

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

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

GARY LEMOINE,
Appellant

v.

CASE NO: C-09-420

**EXECUTIVE OFFICE OF HEALTH
AND HUMAN SERVICES,
DEPARTMENT OF YOUTH SERVICES,**
Respondent

Appellant:

Gary Lemoine (*Pro Se*)
14 Cedar Oak Lane
Hampden, MA 01036

Appointing Authority's Representative:

Rhett Cavicchi
Labor Relations Specialist
Executive Office of Health and
Human Services, Department of
Youth Services
600 Washington Street, 2nd Floor
Boston, MA 02111

Commissioner:

Paul M. Stein

DECISION

The Appellant, Gary Lemoine, brought this appeal pursuant to G.L.c.30, §49, seeking reclassification of his position at the Department of Youth Services' ("DYS") Western Region Youth Service Center Campus ("Youth Center") from Program Coordinator I to Program Coordinator III. At hearing on January 5, 2010, the Human Resources Division ("HRD") presented evidence through two witnesses, Tiffany Ampofo and Melvin Washington, while the Appellant testified on his own behalf and presented evidence

through the testimony of Edward Acciardo. Seventeen (17) Exhibits were received in evidence. A digital recording of the hearing was also prepared.

FINDINGS OF FACT

Based upon the Exhibits and the testimony of Ms. Ampofo, Mr. Washington, Mr. Lemoine, and Mr. Acciardo, and the inferences reasonably drawn from that evidence, I make the findings of fact set forth below.

Procedural History

1. Appellant is employed at the Department of Youth Services in Springfield, Massachusetts, in the position of Program Coordinator I at DYS' Western Region Youth Service Center ("Youth Center") on Tinkham Road. (Testimony of Appellant)
2. The Tinkham Road Youth Center is a long-term juvenile detention facility in Springfield, Massachusetts. (Testimony of Appellant)
3. Appellant has been continuously employed at the Youth Center for 25 years. (Testimony of Appellant; Exhibit 1)
4. Appellant began his employment with DYS in August 1985, in the position of Institution Protection Man/Campus Police Officer. (Exhibit 1)
5. In 1999, Appellant was promoted to the Caseworker position at DYS. (Testimony of Appellant)¹
6. Appellant was again promoted in July 2004 to the position of Program Coordinator I. (Exhibit 1; Testimony of Appellant)

¹ Although he was promoted to the Caseworker position, Appellant testified that he never performed the duties of a Caseworker, but instead immediately began performing the duties of a Program Coordinator in 1999.

7. In February 2008, Appellant first appealed his job classification, and was temporarily reclassified as Program Coordinator II for a “closed period” from January 27, 2008 to June 29, 2008 (Exhibit 15; Testimony of Appellant)
8. From January to June 2008, Appellant performed the duties of a Program Coordinator II at DYS, in which he directly supervised members of the Kitchen and Maintenance Departments. (Testimony of Appellant; Testimony of Washington; Exhibit 6)
9. By Memorandum of July 23, 2008, Appellant’s job title was formally changed back to Program Coordinator I and he ceded supervision of the Kitchen and Maintenance departments at the Youth Center. (Testimony of Appellant; Exhibit 16)
10. Upon returning to the Program Coordinator I position in June 2008, Appellant reported directly to Melvin Washington, the Youth Center’s Facilities Manager. (Testimony of Washington; Exhibit 4)
11. At all relevant times, Mr. Washington, who was hired in 2008, has reported to John Zablocki, Director of Residential Services for the Western Region.
12. Prior to Mr. Washington’s appointment to the Facilities Manager post in 2008, the position did not exist at the Youth Center. (Testimony of Appellant; Testimony of Washington)
13. By e-mail correspondence of June 29, 2009, Appellant made a written request to be reclassified from Program Coordinator I to Program Coordinator III. (Exhibit 8)
14. By letter of September 16, 2009, Executive Office of Health and Human Services (EOHHS) representative Joan Bishop-Fallon denied the reclassification request of Appellant from Program Coordinator I to Program Coordinator III based on her

determination that Appellant did not satisfy the criteria for the Program Coordinator III position. (Exhibit 11)

15. On September 21, 2009, Appellant timely filed an appeal with the Human Resources Department (“HRD”), requesting reversal of the Appointing Authority’s denial of his reclassification request. (Exhibit 14)

16. By letter of October 27, 2009, HRD denied the Appellant’s request to reverse the Appointing Authority’s decision. (Exhibit 13)

17. On November 9, 2009, Appellant filed a Reclassification Appeal with the Massachusetts Civil Service Commission, requesting review of HRD’s decision. (Exhibit 14)

Mr. Lemoine’s Work Unit

18. From July 1, 2007 to June 30, 2008, the last six months of which Appellant was serving in the Program Coordinator II position, his job duties, as defined by the Employee Service Review Form (“EPRS”), included: (1) managing and providing oversight to daily operations of the kitchen and food services; (2) managing the maintenance operations of the Tinkham Road Campus; (3) maintaining records for the Western Region Fleet; (4) providing logistical support for special duties/projects as determined by Executive administration and the Facility Administrator; (5) managing the Western Youth Service Center’s Operational Budget; and (6) managing the Western Youth Service Center Building. (Exhibit 6)

19. During this period, Appellant supervised the Kitchen and Maintenance departments, and performed significant oversight of the Western Region’s transportation fleet. (Testimony of Appellant; Testimony of Ampofo; Exhibit 6)

20. From July 1, 2008 to June 30, 2009, after Appellant had been reassigned to the Program Coordinator I position, his job duties included: (1) “campus and facility security and environmental safety; (2) “Fleet Management”; (3) providing logistical and technical support for special duties/projects as determined by Executive administration and the Facility Administrator; and (4) ensuring proper licensure of the Youth Center. (Exhibit 7)
21. During this period, Appellant’s authority to supervise the Kitchen and Maintenance personnel was eliminated as a result of the creation of the Facilities Manager position in 2008. (Testimony of Washington; Testimony of Appellant).
22. After his reclassification to Program Coordinator I, Appellant’s responsibilities at DYS included coordinating, monitoring and organizing several special programs and activities at the Youth Center. In doing so, he often assisted and consulted with various vendors, teachers and managers of these programs, such as the Greenhouse, the Fire Watch Project, and ongoing renovations and improvements to the physical plant. (Testimony of Appellant; Testimony of Washington)
23. Appellant currently assists in coordinating and organizing various special projects related to fire safety, security, and maintenance (Testimony of Appellant, Testimony of Washington; Testimony of Acciardo)
24. Appellant is often assigned to work with various Youth Center vendors to ensure compliance with security and fire regulations (Testimony of Appellant; Testimony of Washington)

25. Appellant is also presently charged with maintaining records for the Western Region's transportation fleet, which consists of approximately ten vehicles. (Testimony of Appellant; Testimony of Washington).
26. Appellant currently exercises direct supervision over two (2) security personnel who are temporarily charged with physically monitoring the campus building while the sprinkler system remains inoperable. (Testimony of Appellant; Testimony of Washington)
27. During the period in question, Appellant has not exercised indirect supervision over any employees at the Youth Center, although he works closely with several employees and outside vendors on a daily basis (Testimony of Appellant; Testimony of Washington).
28. From approximately 1999 to June 2008, prior to the creation of the Facilities Manager position, Appellant served in a *de facto* supervisory capacity over several of the departments at the Youth Center, and can be credited with the drafting, or at least the compilation and organization of many of the policies and procedures, some of which continue to be used at the campus. (Testimony of Appellant; Testimony of Acciardo)

Evaluation of Reclassification

29. Tiffany Ampofo, the Staffing Analysis Manager at EOHHS Office of Children, Youth and Family Services, was delegated the authority to evaluate Appellant's initial request for reclassification. Ms. Ampofo reports directly to Ms. Bishop-Fallon. (Testimony of Ampofo)
30. In her assessment of his reclassification request, Ampofo reviewed Appellant's Employee Performance Review Forms for FY 2008 and 2009 (Exhibits 6 & 7), the

Massachusetts Department of Personnel Administration (“DPA”) Classification Specification (“Classification Specifications”) for the Program Coordinator Series (Exhibit 5), Appellant’s DPA Form 30 (“Form 30”), dated 6/26/2009 (Exhibit 4), and Appellant’s Interview Guide, dated 6/26/2009. (Exhibit 4)

31. Following a careful review, Ampofo concluded that the duties Appellant was performing at the Youth Center did not rise to the level of either the Program Coordinator II or Program Coordinator III position. (Testimony of Ampofo)
32. There are currently no other DYS employees in the Western Region who are classified as Program Coordinator. (Testimony of Washington)
33. Pursuant to the HRD’s Classification Specifications for the Program Coordinator Series, Program Coordinators of all levels are responsible for:
 1. Coordinating and monitoring assigned program activities to ensure effective operations and compliance with established standards.
 2. Reviewing and analyzing data concerning assigned agency programs to determine progress and effectiveness, to make recommendations for changes in procedures, guidelines, etc., and to devise methods of accomplishing program objectives.
 3. Providing technical assistance and advice to agency personnel and others concerning assigned programs to exchange information, resolve problems and to ensure compliance with established procedures and standards.
 4. Responding to inquiries from agency staff and others to provide information concerning assigned agency programs.
 5. Maintaining liaison with various private, local, state and federal agencies and others to exchange information and/or to resolve problems.
 6. Performing related duties such as attending meetings and conferences; maintaining records; and preparing reports.(Exhibit 5)
34. In addition to these general duties, the Classification Specifications set forth that a Program Coordinator *II* is also responsible for:
 1. Providing on-the-job training and orientation for employees.
 2. Developing and implementing procedures and guidelines to accomplish assigned agency program objectives and goals.
 3. Reviewing reports, memoranda, etc. for completeness, accuracy and content.

4. Conferring with management staff and other agency personnel in order to determine program requirements and availability of resources and to develop the criteria and standards for program evaluation.
5. Evaluating program activities in order to determine progress and effectiveness and to make recommendations concerning changes as needed.
(Exhibit 5)

35. The Specifications additionally set forth the responsibilities of Program Coordinator *III*, which include:

1. Developing and implementing standards to be used in program monitoring and/or evaluation.
2. Overseeing and monitoring activities of the assigned unit.
3. Conferring with management staff and others in order to provide information concerning program implementation, evaluation and monitoring and to define the purpose and scope of the proposed programs.
(Exhibit 5)

36. The majority of the functions that Appellant currently performs at the Youth Center, including those related to Fire Watch, the Greenhouse program, the Fleet, and overseeing vendors' compliance with security, safety and environmental regulations, can be properly classified under the general duties of the Program Coordinator Series: coordinating and monitoring assigned program activities, reviewing and analyzing data, providing technical assistance and advice to agency personnel, and responding to inquiries from agency staff.

37. Additionally, Appellant performs several job functions that fall under the Classification Specifications for the Program Coordinator II position. Although Appellant's testimony, and that of Mr. Acciardo, was remarkably vague on the subject, there was some credible evidence that Appellant has, and continues to draft certain policies and procedures that are followed at the Youth Center. (Exhibit 17A). Testimony was also proffered to the effect that Appellant met with management on a semi-regular basis to help in evaluating program requirements and resource

availability in terms of safety and security at the campus. Appellant has also conducted a minimal amount of on-the-job training for the Fire Watch and Greenhouse programs. However, these duties account for a minority of the Appellant's daily responsibilities at the facility. (Exhibit 17)

38. With regard to supervision, the Specifications state that a Program Coordinator I must “exercise direct supervision (i.e. not through an intermediate level supervisor) over, assign work to and review the performance of 1-5 professional, technical, administrative and/or other personnel; and *may* exercise functional supervision (i.e. over certain but not all work activities, or over some or all work activities on a temporary basis) over 1-5 professional, technical, administrative and/or other personnel.” (Exhibit 5) (emphasis added)
39. A Program Coordinator *II*, in contrast, must “exercise direct supervision (i.e. not through an intermediate level supervisor) over, assign work to and review the performance of 1-5 professional, technical, administrative and/or other personnel; *and* indirect supervision (i.e., through an intermediate level supervisor) over 1-5 professional, technical, administrative and/or other personnel.” (Exhibit 5) (emphasis added)
40. A Program Coordinator *III* must “exercise direct supervision (i.e. not through an intermediate level supervisor) over, assign work to and review the performance of 1-5 professional, technical, administrative and/or other personnel; *and* indirect supervision (i.e., through an intermediate level supervisor) over 6-15 professional, technical, administrative and/or other personnel.” (Exhibit 5) (emphasis added)

41. While Appellant exercised supervision over a large number of personnel when he supervised the kitchen and maintenance departments through June 2008, he presently exercises direct supervision over two employees, both of whom are in temporary positions. And despite his assertion to the contrary, Appellant has not exercised indirect supervision over any employees since he was reclassified as Program Coordinator I in June 2008.
42. In sum, while Mr. Lemoine does occasionally perform several of the functions listed under the Program Coordinator II duties and responsibilities, he does not perform these functions a majority the time. Moreover, Appellant exercises direct supervision over two employees, but failed to present any credible evidence establishing that he exercised indirect supervision over any other employees at the facility.

CONCLUSION

G.L.c.30, §49 provides:

Any manager or employee of the commonwealth objecting to any provision of the classification affecting his office or position may appeal in writing to the personnel administrator and shall be entitled to a hearing upon such appeal ... Any manager or 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.

Mr. Lemoine asserts several reasons why she should be properly classified as an Program Coordinator III: (a) he has been forced to perform the duties above his classification for nine years; (b) he has drafted nearly all of the procedures currently in place at the Youth Center; and (c) because of the expertise and knowledge he has acquired over his tenure at the facility, he oversees and supervises many with higher job classifications and pay grades. Appellant, however, has not satisfied the criteria for reclassification within the Program Coordinator series.

The primary issue is whether, in his *current* position, Mr. Lemoine performs the duties of a Program Coordinator III, or Program Coordinator II for that matter, as those positions are currently defined in the Program Coordinator Series Classification Specifications. A comparison with other employees within his work group or in other units who hold the title of Program Coordinator, although helpful in providing a practical understanding of what the level distinguishing duties of a position are, cannot, alone, establish the basis for reclassification if it is not otherwise warranted. Similarly, an increase in the complexity or volume of the work does not warrant reclassification to a higher title. HRD is “warranted” to reclassify a position only when the job an appellant currently performs matches the Classification Specification for such a higher title.

In this case, due to lack of supervisory duties and absence of sufficient evidence that Mr. Lemoine performed the level-distinguishing duties of a Program Coordinator II or III more than 50 percent of the time, and the evidence that his job remained closer to the duties of a Program Coordinator I for the period in question, he has not met his burden of showing that reclassification of his job is warranted. As noted earlier, several of the functions that Appellant performs on a daily basis can be properly categorized as duties of a Program Coordinator II, or possibly even Program Coordinator III. Notably, he has written a substantial number of the local procedures and guidelines that are used at the facility. However, a close examination of the record shows that Appellant devotes a clear majority of his time to technical issues related to the safety, security and maintenance of the physical plant and residential facilities. This is not to diminish the significance of Appellant’s work. From all accounts, he appears to be somewhat of a jack-of-all-trades at the Youth Center, and someone who is relied upon by many other higher-ranking

employees. But beyond his job duties, Appellant's reclassification request also falls short due to his failure to meet the supervisory requirements of the Program Coordinator II or III positions.

Appellant also argues that he is entitled to a higher rank based on the years that he performed the duties of a Program Coordinator II or III, but remained at the Program Coordinator I pay grade. Although the record from this period is far from complete, based on the testimony it appears that Appellant's responsibilities gradually and unceremoniously increased as he gained experience at the Youth Center. Except for a short period in 2008, he was never properly credited or rewarded for these responsibilities. Unfortunately, there is little the Commission can do to rectify this situation. Following a brief stint where he was awarded Program Coordinator II status in 2008, Appellant was reclassified as a Program Coordinator I, and his duties and responsibilities were modified accordingly on his EPRS form. It is from this point forward that the Commission must examine Appellant's job classification.

The Commission notes that, as often true in classification appeals, Mr. Lemoine is, by all accounts, an outstanding public servant who works hard and is highly respected by his peers and supervisors at DYS. Mr. Lemoine presented himself at the hearing as a skilled professional and person with much pride of service who is, more likely than not, quite capable of aspiring to a higher title. However, reclassification of a position requires proof that the specified duties of the higher title are, in fact, actually being performed as the greater part of the duties of his current position. That proof is lacking from the evidence.

The Appellant has failed to show by a preponderance of the evidence that he is

performing a majority of the duties of a Program Coordinator III more than fifty percent of the time.

Therefore, for the reasons stated herein, Mr. Lemoine's appeal is hereby *dismissed*.

Civil Service Commission

Paul M. Stein
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman ; Henderson, Marquis , McDowell [not participating], and Stein, Commissioners) on October 21, 2010.

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 to: Gary Lemoine
Rhett Cavicchi
John Marra, Esq. (HRD)