

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

JOHN B. SHIELDS,
Appellant

C-06-303

DEPARTMENT OF REVENUE,
Respondent

Appellant's Attorney:

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Hearing Officer:

John J. Guerin, Jr.¹

DECISION

Pursuant to the provisions of G.L. c. 30, § 49, the Appellant, John B. Shields (hereinafter "Mr. Shields" or "Appellant"), is appealing the October 24, 2006 decision of the Human Resources Division (hereinafter "HRD") denying his request for reclassification from the position of Tax Examiner VI (TE VI) to the position of Tax Auditor III (TE III) in the Department of Revenue (hereinafter "DOR"). The appeal was timely filed and a hearing was held on August 7, 2007 and October 31, 2007 at the offices of the Civil Service Commission (hereinafter "Commission"). Four (4) tapes

¹ John J. Guerin, Jr., a Commissioner at the time of the full hearing, served as the hearing officer. His term on the Commission has since expired. Subsequent to leaving the Commission, however, Mr. Guerin was authorized to draft this decision, including the referenced credibility assessments, which were made by Mr. Guerin.

were made of the hearing. The parties submitted Proposed Decisions following the hearing, as instructed.

FINDINGS OF FACT:

Based on the documents entered into evidence (Joint Exhibits 1 – 13 and Appellant’s Exhibit 1) and the testimony of Geralyn Page (hereinafter “Ms. Page”), a Personnel Analyst in the Classification and Benefits Unit at DOR and Robert O’Neill (hereinafter “Mr. O’Neill”), Chief of the Customer Service Bureau at DOR, testifying on behalf of the Appointing Authority; and the Appellant and Allan Breen (hereinafter “Mr. Breen”), Deputy Chief, Customer Service Bureau, testifying on the Appellant’s behalf, I make the following findings of fact:

1. The Appellant commenced his employment with DOR in 1980 as a Principal Clerk and was assigned to the Corporation Bureau. (Testimony of Appellant)
2. In 1988, the Appellant took and passed the Civil Service Exam for a Tax Auditor within DOR. He was classified as, and his permanent position with Civil Service remains that of, Tax Auditor II. (Id.)
3. At the time of his reclassification request, the Appellant worked as the first level supervisor of the corporate abatement unit. The Appellant continues to hold this same position at the present time. (Joint Exhibit 11)
4. The Appellant directly reports to Mr. Breen, the Deputy Chief of the Corporate/Technical/Certificate Unit. Mr. Breen directly reports to Mr. O’Neill, the Chief of the Customer Service Bureau. Mr. O’Neill’s bureau is located in the Taxpayer Services Division. (Id.)

5. Mr. Breen is Mr. Shields's EPRS supervisor and Mr. O'Neill is Mr. Shields's EPRS reviewer. (Joint Exhibit 8)
6. The Tax Auditor classification specifications were established by the Human Resources Division in 1987. (Joint Exhibit 4)
7. As a result of receiving approximately 200 requests for reclassification in 2001 from employees in the Taxpayer Services, Compliance and Audit Divisions, the DOR Human Resources Bureau (hereinafter "HRB") conducted a classification study with regard to the 1987 Tax Examiner and Tax Auditor classification specifications. As part of this classification study, the HRB met with management groups from the Taxpayer Services, Compliance and Audit Divisions to compare the actual job duties of employees against the 1987 Tax Examiner and Tax Auditor classification specifications. (Testimony of Ms. Page)
8. The HRB established level distinguishing duties for the Tax Examiner classification series and the Tax Auditor classification series to augment the 1987 job specifications for each series. (Testimony of Ms. Page and Joint Exhibits 5 & 6)
9. In September 2001, the HRD determined that the level distinguishing duties for the Tax Examiner classification series and Tax Auditor classification series were in concert with the official 1987 job specifications. It was the understanding of the HRD that only appellants who performed field audits of taxpayers in New England would be reclassified to the Tax Auditor I position, that only appellants who were first level supervisors of employees who performed field audits of taxpayers in New England would be reclassified to the Tax Auditor II position and that only appellants who were second level supervisors, e.g., regional audit managers, would be

reclassified to the Tax Auditor III position. The HRB refined these level

distinguishing duties and provided notice of such to the HRD in February 2002. (Id.)

10. The 1987 Tax Auditor classification specifications provide for all levels in the series:

“Incumbents in this series audit financial and tax records of individuals and businesses . . . The basic purpose of this work is to ensure the compliance of individuals and corporations with the Commonwealth’s tax laws, rules and regulations . . .

Conducts examinations and audits of tax returns by analyzing financial reports, records and documents of individuals, partnerships and businesses (sole proprietorships, corporations, etc.) to determine compliance with established laws, rules, regulations and procedures . . .

(Joint Exhibit 4)

11. With regard to the duties of the Tax Auditor III position, the 1987 classification specifications provide that incumbents of positions at this level also:

- “1. Plan and direct team audits of major businesses.
2. Develop guidelines to be followed in the selection of audits
And in audit techniques.
3. Explain laws, rules and regulations to taxpayers.”

(Id.)

12. The 1987 Tax Examiner classification specifications provide for all levels in the series:

“Incumbents of positions in this series review and examine tax returns and records for accuracy and compliance with applicable laws, rules and regulations . . . evaluate applications for tax abatements and determine tax assessments; provide technical assistance to others; and perform related work as required.

The basic purpose of this work is to examine tax returns and financial records to determine tax liability and to ensure compliance with the applicable tax laws, rules and regulations.”

(Joint Exhibit 3)

13. With regard to the duties of the Tax Examiner VI position, the 1987 classification specifications provide:

Incumbents of positions at this level or higher also:

1. Confer with managerial staff concerning laws, rules and regulations governing assigned activities, progress of assigned unit activities, resource requirements, etc.
2. Make recommendations concerning agency budgetary and financial activities to ensure that sufficient resources are available to accomplish goals.

(Id.)

14. The 1987 Tax Examiner classification specifications provide that a Tax Examiner VI is a third level supervisory job in the series. (Id.)

15. With regard to the duties of the Tax Examiner VII position, the 1987 classification specifications provide:

“Incumbents of positions at this level or higher also:

1. Supervise all activities of a major Bureau division of the Department of Revenue in the administration and enforcement of state tax laws, rules and regulations.
2. Formulates operating procedures, rules and regulations for the assigned Bureau division in the Department of Revenue.

(Id.)

16. The level distinguishing duty established for the Tax Examiner VII position in the Taxpayer Services Division provides:

1. First level supervisor of a work unit of tax professionals charged with technical review and quality assurance functions that impact the Taxpayer Services Division.
2. First level supervisor plus responsible for the approval of procedures to be followed by other supervisors and work units in the Taxpayer Services Division and coordination of divisional training.
3. First level supervisor of tax professionals who perform audit abatements in the field.

(Joint Exhibit 6)

17. The level distinguishing duty established for the Tax Examiner VII position in the Taxpayer Services Division provides:

“Serves as Assistant Chief of Bureau, second-level supervisor in the Taxpayer Services Division.”

(Id.)

18. At the time he filed for reclassification and through the present time, the Appellant works as the first level supervisor of a work unit that processes corporate abatement applications. The Appellant reviews his employees’ work, evaluates his employees’ job performance, provides technical assistance to his employees and other Department employees with regard to corporate abatements and approves leave requests for his employees. The Appellant also manually sorts and prioritizes corporate abatement applications and directs applications to the Department’s Office of Appeals as necessary. The Appellant works his own inventory of corporate abatement applications. (Testimony of Mr. O’Neill and Appellant)

19. An abatement application is, in essence, the reverse of an audit. An audit is a field investigation to determine if the tax reported by a taxpayer is consistent with a taxpayer’s relevant books and records. Additional tax assessments may be made as the result of field audits. Taxpayers are often not forthcoming with relevant documents during field audits and auditors are often forced to sift through large amounts of documentation in order to find relevant documents. In contrast, an abatement is an application by a taxpayer, often with relevant documentation attached, for the Department to forgive all or a portion of a tax assessment that has already been made. (Testimony of Mr. O’Neill)

20. The Appellant performs his job duties from his office and has not gone out in the field since his 2006 reallocation application. (Testimony of Mr. O'Neill and Appellant)
21. The Appellant, as the result of his review of corporate abatement applications, occasionally notifies the Audit Division of the possible candidacy of a taxpayer for an audit. Since filing his 2006 reclassification request, the Appellant has made approximately six (6) or seven (7) of these referrals to the Audit Division. (Id.)
22. Mr. Breen, though he is classified in a management position, serves as the Deputy Chief or Assistant Chief of the Appellant's work unit. (Joint Exhibit 11 and Testimony of Mr. O'Neill)
23. Mr. Breen's counterparts in the Customer Service Bureau, Deputy Chief Muldoon and Deputy Chief Hannaford, occupy Tax Examiner VII positions. (Testimony of Mr. O'Neill)
24. After receiving Mr. Shields's reallocation request, the HRB conducted an interview, reviewed the applicable paperwork and determined that the Appellant was properly classified as a Tax Examiner VI. (Joint Exhibits 9 and 10)
25. The DOR's main argument against the reclassification of the Appellant's current position was that he did not do audits and that he is a first-level supervisor. Neither of these aspects of the Appellant's duties comport with those of a Tax Auditor III position. Ms. Page was the key witness for the DOR and was very credible and clear in her explanations of complex classification issues. I found that her almost verbatim recall - under cross examination - of the Appellant's duty performance percentages from his Interview Guide was extremely impressive. I gave great weight to the fact that she admitted that Mr. Breen was far more knowledgeable of the Appellant's day-

to-day duties than she. I also assigned great weight to her testimony that she was personally involved in the reclassification study of 2001 and Mr. Breen was not.

(Testimony of Ms. Page)

26. The DOR made certain that, for the record of this appeal, it was well known that the Appellant is an outstanding and valued employee who has the respect of his co-workers and his employer. (Appointing Authority's Opening Statement)

27. On June 14, 2006, the DOR formally denied the Appellant's classification appeal. (Joint Exhibit 10)

28. The Appellant appealed this decision to the HRD and, on October 24, 2006, the HRD issued a decision affirming the DOR's decision that he was properly classified as a Tax Examiner VI. (Joint Exhibit 1)

29. On November 9, 2006, pursuant to G.L. c. 30, § 49, the Appellant filed an appeal of the decision of the Personnel Administrator with the Civil Service Commission. (Administrative Notice)

CONCLUSION

After careful review of the testimony and based on a preponderance of the credible evidence presented in this appeal, the Commission concludes that the decision of the HRD to deny Mr. Shield's reclassification request should be affirmed.

Mr. Shields has not met his burden of showing that he was improperly classified as a Tax Examiner VI. He seeks reclassification to a Tax Auditor III. Mr. Shields does not perform the job duties of a Tax Auditor III as set forth in the 1987 job specifications because he does not perform audits of taxpayers, he does not plan and direct team audits of major businesses and he does not develop guidelines to be followed in the selection of

audits and in audit techniques. The Appellant does not perform the level distinguishing duty of a Tax Auditor III approved by HRD in 2001 - and refined by the DOR in 2002 - because he does not serve as an audit manager, the second level supervisor of units in a region charged with the completion of field audits of taxpayers located in New England.

Further, Mr. Shields does perform work consistent with duties common to all levels of the Tax Examiner series, as identified on the 1987 classification specifications for the series. Specifically, Mr. Shields reviews and examines tax returns for accuracy and compliance with applicable laws. He evaluates applications for tax abatements, provides technical assistance to others and determines new tax assessments based on information provided by abatement applicants. Mr. Shields also performs work consistent with the level distinguishing duties for a Tax Examiner VI refined by the DOR in 2002. He is a first level supervisor of a work unit of tax professionals who are charged with technical review and quality assurance functions, he has been responsible for the approval of procedures to be followed by other employees with regard to corporate abatement requests and he serves specifically as the first level supervisor of tax professionals who perform abatements.

In his written Appeal of Denial for Reclassification to the Commission, Mr. Shields specifically identified Tax Auditor III as the position for which his request for reclassification was denied. Throughout this process, however, the Appellant addressed the potential that his job duties may also relate to the Tax Examiner VII position. The Appellant's job duties do not qualify for reclassification to this position under either the 1987 classification specifications or the 2001-2002 level distinguishing duties, as Mr. Shields is not an assistant bureau chief, a second-level supervisory position.

As is unfortunately the case in most reclassification appeals to this Commission, the Appellant is, by all descriptions, an outstanding public servant who works hard and is respected by his fellow DOR employees. The bar for proving that one's position is misclassified is set very high. The Appellant presented to this hearing officer as a man of integrity, politeness and pride of service. However, the reclassification of a position requires proof that the level distinguishers of the duties one is performing are better reflected in the higher title to which one aspires. That is simply not the case here.

Therefore, for all the reasons stated herein, the appeal under Docket Number C-06-303 is hereby *dismissed*.

Civil Service Commission

John J. Guerin, Jr.
Hearing Officer

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, Stein and Taylor, Commissioners) on June 26, 2008.

A true record. Attest:

Chairman

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:

Adam Simms, Esq. (for Appellant)

Elizabeth Herriott Tiernay, Esq. (for Appointing Authority)

John Marra, Esq. (HRD)