

THE COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

One Ashburton Place – Room 503
Boston, MA 02108
(617) 727 – 2293

JAMES STRAUB,
Appellant

v.

C-09-31

**DEPARTMENT OF
CONSERVATION &
RECREATION,**
Respondent

Attorney for the Appellant:

Michelle S. Gates, Esq.
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90 Washington Street
Boston, MA 02114

Attorney for the Respondent:

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Commissioner:

Paul M. Stein¹

REVISED DECISION AFTER RECONSIDERATION

Pursuant to the provisions of G.L. c. 30 §49, the Appellant, James Straub (hereinafter “Appellant”) is appealing the January 15, 2009 decision of the Human Resources Division (hereinafter “HRD”) denying his request for reclassification from the position of Program Coordinator II (“PC II”) to the position of Environmental Analyst V (“EA V”) in the Lakes and Ponds Program of the Department of Conservation and Recreation (hereinafter “DCR” or

¹ The Commission gratefully acknowledges the assistance of Maimoona L. Sahi, Esq. in the drafting of this decision.

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“Appointing Authority”). A full hearing was held on March 3, 2009 at the offices of the Civil Service Commission (hereinafter “Commission”). On December 3, 2009, the Commission denied the appeal. Both parties subsequently filed a Motion for Reconsideration. The Appellant’s Motion for Reconsideration was allowed and a further evidentiary hearing was held on March 2, 2010 to review the limited issue of whether the Appellant should be reclassified from the position of Environmental Analyst III (“EA III”) to the position of Environmental Analyst IV (“EA IV”). The hearing was digitally recorded. Both parties subsequently submitted proposed decisions.

FINDINGS OF FACT:

One (1) additional exhibit was entered into evidence at the further evidentiary hearing.

Based on the documents submitted into evidence and the testimony of:

For the Appellant:

- James Straub, EA III, Department of Conservation and Recreation, the Appellant

For the Respondent:

- Robert Samuels, Classification Coordinator, Department of Conservation and Recreation
- Anne Monnolly Carroll, Acting Director of Water Resources, Department of Conservation and Recreation

I make the following findings of fact:

1. The Appellant currently holds the position of EA III in the Lakes and Ponds Program of the DCR. He was reclassified from a PC II to an EA III on September 28, 2007. (Exhibit 2)
2. The Appellant is one of three (3) staff members in the Lakes and Ponds Program.
(Testimony of Carroll, Exhibit 9)

3. All three (3) staff members are in organizational level III positions, which are the first supervisory level positions in each of their respective series; however, none of the members directly or indirectly supervise any other employees or staff in the Lakes and Ponds Program. (Testimony of Carroll, Exhibit 9).
4. The three (3) members perform different job duties, have different expertise and do not report to each other. They help each other and work as a cooperative team. (Testimony of Carroll, Exhibit 9).
5. As the most senior staff member, the Appellant provides guidance to the other members but does not review their performance or direct them in their duties. (Testimony of Appellant, Testimony of Carroll)
6. The Appellant indicated in his Appeal Audit Interview Guide that he performs the following:
 1. Develop work plans for Lakes and Ponds Program – daily
 2. Develop yearly budgets for program – weekly
 3. Develop lake projects for state parks – monthly
 4. Meet with regional staff to better coordinate resources for lake work – weekly
 5. Answer public questions relating to water quality – daily
 6. Discuss options for freshwater resources after meeting with DCR staff – weekly
 7. Educate public about water quality related issues – daily
 8. Meet with town officials to work on lake management projects – monthly
 9. Manage lake projects for budgets, work completed, regulatory adherence – monthly (Exhibit 6)
7. The Appellant further testified that 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. He is also responsible for hiring and supervising up to nine seasonal workers each year. He performs oversight duties with regard to restoration projects conducted. He plans, organizes and conducts lake/watershed management conferences, workshops, and technical training sessions for local officials, and the public

including the control and/or removal of invasive species. (Testimony of Appellant, Exhibit 6 and Exhibit 10)

8. The Appellant is seeking to be reclassified as an EA IV. (Testimony of Appellant)
9. The Massachusetts Department of Personnel Administration Classification Specification for the Environmental Analyst Series as issued in 1989 ("Classification Specification") states that the EA III position is the first-level supervisory job in the series and the EA IV position is the second-level supervisory job in the series.

EXAMPLES OF DUTIES COMMON TO ALL LEVELS IN SERIES:

1. Prepares and/or reviews scientific reports, studies and analytical data on environmental impacts and processes including those associated with the construction and/or operation of facilities such as waste disposal and sewage treatment plants, incinerators, and those pertaining to air and water pollution control measures.
2. Reviews and summarizes environmental data associated with applications for permits and siting of waste disposal facilities.
3. Performs calculations such as those related to groundwater flow, pollutant dispersion, mortality, population ecology and toxicological risk by using calculators or computer models, to solve environmental science problems.
4. Writes memoranda, letters and technical or general reports concerning the environment to provide information and makes recommendations regarding such matters as public and private water supplies, environmental pollution control surveys and inspections, and the status of projects.
5. Collects samples and records changes to the environment or to associated public health risks during the design and/or construction of projects which will alter the natural environment.
6. Inspects proposed locations and existing locations of water supply and/or waste water treatment operations, industrial or hazardous waste treatment facilities and sanitary landfills.
7. Conducts tests and surveys such as vegetational surveys, water quality sampling, radiological surveys and/or geological surveys.
8. Monitors environmental conditions by operating photoionization detectors, gas chromatographs, explosimeters, pH meters and other analytical field equipment.
9. Performs related duties such as collecting, compiling and correlating environmental data; reading manufacturers' publications and meeting with manufacturers' representatives to keep abreast of latest technical advances, new products, product prices, safety hazards, and specifications; maintaining records; providing technical advice on such matters as environmental impact and regulatory codes; and attending meetings and conferences.

DIFFERENCES BETWEEN LEVELS IN SERIES:

Environmental Analyst III: Incumbents of positions at this level or higher also:

1. Write the technical specifications and utilize item service cost estimates to develop the budget portion of agreements and grant applications for assessment and remediation of hazardous waste.
2. Determine enforcement actions and corrective measures to be taken when violation of laws, rules and regulations are discovered.

3. Review and recommend data collection methods for soil, air, waste and water sampling
4. Conduct scientific studies and prepare reports in such areas as meteorology, air pollutant dispersion, contaminant migration, hydrology, hydrogeology and marine ecology.
5. Advise legal staff on environmental matters; prepare scientific data for courtroom testimony.
6. Analyze environmental impact and public health risk assessments associated with the licensing of hazardous waste treatment, storage or transport projects.
7. Develop and maintain computer programs to track environmental data.
8. 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.
9. Monitor the activities of consultants in identifying and treating environmental pollutants.
10. Recommend operational strategies for dealing with compliance and enforcement in the area of public health and environmental protection.
11. Review and approve health and safety plans for environmental assessment and during remedial construction programs.

Environmental Analyst IV: Incumbents of positions at this level or higher also:

1. Deliver expert testimony at court proceedings.
2. Determine data collection methods for soil, air, waste and water sampling.
3. Conduct risk analysis for sites/projects which have impact on or will alter the natural environment.
4. Develop methodologies and procedures for the accumulation of scientific data.
5. Recommend approval/disapproval of applications for licenses or permits for hazardous waste storage or other projects.
6. Determine project environmental impacts and relative risks to the public health, watersheds, wetlands, freshwater bodies or estuaries.
7. 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.
8. Review environmental consulting service proposals and contracts and recommend changes to technical specifications.

SUPERVISION EXERCISED:

Environmental Analyst III:

Incumbents of positions at this level exercise direct supervision (i.e., not through an intermediate level supervisor) over, assign work to and review the performance of 1-5 technical or professional personnel; may exercise indirect supervision (i.e., through an intermediate level supervisor) over 6-15 technical and/or professional personnel; and may exercise functional supervision (i.e., over certain but not all work activities, or over some or all work activities on a temporary basis) over 1-5 technical or professional personnel.

Environmental Analyst IV:

Incumbents of positions at this level exercise direct supervision (i.e., not through an intermediate level supervisor) over, assign work to and review the performance of 1-5 professional personnel; and exercise indirect supervision (i.e., through an intermediate level supervisor) over 6-15 professional and/or technical personnel; and exercise functional supervision (i.e., over certain but not all work activities, or over some or all work activities on a temporary basis) over 6-15 technical or professional personnel. (Exhibit 7)

10. Robert Samuels (hereinafter “Samuels”), a Classification Coordinator for the DCR, testified that if a level III position staff member without any direct supervisory responsibility were to be reclassified to a level IV or level V position, it would be organizationally disruptive.

(Testimony of Samuels)

11. The Appellant frequently exceeds the DCR’s expectations and is “a great asset to the [DCR] and the Lakes and Ponds Program”. (Exhibit 8)

CONCLUSION

After careful review of the testimony and evidence presented in this further hearing, limited to the issue of whether the Appellant should be reclassified from an EA III to an EA IV, I must deny the Appellant’s request for reclassification. The Appellant has not met the burden of proving that he performs a majority of the distinguishing duties of a EA IV more than 50% of the time. I base my conclusion on the documentary evidence and the testimony of the Appellant and other witnesses.

The Classification Specification for the Environmental Analyst series lists EA IV as a second level supervisory position such that incumbents of that position exercise direct supervision over, assign work to and review the performance of 1-5 professional personnel and exercise indirect supervision over 6-15 professional and/or technical personnel.

There is no dispute that the Appellant is an outstanding employee of the DCR, and that he has undertaken increasing responsibility and exceeded expectations. Notwithstanding that fact, it is clear that the Appellant does not exercise direct or indirect supervision over any professional staff members in the Lakes and Ponds Program. The classification coordinator testified that to reclassify the Appellant as an EA IV, without any direct supervisory responsibilities over permanent professional staff, would be organizationally disruptive.

In addition, the Classification Specification provides that an EA IV 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, develop and implement standards to be used in program monitoring and/or evaluation, oversee and monitor the activities of the assigned unit, confer with management staff and others to provide information concerning program implementation, evaluation, and monitoring and to define the purpose and scope of the proposed programs, and exercise supervisory functions. Since the Appellant does not perform a majority of these 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 distinguishing functions of an EA IV more than 50% of the time. All of the duties performed by the Appellant are more closely reflected in the description of an EA III. See Kurt v. Massachusetts Highway Dep't, Docket No. C-09-428 (2010); Grzybowski v. University of Massachusetts at Amherst, Docket No. C-09-388 (2010); Cohen v. Massachusetts Highway Dep't, Docket No. C-09-268 (2010); compare Harand v. Soldiers' Home in Holyoke, 21 MCSR 194 (2008).

Thus the appeal must fail because the Appellant has failed to show by a preponderance of the evidence that he is performing a majority of the level distinguishing duties of an EA IV more than 50% of the time.

For these reasons, the appeal filed under Docket No. C-09-31 is hereby dismissed.



Paul M. Stein
Commissioner

By a vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, McDowell and Stein Commissioners) on September 23, 2010.

A true record. Attest:



Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of this 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:

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