

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

CIVIL SERVICE COMMISSION

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

JAMES GINGERELLI,
Appellant

v.

C-07-256

MASSACHUSETTS HIGHWAY
DEPARTMENT,
Respondent

Appellant's Attorney:

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Respondent's Attorney:

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Commissioner:

Christopher C. Bowman

DECISION

Pursuant to the provisions of G.L. c. 30, s. 49, the Appellant, James Gingerelli (hereafter "Appellant" or "Gingerelli"), is appealing the July 11, 2007 decision of the Human Resources Division (HRD) denying his request for reclassification from the position of Engineering Aide II (EA II) to the position of General Construction Inspector

I (GCI I). The appeal was timely filed and a hearing was held on February 5, 2008 at the offices of the Civil Service Commission. Two tapes were made of the hearing.

FINDINGS OF FACT:

Sixteen (16) exhibits were entered into evidence at the hearing. Based on the documents submitted into evidence and the testimony of:

For the Appointing Authority:

- George Berte, Civil Engineer IV, Massachusetts Highway Department;
- James Gallagher, Civil Engineer III, Massachusetts Highway Department;

For the Appellant:

- Angela Padavano, Civil Engineer III, Massachusetts Highway Department;
- Appellant James Gingerelli;

I make the following findings of fact:

1. The Appellant commenced employment as an EA II with the Massachusetts Highway Department (Mass Highway) in March 2002. Prior to being hired at Mass Highway, he had no construction experience. The Appellant has an Associates degree in business administration. (Testimony of Appellant)
2. At no time during his tenure with Mass Highway has the Appellant received any licenses, including licenses to perform materials testing. (Testimony of Appellant)
3. The Classification Specification for the Engineering Aide series issued in 1999 states that an EA II is the second-level technical job in this series. The level distinguishing duties of an Engineering Aide state that an EA II:
 - (1) inspects construction work to assure compliance with contract plans and specifications on construction projects such as highways, buildings, sewers, bridges, dams and waterways;
 - (2) computes curves, baselines, property lines and elevations;

- (3) drafts plans for engineering projects and assists in the simple phases of design work;
 - (4) operates survey instruments on plane surveys;
 - (5) inspects completed construction; calculates quantities; and assists in the preparation of reports for interim and final payments; and
 - (6) performs related duties such as testing, isolating and replacing defective parts on mechanical, electrical or electronic devices using proper safety equipment in performing duties requiring the use of these devices. (Exhibit 11)
4. Nine (9) months after his appointment, on December 25, 2002, the Appellant filed a written request with Mass Highway to be reclassified from his position from EA II to GCI I. (Exhibit 1)
 5. Examples of duties common to all levels in the General Construction Inspector series include:
 - (1) inspection of materials and construction operations for conformance to rules and regulations and contract plans and specifications;
 - (2) conducting field and/or laboratory tests on materials used in the construction of highways, buildings, bridges, dams, water / sewage systems, tunnels and waterways for conformance with specifications, standards and code compliance to ensure construction safety;
 - (3) performance of minor survey work on construction sites by placing grade stakes and operating survey instruments such as transits, compasses, levels and rods to determine lines and grades in construction work and boundary lines for conformance with construction specifications;
 - (4) maintenance of records at construction operations by taking field notes and drawing sketches to chronicle the progress of construction;
 - (5) inspection of contractors' safety procedures for conformance with state and federal regulations including the number and location of construction safety signs at work sites to insure the safety of construction personnel and the completed projected; and
 - (6) performance of related duties such as attending safety meetings and construction seminars to keep abreast of changes and new developments in the field of construction; calculating quantities for pay estimates and payments and writing routine letters and memoranda. (Exhibit 13)
 6. In conjunction with his request for reclassification to the position of GCI I, Mass Highway sent the Appellant an Interview Guide that included detailed questions

concerning his current position as an EA II. The Appellant completed this form and submitted it to Mass Highway. (Exhibit 4)

7. In this Interview Guide, the Appellant lists as his basis for appeal his work on four projects (Gates Street Bridge; Hopkinton/Southboro Bridge Project; Auburn Street / Sword Street Bridges over Rt. 290 in Auburn; and Bridge Reconstruction Over Burncoat St. in Worcester). In his Interview Guide, the Appellant states:

“I believe my Super Resident Engineers were very satisfied with my performance. I assisted directly in all construction activities and Personnel pertaining to the aforementioned projects. This involved project maintenance and guidance of personnel in all phases of construction to ensure compliance with M.H.D. specifications and construction plans. I am presently working on Contract #33134 in Auburn. Currently I supervise the contractor’s obligations to the Agency. The work to be performed under this contract involves bridgework along with the reconstruction of the roadway approaches. The bridge work includes removing the superstructure of the existing bridge; constructing a new superstructure; making modifications to portion of the abutments; providing and installing railings and protective screening; and other related bridge work. Including repaving, sidewalk reconstruction, removing and resetting guardrails, applying traffic lines and markings and other appertenances and incidental items as set forth in the proposal and required to complete the work .” (Exhibit 4)

8. In the section of the Interview Guide entitled “Job Responsibilities”, the Appellant listed seven (7) duties that he performs including:

- 1) Acts as an Office Engineer on current / past project (10%);
 - 2) Inspect construction operations and ensure compliance with the special provisions and standard specifications (73%);
 - 3) Prepare contract quantity estimates and all project documents (including the project diary, quantity control ledger book, pay book and police time book) (15%);
 - 4) prepare and submit balance and excess reports (less than 1%);
 - 5) complete and submit final packages (less than 1%);
 - 6) perform field tests / and take samples on materials incorporated into the project (2%);
 - 7) confer with Super Resident weekly (less than 1%).
- (Exhibit 4)

9. Three supervisors, all of whom supervised the Appellant at some point between March 2002 and the Summer of 2003, testified before the Commission. George Berte, a Civil Engineer IV who supervised the Appellant between August 2002 and January 2003, testified on behalf of the Appointing Authority. (Mr. Berte was a Civil Engineer III at the time he supervised the Appellant.) James Gallagher, a Civil Engineer III who supervised the Appellant during the Spring / Summer of 2003, also testified on behalf of the Appointing Authority. Angela Padavano, who supervised the Appellant during the Spring and Summer of 2002, testified on behalf of the Appellant.
10. Mr. Berte testified that he assigned the Appellant, an EA II, to work on three different projects in 2002. Also assigned to these projects, other than Mr. Berte (a Civil Engineer III), was a Civil Engineer II; a GCI II, a GCI I; and an EA I. (Testimony of Berte)
11. According to Mr. Berte, the Civil Engineer II was responsible for the project(s) when Mr. Berte was not present and would do estimates, testing and inspections. At times, the GCI II and GCI I would be responsible for filling in for the Civil Engineer II and performing the estimating, testing and inspection duties if the Civil Engineer II was at another work site. (Testimony of Berte)
12. The GCI II and/or GCI I, in the absence of the Civil Engineer II, would be responsible for, among other things, interacting with the Town's engineering department; sampling testing and mentoring people in lesser grades. "Sampling" includes sampling materials for the project, such as gravel and steel. "Testing" includes concrete tests, air tests and slump tests. (Testimony of Berte)

13. According to Mr. Berte, the EA II, the position held by the Appellant, would be responsible for performing more menial tasks including keeping track of men and equipment; counting drums and doing some limited inspectional work such as curbing and drainage inspections; and constructing cylinders. (Testimony of Berte)
14. At all times while Mr. Berte was supervising the Appellant, the Appellant did not perform the duties of a GCI I. Specifically, the Appellant was never the person in charge of a project in the absence of GCI I and the Appellant never did sampling of materials such as gravel and steel. Rather, the Appellant performed duties consistent with an EA II such as limited curbing and drainage inspections; keeping tracking of men and equipment; counting drums and constructing cylinders. (Testimony of Berte)
15. During cross examination, Mr. Berte testified that the Appellant never acted as an “Office Engineer” because this function was never used. (Testimony of Berte) This contradicts the Appellant’s written statement in his interview guide that he served as the “Office Engineer” 10% of the time. (Exhibit 4)
16. Mr. Berte also testified that the Appellant may have been “standing and watching” while certain bridge testing was being completed by a contractor. (Testimony of Berte)
17. The Appellant, during his testimony, testified that he performed “slump tests” as part of the above-referenced project. (Testimony of Appellant)
18. Asked if the Appellant was ever “in charge” of the contractors performing the bridge work, Mr. Berte stated, “No, if there was something of significance, one of the higher grades” would be responsible. Further, Mr. Berte testified that the Appellant would

only be left alone on a project if the contractor was performing basic curbing, sidewalk or drainage work.” (Testimony of Berte)

19. Mr. Berte testified that the Appellant was shown how to complete pay stubs and work orders and that was part of his responsibility as an EA II, but he was never responsible for preparing documents for Mr. Berte’s signature. (Testimony of Berte)

20. Mr. Berte testified that the Appellant was never responsible for calculating quantities for pay estimates, an example of a duty required of a GCI I. (Testimony of Berte and Exhibit 13)

21. Mr. Berte was a good witness. He is a 35-year veteran of what is now the Massachusetts Highway Department. Through his testimony, it was evident that he has a strong command of the subject matter. Further, as someone who has worked his way up the ranks, from an EA I to his current title of Civil Engineer IV, he is intimately familiar with the differences between the duties and responsibilities of an EA II as compared to a GCI I. Finally, he had no ulterior motive for offering testimony that did not support the Appellant’s instant appeal before the Commission. Rather, he appears to take great pride in offering all of his employees mentoring and training opportunities. I find his testimony that the Appellant was not performing the duties of a GCI I to be both informed and credible. (Testimony, Demeanor of George Berte)

22. James Gallagher, a Civil Engineer III, supervised the Appellant during the Spring and Summer of 2003. During this period of time, the Appellant (an EA II), and an EA I were assigned to a bridge rehabilitation project in Auburn, MA. (Testimony of Gallagher)

23. As part of this bridge rehabilitation project, the Appellant was assigned “safety patrol” duty including ensuring the proper placement of the arrow boards, message boards and barrels. The Appellant’s primary responsibility was to fill out a daily log indicating the work done by contractors and to complete pay stubs, examples of duties completed by an EA II. (Testimony of Gallagher and Exhibit 11)
24. Also as part of this bridge rehabilitation project, there were “one or two nights of paving” when the Appellant would “record men and equipment”. On these nights, Mr. Gallagher was present to supervise the Appellant. The Appellant did not perform materials testing as part of this project. The Appellant observed and recorded demolition being completed by contractors and subcontractors. (Testimony of Gallagher)
25. During his testimony, the Appellant confirmed that he simply observed and recorded demolition being completed by contractors. At one point, according to the Appellant, “jersey barriers” needed to be moved and he (the Appellant) followed the contractor and measured how many barriers were moved to determine what the contractor should be paid for that movement of barriers. (Testimony of Appellant)
26. The Appellant testified that detail police officers were present, but that Mr. Gallagher was responsible for overseeing them. (Testimony of Appellant)
27. Mr. Gallagher testified that the Appellant did inspect construction work to assure compliance with contract plan and did assist in the preparation of reports, two examples of duties of a GCI I. (Testimony of Gallagher and Exhibit 13)
28. Asked if the Appellant inspected contractors’ safety procedures for conformance with state and federal regulations, an example of a duty performed by a GCI I, Mr.

Gallagher testified that the Appellant was never responsible for reviewing the safety procedures. Rather, the Appellant was limited to recording whether or not such things as arrow boards and barrels were placed properly by the contractors.

(Testimony of Gallagher and Exhibit 13)

29. The Appellant testified that he was not responsible for the supervision of the placement of arrow boards and other signage during the above-referenced project. During cross-examination, however, the Appellant stated that he did keep a record of such safety equipment. (Testimony of Appellant)
30. Mr. Gallagher testified that the Appellant did not inspect materials and construction operations for conformance to rules and regulations and contract plans, another example of a duty performed by a GCI I. (Testimony of Gallagher and Exhibit 13)
31. Mr. Gallagher also testified that the Appellant did not conduct any field testing and/or laboratory testing, another example of a duty performed by a GC I, nor did the Appellant supervise the placement of any gravel. (Testimony of Gallagher and Exhibit 13)
32. During his testimony, the Appellant confirmed that he did not perform any testing as part of the above-referenced project. (Testimony of Appellant)
33. Mr. Gallagher testified that the Appellant maintained records, but did not draw any sketches to chronicle the progress of construction, another example of a duty performed by a GCI I. (Testimony of Gallagher and Exhibit 13)
34. Mr. Gallagher testified that the Appellant did not exercise functional supervision over 1 -5 technical or other personnel, a responsibility consistent with that of a GCI I. (Testimony of Gallagher and Exhibit 13)

35. Mr. Gallagher was also a good witness. He has 24 years of experience with what is now the Massachusetts Highway Department; he has a strong command of the subject matter; and he understands the distinction between the duties performed by an EA II and that of a GCI I. Like Mr. Berte, I find his testimony that the Appellant was not performing the duties of a GCI I to be both informed and credible. (Testimony of Gallagher)
36. Angela Padavano, a Civil Engineer III, supervised the Appellant for four months in 2002 when the Appellant was assigned to a bridge rehabilitation project. Also assigned to the project was a Civil Engineer II, a GCI I and one other individual, who was either a GCI I or an EA II. (Testimony of Padavano)
37. Asked if the Appellant inspected materials and construction operations for conformance to rules and regulations and contract plans, an example of a duty required of a GCI I, Ms. Padavano testified that the Appellant “watched what was going on every day and inspected every day and he tested the materials as was necessary.” Asked during cross-examination about the testing of materials, Ms. Padavano stated that the Appellant was not licensed to perform such testing. Moreover, Ms. Padavano testified that the Appellant “watched (the contractors) do it and took measurements and kept track of the quantities”. (Testimony of Padavano)
38. Asked if the Appellant conducted field and/or laboratory tests on materials, another example of a duty required of a GCI I, Ms. Padavano testified that the Appellant did field testing on concrete and completed slump tests and air tests and made cylinders. (Testimony of Padavano)

39. During cross-examination, the Appellant acknowledged that his “testing” role was limited to collecting a concrete sample and bringing it to a laboratory to be tested. (Testimony of Appellant)
40. Asked if the Appellant drew sketches to chronicle the progress of construction, an example of a duty of a GCI I, Ms. Padavano testified that the Appellant would draw sketches of different sections of the bridge where concrete was being poured. (Testimony of Padavano)
41. At no point during the Appellant’s testimony before the Commission did he state that he drew sketches as indicated by Ms. Padavano. Further, the Appellant never referenced drawing sketches in the interview guide he completed, nor was this duty ever listed on any of his performance reviews. (Testimony of Appellant; Exhibits 4 and 14)
42. Ms. Padavano testified that the Appellant did not inspect contractors’ safety procedures for conformance with state and federal regulations, an example of a duty required of a GCI I. (Testimony of Padavano)
43. Ms. Padavano testified that the Appellant did not supervise anyone. (Testimony of Padavano)
44. Ms. Padavano is also a long-time employee at Mass Highway, having dedicated 21 years of her professional career to the Commonwealth. She appeared competent and well-versed, but I was unable to reconcile much of her testimony with the documentary evidence in the record and/or the testimony of the Appellant himself. Testifying on behalf of the Appellant, her answers appeared to be geared toward

convincing the Commission that the Appellant's appeal was justified. (Testimony of Padavano)

45. Much of the Appellant's testimony focused on examples of duties consistent with his current classification as an EA II. Although the Appellant briefly referenced performing a "slump test", he offered no additional details or clarification which would allow the Commission to determine if he indeed performed such testing and/or how often. (Testimony of Appellant)

46. On December 29, 2003, Mass Highway issued a decision determining that the Appellant was properly classified as an EA II. (Stipulated Fact)

47. The Appellant subsequently appealed Mass Highway's decision to HRD on April 10, 2006 and October 24, 2006. HRD denied the Appellant's appeal on July 11, 2007. (Stipulated Facts)

48. The Appellant filed an appeal of HRD's decision with the Commission on July 25, 2007. (Stipulated Fact)

CONCLUSION

After careful review of the testimony and evidence presented in this appeal, the Commission concludes that the decision of the Human Resources Division denying Mr. Gingerelli's request to be reclassified as a General Construction Inspector I should be affirmed.

Examples of duties common to all levels in the General Construction Inspector series include:

- (1) inspection of materials and construction operations for conformance to rules and regulations and contract plans and specifications;
- (2) conducting field and/or laboratory tests on materials used in the construction of highways, buildings, bridges, dams, water / sewage systems, tunnels and waterways for conformance with specifications, standards and code compliance to ensure construction safety;
- (3) performance of minor survey work on construction sites by placing grade stakes and operating survey instruments such as transits, compasses, levels and rods to determine lines and grades in construction work and boundary lines for conformance with construction specifications;
- (4) maintenance of records at construction operations by taking field notes and drawing sketches to chronicle the progress of construction;
- (5) inspection of contractors' safety procedures for conformance with state and federal regulations including the number and location of construction safety signs

The Appellant has not met his burden of proof to demonstrate that he performed the majority of the above-referenced duties of a General Construction Inspector I more than 50% of the time. I base this conclusion on the credible and informed testimony of two of the Appellant's former supervisors as well as the testimony of the Appellant himself. Specifically, the Appellant candidly acknowledged during his testimony that his "testing" role was limited to delivering concrete samples to a laboratory for testing. Further, the Appellant never indicated during his testimony or his interview guide that he drew sketches to chronicle the progress of a construction project and his inspection of contractor's safety procedures was limited to ensuring that cones and roadway signs had been placed in the right location by the contractor.

Two of the Appellant's former supervisors testified credibly before the Commission and confirmed that the Appellant did not perform a majority of the duties of a GCI I more than 50% of the time. Much of the testimony of a third prior supervisor, who testified that the Appellant performed *some* of the duties associated with a GCI I, could not be reconciled with the Appellant's testimony or the documentary evidence.

A careful review of the information confirms that the Appellant is properly classified as an Engineering Aide II.

For all of the above reasons, the appeal under Docket No. C-07-256 is hereby *dismissed*.

Christopher C. Bowman, Chairman

By a vote of the Civil Service Commission (Bowman, Chairman, Guerin, Henderson, Marquis and Taylor, Commissioners) on February 28, 2008.

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:

Paul K. Donahue, Esq. (for Appellant)
John L. Casey, Esq. (for Appointing Authority)
John Marra, Esq. (HRD)