

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

CIVIL SERVICE COMMISSION

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

NANCY HARAND,
Appellant

v.

C-07-428

SOLDIERS' HOME IN
HOLYOKE
Respondent

Appellant's Attorney:

Pro Se
Nancy Harand

Respondent's Representative:

Donald R. Andrejczyk, Esq.
General Counsel
Soldiers' Home in Holyoke
110 Cherry Street
Holyoke, MA 01040

Commissioner:

Christopher C. Bowman

DECISION

Pursuant to the provisions of G.L. c. 30, s. 49, the Appellant, Nancy Harand (hereafter "Appellant" or "Harand"), is appealing the November 15, 2007 decision of the Human Resources Division (HRD) denying her request for reclassification from the position of Licensed Practical Nurse I (LPN 1) to the position of Licensed Practical Nurse II (LPN

II). The appeal was timely filed and a hearing was held on March 26, 2008 at the Springfield State Building in Springfield, MA. One tape was made of the hearing.

FINDINGS OF FACT:

Fifteen (15) exhibits were entered into evidence at the hearing. Based on the documents submitted into evidence and the testimony of:

For the Appointing Authority:

- Noreen Fields, Human Resources, Soldiers' Home in Holyoke;
- Cathy Bergeron, Director of Nursing; Soldiers' Home in Holyoke;

For the Appellant:

- Nancy Harand, Appellant;

I make the following findings of fact:

1. Nancy Harand is employed and classified as an LPN I at the Soldiers' Home in Holyoke (hereafter "Soldiers' Home", or "Appointing Authority"). (Stipulated Fact)
2. Harand has been employed full-time by the Soldiers' Home for approximately fourteen (14) years. (Stipulated Fact; Testimony of Appellant)
3. On or about March 26, 2007, the Appellant appealed her classification as an LPN I to the Human Resources Department at Soldiers' Home, requesting that she be classified as an LPN II. (Stipulated Fact)
4. On or about July 16, 2007, the Acting Superintendent of the Soldiers' Home denied the Appellant's request for reclassification and forwarded it for further review to the Executive Office of Health and Human Services; Disabilities and Community Services (HHS). (Exhibits 5, 6 and 7)

5. As part of its justification for denying the Appellant's request for reclassification, the Appointing Authority, in a letter dated July 16, 2007, stated in relevant part:

“It is our position that there is a charge nurse (RNIV) on the floor and 1 RN II. The RNIV is performing the administrative supervisory duties that come closer to the definition of Charge. The Charge Nurse assigns duties and responsibilities for that shift to staff and evaluates the performance of staff on the unit. The information gathered in the audit indicated that you may perform some of the duties required of an LPN II, but you are performing direct patient care functions which are more related to that of an LPN I.” (Exhibit 5)
6. On or about September 19, 2007, after a further review, the Executive Office of Health and Human Services, Disabilities and Community Services, Office of Human Resources, affirmed the decision of the Soldiers' Home to deny the Appellant's request for reclassification. (Exhibit 7)
7. On or about October 3, 2007, Harand timely appealed the denial of the LPN II classification to the state's Human Resources Division (“HRD”). (Exhibit 8)
8. On or about November 15, 2007 HRD denied Harand's appeal of her classification to that agency. (Exhibit 9)
9. On or about December 17, 2007, Harand timely appealed HRD's denial of the reclassification to the LPN II title to the Civil Service Commission. (Stipulated Fact)
10. The Classification Specification states that an LPN II is the “second-level paraprofessional job in this series.” Incumbents of this position are expected to: provide on-the-job training to employees; and “assume charge responsibility for a shift for a ward, unit, area, cottage, clinic, etc”. (Exhibit 2)¹ (emphasis added)

¹ Although there are two other level-distinguishing duties of an LPN II listed in the Classification Specification, the Appointing Authority, through the testimony of Ms. Bergeron, Director of Nursing, testified that no LPN IIs perform these two other duties. Hence, they are not relevant to the instant appeal.

11. Also according to the Classification Specification, an LPN II is expected to “exercise direct supervision over, assign work to, and review the performance of 1-5 personnel; and indirect supervision over 6-15 personnel.” (Exhibit 2)
12. Noreen Fields is responsible for reviewing requests for reclassification submitted by employees at Soldiers’ Home in Holyoke. In regard to the instant appeal, Ms. Fields met with the Appellant as well as Scott Walker, an RN IV who is the “head supervisor” for the work area in question. Ms. Fields reported her findings to the Acting Superintendent at Soldiers’ Home. Ms. Fields testified before the Commission. (Testimony of Ms. Fields)
13. As a result of her review, Ms. Fields found that Ms. Harand “is not always in charge...she does not supervise, she does not do employee evaluations.” According to Ms. Fields, supervision of the CNAs and others working with Ms. Fields is provided by Mr. Walker (RN IV). (Testimony of Fields)
14. Cathy Bergeron is the Director of Nursing at Soldiers’ Home in Holyoke and has been working at Soldiers’ Home for 18 years. She testified before the Commission.
15. According to Ms. Bergeron, an LPN II has “charge responsibility” which means that he / she is the “point person; the person who starts the shift, makes the assignments up; supervises the work going on; gives direction.” Also according to Ms. Bergeron, this LPN II, in addition to this charge responsibility, would also be performing all the direct patient care responsibilities of an LPN I. (Testimony of Ms. Bergeron)
16. According to Ms. Bergeron, whether or not an LPN I or II has charge responsibility depends on how much supervision they have. “If there is an RN II with them, working close to them, working directly over them, that RN II will assume the

direction as to whom is working where, assignments of break times...following the lead of where the patients are going, who is being transferred out; who is being readmitted back from a facility.” Ms. Bergeron testified that if there is no RN on the unit, then an LPN II typically becomes the point person, assuming charge responsibility, even though there is an RN II somewhere in the building. (Testimony of Ms. Bergeron)

17. In regard to the shift worked by the Appellant, the day shift, Ms. Bergeron testified that there is typically an RN II that assumes the charge responsibility for the unit in which the Appellant works. (Testimony of Ms. Bergeron)

18. During the night shift, there is no RN II to assume charge responsibility, only an RN IV for the entire facility. Therefore, LPN IIs are assigned to the night shift as they are expected to assume charge responsibilities. (Testimony of Ms. Bergeron)

19. Several years ago, the Appellant transferred from the night shift, in which she was an LPN II, to the day shift, in which she is an LPN I. (Testimony of Appellant)

20. Also according to Ms. Bergeron, an LPN II with “charge responsibility” performs “more independent assessments...making decisions such as notifying a supervisor as to when a patient’s condition has changed to be able to send them out...”. (Testimony of Ms. Bergeron)

21. Ms. Bergeron testified that the Appellant, on the day shift, does not make any of the independent decisions that an LPN II with charge responsibility at night makes. For example, Ms. Bergeron testified that if a patient falls or there is a change in status of a patient, the Appellant would report to the RN II assigned to the Appellant’s unit and subsequently to the RN Supervisor (RN IV). An LPN II, according to Ms. Bergeron

would report a change in patient status directly to the RN Supervisor (RN IV).

(Testimony of Ms. Bergeron)

22. According to the Appellant, sometime in 2006, she was asked to transfer *from* the “3 East and West” wing at Soldiers’ Home *to* the Alzheimers Unit. (Testimony of Appellant)

23. As an LPN I in the Alzheimers Unit, the Appellant testified that although there is a full-time RN II and a part-time RN II “upstairs on 2 North” while she is working, she reports directly to the RN Supervisor (RN IV). According to the Appellant, she never reports issues such as a change in patient status to the RN II on “2 North”. Rather, as referenced above, the Appellant testified that she would report such an issue directly to the RN IV. (Testimony of Appellant)

24. According to the Appellant, the only time one of the above-referenced RN IIs comes down to the Alzheimers Unit, also known as “1 North”, is to assist the Appellant with the distribution of medication. (Testimony of Appellant)

25. During follow-up testimony, Ms. Bergeron testified that it was her understanding that the part-time RN, referenced above, is supposed to be assigned to “1 North” (the Alzheimers Unit), not “2 North”, as the RN assignments are supposed to be through the care center, not just on one floor. (Testimony of Ms. Bergeron)

26. Ms. Bergeron testified that it was her understanding, prior to hearing the Appellant’s testimony before the Commission, that if the Appellant has any issues regarding patients (i.e. – the need to be transferred out of the facility), that the Appellant would bring this to the attention of an RN II, not directly to the RN IV. (Testimony of M s. Bergeron)

27. Exhibit 14 is the Appellant's Performance Review Form for the period immediately preceding the filing of her classification appeal. According to this review form, the Appellant's direct supervisor is the RN IV. (Exhibit 14)
28. The Appellant testified that as an LPN I in the Alzheimers Unit, she performs duties such as calling doctors directly to get orders, deciding whether to contact a physical or speech therapist for a patient and ordering lab work and x-rays. (Testimony of Appellant)
29. Asked by this Commissioner if she has "charge responsibility" in the Alzheimers Unit, the Appellant testified that she does. During cross-examination, the Appellant testified that she was told by the RN IV that she is the nurse in charge. (Testimony of Appellant)
30. The Appellant testified that while assigned to the day shift in the Alzheimers Unit, all of the CNA Is and CNA IIs (four in total) report to her in addition to the other LPN I assigned to the unit. Asked to clarify what was meant by her testimony that individuals "report" to her, the Appellant testified that the other LPN I would confer with her prior to doing an assessment of a patient. During cross examination, the Appellant testified that she is supervising constantly throughout her shift as she is the only nurse in the unit. (Testimony of Appellant)
31. The Appellant does not complete performance evaluations for any employees.
(Testimony of Appellant)
32. The Appellant testified that she also provides on-the-job training for new employees.
(Testimony of Appellant)

CONCLUSION

After careful review of the testimony and evidence presented in this appeal, the Commission concludes that the decision of the state's Human Resources Division should be overturned and the Appellant should be classified as a Licensed Practical Nurse II.

The Appellant has shown that she performs the two level distinguishing duties of an LPN II which are relevant to this appeal more than 50% of the time. Specifically, the Appellant has shown that she has "charge responsibility" throughout her shift in the Alzheimers Unit and that she provides on-the-job training to other employees.

I base my conclusion on the documentary evidence and the testimony of the Appellant. While the Director of Nursing made a good faith assumption that the Appellant in this case was reporting to an RN II, who should be exercising charge responsibility while the Appellant is on duty, the Appellant's credible testimony before the Commission makes it clear that, in reality, the Appellant is reporting directly to an RN IV. This is corroborated by her review form, which was submitted as Joint Exhibit 14. Further, the Appellant is performing all of the duties typically associated with having charge responsibility in a unit. Finally, based on the Appellant's credible testimony, I conclude that the other LPN I assigned to the shift and the CNAs receive direction and guidance from the Appellant while she is on duty.

For these reasons, the Appellant's Appeal under Docket No. C-07-428, in which she seeks to be re-classified as LPN II, is hereby *allowed*.

Christopher C. Bowman, Chairman

By a vote of the Civil Service Commission (Bowman, Chairman, Guerin, Henderson, Marquis and Taylor, Commissioners) on April 10, 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)(I), 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:

Nancy Harand (Appellant)
Donald R. Andrejczyk, Esq.
John Marra, Esq. (HRD)