

**COMMONWEALTH OF MASSACHUSETTS  
CIVIL SERVICE COMMISSION**

Suffolk, ss.

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

<p><b>MICHAEL SHADD,</b> <i>Appellant</i> v. <b>DEPARTMENT OF CORRECTION,</b></p>
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**Case No. E-17-157**

**DECISION ON JOINT MOTION FOR RELIEF UNDER  
CHAPTER 310 OF THE ACTS OF 1993**

The Appellant, Michael Shadd, appealed to the Civil Service Commission (Commission) seeking to have his position as Correction Officer I/Head Cook with the Respondent, Massachusetts Department of Correction (DOC), be "reclassified" under G.L.c.30, §49 from a "provisional" status to "permanent" civil service status. After hearing, the parties agreed that the matter was not properly before the Commission as a c.30, §49 appeal, and the appeal was converted to an "equity" appeal for relief under C.310 of the Acts of 1993.

The undisputed facts include the following:

1. The Appellant, Michael Shadd, took and passed the 2006 civil service examination for Correction Officer I (CO-I) administered by the Massachusetts Human Resources Division (HRD) and his name was placed on the 2006 eligible list.
2. On or about January 29, 2006, Mr. Shadd was appointed by DOC to the position of a permanent full-time CO-I.
3. About a year after his original appointment, Mr. Shadd began working as in the position of a Head Cook, with the functional title of CO-I/Head Cook. On April 8, 2008, he moved laterally to a position of a CO-I/Head Cook at MCI-Concord, which is the current position he now holds.
4. For some time prior to 1998, a separate examination was given for the position of CO-I/Head Cook and the civil service classification specifications included separate job codes for a CO-I and CO-I/Head Cook.
5. At the time Mr. Shadd took the civil service examination for CO-I in 2006 and later began working in the kitchen, however, there was then no separate civil service job classification for CO-I/Head Cook or a separate civil service examination for that job. Both positions were classified as job code E18165 and commanded the same pay grade.
6. HRD did not resume offering a separate civil service examination for CO/Head Cook until 2007.
7. HRD did not adopt separate job codes for CO-I and CO/Head Cook until 2012, at which time the CO/Head Cook position was assigned a separate job code of E1816C.
8. When CO/Head Cook examinations were offered in 2007 and 2009, or thereafter, Mr. Shadd did not take those examinations because he was advised, both verbally and in writing that it was not necessary for him to do so as he was working in the position of CO/Head Cook and already had permanency in the position of CO-I.

9. In particular, in February 2009, DOC's Human Resources Division issued the following "Important info regarding upcoming CO/Head Cook Exam":
  - "If you are currently a permanent Correction Officer I, working in the kitchen as a CO/Head Cook, you DO NOT need to register or take the upcoming CO/Head Cook exam."
  - "Only provisional (no civil service status) employees need to take the exam."
10. Mr. Shadd was told he was eligible for and he did take (and pass) the Correction Officer/Chef Exam, which is a higher title, equivalent to CO-III (DOC Lieutenant).
11. Following the establishment of eligible lists for CO-I/Head Cook, DOC hired new Head Cooks from the list, who were carried as permanent civil service employees in the title of CO-I/ Head Cook.
12. Mr. Shadd, who had not taken the Head Cook exam, continued to be carried as a permanent CO-I, in the "functional" title of a PROVISIONAL CO/Head Cook.
13. The next CO-I/Head Cook Exam is scheduled for the fall of 2018.
14. According to DOC, there are now 14 permanent Head Cooks and 36 provisional Head Cooks, including Mr. Shadd.

On July 1, 2017, the Commission received a Joint Petition for 310 Relief from the parties. Upon review of the Joint Petition and taking administrative notice of the undisputed facts in the record provided by the parties and HRD, and the applicable civil service laws and rules, the Commission finds that the civil service rights of the Appellant have been prejudiced through no fault of his own. Accordingly, pursuant to the powers of relief inherent in Chapter 534 of the Acts of 1976 as amended by Chapter 310 of the Acts of 1993, the Commission hereby ORDERS:

- A. Sixty days from the date of this Decision, the DOC and HRD shall take such action as necessary and appropriate to effectuate and adjust Mr. Shadd's civil service record so that he shall be deemed a permanent civil service employee in the title of CO-I/Head Cook, effective as of April 6, 2008.
- B. Nothing in this order shall affect Mr. Shadd's civil service seniority date for purposes of G.L.c.31, which shall remain his date of hire,
- C. DOC shall, within 60 days, provide a list of other employees currently carried as a provisional CO-I/Head Cook similarly situated to Mr. Shadd and who seek permanency in that position i.e., who hold permanency in the title of CO-I, who have been treated as a "provisional" CO-I/Head Cook because they were not appointed from an eligible list for CO-I/Head Cook, and who did not take a CO-I/Head Cook exam prior to 2018 because they relied on representations from DOC or HRD that it was not necessary to take such an examination so long as they already held permanency as a CO-I ).
- D. Upon receipt of names, if any, of such "provisional" CO-I/Head Cooks, along with information verifying the facts described in Paragraph C. above, the Commission shall take such further action and enter such further orders as appropriate.

Civil Service Commission

/s/ Paul M. Stein

Paul M. Stein

Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein & Tivnan, Commissioners on March 29, 2018.

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)(1), 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 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. 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:

Michael Shadd. (Appellant)  
Joseph S. Santoro. (for Respondent)  
John Marra, Esq. (HRD)

Courtesy Copy:

Jon Mograss, MCOFU