall under duty #4 in the duties common to all levels, "Writes ... general reports to supervisors concerning the status of engineering projects or problems."

With respect to the third distinguishing duty, "Recommend alternate methods of construction and/or substitution of materials ...," Ms. Saini on one occasion recommended three types of flowable fill to a contractor on the Shrewsbury project where the contract failed to address the issue. She did not recommend an "alternate method" or a "substitution." She has not made any other recommendations on any other projects.

Ms. Saini does not perform any of the other three distinguishing duties of a CE II in the Construction section. She does not determine the feasibility of proposed construction, conduct field investigations to determine the necessity of repair or reconstruction, or act as a resident engineer.

Ms. Saini's primary job functions on the Shrewsbury project were to maintain the project ledger or diary, and prepare cost estimates for what the contractor was due to be paid every two weeks. This is consistent with job duty #15 in the duties common to all levels, "maintaining records."

Ms. Saini argues that her Bachelor's degree in Civil Engineering, her status as a Professional Engineer and her certification as an Engineer in Training should be considered in her request. The issue of classification, however, is based entirely on the Classification Specifications that do not require that degree or those certifications. A Bachelor's degree in Civil Engineering may be used as a substitute for required work experience, but it is not a requirement for certification. The specifications do not mention Engineer in Training or Professional Engineer.

I conclude that Ms. Saini has not met her burden of proving by a preponderance of the evidence that she is performing the majority of the duties of a CE II more than 50% of the time. I recommend that her request for reclassification from CE I to CE II be denied.

DIVISION OF ADMINISTRATIVE LAW APPEALS



Maria A. Imparato
Administrative Magistrate

DATED: March 2, 2011