

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

FERNANDO MESQUITA,
Appellant

v.

C-16-14

**EXECUTIVE OFFICE OF HEALTH AND
HUMAN SERVICES,**
Respondent

Appearance for Appellant:

Fernando Mesquita
Pro se

Appearance for Respondent:

Sheila Anderson
Executive Office of Health and
Human Services
600 Washington Street
7th Floor
Boston, MA 02114

Commissioner:

Cynthia A. Ittleman¹

DECISION

On January 28, 2016, the Appellant, Fernando Mesquita (Mr. Mesquita or Appellant), pursuant to G.L. c. 30, § 49, filed a timely appeal with the Civil Service Commission (Commission), contesting the decision of the state's Executive Office of Health and Human Services (EOHHS) to deny his request for reclassification from the position of EDP Systems Analyst III to the position of EDP Systems Analyst IV. A pre-hearing was held on February 16, 2016 at the offices of the Commission. A full hearing was held at the same location on March

¹ The Commission acknowledges the assistance of Law Clerk Barbara Grzonka in the drafting of this decision.

30, 2016.² Witnesses, except the Appellant, were sequestered. The hearing was digitally recorded and both parties were provided with a CD of the hearing³. The parties opted not to submit post-hearing briefs. The appeal is denied because the Appellant has not proved that he performs the tasks of an EDP IV, including building servers on his own, a majority of the time.

FINDINGS OF FACT:

Twelve (12) exhibits were entered into evidence at the hearing and post-hearing submissions requested at the hearing.⁴ Based on these exhibits, the testimony of the following witnesses:

² The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§1.00, *et seq.*, apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

³ If there is a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to supply the court with a transcript of this hearing to the extent that he/she wishes to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion. In such cases, this CD should be used by the plaintiff in the judicial appeal to transcribe the recording into a written transcript.

⁴ In response to my request at the hearing, the Respondent produced post-hearing redacted documentation of reclassifications of eight (8) EDP IIIs to EDP IVs within a year prior to the hearing in this case, information sent to the state's Human Resources Division (HRD) by the Respondent in response to the Appellant's appeal of its decision to HRD, and four (4) Form 30 Job Descriptions (for various IT positions, including one for EDP III, related to the testimony of Ms. Susan Robak that Form 30s had changed). The EDP III Form 30 produced by the Respondent is dated 2004 and it is significantly different from the Form 30 used by the Respondent in this case (Ex. 8) and it does not list the qualifications required at hire, the qualifications acquired on the job, minimum entrance requirements or license and/or certification requirements. Upon receipt of the multiple Form 30s submitted post-hearing by the Respondent, I requested, and the Respondent produced, the post-hearing affidavit of Ms. Susan Robak regarding the Form 30s produced but it had little information. I had also requested that the Respondent produce Ms. Gurliaccio's notes regarding the Appellant's request for reclassification to EDP IV but the Respondent replied that Ms. Gurliaccio does not have any such notes. Documents produced by the Respondent post-hearing at my request shall be referred to as Respondent's Post-Hearing Exhibits.

Post-hearing, the Appellant also provided documents pursuant to my request at the hearing: the two (2) versions of the EDP III Form 30 Job Descriptions that the Respondent sent him after denying his reclassification request, email messages between the Appellant and Mr. Fitzpatrick regarding the Appellant's request for his Form 30 Job Description, the letter sent by the Appellant to HRD appealing the Respondent's denial of his request for reclassification, and the Appellant's rebuttal to the Respondent's preliminary denial of his reclassification request. (The two (2) Form 30s sent to the Appellant prior to his appeal to the Commission are identical to the Form 30 marked and entered into the record here as Ex. 8 except that one (1) of the Form 30s the Appellant received prior to filing his appeal contains a position number ("POS. #") that is different from Ex. 8.) An email message to the Appellant from Mr. Fitzpatrick, an EOHHS supervisor, preceding the Appellant's appeal, acknowledges that one (1) of the two (2) Form 30s that he sent the Appellant had the correct position number but the other one he sent the Appellant was not the Appellant's Form 30 because it had an incorrect position number. Documents produced by the Appellant post-hearing at my request shall be referred to as Appellant's Post-Hearing Exhibits.

Called by the Respondent:

- Susan Robak , Deputy Director Field Operations, Secretariat IT Operations, Executive Office of Health and Human Services (EOHHS)
- Melanie Gurliaccio, Planning and Staffing Analysis Supervisor, Office of Children, Youth and Family Programs, EOHHS Human Resources office

Called by the Appellant:

- Fernando Mesquita, Appellant

and taking administrative notice of all matters filed in the case and pertinent statutes, case law, regulations, policies, and reasonable inferences from the evidence; a preponderance of credible evidence establishes the following facts:

1. Many years ago, Mr. Mesquita began working for the Commonwealth as a social worker in the Department of Transitional Assistance (DTA). In 1991, his title changed to Operations Coordinator for IT at DTA. (Testimony of Mr. Mesquita)
2. Following various agency consolidations, the Appellant's IT work was extended to a number of agencies. In 2013, the Appellant was upgraded to his current position, Electronic Data Processing Systems Analyst III (EDP III) in the Executive Office of Health and Human Services (EOHHS).⁵ The functional title of his job is IT Site Manager. (Exhibit 1; Testimony of Appellant)
3. By the time that Mr. Mesquita requested to be reclassified to an EDP IV, he was assigned to oversee the IT operations of eleven (11) EOHHS departments in five (5) communities north of Boston; he inherited two (2) of the five (5) communities because one (1) colleague is on sick leave and another colleague (who was an EDP IV) retired in 2014. Through his work on Help Desk, he is familiar with at least some of the Help Desk work others at his site

⁵ The Appellant asserts that he was not previously appointed to EDP Systems Analyst II. (Testimony of Appellant)

perform. He also provides backup to other Site Managers in other communities as needed.
(Exhibits 1 and 4; Testimony of Appellant)

4. Mr. Mesquita is responsible for overseeing the IT needs of approximately 470 people. His duties include, for example, maintaining computers, restoring files from a server, providing printer access to employees, enabling EOHHS to participate electronically in (2) court clinics, meeting with directors as appropriate and providing training one-on-one as needed.
(Testimony of Appellant)
5. The Appellant's immediate supervisor is Mark Grant, a supervisor Technical Pay Law (TPL) employee⁶. Michael Fitzpatrick, the Northeast Region Regional Manager, oversees Mr. Grant. (Testimony of Appellant; Ex. 4)
6. Ms. Sue Robak, the Deputy Director of IT Field Operations for EOHHS since 2013, oversees Mr. Fitzpatrick. (Testimony of Appellant; Testimony of Robak; Ex. 4))
7. Ms. Robak began working for the state years ago, starting as a clerk typist at DTA, following which she furthered her education and moved on to related positions, then to a systems support position. She later obtained certification as a Novell administrator, became a manager and then a site manager, and then became manager for all site managers. Since DTA was consolidated with other agencies in EOHHS, Ms. Robak has been overseeing the work of six (6) regional managers, who supervise fifteen (15) supervisors who, in turn, supervise server and desktop support staff. She is familiar with the EDP Specification

⁶ Established by Chapter 717 of the Acts of 1983, the Technical Pay Law (TPL) Program allows agencies to attract and retain qualified information technology professionals in a highly competitive labor market. Under TPL, there are two categories of employees, with broad salary ranges within which the TPL employee's salary may be adjusted based on the competencies and responsibilities required to perform the job; and on the employee's performance. ... The TPL program is administered by the Executive Office of Administration and Finance, through the joint efforts of the Human Resources Division and the Information Technology Division. A standing TPL Advisory Committee, made up of representatives from Shared Services agencies, meets regularly to review TPL issues and evaluate current program components to ensure that existing needs of shared services stakeholders are being addressed...." TPL Guide 2005 (www.mass.gov/anf/docs/hrd/policies/tpl/final-tpl-guide.doc).

Series (EDP Spec) and she knows the Appellant as an EOHHS employee. (Testimony of Robak; Ex. 4)

8. In or about 2004 to 2010, Ms. Robak was involved in a review of pertinent Form 30s and standardizing them and grade levels for engineers and staff who work on desktop matters and servers. (Testimony of Robak; Respondent's Post-Hearing Exhibits) Following this review period, IT staff in different EOHHS agencies were consolidated. Thereafter, Ms. Robak was involved in the reclassification of about twenty (20) IT employees, which included reclassification of EDP IIs to IIIs and EDP IIIs to IVs or to TPL salary positions. Ms. Robak was involved in the Appellant's reclassification to EDP III in 2013 as well as the Appellant's request for reclassification to EDP IV at issue in this appeal. (Testimony of Robak)
9. For a period of time, all pertinent reclassification requests were sent by Joan Bishop Fallon, Employment and Staffing Manager in the EOHHS Human Resources office, to Ms. Robak for her input. However, in or about July 2015, Ms. Bishop Fallon retired. Since then, reclassification requests have been sent to Regional Managers. Although reclassification requests would usually be sent to the applicant's direct supervisor, since some of the personnel seeking reclassification were in the same bargaining unit as their direct supervisor, the Respondent sent those requests to the applicants' Regional Managers. (Testimony of Robak)
10. Mr. Fitzpatrick was the first person that the Appellant spoke to concerning his interest in being reclassified to EDP IV. The Appellant asked Mr. Fitzpatrick if he (Mr. Fitzpatrick) thought that he (the Appellant) should apply for reclassification to EDP IV and Mr. Fitzpatrick said 'yes'. Thereafter, whenever the Appellant had a question about the reclassification, he consulted Mr. Fitzpatrick. The Appellant asked Mr. Fitzpatrick for his

Form 30 Job Description for his reclassification request. The Respondent preliminarily denied the Appellant's request on August 10, 2015 and issued its final decision denying his request on August 19, 2015. The Appellant did not receive his Form 30 until October 29, 2015 from Mr. Fitzpatrick. (Testimony of Appellant; Exs. 5, 6 and 9; Appellant's Post-Hearing Exhibits) By email message dated November 17, 2015, Jonathan Senecal, in the EOHHS Human Resources office, informed the Appellant that "[t]here is no Form 30 for the EDP Systems Analyst III in your records. Your supervisor is supposed to include it with you (sic) EPRS, which was in the file. If you need further assistance, email [Ms.] xxxx. ..." (Ex. 9)

Appellant's Interview Guide

11. On May 19, 2015, the Appellant sent an email message to Ms. Bishop Fallon in the Respondent's Human Resources office requesting reclassification to EDP IV. By email dated May 22, 2015, Ms. Bishop Fallon contacted the Appellant and Ms. Robak (copying Mr. Fitzpatrick) stating, in part,

"Sue:

Attached please find the necessary documents for the reclassification process that was requested for Fernando Mesquita. Please have Fernando complete the Interview Guide. Upon your review of the completed Interview Guide, you will need to sign the Classification Audit Decision form. Please return both hard copy forms to me. ...

In order to conduct a thorough analysis of this position, please have Fernando provide us with sufficient documentation. In addition, please include a current EPRS, a Form 30, and an updated Organization chart. Please note that this information must be returned to me within **two weeks**. ..." (Respondent's Post-Hearing Exhibits)(emphasis in original)

12. Also on May 22, 2015 Ms. Bishop Fallon sent a memorandum to Ms. Robak stating, in pertinent part,

In accordance with the classification appeal procedures outline in Chapter 30, Section 49, MGL, and with the classification maintenance procedures outlined in

Chapter 30, Section 45, MGL, we have requested the completion of an Interview Guide to gather pertinent information. Attached please find the information the incumbent has prepared. Would you please review it to determine the accuracy of stated duties and responsibilities. If you agree with the information presented, please verify below in the space provided and give a written explanation why you disagree with the stated duties and responsibilities in the Interview Guide. ... (Ex. 12)

13. The Appellant completed and submitted the Interview Guide on May 27, 2015. (Testimony of Appellant; Ex. 1)

14. The Interview Guide asks the employee to describe what he or she views as the basis of the appeal. In response, the Appellant indicated,

Position has changed throughout, the last 3 Mergers (Merging with other agencies about every 3 to 4 years), responsibilities and position itself are equal to surpassed the EDP System Analysts IV form 30, to the point that, not only backup their offices when they are absent, or unavailable to be at their sites, I am required to perform the same work, and expected the same job responsibilities as [EDP IV], I have also inherit their offices through their absence. I assist on their duties, and perform the work together on projects, and diagnose/Troubleshoots problems side by side. Server functions have been added and are on a daily demand such as, Backups and Recover of agencies covered, Operating system patches are a normal routine, Build and restore servers as required have been added

Manage site specific projects as related to network infrastructure & server support Install, configure and support state issued mobile devices. Utilize Active Directory to Add, Delete, Change users and computers to their right environment.

(Ex. 1)(sic)

15. The Interview Guide asks,

What people or groups of people do you come in contact with in the performance of your job both within and outside your agency? Indicate ... the job titles or functions of your contacts. Also describe the nature and purpose of your interpersonal relationships.

The Appellant responded,

As EHS IT Site Manager I am assigned to and not excluding, Sale, DCR, Lynn DCR, Salem DMH, Lynn DMH, Salem DTA, Lynn DYS, Peabody DYS, Peabody DYS (EDU) Methuen DYS (EDU), Peabody and Salem Court Clinics, Lynn Outstations, and backup similar offices in other cities. Customers I support vary through each of the Agencies, they range from Social workers, to Training Unit personnel, Appeals referees, management for each Dept. also deal with Private companies that cover the hardware,

and software used in each office Dealing with Vendors such as Ricoh, Zerox, Konica, Verizon, Ntell, Retrofit, HP, HubTech, etc. on one to one basis when needed for software, hardware issues, requests, and updates and troubleshooting.

Also maintain communication, and work side by side with Server Engineers for such projects as Upgrades, Troubleshooting.

Maintain a professional working relationship with office management and staff regarding trouble tickets, Change Orders, Project planning, Upgrades, Decision Making with Management on a day to day basis.

These relationships are based on my technical and personal skills which allow to problem solve issues within network, desktops, printers, as well as phone services, [voice over IP], and analog, communications video and audio visuals.

Obtain bids for new wiring, and jack installations submitting bids to Centralized office for approval.

Also work together with IT Engineers, IT Telecom staff, to resolve [local area network], [wide area network], and VOIP issues and upgrades.

A good example is that North Shore Site had a move this past spring of 2015 (3 offices moved into a newer space). Attended meetings gave input, and provided databases, and information to facilitate the move.

(Ex. 1)(sic)

16. Asked to describe the “basic purpose” of his position, the Appellant indicated, in part,

As an IT site Manager, I am responsible to maintain a healthy network by providing support for Desktops, servers, monitoring data backups that are performed at the server level, making sure peripherals in the MDF and IDF rooms are functioning properly (such as Switches, HVAC and UPS, and Server, Modem etc.). Assist staff within every office I come in contact with, not only the offices I cover but also any office that this is asked of me ... but also in tutoring when in need of learning the software and or hardware.

Restore information from backups when information has been lost or corrupted.

Assemble, connect and disconnect new or existing equipment as needed, also install, replace and remove (e.g. printers, PC's, servers, UPS, switches, Faxes, MFD's, LCD's, laptops, scanners, phones, Audio Visual equipment).

(Ex. 1)

17. Asked to describe significant changes in his job since his appointment to that position, the

Appellant answered, in part,

As a result of all the Mergers (we started in 1994 as veering only DTA, now we are covering the last Merge, in May 2012, DTA, DDS, DCF, DMH, DPH, MEC, DYS) consolidation and expansion ... the work load has not only increased, the amount of users that I cover have quadrupled, and the level of complexity is far changed ... The software/hardware support is also another addition to our daily routine, and the need of knowledge to be able diagnose, troubleshoot , and aid each individual as by far increased

...

The result the maintaining of network print queues in the windows server environment has increased with Diagnosing and repairing any software issues in the Windows Server 2002, 2008, windows 7 ... as well as Anti-Virus, Operation System patches, or other mandated software upgrades ...

...I work alongside individuals that already maintain the higher position, doing exactly the same work ...

Moving users and computers ... with the constant changing in agencies such as DCF. Participate in the development of the documentation of servers, infrastructure and practices by providing written and/or verbal communications ... The technical ability to be able to maintain, diagnose, and troubleshoot an entire IT solution on the agency and individual level is comparable to that of an [EDP IV][.]

(Ex. 1)(sic)

18. Asked to list his duties (with the most important ones first), and the percentage of time he spends on them, the Appellant indicated,

Troubleshoot errors with applications	25%
Reimage and inventory	10%
Responding to Viruses*	11%
User support Teaching, or just helping ...	12%
System Administration in active Directory/Rights editing or adding	11%
Adding/Editing/Deleting users to the system by means of server	6%
Install printers new devices	5%
Email support	5%
Voip configuration, troubleshooting**	5%
Deploy new equipment throughout my main and backup offices	6%
Move pcs phones desktops printers	3%
Installing new hardware and software based on TR Requests	6%

*... becomes a very much larger percentage when the network/desktops get infected.

**This has become a higher percentage largely because of a major move we had at the North shore Office, and due to the New Call Center Project.

(Ex 1)(sic)

19. Asked to describe the major problems he faces and how he resolves them, the Appellant replied, in part,

The support of applications and upgrade of hardware vary from agency to agency and require constant monitoring, and upgrading ... this requires that I constantly upgrade my IT Knowledge ... to meet these needs, I utilize my skills, internet research ..., technical manuals, work with vendors, specialist, and communication with coworkers ...

Act as lead Support technician ...

(Ex. 1)

20. Asked who assigns, review and approves his work, the Appellant indicated, in part,

Tickets are assigned on call and office covering basis via the helpdesk.
Immediate supervisor and Regional Manager assign tickets based on the above ...
With large percentage of the work coming from staff that I come in contact daily
throughout the agencies in person, by email, and not excluding direct calls
(Ex. 1)

21. Asked whom he supervises, whom his supervisees supervise, and whom he functionally supervises the Appellant wrote, in part, “N/A”. (Ex. 1)

22. Asked what equipment he operates or repairs, the Appellant wrote,

Servers
Backup tape machines
VOIP Phones not excluding Analog Phones
Desktop pcs, laptops, and tablets
Backup power units, as well as UPS batteries.
Printer, Faxes, and Multifunction Units
Cabling,
Troubleshooting Comcast routers and switches at DYS Non Magnet Facilities
Patch Panels, Switches, Routers, Modems
Handheld devices such as DDS portable email devices EBT systems
Operated, and troubleshot Pitney Bowes Mail Machines
Overhead Projection machines
Knowledge of a variety of software used by all the agencies covered.
(Ex. 1)

23. Asked about his working conditions, the Appellant replied, in part, “Time demands are requested sometimes without any anticipated time in order to work after hours, or weekend ...” (Ex. 1)

24. Asked whether his job requires “a certificate, license, graduate degree or other special requirement”, the Appellant indicated, in part, “If any certificates are required they are covered by time of experience on position, and training taken through the years, funded by the Commonwealth, I also have a Bachelor of Arts degree....” (Ex. 1)

The Appellant’s Interview Guide was sent to Melanie Gurliaccio, the Planning and Staffing Analysis Supervisor for the Children, Youth and Families cluster of the EOHHS Human Resources office. Ms. Gurliaccio’s duties include overseeing the creditable service unit to

contact the state Retirement Board to get credit for employees' years of service for retirement. At the time that she reviewed the Appellant's reclassification request, Ms. Gurliaccio had been in her position for one (1) year; the Appellant's reclassification request was the first one she had processed. The Appellant's reclassification request was the only reclassification request from an EDP III in the Northeast Region that Ms. Gurliaccio processed at the time. Ms. Gurliaccio did not have to obtain approval from a supervisor in order to approve or deny reclassification requests. Previously, Ms. Gurliaccio worked in other Human Resources positions at EOHHS, working approximately ten (10) years at EOHHS, and in the private sector prior to working at EOHHS. (Testimony of Gurliaccio)

25. Ms. Gurliaccio reviewed the Appellant's Interview Guide. She compared it to a Form 30 Job Description for an EDP III and for an EDP IV⁷ and compared it to the Appellant's Evaluation Performance Review System (EPRS) 2015, and she reviewed an organization chart for the Appellant's work site. Prior to making her preliminary determination concerning the Appellant's reclassification request, Mr. Gurliaccio spoke to Ms. Robak as she felt that she (Ms. Gurliaccio) was a little over her head with regard to a technology position. Ms. Robak is a manager but Ms. Gurliaccio did not know if Ms. Robak directly supervised the Appellant. While considering the Appellant's reclassification request, Ms. Gurliaccio did not speak with anyone who directly supervises the Appellant. The person who directly supervises someone requesting reclassification may not be involved in the reclassification process because the direct supervisor could be a member of the same bargaining unit.⁸ Ms. Robak explained to Ms. Gurliaccio the differences between an EDP III and IV and she

⁷ It is unclear which version of the Form 30 for EDP III Ms. Gurliaccio used when reviewing the Appellant's reclassification request in view of the fact that the Appellant requested his Form 30 in support of his reclassification request and the Respondent did not send it to him until after it denied his reclassification request.

⁸ It was not established that the Appellant and his direct supervisor were in the same bargaining unit.

explained the work that the Appellant performs. Prior to Ms. Gurliaccio's preliminary decision concerning the Appellant's reclassification request, Ms. Gurliaccio received the decision audit of Ms. Robak. (Testimony of Gurliaccio; Ex. 4)

26. Ms. Robak's audit decision, dated June 1, 2015, stated, in full,

I, Susan M. Robak feel that the attached [Interview Guide] report is inaccurate, for the following reasons.
Fernando's role and responsibility are consistent with an EDP System III. Since his last upgrade from a II to a III, his role has remained the same....
(Ex. 12)

EDP Specification Series

27. A Specification is different from a Form 30. "A Form 30 is a written description of the duties, responsibilities and qualifications required of an individual state employment position. ... [T]he state's Class (Job) Specifications ... are written in a more general form and are intended to describe all of the positions in a given title. Positions are classified, or assigned, to a particular title, by comparing the concepts of the Form 30 to various Class Specifications to determine the best 'fit'. Form 30's are tools for supervisors to use on a regular basis to communicate with employees the requirements of their individual jobs. ..." (Guidelines for Completing Position Descriptions (Form 30),

<http://www.mass.gov/anf/docs/hrd/policies/files/pol-eprs frm30guide.doc>. (Administrative Notice, September 27, 2017))

28. The state's Human Resources Division (HRD) EDP Spec was issued in May 1987 and provides a general summary of the requirements for all levels in the series as well as lists of specific requirements for each level. (Ex. 3)

29. The EDP Spec provides,

Summary of Series

Incumbents of positions in this series analyze procedures and problems to refine data and convert it to programmable form for electronic data processing; confer with users to ascertain specific output requirements, such as types of breakouts, degree of data summarization, and format for management reports; and perform related work as required.

The basic purpose of this work is to develop computer applications by which subject-matter processes can be organized.

(Ex. 3)

30. There are four (4) levels within the EDP Spec. EDP I is the entry level job in this series with no supervisory authority; EDP II is the first-level supervisory job in this series; EDP III is a second-level supervisory job in this series and EDP IV is the highest level in the series and it is a third-level supervisory job. (Ex. 3)

31. The EDP Spec provides examples of duties common to levels I through IV. It also contains additional requirements for EDP III and EPD IV. However, the requirements for an EDP III (numbers 1-9, *infra*) and for an EDP IV (numbers 1-11, *infra*) refer to functions related to mainframe maintenance and software development rather than to Microsoft and other applications currently used by the Commonwealth. Ms. Robak had to “stretch” the EDP Spec in order apply it to current job functions in the context of the Appellant’s reclassification request. (Testimony of Ms. Robak)

32. The additional requirements for EDP III and IV are:

EDP III:

“Incumbents of positions at this level also:

1. Schedule stages of software systems developments including such things as structured walk-throughs, program team assignments and others.
2. Train agency personnel or students on the job.
3. Determine flow of data in relation to data sets, input/output devices, spool allocations and time requirements.
4. Determine amount of computer time, core size and number devices required to process productions requests.
5. Evaluate computer programs to ensure compliance with standards.
6. Estimate the time, equipment and staff requirements for current of proposed systems or projects.

7. Research statistical reference materials to determine most suitable method for analysis of data.
 8. Apply statistical methods to raw data and interpret results.
 9. Confer with staff to determine sources, status of runs, allocation of hardware resources, etc.”
- (Ex. 3)

The Appellant performs requirements:

- #1 - they do not develop software anymore, they install it; this requirement could apply to the Appellant, for example, when he applies a Verizon update, Ms. Robak sends other site managers (who are EDP IIIs) to the Appellant’s site to assist and the Appellant would be the lead EDP III and tell the other EDP IIIs what to do;
 - #2 - the Appellant trains employees one on one on the spot; he does not conduct training on a group level;
 - #3 - the EDP Spec refers in this requirement to “data sets” but EDPs no longer work with “data sets”; the current technology involves working on data backups, which work the Appellant performs;
 - #4 - in current technology, this requirement involves assessing whether better equipment is needed for the task they are trying to perform;
 - #5
 - #6 - currently, this involves estimating time, equipment and staff requirements for current or proposed projects as requested by EPD IVs; and
 - #9
- (Testimony of Robak)

Given the changes in technology since the EDP Spec was issued in 1987, EDP III requirement #7, regarding research to decide the most suitable method for analysis of data, is no longer applicable. Similarly, it is a “reach” to state that EDP III requirement #8, concerning the application of statistical methods for the reasons stated, is still applicable. (Testimony of Robak; Ex. 3)

EDP IV:

“Incumbents of positions at this level also:

1. Prepare EDP unit budget requests and supporting documentation for agency approval and inclusion in final budget.
2. Schedule duty rosters and ensure that all duty stations are properly staffed.
3. Act as consultant to data processing personnel of other agencies or departments, determine suitability of agency programs or systems to meet specific needs and give general advice and direction to agency staff.
4. Act as consultant to users on such matters as computer-augmented or business-oriented instructions, validity of programs, assessing user needs, etc.

5. Approve programs/systems for computer programming.
 6. Conduct workshops and/or classroom training sessions for users and agency personnel and students.
 7. Determine staffing needs and proper allocation of staff to work functions.
 8. Interview, Evaluate and recommend applications for employment.
 9. Approve rescheduling of interrupted or delayed production runs.
 10. Act as liaison between users, operations management, computer center and agency personnel to establish or adjust production priorities
 11. Schedule daily production runs based on program priorities, input/output requirements, sequence of related jobs, etc.”
- (Ex. 3)

The Appellant performs requirements:

#3

#4

#10

Given the changes in technology since the EDP Spec was issued in 1987, EDP IVs no longer perform requirements #1 and #2. With respect to requirement #5, EDP IVs may make recommendations but they do not “approve” programs/systems for computer programming. With respect to requirement #6, Ms. Robak has not asked EDP IVs to conduct classroom training of others but they may train groups within her area. EDP IVs do not perform requirement #7. Regarding requirement #8, EDP IVs may be asked to be involved in interviews as part of a panel. With respect to requirement #9, EDP IVs do not have authority to approve rescheduling of interrupted or delayed production runs.⁹ Regarding requirement #11, the Appellant does not schedule production runs - they are scheduled by others; an EDP III would only monitor such activity. A number of EDP IVs had performed these functions until they were reclassified recently to TPL B (a senior position), the most recent of which reclassifications were completed shortly prior to the Commission’s hearing in this case. One of the reasons for the reclassification of a number of the EDP IVs to TPL Bs was that they were supervising other EDP IVs while

⁹ Ms. Robak indicated that even she cannot approve rescheduling of interrupted or delayed production runs. (Testimony of Robak)

they were members of the same bargaining unit as the EDP IVs they supervised.

(Testimony of Robak)

33. With respect to supervision received, EDP IIIs “receive general supervision from EDP System Analysts or other employees of higher grade who provide guidance on policy, assign work and review performance through conferences and reports for compliance with policy and procedures.” (Ex. 3) EDP IVs “receive general supervision from employees of higher grade who provide policy guidance, assign work and review performance through conferences and reports for effectiveness.” (Id.)
34. The EDP Spec lists twenty-seven (27) qualifications required at hire for all levels, such as knowledge of the types, concepts, techniques and applications of electronic data processing and equipment; knowledge of basic mathematics and elementary algebra; knowledge of the types and applications of job control language applicable to electronic data processing systems; ability to follow oral and written instructions; and ability to understand and apply the policies, procedures, specifications, standards and guidelines governing assigned unit activities. (Ex. 3)
35. Additional requirements at hire for EDP IIIs are: “knowledge of the methods and techniques of statistics” and “knowledge of the principles, practices, and techniques of supervision.” Additional requirements at hire for EDP IVs are: “ability to plan and conduct training or instruction” and “ability to organize work by establishing operating and/or reporting relationships and by assigning the work accordingly”. (Ex. 3) With the exception of supervisory knowledge, which is not required by his Form 30 and the Appellant acknowledges that he does not supervise anyone, the Appellant’s professional experience

appears to meet applicable additional requirements at hire for EDP IVs. (Testimony of Appellant; Exs. 1, 2 and 3)

36. The EDP Spec Minimum Entrance Requirements for an EDP III are, in pertinent part:

Applicants must have at least (A) four years of full-time, or equivalent part-time, professional experience in electronic data processing of which (B) at least two years must have been in work in which the major duties included computer systems analysis, or (C) any equivalent combination of the required experience and the [provided educational] substitutions ...” (Ex. 3)

The minimum entrance requirements for an EDP IV are, in pertinent part:

Applicants must have at least (A) five years of full-time, or equivalent part-time, professional experience in electronic data processing, of which (B) at least three years must have been in work in which the major duties included computer systems analysis, or (C) any equivalent combination of the required experience and the [provided educational] substitutions (Id.)

The Appellant’s professional experience appears to meet applicable EDP IV minimum entrance requirements. (Testimony of Appellant; Exs. 1, 2 and 3)

37. A key difference between EDP IIIs and IVs is the level of work performed on servers. There is a role for EDP IIIs regarding servers but it is minimal. The Appellant’s work on the servers is at the junior level, repetitive, scripted and mapped out. The Appellant worked on building DTA and DCF servers with another EDP III but they were given a script to follow, they made a first attempt on the work but the Appellant did not have the expertise and/or authority to complete the installation, set it up and turn it on. A senior person had to help them complete it. EDP IVs are much more technical; they are assigned to new projects to work with teams to determine the best way to set things up. An EDP IV’s work on a server includes building a server based on an engineering script created by a TPL, who is one step higher than an EDP IV, migrating data onto the new server, and actively monitoring and manipulating a directory. Data migration is usually done by senior server staff, in part, to

ensure that confidential files are properly protected. In addition, as an EPD III, the Appellant's job generally is to monitor computer data back-ups to make sure they are running properly whereas engineers are the ones who configure data back-ups. If there is a problem with the back-up jobs, it is the Appellant's responsibility to alert his supervisor(s). The Appellant and another EDP III built and configured a backup for DCF servers but the backup was predetermined by others and a senior system administrator had to come in and confirm and assist on the job because it was not completed by the Appellant and his associate. The Appellant also completes computer patch jobs to update computer security, helps employees with lost files on their desktops, and resets the print cue if printing stops, which work is performed by EDP IIIs. (Testimony of Ms. Robak; Testimony of Appellant)

Appellant's Form 30

38. In her review of the Appellant's reclassification request, Ms. Gurliaccio reviewed the Appellant's Form 30, which is derived from the EDP Spec. The Appellant's Form 30 lists the following under "General Statement of Duties and Responsibilities":

- Responsible for Customer/User satisfaction as it relates to IT services and support.
- Acts as support technician for sites as assigned.
- Performs tasks associated with managing, prioritizing, and resolving Help Desk tickets.
- Maintains the IT inventory database.
- Provides support of personnel as it relates to the use of equipment and software.
- Assess, debug and resolve technical problems associated with desktops and system peripherals.
- Performs all duties in respectful and professional manner.
- Performs all duties in accordance with EOHHS policies and procedures.
- Performs all business administrative duties in a timely and accurate fashion.
- Participate in projects and meetings as required.
- Support of personnel as it relates to the use of equipment/software in the EOHHS enterprise environment as needed.
- Coordinate site visits with service providers.
- Assists with troubleshooting and resolving Network issues as required.
- Assist with Monitoring and Maintaining the health and integrity of the network.
- Assist with local backup and restore process as required.

- After hours support as authorized and required.
- Responsible to perform related duties as required.
(Ex. 8)¹⁰

39. The Appellant's Form 30 indicates that he has no reporting staff. (Ex. 8)

40. The Appellant's Form 30 lists the following under "Detailed Statement of Duties and Responsibilities":

- Respond and resolve tickets and incidents in accordance with EOHHS IT policies and procedures as they relate to customer support and updates.
- Maintain inventories of all EOHHS IT assets using the EOHHS inventory collection process to secure Commonwealth assets.
- Manage the upgrade of hardware & software when necessary to insure that all services are provided in a secure and timely fashion. This includes but is not limited to new Anti-Virus, Operating System patches, or other mandated software upgrades as directed by EOHHS standards and practices.
- Clearly communicate and/or escalate to their supervisor any IT operations issues or disruption (planned or unplanned) to minimize user impact.
- Assist Telecom with movement of IP phones as required.
- Work collaboratively with internal and external groups in a team environment to improve overall customer service and support.
- Utilize any and all resources available through EOHHS and other sources for assistance with problem resolution.
- Implementation of EOHHS IT enterprise images for PC's (Desktop/Laptop) according to EOHHS procedures and policy to insure a consistent environment.
- Responsible for timely response and support during scheduled and authorized non-business hours to insure continuity of services to the network environment.
- Install and move assets as required according to EOHHS policies and procedures
- Assist with meeting special projects and other requests as required to maximize the efficient use of IT resources.
- Complete all activities within EOHHS security policies and practices to insure the safety and privacy of data, its clients and its resources.
- Act as the contact person for office wiring/cable installations and performs related duties as required.
- Required to travel to various sites as needed or requested.
- Manage site specific projects as related to network infrastructure as required.
- Assist with local backup and restore process to include swapping tapes, restoring files and transfer of media as required.

¹⁰ Ex. 8 is the Form 30 for the Appellant's title as EDP III. The space in the Form 30 to indicate when Ex. 8 was prepared is blank. However, Ex. 8 is very different from the 2004 version of the Form 30 for EDP III produced by the Respondent post-hearing in response to my request at the hearing for information regarding when and how the Form 30 was changed.

- Support, trouble shoot and configure remote access to assist network users with connectivity to EOHHS network from non-magnet connections.
- Perform all duties as required and directed.
(Ex. 8)

41. The “Qualifications Required at Hire” on the Appellant’s Form 30 include, in pertinent part,

- Knowledge of hardware/Microsoft operating systems through current version.
- Experience supporting MS Office Suite.
- Experience working with Active directory.
- Knowledge of an experience with the Local Area Networks (physical and logical).
- Knowledge of capabilities and limitations of computer hardware (PCs, Laptops, Printers & Peripherals).
- Knowledge of IT industry standards.
- Knowledge of the principles, practices and techniques of professional writing and communication methods. ...
- Ability to understand the laws, rules, regulations, and procedures, standards and guidelines governing all EOHHS activities.
- Knowledge and experience with basic security measures and requirements.
- Valid drivers license and access to a vehicle
- Ability to lift up to 35lbs & push 65Lbs (sic).
(Ex. 8)

42. The “Minimum Entrance Requirement” section of the Appellant’s Form 30 states, in pertinent part,

“Applicant must have at least (A) Two years of full-time, or equivalent part-time, professional experience in the IT field or (B) Any equivalent combination of the required experience and the substitutions [provided therein]. ...”
(Ex. 8)

43. The Appellant’s Form 30 does not contain any licensing or certification requirements. (Ex. 8)

Appellant’s EPRS

44. In considering the Appellant’s reclassification request, Ms. Gurliaccio also reviewed the Appellant’s FY’2015 Employee Performance Review Service (EPRS), which rates the employee’s performance as having performed below the pertinent criteria, having met the pertinent criteria, or having exceeded the pertinent criteria. The Appellant’s FY 2015 EPRS

indicates that in the view of Mark Grant, a supervisor Technical Pay Law (TPL) employee¹¹, and reviewer Michael Fitzpatrick, who is Regional Manager for the communities north of Boston and Mr. Grant's supervisor, the Appellant met the applicable criteria. The Appellant did not sign the annual review of his EPRS. (Ex. 2; Testimony of Appellant; Testimony of Robak; Ex. 4) I take administrative notice that an employee's refusal to sign an EPRS typically indicates that the employee does not concur with at least part of the evaluation therein.

45. Duty #1 of the Appellant's FY 2015 EPRS relates to customer satisfaction and support. The performance criteria for this duty are,

Respond and resolve tickets and incidents in accordance with EOHHS IT policies and procedures as they relate to customer support.

Responsible for Customer/User satisfaction as it relates to IT services.

Performs all duties in a respectful and professional manner.

Support of personnel as it relates to the use of equipment/software in the EOHHS enterprise environment as needed.

(Ex. 2)

A notation to this duty apparently written by the Appellant's supervisor states, "Fernando does a good job with staying on top of all the areas he covers. He works hard to meet all customer needs across the multiple EHS agencies he supports." (Id.)

46. Duty #2 of the Appellant's FY2015 EPRS pertains to "technical and team responsibilities", as follows,

¹¹ Established by Chapter 717 of the Acts of 1983, the Technical Pay Law (TPL) Program allows agencies to attract and retain qualified information technology professionals in a highly competitive labor market. Under TPL, there are two categories of employees, with broad salary ranges within which the TPL employee's salary may be adjusted based on the competencies and responsibilities required to perform the job; and on the employee's performance. ... The TPL program is administered by the Executive Office of Administration and Finance, through the joint efforts of the Human Resources Division and the Information Technology Division. A standing TPL Advisory Committee, made up of representatives from Shared Services agencies, meets regularly to review TPL issues and evaluate current program components to ensure that existing needs of shared services stakeholders are being addressed...." TPL Guide 2005)(www.mass.gov/anf/docs/hrd/policies/tpl/final-tpl-guide.doc)

Assess, debug and resolve technical problems associated with desktops and system peripherals.
Assists with troubleshooting and resolving network issues as required.
Assist with the monitoring and maintaining the health and integrity of the network.
Assist with local backup and restore process as required.
Manage the upgrade of hardware & software when necessary to insure that all services are provided in a secure and timely fashion.
Assist Telecom with movement of IP phones as required.
Implementation of EOHHS IT enterprise images for PCs (Desktop/Laptop) according to EOHHS procedures and policy to insure a consistent environment.
Install and move assets as required according to EOHHS policies and procedures.
Assist with site specific projects as related to network infrastructure & server support.
Support, trouble shoot and configure remote access to assist network users with connectivity to EOHHS network from non-magnet connections.
(Ex. 2)

A notation to this duty apparently written by the Appellant's supervisor states, "Fernando does a good job staying on top of all that is required to keep the staff he supports up & running." (Id.)

47. Duty #3 of the Appellant's FY2015 EPRS lists the following performance criteria for "project roles and coordination",

Participate in meetings, special projects and other requests as required to maximize the efficient use of IT resources.
Coordinate site visits with service providers.
Work collaboratively with internal and external groups in a team environment to improve overall customer service and support.
Utilize any and all resources available through EOHHS and other sources for assistance with problem resolution.
Assist with site specific projects as related to network infrastructure and server support.
(Ex. 2)

A notation to this duty apparently written by a supervisor adds, "Fernando is always willing to help out on the projects that hit our area." (Id.)

48. Duty #4 in the FY 2015 EPRS lists the following performance criteria for "leadership

responsibilities”: “Manage site specific projects.” (Ex. 2) A notation to this duty apparently written by a supervisor adds, “Fernando has overseen the swap out of leased based equipment in multiple offices this past year.” (Id.)

49. Duty #5, the last of the duties in the Appellant’s FY 2015 EPRS, lists the following performance criteria,

Performs all business administrative duties in a timely and accurate fashion.
Maintain inventories of all EOHHS IT assets using the EOHHS inventory collection process to secure Commonwealth assets.
Clearly communicate and/or escalate to their supervisor any IT operations issues or disruptions (planned or unplanned) to minimize user impact.
Perform all duties as required and directed.
(Ex. 2)

A note added to this duty apparently written by a supervisor states, “Fernando meets all administrative duties in a timely manner.” (Id.)

Organization Chart

50. The Appellant is one (1) of nine (9) IT Site Managers in the Northeast Region. The Central Region has ten (10) staff members and one (1) current supervisor. It is unclear how many, if any, IT Site Managers there are in the Central Region since there are no job titles for the staff members listed other than the supervisor. There are two (2) Boston Regions (Unit A and Unit B). Unit A has twenty-one (21) staff members and two (2) supervisors. Only (2) of the Unit A staff are designated as IT Site Managers. Boston Region Unit B has eighteen (18) staff members, none of whom are identified as IT Site Managers, and four (4) supervisors. The Southeast Region has fifteen (15) staff members, of who eleven (11) are identified as IT Site Managers, and four (4) supervisors. The Western Region has ten (10) staff members, none of

whom are identified as IT Site Managers, and two (2) supervisors. (Ex. 4)¹² The charts do not include civil service titles (such as EDP III or EDP IV). (Administrative Notice)

Appellant's Request for Reclassification Denied

51. On August 10, 2015, Ms. Gurliaccio wrote to the Appellant, in full,

After reviewing the desk audit [by Ms. Robak], which includes the interview guide, organizational chart, form 30, and supplemental documentation, the preliminary decision of the agency is to deny your appeal with respect to your classification.

You have until *August 28, 2015* to review this recommendation. If you do not agree with it, you may submit a rebuttal in writing to this office with any additional information you think is applicable. If we do not hear from you by *August 28, 2015* we will issue a final decision to you in writing.

Please contact me at (xxx)xxx-xxxx if you have any questions.

Thank you.

(Ex. 5)(emphasis in original)

52. By email dated August 13, 2015, the Appellant submitted a rebuttal to Ms. Gurliaccio stating, in pertinent part, that his duties are divided as follows:

Server duties:

Daily Server Backups Troubleshoot Maintenance Manage perform data restore, Review Logs, create Reports	14%	[of the time]
Monitor Maintain, troubleshoot Server Refresh, and Install, and Server Peripherals Printer Server	16%	
Server install and testing/troubleshoot Repair, Debug, and migrations	8%	
Active Directory – Maintenance EOHHS, DCF, DYS (Workers and computers), New accounts, create, Transfer, Change, terminate DCF, DMH	19%	
Help Desk Tickets	35%	
Admin duties/desktop support requests	8%	(sic)

(Appellant's Post-Hearing Submission)

53. Ms. Gurliaccio received and reviewed Mr. Mesquita's rebuttal letter. (Testimony of Ms. Gurliaccio)

¹² The organizational charts in Exhibit 4 are undated but appear to be charts of personnel at the time that the Respondent considered the Appellant's request for reclassification.

54. By letter dated August 19, 2015, Ms. Gurliaccio informed the Appellant that the Respondent had made a final determination and that his reclassification request was denied stating, in pertinent part,

... An appeal audit was conducted and the results have been reviewed. Accordingly, we found that the duties performed by you do not warrant the reallocation of your position. We regret to inform you that we must therefore deny your reclassification appeal. Appellants who wish to appeal their agency's decision should direct their appeal in writing to the Human Resources Division (HRD), Organizational Development Group, ...
(Exhibit 6)

55. By letter dated September 4, 2015, the Appellant requested that HRD review the Respondent's decision, stating, in pertinent part,

In this letter I will try to breakdown my Server duties/tasks performed as (EDP System Analyst IV) on a daily basis as well as all other requests performed as an EDP System Analyst III, such as server refresh, MDT install, maintenance to Active Directory, (such as Adding deleting changing workers, transfers etc. Many duties/tasks that no only fall under server, as building a servers in the past as requested, (such as the DCF Northern Region servers, ex: Salem, Lynn, Malden, DTA North Shore, Malden, as well implementing software upgrades. ...
In the recent past there are workers from another Region ... which have been reclassified to a IV ... There was one EDP IV position in my Northern region recently retired (..., who happened to be out with a Medical condition prior to his retirement, I inherited his offices, in addition to mine" (sic)
(Appellant's Post-Hearing Exhibits)

In his September 4, 2015 letter, the Appellant also reiterated the percent of time he

performs various functions that he wrote in his rebuttal letter to Ms. Gurliaccio previously.

(Id.)

56. On November 12, 2015, Ms. Latoya Odlum, at HRD, sent an email request to Ms. Gurliaccio requesting a number of documents relating to the Appellant's appeal to HRD. In response, on November 17, 2015, the Respondent submitted the following to HRD:

- a. the Appellant's Interview Guide;
- b. the Appellant's May 19, 2015 email message to Ms. Bishop Fallon requesting

reclassification to EDP IV;

c. a May 22, 2015 email message from Ms. Bishop Fallon to Ms. Robak and the Appellant (copying Mr. Fitzpatrick) forwarding the Interview Guide for the Appellant to complete, for Ms. Robak to comment on the completed Interview Guide in the Classification Audit Decision Form, asking Ms. Robak to include the Appellant's current EPRS, Form 30 and updated Organization Chart; and send the information to Ms. Bishop Fallon within two (2) weeks. (Respondent's Post-Hearing Exhibits);

d. Ms. Gurliaccio's preliminary denial on August 10, 2015 of the Appellant's request;

e. the Appellant's rebuttal to the preliminary denial;

f. the Respondent's final denial of the Appellant's request, dated August 19, 2015;

g. the Appellant's Form 30¹³;

h. a Form 30 for EDP IV;

i. Ms. Robak's comments on the Appellant's request; and

j. organizational charts for the various regions.

(Respondent's Post-Hearing Exhibits)¹⁴

57. By letter dated January 12, 2016, HRD denied the Appellant's appeal of the Respondent's denial of his reclassification decision stating, in pertinent part,

... the Human Resources Division ... has carefully reviewed the information concerning your job classification. We concur with the agency head's decision that the duties being performed by you do not warrant the reallocation of your position and therefore we must deny your appeal.

As provided in the Massachusetts General Laws, Chapter 30, Section 49, you may appeal HRD's classification decision to the Civil Service Commission

(Exhibit 7)

58. On January 28, 2016, Mr. Mesquita filed the instant appeal with the Civil Service Commission. (Stipulated Fact)

Other EDP IV Reclassifications

59. A number of other EOHHS EDP IIIs requested reclassification to EDP IV at or about one year prior to the Appellant's appeal to the Commission. Nine (9) of those who requested this reclassification were approved around that time:

¹³ The Form 30 that the Respondent submitted post-hearing in response to my request at the hearing is the same as the version in Ex. 8 and the same as the correct version that Mr. Fitzpatrick sent the Appellant after the Respondent denied that Appellant's reclassification request.

¹⁴ Apparently, the documents that the Respondent sent to HRD did not include the Appellant's recent EPRS, although Ms. Gurliaccio had considered the Appellant's EPRS in her decision to deny the Appellant's reclassification request. (Respondent's Post-Hearing Exhibits; Administrative Notice)

Employee #1 – Although the employee’s Interview Guide¹⁵ does not state that he builds servers, it states that he “participates in the development of the documentation of servers, infrastructures and technical procedures”, “documented hardware peripherals installations, application installation and troubleshooting, file server parameters”, he has worked on projects assigned by Regional Managers and Ms. Robak, and completed “all activities within DMH/EOHHS security policies and practices to insure the safety and privacy of DMH data, its clients, and its resources.” In addition to his years of experience working for the Commonwealth in IT or IT-related positions, he also worked in IT in the private sector for many years. Although no specific licensing is required for an EDP III, the employee has certificates from three (3) IT institutions. A copy of this employee’s reclassification was sent to the Southeast Regional Manager; there is no indication whether Ms. Robak was involved in this employee’s reclassification in the documents provided by the Respondent.

Employee #2 – This employee’s Interview Guide states explicitly that he builds servers as a normal function of his job and related functions 51% of his time. Ms. Robak agreed with this employee’s reclassification. There is no indication which region this employee works in.

Employee #3 – This employee’s Interview Guide clearly states that he builds servers, in addition to his other tasks. Ms. Robak agreed with this employee’s reclassification in the Central Region.

Employee #4 – This employee’s Interview Guide indicates, for example, that he plays a significant role in the operation of a federal/state payment recovery system, he manages “the consultants who are replatforming the Accounts Receivable ... subsystem for [a program], he manages the “development of user acceptance test scenarios”, he manages the “security for the AR subsystem ... and overseeing the testing effort of the Software Quality Assurance ... testers assigned to the AR subsystem”, directs the “design and development of test scenarios and execution of test plans”, conducts “workshops and/or training sessions for contractors, users and agency personnel”, and has worked on other projects for EOHHS with other outside agencies. Also, although no specific licenses are required, the Appellant lists many computer languages and systems that he knows. Mr. Lorimer, supervisor in the Southeast Region, agreed with this reclassification.

Employee #5 – This employee’s Interview Guide indicates that he is doing more and more work on the server end of his assignments, either assisting in that regard or performing the work himself. He is the site manager with the greatest amount of experience at his site. As a result of the 2012 IT consolidation, this employee’s work has become more complex, requiring him to perform more work on the server end and mentoring desktop staff and users. He has assisted with the operation of Inforad, a messaging system related to healthcare and public safety, for example, which operates on

¹⁵ I asked the Respondent to produce information concerning the employees’ whose reclassifications were approved within the year prior to the instant appeal, redacting the employees’ names. I did not specify what documents the Respondent should produce. The Respondent produced the notice of approval sent to nine (9) of such employees and the Interview Guides for eight (8) of the nine (9) employees whose reclassification requests were approved.

a server. There is no indication what region this employee works in or which supervisor/manager agreed with his reclassification.

Employee #6 – This employee’s Interview Guide states that he spends most of his time on working with servers and that he was the lead person to the “server build and migration from MS Server 2003 to MS Server 2012 operating system”. Although no licensing is required, this employee majored in computer science in college and has a Master’s Degree in education. Ms. Robak agreed to this employee’s reclassification in the Central Region.

Employee #7 – This employee’s Interview Guide states that he builds and configures servers, in addition to his other tasks. Mr. Fitzpatrick agreed with this employee’s reclassification in the Northeast Region.

Employee #8 – The Respondent produced only the one-page reclassification approval of this employee, no Interview Guide. Mr. Fitzpatrick agreed with this employee’s reclassification in the Northeast Region.

Employee #9 – This employee’s Interview Guide states, for example, that he “provide[s] security administration and support of server software (i.e. build[s] and maintain[s] servers, create[s] and administer[s] software security, local group policy, network shares and Active Directory domain administration) and hardware ...” Ms. Robak agreed with this reclassification in the Southeast Region.

Legal Standard

Pursuant to M.G.L. c. 30 § 49, the Civil Service Commission is charged with hearing the appeal of an employee aggrieved by a classification decision of a personnel administrator regarding “any provision of the classification affecting his office or position.” *Id.*

“The determining factor of a reclassification is the distribution of time that an individual spends performing the function of a job classification.” Roscoe v. Department of Environmental Protection, 15 MCSR 47 (2002). It is well established that, in order to justify a reclassification, an employee must establish that he is performing duties encompassed within the higher level position the majority of the time. *See, e.g. Pellegrino v. Department of State Police*, 18 MCSR 261 (2005); Morawski v. Department of Revenue, 14 MCSR 188 (2001); Madison v. Department

of Public Health, 12 MCSR 49 (1999); Kennedy v. Holyoke Community College, 11 MCSR 302 (1998).

Analysis

The Appellant has failed to establish that he performs the functions of an EDP IV a majority of the time. Assessment of the Appellant's performance was complicated by the outdated EDP Spec written in 1987 and revised Form 30. Even Ms. Robak, with the depth and breadth of her knowledge and experience, and prior involvement in updates to certain Form 30s, had a hard time reconciling the Spec for EDP III and IV with current Form 30s, stating that it was a "stretch" at times to say what functions EDP IIIs and IVs are supposed to perform given the changes in technology. She acknowledged that a couple of the functions listed under EDP IV were simply no longer performed. With other functions in the Spec that may have been somewhat dated, Ms. Robak did her best to describe the parallel function being performed under current technology.

The most concrete distinctions between the EDP III and EDP IV title involve independence, authority and the building of servers. With higher technical skills, an EDP IV builds servers on his or her own (and does not just maintain them), has authorization to initiate programs on his or her own, and knows the applicable security and confidentiality requirements. In his Interview Guide, the Appellant listed his duties, assigning percentages to the amount of his time spent on such duties, including: troubleshooting errors with applications (on which he spends most of his time (25%)) and his remaining time for reimaging computers and inventory; responding to viruses; helping end users; system administration; adding/editing/deleting users; installing printers; providing email support; moving desktop computers, working with phones and desktop printers; installing new hardware and software; and VOIP (voice over internet protocol).

The Appellant testified that he built a server with another EDP III but Ms. Robak testified credibly that the Appellant did not complete the job on his own, he did it according to a prepared script, and a higher level employee was required to complete the job, authorize its initiation and ensure that security and confidentiality requirements were met. Moreover, this does not establish that the Appellant was building servers or otherwise performing as an EDP IV a majority of the time. In fact, the Appellant performs eight (8) of the nine (9) requirements for an EDP III but only three (3) of the eleven (11) requirements for an EDP IV. Based on these shortcomings, the Respondent argued, and I find that the Appellant does not perform the functions of an EDP IV a majority of his time. The Respondent did not appear to dispute that the Appellant meets the broad minimum entrance requirements at hire, nor the broad requirements at hire, in the EDP Spec for EDP IVs.

As a result of the EOHHS IT consolidation, a number of Site Managers like the Appellant were assigned to work for a growing number of agencies. In addition, the Appellant was also asked to extend their IT services when someone retired or was on medical leave. Some of the other employees who requested reclassification to EDP IV, like the Appellant, averred that the increase in the number of agencies they serve merits their reclassification. While being asked to perform IT services for additional agencies is challenging and, no doubt, stressful, that alone does not indicate that they are performing the services of an EDP IV. Ms. Robak has extensive IT experience and was directly involved with the consolidation process. Moreover, Ms. Robak has had experience with the Appellant's work – first agreeing to his reclassification to an EDP III in 2013, being aware of the work he has done and through the processing of the Appellant's request for reclassification to EDP IV. Ms. Robak acknowledged that the Spec is old and that the Respondent has had to make changes to applicable Form 30s to help adapt to changes in

technology. She further acknowledged that some EDP IVs do not perform a couple of the Spec requirements because of other changes in technology. Comparing the Spec and the Appellant's Form 30 involved a "stretch", Ms. Robak testified. However, a significant distinction between the EDP III and EDP IV is that EDP IVs actually build servers, not just maintain or patch them and install updates on their own. While the Appellant asserted that, at least on one occasion, had built a server, he acknowledged that a server administrator and/or engineer had to assist the Appellant (and another EDP III) to complete the project and to start it, which authorization the Appellant does not have. Appropriate authorization is necessary, among other things, to ensure that applicable security and confidentiality matters have been addressed.

The Appellant also argued that he worked with other EDP IIIs who were reclassified to EDP IV. The denial of his request, the Appellant asserts, is unfair because he works on the same kind of Help Desk matters as those who were reclassified to EDP IV. He bases his assertion on the fact that they see each other's work on the Help Desk system. However, practically speaking, working on the Help Desk is only one of the tasks they perform.

Lastly, the Appellant alleges that his reclassification request was wrongly sent to Ms. Robak for assessment because Ms. Robak does not directly supervise him, and it should have sent to his immediate supervisor (Mr. Grant) or his secondary supervisor (Mr. Fitzpatrick) since they are familiar with his work. However, Ms. Robak testified about her familiarity with the Appellant's work and that she had agreed with his reclassification to EDP III only a couple of years before the Appellant requested reclassification to EDP IV. As the evidence shows, the Respondent's Human Resources office was the one that determined to whom reclassification requests would be sent for approval, not Ms. Robak. The Appellant further alleges that reclassification requests, like his, in the Northeast Region, that were to be denied were sent to

Ms. Robak for assessment and those that would be approved were sent to Mr. Fitzpatrick, the Northeast Region Manager. As the information herein regarding the reclassification requests of other EDP IIIs approximately one year prior to the appeal here indicates, Ms. Robak was involved with, and agreed with the reclassification of four (4) of the nine (9) other EDP IIIs who requested reclassification in that time period and Regional Managers agreed with the same number of reclassification requests. Those EDP IIIs whose reclassification requests were approved because it was determined that they built servers and/or otherwise performed the functions of a IV a majority of their time, unlike the Appellant. Further, Ms. Robak agreed with the two (2) reclassification requests in the Central Region and one (1) reclassification request in the Southeast Region and Regional Managers in the Southeast and Northeast each agreed with the two (2) reclassification requests in their regions. This overview reveals no unfairness during consideration of the Appellant's reclassification request.

Conclusion

Accordingly, for the above stated reasons, Fernando Mesquita's appeal, filed under Docket No. C-16-14, is hereby denied.

Civil Service Commission

 /s/Cynthia A. Ittleman
Cynthia A. Ittleman, Commissioner

By a 4-1 vote of the Civil Service Commission (Bowman, Chairman (yes); Camuso (yes), Ittleman (yes), Stein (yes) and Tivnan (no), Commissioners) on October 12, 2017

Either party may file a motion for reconsideration within ten days of the receipt of this 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 this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of

this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d)

Notice:

Fernando Mesquita (Appellant)

Sheila Anderson (for Respondent)

John Marra, Esq. (for HRD)