

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

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

LISA COBB,
Appellant

v.

C-17-181

DEPARTMENT OF DEVELOPMENTAL
SERVICES,
Respondent

Appearance for Appellant:

Pro Se
Lisa Cobb

Appearance for Respondent:

Patrick Butler, Esq.
Human Resources Division
One Ashburton Place
Boston, MA 02108

Commissioner:

Christopher C. Bowman

DECISION

On September 12, 2017, the Appellant, Lisa Cobb (Ms. Cobb), pursuant to the provisions of G.L. c. 30, s. 49, filed an appeal with the Civil Service Commission (Commission), appealing the August 25, 2017 decision of the state's Human Resources Division (HRD) to affirm the decision of the Department of Developmental Services (DDS) to deny her request for reclassification from the position of Office Support Specialist I (OSS I) to Program Coordinator II (PC II). On October 10, 2017, I held a pre-hearing at the offices of the Commission and a full hearing was

held at the same location on November 27, 2017¹. The hearing was digitally recorded and one CD was made of the hearing.²

FINDINGS OF FACT:

I entered seven (7) DDS exhibits (1-7) and seven (7) Appellant Exhibits (A-G). Ms. Cobb submitted multiple documents after the hearing which I have marked as Exhibit H. Based on the documents submitted into evidence and the testimony of:

Called by DDS:

- Daniel Lunden, Regional Director, DDS;
- David Tranghese, Employment Services Manager; Executive Office of Health & Human Services (EOHHS);

Called by Ms. Cobb:

- Dr. John Toomey, Medical Consult, DDS (Appellant’s Supervisor)
- Lisa Cobb (Appellant);

and taking administrative notice of all matters filed in the case, and pertinent statutes, regulations, policies, and reasonable inferences from the credible evidence, I make the following findings of fact:

1. Ms. Cobb currently serves as an OSS I. She is seeking to be reclassified to PC II (Stipulated Fact)
2. Employees in the OSS series: “perform administrative support functions such as preparing and analyzing correspondence, reports and other materials as needed; arrange meetings with

¹ The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§ 1.00 (formal rules) apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

² If there is a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to supply the court with a transcript of this hearing to the extent that he/she wishes to challenge the decision as unsupported by substantial evidence, arbitrary or capricious, or an abuse of discretion. In such cases, this CD should be used by the plaintiff in the judicial appeal to transcribe the recording into a written transcript.

internal and external contacts; respond to inquiries, assist in various office programs and perform related work as required.” (Exhibit 2)

3. Common duties among all titles in the Program Coordinator (PC) series include data analysis and review, maintaining liaisons with private and public agencies, attending meetings and conferences, and preparing reports. (Exhibit 3, Pg. 1)
4. The additional duties of a PC II include providing job training and orientation, development and implementation of procedures, review of reports and memoranda, communication with agency managers and personnel for the purpose of program evaluation, and making recommended program changes based upon evaluation. (Exhibit 3, Pg. 2)
5. The PC II title is recognized as the “second-level supervisory job in the series.” Incumbents in this title exercise direct supervision over 1-5 “professional personnel”, and indirect supervision over 6-15 “professional, administrative, technical and/or other personnel”. (Exhibit 3, Pg. 3)
6. HRD’s job specifications establish as a minimum entrance requirement for a PC II, “at least (A) three years of full time, or equivalent part time, professional, administrative, or managerial experience in business administration, business management, or public administration the major duties of which involved program management, program administration, program coordination, program planning, and/or program analysis or (B) any equivalent combination of the required work experience and the (educational) substitutions ...”. (Exhibit 3, Pg. 6)
7. HRD’s job specifications permit the substitution of a bachelor’s degree in “business administration, business management or public administration” for up to two years of the aforementioned three years’ experience. A graduate degree in any of the aforementioned

majors may substitute for the required three years' experience. A bachelor's degree in a major other than the aforementioned majors may substitute for one year of the necessary experience. (Joint Exhibit 19, Pg. 6)

8. Ms. Cobb received an Associates degree in liberal arts from Assumption College. (Appellant Testimony)
9. Immediately prior to working for DDS, Ms. Cobb worked for a home staffing agency for two (2) years. Prior to that, Ms. Cobb worked as a paralegal for a law office for several years. (Appellant Testimony)
10. From 2013 to 2015, Ms. Cobb was employed by a temporary staffing agency and was assigned, through that agency, to DDS as a paralegal. Ms. Cobb was first assigned to the legal department full-time at DDS. After several months, because of funding issues, Ms. Cobb's hours in the legal department were reduced to fifteen (15) hours. At that point, Ms. Cobb was also assigned to assist Dr. John Toomey, the "Medical Consult" for DDS, allowing her to continue working a full-time schedule. (Appellant Testimony)
11. In 2015, DDS posted a full-time OSS I position within Dr. Toomey's office, which Ms. Cobb understood was done to facilitate her appointment. She was subsequently appointed by DDS as an OSS I. (Appellant Testimony)
12. On December 7, 2015, Ms. Cobb signed an OSS I "Form 30: Job Description" which outlined the duties and responsibilities of an OSS I, which included performing "... a wide range of administrative projects ... obtain[ing] necessary paperwork, medical records, notes and pertinent information for various committee members in preparation for medical record reviews, etc. as needed." (Exhibit 1)

13. Dr. Toomey is a doctor specializing in internal medicine and has worked for DDS for ten (10) years. At DDS, Dr. Toomey first served as the Medical Director at “Glavin Regional Center” which eventually closed. In 2013, he transitioned into the position of “Statewide Medical Consult” at DDS. He served in a similar capacity for DMH prior to working for DDS and, prior to that, he was an attending physician at UMASS Medical Center. In his current position at DDS, he is responsible for providing consultation / advice regarding DDS clients. For example, a DDS client may be receiving life-saving medical care in the intensive care unit of a hospital. Dr. Toomey may be informed of this by the legal or ethics office of DDS, leading to a consultation between Dr. Toomey and the physicians at the hospital who are providing care to the DDS client. (Dr. Toomey Testimony)
14. On average, Dr. Toomey receives twenty (20) to thirty (30) consult requests monthly. (Dr. Toomey Testimony)
15. The consultations take place in different forms depending on the circumstances and severity and time-sensitivity of the matter, including verbal, written, in-person, via phone, etc. (Dr. Toomey Testimony)
16. Ms. Cobb is often the first point of contact for non-acute consultation requests. (Dr. Toomey Testimony)
17. Ms. Cobb is responsible for providing the person making the inquiry with an overview of the services provided; walking through the various steps of the process; and letting the caller know what information must be provided as part of the consult process. (Dr. Toomey Testimony)
18. Ms. Cobb may also assist the caller with obtaining necessary medical documentation needed for the consult. (Dr. Toomey Testimony)

19. Based on the information received, Ms. Cobb is responsible for informing Dr. Toomey if the inquiry deserves his immediate attention. (Dr. Toomey Testimony)
20. For non-acute matters that don't require an immediate response (i.e. – immediate phone consultation), the next step in the consultation may be scheduling and holding a meeting and/or physical examination that needs to be coordinated with the DDS client, his/her guardian and medical professionals. (Dr. Toomey Testimony)
21. In cases that are “self-evident”, Ms. Cobb may identify the individuals that would need to attend the meeting and/or examination. (Dr. Toomey Testimony)
22. In cases that are not self-evident, Dr. Toomey himself identifies the individuals that would need to participate in the consultation process. (Dr. Toomey Testimony)
23. Most acute, time-sensitive consults are handled directly by Dr. Toomey. (Dr. Toomey Testimony)
24. Ms. Cobb handles all matters related to the scheduling of the meetings and examinations. For non-acute consults that require a meeting or examination. (Dr. Toomey Testimony)
25. Ms. Cobb attends meetings with Dr. Toomey and ensures that the proper documentation is available for discussion. (Dr. Toomey and Appellant Testimony)
26. Dr. Toomey considers Ms. Cobb to be a “point person” in regard to the scheduling of a “lecture series” that he conducts with nurses and other staff members. (Dr. Toomey Testimony)
27. Ms. Cobb creates new folders for each new client on a shared directory and uses Word or Excel spreadsheets to keep track of client information. (Appellant Testimony)
28. Ms. Cobb does not supervise any employees. (Appellant Testimony)

29. At some point, Dr. Toomey and Ms. Cobb reviewed the job specifications for PC II, including the five (5) level-distinguishing duties of a PC II. (Dr. Toomey Testimony)
30. Dr. Toomey concluded that Ms. Cobb provides “on-the-job-training and orientation for employees” based on the work that Ms. Cobb does to orient employees of organizations calling to inquire about the consult process. (Dr. Toomey Testimony)
31. Dr. Toomey concluded that Ms. Cobb “develops and implements procedures and guidelines to accomplish assigned agency program objectives and goals” due to the role that Ms. Cobb played in helping establish how clients interact with the program. (Dr. Toomey Testimony)
32. Dr. Toomey concluded that much of what Ms. Cobb does is to “review reports, memoranda, etc. for completeness, accuracy and content.” (Dr. Toomey Testimony)
33. Dr. Toomey was not able to identify any instances in which Ms. Cobb consulted with management staff and other agency personnel in order to determine program requirements and availability of resources and to develop the criteria and standards for program evaluation. (Dr. Toomey Testimony)
34. Dr. Toomey concluded that Ms. Cobb’s development of a form used to help with facilitating the consults constituted “evaluating program activities in order to determine progress and effectiveness and to make recommendations concerning changes as needed.” (Dr. Toomey Testimony)

Legal Standard

“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 and shall be entitled to a hearing upon such appeal 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.” M.G.L. c. 30, § 49.

Ms. Cobb must show that he is improperly classified and to do so, she must show that she performs the distinguishing duties of the PC II title more than 50% of the time. See Gaffey v. Dept. of Revenue, C-11-126 (July 18, 2011); see also Bhandari v. Exec. Office of Admin. and Finance, 28 MCSR 9 (2015) (finding that “in order to justify a reclassification, an employee must establish that he is performing duties encompassed within the higher level position the majority of the time....”).

Analysis

Based on a careful review of the evidence, including the credible testimony of the witnesses, I have concluded that Ms. Cobb’s duties and responsibilities fall squarely within the Office Support Specialist Series as she performs important administrative support for the Consult program, including preparing and analyzing correspondence, reports and other materials as needed; arranges meetings with internal and external contacts; responds to inquiries, and assisting in various office programs and performs related work as required. Based on the evidence, it is clear that Dr. Toomey is the coordinator of the Consult program and that he relies on the vital administrative support provided by Ms. Cobb.

While Ms. Cobb does assist prospective clients by providing them with information about the Consult program, this does not constitute “on-the-job training and orientation” included in the level distinguishing duties of a Program Coordinator II. The assistance that Ms. Cobb provides in developing checklists to assist with the Consult process is also among the duties expected of an OSS and is not the type of development and implementation of procedures and guidelines that is consistent with the Program Coordinator series. While Ms. Cobb does review reports and

memoranda, those duties are also expected of an OSS. Further, Dr. Toomey candidly acknowledged that Ms. Cobb does not engage in the type of consultation with management staff to develop program and criteria standards for the program, another level distinguishing duty required of Program Coordinators. Finally, Ms. Cobb does not supervise any employees, a requirement of Program Coordinator IIs.

Conclusion

For all of the above reasons, Ms. Cobb's appeal under Docket No. C-17-181 is *denied*.

Civil Service Commission

/s/ Christopher C. Bowman

Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on September 13, 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 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:

Lisa Cobb (Appellant)

Patrick Butler, Esq. (for Respondent)