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DAWN DAMAN

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**BEFORE THE CIVIL SERVICE COMMISSION
OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND
DAVIDSON COUNTY**

IN THE MATTER OF:

DAWN DAMAN

|
DOCKET NO: 43.02-093589J
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INITIAL ORDER

This contested case was heard on May 17, 2007, before Administrative Judge Margaret R. Robertson of the Administrative Procedures Division of the Secretary of State of Tennessee, sitting for the Civil Service Commission of the Metropolitan Government of Nashville and Davidson County in Nashville, Tennessee. Mr. Thomas Cross, Metropolitan Attorney, represented the Metropolitan Department of Water Services. The Grievant, Mr. Dawn Daman, represented himself.

This case involves the Grievant's appeal of denial of his request to be paid out of class pay at a higher classification than his current job description for performing, in his opinion, the work expected of a person in that higher classification. In essence, the Grievant maintains that he is being required to work in what he considers to be a higher classification without being remunerated at the appropriate pay level for the higher classification.

After consideration of the record in this case, including the arguments of counsel for the Metropolitan Department of Water Services and of the Grievant, it is determined that the Grievant's request must be denied because he is working in a targeted position, for which out of class pay is not available and because, in spite of overlap between the

responsibilities of an ECOI and an ECO II, Grievant has not yet fulfilled all of the criteria for becoming an ECO II, in particular the requirement of three years experience as an ECO I. This decision is based upon the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Grievant Dawn Daman is an employee with the Metropolitan Department of Water Services. He was hired as an ECO I in April of 2005. Since April of 2006, in Mr. Daman's opinion, he has been assigned, and has performed, a significant percentage of the duties found in the job description of an ECO II, and has been spending a majority of his time performing what he considers to be the responsibilities and tasks of an ECO II. For this reason, he has requested that the Metropolitan Department of Water Services recognize with out of class pay his conclusion that he is being required to perform as an ECO II while being remunerated at the pay scale of an ECO I.

2. In support of his contention, Mr. Daman supplied multiple documents in which he has related his own work activities to the components of the job description for an ECO II as documentation that his work responsibilities and performances overlap with the job description of an ECO II.

3. Mr. David Tucker, Assistant Director of Operations for the Metropolitan Department of Water Services, testified that overlap between the responsibilities of and ECO I and ECO II are intentional and a matter of degree. He explained that an ECO II is a targeted position, one that an ECO I advances to as a function of meeting all of the job requirements, including a requirement of three years' experience as an ECO I. At that

time, if the ECO I's performance is satisfactory in other respects he will have achieved the experience and breadth of exposure to all of the department's many work sites expected of an ECO II and will be automatically elevated into the higher position on his increment date.

4. Mr. Tucker said that the overlap in responsibilities between ECO I and ECO II is a deliberate intent to train the ECO I to become seasoned and experienced in the knowledge, skills and abilities required of an ECO II. Specific training events are provided during the three years of service as an ECO I in addition to the on the job training, the exposure to all aspects of the department's distribution system and the seasoning or honing over time of skills and abilities to the levels required of an ECO II.

5. Mr. Tucker did not dispute that Mr. Daman may in fact be capable of meeting most of the minimum requirements of the job description of an ECO II with one notable exception, the requirement of three years of experience as an ECO I.

CONCLUSIONS OF LAW

1. The Civil Service Rules of the Metropolitan Government of Nashville and Davidson County (hereinafter "Rules") provide in Chapter 5 for the classification and compensation scales for all positions in the classified service of Metropolitan Government. Job descriptions are intended to be maintained for every classified position and are to be audited periodically and reclassified when necessary according to policies established by the Department of Human Resources and approved by the Metro Civil Service Commission. Classification and pay reviews are to be conducted at least once every three years. Section 5.1, Metropolitan Government Civil Service Rules.

2. Section 5.6 of the Rules defines “reclassification” as the assignment of a position to a more appropriate classification in order to properly reflect the function of the position. An employee’s classification and salary may be changed through the reclassification policy, Policy 5.6 D-I, which determines how reclassifications are conducted and how salaries are affected. Reclassification of employees occurs as a result of a general reclassification study or an individual position audit independent of a reclassification study. The Appointing Authority is the person who must initiate the request for a position audit if he or she believes that a position is not properly classified. The Human Resources (HR) Department might also initiate a position audit in the interests of properly maintaining the classification plan. Reclassification by position audit is not to be used by management to bypass the promotional or layoff process.

3. If a position audit is requested by an appointing authority, the HR Department will approve or disapprove and schedule the appropriate steps. If the HR Department initiates a position audit on behalf of an employee for the purpose of maintaining the classification plan, the employee must provide written documentation of the justification for the request. The HR Department then conducts the audit and produces a report with recommendations, which is sent to the appointing authority, the employee and the employee’s representative, if there is one. Unless the appointing authority appeals the recommendation to the HR Director, the recommendation should be put in place as soon as possible. Although the Rules do not specifically address this, presumably a negative recommendation to a reclassification request initiated by an

appointing authority could also be appealed to the HR Director. Section 5.6, D-III, Metropolitan Government Civil Service Rules.

4. General guidelines for a position audit reclassification to be approved require that the transition of the employee must be to the most appropriate classification based on the duties performed, and that the employee must meet the minimum qualifications of the new classification. Specific guidelines for reclassification to a higher classification resulting from a position audit require that if the positions involved have been identified for targeting, the policy on upgrading for targeted positions shall apply.

5. According to Policy 5.6 B-II, Upgrades for Targeted Classifications, certain classifications are designated for upgrade instead of promotion. The selection of positions for targeting is reviewed by a committee selected by the Director of HR. *The purpose is to provide, via on-the-job-training while the employee is in the lower classification, the specific and required skills needed to function at the targeted level.* Employees who meet the specific requirements are upgraded to the targeted classification as if being promoted.

6. According to the policy, an upgrade occurs when all of the following criteria are met: the employee has met all applicable education, *experience*, licensing and other minimum requirements as set out in the job description for the higher level, and has an overall average evaluation score of 2.25. The policy further allows for an employee to decline advancement through targeting *with the approval of the Appointing Authority*, in which case, the employee may be eligible for advancement on his next increment date.

7. The guidelines for reclassification to a higher classification do not contemplate reclassification outside the provisions of the policy for upgrading for targeted positions if the position at issue is a targeted one. Policy 5.6 D-I (IV) C. (1).

8. An employee may advance to a higher position in several ways. He may be promoted to a higher position. His position may be reclassified to a higher position. Or he may be asked to work in a higher classification on a temporary basis. According to Section 5.9, the policy for working in a higher classification is intended to provide departments some flexibility for immediate and short term staffing needs, but not to circumvent the civil service promotional system. Employees working in a higher classification under this policy must meet minimum requirements of the position *and assignments must be to budgeted positions* that are vacant or that must be filled because the employee normally assigned to that position is on leave or working in a higher classification. The employee must be *assigned to the higher classification in advance* by an authorized supervisor, must perform at least 75% of the typical duties listed in the functional description of the higher position. There are specific procedures a department must follow for filling positions by out of class assignment beyond 30 working days, including making an announcement of the out of class position and the person selected.

9. The position at which Mr. Daman aspires to be paid, ECO II, is a targeted position. Mr. Daman is quite right that the responsibilities of an ECO I and an ECO II share considerable overlap and similarity, differing more on factors such as degree and independence and supervisory status. As an ECO I with two years or more experience, his current performance would be expected to be at levels higher than the minimum

acceptable levels for an ECO I and overlapping many of the responsibilities and skill levels of an ECO II. That is an intended consequence of the targeting of this position. As explained by Mr. Tucker, part of the rationale for the three year period at an ECO I level is for the employee to develop experience, background and familiarity with the many worksites and responsibilities of the Department of Water Services as a part of training to advance to ECO II.

10. It appears from the Metro Civil Service Rules that there are three ways for Mr. Daman to advance from ECO I to ECO II, which is a targeted position. The first path is the one intended (because it is a targeted position), for the employee to perform as an ECO I acceptably (with at least an average evaluation of 2.25), gaining the requisite training and experience over a period of three years, at which time the employee is automatically is upgraded to ECO II. An alternative in the case of a targeted position is for the employee to decline advancement through targeting *with the approval of the appointing authority*, and to be considered for advancement at his next increment date. We need not go into how such consideration would occur in the instant case because the Grievant clearly does not have the permission of the appointing authority to decline advancement through targeting, which is a prerequisite.

11. In the alternative, Mr. Daman has requested out of class pay for the work he is performing as an ECO I because he contends that the duties and responsibilities he has been assigned are significantly commensurate with the duties and responsibilities of an ECO II and ought to be remunerated at the higher rate, although he has not completed three years in the position, which is one of the criteria for ECO II. The similarity and

overlap of duties and responsibilities between ECO I and II is not disputed, but the conclusion that the similarities and overlap entitle Mr. Daman to out of class pay is not supported by the record or by the Civil Service Rules.

12. Mr. Daman's circumstances do not comply with the requirements for receiving out of class pay. He was not assigned in advance to a higher classification position by a supervisor. As an ECO I with more than two year of experience, he may arguably perform at least 75 % of the typical duties of an ECO II at the level an ECO II is expected to perform them, but because this is a targeted position and because the duties of the two positions are intended to overlap so substantially, this factor is not as persuasive as it might be in other job circumstances. Nor is meeting only one criterion sufficient to obtain out of class pay. It should be noted that Mr. Daman contends he has been required to perform duties he construes as out of his classification for a period much longer than 30 days. There was no testimony to establish that there is a budgeted position that is vacant that Mr. Daman has constructively filled for 30 days or longer. A grievance panel appointed in response to Mr. Daman's complaint reviewed the complaint in August of 2006 and rendered a decision on September 20-21, 2006 unanimously agreeing that Civil Service Rule 5.9 had not been violated and concluding that there was no entitlement to out of class pay. Their decision is consistent with the Civil Service Rules and the evidence presented in this hearing.

13. The remaining avenue by which Mr. Daman might receive elevation to an ECO II before meeting the criterion of three years of experience in the ECO I position is to persuade his supervisor or the Department of Human Resources to undertake a

reclassification study of his position and responsibilities *vis a vis* an ECO II. The police on reclassification specifically says that for positions that have been identified for targeting, it is the policy on upgrading for targeted positions that applies. (Policy 5.6 B-I 1.a.). ECO II has been identified as a targeted position. The minimum criteria for advancement to ECO II include a requirement of three years of experience as an ECO I. The Grievant has not yet met that requirement, and cannot be said to have met the minimum requirements for the ECO II position until he has done so.

14. Under the circumstances of this case, Metro Government has succeeded in proving by a preponderance of the evidence that the duties Mr. Daman is performing are appropriate for his position as an ECO I with several years of experience in that position; that Mr. Daman should advance to the next position, ECO II, presuming he meets all other requirements for advancement, once he has completed three years as an ECO I; and that he is not entitled to out of class pay for discharging these overlapping duties and responsibilities while employed as an ECO I.

It is therefore hereby ORDERED that the Department's denial of early promotion and/or out of class pay for the Grievant be UPHELD.

This Initial Order entered and effective this 19th day of October, 2007.

Margaret R. Robertson
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,
this 19th day of October, 2007.

A handwritten signature in cursive script that reads "Thomas G. Stovall". The signature is written in black ink and is positioned above a horizontal line.

Thomas G. Stovall, Director
Administrative Procedures Division