

NOTIFY

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

NOTICE SENT
10.11.13
M.S.G.
MASS.A.G.
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R.B.R.

SUPERIOR COURT
CIVIL ACTION
SUCV2010-04153

JAMES STRAUB

(LAT)

vs.

RECEIVED
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CLERK OF SUPERIOR COURT
SUFFOLK COUNTY

MASSACHUSETTS CIVIL SERVICE COMMISSION & another¹

MEMORANDUM OF DECISION AND ORDER ON THE
PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS (PAPER #6)

INTRODUCTION

The plaintiff, James Straub ("Straub"), works for the Lakes and Ponds Program, a division of the Department of Conservation and Recreation ("DCR"). He filed this action, pursuant to G. L. c. 30A, § 14 and G. L. c. 31, § 44, as an appeal from a decision issued by the defendant, the Massachusetts Civil Service Commission (the "Commission"), which denied his appeal from the Human Resources Division's (the "HRD") decision, denying his request to be reclassified from the position of Program Coordinator II ("PC II") to the position of Environmental Analyst V ("EA V"). This matter is now before the court on Straub's Motion for Judgment on the Pleadings (Paper #6). For the reasons set forth below, the Motion for Judgment on the Pleadings is DENIED and the Commission's classification decision is AFFIRMED.

¹ The Department of Conservation and Recreation

BACKGROUND

I. Statutory and Regulatory Framework

The Legislature created the Commission in order to “guard against political considerations, favoritism, and bias in governmental employment decisions, including promotions, and to protect efficient public employees from political control.” City of Cambridge v. Civil Serv. Comm’n, 43 Mass. App. Ct. 300, 304 (1997); G. L. c. 7, § 41. It is the Commission’s duty to hear any appeals brought by an “employee of the commonwealth objecting to any provision of the classification affecting his office or position[.]” G. L. c. 7, § 49.²

An employee’s request for employment reclassification is initially handled by the agency for which he/she works, i.e., by the appointing authority.³ If, however, the employee is aggrieved with the results, the employee may go to the Personnel Administrator within the HRD of the Executive Office of Administration and Finance and request further review. G. L. c. 30, § 49; G. L. c. 31A, § 2. If, after review by the HRD, an employee is still aggrieved, that employee may appeal to the Commission. G. L. c. 31, § 43. At this stage, the employee “shall be given a hearing before a member of the [C]ommission or some disinterested person designated by the [C]hairman of the [C]ommission.” G. L. c. 31, § 43. After the conclusion of this hearing, “the member or hearing officer shall file . . . a report of his findings with the [C]ommission” and “the [C]ommission shall render a written decision[.]” G. L. c. 31, § 43.

In reviewing the appointing authority’s decision, the Commission must “conduct a *de novo* hearing for the purposes of finding the facts anew.” Falmouth v. Civil Serv. Comm’n, 447

² “Classification” refers to the classifications created by the Personnel Administrator. Pursuant to G. L. c. 30, § 45, the Personnel Administrator is tasked with “establish[ing], administer[ing] and keep[ing] current and complete an office and position classification plan any pay plan of the commonwealth.”

³ The statute defines “[a]ppointing [a]uthority” as “any person, board or commission with power to appoint or employ personnel in civil service positions.” G. L. c. 31, § 1.

Mass. 814, 823 (2006), citing Sullivan v. Municipal Court of Roxbury Dist., 322 Mass. 566, 572 (1948) and Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-728, rev. den., 440, Mass. 1108 (2003). “[A]fter making its *de novo* findings of fact . . . the [C]ommission does not act without regard to the previous decision[;]” rather, it determines “whether ‘there was reasonable justification for the action taken by the appointing authority in the circumstances found by the [C]ommission to have existed when the appointing authority made its decision.’” Falmouth, 447 Mass. at 823.

An action is “justified” if it is ‘done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law.’ Cambridge v. Civil Serv. Comm’n, 43 Mass. App. Ct. 300, 304, rev. den., 426 Mass. 1102 (1997), quoting Sullivan, 322 Mass. at 572-573; see also Selectmen of Wakefield v. Judge of the First Dist. Court of E. Middlesex, 262 Mass. 477, 482 (1928).

Essentially, the Commission’s role is to determine “whether the appointing authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority.” Cambridge, 43 Mass. App. Ct. at 304; see also Leominster, 58 Mass. App. Ct. at 728; McIsaac v. Civil Serv. Comm’n, 38 Mass. App. Ct. 473, 477 (1995). When the appointing authority fails to meet its burden, the Commission may vacate or modify the decision imposed. G. L. c. 31, § 43.

II. Relevant Classification Specifications

The position descriptions identified below are taken from the list of positions identified in the Massachusetts Department of Personnel Administration’s Classification Specifications for the Environmental Analyst Series, dated May 1, 1989, and were also included in the Commission’s factual findings.

A. Environmental Analyst V (EA V):

An EA V will have "direct supervision over, assign work to and review the performance of one(1) - five(5) professional personnel, and exercise indirect supervision over six(6) - fifteen(15) professional and/or technical personnel." The classification specifications for the EA V are as follows:

Conduct training programs in such areas as chemistry, biology, geology and toxicology; represent the department at court, before legislative bodies, boards, commissions or committees or federal and state agencies; supervise the development of methodologies and procedures for the accumulation of scientific data; approve applications for environmental impact surveys, hazardous waste, cleanup plans, water supply construction and protection projects, wetlands protection and projects utilizing state and federal funding programs for municipalities; identify and correct shortfalls in technical research and development in special areas of assigned environmental science; confer with federal, state and municipal agencies to inform, direct and coordinate activities, projects or programs; approve consultant pay estimates for the performance of a higher grade, order immediate correction or abatement of hazardous conditions to protect public health and safety; approve, modify or deny applications for siting and licensing of oil and hazardous waste storage, treatment, disposal or transportation facilities, or other projects.

B. Environmental Analyst IV (EA IV):

An EA IV position has the same supervisory standards of an EA V.⁴ Individuals in an EA IV position are as follows:

Deliver expert testimony at court proceedings; determine data collection method for soil, air, waste and water sampling; conduct risk analysis for sites/projects which have impact on or will alter the natural environment; develop methodologies and procedures for the accumulation of scientific data; recommend approval/disapproval of applications for licenses or permits for hazardous waste storage or other projects; determine project environmental impacts and relative

⁴ An EA V will have "direct supervision over, assign work to and review the performance of one(1) - five(5) professional personnel, and exercise indirect supervision over six(6) - fifteen(15) professional and/or technical personnel."

risks to the public health, watersheds, wetlands, freshwater bodies or estuaries; develop operational strategies for dealing with compliance and enforcement in the area of hazardous waste management, toxic materials in the work place and wetlands protection; review environmental consulting service proposals and contracts and recommend changes to technical specifications.

C. Environmental Analyst III (EA III):

An EA III will have "direct supervision over, assign work to and review the performance of one(1) - five(5) professional personnel." Occupants of the EA III position must:

Write the technical specification and utilize item service cost estimates to develop the budget portion of agreements and grant applications for the assessment and remediation of hazardous waste; determine enforcement actions and corrective measures to be taken when violation of laws, rules and regulations are discovered; review and recommend data collection methods for soil, air waste and water sampling; conduct scientific studies and prepare reports in such areas as meteorology, air pollutant dispersion, contaminant migration, hydrology, hydrogeology and marine ecology; advise legal staff on environmental matters; prepare scientific data for courtroom testimony; analyze environmental impact and public health risk assessments associated with the licensing of hazardous waste treatment, storage or transport projects; develop and maintain computer programs to track environmental data; conduct meetings and/or conferences with agency staff, contractors and interested parties on environmental issues such as resolving problems; monitor the activities of consultants in identifying and treating environmental pollutants; recommend operational strategies for dealing with compliance and enforcement in the area of public health and environmental protection; review and approve health and safety plans for environmental assessment and during remedial construction programs.

III. Factual and Procedural History

Straub was originally hired as a PC II for the DCR's Lakes and Ponds Program in June 1999. When Straub was hired, he was the program's only employee. Subsequently, the government awarded the Lakes and Ponds Program additional grant money for cleaning regional watershed and controlling and removing invasive species. As the program grew, Straub's duties

increased beyond what he was originally hired to do. As a consequence, on August 24, 2006, Straub requested to be reclassified from a PC II to that of an EA V. The DCR denied this request, but agreed to reclassify him as an EA III.

Straub appealed the DCR's classification decision to the HRD, again requesting to be reclassified as an EA V. On January 15, 2009, after review, the HRD denied his appeal, determining that the "Environmental Analyst III is the most appropriate job classification [for Straub]." Straub disagreed with this determination and, on January 28, 2009, he filed an appeal with the Commission. A hearing on his appeal was held on March 3, 2009. On December 3, 2009, the Commission issued its decision (the "December Decision"), determining that the duties and responsibilities Straub was obligated to perform exceeded those of a PC II, but that, he had failed to prove he was performing the duties and responsibilities of an EA V more than 50% of the time.⁵ Accordingly, the Commission denied Straub's request for EA V classification and affirmed the DCR's original EA III classification decision.

Both Straub and the Department sought reconsideration of the December Decision. More specifically, the DCR sought clarification with respect to the December Decision's conclusion, where the Commission referred to Straub's employee supervisory/oversight duties as meeting the EA IV classification requirements rather than the EA III requirements.⁶ In its request for reconsideration, the DCR argued that the reference to the EA IV requirements was a clerical error. In opposition, Straub argued the reference was purposeful and that, in issuing the December Decision, the Commission intended to reclassify him as an EA IV.

⁵ An employee is eligible for reclassification "if she spends at least fifty percent of her total time performing the higher level duties." Fournier v. Civil Serv. Comm'n, 77 Mass. App. Ct. 1121, 2010 WL 3504138 *1 (2010) (Unpublished Rule 1.28).

⁶ In the conclusion of the December Decision, the Commission stated, Straub performed the "oversight and monitoring duties of an EA IV more than 50% of the time."

The Commission granted the motion for reconsideration, finding that the December Decision did not definitively intend to reclassify Straub as an EA IV. Ultimately, the Commission held that a new hearing should be conducted in order to allow the parties to present additional evidence concerning whether Straub should, in fact, be classified as an EA IV. Subsequently, on March 2, 2010, a new hearing was held to determine whether Straub was entitled to reclassification as an EA IV. On September 23, 2010, the Commission issued the Revised Decision After Reconsideration (the "Revised Decision"), which included additional findings pertaining to Straub's job duties.⁷

In the Revised Decision, the Commission took note of Straub's duties as indicated in his Appeal Audit Interview Guide.⁸ The Commission found that, while Straub was the most senior employee in the Lakes and Ponds Program, he had no supervisory authority over the other employees and that, they did not report to Straub; rather, the entire group worked as a team. According to the Commission, Straub "[did not] exercise direct or indirect supervision over any professional staff members in the Lakes and Ponds Program[.]" While the Commission acknowledged that Straub provided guidance because of his seniority, it concluded that, in addition to lacking the critical supervisory responsibilities required to hold the title of an EA IV,

⁷ Straub's testimony before the Commission at the second hearing indicated he is responsible for allocating the program's budgeted funds, purchasing equipment, identifying and prioritizing which projects shall be undertaken, and determining the methods and procedures for conducting the projects. He drafts the scope of work to be put out to bid, selects the contractors who will do the work, and approves the payments for the completed work. Further, Straub is responsible for hiring and supervising up to nine seasonal workers each year. He performs oversight duties with regard to restoration projects and he plans, organizes and conducts lake/watershed management, conferences, workshops, and technical training sessions for local officials and the public, including with respect to the control and/or removal of invasive species.

⁸ These duties included the following: developing daily work plans for the Lakes and Ponds Program; developing a yearly budget for the program; developing monthly lake projects for the various state parks; meeting weekly with regional staff to better coordinate resources for lake work; answering, on a daily basis, public questions relating to water quality; discussing options for freshwater resources after weekly meetings with other DCR staff; educating the public about water quality related issues; meeting with town officials to work on lake management projects; and managing lake projects.

Straub did not perform a majority of other EA IV duties more than 50% of the time. For these reasons, the Commission denied Straub's request for reclassification

DISCUSSION

Pursuant to G. L. c. 30A, § 14, Straub petitions this court to review the Commission's decision, requesting that the court set aside the Commission's decision and remand this case to the HRD for a new hearing. In support, Straub asserts two main arguments. First, Straub argues the Revised Decision is arbitrary and capricious because it allegedly conflicts with the December Decision. Second, he claims the Commission's Revised Decision is not supported by substantial evidence. Below, the court addresses both arguments.

I. Standard of Review

The scope of review for an agency's decision is defined by G. L. c. 30A, § 14. Howard Johnson Co. v. Alcoholic Beverages Control Comm'n, 24 Mass. App. Ct. 487, 490 (1987). Pursuant to this provision, the court may affirm, remand, set aside or modify an agency's decision if it determines that the substantial rights of any party may have been prejudiced because the agency's decision is: (1) based upon an error of law; (2) unsupported by substantial evidence; (3) unwarranted by facts found by the court on the record submitted; or (4) arbitrary or capricious, an abuse of discretion, or otherwise not in accordance with the law. G. L. c. 30A, § 14(7).

In reviewing the agency's decision, the court is required to give due weight to the agency's experience, technical competence, specialized knowledge, and the discretionary authority conferred upon it by statute. Flint v. Commissioner of Pub. Welfare, 412 Mass. 416, 420 (1992). The reviewing court may not substitute its judgment for that of the agency. Southern Worcester County Reg'l Vocational Sch. Dist. v. Labor Relations Comm'n, 386 Mass. 414, 420-

421 (1982). The party appealing an administrative decision bears the burden of demonstrating the decision's invalidity. Merisme v. Board of Appeals on Motor Vehicle Liab. Policies and Bonds, 27 Mass. App. Ct. 470, 474 (1989).

II. Arbitrary & Capricious

Straub argues that the Revised Decision is arbitrary and capricious. More specifically, he contends the Revised Decision is improper because it directly contradicts the December Decision, which the Commission initially issued with respect to his classification level. Essentially, Straub argues that the reference in the December Decision indicating he met the supervisory/oversight requirements of the EA IV classification was not an error or mistake and that no clarification was necessary. In reply, the DCR claims the single reference, in the conclusion of the December Decision, indicating Straub met the supervisory requirements of the EA IV classification was plainly a clerical error and that, the Revised Decision should be affirmed. After consideration, the court concludes the DCR is correct.

While the Commission does state in the conclusion of the December Decision that Straub "performs the duties of an EA IV, in that . . . [he] performs the oversight and monitoring duties of an EA IV more than 50% of the time," earlier in the decision the Commission found that he "did not supervise employees, provide discipline, authorize overtime, participate in employee grievances, or approve leave time." It was proper for the DCR to seek clarification to resolve these two contradictory statements. The conclusion reached in the Revised Decision, indicating that Straub did not "exercise supervisory functions over permanent professional staff, he has failed to establish that he performed majority of the level distinguishing functions of an EA IV more than 50% of the time," was a necessary clarification.

Much of Straub's argument is based on his contention that the evidence presented at the re-hearing was the same as that which was submitted at the initial hearing and thus, at the conclusion of the rehearing, the Commission should not have reached a different conclusion. First, the court is not convinced the Commission actually reached a "different" classification conclusion. As explained, the rehearing was necessary to resolve the December Decision's contradictory findings.

Second, Straub is plainly wrong that the Revised Decision was based upon the same evidence as initially heard. In granting the parties' motions for reconsideration, the Commission recognized that the evidence presented at the initial hearing was incomplete and/or insufficient to determine whether Straub could properly be reclassified as an EA IV and consequently, the Commission scheduled the second hearing for the express purpose of allowing the parties to supplement the record and present additional evidence concerning Straub's job duties. The Commission examined additional exhibits and heard additional testimony from Straub as well as other witnesses. The additional evidence allowed the Commission to make new findings.

As a result of inconsistencies in the conclusion of the December Decision, the Commission held the second hearing for the purpose of deciding whether Straub could correctly be classified as an EA IV. In this decision as well as the December Decision, the supervisory duties Straub performed over permanent employees was the crucial factor in determining Straub's classification level. The Revised Decision clarifies any ambiguities as to Straub's supervisory responsibilities, stating that, "[s]ince [Straub] does not perform majority of [EA IV] duties more than 50% of the time, *or exercise supervisory functions* over permanent professional staff, he has failed to establish that he performed a majority of the level [of] distinguishing functions of an EA IV more than 50% of the time." (emphasis added). Straub has not met his

burden to demonstrate that the Commission acted arbitrarily and/or capriciously with respect to this conclusion.

III. Substantial Evidence

Straub claims that, for many of the same reasons discussed and rejected above, the Revised Decision was not supported by substantial evidence. The court disagrees. Substantial evidence means only "such evidence as a reasonable mind might accept as adequate to support a conclusion." G. L. c. 30A, § 1(6). Here, the court concludes the Commission's decision was supported by substantial evidence.

At the second hearing, based on the testimony of additional witnesses that did not testify at the initial hearing, the Commission found that Straub did not exercise supervisory authority "over any other employees or staff in the Lakes and Ponds Program." This conclusion was supported by substantial evidence. Indeed, according to Straub's own description of his duties, he did "not review [employee] performance or direct them in their duties." Since he has acknowledges this lack, he cannot now reasonably argue that he should be classified to a position requiring performance of supervisory functions.

The record reflects that an EA IV is a second-level supervisory position requiring the direct supervision, review and assignment of work to one to five professional personnel *and* the indirect supervision of six to fifteen professional and/or technical personnel. The record does not support a finding that Straub meets this requirement. In fact, with the exception of his supervision of nine seasonal workers each year, Straub does not perform any supervisory functions. Thus, Straub cannot be classified as an EA IV position.⁹

⁹ This conclusion is further supported by the fact that, in the Revised Decision, the Commission determined that Straub did not meet his burden to prove he performs "a majority of [the] distinguishing duties of an EA IV more than 50% of the time."

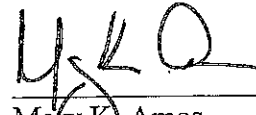
ORDER

Based on the relevant credible evidence, there was nothing improper about the Commission's conclusions. Thus, for the reasons explained, it is hereby **ORDERED** that:

1. Straub's Motion for Judgment on the Pleadings (Paper # 6) is **DENIED**; and
2. the Commission's Revised Decision is **AFFIRMED**.

SO ORDERED.

Date: October 10, 2013

A handwritten signature in black ink, appearing to read 'M. K. Ames', written over a horizontal line.

Mary K. Ames
Justice of the Superior Court