

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, SS.

SUPERIOR COURT

C.A. NO. 1872CV00192

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STANLEY KALLIANIDIS,

Plaintiff

Vs.

MARY LOU SUDDERS, SECRETARY  
OF THE EXECUTIVE OFFICE OF  
HEALTH AND HUMAN SERVICES, AND  
CHRISTOPHER BOWMAN, CHAIR, CIVIL  
SERVICE COMMISSION,

Defendant

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COMMONWEALTH OF MASS  
CIVIL SERVICE COMMISSION

**MEMORANDUM OF DECISION**  
**AND ORDER ON CROSS MOTIONS**  
**FOR JUDGMENT ON THE PLEADINGS**

INTRODUCTION

Stanley Kallianidis, a Counsel II with the Board of Hearings for Mass Health for the past 26 years, seeks review of the denial of his application for reclassification to Counsel III by the Office of Health and Human Services, affirmed by the Civil Service Commission. Judicial review is sought pursuant to G.L. c. 30A. After hearing, and for the following reasons, the plaintiff's motion for judgment on the pleadings in **DENIED** and the defendant's cross motion for judgment on the pleadings is **ALLOWED**.

## FACTUAL BACKGROUND

Stanley Kallianidis has been employed as a hearing officer with the Board of Hearings (“BOH”) for twenty-six years. During the first 6 years he worked as a consultant and for the most recent 20 years he has been employed as a Counsel II. Attorney Kallianidis obtained his juris doctorate degree from Tulane University School of Law and became a member of the Massachusetts Bar approximately 28 years ago. Since 1992 he has worked as a Medicaid/MassHealth hearing officer with the designation of Counsel II, presiding over appeals of both MassHealth applicants and members and MassHealth service providers. At the time of his hearing before the Civil Service Commission there were fifteen other Counsel II hearing officers at the BOH, none with the length of service of Attorney Kallianidis. During his tenure he has participated in the formation of the current BOH, the hiring of almost all hearing officers, mentoring other hearing officers, and supervision and mentoring of legal interns. He has received extensive training and participated in continuing education in the fields of Elder Law and Medicaid/MassHealth law. He has conducted on-site adjudicatory hearings at chronic care hospitals, and conducted a hearing over a disputed State Auditor’s report. Attorney Kallianidis has been called upon to handle unusual cases and difficult appellants. The extent of his experience and accomplishments at the BOH is not disputed.

At the time of his hire and until August 2013, the state position of Counsel was classified, pursuant to G.L. c. 30, § 45, as Counsel I and Counsel II. In August, 2013 revised “Classification Specifications” came into existence, adding the level of Counsel III to the classification system. A Counsel III was defined as a “statewide agency expert in a particular area of the law”. A.R. 25 The Commission established a new approach to distinguish between the levels in reclassification requests with the creation of a three part test:

- (a) The Counsel III must have “Knowledge Education and Experience” as well as the additional requirements described for a Counsel III in the section of the specification entitled “incumbents are required to have the following at the time of hire”;
- (b) A Counsel III must have the ‘distinguishing characteristic’ as THE most expert and experienced attorney in the agency in a specific area of expertise essential to a core mission of the agency; and
- (c) The Counsel III must perform, in the aggregate, at least a majority of the time, duties listed in the Counsel III class specifications under “Supervision Exercised”, “Additional Functions Performed”, “Additional Key Accountabilities” and “Relationships with Others”, with the “Supervision Received” by a Counsel III.

Thompson v. Division of Insurance, 29 MCSR 585 (2016). Additionally, the Commission, in applying the “distinguishing characteristics” criterion, considers the “significance of the area of expertise to the core mission of the agency and the degree of specialization involved.” Id. This three-part test has become the standard method of distinguishing between a Counsel II and Counsel III, and has been applied in reclassification cases. See Rubin v. HRD, 30 MCSR 8 (2017); Phelan v. Division of Insurance, 30 MCSR 42 (2017).

The determination as to whether an employee fits within one classification or another hinges upon the distribution of time they spend performing the functions of that specific classification. A.R. 44, See Fournier v. Civil Service Commission, 77 Mass.App.Ct. 1121 (2010) The applicant need not perform each higher level duty fifty percent of the time, but must spend at least fifty percent of his total time performing the higher level duties. Id. The applicant has the burden of proof to demonstrate that he is improperly classified and is performing duties encompassed within the higher level position the majority of the time. See Conkey v. Department of Conservation and Recreation, 20 MCSR 520, 521-522 (2006)

Attorney Kallianidis applied for reclassification from Counsel II to Counsel III in November, 2014. His request was denied by EOHHS human resources personnel. The denial was appealed to HRD, and a classification appeal hearing was held on June 19, 2015. On January 24, 2017 the denial was affirmed. An appeal to the Civil Service Commission followed with a full evidentiary hearing on February 10, 2017. Testimony was taken from the board's director Kim Larkin and an EOHHS manager, Melanie Gurlaccio, as well as from Attorney Kallianidis. Documentary evidence was also considered. The Commission found that while he might be the most experienced attorney at the board, Attorney Kallianidis was not the most expert, as required for elevation to Counsel III. The Commission affirmed the denial of the application, and judicial review was timely sought.

#### STANDARD OF REVIEW

Pursuant to G.L. c. 30A, § 14(7), this court may reverse, remand, or modify an agency decision if "the substantial rights of any party may have been prejudiced" because the agency decision is based on an error of law or on unlawful procedure, arbitrary and capricious, or unwarranted by facts found by the agency and supported by substantial evidence." Attorney Kallianidis bears the burden of demonstrating the invalidity of the Board's decision. Merisme v. Board of Appeal on Motor Vehicle Liab. Policies and Bonds, 27 Mass. App. Ct. 470, 474 (1989). In reviewing an agency decision, the Court is required to "give due weight to the experience, technical competence, and specialized knowledge of the agency, as well as to the discretionary authority conferred upon it" by statute. G.L. 30A, § 14(7) (1997); Flint v. Commissioner of Pub. Welfare, 412 Mass. 416, 420 (1992); Seagram Distillers Co. v. Alcoholic Beverages Control Comm'n, 401 Mass. 713, 721 (1988). The reviewing court may not substitute its judgment for

that of the agency. Southern Worcester County Regional Vocational Sch. v. Labor Relations Comm'n, 386 Mass. 414, 420-21 (1982), citing Olde Towne Liquor Store, Inc. v. Alcoholic Beverages Control Comm'n, 372 Mass. 152, 154 (1977). Nor may a court reject an administrative agency's choice between two conflicting views, even though the court justifiably would have made a different choice had the matter been presented de novo. Zoning Bd. of Appeals v. Housing Appeals Comm'n, 385 Mass. 651, 657 (1982) (citations omitted).

### DECISION

Paul M. Stein, Commissioner of the Civil Service Commission, determined that Attorney Kallianidis failed to meet his burden of establishing that he was engaged in the specified duties of the Counsel III classification as the major part of his current position. Focusing on present performance, the Commissioner did not find that he performed at a singularly high level of specific expertise unique to the agency and setting him apart from his peers. The writing/decision samples provided did not establish his work to be unique when compared to that of his peer Counsel IIs. The two more complex decisions submitted in support of the application were four years old and failed to demonstrate a level of unique agency expertise necessary to distinguish a Counsel II from a Counsel III.

Employment and Staffing Manager Melanie Gurliaccio testified that Attorney Kallianidis' co-workers with a Counsel II designation could substitute for him if he was unavailable to perform his job, establishing an absence of uniqueness. She also testified that the applicant was not writing, recommending or reviewing legislation, some of the criteria used to establish Counsel III qualification. Ms. Gurliaccio confirmed that Attorney Kallianidis was not performing the duties of the higher classification more than 50% of the time, as confirmed by the interview guide completed by him. While he did perform many of the functions on the list of

distinguishing characteristics for Counsel III, he did not perform them more than 50% of the time.

Kim Larkin is the Director of the BOH, a position that she has held since 1998. At the time of the hearing and prior thereto she supervised Attorney Kallianidis. Ms. Larkin described the Counsel II attorneys at the BOH, including Attorney Kallianidis, as “generalists”. While their years of service may differ, many share the same responsibilities as to supervision of counsel with less experience, mentoring, reviewing proposed legislation, and handling cases. In summary, Attorney Kalliandis does not possess any particular, specialized expertise that differentiates him from other Counsel II in the agency. He, like many others at the Board of Hearings, is very knowledgeable and good at his job, but he is not called upon to perform specialized, extraordinary tasks that other Counsel II are not qualified or able to perform more than 50% of the time.

Attorney Kallianidis argues for an interpretation of the Counsel III designation that has not been adopted. He feels that because he has been at the BOH longer than any other Counsel II, he is automatically the most experienced and most expert, and thus must be elevated to Counsel III. The agency, however, interprets the newer designation of Counsel III differently. The application espoused by the agency is set forth in Thompson v. Division of Insurance, 29 MCR 585 (2016). “By definition, all legal counsel employed by the Commonwealth hold a post-graduate doctorate-level degree and have attained some level of accomplishment in the law. Many come into state government with prior, often extensive experience in a particular field within the practice of law. In addition, unlike many other job specifications that provide a clear civil service ‘career ladder’ from entry level into management roles, the new Counsel Specifications were not intended to be used to provide such a path; indeed, the original drafts

were expressly rejected because they overlapped with management positions in the legal area.”

Id. Given the significant overlap between the qualifications for Counsel II and Counsel III, the Commission developed the three-pronged test to determine eligibility for reclassification: (a) Knowledge and Experience characteristics; (b) the most expert and experience attorney in the agency in a specific area of expertise essential to a core mission of the agency; and (c) performance, in the aggregate, at least a majority of the time, duties listed in the Counsel III class specifications. Id. “In applying the ‘distinguishing characteristic’ criterion, the Commission will consider the significance of the area of expertise to the core mission of the agency and the degree of specialization involved. Generalized expertise, such as knowledge of administrative law or trial practice, would be less likely to meet the ‘distinguishing characteristic’ criterion than, say, a subject-specific expertise”. Id.

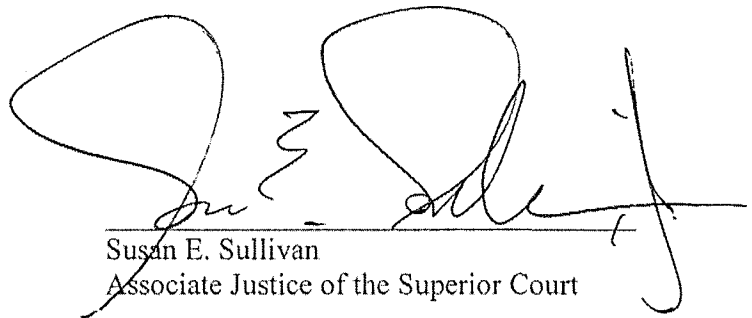
This court is required to "give due weight to the experience, technical competence, and specialized knowledge of the agency, as well as to the discretionary authority conferred upon it" by statute. G.L. 30A, § 14(7) (1997); Flint v. Commissioner of Pub.Welfare, 412 Mass. 416, 420 (1992); Seagram Distillers Co. v. Alcoholic Beverages Control Comm'n, 401 Mass. 713, 721 (1988) This court may not substitute its judgment for that of the agency. Southern Worcester County Regional Vocational Sch. v. Labor RelationsComm'n, 386 Mass. 414, 420-21 (1982), citing Olde Towne Liquor Store, Inc. v. Alcoholic Beverages Control Comm'n, 372 Mass. 152, 154 (1977). Nor may this court reject an administrative agency's choice between two conflicting views, even though the court justifiably would have made a different choice had the matter been presented de novo. Zoning Bd. Of Appeals v. Housing Appeals Comm'n, 385 Mass. 651, 657 (1982) (citations omitted). Likewise, this court cannot reject the reasoning of the Commission and substitute that of Attorney Kalliandis, absent a showing that the agency decision is based on

an error of law or an unlawful procedure, arbitrary and capricious, or unwarranted by facts found by the agency and supported by substantial evidence. There has been no such showing, and the decision must stand.

**ORDER**

The plaintiff Stanley Kallianidis, Esq. has not shown there to be an error of law, unlawful procedure, an arbitrary or capricious decision, or a decision unwarranted by the facts found by the Civil Service Commission. He has established a lengthy and well-respected career at the Board of Hearings, where he has made and continues to make significant contributions. He has not established, however, the distinguishing characteristics attendant to Counsel III classification. The plaintiff's motion for judgment on the pleadings is **DENIED**, and the defendant's cross motion for judgment on the pleadings is **ALLOWED**.

Date: January 30, 2019



Susan E. Sullivan  
Associate Justice of the Superior Court

A true copy, Attest:   
Clerk