

**COMMONWEALTH OF MASSACHUSETTS**

**CIVIL SERVICE COMMISSION**

One Ashburton Place: Room 503  
Boston, MA 02108  
(617) 979-1900

ANTHONY PAVONE,  
*Appellant*

v.

C-20-085

MASSACHUSETTS DEPARTMENT  
OF TRANSPORTATION,  
*Respondent*

Appearance for Appellant:

Timothy Rodden, Esq.  
Upper Charles Law Group  
10 Kearney Rd #101  
Needham, MA 02494

Appearance for Respondent:

Matthias Kriegel, Esq.  
MassDOT  
10 Park Plaza  
Boston, MA 02116

Commissioner:

Christopher C. Bowman

**DECISION**

On May 26, 2020, the Appellant, Anthony Pavone (Appellant), pursuant to the provisions of 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 MassDOT's decision to deny the Appellant's request for reclassification from the position of General Construction Inspector I (GCI I) to General Construction Inspector II (GCI II).

On June 23, 2020, I held a remote pre-hearing conference via Webex videoconference. A status conference was subsequently held on July 23, 2020 and a full hearing was held on August 28, 2020, both via Webex videoconference.<sup>1</sup> The full hearing was audio and video recorded via Webex and both parties were provided with a link to the recording.<sup>2</sup> On October 19, 2020, the parties submitted proposed decisions.

**FINDINGS OF FACT:**

Forty-six (46) exhibits (Respondent Exhibits 1-19 (R1 – R19) and Appellant Exhibits 1-27 (Exhibits A1 – A27)) were entered into evidence at the hearing. Based on the documents submitted and the testimony of the following witnesses:

*Called by MassDOT:*

- James Marine, Acting District Administrative Manager, District 3;
- Barry Lorion, Highway Director, District 3;

*Called by the Appellant:*

- Anthony Pavone, Appellant;
- James Gallagher, Civil Engineer III, District 3;
- Michael Hartnett, District Construction Engineer, District 3;

and taking administrative notice of all matters filed in the case and pertinent statutes, regulations, case law and policies, and reasonable inferences from the evidence, I find the following:

*Appellant's Employment History and Request for Reclassification*

1. The Appellant has been employed by the Commonwealth since 1998, when he was first appointed as a Toll Collector for the Turnpike Authority. (Stipulated Fact)

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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 Chapter 31 or any Commission rules taking precedence.

<sup>2</sup> 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

2. Shortly after a reorganization of transportation-related agencies in 2009, the Appellant was appointed as a Plumber for MassDOT. (Stipulated Fact)
3. In 2011, the Appellant was reclassified to the title of Plumber and Steamfitter II. (Testimony of Appellant)
4. On November 25, 2018, the Appellant was promoted to the position of General Construction Inspector I (GCI I). (Stipulated Fact; Testimony of Appellant)
5. On November 25, 2019, the Appellant filed a request for reclassification with MassDOT, seeking to be reclassified to General Construction Inspector II (GCI II). (Stipulated Fact)
6. On April 16, 2020, MassDOT denied the Appellant's request for reclassification. (Stipulated Fact)
7. On May 22, 2020, HRD denied the Appellant's appeal of MassDOT's determination. This timely appeal with the Commission followed. (Stipulated Facts)

*GCI I & II Job Specifications*

8. The Classification Specifications for GC I indicate that an individual in that position “receive[s] direct supervision from General Construction Inspectors or other employees of a higher grade who provide instruction and policy guidance ...”. (Exhibit R13)
9. The Classification Specifications for GCI II indicate that an individual in that position “receive[s] general supervision from employees of a higher grade who provide procedural and policy guidance...” (Exhibit R13)

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unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion. If such an appeal is filed, this recording should be used to transcribe the hearing.

10. The Classification Specifications for GCI I describe field work and generally include inspecting materials and construction operations for conformance to rules and regulations and contract plans and specifications, conducting tests on construction materials, performing minor survey work, maintaining records of construction operations, and inspecting contractor safety procedures for conformance with current regulations. (Exhibit R13)
11. The Classification Specifications for GCI II contain a more general statement of duties which carry a greater degree of responsibility and independent decision-making. They include inspecting construction operations, but also include recommending changes to specifications or construction plans, recommending the acceptance of completed construction projects, responding to inquiries from abutters, contractors, other agencies and the general public, reporting and recording investigative and inspection activities by writing letters, reports and memoranda, recommendations for corrective action and justifications for contract proposals. (Exhibit R13)
12. GC Is exercise functional supervision over certain but not all work activities on a temporary basis over 1-5 technical personnel while GCI IIs exercise direct supervision and review the performance over 1-5 technical personnel and functional supervision over 1-5 other personnel. (Exhibit R13)
13. Applicants for GCI II must have “ ... at least (A) five years of full-time, or equivalent part-time, technical experience in the construction, inspection and/or alteration of construction projects such as highways, buildings, bridges, tunnels, sewers, waterways, dams and parks or (B) any equivalent combination of the required

experience and [educational substitutions which are not applicable here]. (Exhibit R13)

*Appellant's Job Duties and Responsibilities*

14. In his initial letter to MassDOT requesting reclassification, the Appellant stated:

“My resident engineer is Mr. James Gallagher. My job duties now include concrete sampling, asphalt inspections when grinding/paving is being done. I keep a daily log of the contractor's completed work and ensure that the work which has been logged has been completed to the contract specifications. I then enter my daily log into the field report recording all measurement, pay codes and pictures which is then reported back to Mr. Gallagher for his review and input. Together, Mr. Gallagher and I ensure that the set ups and road closures are done properly to ensure the well being and safety of the workers and the public.” (Exhibit R1)

15. In the Employee Questionnaire submitted to MassDOT, the Appellant wrote: “I am now able to provide Line and grade to the contractor and calculate pay quantities for estimates.” (Exhibit R3).

16. In the Interview Guide that the Appellant submitted to MassDOT as part of his request for reclassification, the Appellant stated that his job involves providing line and grade to the contractor(s), calculating quantities for pay estimates, entering quantities, and maintaining records. The Appellant also stated that the percentage breakdown of his duties are as follows: “On site (70%); Providing quality control data/per random numbers for samples (10%); Detail Officers (5%);” and “Field Reports (15%).” (Exhibit R4)

17. When asked as part of the Interview Guide to “... describe the major problems you face in your position. Indicate what action you take in order to resolve them”, the Appellant wrote: “When I find that the contractor is not performing items to specification, I document that information and give it to the RE.” (emphasis added) (Exhibit R4)

18. In a form submitted to MassDOT to contest the initial denial of his reclassification request, the Appellant stated that his job duties include “concrete sampling, asphalt inspections when grinding/paving is being done.” He also stated that “[He] keep[s] a daily log of the contractor’s completed work and ensure[s] that the work which has been logged has been completed to the contract specifications. [He] then enter[s] [his] daily log into the field report recoding all measurement, pay codes and pictures which is then reported back to Mr. Gallagher for his review and input.” He also stated that he and Mr. Gallagher ensure “that the set ups and road closures are done properly to ensure the well-being and safety of the workers and the public.” (Exhibit R1)
19. The Appellant’s GCI I Employee Performance Review Series (“EPRS”) Form, dated June 24, 2019 and signed by him and his supervisor, states that he performs the following duties: (1) Inspects the work of contractors to insure conformance to plans, specifications and standards of good workmanship on various phases of highway construction (e.g., excavations for foundations, pile driving, earth-work cut and fill, concrete masonry foundations, roadway substructure, surfacing and curbing, bridges, structural steel erections, concrete reinforcing, concrete finishing, painting, and erection of other structures and buildings related to highway work); (2) Gives simple lines and grades to contractors with transit and level and sets batter boards and stakes for grading; (3) Inspects and performs field tests on materials for conformance to specifications; (4) Advises contractors on work that does not conform to requirements and notifies Resident Engineer; (5) Maintains records of completed work, members of contractors work force, machine hours, labor costs, and other data required for estimates for payment; and (6) Inspects construction work on highways or other state

property to insure conformance to permit terms on work performance by public utility and other companies. (Exhibit R6)

20. In April 2019, the Appellant was assigned to work on the Route 140 / I-290 Bridge Replacement Project in Shrewsbury, MA, a \$13 million project. (Testimony of Appellant and Gallagher)

21. James Gallagher, the Appellant's supervisor, was the only person assigned to the Route 140 / I-290 project when it first began in January 2019, in part because of a staffing shortage. (Testimony of Gallagher)

22. Mr .Gallagher had asked for assistance because he was also responsible for other projects at the time. (Testimony of Gallagher)

23. When the Appellant was first assigned to this project in April 2019, he required three months of training by Mr. Gallagher, including training on how to complete the daily forms used to monitor the contractor's work. (Testimony of Gallagher)

### *Legal Standard*

G.L. c. 30, § 49 states:

“Any manager of employee of the commonwealth objection 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 of 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.”

The Appellant has the burden of proving by a preponderance of the evidence that he is improperly classified. McKinnon v. Executive Office of Health & Human Services, 30 MCSR 272-75 (2017). To do so, the Appellant must show that he is spending more than 50% of his time performing the duties of a GCI II. McKinnon at 275; see also Pellegrino

v. Department of State Police, 18 MCSR 261 (2005); Morawski v. Department of Revenue, 14 MCSR 188 (2001); Madison v. Department of Public Health, 12 MCSR 49 (1999); Kennedy v. Holyoke Community College, 11 MCSR 302 (1998).

*Analysis*

The Appellant is a dedicated public employee who has served MassDOT, or its predecessor agencies, since 1998. He is a Master Plumber who has served in various positions including Toll Collector, Plumber and, currently, GCI I. He takes his job duties seriously and appears to be a model employee who is respected by his supervisors. However, the Appellant has failed to show, by a preponderance of the evidence, that he should be reclassified from GCI I to GCI II.

First, the Appellant does not meet the minimum entrance requirements of a GCI II. Although he has a strong background in other areas, including being a Master Plumber, he has not shown that he has five years of full-time, or equivalent part-time, technical experience in the construction, inspection and/or alteration of construction projects such as highways, buildings, bridges, tunnels, sewers, waterways, dams and parks. In fact, at the time of this appeal, the Appellant had only been serving as a GCI I for just over a year. As this is the only experience that meets the above-referenced requirements, he falls significantly short of the minimum five years of relative experience that is required.

Second, the Appellant does not exercise direct supervision and review the performance over 1-5 technical personnel and functional supervision over 1-5 other personnel. The supervision requirement, standing alone, is not always an automatic bar to a successful reclassification appeal. Here, however, it is one of multiple reasons which, taken



together, show that the Appellant does not perform the duties and responsibilities of a GCI II.

Third, the Appellant's own written submissions to MassDOT show that he spends a majority of his time primarily performing the duties of a GCI I, not a GCI II. I did consider the testimony of the Appellant and his supervisors, which painted a picture of the Appellant performing the duties more consistent with a GCI II. After a careful review of the record, I gave more weight to the documentary evidence, including those written submissions signed by the Appellant and his supervisors, as opposed to testimony that appeared geared toward assisting a hard working employee with prevailing on his reclassification appeal.

Based on that documentary evidence, the primary function of the Appellant's position is to inspect the work of contractors to ensure that the work conforms to plans, specifications, and standards of good workmanship. He is also responsible for giving simple lines and grades to contractors and sets stakes for grading of the work completed by those contractors. Additionally, the Appellant's position inspects and performs field tests on materials to ensure conformance to the specifications, performs contract quantity estimates for construction projects, maintains records of completed work, and completes daily and general reports that are provided to the Resident Engineer for review. These are duties that are commonly performed by a GCI I.

The Appellant does not attend pre-bid conferences, does not work with EEO personnel on compliance, is not responsible for responding to inquiries from abutters or state agencies, does not edit reports prepared by subordinates (because he does not have and

has never had subordinates), and does not recommend the acceptance of completed construction projects. These duties are commonly performed by a GCI II.

*Conclusion*

For the reasons stated above, the Appellant's appeal under Docket No. C-20-085 is hereby *denied*.

Civil Service Commission

/s/ Christopher Bowman  
Christopher C. Bowman  
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Tivnan, and Stein, Commissioners) on November 19, 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)(I), 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:  
Timothy Rodden, Esq. (for Appellant)  
Matthias Kriegel, Esq. (for Respondent)