

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

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

JAMES STRAUB,
Appellant

v.

CASE NO. C-09-31

**DEPARTMENT OF
CONSERVATION &
RECREATION,**
Respondent

Appellant's Attorney:

Michelle S. Gates
M.O.S.E.S.
90 Washington Street
Boston, MA 02114

Respondent's Representative:

Frank E. Hartig
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Commissioner:

Paul M. Stein¹

DECISION

Pursuant to the provisions of G.L. c. 30, s. 49, the Appellant, James Straub (hereinafter "Appellant" or "Mr. Straub"), is appealing the December 9, 2008 decision of the Human Resources Division (HRD) denying his request for reclassification from the position of Program Coordinator II (PC II) of the Lakes and Ponds Program in the Department of Conservation and Recreation (hereinafter "DCR") to the position of Environmental Analyst V (EA V). The appeal was timely filed and a hearing was held on March 3, 2009 at the McCormack Building in Boston, MA. One tape was made of the hearing.

¹ The Commission gratefully acknowledges the assistance of legal intern Heather Coons.

FINDINGS OF FACT:

Twelve (12) exhibits were entered into evidence at the hearing. Based on the documents submitted into evidence and the testimony of:

For the Appointing Authority:

- Robert Samuels, Classification Coordinator, Office of Human Resources, Department of Conservation and Recreation;

For the Appellant:

- James Straub, Appellant;

I make the following findings of fact:

Procedural History

1. The Appellant has a Bachelor's degree in Aquatic Biology, has been a field scientist of aquatic systems for one and a half (1.5) years, a research scientist for two (2) years, and has been the Lakes and Ponds Program Coordinator for eight (8) years. (Ex. 6)
2. The DCR hired Straub as the DCR's Lake and Ponds Program Coordinator II in June 1999². (Ex. 6)
3. At the time of this appeal, the Appellant, James Straub is employed by the DCR as the Lakes and Ponds Coordinator within the Office of Water Resources in the Division of Water Supply Protection as an EA III. (Ex. 5, 9)
4. On or about August 24, 2006 the Appellant filed an appeal within the DCR for a reclassification from PC II to EA V in belief that the duties that he performs are more correctly suited for a position of EA V. (Ex. 3)

² An incumbent for the PC II job would "monitor and protect the water quality of all lakes and ponds located within the Department of Conservation and Recreation's park system and works with other agency staff on lake and watershed issues. Monitors and maintains all forms of watershed influences" and "educated the public on the many issues surrounding the lakes and ponds in the Commonwealth." (Ex. 5) However, Appellant regularly develops a budget for his program, oversees watershed studies and oversees contractors on lake and pond programs. (Ex. 6).

5. On or about September 28, 2007 the respondent agreed that the duties Mr. Straub is performing have increased beyond a classification of PC II to that of an EA III.
6. On or about December 9, 2008 Straub appealed to the Human Resources Division (“HRD”) regarding his reclassification to EA III from PC II. (Ex. 1)
7. On or about January 15, 2009, the HRD denied the Appellant’s appeal, reaffirming the EA III classification. (Ex. 1)
8. On or about January 28, 2009, the Appellant timely filed an appeal with the Civil Service Commission for a reclassification to an EA V believing that his duties reached beyond those of an EA III. (testimony of Appellant)

Program History

9. The DCR hired Mr. Straub in 1999 as a PC II in the Lakes and Ponds program. When the Appellant was hired, he was the only staff member in the Lakes and Ponds program. Throughout his time at DCR, the government awarded the Lakes and Ponds program federal grants for cleaning up regional watersheds, and also controlling and removing invasive species. With this expansion of the Lakes and Ponds program, Mr. Straub’s duties increased beyond those for which he was hired. As another consequence of the federal grants, the Lakes and Ponds Program grew to include Steve Asen (Regional Planner), Tom Flaherty (Environmental Analyst III), Michelle Robinson (Aquatic Biologist II) and the Appellant. (Ex. 9, Testimony of Appellant)
10. All four staff members report directly to Program Manager V, Acting Director, Ann Monnolly. (Ex 9, Testimony of Appellant)

11. In the organization chart of the Lakes and Ponds program, there is a vacancy for an EA V position; however, due to budgetary constraints and the current small size of the staff, it has not been filled. (Ex 8, 9)

Classification Specification Evaluation

12. Robert Samuels is a classification supervisor who reviews reclassification requests for the DCR's Human Resources Division. Mr. Samuels conducted the investigation into Appellant's reclassification request. These investigations routinely involve review of an Employee Performance Review Forms ("EPRS") which is used for review of an employee's major duties by his or her supervisor, the Appellant's Form 30 that lists the duties performed by the employee in the position and an interview with Appellant's direct supervisor. (Testimony of Samuels)
13. The Appellant frequently exceeds the DCR's expectations and is "a great asset to the Department and the Lakes and Ponds Program." (Ex. 8, 10)
14. Regardless of how well Mr. Straub performs his job, the tasks that he performs and the supervision that he gives indicate which class specification best fits the Appellant's position at DCR, not his performance. (Testimony of Samuels)
15. A person has direct supervision when he or she fills out the EPRS forms for the employee(s) and assigns work to that employee as well. (Testimony of Samuels)
16. Appellant does not supervise DCR employees, provide discipline, authorize overtime, participate in employee grievances, or approve leave time. (Ex. 6, 8, Testimony of Appellant)
17. The DCR looks at "budgetary responsibilities and supervisory responsibilities" specifically when evaluating the EA V position. (Testimony of Samuels)

18. An EA V “ will 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.” (Ex. 7)

19. Classification Specification for the EA V states the duties of the person holding that position:

“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 services in compliance with technical standards; in the absence of an employee of a higher grade, order immediately 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.” (Ex. 7)

20. An EA IV position has the same supervisory standards of that of an EA V.³ (Ex. 7)

21. Incumbents in an EA IV position will:

“Deliver expert testimony at court proceedings; determine data collection methods 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 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.” (Ex. 7)

³ “direct supervision over, assign work to and review the performance of one (1) – five (5) technical or professional personnel.” (Ex. 7)

22. An EA III will have “direct supervision over, assign work to and review the performance on one (1) – five (5) technical or professional personnel.” (Ex. 7)

23. Incumbents in an EA III position should:

“Write the technical specifications 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 air, water, soil and wetland impacts, public health effects and investigating and 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.” (Ex. 7)

24. Mr. Straub has testified before the Conservation Commission but only to a very limited extent; he directs data collection of both DCR employees and outside consultants; reviews the environmental impact of various state projects including the public health, watershed, wetland and freshwater effects; develops and monitors sampling procedures; manages a program that includes protecting wetlands; and continuously works with the contractors and consulting persons that the DCR contracts for its work. (Testimony of Appellant)

CONCLUSION

After careful review of the testimony and evidence presented in this appeal, the Commission concludes that the appeal by Mr. Straub must be denied.

The Appellant has failed to meet his burden of proof regarding the Class Specifications for the EA V position. The Commission recognizes that the Appellant is an outstanding employee who is professional and competent in all of his duties, however, this does not have any effect on the job title that the Appellant actually performs. During the Appellant's credible and straightforward testimony, Mr. Straub confirmed that he performed the tasks associated with an EA V position less than 50% of the time. However, the appellant affirmed that he performed the duties of an EA IV more than 50% of the time.

I base my conclusion on the documentary evidence and the testimony of the Appellant and the Classification Coordinator. The Appellant does not exercise actual supervision over any other DCR employee, the classification coordinator confirmed that to be promoted to an EA V position, the candidate needed actual supervision over other DCR employees and that this was an important function for the EA V level, the Appellant thereby does not meet the supervisory requirements for the EA V position (Testimony of Samuels). The Appellant testified that he only did a very minimal amount of work at the EA V level class specifications thereby admitting that what work that he did do was not performed more than 50% of the time. There is a proposed position that contemplates an opening in the work group for an EA V, but this position is not yet funded nor is it organizationally possible with the small number of staff available. Furthermore, creating an EA V below the level of that proposed position would be "organizationally disruptive." (Testimony of Samuels) However, the Appellant does perform the duties of an EA IV, in that, although he does not have the supervisory and budgetary power of an

EA V, the Appellant performs the oversight and monitoring duties of an EA IV more than 50% of the time.

For these reasons, the Appellant's Appeal under Docket No. C-09-31, in which he seeks to be re-classified as EA V, is hereby *denied*.

Civil Service Commission

Paul M. Stein
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman [absent]; Henderson, Marquis, Stein and Taylor, Commissioners) on December 3, 2009.

A true record. Attest:

Commissioner

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:

James R. Straub (Appellant)
Michelle S. Gates, Esq.
Frank E. Hartig, Esq.
John Marra, Esq. (HRD)