

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

ELIZABETH SHEARER,
Appellant

v.

C-17-239

DEPARTMENT OF REVENUE,
Respondent

Appearance for Appellant:

Pro Se
Elizabeth Shearer

Appearance for Respondent:

Corinne Walsh, Esq.
Department of Revenue
100 Cambridge Street: 6th Floor
Boston, MA 02114

Commissioner:

Christopher C. Bowman

ORDER OF DISMISSAL

On November 17, 2017, the Appellant, Elizabeth Shearer (Ms. Shearer), pursuant to G.L. c. 30, s. 49, filed an appeal with the Civil Service Commission (Commission), contesting the decision of the state’s Human Resources Division (HRD) to affirm the decision of the Department of Revenue (DOR) to deny Ms. Shearer’s request to be reclassified from Administrative Assistant I (AA I) to Office Support Specialist II (OSS II)¹ or Child Support Enforcement Specialist I (CSES I).

On December 5, 2017, I held a pre-hearing conference at the offices of the Commission which was attended by Ms. Shearer, counsel for DOR and a DOR representative.

¹ Ms. Shearer’s initial request was to be reclassified to Administrative Assistant II (AA II). That title no longer exists and the effective equivalent is OSS II.

Consistent with all such pre-hearing conferences, I asked Ms. Shearer how she would show, as part of a full hearing, that she performs the level-distinguishing duties of either of the higher classifications more than 50% of the time, the well-established standard for deciding such appeals. She was unable to identify any level-distinguishing duty of the higher classification that she performs as part of her regular job duties. Rather, Ms. Shearer stated that the basis of her appeal was that: a) she is a long-term employee; b) she has taken on additional responsibilities since the departure of employees as part of the state's early retirement program; and c) she does the same work as others as co-workers who are in these higher titles.

First, while Ms. Shearer is indeed a long-term (and valued) DOR employee, that is not a factor in determining whether a reclassification is justified. Rather, as noted above, the standard is whether the employee performs the level-distinguishing duties more than 50% of the time. Second, none of the additional duties cited by Ms. Shearer fall under the level-distinguishing duties of the higher title(s) being sought here. Finally, the Commission has been clear that the classification of others is not a reasonable basis for the reclassification of an individual – finding that “the fact that [the Appellant’s] co-workers may be working below grade or misclassified does not entitle the Appellant to the reclassification requested. Gaffey v. Dept. of Revenue, 24, MCSR 380 (2011). That is particularly true when, as here, the Appellant is unable to show that she performs any of the level-distinguishing duties of the higher classification.

I provided DOR with the opportunity to file a Motion for Summary Decision and for Ms. Shearer to file a reply. DOR filed a Motion for Summary Decision. Ms. Shearer did not file a reply. Since there is no question of material fact to be decided, and because Ms. Shearer failed to state any intention to present any evidence at a full hearing to show that she meets the standard for reclassification, I have opted to decide this matter without a full hearing, allowing DOR's

Motion for Summary Decision. (See Zachary v. Civ. Serv. Comm'n & Dep't of Correction, Suffolk Sup. Ct. No. 07-3197 (2008) (upholding the Commission's decision to dismiss appeal after a pre-hearing in which the hearing officer was unpersuaded that the Appellant, who admitted violating DOC rules, would be able to show at a full hearing that his conduct was an accepted practice at DOC.)

Conclusion

The Appellant's appeal under Docket No. C-17-239 is hereby *dismissed*.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on March 15, 2018.

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:

Elizabeth Shearer (Appellant)

Corinne Walsh, Esq. (for Respondent)