

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

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

WILLIAM MURRAY,
Appellant

v.

C-17-165

DEPARTMENT OF CORRECTION,
Respondent

Appearance for Appellant:

William Murray
Pro se

Joseph Santoro
Department of Correction
Labor Relations Advisor
Industries Drive, P.O. Box 946
Norfolk, MA 02056

Commissioner:

Cynthia A. Ittleman

DECISION

William Murray (Mr. Murray or Appellant) filed the instant appeal at the Civil Service Commission (Commission) on August 23, 2017, under G.L. c. 30, s. 49, challenging the decision of the state’s Human Resources Division (HRD) and the state Department of Correction (DOC or Respondent) to deny his request for reclassification from Correctional Program Officer (CPO)-C to CPO-D. A prehearing conference was held in this regard on September 26, 2017 at the offices of the Commission. On October 26, 2017, the DOC filed a Motion to Dismiss (Motion) the appeal. On November 27, 2017, the Appellant filed an opposition to the Motion. On March 1, 2018, the Commission denied the Motion (“at this time”) and a full hearing was scheduled to take place on May 18, 2018. Subsequently, however, the Appellant requested, and the DOC

agreed, that the case shall be decided on the papers to be submitted by both parties instead of having a full hearing.¹ The parties submitted numerous documents in support of their respective positions. For the reasons stated herein, the appeal is denied.

FINDINGS OF FACT

Based on the fourteen (14) Exhibits submitted by the DOC, thirteen (13)² Exhibits submitted by HRD, and the many³ documents submitted by the Appellant, and taking administrative notice of all matters filed in the case, as well as pertinent statutes, case law, rules, regulations, policies, and reasonable inferences from the evidence, a preponderance of evidence establishes the following facts:

1. The Appellant was hired by the DOC approximately twenty (20) years prior to his request for reclassification in 2016. (Stipulation)
2. At the time that the Appellant requested reclassification, his classification was CPO-C, a title he had held for approximately seven (7) years) and the Appellant worked at Mass. Correctional Institution Cedar Junction (MCI Cedar Junction). (Stipulation; R.Ex. 4))
3. On October 10, 2016, the Appellant submitted a request to be reclassified to CPO-D. (Stipulation)
4. At the request of the DOC, on December 6, 2016 the Appellant prepared and submitted an Audit Interview Guide (the Guide) to the DOC, stating, in part,

¹ The Standard Adjudicatory Rules of Practice and Procedures, 810 CMR §§ 1.00, *et seq.*, apply to adjudications before the Commission, with G.L. Chapter 31, or any Commission rules, taking precedence.

² The DOC also submitted a Prehearing Memorandum, a Motion to Dismiss and an Amended Motion to Dismiss (May 14, 2018)(Amended Motion)(adding that the case should be dismissed because there was an eligible list from which a CPO-D may be selected but that the Appellant was not reached). There is no ruling in the file on the Amended Motion but it is denied in conjunction with this decision. In addition, the DOC filed a hearing memorandum and exhibit list.

³ By U.S. mail, the Appellant submitted a list of 26 documents and the cited documents except that at least numbers 15, 16 and 26 appear to be missing. The Appellant submitted additional documents through many email messages, which documents are unnumbered, some of which appear to be duplicates. I have confirmed to the DOC and the Appellant receipt of whatever documents I received from the *pro se* Appellant by email. The DOC objected to at least some of the documents that the Appellant submitted by email because of the handwriting on them of unknown origin. The handwriting on such documents has been given no weight since their origin is unknown.

“[i]n the absence of a CPO D in the CHRI Unit that historically has had one ... I have assumed all the duties of a CPO D, in addition to the historical duties of a CPO C.”

he supervises five (5) CPO-A/Bs;

in April 2016, the Appellant again states that he assumed the CPO-D responsibilities because of the departure of the CPO-D, including processing speedy trial papers;

the specific duties he performs include:

1. Supervision of CHRI
 2. Court Trips/legal issues
 3. DNA
 4. IAD⁴
 5. Monitor staff work from distribution pile
 6. OV⁵ Reviews for sex offenses
 7. Average 131 OV reviews per month
 8. Sex offender Liaison - interact with [Sex Offender Registry Board] to give inmates paperwork from SORB
 9. SO unit liaison - interact with Sex offender unit concerning IMS⁶
Screens send inmate fingerprints when requested
 10. New men screening for sex offenses daily
 11. Parole violate sex offense screening (former records duty assigned to me)
 12. Register sex offenders (records aspect assigned earlier this year ...)
 13. Transfer checks
 14. Statistics – monitor and maintain a monthly statistical spread sheet of productivity.
 15. Sign and approve time when Director [G] not here.
- (R.Ex. 5)

5. On April 27, 2017, the DOC Director of Personnel, Carol Thomas, signed her analysis, recommending that the Appellant’s reclassification be denied, which was accepted by then-Commissioner Turco on May 9, 2017. Director Thomas reviewed the Appellant’s Guide, the Form 30 for a CPO-C, the Appellant’s EPRS, the pertinent organizational

⁴ IAD appears to refer to Interstate Agreement on Detainers, involving agreements between states who have custody of an inmate wanted in another state. *See, e.g.,* https://doc.dc.gov/sites/default/files/dc/sites/doc/publication/attachments/DOC_PS_4356_1C_Interstate_Agreements_on_Detainers.pdf (February 20, 2020).

⁵ There is no information in the record indicating the meaning of “OV”.

⁶ I infer that IMS is the unit’s Information Management System.

chart and the Specification Series (Spec) for the CPO title. She found that the Appellant is appropriately classified because:

- a. many of the functions the Appellant indicated that he performs are common to all of the CPO positions in the Series;
 - b. although the Appellant is the Criminal History Record Information (CHRI) Sex Offender Coordinator in his office, the “overall duties and responsibilities of a CPO-D are not consistent with what Mr. Murray is performing”;
 - c. the Commitment Manager who supervises Mr. Murray is also responsible for all aspects relating to inmate legal issues and sex offender matters;
 - d. “the basic purpose of Mr. Murray’s work is to be responsible for tracking the receipts of Habeas by departmental personnel, identifying and processing sex offender information” in accord with existing statutes and DOC policies, and “inputting and monitoring legal issues in IMS”, not for “coaching and developing others by identifying development needs of others and coaching or otherwise helping others to improve their knowledge or skills.” (R.Ex. 4)
6. On May 19, 2017, the DOC denied the Appellant’s request for reclassification.
(Stipulation)
7. On June 2, 2017, the Appellant appealed the DOC’s denial of his reclassification request.
(Stipulation)
8. On August 17, 2017, HRD affirmed the DOC’s denial of the Appellant’s request for reclassification. (Stipulation)
9. On August 23, 2017, the Appellant timely filed an appeal at the Commission.
(Stipulation)
10. On September 19, 2017, the Appellant resigned, retiring from DOC. (R.Ex. 14)

CPO Series Classification Specification (Spec)

11. The 2007 CPO Spec describes the work performed at all levels in this Series, in part, as follows:

Based on assignment, employees ... provide non-therapeutic counseling, rehabilitation, or custodial care and treatment to inmates; ... interview inmates;

obtain inmate criminal histories through correspondence with other Law Enforcement agencies such as the Criminal Justice Information System and the FBI, from institution and court records, collect and analyze assessment information; counsel inmates on programming and placement recommendations ...; and describe, explain, or answer inquiries regarding institutional rules, regulations, policies, procedures, programming, custody levels, classification and institutional placement. Employees in this series shall perform Re-Entry duties: obtaining information and completing all required data entry on IMS relevant to inmate work history, programming, treatment, education, community resources and successful release; transport all released inmates to regional re-entry sites; ...; upon release, will identify those individuals who are required to register as Sex Offenders ... As a liaison to the Parole Board, employees will attend Parole hearings, provide inmate criminal history and will provide a summary of evaluative information to the Parole Board”
(R.Ex. 11)

12. The “competencies” required at the CPO-C level and above are critical thinking, deductive reasoning, inductive reasoning, resolving conflict and negotiating with others.

(R.Ex. 11)

13. The “competencies” required at the CPO-D level are complex skills and processes in law, government and jurisprudence and making decisions and solving problems and supervisory, staff development and consulting skills. In addition, CPO-Ds are required to have the following “competencies”: “Identifying developmental needs of others and coaching or otherwise helping others to improve their knowledge or skills, coordinating members of a work group to accomplish tasks”; “encouraging and building trust, respect, cooperation among team members; and providing guidance and direction to subordinates, including setting performance standards and monitoring subordinates.” (R.Ex. 11)

14. The required work experience for a CPO-C is four (4) years of experience in counseling, guidance, criminal justice or social work that included counseling and/or rehabilitation of criminal offenders, inmates, or prisoners and one (1) year of experience in counseling and/or rehabilitation of criminal offenders, inmates, or prisoners with certain education

substitutions. CPO-D candidates are required to have five (5) years of such experience, and two (2) years of experience counseling and/or rehabilitation of criminal offenders, inmates or prisoners with certain education substitutions. (R.Ex. 11) There appears to be no dispute that the Appellant has the requisite work experience for both the CPO-C and CPO-D positions. (Administrative Notice)

Form 30 Job Descriptions

15. The Form 30 job descriptions of CPO-Cs and CPO-Ds are similar. Their few differences include:

CPO-Cs are supervised by a CPO-D and/or Director of Classification whereas a CPO-D is supervised by the Director of Classification and/or Deputy Superintendent;

Of the ten (10) duties and responsibilities in each, the only differences between the duties for a CPO-C and a CPO-D are in duties 7 and 9. Duty 7 for a CPO-C provides, “[s]erve as member/chairperson of inmate Classification and Disciplinary Boards as needed.” Duty 7 for a CPO-D provides, “Act as chairperson of classification Boards and ensure quality control of classification reports.” Duty 9 for a CPO-C provides, “[p]erform administrative functions including assigning caseloads, maintaining accurate records and generating various reports. Duty 9 for a CPO-D provides, “[o]versees and coordinates counseling activities to ensure effective operations and compliance with establishes (sic) standards.”

Minimum entrance requirements for both CPO-C and CPO-D are four (4) years of experience but a CPO-C is required to have one (1) year of experience counseling and/or rehabilitation of inmates but the CPO-D is required to have two (2) years counseling and/or rehabilitation, in addition to one (1) year as a supervisor.

(R.Exs. 9 and 10)

Employee Personal Evaluations (EPRS)

16. The Appellant received “meets” or “exceeds” ratings in his 2015-2016 EPRS as a CPO-

C. His duties are listed as:

1. Verifies informational sources that reflect inmate legal issues:

1. Initiates contacts with prosecution confirming the accuracy of identified legal issues
2. Utilizes the CJIS network to affirm rendition statuses
3. Tracks the receipts of Habeas by department personnel
4. Utilizes CJIS information to identify legal issues to include ... outstanding and resolved charges, probation matters, fines, CORI, immigration issues and restraining orders
5. Ensures that all relevant legal issues are entered into IMS
2. Serves as the CHRI Coordinator
 1. Identifies those inmates who are sex offenders ...
 2. Acts as liaison to the [SORB]
 3. Identifies and processes sex offender information in accordance with existing statutes and DOC policies
 4. Reviews and screens inmate official versions for sexual content.
 5. Enters current official version inmate IMS when applicable
3. Serves as a departmental liaison with institution and court personnel ...
 1. Provides technical assistance to institutional and court personnel
 2. Keeps institutional personnel abreast of information changes in legal issues
 3. Inputs and monitors legal issues in IMS
 4. Possess the ability to follow oral and written instructions
4. Adheres to the rules and regulations of CORI
 1. Exercises discretion in dealing with confidential information
 2. Ability to deal tactfully with others
 3. Ability to communicate effectively in oral expression
5. Screens all inmates prior to placement to a minimum facility.
 1. Utilizes CJIS information to identify legal issues to include ... outstanding and resolved charges, probation matters, fines, CORI, immigration issues and restraining orders ...
 2. Reviews all relevant information to ensure placement in a minimum facility is appropriate.
6. Provides supervision of the CPO A/B's (sic) in the [CHRI]
7. Other duties as assigned
(R.Ex. 7)

17. On the Appellant's 2015-2016 EPRS, his supervisor, Mr. G (CPO-D), wrote on his annual review: "Bill has really come a long way as a supervisor in the CHRI Unit. With the absence of a CPO-D, Bill has stepped up to the plate taking on more roles and helping out whenever needed." (R.Ex. 7)

18. On August 3, 2016, the Appellant wrote to his superior asking if he has “been stripped of [his] supervision duties.” His superior replied, “No you are still supervising the CHRI Unit.” (A.Ex. August 3 and 4, 2016 email)
19. An EPRS (with ratings and any written comments redacted) for Mr. G, who was a CPO-D and supervised the Appellant for some period of time, shows that Mr. G had the following duties:
1. serves as Chairman on Classification hearings
 2. supervise and train CPO-A/B and CPO-C staff assigned to Unit Team
 3. Institution Transfer Coordinator
 4. perform duties of Emergency Escorted Releases Coordinator
 5. prepare performance evaluations of CPO-C and CPO-A/B (subordinate staff)
 6. supervisor for reentry CPO
 7. prepare statistical reports for administrative (sic) review and use (Classification Hearing Statistics, SMU Admission Statistics, Furlough Quarterly Report) (A.Ex. 17)⁷

Applicable Law

Under G.L. c. 30, s. 49, any state manager of state employee may seek to have their titles reclassified under appropriate circumstances. Specifically, this statute provides,

Any manager or an employee of the commonwealth objecting to any provision of the classification affecting the manager or employee's office or position may appeal in writing to the personnel administrator. If the administrator finds that the office or position of the person appealing warrants a different position reallocation or that the class in which said position is classified should be reallocated to a higher job group, he shall report such recommendation to the budget director and the house and senate committees on ways and means in accordance with paragraph (4) of section forty-five. 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. If said commission finds that the office or position of the person appealing warrants a different position reallocation or that the class in which said position is classified should be reallocated to a higher job group, it shall report such recommendation to the budget director and the house and senate committees on ways and means in accordance with paragraph (4) of section forty-five. If the personnel administrator or the civil service commission finds that the office or

⁷ Another CPO-D whose EPRS (with ratings and any written comments were redacted) was included in the record here shows the same duties as Mr. G except there is one (1) less duty and it includes a duty, in part, to be Supervisor of Specialized Units.

position of the person appealing shall warrant a different position allocation or that the class in which said position is classified shall be reallocated to a higher job group and so recommends to the budget director and the house and senate committees on ways and means in accordance with the provisions of this section, and if such permanent allocation or reallocation shall have been included in a schedule of permanent offices and positions approved by the house and senate committees on ways and means, such permanent allocation or reallocation shall be effective as of the date of appeal to the personnel administrator....

Id.

A history of Commission decisions has established that in an appeal of the denial of a request for reclassification, the Appellant must prove, by a preponderance of evidence, that they perform the functions of the reclassification they seek a majority of the time. *See, e.g., Roman v. Department of Revenue*, 14 MCSR 184 (2001)(Counsel II – appeal denied); *Gruber v. Department of Revenue*, 14 MCSR 100 (2001)(Attorney – appeal denied); *Formichella v. Massachusetts Highway Department*, 21 MCSR 261 (2008)(Engineer – appeal denied); *Straub v. Department of Conservation and Recreation*, 22 MCSR 689 (2009)(Environmental Analyst III – appeal denied) *aff'd*, *Straub v. Civil Service Commission & another*, Superior Court C.A. No. SUCV2010-04143 (2013); *Kurker v. Department of Conservation and Recreation*, 22 MCSR 357 (2009)(Ranger II – appeal allowed); *Guidmond v. Department of Correction*, 27 MCSR 327 (2014)(Correction Program Officer – appeal denied); *Messier v. Department of Correction*, 13 MCSR 204 (2000)(Clerk III – appeal denied); *Lefebvre v. Department of Early Education and Care*, 22 MCSR 149 (2009)(Administrative Assistant II – appeal allowed); *McCollum v. Department of Environmental Protection*, 15 MCSR 23 (2002)(Environmental Engineer VI – appeal denied); *Towns v. Department of Mental Retardation*, 21 MCSR 17 (2008)(Vocational Instructor C – appeal denied); *Palmieri v. Department of Revenue*, 26 MCSR 180 (2013)(Management Analyst II – appeal denied); *Skinner v. Department of Revenue*, 21 MCSR 379 (2008)(Systems Analyst II – appeal denied); *O’Neill v. Department of Revenue*, 19 MCSR

149 (2006)(Tax Auditor I – appeal denied); Erb v. Department of Revenue, 18 MSCSR 202 29 (2005)(Program Coordinator III – appeal denied); Cote v. Department of Revenue, 18 MCSR 189 (2005)(Tax Examiner III – appeal denied); Velez v. Department of Revenue, 14 MCSR 93 (2001)(Child Support Enforcement Worker – appeal denied); Kasprzak v. Department of Revenue, 13 MCSR 120 (2000)(Child Support Enforcement worker – appeal denied); Guidara v. Department of Transitional Assistance, 24 MCSR 133 (2011)(EDP Systems Analyst III – appeal allowed); Baddeley v. Bristol Community College, 12 MCSR 103 (1999)(Clerk – appeal denied); Guarente v. University of Massachusetts at Lowell, 27 MCSR 102 (2014)(Clerk IV – appeal denied); Kimball v. Metropolitan District Commission, 12 MCSR 155 (1999)(Park Foreman – appeal allowed) and Straub v. Civil Service Commission & another, Superior Court, C.A. No. SUCV2010-04143 (2013).

Analysis

The Appellant has not proved by a preponderance of the evidence that he performed the functions of a CPO-D a majority of the time before he resigned from the DOC. The Appellant's main contention is that there is no CPO-D left in his Unit and, as a result, he performs the functions of a CPO-D (in addition to his functions as a CPO-C). In addition, the Appellant asserts that he performed each of a number of CPO-D functions 100% of the time. Clearly, someone cannot perform each of a number of duties simultaneously 100% of the time.

The Appellant submitted a number of documents that he asserts support his contentions. As indicated above, a couple of the Appellant's submitted documents are statements indicating that the Appellant has improved as a supervisor and concurs that he retains his supervisor duties. However, the Spec indicates that supervision of CPO-A/Bs is part of the job of a CPO-C. In addition, a number of the other documents that the Appellant submitted here are documents that

he wrote, which do not provide objective proof that the Appellant performs the function of a CPO-D a majority of the time and/or they refer to documents not in the record.

In his Interview Guide, the Appellant listed fifteen (15) tasks that he performed, five (5) of which he asserted are the duties of a CPO-D (tasks 2, 3, 4, 14 and 15). However, the Appellant did not indicate how those few functions qualify as the tasks of a CPO-D, nor did he prove that he performs them most of the time. In addition, in his Interview Guide and other documents he submitted, the Appellant refers to various duties in his EPRS as “level distinguishing duties” when it is the level distinguishing duties between the various levels of the Spec that determine their distinctions. In fact, the Spec indicates that a CPO-D is required to have certain “competencies”, including Complex Skills and Processes and Supervisory, Staff Development and Consulting Skills. While it is clear that the Appellant supervised a number of CPO A/Bs, as required of a CPO-C like himself, there is no indication in the record, for example, that he helped identify staff development needs and trained them. There is also no indication in the record that the Appellant is authorized and/or required to prepare EPRSs for the CPO-A/Bs he supervises, which is a requirement for a CPO-D. There is also no indication in the record that the Appellant performed the complex skills and processes or consulting required of a CPO-D. Moreover, even comparing the Appellant’s EPRS to the EPRS of a CPO-D who had supervised him shows that the two had different sets of duties, although their Form 30 job descriptions appear to be similar.

Even if the Appellant had established by a preponderance of the evidence that he had performed the duties of a CPO-D a majority of the time prior to his resignation, it is highly unlikely that there would be a financial remedy. Specifically, G.L. c. 30, s. 57 provides,

The decision of the civil service commission shall be final and binding on all agents and agencies of the commonwealth; provided, however, that any such decision may have retroactive effect pursuant to the applicable provisions of section forty-nine and also pursuant to rules made under the provisions of section fifty-three; and, provided further, that *no such decision shall require any payment to be made as of any date before the beginning of the fiscal year in which such decision shall be rendered*, except to the extent such payment is permitted pursuant to the provisions of said section forty-nine and subject to appropriation for the purposes thereof. *If such decision shall require the payment of money to any employee of the commonwealth, the civil service commission shall notify the appointing authority, the personnel administrator, the budget director, and the comptroller of the amount or amounts thereof, and such amount or amounts shall be paid from available appropriations if in accordance with law.*

Id. As a result, even if the Commission allowing this appeal was warranted, which it is not, a retroactive payment is unlikely and it is unlikely that funding therefor would be available.

Moreover, the statute requires the recipient of such payment to be an employee and the Appellant retired from the DOC in 2017.

While this decision finds that the Appellant did not perform the duties of a CPO-D a majority of the time, it should not be read to undermine the important, difficult and professional work that the Appellant performed as a CPO-C and in his prior titles during his significant tenure at the DOC.

Conclusion

Accordingly, for the above stated reasons, the discipline appeal of Mr. Murray, Docket No. C-17-165, is hereby denied.

Civil Service Commission

/s/Cynthia A. Ittleman

Cynthia A. Ittleman, Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on March 12, 2020.

Either party may file a motion for reconsideration within ten days of the receipt of the Commission's 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 the decision or a significant factor the Agency or the Presiding Officer may have

overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the Commission's 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).

William Murray (Appellant)
Joseph Santoro (for Respondent)
Michele Heffernan, Esq. (HRD)