

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

One Ashburton Place - Room 503
Boston, MA 02108
(617) 979-1900

DEANNA SHINE,
Appellant

CASE NO: C-19-228

v.

DEPARTMENT OF CORRECTION,
Respondent

Appearance for Appellant:

Deanna Shine, Pro Se

Appearance for Respondent:

Joseph S. Santoro, Labor Relations Analyst
Department of Correction
50 Maple Street, 1st Floor
Milford, MA 01757

Commissioner:

Paul M. Stein

DECISION

The Appellant, Deanna Shine, appealed to the Civil Service Commission (Commission) pursuant to G.L.c.30,§49,¹ from the denial of the Massachusetts Human Resources Division (HRD) of a request to reclassify her position at the Massachusetts Department of Correction (DOC) from her current title of Office Support Specialist I (OSS-I) to the title of Program Coordinator II (PC-II). The Commission held a pre-hearing conference at the Commission's Boston office on November 26, 2019, and a full hearing at the UMass School of Law at Dartmouth on January 27, 2020, which was digitally recorded.² Twenty-nine (29) exhibits (*Exhs. 1 through 29*) were received in evidence. The Commission received a post-hearing Proposed Decision from DOC and a post-hearing Plaintiff's Brief from Ms. Shine. The DOC also submitted a Motion to

¹ The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§ 1.00, *et seq.*, apply to adjudications before the Commission with and conflicting provisions of G.L. c.30,§49, or Commission rules, taking precedence.

² Copies of a CD of the full hearing were provided to the parties. If there is a judicial appeal of this decision, the plaintiff in the judicial appeal becomes obligated to use the CDs to supply the court with the written transcript of the hearing to the extent that he/she wishes to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion.

Reopen the Record to submit three post-hearing proposed Rebuttal Exhibits which Ms. Shine opposed. The Motion to Reopen is denied. The proposed Rebuttal Exhibits are not received in evidence and are not relied upon in this Decision. For the reasons stated, the appeal is denied.

FINDINGS OF FACT

Based on the Exhibits entered into evidence and the testimony of the following witnesses:

Called by DOC:

- Stephen Kennedy, DOC Superintendent
- Sara Parmenter, DOC Director of Payroll and Personnel

Called by the Appellant:

- Deanna Shine, Appellant
- Anthony J. Constantino, DOC Chaplain II
- Richard F. Heik, DOC Correctional Program Officer A/B

and taking administrative notice of all matters filed in the case, pertinent law and reasonable inferences from the credible evidence, a preponderance of evidence establishes these facts:

1. The Appellant, Deana Shine, has been employed at the DOC's Old Colony Correctional Center (OCCC) since April 2011. She holds the title of Office Support Specialist I (OSS-I). (*Exhs. 1 & 5; Testimony of Appellant, Parmenter & Kennedy*)

2. In 2015, Ms. Shine was assigned to the OCCC Programs and Treatment Office (OCCC/DOT), the position she held at the time of the request for reclassification involved in this appeal. (*Exhs. 5 through 8 & 16; Testimony of Constantino, Heik & Kennedy*)

3. The OCCC/DOT is headed by a Director, who manages a variety of inmate services, including recreational, social, educational and religious activities, typically supported by a staff of one or more Recreation Officers (ROs) and Correction Program Officers (CPOs), other specialists, interns, volunteers and administrative staff. Ms. Shine reported to the Director. She never had any direct reports and evaluated no DOC employee's performance. (*Exhs. 5, 8, 16 through 26; Testimony of Appellant, Heik & Constantino*)

4. As provided on her Form 30s and EPRS evaluations, examples of Ms. Shine's specific duties as the OCCC/DOT OSS-I included:

- Administrative support to the DOT, Volunteer Services Coordinator and Wedding Coordinator
- Liaison to the Recreation Staff, CPOs and Chaplain
- Liaison to governmental agencies to exchange information and coordinate activities
- Schedule and attend meetings
- Maintain electronic and meeting calendars for movies, recreation, library, religious, gym and other inmate activities
- Coordinate unit and department programs and activities
- Ensures office activities are operational and comply with standards or guidelines
- Responsible for organization and upkeep of files
- Conduct research
- Prepares monthly and quarterly reports and compiles data
- Creates and maintains data base and spreadsheet files
- Responds to inquiries and correspondence and screen phone calls
- Handle inmate requests for leisure-time equipment (e.g., MP3 players, etc.)

(Exh. 9 & 16)

5. During her employment at OCCC/DOT, Ms. Shine was well-regarded as a good employee, whose performance consistently was rated as "meets" or "exceeds" requirements.

(Exhs 5 through 8 & 16: Testimony of Constantino, Heik & Kennedy)

6. In June 2019, Ms. Shine filed a request for reclassification of her position from OSS-I to Program Coordinator II (PC-II). *(Exh.5)*

7. In the Interview Guide submitted by Ms. Shine in support of her request for reclassification, she provided a detailed list of the most important duties she regularly performed, substantially all of which were administrative in nature, such as daily handling of mail, scheduling, coffee orders, typing letters, handling volunteer calls, monthly and quarterly report preparation, program schedules, ordering supplies and meeting minutes. She also listed a variety of tasks she performed "as needed", such as assisting other staff with processing program

paperwork. She did not provide any specific breakdown of the amount of time spend performing any particular task. (*Exhs. 5 & 16*)

8. The gravamen of Ms. Shine’s reclassification request turned on her contention that, in addition to her core administrative duties, she performed additional management level “program coordination” duties that were delegated to her by her supervisor or that she was required to pick up due to an understaffed department, particularly, vacancies in the positions of RO and/or CPO. (*Exhs. 4 through 7; Testimony of Appellant, Heik & Constantino*)

9. Examples of the duties that Ms. Shine describes as “program coordinator” work include:

- Recreation and Leisure Activities Manual – Ms. Shine prepared a three-page summary of the programs provided by the Recreation Department and a fifteen page “Recreation Programs Operations Manual”. She used a comparable manual prepared in October 2016 by another institution (MCI Framingham) as the template, with input from the DOT ROs and significant edits to conform to the programs offered at OCCC. Superintendent Kennedy described this one-time project as a “combination” of “cut and paste” and “some original work” (*Exh. 17; Testimony of Appellant & Kennedy*)
- Inmate Run Programs – Inmate Self-Improvement Groups are structured inmate run groups, supervised by a Superintendent’s designee (typically CPO), to provide offenders with a forum to develop interpersonal communications, problem solving and other basic life skills. Ms. Shine prepared forms based on the applicable DOC regulations and entered the data provided to her to track and evaluate these programs. She performed similar tasks for reporting activities under the “Good Time” program as well as other programs, preparing spreadsheets and evaluation forms for approval by the supervising staff member or program facilitator. DOC Personnel Director

Parmenter found most of this work was not “evaluating” programs, but rather researching, scheduling and “maintaining the process for programs to be evaluated” by others. (*Exhs. 18, 20, 23 & 24; Testimony of Appellant & Parmenter*)

- Supervision of Interns and Volunteers – The DOC provides opportunities for college students to intern at its facilities and utilizes volunteers to facilitate some of the recreational activities. These individuals are not DOC employees and there are no payroll records or personnel files maintained on them. Ms. Shine’s responsibilities with interns and volunteers focused on providing documentation needed to process them on arrival and to evaluate them at the completion of their tours, for approval by the DOT or others, all as prescribed in the applicable DOC regulations and “Central Office” forms. (*Exhs. 21 through 23; Testimony of Appellant & Parmenter*)

10. On July 29, 2019, after an audit of Ms. Shine’s request, DOC Commissioner Mici denied the request, concluding that “careful review . . . determined that you do not meet the classification specifications for the Program Coordinator II.” (*Exh. 3*)

11. Ms. Shine duly appealed the DOC’s decision to the Massachusetts Human Resources Division (HRD) which, by letter dated October 21, 2019, informed Ms. Shine that HRD concurred with the DOC’s decision that the duties being performed by her did not warrant the reallocation of her position and, therefore, denied her appeal. (*Exh. 2*)

12. Ms. Shine duly appealed HRD’s decision to the Commission. (*Exh. 1*)

13. In February 2020, with this appeal pending, Ms. Shine was reassigned to the OCCC Office of Security, reporting to the Director of Security (DOS). She retained her title of OSS-I and pay

status. She provides scheduling, tracking and other administrative support to the DOS. She no longer performs any duties for the OCCC/DOT. (*Exhs.27&28; Testimony of Kennedy*)³

14. If Ms. Shine were reallocated to a PC-II position, she would be the only such Program Coordinator at OCCS. PCs are not typically assigned to a DOC facility, such as OCCC. (*Exh. 8, 26 & 27; Testimony of Parmenter & Kennedy*).

15. The Classification Specification for the Office Support Specialist (OSS) Series, as reissued by HRD effective April 1, 2012, defines the basic purpose of the work of an OSS is to “perform administrative functions such as preparing and analyzing correspondence, reports and other materials as needed; arrange meetings and internal and external contacts; respond to inquiries, assist in various office programs and perform related work as required.” (*Exh. 10*)

16. The OSS Series contains two levels: (1) OSS-I is a first-level administrative job, with authority to exercise direct supervision over, assign work to, and review the performance of clerical personnel and (2) OSS-II is a second-level supervisory job, with authority to exercise supervision over, assign work to and review the performance of clerical or technical personnel. (*Exh.10*)

17. Examples of the specific duties common to both OSS titles include: (1) provide administrative support to assigned personnel; (2) schedule and attend meetings; (3) conduct research; (4) maintain electronic meeting and event calendars; (5) use computer software or databases to prepare reports and compile data; (6) create and maintain database and spreadsheet files; (7) respond to inquiries and provide information to internal and external contacts; (8) coordinate unit or department programs and activities (e.g. trainings, seminars, teleconferences, employee recognition activities, recruitment and retention efforts); (9) ensure office activities are

³ Ms. Shine’s replacement at the OCCC/DOT is a Clerk III. (*Testimony of Kennedy*)

operational and in compliance with standard or guidelines; (10) acts as liaison with local and federal agencies to exchange information and coordinate activities; (11) screen phone calls; and (12) organize and maintain filing systems/file rooms. (*Exh.10*)

18. The Classification Specification for the Program Coordinator Series, issued July 1, 1987, defines the basic purpose of the work of a PC “to coordinate, monitor, develop and implement programs for an assigned agency.” (*Exh.11*)

19. The PC series contains three levels, all of which are supervisory positions: (1) PC-I is the first-level supervisory job, providing direct supervision, work assignments and performance reviews of 1-5 professional, technical, administrative and/or other personnel; and may exercise functional supervision over some or all of the work of other such personnel; (2) PC-II is the second-level supervisory job, providing direct supervision, work assignments and performance reviews of 1-5 professional, technical, administrative personnel AND indirect supervision (through an intermediate supervisor) of an additional 1-5 such personnel; PC-III is the third-level supervisory job, providing direct supervision over 1-5 personnel AND indirect supervision (through an intermediate supervisor) of 6 – 15 personnel. (*Exh.11*)

20. Examples of the specific duties common to all PC positions include: (1) coordinate and monitor assigned programs activities in order to ensure effective operations and compliance with established standards; (2) review and analyze data concerning assigned agency programs in order to determine progress and effectiveness, to make recommendations for changes in procedures, guidelines, etc and to devise methods of accomplishing program objectives; (3) provide technical assistance and advice to agency personnel and others concerning assigned agency programs in order to exchange information, resolve problems and to ensure compliance with established policies, procedures and standards; (4) respond to inquiries from agency staff and others in order

to provide information concerning assigned agency programs; (5) maintain liaison with various private, local, state and federal agencies and others in order to exchange information and/or to resolve problems; (6) perform related duties such as attending meetings and conferences; maintaining record and preparing reports. (*Exh. 11*)

21. A PC-II second-level supervisor also: (1) provides on-the-job training and orientation for employees; (2) develops and implements procedures and guidelines to accomplish assigned agency program objectives and goals; (3) reviews reports, memoranda, etc. for completeness, accuracy and content; (4) confers with management staff and other agency personnel in order to determine program requirements and availability of resources and to develop the criteria and standards for program evaluation; (5) evaluate program activities in order to determine progress and effectiveness and to make recommendations concerning changes as needed. (*Exh. 11*)

APPLICABLE LAW

G.L.c.30, §49 provides:

“Any 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. Said commission shall hear all appeals as if said appeals were originally entered before it. If said commission finds that the office or position of the person appealing warrants a different position reallocation . . . it shall be effective as of the date of appeal . . .”

“The determining factor of a reclassification is the distribution of time that an individual spends performing the function of a job classification.” Roscoe v. Department of Environmental Protection, 15 MCSR 47 (2002). In order to justify a reclassification, an employee must establish that she is performing distinguishing duties encompassed within the higher level position the majority of the time. See, e.g., Pellegrino v. Department of State Police, 18 MCSR 261 (2005) (at least 51%); Morawski v. Department of Revenue, 14 MCSR 188 (2001) (more than 50%);

Madison v. Department of Public Health, 12 MCSR 49 (1999) (at least 50%); Kennedy v. Holyoke Community College, 11 MCSR 302 (1998) (at least 50%). What must be shown is that Ms. Shine performs the “distinguishing duties” of PC-II a majority her time and, in making this calculation, duties which fall within both the higher and lower title do not count as “distinguishing duties.” See Lannigan v Department of Developmental Services, 30 MCSR 494 (2017)

ANALYSIS

Ms. Shine is well-regarded by her colleagues and she is, without doubt, a dedicated and hard-working public employee. However, reclassification of a position by the Commission requires proof that specified distinguishing duties of the title to which reclassification is requested are, in fact, actually being performed as the major part of her current work (i.e. more than 50 percent of her time is spent on these distinguishing duties). Accordingly, the issue before the Commission is limited to that narrow question.

First, after careful review of the evidence, I conclude that Ms. Shine was not performing the distinguishing duties of a PC-II a majority of the time. Ms. Shine did not expressly prove which PC-II duties she claimed to aggregate to 50% of her time. To the contrary, the preponderance of the evidence established that substantially all of the regular duties she performed while assigned to OCCC/DOT fit the job description of the administrative duties of an OSS-I. There is no dispute that the duties of the OSS Series and the PC Series do overlap (i.e., employees in each series, to some extent, have responsibility to “coordinate” activities, analyze data, prepare reports and serve as a liaison within and outside the agency) and that some of the work Ms. Shine’s performance falls into these categories that fits both job descriptions. However, as noted above, work expressly described as common to both the OSS and PC jobs are excluded from the tasks that are counted

to show she performs at the PC-II level a majority of the time. E.g., Lannigan v Department of Developmental Services, 30 MCSR 494 (2017)

Second, Ms. Shine had never had direct reports and exercised no formal supervisory responsibilities over other DOC employees as an OSS-I in the OCCC/DOT. Although she claims that she managed interns and volunteers, even if those duties were “supervisory” in nature, oversight of non-employees does not generally qualify as the required supervisory duties as defined by the PC Series Job Classification. See, e.g., Haque v. Department of Environmental Protection, 27 MCSR 585 (2014); Farinha v. UMass at Dartmouth, 23 MCSR 22 (2010); Dziczek v. Department of Conservation & Recreation, 20 MCSR 200 (2007); Canata v. Holyoke Comm. College, 14 MCSR 91 (2001). This lack of supervisory responsibility is especially critical here where agency program supervisory duties are the essence of the PC Job Series, at all levels. See Sutliff v. Executive Office of Labor & Workforce Dev., 32 MCSR 26 (2019)⁴

Third, Ms. Shine contends that, in effect, she became a “de facto” program coordinator, temporarily filling in “as needed” to perform duties that would have been the responsibility of other staff during periods when there were vacancies in the positions directly responsible for those duties. The evidence, however, does not support the conclusion that, at the time of the request for reclassification in June 2019, or at any other time, Ms. Shine regularly performed these level distinguishing duties more than 50% of the time. The Commission has consistently held that a reclassification requires proof that those duties comprise the majority of her current, permanently

⁴Ms. Shine contends that no PC-IIs supervise other employees at the DOC and lack of supervisory duties should not prevent her from reclassification. The Commission has repeatedly noted, when reviewing reclassification appeals, the Commission must look “only at the duties of the Appellant” and the classification of other employees who held those positions prior to being transferred to their current job, or promoted by the Appointing Authority to the position, have no bearing on the issue before the Commission as to whether the Appellant meets the preponderance of the evidence test that the Appellant is performing a majority of the time at the higher level. See Dell’Anno v. Massachusetts Dep’t of Revenue, CSC No. C-18-083, 33 MCSR 8 (2020); McBride v. Dep’t of Industrial Accidents, 28 MCSR 242 (2015); Palmieri v. Department of Revenue, 26 MCSR 180 (2013).

assigned work. In this respect, a reclassification is different from a promotion, which implies a prospective change in duties, rather than proof that the duties are already being performed at the higher level a majority of the time. Similarly, 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., Brunelle v. Massachusetts Dep’t of Transp., 33 MCSR 370 (2020); Hartnett v. Department of Revenue, 30 MCSR 398 (2017); Baran v. Department of Conservation & Recreation, 18 MCSR 355 (2005). See generally, Boston Police Dep’t v. Jones, 98 Mass.App.Ct. 762 (2020) (in general, voluntary overtime and detail pay are not part of the regular compensation of a tenured civil servant)

Finally, Ms. Shine contends that her request for reclassification was denied in retaliation for animus by her superiors against her. This contention is not a matter within the purview of the Commission to determine in a reclassification appeal. I note, however, that I found no justification to reach such a conclusion of animus or bias from the evidence presented.

In sum, Ms. Shine did not meet her burden to establish that she performs the duties of a PC-II more than half of her time. Therefore, a reclassification of her position is not warranted.

Accordingly, for the reasons state above, the appeal of the Appellant, Deana Shine, under Docket No. C-19-228, is ***denied***.

Civil Service Commission

/s/ Paul M. Stein

Paul M. Stein
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Tivnan & Stein, Commissioners) on March 11, 2021.

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 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. 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:

Deana Shine (Appellant)

Joseph S. Santoro. (for Respondent)