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SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. SUCV2008-3288

JOHN SHIELDS,
Plaintiff

v.

DEPARTMENT OF REVENUE &
CIVIL SERVICE COMMISSION,
Defendants

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MEMORANDUM OF DECISION ON PLAINTIFF'S
MOTION FOR JUDGMENT ON THE PLEADINGS

Plaintiff John Shields, an employee of the Department of Revenue ("DOR"), seeks judicial review pursuant to G. L. c. 31, § 44 of the Civil Service Commission's decision denying his request to be classified as a Tax Auditor III. The Commission and Shields disagree about whether Shields performs the duties required for the position. Shields has moved for judgment on the pleadings, and for the following reasons, the plaintiff's motion is Denied.

Background

Tax Auditor and Tax Examiner Classifications

In 1987, the Department of Personnel Administration issued classification specifications for the Tax Auditor and Tax Examiner job series. The specifications described the qualifications needed for each job in the series and listed the duties incumbent upon each employee. According to the 1987 specifications, a Tax Auditor's purpose is "to ensure compliance of individuals and corporations with the Commonwealth's tax laws, rules and regulations." See Administrative Record ("A.R."), Exhibit 4. An employee at any level of the Tax Auditor series "conducts

examinations and audits of tax returns by analyzing financial reports, records and documents of individuals, partnerships and businesses.” *Id.* Further, all Tax Auditors develop “information for use in preparing guidelines, making recommendations on rules, regulations and procedures and in preparing cases for tax investigation” *Id.* A Tax Auditor III plans and directs major audits, develops guidelines and techniques for audits, and explains tax laws, rules, and regulations to taxpayers. *Id.*

Tax Examiners “examine tax returns and financial records to determine tax liability and to ensure compliance with applicable tax laws, rules and regulations.” A.R., Exhibit 3. A Tax Examiner “[r]eviews tax returns for accuracy and for proper computation of tax; contacts taxpayers . . . recommends action to be taken in unresolved cases . . . [a]udits corporations and business establishments according to agency procedures and accepted accounting practice . . . [and] evaluates applications for abatements of taxes,” in addition to other duties. *Id.* A Tax Examiner VII supervises a major bureau division of the DOR and formulates operating procedures, rules, and regulations.

In September 2001, the DOR Human Resources Bureau (“HRB”) conducted a review of the 1987 classifications and designated certain duties as “level distinguishing duties.” At that time, Patricia Wada, the then-Acting Personnel Manager, wrote a letter to the Acting Commissioner of the DOR stating that employees requesting reclassification in the Tax Auditor series must “meet the level distinguishing characteristic of *performing field audits of taxpayers located in New England.*” (emphasis in original). A basic field auditor would be classified as a Tax Auditor I. A Tax Auditor II was a first level supervisor. Only second level supervisors, or regional audit managers, could be classified as Tax Auditor III.

Shields's Employment at the Department of Revenue

Shields has worked at the DOR since 1980. In 1988, he passed the civil service examination and assumed the permanent position of Tax Auditor II, which he currently holds. Shields is also a Tax Examiner VI in the Customer Service Bureau of the Technical Services Division.¹ He remains the first level supervisor of the corporate abatement unit.

According to hearing testimony, at the time of his reclassification request, Shields reviewed subordinate employees' work, evaluated their job performance, provided them with technical assistance, and approved their leave requests. He sorted and prioritized corporate abatement applications,² directed applications to the Office of Appeals, and maintained his own load of abatement applications. While focusing on abatements, Shields occasionally recommended to the Audit Division a candidate for an audit. Since 2006, this has occurred about six or seven times. He was directly supervised by Allan Breen in the Customer Service Bureau, which is part of the Taxpayer Services Division. Robert O'Neill, the Chief of the Customer Service Bureau, supervised Breen.

In 2006, Shields requested reclassification from Tax Examiner VI³ to Tax Auditor III.⁴

¹On the Reclassification Appeal Form, see Administrative Record ("A.R.") at 1, Shields requested reclassification as a Tax Auditor III. Although Shields did not formally request the Tax Examiner VII position, he has argued in the pleadings that he should be reclassified as either a Tax Auditor III or Tax Examiner VII.

²An abatement is an application by a taxpayer for the DOR to forgive all or a portion of a tax assessment that has already been made.

³On the Reclassification Appeal Form, Shields identified his title at the time of the request as Tax Examiner VI.

⁴The hearing officer acknowledged that in his pleadings, Shields advances the argument that he should also be considered for a Tax Examiner VII position. The hearing examiner focused

Following his reclassification request, the HRB determined that Shields was properly classified as Tax Examiner VI and denied the request on June 14, 2006. The HRB found that Shields did not perform audits and was only a first level supervisor. Therefore, Shields's responsibilities did not qualify him for the Tax Auditor III position. Shields appealed the HRB's decision to his personnel administrator, but on October 24, 2006, the decision was affirmed.

Shields's Appeal

Pursuant to G. L. c. 30, § 49,⁵ Shields appealed the personnel administrator's decision to the Civil Service Commission, and Hearing Officer John J. Guerin, Jr. conducted a hearing on August 7 and October 31, 2007. He received exhibits and took testimony from O'Neill, Breen, and Geralyn Page, a Personnel Analyst.

The hearing officer concluded that Shields "has not met his burden of showing that he was improperly classified as a Tax Examiner VI." Decision at 8. Hearing Officer Guerin found that Shields performs work consistent with a Tax Examiner VI, not a Tax Auditor III. Specifically, the decision states,

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 or major businesses and he does not develop guidelines to be followed in the

his decision on Tax Auditor III, but did note briefly that Shields would not have qualified for reclassification as a Tax Examiner VII.

⁵General Laws c. 30, § 49 provides, in part,
[a]ny 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

selection of audits and in audit techniques. [Shields] does not perform the level distinguishing duty of a Tax Auditor III . . . 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

Decision at 8-9.

Discussion

Standard of Review

Shields seeks review of the Civil Service Commission's decision pursuant to G. L. c. 31, § 44, which provides, "[a]ny party aggrieved by a final order or decision of the [Civil Service] commission following a hearing . . . may institute proceedings for judicial review in the superior court within thirty days after receipt of such order or decision. Any proceedings in the superior court shall . . . be governed by the provisions of section fourteen of chapter thirty A." See *Plymouth v. Civil Serv. Comm'n*, 426, Mass. 1, 5 (1997). The standard of review governing the appeal of a decision of an administrative agency under G. L. c. 30A, § 14(7) requires that the decision be set aside only if based upon error of law or if unsupported by substantial evidence. *Dube v. Contributory Retirement Appeal Bd.*, 50 Mass. App. Ct. 21, 23 (2000). The court is limited to a review of the administrative record, and the party appealing from the agency decision bears the burden of establishing the invalidity of that decision. *Merisme v. Board of Appeal on Motor Vehicle Liab. Policies & Bonds*, 27 Mass. App. Ct. 470, 474 (1983). A reviewing court may not substitute its own judgment for that of the agency, *Southern Worcester County Vocational Regional High Sch. v. Alcoholic Beverages Control Comm'n*, 386 Mass. 414, 420-421 (1984), nor may it displace an agency's choice between two fairly conflicting views, even though

the court would justifiably have made a different choice were it deciding the matter de novo.

Zoning Bd. of Appeals of Wellesley v. Housing Appeals Comm., 385 Mass. 651, 657 (1982).

Analysis

The hearing officer found, and the record supports the conclusion, that Shields does not qualify for the Tax Auditor III position. He does not perform the duties listed in the 1987 classification specifications for a Tax Auditor III, nor does he perform the level distinguishing duties adopted in 2001. For example, Shields does not currently perform audits. See Supplemental A.R., Vol. II at 28-32. He does not “plan and direct team audits of major businesses” nor does he “develop guidelines to be followed in the selections of audits and audit techniques.” Supp. A.R., Vol. II at 32. At the hearing, Shields testified to the fact that he knew the principles and practices of auditing, that his work on abatements was based on much of the same information and documents as audits, and that he has performed audits in the past. See Supp. A.R., Vol. II at 116-119. That knowledge and skill, however, does not alone qualify him to be a Tax Auditor III as laid out in the 1987 classifications. Moreover, as a first-level supervisor who directly oversees a group of employees, Shields does not satisfy the Auditor III level distinguishing duty of being a regional audit manager.⁶

In reaching his decision, the hearing officer specifically noted that he had weighed the testimony of the witnesses and determined their credibility. He credited Page’s explanations of the classification levels. He further acknowledged that Breen, who supported Shields’s reclassification, saw more of Shields’s activities and job performance on a day-to-day basis than

⁶Nor does he satisfy the Tax Examiner VII distinguishing duty of serving as a second-level supervisor in either the Compliance or the Taxpayer Services Division. See A.R., Exhibit 6 at 147-148.

Page. See Decision at 7-8, para. 25.

Shields's argument goes further than simply alleging that he performs duties which would qualify him for reclassification. He claims that the DOR does not adhere to its own guidelines when determining whether an employee should be reclassified. He argues that the failure to follow internal guidelines means the DOR's decisions are arbitrary and capricious. See Plaintiff's Memo. in Support of his Motion to Reverse the Decision of the Civil Service Commission at 13-14.

In this case, however, Shields has not carried his burden of showing that the hearing officer's decision was invalid. See *Merisme*, 27 Mass. App. Ct. at 474 (appealing party must establish invalidity of decision). He is correct that the DOR "must abide by [its] own internally promulgated policies," *Biogen IDEC MA, Inc. v. Treasurer & Receiver Gen.*, 454 Mass. 174, 186 (2009), and the hearing officer noted at the hearing that the testimony "established . . . that there are some very admitted inconsistencies throughout this whole system." Supp. A.R., Vol. I at 77. For example, the record suggests that job responsibilities may overlap, and employees performing the same or similar obligations may work in different divisions. In some cases, an employee's title may not correlate precisely with the work he performs. See Supp. A.R. Vol. II at 12-17. As Page testified,

there are misclassifications within the agency, not only in the Tax Auditor series, but in other positions as well. Employees may receive promotions into certain positions, and due to operational needs, jobs are consolidated, moved, transferred, and they are no longer performing that function. . . .

Article 16 of the collective bargaining contracts allows [sic] the agency to assign work that is in a lower-grade title, as long as there is no harm done to the employee. And this is certainly the case in some areas where we have Tax Auditors performing outside of the Audit Division and perhaps not even performing audits at this point. . . .

[T]he agency was a lot bigger several years ago and you had those extra layers where you could have additional supervisory personnel. We've been downsized significantly, . . . and we see that supervisory personnel, similar to Mr. Shields' case, are also required to carry an inventory.

Supp. A.R. Vol. I at 34-35.

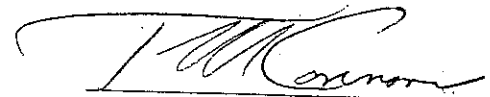
Notwithstanding this testimony about the inconsistencies in the DOR's classification system, the Commission's hearing officer found that, in this case, Shields had been properly classified as a Tax Examiner VI. As noted above, there was substantial evidence to support that conclusion, and nothing in the record indicates that the hearing officer's decision was based upon an error of law.

Conclusion

While all parties agree that Shields is "an outstanding and valued employee [of the DOR] who has the respect of his co-workers and his employer," in the absence of performing the duties required for reclassification, that is insufficient to reclassify him as a Tax Auditor III.

Order

The Civil Service Commission's decision is affirmed. The plaintiff's motion for judgment on the pleadings is Denied.



Thomas A. Connors
Justice of the Superior Court

Date: October 29, 2009

Notice sent
to all parties
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