

**COMMONWEALTH OF MASSACHUSETTS**

**CIVIL SERVICE COMMISSION**  
100 Cambridge Street, Suite 200  
Boston, MA 02114  
(617) 979-1900

THOMAS WATERS,  
*Appellant*

v.

C-23-052

DEPARTMENT OF MENTAL HEALTH,  
*Respondent*

Appearance for Appellant:

*Pro Se*  
Thomas E. Waters

Appearance for Respondent:

Robert R. Wagner, Esq.  
Department of Mental Health  
25 Staniford Street  
Boston, MA 02114

Commissioner:

Shawn C. Dooley<sup>1</sup>

**SUMMARY OF DECISION**

The Commission denied the Appellant's reclassification appeal as he was unable to show that he performed the higher duties of Carpenter II more than 50% of the time.

**DECISION**

The Appellant, Thomas Waters, appealed to the Civil Service Commission (Commission) pursuant to the provisions of G.L. c. 30, § 49 from the denial of the Massachusetts Human Resources Division (HRD) of a request to reclassify his position at the Department of Mental

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<sup>1</sup> The Commission acknowledges the assistance of Law Clerk Emily Yormak with the preparation of this decision.

Health (DMH) from his current title of Carpenter I to the title of Carpenter II.<sup>2</sup> A remote pre-hearing conference was held via Webex on May 16, 2023. On July 11, 2023, I conducted an in-person full hearing at the offices of the Commission in Boston. The hearing was recorded via the Webex videoconferencing platform, and copies were provided to the parties.<sup>3</sup> Both parties filed a Proposed Decision. For the reasons stated below, Mr. Waters's appeal is denied.

### **FINDINGS OF FACT**

Based on the exhibits entered and testimony of the following witnesses:

*Called by DMH:*

- Paul Truax, Director of Engineering and Facilities Management, DMH
- Mary Connelly, EOHHS Classification and Compensation Lead

*Called by the Appellant:*

- Thomas Waters, Appellant
- Mark Anderson, Facilities Director, Taunton State Hospital (Hospital)
- James Clondas, Institutional Maintenance Foreman

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. Mr. Waters has been employed with DMH since August 1993. (*Testimony of Appellant*)
2. Mr. Waters was hired as a Mental Health Worker I, later served as a Recreational Therapist I,

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<sup>2</sup> The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§ 1.01, et seq., apply to adjudications before the Commission with G.L. c. 31, or any Commission rules, taking precedence.

<sup>3</sup> A link to the audio/video recording was provided to the parties. If there is a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to supply the court with a transcript of this hearing to the extent that they wish to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion. If such an appeal is filed, the recording provided to the parties should be used to transcribe the hearing.

and, on or about January 11, 2015, he was appointed as a Carpenter I at the Hospital.

*(Respondent Exhibits 3 and 5)*

3. Mr. Waters is supervised by and reports to the Institutional Maintenance Foreman.  
*(Testimony of Appellant, Clondas, Truax)*
4. The Hospital has a Task Order system whereby carpentry jobs and other trades jobs (e.g., electrical, plumbing) are requested. *(Testimony of Appellant, Clondas)*
5. Typically, the Institutional Maintenance Foreman reviews the task orders that have been submitted and assigns tasks to the different trades workers as appropriate. *(Testimony of Appellant, Clondas, Truax)*
6. In his role as Carpenter I, the Appellant principally performs carpentry work to maintain buildings and related structures, provides technical and other assistance to co-workers, including those in his title, and works collaboratively with co-workers to handle and assign particular tasks. *(Respondent Exhibit 2; Testimony of Appellant, Clondas)*
7. The Appellant is regarded as a good and valuable employee. *(Testimony of Clondas)*
8. In his job, Mr. Waters does not review the performance of anyone, does not review or approve anyone's leave requests, does not review or approve anyone's work time reporting, does not approve anyone's time off, does not approve training, and does not initiate employee discipline—all of these being tasks typically performed by supervisors.  
*(Testimony of Appellant, Clondas, Truax)*
9. Mr. Waters assigns particular tasks to tradespeople and other Carpenter Is after they are assigned to the team by the Foreman. He guides them in how to work safely around patients in a hospital setting. He also instructs these people on proper procedure, including the use

and safety of equipment and priority of tasks, and ensures that they are completing tasks fully. (*Testimony of Appellant*)

10. The Job Specification for the Carpenter Series establishes two levels: Carpenter I and Carpenter II. (*Respondent Exhibit 1*)
11. The Carpenter II title has a single duty distinguishing it from the common duties that may be performed by either Carpenter Is or Carpenter IIs. It is that they “...provide instruction for *subordinates* regarding handling of emergen-cies (sic), the feasibility of performing repair or alteration and the scheduling of work.” (*emphasis added*) (*Respondent Exhibit 1*)
12. Mr. Waters submitted an EHS Classification Appeal Form. (*Testimony of Connelly*)
13. Mary Connelly, a Classification and Compensation Analyst within the EHS Classification and Compensation office, was assigned to review the appeal and to determine whether it merited approval or denial. (*Testimony of Connelly*)
14. As part of her review, Ms. Connelly reviewed a variety of documents, including:
  - a. Carpenter series Classification Specifications. (*Respondent Exhibit 1*)
  - b. Interview Guide from original reclassification request. (*Respondent Exhibit 5*)
  - c. Appellant’s Form 30 (Job Description). (*Respondent Exhibit 2*)
  - d. Performance Review form for Fiscal Year 2022. (*Respondent Exhibit 6*)
  - e. Appellant’s resume. (*Respondent Exhibit 3*)
  - f. Addendum to Appellant’s resume. (*Respondent Exhibit 4*)
15. Ms. Connelly and another representative of the EOHHS Classification and Compensation office also met with Mr. Waters on January 10, 2023, and reviewed with him his Form 30 and the Interview Guide wherein Mr. Waters ascribed percentages of work time devoted to particular duties. (*Testimony of Connelly; Respondent Exhibit 5*)

16. At the meeting, Mr. Waters confirmed the accuracy of the Form 30 and the Interview Guide.

*(Testimony of Appellant)*

17. Having reviewed the written materials and having talked to Mr. Waters regarding his job,

Ms. Connelly determined that his classification appeal could not be sustained or approved as he did not (and does not) formally supervise anyone. *(Respondent Exhibit 7)*

18. Ms. Connelly denied the appeal by letter to the Appellant dated February 1, 2023.

*(Respondent Exhibit 5)*

19. The Appellant appealed this decision to HRD and, on March 14, 2023, HRD Personnel

Analyst Alexandra McInnis issued a decision denying Mr. Waters's appeal. (Respondent Exhibit 8)

20. On April 11, 2023, Mr. Waters filed a timely appeal with the Civil Service Commission.

### **APPLICABLE LAW**

Section 49 of G.L. c. 30 provides:

A manager or an employee of the commonwealth objecting to any provision of the classification affecting the manager or employee's office or position may appeal in writing to the personnel administrator. Any . . . 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 . . . it shall be effective as of the day of the appeal.

As a general rule, the Appellant must prove, by a preponderance of evidence, that they perform a majority of the functions of the reclassification they seek and that they perform those functions a majority of the time. See, e.g., Thompson v. Division of Insurance and HRD, 29 MCSR 565 (2016). Stated differently, in order to justify a reclassification, an employee must establish that they are performing duties encompassed within the higher-level position the majority (i.e., at least 50% or more) 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%).

“The bar for proving that one's position is misclassified is set very high.” Shields v. Department of Revenue, 21 MCSR 263, 266 (2008).

### **ANALYSIS**

The Appellant has been unable to show, by a preponderance of the evidence, that he performs the level-distinguishing duties of Carpenter II more than 50% of the time. Although Mr. Waters is clearly an excellent employee and goes above-and-beyond at work, his initiative and contributions do not meet the standard for reclassification. The record, which is largely undisputed, shows that even if Mr. Waters performs any supervisory duties, they comprise much less than 50% of his workdays.

In his basis for appeal, Mr. Waters stated that he supervises a trades worker and another Carpenter I in daily operations, in addition to researching and purchasing supplies based on what vendors are on state contract. This supervision that Mr. Waters describes pertains to the quality of work done by other employees and providing additional assistance. While Mr. Waters is watching over the work being performed, these other employees do not report to Mr. Waters, as is required for reclassification. These employees are not his subordinates, and Mr. Waters is not responsible for scheduling their work, although he may assign tasks. Further, he does not review the performance of any employee, does not review or approve anyone's leave requests, does not approve anyone's time off, does not approve training, and does not initiate employee discipline; all of which are tasks assigned to their supervisor and not the Appellant. While Mr. Waters

oversees the quality of work done by other employees, keeping an eye on other employees and being the lead carpenter does not constitute level-distinguishing supervision.

The record evinces that Mr. Waters is the senior carpenter at Taunton State Hospital and is given greater responsibility and authority than the other Carpenter Is or tradespeople who work there. It is unfortunate that the State has not provided for a position such as “lead carpenter” or some other similar position between Carpenter I and Carpenter II as Mr. Waters likely could qualify for a more senior position along those lines.

Mr. Waters enjoys glowing reviews from his supervisor and colleagues. Once a position is available for Carpenter II, his supervisors state that Mr. Waters would be an excellent candidate for such a promotion. I agree. Notwithstanding Mr. Waters’s exemplary reviews and significant contributions to the Taunton State Hospital, however, his current duties and responsibilities do not meet the standard for reclassification to Carpenter II.

## **CONCLUSION**

For the reasons stated herein, the appeal of the Appellant, Thomas Waters, is *denied*.

Civil Service Commission

/s/ Shawn C. Dooley

Shawn C. Dooley, Commissioner

By vote of the Civil Service Commission (Bowman, Chair; Dooley, Stein, & Tivnan, Commissioners [McConney – Absent]) on November 2, 2023.

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 this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission 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:

Thomas E. Waters (Appellant)

Robert R. Wagner, Esq. (for Respondent)



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CONCURRING OPINION OF COMMISSIONER TIVNAN

I concur with the well-reasoned conclusion of Commissioner Dooley that the Appellant is not entitled to reclassification, as he does not perform the level-distinguishing duties of a Carpenter II more than 50% of the time. To me, however, the record also shows that the Appellant, a 30-year state employee, goes above and beyond the required duties of a Carpenter I, including his willingness to provide instruction and guidance to others, to the benefit of DMH and its clients. While a reclassification to Carpenter II, based on the specifications drafted many years ago, may not be justified, I would encourage DMH to explore other means to recognize the elevated role that the Appellant plays at DMH beyond that of a Carpenter I.

Civil Service Commission

/s/ Kevin Tivnan  
Kevin M. Tivnan  
Commissioner  
November 2, 2023