

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

CIVIL SERVICE COMMISSION

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

MARY ELLEN SCLAFANI-ABRAMS,
Appellant

v.

C-19-106

DEPARTMENT OF REVENUE,
Respondent

Appearance for Appellant:

Pro Se
Mary Ellen Sclafani-Abrams

Appearance for Respondent:

Richard V. Gello, Esq.
Senior Counsel, Labor Relations
100 Cambridge Street
Boston, MA 02114

Commissioner:

Christopher C. Bowman

DECISION

On April 26, 2019, the Appellant, Mary Ellen Sclafani-Abrams (Appellant), pursuant to G.L. c. 30, § 49, filed an appeal with the Civil Service Commission (Commission), contesting the decision of the state's Human Resources Division (HRD) to deny her request for reclassification from an EDP Computer Operations Supervisor position to Program Coordinator III (PC III). On May 21, 2019, I held a pre-hearing conference at the offices of the Commission. I held a full

hearing at the same location on July 8, 2019.¹ The hearing was digitally recorded and both parties were provided with a usb drive containing a recording of the hearing.²

FINDINGS OF FACT:

Twenty-three (23) joint exhibits (Exhibits 1-23) and nine (9) Appellant Exhibits (Exhibits A1 – A9) were entered into evidence at the hearing. Based on these exhibits, the testimony of the following witnesses:

Called by DOR:

- Sandra Antonucci, Classification Analyst, Human Resources Bureau
- Judith Johnson, Chief, Data Integration Bureau

For the Appellant:

- Mary Ellen Sclafani-Abrams, 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 Appellant is employed with the Department of Revenue in the Data Integration Bureau (DIB), and is classified as an EDP Computer Operations Supervisor. (Exhibits 3, 13; Testimony of Antonucci & Appellant)
2. The Appellant began her employment with the Department of Revenue in 2001 as a Data Entry Supervisor in DIB. (Testimony of Appellant) Her official title at that time was Research Analyst II.

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.

²The Commission subsequently had a written transcript of the hearing prepared.

3. The Appellant was placed into her current title of EDP Computer Operations Supervisor via a maintenance reclassification in 2007. (Testimony of Antonucci) She has remained in the role of a Data Entry Supervisor since that time.
4. On February 21, 2018, The Appellant submitted a classification appeal to the Department's Human Resources Bureau ("HRB"), seeking the title of PC III. (Exhibit 3).
5. HRB Classification Analyst Sandra Antonucci (Ms. Antonucci) handled the Appellant's appeal. (Exhibits 3 & 4; Testimony of Antonucci).
6. In 1987, HRD approved Classification Specifications for the EDP Computer Operations Supervisor series and the Program Coordinator Series (Exhibits 11 & 12).
7. The EDP Computer Operations Supervisor classification specifications cover one title – the EDP Computer Operations Supervisor, which is a NAGE Unit 6, Grade 13 title. (Exhibit 11).
8. The EDP Computer Operations Supervisor exercises direct supervision over 1-6 employees and indirect supervision of 16-34 employees. (Exhibit 11)
9. The general responsibilities of incumbents in the EDP Computer Operations Supervisor title are to “plan, supervise and coordinate the best use of resources for electronic data processing (EDP) computer operations; schedule daily production runs based on program priorities; supervise and implement system and program operation; evaluate performance of computer systems and peripheral data processing equipment; determine causes of system and program failure; and perform related work as required.” The basic purpose of the position is “to achieve efficient use of computer systems.” (Exhibit 11).
10. According to the EDP Computer Operations Supervisor classification specifications, the duties an incumbent in that title performs include the following relevant duties:

“1. Reviews operating logs to identify equipment status and/or job streams; . . . scheduling duty rosters; . . . determines appropriate response to error conditions by stopping jobs, changing instructions, restarting runs, etc; evaluates production sheets, logs, etc., to identify production problems and determine whether work is being performed as scheduled.”

“2. Scheduling test times for analysts and programmers; schedules daily production runs based on program priorities . . . ; and reassigns priorities and reschedules computer runs due to cancellations and unavailability of input data or devices to ensure maximum and efficient utilization of computer time.”

“3. Develops and or revises standard operating procedures for data processing operations and coordinates activities of own section with other data processing sections for efficiency of operations.”

“5. Recommends expansion or revision of operations by evaluating the performance of operating systems and hardware, including disc channel balance, idle time and load averages.”

“7. Communicates with on-line users, technical personnel, utility companies and vendor representatives about existing or potential problems and/or to identify and resolve problems.”

“8. Prepares reports on equipment and computer use, work plans, and work status; meets with employees to discuss progress, goals or priorities; plans and designs physical layout of computer room to accommodate equipment; and coordinates the acquisition of hardware, software and computer services.” (Exhibit 11).

11. The Program Coordinator classification specifications cover three titles, all of which are

NAGE Unit 6 titles: Program Coordinator I (PC I) – Grade 10; Program Coordinator II (PC II) – Grade 12; and PC III – Grade 14. (Exhibit 12).

12. Under the Program Coordinator Specification, incumbents in the Program Coordinator series

“coordinate and monitor assigned program activities; review and analyze data concerning agency programs; provide technical assistance and advice to agency personnel and others; respond to inquiries; maintain liaison with various agencies; and perform related work as required.” The basic purpose of the work is to “coordinate, monitor, develop and implement programs for an assigned agency.” (Exhibit 12.)

13. According to the Program Coordinator Specification, an incumbent in any title in the Program Coordinator series may provide direct supervision and perform the following relevant duties:

- “1. Coordinates and monitors assigned program activities to ensure effective operations and compliance with established standards.
2. Reviews and analyzes data concerning assigned agency programs to determine progress and effectiveness, to make recommendations for changes in procedures, guidelines, etc. and to devise methods of accomplishing program objectives.
3. Provides technical assistance and advice to agency personnel and others concerning assigned programs to exchange information, resolve problems and to ensure compliance with established policies, procedures and standards.
4. Responds to inquiries from agency staff and others to provide information concerning assigned agency programs.
5. Maintains liaison with various private, local, state and federal agencies and others to exchange information and/or to resolve problems.
6. Performs related duties such as attending meetings and conferences; maintaining records; and preparing reports.” (Exhibit 12.)

14. The PC III exercises direct supervision over 1-5 employees and indirect supervision over 6 - 15 employees. (Exhibit 12)

15. The PC III is set apart from lower titles in the PC series in that incumbents perform the following additional duties:

- “1. Develop and implement standards to be used in program monitoring and/or evaluation.
2. Oversee and monitor the activities of an assigned work unit.
3. Confer with management staff and others in order to provide information concerning program implementation, evaluation and monitoring and to define the purpose and scope of proposed programs.” (Exhibit 12).

16. The Appellant completed an Interview Guide (the Guide), which was signed on March 22, 2018 by the Appellant and her supervisor, Glenda Rivera, Deputy Chief, DIB. (Exhibit 4).

17. In the Guide, the Appellant listed the following as her duties:

- “Maintain the production standards of the data entry area by performing necessary supervisory functions in order to ensure all established deadlines.
- Develop and train immediate staff.
- Improve and maintain quality of the Data Entry staff.
- Train all employees on work procedures by explaining and providing written instructions.
- Test systems to ensure compliance with business rules.
- Evaluate and review progress of employees by completing the EPRS forms.
- Monitor and maintain reports.
- Request and maintain Account Requests utilizing the WEB Forms Flow for seasonal and full time employees.
- Utilize the Remittance systems and applications to prepare end of day reports and balance the deposit.
- Approve Employee Self Serve for each employee.
- Forms Committee” (Exhibit 4).

18. In a follow-up email on April 5th, the Appellant clarified that she spends 80% of her time on the duties of maintaining the production standards of the data entry area by performing supervisory functions, developing and training immediate staff, improving and maintaining the quality of Data Entry staff, evaluating and reviewing employee progress by competing EPRS forms, and approving Employee Self-Service for each employee. She also spends 5% of her time training employees on work procedures by explaining and providing written instructions; 5% of her time testing systems to ensure compliance with business rules, 5% of her time monitoring and maintaining reports, 3% of her time on Forms Committee work, 1%

of her time maintaining account requests, and 1% of her time utilizing the Remittance systems and applications to perform end of day reports. (Exhibit 5).

19. Developing program goals and performance evaluation criteria, such as accuracy standards, are the responsibility of DIB management. (Testimony of Johnson).
20. The Appellant meets for one hour weekly with her manager, Judith Johnson (Ms. Johnson) and the Fairfax Imaging Team to discuss potential improvements to the Imaging system. (Testimony of Johnson).
21. The Appellant also works closely with the Forms Committee to make sure that DOR forms are compatible with the systems. (Testimony of Johnson).
22. The Appellant spends about 95% of her time supervising staff and about 5% of her time meeting with managers and other groups. (Testimony of Johnson).
23. Ms. Antonucci interviewed the Appellant on April 5, 2018. (Exhibit 6).
24. The Department concluded that the Appellant was appropriately classified and notified the Appellant of its preliminary decision to deny the appeal in a letter dated November 9, 2018, which informed the Appellant of the basis for denial and notified the Appellant of her right to submit a rebuttal for consideration. (Exhibit 7).
25. As the basis for its denial, the Department informed the Appellant that it found that she “does not perform the duties of the PC III a majority of the time.” (Exhibit 7; see also Exhibit 11).
26. DOR’s November 9, 2018 letter to the Appellant states in part: “Justification: Incumbent does not perform the duties listed below a majority of the time:
 - Must supervise staff;
 - Must develop and implement standards to be used in program monitoring and/or evaluation;

- Must oversee and monitor activities of the assigned unit;
- Must confer with management staff and others in order to provide information concerning program implementation, evaluation and monitoring and to define the purpose and scope of proposed programs.” (Exhibit 7)

27. The Appellant submitted a rebuttal by letter dated November 16, 2018. (Exhibit 8).

28. The Department notified the Appellant that her appeal was denied by letter dated January 2, 2019. (Exhibit 9).

29. The Appellant submitted an appeal to HRD by letter dated November 6, 2018. (See Exhibit 10).

30. HRD denied the appeal by letter dated April 8, 2019, explaining that the duties being performed “do not warrant the reallocation of [her] position.” (Exhibit 10).

31. The Appellant filed an appeal with the Commission on April 26, 2019.

Legal Standard

“Any manager or employee of the commonwealth objecting to any provision of the classification of his office or position may appeal in writing to the personnel administrator and shall be entitled to a hearing upon such appeal Any manager or employee or group of employees further aggrieved after appeal to the personnel administrator may appeal to the civil service commission. Said commission shall hear all appeals as if said appeals were originally entered before it.” G.L. c. 30, § 49.

The Appellant has the burden of proving that she is improperly classified. To do so, she must show that she performs the duties of the CSES II title more than 50% of the time, on a regular basis. Gaffey v. Dep’t of Revenue, 24 MCSR 380, 381 (2011); 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 the duties encompassed within the higher level position a majority of the time”)

Parties' Arguments

DOR argues that the Appellant is appropriately classified as an EDP Computer Operations Supervisor, as her duties, according to DOR, are perfectly in line with her current classification. DOR concluded that where the Appellant's duties overlapped with the duties in the Program Coordinator classification specification, those duties aligned either with the duties common to all levels in the series or with the duties of the PC II. Further, DOR determined that the vast majority of the Appellant's time is spent supervising and training data entry staff and the data entry function, and that those duties are common to the EDP Computer Operations Supervisor classification specification and the PC II level of the Program Coordinator classification specification. In DOR's determination, the Appellant does not perform the duties of a PC III, even some of the time.

The Appellant argues that she does perform the level distinguishing duties of a PC III a majority of the time as: she has taken on additional duties with the launch of new software systems, including GeniSys and Fairfax; she supervises a group of 13 full-time employees and up to 15 seasonal employees, depending on the time of year; she has a direct role in the performance criteria for her employees; including identified keystrokes, rather than number of returns entered, as a more equitable way to evaluate employee performance; she has customized instruction manuals for DOR use of the GeniSys and Fairfax systems within the Processing Bureau; and she meets regularly with her managers to discuss department goals.

Further, the Appellant points to the recommendation of bureau chief Judith Johnson, who believes that the Appellant should be granted reclassification, as she believes that the Appellant

duties include program evaluation and assisting with developing standards (i.e. – keys strokes v. returns completed); and because the job has evolved and the specifications are so old and do not reflect the breadth of the duties the Appellant performs.

Finally, the Appellants argues that she has more duties and responsibility of the mailroom supervisor, who is classified as a PC III.

Analysis

This is a very close call, primarily because of the overlap between the duties and responsibilities of an EDP Computer Operations Supervisor and a Program Coordinator. However, the Appellant has shown, by a preponderance of the evidence that she spends a majority of her time performing the duties and responsibilities of a PC III for the reasons discussed below.

First, the Appellant does indeed coordinate a finite program. She oversees a unit with a defined mission: ensuring that tax returns which require manual review before they are input into the system are processed in a timely and efficient manner.

Second, the Appellant does provide direct and/or indirect supervision over more than a dozen employees, including seasonal employees. In contrast, DOR acknowledges that certain PC IIIs working at DOR supervise no employees, mainly PC IIIs whose functional title is Executive Assistant to a senior DOR manager. Further, I see no basis for the conclusion by DOR, raised during the hearing, that the employees being supervised by a PC III must themselves be coordinating a project. That is not stated in the PC job specifications and appears to be a somewhat illogical conclusion reached by DOR during this review process.

Third, it appears to be undisputed that the Appellant oversees and monitors activities of this unit.

Fourth, although it is a closer call, the Appellant has shown that she does develop and implement standards to be used in program monitoring and/or evaluation. I gave significant weight to Bureau Chief Judith Johnson who has decades of experience at DOR and is intimately familiar with the duties and responsibilities of the Appellant. In her opinion, the Appellant *does* play an important role in the development and implementation of standards. Specifically, it was the Appellant who recommended changing the fundamental way in which employees in the unit are evaluated, moving away *from* measuring how many returns are keyed *to* measuring how many key strokes are entered by employees on a daily and weekly basis. Further, the Appellant also implements performance standards by doing a quality control check of random returns each week for each employee to identify any potential errors and meets with employees to prevent any reoccurrence.

Fifth, the Appellant does meet with management staff and others, including vendors, in order to provide information regarding program implementation, evaluation and monitoring and, to an admittedly lesser extent, to define the purpose and scope of the program.

Sixth, I did consider that the Appellant has taken on additional responsibilities with the rollout of the Department's new tax software over the last four years, including supervision of additional operators and the development of manuals to complete work in new systems, both of which are indicative of someone performing higher-level program coordination duties.

While I concur with DOR that there is a significant overlap with the EDP Computer Operations Supervisor job specifications, I believe it would not be fair or equitable to effectively harm the Appellant because the program that she coordinates happens to involve the oversight of technical personnel performing technical duties. In fact, it appears that is precisely what is

happening here, with the mail room coordinator, who does not supervise technical staff, being classified as a Program Coordinator III.

For all of the above reasons, the Appellant's appeal under Docket No. C-19-106 is hereby *allowed*.

Civil Service Commission

/s/ Christopher C. Bowman
Christopher C. Bowman
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Tivnan, and Stein, Commissioners) on March 12, 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)(l), 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 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:
Mary Ellen Sclafani-Abrams (Appellant)
Richard V. Gello, Esq. (for Appointing Authority)
Michele Heffernan, Esq. (HRD)