

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

JOSEPH E. DiMUCCI,
Appellant

v.

C-05-222

DEPARTMENT OF MENTAL RETARDATION,
Respondent

Appellant's Attorney:

*Pro Se*¹
Joseph E. DiMucci

Respondent's Attorney:

Julian T. Tynes, Esq.
DMR Assistant General Counsel
171 State Avenue
Palmer, MA 01069

Commissioner:

John J. Guerin, Jr.

DECISION

Pursuant to the provisions of G.L. c. 30, § 49, the Appellant, Joseph E. DiMucci (hereinafter "Mr. DiMucci" or "Appellant"), is appealing the May 9, 2005 decision of the Human Resources Division ("HRD") denying his request for reclassification from the position of Vocational Instructor A/B ("VI-A/B") to the position of Vocational Instructor C ("VI-C") for the Respondent, Department of Mental Retardation ("DMR"). The appeal

¹ Although the Appellant appeared *pro se*, he did employ the assistance of Ms. Patricia Couhig, a union representative from AFSCME Council 93 AFL-CIO, who was allowed, without objection, to cross-examine the Appellant after examination by the Respondent.

was timely filed and a hearing was held on December 5, 2006 at the offices of the Civil Service Commission (hereinafter "Commission"). One tape was made of the hearing. Proposed Decisions were invited from the parties to be submitted by January 5, 2006. Subsequent to the conclusion of the hearing on this matter, however, the parties engaged in a lengthy but unsuccessful settlement negotiation. Neither party chose to ultimately submit post-hearing materials.

FINDINGS OF FACT:

Based on the documents entered into evidence (Joint Exhibits 1 and 2) and the testimony of Annette Szivos, DMR Division Director; Stanley Ligawiec, DMR Personnel Officer and the Appellant, I make the following findings of fact:

1. At the time of the denial of his request for reclassification, the Appellant had been employed by the DMR for over 25 years. He was appointed to the position of VI-A/B on or about November 30, 2003. He was promoted to the position of VI-C on July 31, 2005 and remains in that position as of this writing. (Testimony of Appellant and Exhibit 1)
2. Because the Appellant now serves in the position to which he sought to be reclassified, the DMR moved at the Commission hearing to limit the time period in which a remedy could be granted to be from March 22, 2004, the date of his request to the DMR for reclassification, to July 31, 2005, the date of his promotion to the position of VI-C. There was no opposition from the Appellant to this motion and the limited period of remedy was allowed by the Commission.

3. At all times relevant to this appeal, the Appellant was assigned to the DMR's Templeton Development Center ("TDC") in Baldwinville. His primary assignment was to the Workshop at the TDC. (Exhibit 1)
4. The Appellant's VI-A/B "Position Description – Form 30", prepared in March 2004, includes a "General Statement of Duties and Responsibilities" that states the following in that section:

"Supervises and instructs workers in a sheltered workshop setting; work includes benchtop assembly tasks; skills taught include task attention, punctuality, production and quality control, and some hands on production, either training or actual production."
(Id.)
5. Also included on the Form 30 is a section providing for a "Detailed Statement of Duties and Responsibilities." Two (2) of the twenty-eight (28) specific duties and responsibilities listed in this section require supervision of DMR clients under the Appellant's care. None of the duties and responsibilities requires the Appellant to supervise co-workers or other staff of the DMR. (Id.)
6. In conjunction with his request for reclassification to the position of VI-C, the DMR sent the Appellant an Interview Guide that included detailed questions concerning his position as a VI-A/B. The Appellant completed the guide and submitted it to the DMR on December 9, 2004. (Id.)
7. On page 8 of the Interview Guide, the preparer is asked to describe his or her supervisory responsibilities. The Appellant wrote, "Any Direct Care staff (MRW's) assigned to Vocational Program. Clients working at the Vocational worksite." (Id.)

8. Stanley Ligawiec, a DMR Personnel Officer, credibly testified that he has worked for the DMR Human Resources since 1978. He stated that he first met the Appellant during this reclassification appeal process. Mr. Ligawiec was responsible for reviewing the Appellant's Interview Guide and assisted the Appellant with completing the section on page 7 titled SPECIFIC DUTIES: WHAT DO YOU DO?. Here, the Appellant was asked to list his duties in descending order of importance and to apply a percentage of time that he attends to each duty listed. (Testimony of Ligawiec and Exhibit 1)

9. In the SPECIFIC DUTIES section, the Appellant listed the following:

“Supervises and implements client programs and instructs clients in the Workshop Program at TDC in assembly production tasks as instructed by the objective manager based upon programmatic and client needs and as indicated on each client’s quarterly program plan(s). Also provides input toward the development and implementation of programs, maintains good working relationships other co-workers, vendors and clients, attends Vocational Department workshop team meeting(s).” (Emphasis added.)

The Appellant indicated that he attended to these duties 64% of his time. (Exhibit 1)

10. Mr. Ligawiec was responsible for matching the information provided by the Appellant in the Interview Guide with the class, or job, specifications of the position to which the Appellant wished to be reclassified. He was then responsible for making a conclusion, based on this comparison of duties, as to whether the Appellant should be reclassified to the position of VI-C. (Testimony of Ligawiec)

11. The Class Specification for the Vocational Instructor series, effective July 1, 2001, states that the VI-A/B title is “used for nonsupervisory Vocational

Instructors.” The VI-C title is “used for Vocational Instructor (sic) who are first-level supervisors and/or non-supervisory employees performing the most complex assignments.” (Exhibit 2)

12. Mr. Ligawiec concluded in a January 14, 2005 letter to the DMR that the Appellant’s “position is properly classified as Vocational Instructor (A/B).” In an attachment to that letter, Mr. Ligawiec states *inter alia* that “Mr. DiMucci does provide direction to direct care staff assigned to the program(s) he is responsible for but is not their supervisor nor does he conduct performance appraisals.” (Exhibit 1)
13. At the Commission hearing, the Appellant testified that there were no workers in the same or lower titles as his that report to him. He indicated that he supervised direct care staff but did not prepare Employee Performance Reviews (“EPRS”) for them. When asked under direct examination if he had ever supervised another VI, the Appellant did not answer. He did offer that he would supervise substitute VI’s because they were unfamiliar with the workshop and he did provide input to supervisor’s regarding assignment of lower level workers. However, he stated that he did not routinely instruct fellow VI’s and was not considered a supervisor by them. (Testimony of Appellant)
14. Annette Szivos, DMR Division Director, was responsible for all vocational services provided at the TDC and also for reviewing the Appellant’s EPRS. She credibly testified that no DMR staff directly reported to, or was supervised by, the Appellant. However, she was effusive in her praise for the Appellant’s work

performance and approved a glowing EPRS in Evaluation Year July 2003 – June 2004. (Testimony of Szivos and Exhibit 1)

15. Indeed, throughout the hearing, the DMR’s Attorney, Julian Tynes seized every opportunity to inform the Commission that the Appellant is such a valued worker that he (Attorney Tynes) took no pleasure in having to deal with him in the adversarial manner inherent in the appeal process. The DMR did not wish to “embitter” such a fine employee and offered to enter into settlement negotiations even at the conclusion of the Commission hearing. In the DMR’s opening statement at hearing, Attorney Tynes averred that the Appellant was an “outstanding” employee and when a VI-C position became vacant, the Appellant was promoted because he possessed the skills for the job. However, the DMR also asserted that the Appellant was *not* acting as a VI-C during the time period in question, March 22, 2004 – July 31, 2005. (Statements of Attorney Tynes)

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 Mr. DiMucci’s reclassification request should be affirmed.

As a provider of services to mentally retarded citizens, the Appellant performs a difficult job and vital service to the people of our Commonwealth. The Commission takes this opportunity to thank him and all of his colleagues throughout the state.

However, the Appellant has not met his burden of proof to demonstrate that he was improperly classified as a Vocational Instructor A/B from March 22, 2004 until July 31, 2005. It is clear that his Form 30 reflected duties that were consistent with his VI-A/B title. Based on a preponderance of the credible evidence at hand, the Appellant's duties did not reflect those performed by employees in the title of Vocational Instructor C, to which he seeks reclassification. Although some of his duties were consistent with those of a VI-C, the Appellant clearly did not exercise supervisory duties which distinguish the position from his title at the time. At the hearing before the Commission, the Appellant testified that, indeed, he did not exercise supervisory duties but "assisted" others in managing the client programs. There is certainly no indication that the Appellant performed duties, "complex" or otherwise, that were consistent with the VI-C 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-05-222 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 February 21, 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:

Joesph E. DiMucci

Julian T. Tynes, Esq.