

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

RAYMOND VAN LOON,)
)
 Petitioner,)
)
 vs.) Case No. 03-4285SED
)
 DEPARTMENT OF HEALTH,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

On March 16, 2004, an administrative hearing in this case was held in Tampa, Florida, before William F. Quattlebaum, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

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STATEMENT OF THE ISSUE

The issue in the case is whether the Petitioner's employment position was properly reclassified from Career Service to Selected Exempt Service pursuant to Section 110.205(2)(x), Florida Statutes (2001).

PRELIMINARY STATEMENT

On April 23, 2001, Raymond Van Loon (Petitioner) became employed by the Hillsborough County Health Department as a Professional Engineer III. On July 1, 2001, the Department of Health (Respondent) reclassified the Petitioner's employment position from the Career Service System to the Selected Exempt System pursuant to Section 110.205(2)(x), Florida Statutes (2001).

Following the decision rendered in Reinshuttle v. Agency for Health Care Admin., 849 So. 2d 434 (Fla. 1st DCA 2003), the Petitioner was notified by the Respondent's letter dated July 21, 2003, that he could file a petition challenging the reclassification of his position. The Petitioner petitioned for review of the reclassification. On November 18, 2003, the Respondent forwarded the petition to the Division of Administrative Hearings, which scheduled the hearing for February 9, 2004. Upon unopposed motion filed by the Petitioner, the hearing was rescheduled for March 16, 2004.

At the hearing, the Petitioner presented the testimony of one witness and testified on his own behalf. Petitioner's Exhibits numbered 1, 2, and 4 were admitted into evidence. The Respondent presented the testimony of five witnesses, and had Exhibits numbered 1 through 4, 6 through 8, 10 through 12, and 18 through 32 admitted into evidence.

The one-volume Transcript was filed on March 29, 2004. Proposed recommended orders were due to be filed within ten days from the date of the transcript filing. On April 5, 2004, the Respondent filed an unopposed motion to extend the time for filing the proposed recommended orders, which was granted. Both parties thereafter filed proposed recommended orders on April 16, 2004.

FINDINGS OF FACT

1. Beginning on April 23, 2001, and at all times material to this case, the Petitioner was employed by the Hillsborough County Health Department as a Professional Engineer III, a position requiring state registration in accordance with Chapter 471, Florida Statutes (2001).

2. The job announcement related to the Petitioner's employment states that the position "oversees" the drinking water program and engineering-related activities. The position was responsible for management of "Safe Drinking Water" permitting and compliance enforcement program entailing a

variety of duties, including planning, organizing, and coordinating work assignments.

3. According to organizational charts before and after the date of the reclassification of the position, the Professional Engineer III position had direct supervision of four employment positions, and indirect supervision of eight additional positions that reported to one of the Petitioner's direct employees.

4. The position of Professional Engineer III includes a substantial amount of engineering review responsibilities, and is charged with direct supervision of the Safe Drinking Water Act program staff and Limited Use Drinking Water program staff.

5. The position description categorized the job responsibilities as "regulatory," "supervising/training," "enforcement," "policies and procedures," "record keeping," "education," and "committees/other duties." Review of the specific duties indicates that the Petitioner's supervisory responsibilities were included within several of the categories.

6. Included within the "regulatory" category was "[e]nsures staff conduct field inspections of public water systems. . . . Supervisor is responsible and accountable for field staff."

7. Included within the "supervising/training" category were the following duties:

- Supervises Engineers to ensure all programs in the Safe Drinking Water Program are completed according to the agreement with DEP and the policies and procedures of the Department of Health.
- Supervises an Environmental Supervisor II to ensure that all programs in the Limited Use Drinking Water Program and Private Drinking Water Program are completed according to the F.S., F.A.C. and county regulations.
- Supervises staff review of engineer's plans.
- Supervises and reviews the preparation of non-compliance letters written by staff regarding enforcement actions.
- Provide training to new Health Department staff in all aspects of EHS at least once a year (standardized presentation).
- Perform field inspections (documented) with personnel on a quarterly basis to evaluate staff performance and for Quality Improvement (QI) in accordance with office policy. Telephone regulated facilities each quarter to determine customer satisfaction . . . in accordance with office policy.
- Develop training modules for specific program areas (public drinking water systems) and maintain them accurate and current. Provide those training modules to new EH staff and twice a year to existing EH staff.
- Assign staff to special work areas as necessary and perform field inspections (staff shortages, vacation/leave time, and natural disaster).
- Evaluate personnel's work, plan work load, special tasks to include efficiency.

8. Included within the "enforcement" category were the following duties:

- Reviews appropriate enforcement activities generated by staff and assure timely

progress of formal enforcement from compliance to enforcement.

- Ensures the time progress of enforcement cases by working closely with the compliance section of the Public Drinking Water Program in bringing non-compliant clients into enforcement. Follow up on violations of FAC and/or FS and ensure compliance is achieved or enforcement action is taken.

9. Included within the "policies and procedures" category was the responsibility to "[r]eview daily activity reports and corresponding paperwork each day."

10. The Petitioner was responsible for managing the daily workflow of the office. He planned, directed, and reviewed the work performed by his employees.

11. The Petitioner was responsible for the evaluation of all employees under his direct supervision, including newly hired probationary employees.

12. The Petitioner was responsible for review of the evaluations for employees for whom he had indirect supervisory duties, and he also provided his own independent evaluation of their performance.

13. The Petitioner was responsible for the discipline of employees. At one point he had to counsel an employee who was consistently late to arrive for work.

14. The Petitioner was also responsible for seeking qualified applicants for position openings. He was responsible

for initiating the employment process. He chose the panel that interviewed applicants, designed the interview questions, participated in interviews, and made the final recommendation as to the person hired. He had the authority to decline to fill an open position if he deemed that the applicants lacked sufficient qualification.

15. The Petitioner claims that the majority of his time was spent in review of permit applications and related engineering tasks. The evidence fails to support the assertion.

16. The Petitioner's claim appears to essentially relate to a period of time subsequent to the July 1, 2001, reclassification of the position.

17. During the time between his initial employment and the date of the position reclassification, the Petitioner was primarily a supervisory employee and had little, if any, permit review responsibilities. The office was fully staffed with other employees who were directly responsible for review of permit applications and related field reviews.

18. In autumn of 2001, after the position was reclassified, the office began to lose employees, resulting in an increased workload for the remaining workers. At this point, the Petitioner began to undertake a substantial role in the actual review of permit applications in addition to his supervisory duties. Nonetheless, the Petitioner remained

responsible for supervision of remaining employees. The Petitioner was also responsible for filling the vacant positions.

CONCLUSIONS OF LAW

19. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding. § 120.57(1), Fla. Stat. (2003).

20. Section 110.602, Florida Statutes (2001), creates the Selected Exempt Service employment classification as follows:

Selected Exempt Service; creation, coverage.--The Selected Exempt Service is created as a separate system of personnel administration for select exempt positions. Such positions shall include, and shall be limited to, those positions which are exempt from the Career Service System pursuant to s. 110.205(2) and (5) and for which the salaries and benefits are set by the department in accordance with the rules of the Selected Exempt Service. The department shall designate all positions included in the Selected Exempt Service as either managerial/policymaking, professional, or nonmanagerial/nonpolicymaking.

21. In relevant part, Section 110.205(2)(x), Florida Statutes (2001), exempts from the Career Service System, certain employees described as follows:

Effective July 1, 2001, 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. (Emphasis supplied.)

22. The Respondent has the burden of establishing by a preponderance of the evidence that the reclassification of the Petitioner's employment position was proper under the applicable statutes. Florida Department of Transportation v. J.W.C. Co., Inc., 396 So. 2d 778 (Fla. 1st DCA 1981); Balino v. Department of Health and Rehabilitative Services, 348 So. 2d 349 (Fla. 1st DCA 1977). See also Section 120.57(1)(j), Florida Statutes (2003), providing that "[f]indings of fact shall be based upon a preponderance of the evidence, except in penal or licensure disciplinary proceedings or except as otherwise provided by statute. . . ." In this case, the burden has been met.

23. The Petitioner's employment position at the time of reclassification, both as identified in the position description and as actually performed, meet the above-referenced definition of "supervisory." Accordingly, the statute authorizes the reclassification of the position from Career Service to Selected Exempt.

24. His employer informed the Petitioner that the reclassification occurred because his position was

"supervisory." It should be noted that Section 110.205(2)(r), Florida Statutes (2001), provides that positions requiring licensure as an engineer pursuant to Chapter 471, Florida Statutes, are also exempt from the Career Service System, and that salaries and benefits for such positions are in accordance with the rules related to Select Exempt Service.

25. The Petitioner asserts that Florida Administrative Code Rule 60K-1.009 (in effect at the time the reclassification occurred, but repealed on January 1, 2002) suggests that the Petitioner was in a "coordinator position" and therefore, was not properly reclassified. The greater weight of the evidence establishes that the primary responsibility of the Petitioner at the time the reclassification occurred was supervisory as defined by the statute as well as by the rule.

26. The Petitioner is disputing the termination of his employment in November 2002. Such issues are outside the scope of this proceeding. Section 110.604, Florida Statutes (2003), provides as follows:

Suspensions, dismissals, reductions in pay, demotions, and transfers.--Employees in the Selected Exempt Service shall serve at the pleasure of the agency head and shall be subject to suspension, dismissal, reduction in pay, demotion, transfer, or other personnel action at the discretion of the agency head. Such personnel actions are exempt from the provisions of chapter 120.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Department of Education enter a Final Order finding that the "Professional Engineer III" position held by Raymond Van Loon on July 1, 2001, was properly classified into the Selected Exempt Service.

DONE AND ENTERED this 21st day of April, 2004, in Tallahassee, Leon County, Florida.

William F. Quattlebaum

WILLIAM F. QUATTLEBAUM
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Filed with the Clerk of the
Division of Administrative Hearings
this 21st day of April, 2004.

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.