

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

CIVIL SERVICE COMMISSION

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

ANNE HARTNETT,
Appellant

v.

C-16-137

DEPARTMENT OF REVENUE,
Respondent

Appearance for Appellant:

Pro Se
Anne E. Hartnett

Appearance for Respondent:

Elisabeth M. Baker, Esq.
Counsel, Labor Relations
100 Cambridge Street
Boston, MA 02114

Commissioner:

Christopher C. Bowman

DECISION

On August 6, 2016, Ms. Hartnett, Anne Hartnett (Ms. Hartnett or Appellant), pursuant to G.L. c. 30, § 49, filed an appeal with the Civil Service Commission (Commission), contesting the decision of the Human Resources Division (HRD) to affirm the Department of Revenue (Department or DOR)'s denial of her request for reclassification from Tax Examiner III (TE III) to Tax Examiner IV (TE IV). A pre-hearing conference was held at the offices of the Commission on September 6, 2016 and a full hearing was

held at the same location on October 3, 2016.¹ Additional testimony was provided by conference call of the Parties on October 6, 2016. I subsequently re-opened the hearing to take additional testimony at the offices of the Commission on February 2, 2017. The full hearing was digitally recorded and both parties were provided with CDs of the hearing, one for each day.²

FINDINGS OF FACT:

I entered the following exhibits into evidence: Respondent Exhibits 1-11; 13-17; and Appellant Exhibits A-I; K-P. I also left the record open for one (1) additional exhibit, which I received and marked as Respondent Exhibit 16. Based on these exhibits, the testimony of the following witnesses:

For DOR:

- Karen Sheehan, Manager, Non-Filer Unit in the Trustee Tax Bureau of the Department of Revenue's Audit Division;
- Geralyn Page, Manager, Classification Unit Department of Revenue's Human Capital Development Group;
- Sandra Antonucci, Classification Analyst, Department of Revenue;

For Ms. Hartnett:

- Anne Hartnett, Appellant

and taking administrative notice of all matters filed in the case, and pertinent rules, statutes, regulations, case law, policies, and reasonable inferences from the credible evidence; a preponderance of credible evidence establishes the following facts:

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.

1. Ms. Hartnett is employed with DOR in the Filing Enforcement Unit of its Trustee Tax Bureau within the Audit Division, and is classified as a Tax Examiner III (TE III).
(Exhibits 4 & 14; Testimony of Sheehan)
2. Ms. Hartnett began her employment with DOR as a TE I in 1987. (Stipulated Fact)
3. In 1993, Ms. Hartnett was promoted to the title of TE II and in 1997 was promoted to the title of TE III. (Respondent's Pre-Hearing Memorandum)

Prior Appeal

4. In 2005, the Commission previously denied Ms. Hartnett's appeal of her TE III classification, in which she was seeking the title of TE IV. That prior Commission decision was based, in part, on the conclusion that: "Ms. Hartnett did not perform the level distinguishing duty of a TE IV formulated in February 2002 because she did not have authority to make accounting adjustments in excess of \$10,000. Ms. Hartnett was authorized only to make accounting adjustments from -\$1,000 to +\$1,000." (See Hartnett v. Department of Revenue, 18 MCSR 5 (2005)).
5. The prior Commission decision was upheld at multiple levels of judicial review. In upholding the Commission's decision, the Superior Court stated in part: "... she [Hartnett] had authority to make a determination for a tax liability to assess a tax in excess of \$10,000. She lacked the third criteria of being able to make accounting adjustments in excess of such amount." (emphasis added) The Court went on to say in part: "... the evidence is uncontroverted that Hartnett's co-worker [] who was also a T.E. III, was promoted to Tax Examiner IV purportedly because she met the additional criteria of having authority to make adjustments in excess of \$10,000 ... While the circumstances surrounding the reclassification of [co-worker] to a Tax

Examiner IV may appear to be unfair in light of the fact that she essentially performed the same functions as Hartnett and fortuitously discovered her authority to make tax adjustments in excess of \$10,000, these facts alone are insufficient to characterize the decision of [the hearing officer] as arbitrary and capricious.” (See Hartnett v. Civ. Serv. Comm’n, Dep’t of Revenue and Pers. Admin., Bristol Sup. Ct. No. BRCV2005-0230 (2006).

6. In upholding the Superior Court decision, the Appeals Court stated in part: “The subtle point addressed by the Superior Court judge is that, even if Hartnett had occasion (as alleged) to assist superiors in making certain adjustments as to tax liabilities in excess of \$10,000 ... that fact alone did not require a finding that she had the requisite departmental ‘authority’ to make such an adjustment.” (emphasis added) (See Harnett v. Civil Serv. Comm’n & Others, 2008 Mass. App. Unpub. LEXIS 988 (2008))

Filing of Instant Appeal

7. On September 14, 2015, Ms. Hartnett filed a request for reclassification with DOR, seeking to be reclassified from TE III to TE IV. (Stipulated Fact)
8. On May 12, 2016, DOR denied Ms. Hartnett’s request for reclassification. (Stipulated Fact)
9. On May 30, 2016, Ms. Hartnett appealed DOR’s decision to HRD. (Stipulated Fact)
10. On July 21, 2016, HRD denied Ms. Hartnett’s appeal. (Stipulated Fact)
11. On August 6, 2016, Ms. Hartnett filed the instant appeal with the Commission. (Stipulated Fact)
12. Ms. Hartnett’s 2016 appeal to the Commission stated in part:

“Years ago, I requested the reclassification. I was denied because I did not meet the level distinguishing duty of doing an accounting adjustment over ten thousand dollars. As of March 2015, I have been working a custom’s project which required me to assess tax over ten thousand dollars. My EPRS states my delegation is below that amount. In September my threshold for accounting adjustments was increased over ten thousand dollars to work taxpayer services cases. Accounting adjustments are now amended returns and I am still doing those adjustments over that threshold. I am also releasing large refunds.

I spoke to my supervisor Karen Sheehan about the discrepancy in my EPRS. She stated that I was only doing the assessments over ten thousand dollars because of the arrival of Genisys (our new computer system). I suggested that it shouldn’t matter why and that the duty should be noted on my EPRS if it is being done. She told me I could attach comments.

I may be wrong but I believe that by assessing over my designated threshold, completing adjustments over ten thousand, and amending and releasing refunds over the level distinguishing duties, I am working out of my title. I am submitting proof of my threshold levels. I am including emails that state there are no thresholds for adjustments. I am also submitting a copy of an assessment over my threshold amount.” (emphasis added) (Appellant’s Appeal Form)

The Customs Project

13. The only significant change in Ms. Hartnett’s job between the time of the prior Commission decision and the time of her current request for reclassification at issue here is that she “began working customs cases in March 2015” and that, at the time, she spent 100% of her time working on those cases. (Appellant Exhibit I; Testimony of Appellant)
14. Since Ms. Hartnett’s request for reclassification to DOR was filed on September 14, 2015, the applicable period of time to be considered as part of this appeal is March 2015 (the date Ms. Hartnett indicates that her job duties changed) to September 14, 2015, the date she filed a request for reclassification.
15. The customs cases worked by Ms. Hartnett beginning in March 2015 were part of a project by which Ms. Hartnett and another employee correspond with taxpayers

identified by U.S. Customs as having made purchases from outside the United States and who have been identified by DOR as not having paid the requisite taxes on said purchase(s) (“the Customs Project”). (Appellant Exhibit I ; Testimony of Sheehan; Testimony of Appellant)

Impact of DOR Re-Organization on Classification Appeals

16. In 2001 and 2002, the Department’s Tax Division existed as three (3) separate divisions: the Taxpayer Services Division, the Compliance Division, and the Audit Division, and the Level Distinguishing Duties (LDDs) were articulated in the same distinct manner: rather than one list for each title, there were three (3) lists, one (1) for each section, and each list reflected the LDD for each title as it applied to the respective section. (Exhibit 3; Testimony of Page)
17. Several years ago, DOR’s then-Human Resources Bureau decided to include in their preliminary denial letters all level-distinguishing duties from all of the divisions for the title sought as opposed to the prior practice of using a separate list of duties for each division. However, not performing a duty on the list does not negatively impact an appellant. This potentially helps rather than harms Ms. Hartnett as the inquiry is whether an appellant is performing TE IV duties and, if so, how often. (Testimony of Page) For example, if Ms. Hartnett performed one of the TE IV duties listed on the Taxpayer Services Division and she spent more than 50% of her time on that duty, this would warrant a reclassification to TE IV.

DOR's evaluation of Ms. Hartnett's instant classification appeal

18. Ms. Hartnett completed an Interview Guide (“the Guide”), which was signed by Ms. Hartnett on September 23, 2015 and signed by Ms. Hartnett’s supervisor, Ms. Karen Sheehan (“Ms. Sheehan”) on the same date. (Appellant Exhibit I)
19. In the Guide, Ms. Hartnett stated that the basis for her appeal is that, in part: “The classification of the Tax Examiner IV position is advanced, specialized, and technical knowledge in the examiner series” and that she believes that her “work on customs cases fits the criteria.” (Appellant Exhibit I)
20. Sandra Antonucci, a classification specialist with years of experience regarding classification appeals, interviewed Ms. Hartnett on November 18, 2015. (Testimony of Ms. Antonucci and Exhibit 13)
21. The Department concluded that Ms. Hartnett was appropriately classified and notified Ms. Hartnett of its preliminary decision to deny the appeal. (Exhibit 5)
22. As the basis for its denial, the Department informed Ms. Hartnett that it found that she “does not perform, on a regular basis, the level-distinguishing duties required for reclassification to the title requested,” and listed the duties as follows:
 - a. Confer with agency personnel, complainants, and others to obtain data and/or supportive documentation for use in making recommendations for appropriate action and preparing required reports.
 - b. Review caseloads and monitor progress of audits in order to determine resource requirements and to schedule audits.
 - c. Provide information to subordinates concerning changes in fiscal or auditing policies and procedures, etc.

- d. Exercise direct supervision over, assign work to, and review the performance of one to five professional and other staff.
- e. Conduct technical reviews of completed cases/divisional operations and conducts quality assurance review for TSD through case sampling.
- f. Assesses training needs and designs curriculum for on the job and formal training sessions and presents formal training sessions on tax law and DOR policies and procedures.
- g. Reviews new/proposed legislation and regulations and/or Public Written Statements to assess impact on operations and makes recommendations for implementation in TSD.
- h. Participates in agency-wide committees to develop forms and new programs.
- i. First-level supervisor of work unit charged with oversight of single customer service function.
- j. Reviews, approves, and/or denies abatement claims and amended returns with a delegation of up to \$25,000.
- k. Authority to make accounting adjustment in excess of \$10,000 in addition to those responsibilities assigned to a Tax Examiner III.
- l. Performs some field audits by examining books and records, but less than 50% of the time.
- m. NIA delegations – up to \$7,500 for BODA and \$25,000 for FEU.

(Exhibit 5)

23. These duties can be found in the 1987 Classification Specification and 2002 Level-Distinguishing Duties for the TE IV title. The TE IV NIA delegation is not a duty in

and of itself but rather an extension of the TE III duty “conducts complex, specialized desk audits that involve multiple audit issues,” as DOR sought to include thresholds under a then-new system, Audit Workbench (“AWB”) in order to better define the graduated expectations of different levels in the series. The NIA delegation was not used to change the Specification but rather to articulate the graduated responsibility with the implementation of Audit Workbench. This was not a change to the Specification but rather a more clear articulation of how the previously approved duty was applied when expected of a higher title, given that all duties in the series are cumulative. (Testimony of Page)

24. The Appellant submitted a rebuttal by letter dated April 19, 2016. (Exhibit 6)

25. The Appellant admits that she does not perform the following duties:

- d. Exercise direct supervision over, assign work to, and review the performance of one to five professional and other staff.
- e. Conduct technical reviews of completed cases/divisional operations and conducts quality assurance review for TSD through case sampling.
- f. Assesses training needs and designs curriculum for on the job and formal training sessions and presents formal training sessions on tax law and DOR policies and procedures.
- g. Reviews new/proposed legislation and regulations and/or Public Written Statements to assess impact on operations and makes recommendations for implementation in TSD.
- h. Participates in agency-wide committees to develop forms and new programs.

- i. First-level supervisor of work unit charged with oversight of single customer service function.
- l. Performs some field audits by examining books and records, but less than 50% of the time.

(See Exhibit 6; Testimony of Appellant)

The Appellant's Duties Prior to March 2015

26. Prior to March 2015, the Appellant was primarily responsible for business non-filer issues and her duties, consistent with her duties in or around 2001, were comprised of:

- a. Responding to inquiries from taxpayers, tax professionals and DOR personnel by reviewing records, researching issues and applying laws, rules, regulations and policies in order to provide quality customer service.
- b. Working cases in the Mirror inventory,³ reviewing documents scanned into Mirror and determining action that needs to be taken.
- c. Preparing NIAs accurately when necessary to notify taxpayers of potential assessments.

(Exhibit 14; Testimony of Sheehan, Testimony of Appellant)

27. The Appellant had an NIA delegation of up to \$10,000 and authority to perform accounting adjustments of +/- \$1,000. (Testimony of Sheehan, Testimony of Appellant)

28. The Appellant's group was not responsible for work related to amended returns or abatements. (Testimony of Sheehan, Testimony of Appellant)

29. The Appellant did not supervise. (Testimony of Sheehan; Testimony of Appellant)

³ Mirror is a program that stores scanned documents. (Testimony of Sheehan)

The Customs Project: March 2015 to Present

30. Prior to November 30, 2015, the Appellant's group utilized MassTax, the Department's legacy system, in conjunction with other platforms in order to perform their day-to-day work on the customs project. (Testimony of Sheehan)
31. Between mid-August 2015 and mid-November, 2015, the Appellant's group began regularly working "queues" as part of a separate "clean up" project ("the Clean-Up Project"), which consisted of work not typically performed by the group, in order to assist in preparing data for transition to a new system, GeniSys. (Testimony of Appellant, Testimony of Sheehan)
32. GeniSys is an integrated platform that brings "all taxes and functions into a single system" and also creates greater accessibility and autonomy for taxpayers. (Exhibit 9; Testimony of Sheehan)
33. Everyone in the Appellant's group assisted with these efforts, regardless of title, and overtime to do so was available to everyone. (Testimony of Sheehan)
34. Because the Clean-Up Project was not work typically performed by the Appellant's group, they did not have the proper permissions to handle refunds and offsets in MassTax. (Testimony of Sheehan)
35. In order to acquire the permissions, Ms. Sheehan had to request a change to the security levels for the employees, which included the Appellant and two (2) Tax Examiner IIs who came from another unit to assist. (Testimony of Sheehan, Testimony of Appellant)
36. This request resulted in an unavoidable change to another technical aspect: the system would no longer stop these employees from performing accounting adjustments in

excess of what they were actually permitted and/or asked to perform. (Testimony of Sheehan)

37. The security level changes made in MassTax for the Clean-Up Project were not reverted back to the prior settings after the rollout of GeniSys because the group would no longer be using MassTax. (Testimony of Sheehan)

38. No one thought to revert the increased security levels for everyone in the unit because the unit's work would be performed in GeniSys from that time forward. (Testimony of Ms. Sheehan)

39. Another employee working on the Customs Project did not participate in the Clean-Up Project and therefore did not have an increased security level. (Testimony of Ms. Sheehan)

40. As of the date of the hearing before the Commission, the Appellant's security level in MassTax remained at the higher level due to an oversight. (Testimony of Ms. Sheehan)

41. At the time of the hearing, no new Customs work was being assigned as the Department is preparing the transition of that work to GeniSys. (Testimony of Appellant)

The Customs Project and Accounting Adjustments

42. As part of the work in the Customs Project, the separate "Data Integration Bureau" ("DIB") would occasionally mistype a return, which would result in a typographical error needing rectification to "reduce the tax by the amount of the interest."

(Testimony of Appellant)

43. Accounting adjustments were not part of the Customs Project but there were “not a lot but a few” errors needing the rectifications referenced above those actions would be recognized by Masstax as an accounting adjustment or “775 transaction.”
(Testimony of Ms. Sheehan)
44. These rectifications, or accounting adjustments, would not be greater than \$10,000.
(Testimony of Sheehan)
45. If the Appellant needed a higher-level approver to perform an adjustment in MassTax greater than her +/- \$1,000 authority, Ms. Sheehan expected that Ms. Hartnett would go to her and/or to the TE IV in the group. (Testimony of Sheehan)
46. The Appellant testified that since mid-August 2015, she had performed accounting adjustments in excess of \$10,000 to correct DIB errors and that Ms. Sheehan gave her permission to perform accounting adjustments in excess of \$10,000 on her Customs cases. (Testimony of Appellant)
47. Ms. Sheehan denied that any such permission was given. Ms. Sheehan testified that, had the Appellant tried to perform a MassTax accounting adjustment in excess of \$10,000 after the Clean-Up Project, “it would have worked” but that she never gave the Appellant permission to do so, and that it was “not even a subject.” I credit her testimony.
48. The Appellant testified that she had made three (3) adjustments over \$10,000 since mid-August 2015 that “she can remember right off the bat.” In later testimony, the Appellant stated that there were more than three (3), in fact “quite a bit,” and ultimately testified that there were more than twenty (20) such adjustments.
(Testimony of Appellant)

49. There is no document or independent testimony to corroborate that the Appellant was given permission to perform *accounting adjustments* greater than \$10,000 or that she performed any such adjustment, authorized or otherwise.

The Customs Project and NIAs

50. Unlike the NIAs issued by the Appellant in her day-to-day work prior to the Project, which required a tax examiner to determine the underlying value included in the NIA amount, the amount on Customs NIAs is determined from the purchase value reported to DOR by U.S. Customs. (Testimony of Sheehan, Testimony of Appellant)

51. As a result, ISO, a technical group with no tax qualifications, issued the NIAs for the Customs Project regardless of the amount. (Testimony of Sheehan)

52. Every so often an NIA would “kick out” and the Appellant or her co-worker would have to issue the NIA manually (Testimony of Sheehan)

53. At some point around August 2015, ISO became occupied with preparation for GeniSys and no longer issued NIAs for the Customs Project. Instead, the Appellant and the other employee on the Customs Project issued the NIAs manually, but the value of the item(s) was still taken directly from the value provided by U.S. Customs. (Testimony of Sheehan, Testimony of Appellant)

54. The Appellant has issued four (4) NIAs over \$10,000 through the Customs Project, since ISO stopped automating the NIAs. (Testimony of Sheehan)

55. One of these, with penalty and interest, was over one (1) million dollars; however, this was an atypically high NIA value. Ms. Sheehan was aware of this NIA and was the individual who ultimately sent the NIA to bill. (Exhibit 10; Testimony of Sheehan)

56. Most NIAs are under \$1,000. (Testimony of Sheehan)
57. As part of the Customs Project, taxpayers may request a waiver of penalty; however, the Appellant does not have the authority to waive a penalty and it must be done by her supervisor. (Testimony of Sheehan)
58. The Customs Project work has been winding down and the Appellant had returned to doing duties consistent with the rest of the group just prior to the date of full hearing. (Testimony of Sheehan; Testimony of Appellant)
59. Although it was anticipated that the customs cases would again need attention after the rollout of GeniSys for personal income tax types in December 2016, Ms. Sheehan did not know if or how GeniSys would affect the work; however, the Appellant will no longer perform the duties in MassTax. (Testimony of Sheehan)

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. Hartnett must show that she is improperly classified and to do so, she must show she performs the distinguishing duties of the TE IV 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

Ms. Hartnett relies on a voluntary Customs Project and, in part, on duties performed as part of a temporary overtime project to argue that she should be classified as a TE IV. This is not the first time the Commission has been faced with the less straightforward consideration of project-based work and voluntary participation. In 2005, the University of Massachusetts, Amherst (“UMass”) instituted a pilot program to explore the functionality and potential utility of a Tree Crew. Caragulian v. University of Massachusetts, Amherst, 18 MCSR 207 (2005). UMass solicited volunteers and selected two (2) individuals, one of whom ultimately appealed his classification based on the work he performed during that time and the expertise he contributed as a certified Arborist, which was beyond his official title of “Skilled Laborer” and upon which UMass relied to qualify for a grant to support the project. *Id.* The Commission found, however, that in addition to not performing the duties of the title sought, “Tree Climber,” more than 51% of the time, it was significant that the “Tree Crew [was] still not a permanent program” by the date of the hearing.

Although the titles of Tree Climber and Tax Examiner are different, the nontraditional, voluntary and temporary nature of Ms. Hartnett’s roles are common characteristics. The Clean-Up Project was temporary and voluntary, as Ms. Hartnett performed these duties only in her “down time” and when electing to come in on the weekends. The Customs Project was also voluntary. However, even if the work

performed by Ms. Hartnett on the Customs Project is considered, it does not warrant a reclassification to TE IV.

The Department included every TE IV duty for consideration in Ms. Hartnett's appeal in an effort to give Ms. Hartnett greater opportunity to show she performs the duties of the TE IV title a majority of the time.

Ms. Hartnett admits that she does not perform the following seven (7) duties: exercise direct supervision over, assign work to, and review the performance of one to five professional and other staff; conduct technical reviews of completed cases/divisional operations and conducts quality assurance review for TSD through case sampling; assesses training needs and designs curriculum for on the job and formal training sessions and presents formal training sessions on tax law and DOR policies and procedures; reviews new/proposed legislation and regulations and/or Public Written Statements to assess impact on operations and makes recommendations for implementation in TSD; participates in agency-wide committees to develop forms and new programs; first-level supervisor of work unit charged with oversight of single customer service function; and performs some field audits by examining books and records, but less than 50% of the time.

That leaves six (6) remaining duties: confer with agency personnel, complainants, and others to obtain data and/or supportive documentation for use in making recommendations for appropriate action and preparing required reports; review caseloads and monitor progress of audits in order to determine resource requirements and to schedule audits; provide information to subordinates concerning changes in fiscal or auditing policies and procedures, etc.; review, approve, and/or deny abatement claims

and amended returns with a delegation of up to \$25,000; authority to make accounting adjustment in excess of \$10,000 in addition to those responsibilities assigned to a Tax Examiner III; and conducts complex, specialized desk audits that involve multiple audit issues with an NIA delegation of up to \$25,000 for FEU, or the “Filing Enforcement Unit.”

Ms. Hartnett stated that she does confer with agency personnel, complainants, and others to obtain data and/or supportive documentation for use in making recommendations for appropriate action and preparing required reports; however, as Ms. Page noted, the duty is practically identical to duties performed by lower levels in the series, without taking the supervisory context into account. However, even had Ms. Hartnett proved that she performs this duty as contemplated by the Specification, she has not provided any information to suggest what percent of the time, if any, that she performs it.

Ms. Hartnett testified that she reviews caseloads and monitors progress of audits in order to determine resource requirements and to schedule audits, as she monitors her own caseload; however, I do not find this argument to be persuasive nor did the Commission find that Ms. Harnett performed this duty at the time of her last appeal. See Harnett v. Dept. of Revenue, 18 MCSR 5 (2005). The language of the duty on its face speaks to reviewing caseloads, indicating multiple caseloads, as well as decisions on scheduling and resource allocations, which is consistent with a supervisory function rather than managing one’s own work. I do not find that Ms. Hartnett performs this function.

Ms. Hartnett testified that she provides information to subordinates concerning changes in fiscal or auditing policies and procedures, etc. because she compiled a

“GeniSys Manual” with a coworker in her group. The testimony of Ms. Sheehan and Ms. Page, however, illustrated that the manual consisted of compiling printouts from trainings held by others and that it was a group effort. Further, there is nothing to suggest that the “Manual” was created for subordinates, as Ms. Hartnett does not have subordinates. This one-time occasion which, although surely appreciated, was not asked for or required, nor was it provided to subordinates. Ms. Hartnett does not perform this duty.

Review, Approve, and/or Deny Abatement Claims and Amended Returns with a Delegation of up to \$25,000

Ms. Hartnett did not perform this duty prior to mid-August 2015 as part of the Customs Project. Ms. Hartnett does contend, however, that she worked amended returns as part of the Clean-Up Project, which her supervisor denies. The record does not reflect information to corroborate Ms. Hartnett’s assertion. Yet, as discussed, the Clean-Up Project is not relevant to Ms. Hartnett’s appeal, as this work was temporary, sporadic, and voluntary. This project lasted no longer than three (3) months, and was clearly not part of her regular duties, as Ms. Hartnett worked on the project either in her “down time” or on Saturdays, a day on which she did not typically work.

Authority to Make Accounting Adjustment in Excess of \$10,000 in Addition to Those Responsibilities Assigned to a Tax Examiner III

Ms. Hartnett did not have technical or actual authority to perform accounting adjustments in excess of \$1,000 prior to mid-August 2015. It is the mid-August 2015 change to the group’s security level in order to facilitate the Clean-Up Project that removed the “lock” on those employees’ ability to perform accounting adjustments in excess of their respective thresholds. Ms. Hartnett’s supervisor readily admits that lock was removed and that, because the rest of the group transitioned to GeniSys, there was an

oversight in failing to remove the higher security level for Ms. Hartnett when she no longer needed it to assist with the Clean-Up Project. Ms. Hartnett's supervisor denies, however, that Ms. Hartnett was ever given actual authority to perform accounting adjustments over her \$1,000 threshold. I credit her testimony.

All witnesses testified that an accounting adjustment is a "change to a taxpayer's tax liability." Further, in Italiano v. Department of Revenue, 18 MCSR 367 (2005), a classification appeal in which a TE III was seeking to be reclassified as a TE IV, the Commission concluded:

"Ms. Italiano argues that she had the authority to make accounting adjustments greater than \$10,000 because she issued NIAs and NOAs in excess of that amount. This argument is not valid. Karen Sheehan and GERALYN PAGE provided credible testimony explaining the difference between issuing an NIA or NOA on the one hand, and making an accounting adjustment on the other. As Ms. Sheehan explained, issuing NIAs and NOAs involves assessing a tax liability against a taxpayer. That differs from adjusting a tax liability – upwards or downwards – after the liability has been assessed."
(emphasis added)

Also of question is whether a refund is considered an accounting adjustment; however, where the threshold associated with amended returns or "refunds," \$25,000, and a separate and distinct threshold for accounting adjustments, \$10,000, exist within the level-distinguishing duties for the same title, TE IV, they cannot logically be the same thing.

Ms. Hartnett testified that she performs accounting adjustments when she adjusts the interest down following an error by DIB. Ms. Sheehan testified that accounting adjustments are "775 transactions" in MassTax and agreed that adjusting the interest down based on an error by DIB would qualify as a 775 transaction. Ms. Hartnett testified

that there were three (3) that she could recall but ultimately averring that she performed more than twenty (20) accounting adjustments over \$10,000 since mid-August 2015. DOR denies any such adjustments occurred and Ms. Hartnett did not provide documentation to substantiate this claim.

After reviewing all of the relevant testimony and other evidence, I have concluded that Ms. Hartnett was not given permission to perform accounting adjustments in excess of \$10,000 as part of the Customs Project nor did she make any bona fide accounting adjustments over \$10,000.

Conducts Complex, Specialized Desk Audits that Involve Multiple Audit Issues with an NIA Delegation of Up to \$25,000 for FEU

Absent the \$25,000 NIA delegation, this duty is a TE III duty. Thus, even should I find that the Customs Project requires conducting complex, specialized desk audits that involve multiple audit issues, this duty falls squarely under Ms. Hartnett's expected duties as a TE III.

Ms. Hartnett highlighted an NIA in the amount of over 1 million dollars. Although this is an impressive amount, the record reflects that this NIA is in no way indicative of the NIAs typically issued by Ms. Hartnett. Further, this NIA was not completed by Ms. Hartnett in a vacuum, but rather after much deliberation with her supervisor and her supervisor is the individual responsible for actually sending it to bill after the NIA was issued.

The record reflects that from the time ISO stopped issuing the NIAs, Ms. Hartnett has only issued four (4) NIAs over her TE III threshold of \$10,000, one of which was the aforementioned 1-million-dollar NIA. Yet even of these four (4) NIAs, Ms. Hartnett's authority stems from the very important fact that unlike NIAs issued in her day-to-day

work, Ms. Hartnett does not determine the underlying value of the item but rather receives the value from U.S. Customs. In fact, prior to August 2015, ISO, a technical group with no requirement of tax knowledge, created these NIAs from the same Customs information.

Thus, Ms. Hartnett's ability to issue NIAs over her TE III \$10,000 threshold for NIAs related to the Customs Project is not indicative of the trust and responsibility contemplated by the TE IV LDD, but rather a clerical function formerly performed by non-TE staff. Further, even should the Commission find otherwise, the four (4) NIAs over \$10,000 issued by Ms. Hartnett in the last year constitute a negligible amount of time spent on this "duty."

For all of the above reasons, Ms. Hartnett has not shown that she performs the duties of a TE IV more than fifty percent of the time. Accordingly, for all of the above stated reasons, the appeal under Docket No. C-16-137 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, Stein and Tivnan, Commissioners) on October 26, 2017.

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:

Anne Hartnett (Appellant)

Elisabeth M. Baker, Esq. (for Appointing Authority)

John Marra, Esq. (HRD)