COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION

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

DEANNA SHINE,
Appellant

v.

DEPARTMENT OF CORRECTION,
Respondent

Case No.: C-14-267

DECISION

Pursuant to G.L. c. 31, § 2(b) and/or G.L. c. 7, § 4H, a Magistrate from the Division of Administrative Law Appeals (DALA), was assigned to conduct a full evidentiary hearing regarding this matter on behalf of the Civil Service Commission (Commission).

Pursuant to 801 CMR 1.01 (11) (c), the Magistrate issued the attached Tentative Decision to the Commission. The parties had thirty (30) days to provide written objections to the Commission. No objections were received.

After careful review and consideration, the Commission voted to affirm and adopt the Tentative Decision of the Magistrate in whole, thus making this the Final Decision of the Commission.

The decision of the Human Resources Division to deny Ms. Shine's request for reclassification is affirmed and Ms. Shine appeal under Docket No. C-14-267 is hereby ***denied***.

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell, Stein and Tivnan, Commissioners) on October 29, 2015.

Civil Service Commission

/s/ Christopher C. Bowman
Christopher C. Bowman
Chairman

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)(l), 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. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d).

Notice to:
Deanna Shine (Appellant)
Andrew McAleer, Esq. (for Respondent)
Joseph Santoro (for Respondent)
Edward B. McGrath, Esq. (Chief Administrative Magistrate, DALA)

COMMONWEALTH OF MASSACHUSETTS

Division of Administrative Law Appeals
1 Congress Street, 11th Floor
Boston, MA 02114
www.mass.gov/dala

Deanna Shine,
Appellant

v.

Docket No. C-14-267
DALA No. CS-15-33

Department of Correction,
Appointing Authority

Appearance for Deanna Shine:

Deanna Shine
Pro se

Appearance for Appointing Authority:

Joseph S. Santoro
Andrew S. McAleer, Esq.
Department of Correction
P.O. Box 946
Industries Drive
Norfolk, MA 02056

Administrative Magistrate:

Kenneth Bresler

SUMMARY OF RECOMMENDED DECISION

The Human Resources Division's decision not to reclassify the appellant as a Program Coordinator or Research Analyst is affirmed because she does not supervise employees or perform the duties of those positions more than 50% of the time.

RECOMMENDED DECISION

The petitioner, Deanna Shine, appeals the decision of the Human Resources Division to deny her request to reclassify her from Word Processing Operator I to a Program Coordinator or

Research Analyst.

I held a hearing on January 30 and June 1, 2015, which I recorded digitally. Ms. Shine represented herself, testified, and called two other witnesses: Norma Longe and Sergeant David Sullivan, both DOC employees. The DOC called James O'Gara, a Personnel Analyst with the DOC. I have accepted into evidence 31 exhibits.

At the conclusion of the hearing on January 30, 2015, I ordered the parties to submit briefs in a month and to submit documents about their discovery dispute. On February 3, 2015, I suspended the briefing schedule because the discovery dispute was pending; DOC might be ordered to provide more documents; and a second day of hearing may have been warranted based on those documents.

On March 17, 2015, I ordered the DOC to provide various information to Ms. Shine by April 17, 2015. A round of motions and orders concerning discovery and scheduling a second date then ensued.

On May 7, 2015, I ordered in part:

> 3. When it comes time to submit post-hearing briefs…I ask the parties to argue factually and legally whether DOC has improperly withheld or redacted documents; whether Ms. Shine had enough time to respond to withheld or redacted documents; and whether DOC should have argued to me its legal basis to withhold or redact documents, knowing that I had become involved in this discovery dispute, rather than withholding or redacting documents, waiting for Ms. Shine to object, and then responding to Ms. Shine's objection. *See Garlen Seong v. City of Malden*, DALA Docket No. CS-13-401, CSC Docket No. G1-13-101 (adverse inferences can be drawn against appointing authority for non-production of ordered documents).
>
> 4. I will generally not consider in my recommended decision any facts alleged by the parties in pleadings, such as affidavits. If the alleged facts are important to their cases, the parties should have introduced them on January 30, 2015. Post-hearing pleadings will not become a way to introduce more evidence, especially evidence that is not subject to cross-examination or my questions.

On May 19, 2015, I issued an order noting in part: "The number of pleadings, their

length, and their tone have become immoderate and are probably not commensurate with the magnitude of the issue in this appeal."

On June 1, I held the second day of hearing. Its purpose, as I explained in my May 7, 2015 order, was

> to focus on any documents that Ms. Shine requested for discovery. The second day of hearing will not be for any other purpose, such as to reopen, re-examine, or re-argue issues that were discussed or should have been discussed on the first day of hearing, January 30, 2015. It will not be for rebuttal, for parties to ask me to note their objections to each other's factual allegations, positions, and inferences, or any other purpose.

Both parties submitted post-hearing briefs. Based on the exhibits and testimony, I make the following findings of fact.

Findings of Fact

1. In April 2010, the DOC hired Ms. Shine as a word processing operator. (Shine testimony.)

2. On January 13, 2014, Ms. Shine filed her Classification Appeal, asking to be reclassified from Word Processing Operator I to Program Coordinator I, II, or III, or Research Analyst I, II, or III. (Exs. 8, 9.) (As explained below, the issue in this appeal is now whether Ms. Shine should be a Program Coordinator I or II or Research Analyst II.)

3. In her Classification Appeal form, when asked to "[b]riefly describe the overall basic purpose of your job," Ms. Shine began her answer with "Comprehensive computer skills…." (Ex. 8.)

4. In her Classification Appeal form, when asked, "What do you do? (List most important first – please put the percentage of time spent on each duty….)," Ms. Shine did not list percentages. In her first of three paragraphs (the last was the longest), Ms. Shine listed "assist[ing] with New Employee Orientation" and in-service training. In the second paragraph,

she listed helping DOC employees who had software questions; facilitating training as needed; tracking, reviewing, editing, and finalizing "presentations, proposals, reports, etc."; scheduling meetings; taking meeting minutes; and screening and directing telephone calls and correspondence as appropriate. (Ex. 8.)

5. In addition, Ms. Shine handles identification cards, conflict-of-interest forms, books, and certifications for new employees. (Shine testimony.)

6. Ms. Shine has helped with CPR training and created a document about it. (Ex. 25; Shine testimony.)

7. Ms. Shine created a PowerPoint presentation for DOC employees on how to change their passwords. (Ex. 26; Shine testimony.)

8. She works with various software programs, such as the Learning Management System (LMS) and databases, such as for firearms. When they have problems, she trouble shoots. (Shine testimony.)

9. Ms. Shine does not supervise employees. (Ex. 8; Shine testimony.)

10. On May 12, 2014, Mr. O'Gara completed his Appeal Audit Form. Among other things, he concluded that Ms. Shine is "clearly not providing any level of development and implementation of a program," had no supervisory duties, did not review and analyze data, and did not devise ways to accomplish program objectives. "The basic purpose of Ms. Shine's work is to provide administrative support to the Area Training Supervisor and the Division of Staff Development unit." (Ex. 10.)

11. Mr. O'Gara concluded that Ms. Shine should not be reclassified as a Program Coordinator II or Research Analyst II but as an Office Support Specialist I. (Ex. 10.)

12. On May 30, 2014, the DOC informed Ms. Shine of Mr. O'Gara's conclusion, which

was a "preliminary recommendation" to DOC. (Ex. 18.)

13. On June 30, 2014, DOC informed Ms. Shine that it had determined that she could not be reclassified as a Program Coordinator II or Research Analyst II and that her duties were consistent with those of an Office Support Specialist I. (Ex. 7.)

14. Ms. Shine appealed that adverse decision to the Human Resources Division (HRD). (Ex. 6.)

15. An Office Support Specialist I is someone who performs general office work. (O'Gara testimony.)

16. On November 7, 2014, the HRD denied Ms. Shine's appeal to be reclassified from Word Processing Operator I to Program Coordinator II or Research Analyst II, instead finding that Office Support Specialist I was the best job description of her duties. (Ex. 6.)

17. At some point, Ms. Shine became an Office Support Specialist I. (Ex. 5; Shine testimony.)

18. On November 13, 2014, Ms. Shine appealed the HRD's adverse decision to the CSC.

19. On December 9, 2014, the CSC conducted a prehearing conference. Ms. Shine clarified that she was appealing to be reclassified as a Program Coordinator II or Research Analyst II. The CSC, in transmitting the appeal to the Division of Administrative Law Appeals for a hearing and recommended decision, conveyed that it would be efficient to assess whether Ms. Shine could also be reclassified as a Program Coordinator I. (Ex. 4.)

20. Program Coordinators, among other things, coordinate and monitor programs; review and analyze data about them; provide technical assistance and advice to agency personnel; respond to inquiries; and act as liaison with other agencies. Program Coordinators I and II immediately supervise one to five staff members. (Ex. 3.)

21. Research Analysts, among other things, research subject areas; determine methods and procedures to use in collecting data; analyze information to make conclusions and recommendations; prepare reports; and collect and compares information from sources. (Ex. 2.)

22. Research Analysts I do not supervise, but Research Analysts II supervise one to five professional or technical personnel engaged in research. (Ex. 2.)

23. Although Ms. Shine conducts training, some of it is one-on-one (Shine testimony), training is not supervising.

24. Some DOC Program Coordinators do not supervise employees. (Exs. 28 and 29; Shine testimony.)

Discussion

I affirm the DOC's denial of Ms. Shine's request to reclassify her. Ms. Shine has not proved by a preponderance of the evidence that she is performing the duties of a Program Coordinator I or II or Research Analyst II more than 50% of the time.

While Program Coordinators, among other things, coordinate and monitor programs, review and analyze data about them, and act as liaison with other agencies (Ex. 3), Ms. Shine does not do so.

While Research Analysts, among other things, research subject areas; determine methods and procedures to use in collecting data; and analyze information to make conclusions and recommendations (Ex. 2), Ms. Shine does not do so.

Ms. Shine is not performing the duties of a Program Coordinator or Research Analyst and should not be reclassified as one. That much is clear and dispositive even before one examines the issue of her supervisory duties.

While Program Coordinators and Research Analysts II supervise one to five employees,

Ms. Shine does not supervise any. Ms. Shine's response is twofold: She *does* supervise employees. By training them one-on-one, she is supervising them. I reject that argument. Training is simply not the equivalent of supervising. She is not directing or even monitoring the substantive work of other employees. If she trained the commissioner of the Department of Correction how to use a database, even one-on-one, Ms. Shine would not be supervising the commissioner.

And, Ms. Shine responds, not all Program Coordinators supervise employees. Ms. Shine presented evidence that some Program Coordinators do not supervise employees and the DOC did not rebut it. (Exs. 28, 29; Shine testimony.) Ms. Shine has proved by a preponderance of the evidence that some DOC Program Coordinators do not supervise employees, but she still does not prevail for two reasons. That other DOC employees without supervisees are mistakenly classified as Program Coordinators does not entitle her to be similarly misclassified. *Harrison v. Human Resources Division*, 13 MCSR 118, 119 (2000)(reclassifying an appellant solely because other employees are misclassified "would only aggravate the problem"). And aside from the issue of supervising other employees, Ms. Shine is *not* performing the duties of a Program Coordinator or Research Analyst. She may argue that she does not need to be a supervisor to be a Program Coordinator or Research Analyst but she does need to perform the substantive non-supervisory duties of either of those positions to fill either of them.

As for discovery, DOC has not been forthcoming. DOC has not complied with the spirit of 801 CMR 1.01(8)(a): "The Parties are encouraged to engage in voluntary discovery…." In addition, the DOC's position has been that it should not have to respond to Ms. Shine's document requests from her DOC email account. After the DOC argued that Ms. Shine's discovery requests were burdensome and I ordered DOC to comply with them, DOC requested a

status conference so that it could reargue the issue. Rather than inform me that it would withhold or redact documents, it did so without informing me, waited for Ms. Shine to object, and then responded to Ms. Shine's objection. When DOC finally released documents to Ms. Shine, they were so heavily redacted that they were practically useless to her. (Shine testimony.) The DOC released 8,000 pages of documents with no organization discernible to Ms. Shine. (Shine testimony.)

Furthermore, the DOC has treated Ms. Shine's discovery request as a public records request under G.L. c. 66, § 10. It has informed her that it may attempt to collect thousands of dollars from her in fees under the statute. On June 1, 2015, the DOC, in response to my question, stated that it has not yet attempted to collect such fees from Ms. Shine but could do so in the future. Toward the end of the hearing, the DOC amended its position to add that it may also try to collect fees under 801 CMR 1.01(8)(b). That provision states:

> The Presiding Officer may require a Party requesting documents to pay the Party or Agency responding to a document request the fee per page determined by the Executive Office for Administration and Finance.

The DOC has not requested that I order Ms. Shine to pay for discovery. If it so moved, I would deny it for two reasons. Such a request would be untimely; the DOC was supposed to provide Ms. Shine with discovery by April 17, 2015. And, as I have stated, the DOC has not been forthcoming on discovery. I see no reason to reward it with fees.

Nonetheless, the DOC's acts, omissions, and positions on discovery do not affect Ms. Shine's appeal substantively. She was trying to use discovery to prove that some DOC Program Coordinators are not supervising other employees. As discussed above, that issue misses the mark. Even if Ms. Shine had been able to prove what she wanted with discovery, or if a negative inference could be drawn against DOC for its acts, omissions, and positions on discovery, Ms.

Shine would still not prevail in this appeal. Furthermore, if Ms. Shine had received discovery and it had proved what she hoped it would prove, it would have emphasized what Ms. Shine already proved with her testimony: some DOC Program Coordinators are not supervising other employees.

Conclusion and Order

Ms. Shine has not proved by a preponderance of the evidence that she is performing the duties of a Program Coordinator I or II or Research Analyst II more than 50% of the time. Accordingly, I recommend that the Civil Service Commission affirm the Human Resources Division's

DIVISION OF ADMINISTRATIVE LAW APPEALS

_____
Kenneth Bresler
Administrative Magistrate

Dated: