

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

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

SHARON DEMPSTER,
Appellant

v.

C-09-228

DEPARTMENT OF CHILDREN,
YOUTH AND FAMILIES,
Respondent

Appellant's Attorney:

Joseph Donnellan
Rogal and Donnellan, P.C.
43 Charles Street
Needham, MA 02434

Respondent's Representative:

Jonathan Platt
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Boston, MA 02111

Commissioner:

Christopher C. Bowman¹

DECISION

Pursuant to the provisions of G.L. c. 30, § 49, the Appellant, Sharon Dempster (hereinafter "Appellant" or "Ms. Dempster"), is appealing the April 9, 2009 decision of the state's Human Resources Division (hereinafter "HRD") denying her request for reclassification from the position of Personnel Officer I (Grade 11) to the position of Program Coordinator III (Grade 14). The appeal was timely filed and a hearing was held

¹ The Commission acknowledges the assistance of Legal Intern Heather Coons in the preparation of this decision.

on June 2, 2009 at the offices of the Civil Service Commission (hereinafter “Commission”). The hearing was digitally recorded. Both parties submitted post-hearing briefs in the form of proposed decisions.

FINDINGS OF FACT:

Twenty (20) exhibits were entered into evidence at the hearing. Based on the documents submitted into evidence and the testimony of:

For the Appointing Authority:

- Tiffany Ampofo, Staffing Analysis Manager, Executive Office of Health and Human Services;
- Douglas Shatkin, Direction of Human Resources, Children, Youth and Families Cluster;
- Joan Bishop – Fallon, Employment and Staffing Manager, Executive Office of Health and Human Services;

For the Appellant:

- Sharon Dempster, Appellant;

I make the following findings of fact:

1. The Appellant is currently employed as a Personnel Officer I in the Children, Youth and Families (hereinafter “CYF”) division of the Executive Office of Health and Human Services (hereinafter “EOHHS”). (Appellant’s testimony)
2. Ms. Dempster began working for the Department of Medical Assistance in November 2000 as a Personnel Officer I. (Appellant’s testimony)
3. Doug Shatkin (“Mr. Shatkin”) is the current Director of Human Resources for the Children, Youth and Families division of EOHHS. Mr. Shatkin has been employed in a human resources function for more than thirty (30) years. He

4. During this consolidation, an employee reorganization took place as well. Mr. Shatkin and the others responsible for this reorganization ensured that no employee's job title (and thus his/her pay grade) would be harmed by the consolidation. (Shatkin's testimony)
5. As per the National Association of Government Employees bargaining agreement with the Commonwealth of Massachusetts, the state reviewed each position. If the person filling the position had a higher pay grade than the position demanded, the employee was "grandfathered at their existing level." This was done so as not to cause harm to any employee's pay grade. (Exhibit 18)
6. Lateral moves were also acceptable, where an employee would keep the same pay grade as they had before. (Shatkin's testimony)
7. Ms. Dempster laterally moved from her position as a Personnel Officer I at DMA to a Personnel Officer I position in the CYF division. (Appellant's testimony)
8. The Appellant shares many of her duties with Wendy Nelson (hereinafter, "Ms. Nelson"), a Workers Compensation Analyst and a Program Coordinator II. (Appellant's testimony)
9. In October 2003, Ms. Nelson transferred from a Program Coordinator II position at DMA to her current position in CYF. (Shatkin's testimony)
10. As a condition of the NAGE agreement, Ms. Nelson was kept at her same classification even though she accepted a position that was classified as a Personnel Officer I. (Shatkin's testimony)

11. According to the Classification Specification, a Personnel Officer I's duties

include, among other things:

"Processes requests for...leaves of absence; compiles and reviews forms and substantiating documents, statistics and spending plans in order to ensure compliance with rules, regulations and contract agreements and to expedite flow of work between agencies or units; performs related duties such as reviewing, updating, maintaining and inspecting printouts, records, files, (including attendance records, leave records...); gathering records, documents and other relevant information for use in court cases and hearings..."
(Exhibit 12)

12. The duties of a Program Coordinator III are to:

"Develop and implement standards to be used in program monitoring and/or evaluation, oversee and monitor activities of the assigned unit, and confer with management staff and other in order to provide information concerning program implementation, evaluation and monitoring and to define the purpose and scope of the proposed programs." (Exhibit 13)

13. The Classification Specification states that a PC III is the "third-level supervisory

job in this series." A PC III is expected to, among other duties "exercise direct supervision...over, assign work to, and review the performance of 1-5 professional personnel; and indirect supervision...over 6-15 professional, administrative, technical, and/or other personnel." (Exhibit 13)

14. The Appellant does not supervise anyone nor does she complete anyone's

performance evaluation. (Shatkin's Testimony)

15. Sixty-five percent (65%) of Ms. Dempster's duties are devoted to the area of

Workers' Compensation (WC). (Appellant's Testimony; Interview Guide)

16. Ms. Dempster's Workers' Compensation duties consist of: acting as

liaison/relaying information within the WC Unit; maintaining and providing information to the WC Managers and attorneys such as reporting the status of

17. Ms. Dempster also performs duties related to the processing of leaves under the Federal Family Medical Leave Act (FMLA) as well as acting as a Group Insurance Commission (GIC) Coordinator. These duties comprise less than thirty-five percent (35%) of her work time. (Appellant and Ampofo's Testimony, Interview Guide, Exhibit 4)
18. Ms. Dempster's FMLA and GIC duties consist of: Explaining benefit information to employees; reviewing forms for accuracy; processing reports; notifying employees of open enrollment and benefit changes; submitting documentation to GIC; entering GIC information into the payroll system; receiving FMLA medical documentation; informing employees of the approval/denial of their FMLA requests; ensuring employees know their rights and responsibilities under the FMLA and responding to employee inquiries. (Appellant and Ampofo's Testimony, Interview Guide, Exhibits 4, 15 and 20)

19. On or about September 12, 2008, Ms. Dempster filed a written request to be reclassified as a Program Coordinator III. (Stipulated Fact)
20. On or about March 6, 2009, CYF denied Ms. Dempster's reclassification request. (Stipulated Fact)
21. On or about March 9, 2009, Ms. Dempster appealed CYF's denial to HRD. (Stipulated Fact)
22. On or about April 9, 2009, HRD denied Ms. Dempster's appeal. (Stipulated Fact)
23. On or about April 23, 2009, Ms. Dempster filed an appeal of HRD's decision with the Civil Service Commission. (Stipulated Fact)

CONCLUSION

After careful review of the testimony and evidence presented in this appeal, the Commission concludes that the decision of HRD to deny the Appellant's request for reclassification should be affirmed.

The Appellant has not met her burden of proof to demonstrate that she is improperly classified as a Personnel Officer I in that she has not shown that she performs the duties of a Program Coordinator III more than 50% of the time.

I base my conclusion on the documentary evidence and the credible testimony of the Appellant and all of the Appointing Authority witnesses. Although Ms. Dempster is a valuable employee, her own testimony shows that her job duties are most consistent with those contained in the Personnel Officer I job specification. Virtually all of the Appellant's duties involve the communicating, recording, processing and tracking of personnel/HR related information which is the very essence of the Personnel Officer I job specification.

Further, the Program Coordinator III position contemplates a significant level of supervisory authority over the work of other employees. The Appellant exercises no supervision, direct or indirect, over other employees.

The Appellant raised concerns regarding a co-worker who is being paid at a level higher than her. The EOHHS representatives provided ample evidence and testimony as to how and why this came to be. The job titles which employees filled in the reorganized HR Unit were defined by an agreement between the Commonwealth and the employee's exclusive collective bargaining representatives. Accordingly, a small fraction of the affected employees were allowed to continue at their higher ("grandfathered") salary grade until they vacate the position while the remainder of the employees were appropriately classified in the Personnel Officer I title.

For these reasons, the Appellant's Appeal under Docket No. C-09-228, in which she seeks to be reclassified as Program Coordinator III , is hereby *dismissed*.

Christopher C. Bowman, Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis and Stein, Commissioners [Taylor Absent]) on August 13, 2009.

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:

Joseph Donnellan, Esq. (for Appellant)

Jonathan Platt (for Appointing Authority)

John Marra, Esq. (HRD)