

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

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

MARIE BEDARD,

Appellant

v.

Case No.: D-13-225

**MARLBOROUGH
PUBLIC SCHOOLS,**

Respondent

ORDER OF DISMISSAL

On October 17, 2013, the Appellant, Marie Bedard, filed an appeal with the Civil Service Commission (Commission) contesting a decision of the Superintendent of the Marlborough Public Schools (MPS) that resulted in a change of work location. A pre-hearing conference was held at the offices of the Commission on November 19, 2013.

It is undisputed that Ms. Bedard became a permanent Senior Clerk / Typist for the MPS on September 12, 1989. For her entire career with MPS, she worked in the Central Office performing such administrative duties as preparing time sheets, purchase orders, etc. for the Special Education Office.

On September 23, 2013, Ms. Bedard was informed that she was being assigned to the Hildreth School, where she performs administrative duties such as tracking time and attendance and answering phones. The school is only a couple of miles from the Central Office. Ms. Bedard alleges that the assignment was disciplinary in nature and related to an incident where she was questioned about her work performance by the new Director of Special Education. Her civil service title remained the same; she faced no reduction in pay; and her job duties fall within the clerical series.

Based on the undisputed facts, the Commission does not have jurisdiction to hear this appeal.

First, the Appellant has not served as a tenured employee since prior to October 14, 1968. G.L. c. 31, § 43 only grants procedural protections to employees have been transferred without their written consent if they were a tenured employee on or before October 13, 1968, which Ms. Bedard was not.

In order to invoke the protection of another section of the civil service law, G.L. c. 31, § 35, the Appellant is required to establish that she was “transferred” within the meaning of the civil service law.

"The Civil Service Commission has defined the term "Transfer" as a "change of employment under the same appointing authority from a position in one class to a similar position in the same or another class or a change of employ in the same position, under the same appointing authority, from one geographical location to a different geographical location, provided that a different geographical location shall be one which is both more than a commuting distance from the employee's residence than its prior location and more distant from the employee's residence than his prior location..." Sullivan v. Dep't of Transitional Assistance, 11 MCSR 80 (1998).

A series of other Commission decision has established the difference between a transfer and a reassignment and that the Commission lacks jurisdiction over those appeals involving a reassignment.

In Appellant v. Department of Revenue, 1 MCSR 28, 29 (1985), the Commission dismissed the Appellant's appeal on the grounds that the action being appealed was a reassignment as opposed to a transfer. In that case, the employee's position in the Worcester office was eliminated and he was reassigned to the Cambridge office. The employee claimed that this change in duty was effectively a transfer. The Commission found that the distances to Cambridge or to Worcester from the employee's home were approximately equal. It further found that that the reassignment did not affect the employee's job title, duties, grade or salary.

In McLaughlin v. Registry of Motor Vehicles (CSC Case No. G-01-1461 (2004)), the Commission determined that it lacked jurisdiction to hear the appeal in that the action taken did not constitute a transfer, but a reassignment. In McLaughlin, the Appellant was not transferred to a different position, but merely relocated to a different branch office while keeping the same job title, duties and pay.

In Sands v. City of Salem, 21 MCSR 502, 504 (2008)), the Commission, citing Sullivan, determined that it lacked jurisdiction to hear the appeal in that the action taken did not constitute a transfer, but, rather, a reassignment. In Sands, the Appellant, a Hoisting Equipment Operator, was no longer able to perform some of the essential duties in his previously held position. Therefore, in order to make reasonable accommodations for his medically documented permanent disability, he was reassigned to perform cemetery-related duties in the Cemetery Department. Although his distance of travel from his residence was greater than previously, the Commission concluded that the change in travel did not impose an unreasonable hardship on the employee.

In McQueen v. Boston Public Schools (21 MCSR 548, 551 (2008)), the Commission determined that it lacked jurisdiction to hear the appeal in that the action taken did not constitute a transfer, but, rather, a reassignment. In McQueen, the Appellant was reassigned from one elementary school to another. In dismissing his appeal, the Commission considered that the Appellant retained the same position of junior custodian and retained the same rate of pay in his new position.

In Anderson v. Saugus Public Schools (CSC Case No. D-09-381) (2010), the Commission determined that it lacked jurisdiction to hear the appeal in that the action taken did not constitute a transfer, but, rather, a reassignment. In Anderson, the Appellant retained her title

of Principal Clerk; she did not face any reduction in pay nor had she been assigned to a work location that resulted in a longer commute. While her functional duties had changed, those duties still fell clearly within the clerical series. Even if the functional duties were substantially different, as they were in the Sands case, the Commission concluded that this alone would not constitute a transfer that is reviewable by the Commission.

In Haye and Simone v. Methuen Public Schools, 23MCSR 122 (2010), the Commission determined that it lacked jurisdiction to hear appeals in that the action did not constitute a transfer, but, rather, a reassignment. In Haye and Simone, the Appellants were both permanent junior building custodians. They were reassigned to building custodian positions different from those in which they had been serving. Each of them continued to serve in junior building custodian positions without any loss of compensation. Mr. May, who had previously worked in the functional title of “building custodian / store delivery person” and Mr. Simone, who had previously worked as building custodian / system-wide groundskeeper”, each had been reassigned to positions as junior building custodians in one of the elementary schools in the Methuen Public Schools.

In Breen v. Gardner School Department, 25 MCSR 154 (2012), the Commission determined that it lacked jurisdiction to hear the appeal in that the action did not constitute a transfer, but, rather, a reassignment. In Breen, the Appellant was a Senior Clerk / Typist. She was laid off, then reinstated to her permanent civil service title of Senior Clerk / Typist. A subsequent arbitration decision, related to another employee, addressed provisions of the collective bargaining agreement related to the assignment of clerks to various positions in the School Department. Although the Appellant was assigned to a different work location, her permanent title of Senior Clerk/ Typist was not disturbed.

Here, as referenced above, Ms. Bedard’s permanent civil service title has not been disturbed, she continues to perform administrative duties that are consistent with the clerk series, she has suffered no reduction in pay and her new work location is only a couple of miles away from her prior work location. Given these undisputed facts, the action that occurred here was a reassignment and not a transfer, even if the reason for the reassignment was related to Ms. Bedard’s work performance.

For these reasons, Ms. Bedard’s appeal under Docket No. D-13-225 is *dismissed*.

Civil Service Commission

Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Marquis, McDowell and Stein, Commissioners) on December 19, 2013.

A True Record. Attest:

Commissioner

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)(1), 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.

Notice to:

Marie Bedard (Appellant)

Richard Langlois, Superintendent (Respondent)