

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION
One Ashburton Place, Room 503
Boston, MA 02108
(617) 979-1900

HARUNA MALIANI,
Appellant

v.

C-18-100

DEPARTMENT OF PUBLIC HEALTH,
Respondent

Appearance for Appellant:

Joseph Sulman, Esq.
Law Office of Joseph L. Sulman
391 Totten Pond Road, Suite 402
Waltham MA 02451

Appearance for Respondent:

David Markowitz, Esq.
Deputy General Counsel
Department of Public Health
250 Washington Street, 2d Floor
Boston MA 02108

Commissioner:

Cynthia A. Ittleman

DECISION

On May 30, 2018, the Appellant, Haruna Maliani (Maliani or Appellant), pursuant to G.L. c. 30, § 49, filed an appeal with the Civil Service Commission (Commission), contesting the decision of the state's Human Resources Division (HRD) to affirm the determination of the Department of Public Health (DPH) / Executive Office of Health and Human Services (EOHHS) denying the Appellant's appeal to be reclassified from Registered Nurse IV (RN IV) to Registered Nurse V (RN V) at Tewksbury State Hospital. On July 10, 2018, a pre-hearing conference was held at the offices of the Commission; a full hearing was held at the same

location on October 17, 2018.¹ The hearing was digitally recorded and a CD of the recording was provided to both parties.² The parties filed post-hearing briefs. For the reasons stated herein, the appeal is denied.

FINDINGS OF FACT:

I entered twenty-one (21) exhibits from the Respondent and eight (8) exhibits from the Appellant. Based on the documents submitted into evidence, the testimony of:

Called by the Appellant:

- Haruna Maliani, Apellant;
- Victoria Pike, Assistant Director of Nursing;
- Alex Adusei, RN V Night Shift Nursing Supervisor;
- Sergie Piedad, RN V Evening Shift Nursing Supervisor;

Called by the Respondent:

- Janice Bishop, Chief Nursing Officer;
- Margaret Sydlowski, Employment and Staffing Coordinator;
- Veronica Gjino, Classification Coordinator for EOHHS;
- Deborah Cory, Deputy Director of Labor Relations.

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

¹ The Standard Adjudicatory Rules of Practice and Procedure, 801 Code Mass. Regs. §§ 1.00, *et seq.*, 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 becomes obligated to use the copy of the CD provided to the parties 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.

1. Haruna Maliani has been employed at Tewksbury Hospital since 2006. He began his employment there as a Licensed Practical Nurse II. He became a Registered Nurse II in 2007. He was promoted to Registered Nurse III, Clinical Charge Nurse, in 2014. In June 2015, he applied for and was promoted to RN IV, Nursing Supervisor, on the Evening Shift, which is the 3 to 11 p.m. shift. (App. Testimony at 1:50-55 ; Resp. Ex. 3). He currently works as an RN IV Supervisor on the evening shift (App. Testimony).
2. According to DPH's Classification Specifications for the Registered Nurse Series, the duties of an RN IV Nurse Supervisor include the duties of the lower classifications of RN III as well as the following:
 - Direct the nursing activities for two or more wards or full-time programs for all shifts;
 - Authorize overtime for shift personnel and transportation of patients to other hospitals;
 - Authorize transportation of patients to other health care facilities in emergency situations.
3. The Program Description for Registered Nurse IV, Nursing Supervisor, Evenings, ("Form 30") for the Appellant, dated June 2015, describes the overall job responsibilities of his position as an RN IV as a position that:

"Provides, directs, coordinates, supervises, and evaluates nursing care to patients... on several units of the evening shift within the established philosophy, objectives and standards of the hospital and Nursing Department. Provides guidance and leadership to nursing staff as needed. Performs related work as required."

Among the twenty (20) job responsibilities listed on the Appellant's Form 30 most relevant to this appeal include the following:

- Performs administrative functions of the nursing department and addresses administrative issues promptly, calling the D.O.N. designee and the duty officer as necessary and/or required by policy.
- Takes a leadership role in the guidance of personnel regarding problems of an immediate nature and implements the disciplinary process when appropriate.
- Assist with special projects such as data collection related to attendance, incident reports, etc.

- Compliance with all applicable state and federal laws, including the Health Insurance Portability and Accountability Act (HIPAA) regulations... (Resp. Ex. 14).
4. The duties of an RN V, according to DPH's Classification Specifications for Registered Nurse Series, include the duties of the RN IV and "may also" include:
 - Inspect physical facilities to ensure compliance with Federal and State laws and regulations;
 - Oversee and implement the quality assurance program and examine medical and other records relative to utilization review to ensure compliance with federal, state and professional standards, regulations and laws designed to ensure and control quality of care;
 - Analyze statistical reports such as reports on patient census, personnel changes, accidents and time and attendance in order to recommend action concerning patient census deployment of personnel and effective use of available resources. (Resp. Ex. 13).
 5. In the spring of 2015, Chief Nursing Officer Jan Bishop (Ms. Bishop) reviewed the duties and responsibilities of those employees holding RN V position and determined that the duties were more aligned with the classification of RN IV. This decision was applied prospectively only. (Bishop Testimony). The Appellant's position was the first position to be filled after the classification change. (Bishop Testimony).
 6. The Appellant requested a reclassification to an RN V (Nurse Supervisor) on December 14, 2016.³ (Administrative Notice)
 7. The process for reviewing a reclassification request at EOHHS includes the Appellant completing an Interview Guide, an interview with the employee seeking reclassification, a review of the employee's history, and a review of current job specifications and the job specifications of the job sought. After reviewing of all pertinent material, a recommendation is made to DPH. (Sydlowski Testimony at 5:57).

³ The Appellant contends that a colleague is an RN V but has the same duties as the Appellant. DPH promoted that employee into the Nursing Supervisor position at Tewksbury Hospital and classified him as RN V in January 2015. This promotion would have occurred *before* the administrative decision to prospectively change the RN IV and RN V duties in the spring of 2015 and occurred well before the Appellant filed his appeal for classification.

8. The Agency denied the Appellant's request for reclassification on April 10, 2017. The Appellant appealed to the Human Resources Division (HRD), and HRD denied the Appellant's appeal on May 16, 2018. (Stipulated Facts).
9. The Appellant stated on his Interview Guide that he was seeking classification because he had been performing the duties of an RN V for over a year, including when an RN V is unavailable because of vacation, sick time, or when alone on a shift, as he is on assigned rotating weekends. He listed the time spent on his RN IV responsibilities as equally distributed, totaling 100 % of "what he does," and indicated that each day the responsibilities shift according to that day's situation. (Resp. Ex. 3).
10. On his Interview Guide, the Appellant listed the three duties that distinguished the RN IV and RN V positions and provided specific examples of how he believed he performed each of the three duties. The three distinguishing duties and the Appellant's comments are summarized as follows:
 - **Inspect physical facilities to ensure compliance with Federal and State laws and regulations:** The Appellant ensures that the patient environment is safe and meets OSHA standards during every shift. For instance, he ensures that all hospital items and equipment are functional.
 - **Oversee and implement the quality assurance program and examine medical and other records relative to utilization review to ensure compliance with federal, state and professional standards, regulations and laws designed to ensure and control quality of care.** The Appellant detailed several actions that ensured compliance with Healthcare Quality, the guidelines of CMS and DPH, including infection control, timely medication supply, overseeing guidelines; and overseeing admissions that generally occur after business hours.
 - **Analyze statistical reports such as reports on patient census, personnel changes, accidents and time and attendance in order to recommend action concerning patient census deployment of personnel and effective use of available resources:** The Appellant ensures all units are staffed adequately, including deployment of overtime nursing hours, and reviews daily reports of restraint use and prevalence and fall rates and injury incidents. (Resp. Ex. 3).

11. Ms. Pike, the Appellant’s supervisor, and Chief Nursing Officer Bishop, who have been employed in leadership roles for many years, reviewed the Appellant’s appeal for reclassification. (Pike Testimony; Bishop Testimony). In her review, Ms. Bishop wrote that The RN IV positions hold “a very important role in the coverage of the shift they work... Their responsibility is for an 8 hour shift. The RN V has 24 hour accountability for the unit that they oversee. The assessment, monitoring, setting policy, implementation, responsibility for the nursing units 24/7 is the role of an RN V. (Bishop testimony) Additionally, the RN IV’s role is to give input into the performance evaluation of staff, whose responsibility is to follow through with performance evaluations. Involvement in committees is not an expectation to justify reclassification to an RN V because all levels of RNs and LPNs participate in committees. (Bishop Testimony, Resp. Ex. 3; Resp. Ex. 5).

12. In her review, Ms. Bishop addressed the three duties of an RN V that distinguish that classification from the RN IV:

- **Inspect physical facilities to ensure compliance with Federal and State laws and regulations:** The RN V “follows up with Departments (i.e. Facilities, Maintenance) that the safety issues have been corrected and staff have been educated if necessary on the changes. Example: removal of mold, water pipes repaired, kitchen refrigerators cleaned, broken equipment removed from the unit... It is the RN IV’s responsibility to notify the RN V of all safety issues identified for follow up and corrective action implemented.”
- **Oversee and implement the quality assurance program and examine medical and other records relative to utilization review to ensure compliance with federal, state and professional standards, regulations and laws designed to ensure and control quality of care.:** RN V duties include developing Quality Assurance monitors and implementing the process of those monitors. “They collect data, evaluate and change processes accordingly... and present to Nursing Quality Committee for discussion.”
- **Analyze statistical reports such as reports on patient census, personnel changes, accidents and time and attendance in order to recommend action concerning patient census deployment of personnel and effective use of available resources:** The RN V is responsible for planning the time for all staff on a 2-week rotation and works with HRD to monitor staff on FMLA. The RN V “follow up[s] with analyzing the reports and following up with

ways to improve the outcomes, example: fall rates, restraint use, constant observation stats and 1:1s.” (Resp. Ex. 5).

13. At the time of his appeal for reclassification, the Appellant checked for safety issues during his shift and followed up to see if issues were remedied. On every other weekend, he was the sole supervisor for 2-3 units when the RN V Evening Shift Nursing Supervisor was not present. (Appellant Testimony).
14. When the Appellant leaves his shift, others are responsible for decision-making. (Appellant Testimony at 4:12).
15. The Nurse V position is responsible for writing and signing staff members’ EPRS evaluations.⁴ (Pike Testimony at 2:07; 2:24-2:25). The Appellant routinely communicated via email with his supervisor and other RN IVs and Vs to share a commendation about a staff member or to let a supervisor know about improper behavior which the Appellant had addressed while working that shift. (Appellant testimony at 3:17). The Appellant began the discipline process through staff education and counselling. The Appellant did not write or sign EPRS evaluations. (Pike Testimony at 2:04-6).

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.” G.L. c. 30, s. 49.

⁴ The RN V Night Shift Nursing Supervisor at Tewksbury Hospital who was hired in 2015 prior to the administrative decision to redefine the Nurse IV position, testified that he has in the past written EPRS evaluations for staff. (Adusei Testimony at 144-145).

“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). The Appellant must show that he is improperly classified and to do so, he must show that he performs the distinguishing duties of the RN V title more than 50% of the time. See Gaffey v. Dept. of Revenue, C-11-126 (July 18, 2011); see also Ghandari 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 with in the higher level position a majority of the time....”). Further, “[w]here duties are equally applicable to both the lower and higher titles, although they may be described slightly differently for each title, those types of overlapping duties are not “distinguishing” duties of the higher title.” Saunders v. Dep’t. of Labor Standards, 32 MSCR 413, 415 (2019).

Analysis

The Appellant is a skilled and dependable nurse who cares for his patients and takes his oversight responsibilities seriously at Tewksbury Hospital. However, reclassification of a position by the Commission requires proof that the Appellant is performing the level distinguishing duties of the higher classification a majority of the time. After a careful review of all the evidence, including the relevant testimony of all witnesses and all relevant documents, the Appellant has not shown, by a preponderance of the evidence, that he performs the level distinguishing duties of an RN V a majority of the time.

At first glance, certain evidence supports the Appellant’s argument in favor of reclassification. The forms describing the duties of the RN IV and the RN V share all job duties but two and the DPH classification specifications show shared responsibilities except for three duties, which are broadly worded. Shortly before the Appellant applied for and received a

promotion to the RN IV Evening Shift Supervisor, other RN IVs had been administratively reclassified to RN Vs. Thus, Appellant works with RN Vs who share his responsibilities.

However, the testimony from the Chief Nursing Officer and human resources representative, both of whom have substantial experience, shows the difference between the two classifications in practice. RN Vs are responsible for their duties during a 24 hour shift and RN IVs are responsible for their duties during an 8 hour shift. As Ms. Bishop explained in her analysis and at hearing, RN Vs inspect physical facilities to ensure compliance with Federal and State laws and regulations. This inspection requires, at the RN V classification, “follow-up with Departments (i.e. Facilities, Maintenance) that the safety issues have been corrected and staff have been educated if necessary on the changes.” Arguably, the Appellant performs this duty *during his shift* by routinely inspecting the physical facilities in the units he supervises and following up with repair requests. Likewise, the Appellant provided evidence that he “oversee[s] and implement[s] the quality assurance program and examine[s] medical and other records relative to utilization review to ensure compliance with federal, state and professional standards, regulations and laws designed to ensure and control quality of care,” on the units *when he is supervising*. He does not “develop[] Quality Assurance monitors and implement[] the process of those monitors.” The duty of an RN V, to “analyze statistical reports such as reports on patient census, personnel changes, accidents and time and attendance in order to recommend action concerning patient census deployment of personnel and effective use of available resources,” were performed as part of the Appellant’s job responsibilities because of deployment of staff according to the needs of the patients *during his shift*. The Appellant does not, however, perform the duty of an RN V to follow up with analyzing reports about statistics such as fall rates, restraint use, and constant observation, while also implementing ways to improve those statistics.

The most significant difference in responsibilities between these two classifications is the level of responsibility over a period of time: RN Vs have the responsibility for 24 hours of hospital activities; the Appellant, as an RN IV, is responsible for activities that originate during his eight-hour shift for the units he supervises. Additionally, the Appellant does not write evaluations for other staff. While he may begin a disciplinary process through counseling, it is the responsibility of the RN V to administer discipline, if warranted, and complete and sign staff EPRS evaluation forms.

The Appellant performs the duties of an RN IV as specified in his Form 30: he performs administrative functions of the nursing department, addresses administrative issues promptly, takes a leadership role in the guidance of personnel regarding problems of an immediate nature, implements the disciplinary process when appropriate, assists with special projects such as data collection related to attendance and incident reports, and ensures compliance with all applicable state and federal laws including HIPPA regulations. That these duties share similarities with the duties of an RN V does not indicate the Appellant has the responsibilities of an RN V for more than half the time.

In summary, a preponderance of the evidence establishes that most of the Appellant's job duties fit squarely within his current level of an RN IV. The Appellant has not met his burden to show that he performs the responsibilities of RN V more than fifty percent of the time.

Conclusion

For all of the above reasons, the Appellant's appeal under Docket No. C-18-100 is hereby ***denied.***

Civil Service Commission
/s/ Cynthia Ittleman
Cynthia A. Ittleman
Commissioner

By a vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Camuso and Stein (Commissioners) – AYE; and Tivnan (Commissioner) - NO) on March 11, 2021.

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 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:

Joseph Sulman, Esq. (for Appellant)

David Markowitz, Esq. (for Respondent)