

**COMMONWEALTH OF MASSACHUSETTS  
CIVIL SERVICE COMMISSION**

**SUFFOLK, ss.**

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

**DAWNMARIE ZELLER,**  
*Appellant*

**CASE NO: C-17-063**

v.

**DEPARTMENT OF PUBLIC HEALTH,**  
*Respondent*

Appearance for Appellant:

Pro Se

Appearance for DPH

David Markowitz, Esq.  
Department of Public Health  
250 Washington Street- 2<sup>nd</sup> Floor  
Boston MA 02198

Commissioner:

Paul M. Stein

**DECISION**

The Appellant, Dawnmarie Zeller, appealed to the Civil Service Commission (Commission) pursuant to G.L.c.30,§49, from the denial of the Massachusetts Human Resources Division (HRD) of her request for reclassification from Registered Nurse II (RN-II) to Registered Nurse III (RN-III) at Tewksbury State Hospital of the Department of Public Health (DPH) within the Executive Office of Human Services (EOHHS). The Commission held a pre-hearing conference on April 18, 2017 and held a full hearing on June 6, 2017 and June 29, 2017, all at the Commission's offices in Boston.<sup>1</sup> The full hearing was digitally recorded and the parties received a copy of the CDs.<sup>2</sup> Twenty exhibits (R1 through R14, 15A-15C, 16, 18, 20 through 22 & 24A-24C) were introduced into evidence. Two exhibits (19 & 23) were marked for identification. Neither party elected to submit a Proposed Decision.

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<sup>1</sup> The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§ 1.00, *et seq.*, apply to adjudications before the Commission with and conflicting provisions of G.L. c.30,§49, or Commission rules, taking precedence.

<sup>2</sup> If there is a judicial appeal of this decision, the plaintiff in the judicial appeal becomes obligated to use the CDs to supply the court with the written transcript of the hearing to the extent that he/she wishes to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion.

## **FINDINGS OF FACT**

Based on the Exhibits entered into evidence and the testimony of the following witnesses:

*Called by EOHHS:*

- Margaret Sydlowski, DPH Employment Staffing Coordinator, Tewksbury State Hospital
- Veronica Gjino, EOHHS, Human Resources Classification Coordinator
- Janice Bishop, Chief Nursing Officer, Tewksbury State Hospital

*Called by the Appellant:*

- Dawnmarie Zeller, Appellant

and taking administrative notice of all matters filed in the case, pertinent law and reasonable inferences from the credible evidence, a preponderance of evidence establishes these facts:

1. The Appellant, Dawnmarie Zeller, has been employed since 2003 as an RN-II at Tewksbury Hospital, one of four state-operated facilities in the Bureau of Hospitals of the Department of Public Health (DPH) within the Executive Office of Health and Human Services (EOHSS). (*R1 through R3; Testimony of Appellant; <https://www.mass.gov/orgs/bureau-of-hospitals>*)

2. Tewksbury Hospital is an acute and chronic multi-specialty hospital that provides comprehensive treatment, care, and comfort to adults with medical and/or mental illnesses. Tewksbury Hospital is one of four such state-operated hospitals which provide medical care to individuals for whom community facilities are not available or access to health care is restricted. (*15A; <https://www.mass.gov/orgs/bureau-of-hospitals>; <https://www.mass.gov/locations/tewksbury-hospital>*)

3. From her initial hire until 2012, Ms. Zeller served as a direct patient care nurse assigned to the hospital's Neurologic Rehabilitation Unit. She holds a certification as a Certified Rehabilitation Registered Nurse (CRRN) as well as a Certified Case Manager (CCM). (*R3, R5, R12 & 24A-B; Testimony of Sydlowski & Appellant*)

4. In 2012, Ms. Zeller transferred laterally (maintaining her RN-II job title) to accept her current functional position as an Admissions Screening Nurse in the hospital's Admissions Office. *(R2 through R3, R12 & 22; Testimony of Sydlowski & Appellant)*

5. The hospital's Admissions Office is managed by the Admissions Coordinator (RN-IV), currently Susan Doherty, who is Ms. Zeller's direct supervisor. The office also employs an Admissions Office Clerk (Clerk III), who also reports to the Admissions Coordinator. There currently exists one vacancy for another RNII. In Ms. Zeller's current position, she has no direct reports and does not supervise other employees, save for functional direction of the work of the Admissions Office Clerk in the absence of the Admissions Coordinator. *(R2 R3, R8, R9, R12 & 22; Testimony of Sydlowski, Bishop & Appellant)*

6. In her position as Admissions Screening Nurse, Ms. Zeller pre-screens patient referrals and coordinates the admissions and discharge process, collects clinical and insurance information on prospective patients (which occasionally includes visiting the patient at the referring facility), presents the patient information to the hospital's "Admissions TEAM" (a committee of comprised of senior clinical and administrative staff who make the decision whether or not to approve the admission), coordinates the requirements to facilitate the third-party reimbursement/managed care process (including pre-admission authorization and length of stay requirements), maintains the patient census, prepares and disseminates reports and other admission information to all appropriate departments, and "markets Tewksbury Hospital in a positive quality oriented manner" to patient families, outside agencies and the general public. *(R2, R3, R9, R9, R12, 16 & 22; Testimony of Sydlowski, Gjino, Bishop & Appellant)*

7. Ms. Zeller no longer provides direct “patient care” and does not have substantial and regularly assigned responsibility for a patient’s treatment during the patient’s stay at the hospital following admission. (*R2 through R5,R12; Testimony of Sydlowski, Gjino & Bishop*)

8. In June 2016, Ms. Zeller submitted a “Position Classification Appeal Form” to the DPH Employment & Staffing Coordinator (Margaret Sydlowski), seeking reclassification of her position from an RN-II to an RN-III, based on her duties which she described as “a clinical liaison/screener” and “clinical case manager . . . in the admissions office as well as out in the community representing Tewksbury Hospital.” (*R1*)

9. As part of the reclassification request, Ms. Zeller completed the required “Interview Guide”, which provided a written explanation for the basis of her request, along with various supporting documents, including her resume, information about an RN-IV position of “Clinical Liaison/Screening Nurse posted at Shattuck Hospital (another DPH facility),<sup>3</sup> EPRS forms from 2012 through 2016, her RN-II position Form 30 prepared in 2005, and a June 2015 organizational chart of the hospital’s Department of Nursing. (*R2*)

10. According to the “Interview Guide” submitted by Ms. Zeller, she broke down her duties as follows:

- 37.5% - Review unsolicited referrals and prepare for submission
- 6.25% – Collaborate with outside agencies to communicate admitting policies and patient status
- 6.25% - Interview prospective patient/legal representative and obtain signed consent forms
- 8.0% - Evaluate reimbursement criteria and initiate third-party pre-authorization as needed
- 12.5% - Present clinical data to Admissions TEAM.
- 3.125% - Arrange for reception of new patient onto unit and input patient into data base
- 0.5% - Obtain interpreter services for non-English speaking patients

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<sup>3</sup> Jan Bishop, the current Chief Nursing Officer at Tewksbury Hospital, who also is knowledgeable about the operation of the Shattuck Hospital from prior experience there, explained that the two institutions have “totally different” operating models; unlike Tewksbury Hospital, the Shattuck utilizes a “case manager” model in which the admissions staff, in addition to screening admissions, also perform direct patient care duties, in particular, serving as clinical case-managers throughout a patient’s stay. This distinction explains why the members of the admissions staff at Shattuck have the functional title of “Clinical Liaison, RN Screener” and are more highly rated as RN-IVs. (*R3, R10 & 15C; Testimony of Bishop*)

- 8.125% - Communicate prospective patient's needs, arrival time and medical issues with unit nurse managers/charge nurses/rehab team members
- 2.75% - Respond to outside requests for information regarding admissions or services from prospective or current patients and family members
- 1.125% - Maintain daily census
- 2.125% - Provide for hospital tours
- 3.765 - Represent Tewksbury Hospital at information fairs, attending conferences and community networking and other public relations and marketing activities
- 4.25% - Act as Case Management Nurse as necessary

(R2)

11. The Classification Specifications for the Registered Nurse Series promulgated by HRD include six levels. There are two "professional" levels – RN-I (entry level professional) and RN-II (second-level professional); and four supervisory levels – RN-III (first-level supervisor); RN-IV (second-level supervisor); RN-V (third-level supervisor); and RN-VI (fourth-level supervisor). (R11)

12. Examples of duties common to all levels of Registered Nurse titles:

- "Provides primary nursing care to patients . . . recording related health data . . . evaluating patient conditions and adjusting care in conjunction with other providers"
- "Provides psychosocial support to patients"
- "Establishes a plan of patient care . . . through consultation with other staff and superiors and through an analysis of data and symptoms"
- "Investigates complaints by patients and others . . . and attempts to resolve complaints"
- "Admits and discharges patients . . ."
- "Identifies, evaluates and responds to changes in patients' conditions and reports findings to appropriate health care personnel"
- "Performs related duties such as . . . preparing and maintaining pertinent documentation . . ."
- "Attends seminars, workshops, conferences and staff meetings to maintain professional proficiencies and or licensure"

Additional duties performed at the RN-II level include:

- "Performs duties of charge nurse on a ward or unit for a single shift on a regular basis"
- "May instruct ward or unit personnel in nursing techniques, procedures, and equipment"

Additional duties performed at the RN-III level include:

- “Oversee the nursing care of patients on assigned ward or unit for all shifts by developing an individual care plan for each patient, by marking [sic] nursing assignments, and by providing staff instruction and educational conferences . . .”
- “Evaluating nursing activities on all shifts by reviewing patient charts, observing nursing care, and visiting patients to ensure . . . treatment is administered in accordance with physicians instructions”
- “Coordinate the implementation of clients’ individual treatment service plans, as determined by an interdisciplinary team, by conferring with appropriate health care professionals . . . may serve as an interdisciplinary team leader.”
- “Coordinate the clinical and administrative activities of clinics . . .”
- “Provide nursing services, such as infection control and employee health on an institutional-wide basis”
- “Coordinate the clinical and administrative activities of community-based facilities, such as halfway house, community residences and intermediate care facilities”

(R11)

13. By letter dated December 21, 2016, EOHHS Classification Coordinator Veronica Gjino informed Ms. Zeller that she was properly classified as an RN-II. Ms. Zeller was offered the opportunity to submit further documentation by way of rebuttal to this preliminary decision, which she did. (R3 through R5; Testimony of Gjino)

14. After further review by Ms. Gjino and Ms. Sydlowski, by letter dated February 13, 2017, Ms. Gjino informed Ms. Zeller that the agency had made a final decision that she was properly classified as an RN-II. (R6 & R14; Testimony of Sydlowski & Gjino)

15. Ms. Zeller duly appealed to HRD which, by letter dated March 24, 2017, informed Ms. Zeller that HRD concurred with the determination by EOHHS that she was properly classified and denied her appeal. (R7)

16. This appeal to the Commission duly ensued. (Claim of Appeal)

### **APPLICABLE CIVIL SERVICE LAW**

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. . . 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. If said commission finds that the office or position of the person appealing warrants a different position reallocation . . . it shall be effective as of the date of appeal . . .

“The determining factor of a reclassification is the distribution of time that an individual spends performing the function of a job classification.” Roscoe v. Department of Environmental Protection, 15 MCSR 47 (2002). In order to justify a reclassification, an employee must establish that she is performing distinguishing duties encompassed within the higher level position the majority (i.e., at least 50% or more) of the time. See, e.g., Pellegrino v. Department of State Police, 18 MCSR 261 (2005) (at least 51%); Morawski v. Department of Revenue, 14 MCSR 188 (2001) (more than 50%); Madison v. Department of Public Health, 12 MCSR 49 (1999) (at least 50%); Kennedy v. Holyoke Community College, 11 MCSR 302 (1998) (at least 50%). What must be shown is that Ms. Zeller performs the “distinguishing duties” of the RN-III position at least 50% of the time and, in making this calculation, duties which fall within both the higher and lower title do not count as “distinguishing duties.” See Lannigan v Department of Developmental Services, 30 MCSR 494 (2017)

### **ANALYSIS**

Ms. Zeller is uniformly regarded by her colleagues as a dedicated public servant who works hard at her job and has willingly taken up the slack from contraction of the Tewksbury Hospital workforce. However, reclassification of a position by the Commission requires proof that specified distinguishing duties at a higher title are, in fact, actually being performed as the major part of her current work. Accordingly, the issue before the Commission is limited to that narrow question.

The evidence establishes that substantially all of Ms. Zeller’s job duties fit squarely within her current level of an RN-II. While the quantity of her work has expanded over time and she

does occasionally perform at a higher level, the preponderance of the evidence established that she does not perform above the RN-II level more than 50% of the time, which is the Commission's core requirement to allow a reclassification.

First, substantially all of the duties regularly performed by Ms. Zeller as an Admissions Screening Nurse fit well within the duties common to ALL levels of Registered Nurses in the series: e.g., "assessing health status of patients", "recording related health data", "evaluating patient's conditions", "adjusting care in conjunction with other providers", "establishing a plan of patient care", "admits and discharges patients" and "attends seminars, workshops, conferences and staff meetings". On the other hand, Ms. Zeller does not perform most of the duties of the RN-III level: i.e., she does not "oversee the nursing care of patients", "evaluate nursing activities on all shifts", "coordinate the clinical and administrative activities of clinics", "provide nursing services . . . on an institution-wide basis" or "coordinate the clinical and administrative activities of community-based facilities". While some of the duties Ms. Zeller performs as part of the admissions process could fairly be construed as those which "coordinate the implementation of clients' individual treatment service plans" (RN-III distinguishing duty No. 3), even Ms. Zeller's self-assessment of the work that might fit this distinguishing duty does not come close to being more than 50% of her overall work. Thus:

- 6.25% - Interview prospective patient/legal representative and obtain signed consent forms
- 12.5% - Present clinical data to Admissions TEAM.
- 3.125% - Arrange for reception of new patient onto unit and input patient into data base
- 8.125% - Communicate prospective patient's needs, arrival time and medical issues with unit nurse managers/charge nurses/rehab team members
- 2.75% - Respond to outside requests for information regarding admissions or services from
- 4.25% - Act as Case Management Nurse as necessary
- 37.00% - SUBTOTAL**

Second, the changes in the nature of the patient population and reimbursement process to which Ms. Zeller points certainly have added additional responsibilities to her work in

processing admissions. These changes, however, are substantially consistent as logical extensions of the existing duties that Ms. Zeller has performed in her position of Admissions Screening Nurse. They do not change the character of the job, which remains focused on facilitating the admission of patients to the hospital and does not alter the fact that Ms. Zeller does not perform above an RN-II level a majority of her time.

Third, Ms. Zeller points to other DPH personnel employed at the Shattuck Hospital with the title of an RN-IV whom she claims perform the same job as an admissions nurse as she does at the Tewksbury Hospital. In fact, the two jobs are not the same. The Shattuck Hospital “Clinical Liaison/RN Screener” works under a “Case Manger” model and has substantial, regular duties related to the care of patients after admission. Moreover, misclassification of other employees is not dispositive of the question before the Commission here, and it does not justify the Commission allowing a reclassification appeal of any employee that has not proved entitlement to such reclassification of her position based on the duties she performs.. See, e.g., McKinnon v. EOHHS, 30 MCSR 272 (2017); Pizzi v. Department of Public Health, 29 MCSR 233 (2016); Palmieri v. Department of Revenue, 26 MCSR 180 (2013) While there may be good reason to contest the logic and equity of various job titles and pay grades vis-à-vis each other within an agency, the proper forum, if any, in which to raise those concerns, lies elsewhere than with this Commission.

Fourth, I note that, as defined in the Classification Specification, an RN-III is the first-level supervisor in the nursing series, i.e., the job involves direct supervision and performance evaluation of subordinates who report to her. Ms. Zeller has no such responsibility, save for some functional oversight of the admissions clerk and filling in when her own supervisor is absent. DPH does not press this issue and, as the appeal can be decided on other grounds, the

Commission need not address whether the level of supervision is sufficient to meet the required standard in this particular situation.

In sum, EOHHS and HRD correctly determined that Ms. Zeller performs the duties of her current title of RN-II more than half of her time. Ms. Zeller did not meet her burden to establish otherwise. Therefore, the Commission is not authorized to order that her position be reclassified to an RN-III.

Accordingly, for the reasons stated above, the appeal of the Appellant, Dawnmarie Zeller, under Docket No. C-17-065, is *dismissed*.

Civil Service Commission

/s/ Paul M. Stein

Paul M. Stein  
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Tivnan & Stein, Commissioners) on April 12, 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)(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 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:

Dawnmarie Zeller (Appellant)  
David Markowitz, Esq. (for Respondent)  
John Marra, Esq. (HRD)