

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

DEBRA TOWNS,
Appellant

v.

C-07-251

DEPARTMENT OF MENTAL RETARDATION,
Respondent

Appellant's Attorney:

Pro Se
Debra Towns
P. O. Box 218
West Warren, MA 01092

Respondent's Attorney:

Julian T. Tynes, Esq.
Department of Mental Retardation
171 State Avenue
Palmer, MA 01069

Commissioner:

John J. Guerin, Jr.

DECISION

Pursuant to the provisions of G.L. c. 30, § 49, the Appellant, Debra Towns (hereinafter "Ms. Towns" or "Appellant"), is appealing the June 1, 2007 decision of the Human Resources Division (HRD) denying her request for reclassification from the position of Vocational Instructor C to the position of Rehabilitation Counselor A/B. The appeal was timely filed and a hearing was held on October 2, 2007 at the offices of the Civil Service Commission (hereinafter "Commission"). One tape was made of the

hearing. The parties agreed to decline submission of Proposed Decisions following the hearing.

FINDINGS OF FACT:

Based on the documents entered into evidence (Joint Exhibits 1 – 3 and 6 – 9)¹ and the testimony of Sandra Hobbs, Regional Director of Employment for the Department of Mental Retardation (DMR); Stanley Legawiec, DMR Personnel Officer and the Appellant, I make the following findings of fact:

1. The Appellant is employed as a Vocational Instructor C with the DMR Regional Employment Services Agency (RESA) and is assigned to the Palmer office. The functional title for her duties is Job Coach/Job Developer. She has been in this current position since March 1999 and has been employed by the DMR for approximately 26 years. (Testimony of Appellant, Stipulated Facts and Exhibit 1)
2. The Appellant became aware that 2 workers in the RESA's Worcester office were doing the same job as she but were being compensated at Pay Grade 18 whereas the Appellant is in Pay Grade 14. She filed this appeal seeking to reconcile the difference in her Pay Grade and that of the Worcester office workers. (Testimony of Appellant)
3. On May 16, 2006, the Appellant filed a written request with DMR to be reclassified from her position as a Vocational Instructor C to the position of Rehabilitation Counselor A/B. (Stipulated Fact)

¹ Proposed Exhibits 4 & 5 were allowed to be submitted but, then stricken as it was determined the same information provided in those documents was also included in Exhibit 8.

4. The current Class Specification promulgated by the HRD and effective July 1, 2001 require a Rehabilitation Counselor A/B to possess “At least two years of . . . vocational counseling, employment counseling, rehabilitation counseling, or educational counseling.” (Exhibit 7)
5. In conjunction with her request for reclassification to the position of Rehabilitation Counselor A/B, the DMR sent the Appellant an Interview Guide that included detailed questions concerning her position as a Vocational Instructor C. The Appellant completed the guide and submitted it to the DMR on May 16, 2006. (Exhibit 8)
6. Beginning on page 6 of the Interview Guide, the preparer is asked to describe his or her specific job duties and to note the percentage of time spent on each duty. The Appellant was very thorough in her preparation of the Interview Guide. Among a myriad of important duties that she described as performing, nowhere is mentioned that she does any sort of counseling. The Appellant also did not list any duties that would distinguish her as a Rehabilitation Counselor A/B rather than a Vocational Instructor C, nor did she attach a percentage of time performing any duties consistent with the higher title more than 50 % of the time. (Id.)
7. In the Appeals Audit Report (Form ES-29) that was prepared by Personnel Officer Stanley Legawiec in order to assess the Appellant’s request for reclassification, he writes, in pertinent part:

“Ms. Towns does not meet the current qualifications for the position, which require at least two years experience in ‘Vocational counseling, employment counseling, rehabilitation counseling, or educational counseling.’ Being a job developer or vocational instructor does not qualify staff to be a counselor in that they are entirely different positions and levels of responsibility.”

(Id.)

8. Relative to the Appellant's claim that she performs the same work as two higher classified employees in the Worcester RESA office, Mr. Legawiec offered the following in the Appeal Audit Report:

"Ms. Towns stated in her Interview Guide that there are three (3) full-time Job Developers in Regional Employment Services, two of which are in Rehabilitation Counselor (A/B) blocks. Ms. Towns is a Vocational Instructor (C). She also stated that all have caseloads and 'go about job developing and marketing the same way.'

Ms. Towns has 11 individuals on her caseload and tries to find them jobs. She will also refer jobs for her caseload to other developers if they can get their people that job.

Ms. Towns is involved with intake when there is a referral. She sits with the consumer, assesses work history, likes and dislikes all aspects of their 'job needs'. She provides information to professional staff and monitors and evaluates the consumer's needs.

Ms. Towns is part of the training committee. She provides quarterly training for consumers based on their needs.

Ms. Towns also stated that based upon her job duties and responsibilities, she feels she is doing the same work as they are and that she has been doing the same job for five years.

There is no 'job developer' position in state service."

(Id.)

9. Regional Employment Director Sandra Hobbs was asked for input to the Appeal Audit and stated the following, in pertinent part regarding the Worcester office employees:

"Historically, job development has been done by Vocational Instructor C's. Others have also done it, including managers and program coordinators. In my agency, everyone has a duty of helping to do job development.

The rehabilitation counselors at Regional Employment Services have varied responsibilities. Two are senior job developers but also have higher level responsibilities within the agency, such as functional supervision, input into EPRS, Human Rights Coordinator, Safety manager, etc. These two individuals (when they were selected for the positions) met the old MER's; they were qualified under the old system. The qualifications were upgraded in 2001. Other counselors carry clinical caseloads or manage work areas and supervise.”

(Id.)

10. Both Ms. Hobbs’ and Mr. Legawiec’s testimony at the Commission hearing was consistent with their respective statements in the Appeal Audit. (Testimony of Hobbs and Legawiec)

11. Ms. Hobbs concluded her comments in the Appeal Audit by stating:

“If there were a series for Job Coaches/Job Developers, which would classify these positions ABOVE vocational instructors, but BELOW Rehabilitation Counselors, I would whole heartedly support this reallocation into a Job Developers position. The job responsibilities require much greater knowledge, skills and abilities than a vocational instructor . . . but not at the counselor level.”
(Exhibit 8)

12. On February 5, 2007, the DMR issued a decision determining that the Appellant was properly classified as a Vocational Instructor C. (Exhibit 9)

13. The Appellant appealed the DMR’s decision to the HRD in May 2007 and the HRD denied the appeal on June 1, 2007. (Stipulated Fact)

14. The Appellant filed the instant appeal of the HRD’s decision with the Commission on July 17, 2007. (Id.)

CONCLUSION:

After careful review of the testimony and based on a preponderance of the credible evidence presented in this appeal, the Commission concludes that the decision of

the Human Resources Division to deny Ms. Town's reclassification request should be affirmed.

The Appellant has not met her burden of proof to demonstrate that she is improperly classified as an Vocational Instructor C. It is clear that her Form 30 reflects duties that are consistent with her current Vocational Instructor C title. Based on a preponderance of the credible evidence at hand, the Appellant's duties do not reflect those performed by employees in the title of Rehabilitation Counselor A/B to which she seeks reclassification. Although some of her current duties are consistent with those of a Rehabilitation Counselor A/B, the Appellant does not and has not exercised counseling duties as required in the Rehabilitation Counselor A/B position. Also, there is certainly no indication that Ms. Towns performs duties that are consistent with the Rehabilitation Counselor A/B title more than 50% of the time as required for consideration to be reclassified into a higher position.

Therefore, for all the reasons stated herein, the appeal under Docket No. C-07-251 is hereby *dismissed*.

Civil Service Commission

John J. Guerin, Jr.
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Guerin, Marquis and Taylor, Commissioners) on January 10, 2008.

A true record. Attest:

Commissioner

A motion for reconsideration may be filed by either Party within ten days of the receipt of a Commission order or decision. 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.

Any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under section 14 of chapter 30A 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:

Debra Towns

Julian T. Tynes, Esq.