

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

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

DARLING CARTER,
Appellant

CASE NO: C-18-193

v.

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

Appearance for Appellant:

Darling Carter, Pro Se

Appearance for EOHHS:

Ricardo Couto, Labor Relations Specialist
EOHHS – 7th Floor
600 Washington Street
Boston, MA 02111

Commissioner:

Paul M. Stein

DECISION

The Appellant, Darling Carter, appealed to the Civil Service Commission (Commission) pursuant to G.L.c.30,§49,¹ from the denial of the Massachusetts Human Resources Division (HRD) of a request to reclassify her position at the Children, Youth & Families (CYF) Office of Human Resources (CYF-HR) within the Executive Office of Health and Human Services (EOHHS) from her current title of Personnel Officer II (PO-II) to Personnel Analyst III (PA-III). The Commission held a pre-hearing conference at the Commission's Boston office on October 30, 2018 and a full hearing at that location on January 10, 2019, which was digitally recorded.² . Twenty (20) exhibits (*Exhs. 1 through 14, 15A & 15B, 16A & 16B, 17 through 20*) Neither party chose to submit a Proposed Decision. For the reasons stated, the appeal is denied.

¹ 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.

² Copies of a CD of the full hearing were provided to the parties. 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:

- Amy Lynch, EOHHS Director of Recruitment, Staffing & Policy
- Cindy Smey, CYF-HR, Planning & Staffing Analysis Unit

Called by the Appellant:

- Darling Carter, CYF-HR, 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, Darling Carter, holds the position of Payroll Assistant Supervisor in the CTF-HR's Personnel/Payroll Unit, with a civil service title of PO-II, a position that she has held since her promotion from PO-I in October 2012. (*Exhs. 5, ,. 12 through 14, 17, 18 & 20: Testimony of Appellant*)

2. The Personnel/Payroll Unit handles payroll processing needs for CYF employees, including such activities as processing new hires, promotions, demotions, reclassifications, retroactive pay adjustments, changes in hours and alternative work schedules, employee tax forms, time and attendance records, payroll deductions and audit of employee bi-weekly payroll (pay advice). (*Exhs. 5,7. 12 through 14, 15A, 17, 18 & 20: Testimony of Appellant & Lynch*)

3. The Personnel/Payroll Unit is managed by a Payroll Unit Manager (Administrator VI), who reports to an Employment Services Director aka Payroll Director (Administrator VII)³. The Payroll Unit Manager directly supervises two Payroll Supervisors (PA-IIIs), three Payroll Assistant Supervisors (PO-IIIs) and one PO-I, who handles "120 Post-Retiree" matters. Ms. Carter (in conjunction with one of the Payroll Supervisors) directly supervises four PO-Is, one of the other PO-IIIs supervises four other Personnel Officer Is (in conjunction with another

³ The Administrator VII reports to the CYF-HR Director. (*Exhs. 12, 18 & 20*)

Payroll Supervisor) and the third PO-II handles quality & compliance matters and appears to have no direct reports. (*Exhs. 5, 12, 18 & 20: Testimony of Appellant & Lynch*)

4. Ms. Carter devotes approximately 50% of her time in supervising, training and counseling others, including the four PO-Is for whom she is directly responsible for their performance evaluations as well as functional supervision of the other PO-Is and clerical staff. She devotes the rest of her time handling her own case load of payroll issues for CYF employees (she is responsible for handling all personnel/payroll processing matters for approximately 1,000 FTEs). (*Exhs. 5, 13, 14, 15A, 17 & 19ID; Testimony of Appellant*)

5. Ms. Carter is considered a “stellar” employee who consistently meets or exceeds her performance expectations. (*Exhs. 5 & 14; Testimony of Lynch*)

6. At one point, Ms. Carter was offered the opportunity for promotion to a newly created management position (M-IV), in effect, elevating her to a position of Assistant Payroll Unit Manager responsible to assume direct management over the other supervisors, including the PA-IIIs. She declined the promotion because it would have meant taking a pay cut from what she would be able to earn as a PO-II after COLA adjustments that were about to take effect under her union CBA. That position was then “repurposed” and is no longer available. (*Testimony of Appellant Lynch*)⁴

7. On or about October 31, 2017, Ms. Carter filed a request with CYF-HR for reclassification of her position from a PO-II to a PA-III. By letter dated June 18, 2018, after review and audit of her request, CYF-HR Director Amy Lynch informed Ms. Carter that she did

⁴ At the Commission hearing, Ms. Lynch testified that, as a result of Ms. Carter’s reclassification request, among other things, a review of the PA-III positions in CYF, led to the conclusion that Payroll Supervisors (as well as perhaps several dozen other PA-IIIs in the agency, were not doing the work of a PA-III and were “misclassified”, either because they were moved into those positions from other assignments or for other reasons. These positions have been “flagged” and, when the incumbents leave the position, they will be restructured to an appropriate management or other position. (*Testimony of Lynch*)

not warrant reclassification to the title of a PA-III and that her request was denied. (*Exhs. 1 through 8: Testimony of Smey & Lynch*)

8. Ms. Carter duly appealed the denial of her reclassification request to the Massachusetts Human Resources Division (HRD). By letter dated September 12, 2018, HRD informed Ms. Carter that she was appropriately classified as a PO-II, she did not warrant reclassification to a PA-III, and her appeal was denied. This appeal to the Commission ensued. (*Exhs. 9 through 11*)

9. The Personnel Officer Classification Specification was promulgated by HRD in 1987 and contains two job titles in the series: (1) PO-I is the “entry-level supervisory job” in the series, responsible for supervising at 1 to 5 clerical personnel and exercising functional supervision over 1 to 5 other professional, technical or administrative personnel; and (2) PO-II is the “second-level supervisory job” in the series, responsible to directly supervise 1 to 5 PO-Is or other professional personnel, and indirectly supervise (through an intermediate supervisor) another 1 to 5 clerical personnel. (*Exh. 16A*)

10. Incumbents of positions in the Personnel Officer series perform a broad variety of “personnel functions for an assigned agency”, including support for staffing decisions, hiring, performance evaluations, discipline and personnel records. The “basic purpose” of the work is “to ensure that the agency personnel functions are in compliance with established law, rules, policies, regulations and contractual agreements”. (*Exh. 16A*)

11. The Personnel Analyst Classification Specification, also promulgated by HRD in 1987, contains three job titles: (1) PA-I is the “entry-level professional job” in the series; (2) PA-II is the “first level supervisory job” in the series, responsible to directly supervise 1-5 professional personnel; and (3) PA-III is the “second-level supervisory job” in the series, responsible to

directly supervise 1 to 5 professional personnel and indirectly supervise 6 to 15 professional personnel. (*Exh. 16B*)

12. Incumbents of positions in the Personnel Analyst series “make recommendations on position classification and related personnel actions”, such as personnel studies, wage and salary surveys and classification studies. The “basic purpose” of the work of a Personnel Analyst “is to ensure the proper maintenance of the statewide personnel classification system.” (*Exh. 16A*)

13. Both POs and PAs are represented by the same bargaining union, NAGE Unit 6. PO-II carries a Grade 13 ranking; PA-III carries a Grade 15 ranking. (*Testimony of Appellant & Lynch*)

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. Carter is well-regarded by her colleagues as a “stellar” public servant who works hard at her job. However, reclassification of a position by the Commission requires proof that specified distinguishing duties of the title to which reclassification is requested are, in fact, actually being performed as the major part of her current work (i.e. more than 50 percent of her time is spent on these distinguishing duties). Accordingly, the issue before the Commission is limited to that narrow question.

The evidence establishes that Ms. Carter does not perform any of the duties of a PA-III and, therefore, the Commission has no basis upon which to overturn the decision of the EOHHS and HRD that she should not be reclassified to that position.

First, there is no dispute that Ms. Carter does not perform the duties of a PA-III (or a PA-I or PA-II for that matter) as defined by the Personnel Analyst Classification Specification. The jobs in this series involve work in the specialized personnel field of position classification. The work of the CYS-HR Personnel/Payroll unit does not involve any essential duties set forth in the Personnel Analyst job series. Ms. Carter acknowledged that she does not perform any duties relating to position classification because she is not currently assigned those duties but would be happy to perform them if requested. Ms. Lynch acknowledges that the supervisors in the CYS-HR Personnel/Payroll Unit who now occupy a job title of PA-III are “misclassified.”

Second, the job duties defined in the two-tier Personnel Officer Classification Specification are broadly defined and seem to be written to fit more of a “generalist” human resources

operation. They are not a perfect fit for the specialized, multi-level supervisory positions occupied by Ms. Carter and her peers in the CYS-HR Personnel/Payroll unit. In particular, Ms. Carter is a first-line supervisor, not the second-line supervisor described in the PO-II job description (which would more aptly fit the supervisor to whom Ms. Carter reports.). Similarly, none of the PO-Is on her staff have any reports and do not directly supervise anyone as described in the PO-I job description. As there is no title above PO-II in the series, there is no opportunity for advancement in the unit within the job series above that level (i.e. Grade 15, NAGE Unit 6). This mismatch of job titles and job functions, however, does not justify Ms. Carter's reclassification to what is another clearly inappropriate mismatch.⁵

Third, reclassification of Ms. Carter would be fraught with practical complications, including the elevation of an employee to the same level as her supervisor, which presents an organizational anomaly that, as a general rule, ought to be avoided. It would also perpetuate the "misclassification" issue that CYS has "flagged" and intends to rectify when incumbents who currently hold the PA-III job title leave the unit.

In sum, Ms. Carter did not meet her burden to establish that she performs the duties of a PA-III more than half of her time. Therefore, the Commission is not authorized to recommend that her position be reclassified.

Accordingly, for the reasons stated above, the appeal of the Appellant, Darling Carter, under Docket No. C-18-193 is *denied*.

Civil Service Commission

/s/ Paul M. Stein

Paul M. Stein
Commissioner

⁵ If there truly is need for a multi-level supervisory structure in a specialized HR unit such as found in the CYF-HR payroll operation, it should be addressed through a "group allocation" review and/or possible update to the 1987 Classification Specifications in this area to better fit the reality on the ground, matters which are beyond the purview of the Commission's authority in this appeal.

By vote of the Civil Service Commission (Bowman, Chairman [absent]; Camuso, Ittleman, Tivnan & Stein, Commissioners) on January 16, 2020.

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:

Darling Carter. (Appellant)

Ricardo Couto (for Respondent)