

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MARIE-MICHELLE EDOUARD,)
)
 Petitioner,)
)
 vs.) Case No. 03-4234SED
)
 DEPARTMENT OF HEALTH,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on February 4, 2004, in Miami, Florida, before Patricia Hart Malono, a duly-designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Marie-Michelle Edouard, pro se
6143 Northwest 183rd Lane
Miami, Florida 33015

For Respondent: Stephen W. Foxwell, Esquire
Department of Health
4052 Bald Cypress Way, Bin A02
Tallahassee, Florida 32399-1703

Reynaldo Velazquez, Esquire
Allen, Norton & Blue, P.A.
121 Majorca, Suite 300
Coral Gables, Florida 33134

STATEMENT OF THE ISSUE

Whether the Petitioner's position of employment with the Respondent was properly reclassified from Career Service to Selected Exempt status.

PRELIMINARY STATEMENT

In a letter dated July 21, 2003, Marie-Michelle Edouard was notified that she had the right to request an agency review of the decision to reclassify her position of employment with the Department of Health ("Department") from a Career Service System position to a Selected Exempt Service position.¹ Dr. Edouard timely filed a Petition with the Department requesting a hearing. The Department forwarded the matter to the Division of Administrative Hearings for the assignment of an administrative law judge. Pursuant to notice, the final hearing in this case was held on February 4, 2004.

At the hearing, the Department presented the testimony of Mary Jo Trepka, M.D.; Yukosava Petrovic; Hilda Ortiz; and Juan Carlos Santana. Respondent's Exhibits 1 through 5 were offered and received into evidence. Dr. Edouard testified in her own behalf, and Petitioner's Exhibit 1 was received into evidence.

The one-volume transcript of the proceedings was filed with the Division of Administrative Hearings on March 8, 2004. The Department requested and was granted an extension of time to file proposed findings of fact and conclusions of law, and the

Department timely filed its proposed findings of fact and conclusions of law, which have been considered in the preparation of this Recommended Order; Dr. Edouard did not file a post-hearing submittal.

FINDINGS OF FACT

Based on the oral and documentary evidence presented at the final hearing and on the entire record of this proceeding, the following findings of fact are made:

1. Dr. Edouard is a physician who was employed by the Department as the Senior Human Services Program Manager for the Miami-Dade County Childhood Lead Poisoning Prevention Program. This program operates under a grant from the federal Centers for Disease Control, and Dr. Edouard worked out of the Epidemiology and Disease Control Department of the Miami-Dade County Health Department.

2. Prior to July 2001, Dr. Edouard's position was classified as a Career Service System position.

3. As Senior Human Services Program Manager, Dr. Edouard supervised a staff of four to five persons, including an epidemiologist, an environmental specialist, a nurse, and a secretary specialist, and she spent the majority of her time supervising these employees: Dr. Edouard prepared the work assignments for her staff; trained the members of her staff; monitored the progress of the staff members in completing their

assignments; prepared evaluations for each staff member and made recommendations for improvement; approved or disapproved requests for leave; had the authority to recommend members of her staff for disciplinary action; had the authority to recommend salary increases and/or to recommend promotion for members of her staff; and prepared the budget for her program grant.

4. Dr. Edouard was considered by her supervisor to be a very creative, hardworking, dedicated healthcare professional who established Miami-Dade County's Childhood Lead Poisoning Prevention Program.

5. In July 2001, Dr. Edouard's position was reclassified from a Career Service System position to a Selected Exempt Service position because the position included substantial supervisory responsibilities. After the reclassification, the formal job description for the Senior Human Services Program Manager position remained the same in all material respects as the job description for the Career Service System position.

6. Dr. Edouard was terminated from her position several months after it was reclassified.

7. At the time Dr. Edouard's position was reclassified from a Career Service System position to a Selected Exempt Service position, there were other supervisory employees of the Epidemiology and Disease Control Department of the Miami-Dade

County Health Department whose positions were not reclassified but remained Career Service System positions. These employees were registered nurses serving as nursing program specialists.

CONCLUSIONS OF LAW

8. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and of the parties thereto pursuant to Sections 120.569 and 120.57(1), Florida Statutes (2004).

9. The Department, as the party whose action changed the status quo, has the burden of proving by a preponderance of the evidence that Dr. Edouard's position was appropriately reclassified from a Career Service System position to a Selected Exempt Service position. See Board of Trustees of the N.W. Florida Community Hosp. v. Department of Management Servs., Div. of Retirement, 651 So. 2d 170, 172 (Fla. 1st DCA 1995)(hearing officer correctly determined that employer's decision to treat Brown as an independent contractor established status quo and that Division of Retirement had burden to demonstrate that Brown was in fact an employee)(citing Florida Dep't of Transp. v. J.W.C. Co., Inc., 396 So.2d 778, 788 (Fla. 1st DCA 1981)("In accordance with the general rule, applicable in court proceedings, 'the burden of proof, apart from statute, is on the party asserting the affirmative of an issue before an administrative tribunal.'").

10. Section 110.205, Florida Statutes (2001), provides in pertinent part:

(1) CAREER POSITIONS.--The career service to which this part applies includes all positions not specifically exempted by this part, any other provisions of the Florida Statutes to the contrary notwithstanding.

(2) EXEMPT POSITIONS.--The exempt positions that are not covered by this part include the following

* * *

(x) Managerial employees, as defined in s. 447.203(4), confidential employees, as defined in s. 447.203(5), and supervisory employees who spend the majority of their time communicating with, motivating, training, and evaluating employees, and planning and directing employees' work, and who have the authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline subordinate employees or effectively recommend such action, including all employees serving as supervisors, administrators, and directors. Excluded are employees also designated as special risk or special risk administrative support and attorneys who serve as administrative law judges pursuant to s. 120.65 or for hearings conducted pursuant to s. 120.57(1)(a). Additionally, registered nurses licensed under chapter 464, dentists licensed under chapter 466, psychologists licensed under chapter 490 or chapter 491, nutritionists or dietitians licensed under part X of chapter 468, pharmacists licensed under chapter 465, psychological specialists licensed under chapter 491, physical therapists licensed under chapter 486, and speech therapists licensed under part I of chapter 468 are excluded, unless otherwise collectively bargained.

11. Based on the findings of fact herein, the Department has proven by a preponderance of the evidence that Dr. Edouard's position as the Senior Human Services Program Manager for the Miami-Dade County Childhood Lead Poisoning Prevention Program included supervisory functions, as defined in Section 110.205(2)(x), Florida Statutes (2001), and that Dr. Edouard actually engaged in supervisory activities during the majority of the time she spent on the job.

12. Dr. Edouard's complaint that nurses in the Epidemiology and Disease Control Department of the Miami-Dade County Health Department cannot be addressed in this administrative forum. The exclusion of registered nurses from the category of managerial, confidential, and supervisory employees is included in Section 110.205(2)(x), Florida Statutes (2001), and this statutory exclusion can only be changed by legislative action.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the decision to reclassify the position of employment with the Department of Health formerly held by Marie-Michelle Edouard be sustained.

DONE AND ENTERED this 16th day of April, 2004, in
Tallahassee, Leon County, Florida.

Patricia H. Malono

PATRICIA HART MALONO
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 16th day of April, 2004.

ENDNOTE

^{1/} This notice was apparently sent as a result of the decision
in Reinshuttle v. Agency for Health Care Administration, 849
So. 2d 434 (Fla. 1st DCA 2003).

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this recommended order. Any exceptions to this recommended order should be filed with the agency that will issue the final order in this case.