

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

JUDITH PAGE JOLLY, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 04-3232SED  
 )  
 DEPARTMENT OF CHILDREN AND )  
 FAMILY SERVICES, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

SUMMARY RECOMMENDED ORDER

This case came on for consideration pursuant to a Motion For Summary Disposition filed by Petitioner. After stipulation of the parties that summary disposition was appropriate and the record complete the Petitioner's Motion was granted.

APPEARANCES

For Petitioner: Jerry G. Traynham, Esquire  
Patterson & Traynham  
315 Beard Street  
P.O. Box 4289  
Tallahassee, Florida 32315

For Respondent: Richard W. Evans, Esquire  
Allen, Norton & Blue, P.A.  
906 North Monroe Street  
Tallahassee, Florida 32308

STATEMENT OF THE ISSUE

The issue in this proceeding is whether Petitioner's position was properly reclassified from Career Service status to Selected Exempt status.

PRELIMINARY STATEMENT

On July 1, 2001, the Department of Children and Family Services (Department or Respondent) reclassified Petitioner's employment position from Career Service to the Select Exempt Service under the "Service First" initiative codified in Section 110.205(2)(x), Florida Statutes. At the time of the reclassification, Petitioner received no clear point of entry to an administrative hearing. Nevertheless, on May 9, 2002, Petitioner filed a Petition for Section 120.569, 120.57(1) Hearing with the Department. The Petition alleged that the Department improperly reclassified Petitioner's position upon the supposition that it was exempt from Career Service status pursuant to Section 110.205(2)(x), Florida Statutes, as performing duties either "managerial" or "confidential" within the meaning of Section 447.203(4) or (5), Florida Statutes, or "supervisory" within the meaning of Section 110.205(2)(x), Florida Statutes. The Petition for hearing was denied by the Department and Petitioner appealed that denial. This case became one of five cases consolidated in the First District Court of Appeal, which led to the opinion in Reinshuttle v. Agency for Healthcare Administration, 849 So. 2d 434 (Fla. 1st DCA 2003), that held Petitioner was entitled to an administrative hearing on the reclassification of her position. Thereafter, on September 15, 2004, the Petition for hearing was

forwarded to the Division of Administrative Hearings and the case set for hearing on November 29-30, 2004.

On November 17, 2004, the parties filed a Joint Motion to Continue and to Consolidate For Joint Hearing. The Motion requested consolidation of this case with Lori Cooper v. Department of Children and Family Services, DOAH Case Number 3231SED. The Cooper case had generally followed the same legal process as this case and involved the same issues. On November 22, 2004, a continuance was granted and the case was rescheduled for February 8, 2005. The cases were not consolidated but would be combined for purposes of hearing. On February 3, 2005, the parties filed a second Joint Motion to Continue due to an immediate family member's death in Petitioner's family. The Motion also advised that the parties were engaged in settlement negotiations. On February 4, 2005, the Motion to Continue was granted and the cases rescheduled for March 31, 2005. On March 29, 2005, the parties filed a third Joint Motion to Continue based on continued negotiation regarding the details of the settlement regarding Petitioner's position. Due to the settlement in principle, the case was placed in abeyance with a status report due by May 2, 2005.

On May 2, 2005, the parties filed a Stipulation and Agreement of the Parties stipulating that the Department did not contest the Petition. The stipulation requested the abeyance be

continued pending resolution of the issue of attorney's fees and costs at issue in the First District Court of Appeal. On May 3, 2005, abeyance was continued with a status report due no later than July 2, 2005. Thereafter, status reports were filed by the parties with the issue of attorney's fees and costs remaining unresolved. On March 7, 2006, the parties requested the abeyance be continued and advised that the issue of attorney's fees and costs had been referred for mediation before a mediator. (On December 29, 2006, the parties notified the undersigned that the issue of attorney's fees and costs had been resolved. On January 31, 2007, the undersigned held a status conference to determine whether the cases should be scheduled for hearing. Both parties agreed that the cases should be handled by summary disposition and that the record was complete.)

#### FINDINGS OF FACT

1. Prior to July 1, 2001, Petitioner, Jolly was employed in the Comprehensive Health Planning Section of the Programs, Regulation and Health Facilities Division of the Department of Children and Family Services (DCFS) in a Career Service employment position classified and titled Administrative Assistant II Career Service. At the time, Petitioner held permanent Career Service status.

2. The Administrative Assistant II position was certified by the Public Employees Relations Commission (PERC) as within the Career Service Administrative-Clerical collective bargaining unit, represented by the Florida Public Employees Council 79, AFSCME.

3. In her position, Petitioner performed clerical functions. She did not supervise other employees, perform any managerial functions, or perform any confidential duties. She had no role in labor relations, collective bargaining, the adjustment of grievances filed by employees, or the imposition of discipline upon other employees for breaches of conduct. Similarly, Petitioner had no role in the preparation of agency budgets for collective bargaining, or for other purposes.

4. Sometime around June 15, 2001, Petitioner was notified by DCFS that her position as an Administrative Assistant II would be reclassified as a position within the Selected Exempt Service (SES). The reclassification was effective July 1, 2001. No input from the Petitioner regarding the duties of her position was sought by the Department in its decision to reclassify Petitioner's position. Indeed, the Department reclassified the position based on the fact that Petitioner assisted or aided managerial employees and allegedly had access to confidential material. However, there was no evidence in the

record that Petitioner's position involved any confidential matters.

5. Petitioner was terminated from employment with DCFS, without explanation, on June 28, 2002. In terminating her employment as an Administrative Assistant II, DCFS represented that Petitioner had no appeal rights either to PERC or under the bargaining agreement between AFSCME and the State of Florida because her position had been reclassified. However, the evidence does not demonstrate that Petitioner's position was managerial, confidential or supervisory. Therefore, Petitioner's position should not have been reclassified to SES and she is entitled to her rights as a Career Service employee.

CONCLUSIONS OF LAW

6. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this litigation. §§ 120.569 and 120.57(1), Fla. Stat. (2005;) and Reinshuttle v. Agency for Healthcare Administration, 849 So. 2d 434 (Fla. 1st DCA 2003).

7. Section 110.205, Florida Statutes (2001), states:

(1) CAREER POSITIONS.— The career service to which this part applies includes all positions not specifically exempted by this part, . . . .

(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.

8. Section 447.203(4) and (5), Florida Statutes (2001), states:

(4) "Managerial employees" are those employees who:  
(a) Perform jobs that are not of a routine, clerical, or ministerial nature and require the exercise of independent judgment in the performance of such jobs and to whom one or more of the following applies:

1. They formulate or assist in formulating policies which are applicable to bargaining unit employees.
  2. They may reasonably be required on behalf of the employer to assist in the preparation for the conduct of collective bargaining negotiations.
  3. They have a role in the administration of agreements resulting from collective bargaining negotiations.
  4. They have a significant role in personnel administration.
  5. They have a significant role in employee relations.
  6. They are included in the definition of administrative personnel contained in s. 228.041(10).
  7. They have a significant role in the preparation or administration of budgets for any public agency or institution or subdivision thereof.
- (b) Serve as police chiefs, fire chiefs, or directors of public safety of any police, fire, or public safety department. Other police officers, as defined in s. 943.10(1), and firefighters, as defined in s. 633.30(1), may be determined by the commission to be managerial employees of such departments. In making such determinations, the commission shall consider, in addition to the criteria established in paragraph (a), the paramilitary organizational structure of the department involved.

However, in determining whether an individual is a managerial employee pursuant to either paragraph (a) or paragraph (b), above, the commission may consider historic relationships of the employee to the public employer and to co-employees.

(5) "Confidential employees" are persons who act in a confidential capacity to assist or aid managerial employees as defined in subsection (4).



9. Because Respondent sought to reclassify the employment position from Career Service to Exempt Service, it bears the burden to prove by a preponderance of evidence that the reclassification met statutory requirements. See Florida Department of Transportation v. J.W.C., 396 So. 2d 778 (Fla. 1st DCA 1981); Balino v. Department of Health and Rehabilitative Services, 348 So. 2d 349 (Fla. 1st DCA 1977); and Young v. Department of Community Affairs, 625 So. 2d 831 (Fla. 1993).

10. Clearly, Petitioner does not meet the criteria for reclassification of her position. The supporting affidavit of Petitioner establishes factually that in her position with the Respondent, as an Administrative Assistant II, Petitioner performed no duties which were "managerial" or "confidential" within the meaning of Section 447.203(4) or (5), Florida Statutes, or "supervisory" within the meaning of Section 110.205(2)(x), Florida Statutes. Taken together with Respondent's stipulation that it does not contest the Petition, these facts establish that Petitioner's position was properly classified as within the Career Service, and that it was improper for Respondent to reclassify the position as within the Select Exempt Service. Therefore, Petitioner's position should be properly classified as Career Service.

RECOMMENDED ORDER

Based upon the Findings of Fact and Conclusions of Law reached it is RECOMMENDED:

That Petitioner's position of Administrative Assistant II, is that of a Career Service employee and should not have been reclassified as Select Exempt Service. Petitioner is a person entitled to rights pertaining to Career Service employees as of the time of her improper reclassification.

DONE AND ENTERED this 13th day of April, 2007, in Tallahassee, Leon County, Florida.

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DIANE CLEAVINGER  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
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this day of <month>, <year>.

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.