

COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION

Decision mailed: 7/1/11
Civil Service Commission 03

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

JAMES MORELLO,
Appellant

v.

Case No.: C-10-345

EXECUTIVE OFFICE OF
HEALTH AND HUMAN
SERVICES,
Respondent

DECISION

After careful review and consideration, the Civil Service Commission voted at an executive session on June 30, 2011 to acknowledge receipt of the report of the Administrative Law Magistrate dated May 2, 2011. The Commission received comments from the Appellant on May 31, 2011. The Commission voted to adopt the findings of fact and the recommended decision of the Magistrate therein. A copy of the Magistrate's report is enclosed herewith. The Appellant's appeal is hereby *dismissed*.

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis and Taylor, Commissioners) on June 30, 2011.

A true record. Attest.



Christopher C. Bowman
Chairman

Either party may file a motion for reconsideration within ten days of the receipt of a 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 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.

Notice to:
James Morello, *pro se*
Rhett Cavacchi, Esq. (for Appointing Authority)
Richard C. Heidlage, Esq. (DALA)



THE COMMONWEALTH OF MASSACHUSETTS

DIVISION OF ADMINISTRATIVE LAW APPEALS

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May 2, 2011

Christopher C. Bowman, Chairman
Civil Service Commission
One Ashburton Place, Room 503
Boston, MA 02108

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COMMONWEALTH OF MASS
CIVIL SERVICE COMMISSION

Re: James Morello v. Executive Office of Human Services
DALA Docket No. CS-11-40
CSC Docket No. C-10-345

Dear Chairman.Bowman:

Enclosed please find the Recommended Decision that is being issued today. The parties are advised that, pursuant to 801 CMR 1.01(11)(c)(1), they have thirty days to file written objections to the decision with the Civil Service Commission. The written objections may be accompanied by supporting briefs.

Sincerely,


Richard C. Heidlage
Chief Administrative Magistrate

RCH/mbf

Enclosure

cc: James Morello
Rhett Cavacchi

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Division of Administrative Law Appeals

James Morello,
Appellant

v.

Docket No. C-10-345
DALA No. CS-11-40

**Executive Office of
Health & Human Services,**
Respondent

Appearance for Appellant:

James Morello
[REDACTED]
[REDACTED]

Appearance for Respondent:

Rhett Cavicchi
Labor Relations Specialist
EOHHS
600 Washington Street, 2nd floor
Boston, MA 02111

Administrative Magistrate:

Maria A. Imparato, Esq.

SUMMARY OF RECOMMENDED DECISION

The Appellant has not met his burden of proving that he is improperly classified as a Program Coordinator III. He has not shown by a preponderance of the evidence that he is performing the majority of the duties of a Personnel Analyst III more than 50% of the time.

RECOMMENDED DECISION

James Morello is appealing under the provisions of M.G.L. c. 30, s. 49 the November 22, 2010 decision of the Human Resource Division (HRD) to deny his request to be reclassified from the position of Program Coordinator III (PC III) to Personnel

Analyst III (PA III) in the Executive Office of Health and Human Services (EOHHS).

(Exs. 6, 7, 8.)

I held a hearing on February 4, 2011 at the office of the Division of Administrative Law Appeals, 98 North Washington Street, Boston, MA. I admitted documents into evidence. (Exs. 1 – 18) and “A” through “H” for identification.

Sara Sullivan, Employment and Staffing Representative of the Disabilities and Community Services (DCS) cluster of the office of the EOHSS - Office of Human Resources, and Lisa Gallup, Director of Employment Services of the DCS cluster, testified on behalf of the Respondent.

FINDINGS OF FACT

1. James Morello has been employed as the Supervisor of Benefits and Leave in the DCS cluster at the EOHSS - Office of Human Resources since January 2004. (“H.”)
2. EOHSS-Human Resources has two other clusters: Health and Children; and Youth and Families. (“H.”)
3. Mr. Morello is classified as a Program Coordinator III (PC III).
4. DCS provides human resources functions to multiple state agencies including the Department of Developmental Services (DDS), Mass. Rehabilitation Commission (MRC), Mass. Commission for the Blind (MCB), Mass. Commission for the Deaf and Hard of Hearing (MCDHH), and the Chelsea Soldiers Home. (“H.”)
5. Mr. Morello’s overall mission as Benefits and Leave Supervisor is to assure that all benefits and leave programs and operations function effectively. Two

staff report directly to Mr. Morello. Mr. Morello does not exercise any indirect supervision. (Exs. 4, 12.)

6. Mr. Morello's job duties include: 1) directing the day to day operations of the Benefits and Leave unit for the DCS cluster, including administration of the following programs; Group Insurance Commission (GIC), Family and Medical Leave Act (FMLA), Extended Illness Leave Bank (EILB), Worker's Compensation and Employee Orientation; 2) supervising the daily operation of the Benefits and Leave Unit by conducting staff meetings, ensuring all transactions are processed, requests for information are processed and a service-oriented atmosphere is created; 3) overseeing, coordinating and monitoring FMLA for the DCS agencies to ensure compliance with FMLA rules and regulations; 4) overseeing and monitoring EILB withdrawals for the DCS agencies to ensure compliance with the delegation process; and 5) promoting the mission of EHS Human Resources and providing backup and/or assistance to other functional units as required to ensure smooth operation of the office. (Ex. 5.)
7. The purpose of the PC Series is to coordinate, monitor, develop and implement programs for an assigned agency. Incumbents in the PC 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 worked as required. (Ex. 11, II.)

8. Incumbents in the PC III position develop and implement standards to be used in program monitoring and/or evaluation; oversee and monitor activities of the assigned unit; and 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. (Ex. 11, V.)
9. The purpose of the PA Series is to ensure the proper maintenance of the statewide personnel classification system. Incumbents in the PA Series make recommendations on position classification and related personnel action; conduct personnel studies such as job analyses, classification studies, job evaluation studies, organizational analyses, and wage and salary surveys; write and revise job specifications; advise other agencies on personnel policies and procedures; and perform related work as required. (Ex. 10, II.)
10. A PA III supervises assigned groups of workers by developing procedures consistent with agency policies and objectives; instructs staff in policies and procedures; and approves work to ensure appropriate technical content and compliance with policy, laws, rules, regulations, and target dates. (Ex. 10, V.)
11. A PA III exercises direct supervision over, assigns work to, and reviews the performance of 1 – 5 professional personnel; may exercise indirect supervision over 1 – 5 clerical personnel; and exercises indirect supervision through an intermediate level supervisor over 6 – 15 professional personnel. (Ex. 10, VIII.)

12. On or about January 29, 2007, Mr. Morello received notice that DCS reclassified his position to a PC III in response to his request to be reclassified from a Personnel Officer II (PO II) to a PA III. (Exs. 2, 3, 13; "H.")
13. Mr. Morello did not appeal the above-referenced reclassification decision. ("H.")
14. On February 8, 2010, DCS received a request from Mr. Morello that he be reclassified as a PA III. (Ex. 1; "H.")
15. On October 18, 2010, DCS denied Mr. Morello's request to be reclassified as a PA III for the following reason: "The basis of the appeal is two-fold; the Modernization Project and Pay Equity. While the Program Coordinator title is generic in nature, and often used as a catch-all title, it is appropriate for the function. Mr. Morello oversees and implements all benefits and leave programs. Classification, unfortunately, does not address volume, which has increased due to reduction in staff, nor compensate for merit. Therefore, the function remains properly classified as a Program Coordinator III." (Ex. 6; "H.")
16. Mr. Morello's request for reclassification to PA III was denied also because there had been no changes in his job duties since the time of his 2006 request to be reclassified to a PA III, except that the systems are now automated. Automation of the systems does not change job classification. (Testimony, Sullivan.)
17. On November 2, 2010, Mr. Morllo appealed DCS's decision to the Human Resources Division (HRD). ("H.")

18. On November 22, 2010, HRD denied Mr. Morello's appeal. (Ex. 7; "H.")
19. On December 6, 2010, Mr. Morello filed the instant appeal at the Civil Service Commission. (Ex. 8; "H.")
20. Mr. Morello has Civil Service standing as a PC III. ("H.")
21. Mr. Morello has a Bachelor of Science in psychology. ("H.")

CONCLUSION

I recommend that the decision of HRD denying Mr. Morello's request to be reclassified from a PC III to a PA III be affirmed. Mr. Morello has not met his burden of proving that he is improperly classified. He has not shown by a preponderance of the evidence that he is performing the majority of the duties of a PA III more than 50% of the time. In fact, Mr. Morello has not shown that he performs any of the duties of a PA III.

As a Benefits and Leave Supervisor, Mr. Morello directs and supervises to day to day operations of the Benefits and Leave Unit and he administers and monitors a variety of employee programs including GIC, FMLA, EILB, and Worker's Compensation.

These duties fall squarely within the PC III job specifications where incumbents develop and implement standards to be used in program monitoring; oversee and monitor the activities of an assigned unit; and provide information concerning program implementation.

Mr. Morello does not perform any duties in the PA series. He does not participate in the basic work of the PA series which is to ensure the proper maintenance of the statewide personnel classification system. He does not make

recommendations on position classification and related personnel action; he does not conduct personnel studies; he does not write and revise job specifications. Mr. Morello does not perform any duties of a PA III. He does not develop procedures related to the statewide personnel classification system. Furthermore, Mr. Morello does not exercise any indirect supervision.

Mr. Morello admitted on cross-examination that he does not perform any of the duties of a PA III.

I conclude that Mr. Morello has not met his burden of proving by a preponderance of the evidence that he is performing the majority of the duties of a PA III more than 50% of the time. I recommend that his request for reclassification from a PC III to a PA III be denied.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Maria A. Imperato

Maria A. Imperato
Administrative Magistrate

DATED: **MAY - 2 2011**