

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

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

JAMES T. SMITH,
Appellant

v.

C-17-006

DEPARTMENT OF DEVELOPMENTAL
SERVICES,
Respondent

Appearance for Appellant:

Pro Se
James T. Smith

Appearance for Respondent:

Robert Smith, Esq.
Dept. of Developmental Services
500 Harrison Avenue
Boston, MA 02118

Commissioner:

Christopher C. Bowman

DECISION

On January 11, 2017, the Appellant, James Smith (Mr. Smith), pursuant to the provisions of G.L. c. 30, s. 49, filed an appeal with the Civil Service Commission (Commission), appealing the January 3, 2017 decision of the state's Human Resources Division (HRD) to affirm the decision of the Department of Developmental Services (DDS) to deny his request for reclassification from the position of Adaptive Equipment Technician II (AT II) to Program Coordinator II (PC II). On January 24, 2017, I held a pre-hearing at the offices of the Commission and a full hearing

was held at the same location on March 9, 2017¹. The hearing was digitally recorded and one CD was made of the hearing.² The parties submitted proposed decisions on April 3, 2017 (Appellant) and April 14, 2017 (Respondent) .

FINDINGS OF FACT:

Twenty-one (21) exhibits were entered into evidence. Based on the documents submitted into evidence and the testimony of:

For DDS:

- David Tranghese, Employment Services Manager;

For Mr. Smith:

- Chadwick Shrum, Adaptive Equipment Designer C;
- Nicholas Whitaker, Adaptive Equipment Designer C;
- Thomas Mercier, Director, Assistive Technology Services;
- James Smith, 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. Mr. Smith has been employed by DDS, which currently falls under the jurisdiction of the Executive Office of Health and Human Services (EOHHS), for approximately three (3) years. (Stipulated Fact)

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.

2. Mr. Smith is currently employed by DDS as an AT II. He has held this position since August 2014 (Stipulated Facts).
3. From 1982 to 1996, Mr. Smith served in the United States Marine Corps as a motor equipment mechanic. (Testimony of Mr. Smith)
4. From 1993 to 1998, Mr. Smith was employed by the Town of Athol's DPW where he was responsible for the upkeep of Town roads and cemeteries. (Exhibit 21)
5. From 1998 to 2012, Mr. Smith was employed by the Templeton Development Center as a Motor Equipment Mechanic II where he was responsible for the care and maintenance of farm and site equipment. (Exhibit 21)
6. From 2012 to 2014, Mr. Smith was employed for a tire company in Orange, MA as an Inventory Control / Delivery Associate. (Exhibit 21)
7. Mr. Smith possesses a Massachusetts Class A Commercial Drivers License (CDL): Passenger Transport, Tank Vehicle Endorsements. (Exhibit 21)
8. Mr. Smith possesses a Massachusetts Department of Public Safety License for Hoisting Machinery / Class C Backhoe / Loader. (Exhibit 21)
9. The state's Human Resources Division (HRD)'s job specifications for the Adaptive Equipment Technician series recognize two job titles within the series; AT I and AT II. The specifications describe the purpose of the job series as to "construct, alter, fit and repair adaptive equipment such as wheelchairs and protective helmets for clients requiring such specialized equipment." (Exhibit 18, Pg. 1)
10. Among the duties common to both titles in the Adaptive Equipment Technician series are the construction, alteration and repair of adaptive equipment, assistance with and instruction in

the fitting and use of adaptive equipment, and maintaining an inventory of supplies and equipment used. (Exhibit 18, Pg. 1)

11. Each title within the Adaptive Equipment Technician series maintains “major work contacts...with patients, clients, agency staff, vendors and other auxiliary personnel”. (Exhibit 18, Pg. 1)
12. The AT II title is recognized as the “first-level supervisory job” in the Adaptive Equipment Technician series. Incumbents in the AT II title exercise direct supervision over 1-5 assigned personnel. This supervision includes the assignment of work and review of the performance of assigned personnel. (Exhibit 18, Pg. 2)
13. Further duties particular to the AT II title include the provision of on-the job training for subordinates and the requisition of materials and supplies as needed. (Exhibit 18, Pg. 2)
14. The HRD job specifications for the Program Coordinator series describes the purpose of the series as the coordination, development and implementation of programs for the agency. (Exhibit 19, Pg. 1)
15. Common duties among all titles in the Program Coordinator series include data analysis and review, maintaining liaisons with private and public agencies, attending meetings and conferences, and preparing reports. (Exhibit 19, Pg. 1)
16. 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 19, Pg. 2)
17. 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 19, Pg. 3)

18. 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”. (Joint Exhibit 19, Pg. 6)
19. 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)
20. Mr. Smith’s work location is the Assistive Technology Workshop in Worcester. (Worcester AT Workshop) (Testimony of Mr. Smith and Mr. Mercier)
21. From 2014 to the present, Thomas Mercier has been Mr. Smith’s direct supervisor.(Testimony of Mr. Mercier and Mr. Smith)
22. DDS’s Assistive Technology Division is responsible for the construction, refurbishment and repair of adaptive medical equipment for DDS clients. DDS operates a total of four assistive technology workshops across the state, including Mr. Smith’s work location. (Testimony of Mr. Mercier and Exhibit 13)

23. A total of three DDS employees currently work full-time at the Worcester AT Workshop: Mr. Smith as well as Chadwick Shrum and Nicholas Whitaker, both of whom are Adaptive Equipment Designer Cs. A fourth individual was briefly employed at the workshop as an Adaptive Equipment Technician I, but he was recently terminated during his probationary period. (Testimony of Mr. Smith, Mr. Mercier, Mr. Shrum and Mr. Whitaker)
24. Since 2014, the Worcester AT Workshop has also been home to the “ReEquipment program”, a collaborative effort between the Massachusetts Rehabilitation Commission and an outside entity, ReEquipment, Inc. ReEquipment is a federally-funded initiative to locate and refurbish used medical equipment to make available to anyone in Massachusetts. (Testimony of Mr. Mercier, Exhibit 3)
25. Mr. Mercier is the Director of Assistive Technology Services for DDS. (Testimony of Mr. Mercier)
26. When the ReEquipment program was first started, Mr. Mercier asked Mr. Smith to coordinate the set-up of the ReEquipment program. Mr. Mercier considers Mr. Smith to be the ongoing coordinator of the ReEquipment program as he relies on Mr. Smith to: a) be the go-to person for ReEquipment donations; b) coordinate the activities of an intern from the Department of Youth Services (DYS); c) post all available equipment on the website; and d) participate in monthly management calls related to the ReEquipment Program. (Testimony of Mr. Mercier)
27. In addition to the DYS intern, ReEquipment employs an individual to assist with the operation of the ReEquipment program at the Worcester AT Workshop. This individual, when the position is filled, works at the workshop three eight-hour days per week; Wednesdays, Thursdays and Fridays, and typically performs cleaning assignments. (Testimony of Mr. Smith and Mr. Mercier)

28. Mr. Smith provides feedback to Mr. Mercier regarding the AT I's job performance.
However, Mr. Mercier performed all EPRS evaluations of the AT I. (Testimony of Mr. Mercier).
29. On Mondays, Mr. Smith loads a truck with equipment for delivery that day, picks up donated equipment, prepares donated equipment for cleaning, photographs donated equipment and posts the pictures on the ReQuipment website. (Testimony of Mr. Smith)
30. On Tuesdays, Mr. Smith performs maintenance for DDS programs in the field. He, Mr. Shrum and Mr. Whitaker typically visit two DDS group homes per week to perform preventative maintenance. These preventative maintenance visits typically start at 6:30-7:00 A.M. and end at 1:00 P.M. (Testimony of Mr. Smith and Mr. Shrum)
31. On Wednesdays, Mr. Smith provides oversight to the cleaning and refurbishment of equipment for the ReQuipment program, but also conducts maintenance and repairs for DDS programs. (Testimony of Mr. Smith)
32. On alternating Thursdays, Mr. Smith participates in the Worcester AT Workshop's wheelchair clinic, in which DDS staff bring wheelchairs in need of repair to the workshop for maintenance. (Testimony of Mr. Smith)
33. On Friday mornings, Mr. Smith coordinates the ReQuipment pick up/delivery schedule for the upcoming week. During the afternoon, he performs maintenance work on DDS equipment. (Testimony of Mr. Smith)
34. David Tranghese is the Employment Services Manager for DDS's Central/West Region. He reviews employee requests for reclassification on behalf of the appointing authority and makes recommendations to the appointing authority as to whether or not the request should be approved. The appointing authority decides whether or not to support the

recommendation, which is then referred to EOHHS for their consideration. (Testimony of Mr. Tranghese)

35. Mr. Tranghese ultimately recommended that Mr. Smith's reclassification request be rejected. His reasons for rejection were twofold. First, he believed that Mr. Smith's description of his job duties within the Interview Guide were consistent with the enumerated duties of an AT II in HRD's job specifications. Second, he did not believe that Mr. Smith met the minimum entrance requirements of a PC II. (Testimony of Mr. Tranghese; Exhibit 17)

36. As part of the hearing before the Commission, Mr. Tranghese testified that Mr. Smith also performs all of the level distinguishing duties of a PC II, with the exception of the role of second level supervisor. Mr. Tranghese stated at the hearing before the Commission that the reason for denying the reclassification request was based on the failure to meet the minimum entrance requirements. (Testimony of Mr. Tranghese)

37. EOHHS approved the recommendation to deny Mr. Smith's request for reclassification. (Testimony of Mr. Tranghese).

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.

Mr. Smith must show that he is improperly classified and to do so, he must show that he 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 Tom Mercier, the Director of Assistive Technology Services for DDS, Mr. Smith’s duties and responsibilities are consistent with those contained in the Program Coordinator Series. Unlike other AT IIs at DDS, Mr. Smith has been given the responsibility of coordinating a program. According to Mr. Mercier, Mr. Smith was asked to coordinate the set-up of the ReQuipment program, a federally-funded program established to locate and refurbish used medical equipment to make available to anyone in Massachusetts. Since its inception, Mr. Smith has continued to play a coordination role regarding that program, serving as the go-to person for such things as donations, ensuring that all equipment is posted on the website and making recommendations regarding the program directly to Mr. Mercier and through his participation in monthly management calls.

Even Mr. Tranghese, the person responsible for making the recommendation to deny Mr. Smith his reclassification, acknowledged as part of his credible testimony that Mr. Smith performs all of the level-distinguish duties of a PC II. Mr. Smith’s request was denied, however, because, according to DDS, he does not meet the minimum entrance requirements. The evidence shows otherwise. Through his program coordination duties at DDS over the past three (3) years, Mr. Smith has accumulated three (3) years of experience in program management.

Mr. Smith, however, is not a second-level supervisor, a requirement of a PC II. At best, he performs functional supervision, when the positions are filled, of a DYS intern and an AT I.

With rare exception, the Commission has long held that, in order to show actual supervision, the Appellant must demonstrate that he/she is responsible for completing the employee's performance evaluation. Although Mr. Smith is not responsible for completing the EPRS of any of the above-referenced employees, I believe, based on the somewhat unique circumstances here, that he does perform a supervisory role (as a first-level supervisor) regarding these employees in regard to his duties and responsibilities coordinating the ReEquipment program.

Conclusion

For all of the above reasons, Mr. Smith's appeal under Docket No. C-17-006 hereby ***allowed in part***. He shall be reclassified to the position of Program Coordinator I.

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 February 15, 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 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:

James Smith (Appellant)
Robert Smith, Esq. (for Respondent)
Regina Caggiano (HRD)