

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION
One Ashburton Place: Room 503
Boston, MA 02108

FRANCIS J. GRAHAM, JR.,
Appellant

v.

C-17-131

DEPARTMENT OF CONSERVATION
AND RECREATION,
Respondent

Appearance for Appellant:

Meaghan Ventrella, Esq.
AFSCME 93
8 Beacon Street
Boston, MA 02108

Appearance for Respondent:

Kenneth Langley, Esq.
Labor Relations Unit/Shared Services
Executive Office of Environmental Affairs
251 Causeway St., Suite 600
Boston, MA 02114

Commissioner:

Cynthia A. Ittleman

DECISION

On June 28, 2017, the Appellant, Francis Graham (Mr. Graham or Appellant), pursuant to G.L. c. 30, s. 49, filed a timely appeal with the Civil Service Commission (Commission), contesting the decision of the Department of Conservation and Recreation (DCR or Respondent) to deny his request to be reclassified from Forest and Park Supervisor II (FPS II) to FPS III. A pre-hearing conference was held on August 1, 2017 at the offices of the Commission in Boston. A full hearing was held at the same location on September 7, 2017.¹ The hearing was digitally

¹ 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.

recorded and both parties were provided with a CD of the hearing². After the hearing, the parties submitted post-hearing memoranda. For the reasons stated herein, the appeal is denied.

FINDINGS OF FACT:

Ten (10) exhibits were entered into evidence at the hearing.³ In response to my request at the hearing, the Respondent subsequently produced an affidavit concerning Exhibit 10, documents concerning the state's lease to the SSARC (South Shore Association for Citizens with Developmental Disabilities) of a part of Webb State Park; a DCR permit authorizing the South Shore Yacht club to use its own boathouse and related facilities in Webb State Park; and the notations of Ms. Kane and Ms. Costanza in their review of the Appellant's reclassification application. These documents produced by the Respondent post-hearing are marked and entered into the record as the Respondent's Post-Hearing Exhibits. Also included among the Post-Hearing Exhibits are the October 3, 2018 email comments of the Appellant regarding the Respondent's affidavit concerning Exhibit 10. Further, post-hearing, the Appellant produced color photographs of, or parts of Webb State Park, which are marked and entered into the record as Appellant's Post-Hearing Photographs. Based on these exhibits, the testimony of the following witnesses:

Called by the Respondent:

- Danielle Daddabbo, Classification Coordinator, Human Resources, EOE

² 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.

³ Exhibits 1 through 9 were entered into the record by the Appellant at the hearing. Each of the Appellant's exhibits are comprised of many documents. The Respondent offered a chart as its sole exhibit; the chart is marked Exhibit 10. In response to my request at the hearing, the Respondent subsequently produced an affidavit from Ms. Kane at DCR describing the origin and an interpretation of the chart. (Post-Hearing Exhibit) Thereafter, the Appellant submitted several email messages responding to Ms. Kane's affidavit, of which I take administrative notice.

- Kimberlee Costanza, Classification and Compensation Specialist, Human Resources, EOE

Called by the Appellant:

- Francis J. Graham, Jr., Appellant

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

Background

1. The Appellant has been a parks employee for more than two (2) decades. (Testimony of Appellant) He was appointed to the position of FPS II, Grade 16, in the George's Island State Park in the DCR Boston Harbor Islands, Hingham, Southeast in March 2011 following a grievance. (Ex. 1; Testimony of Appellant)
2. Duties common to all three (3) levels of the FPS title include:
 - Supervises the maintenance of assigned recreational areas, including such activities as grounds maintenance, building and equipment maintenance and repair and removal of hazardous trees or limbs.
 - Inspects the condition of state-operated forest and park recreational areas and facilities ...
 - Patrols recreational areas and facilities to maintain security and ensure compliance with application rules ...
 - Issues permits or gives permission for the use of recreational facilities, park areas, etc. and collects related fee.
 - Maintains records and prepares reports ... and make (sic) appropriate recommendations.
 - Organizes and implements recreational and cultural programs ...
 - Coordinates the activities and work of volunteers, court referred individuals, etc.
 - Performs related duties such as determining supply needs; operating and performing routine maintenance on various types of equipment and vehicles ...
 - (Ex. 1 – FPS Spec)
3. The FPS II job posting, #J14378, for which the Appellant applied stated, in part, that the FPS II,

... Monitors the operation, administration and maintenance of a major recreation area with one or more satellite areas or a heritage park consisting of a visitor center, extensive grounds and multiple recreational facilities including performance stages, boathouses, etc.

Represents the agency at meetings and conferences with representatives of federal, state and municipal agencies and community and other groups to provide information concerning agency objectives and to obtain their cooperation in achieving those goals and/or to resolve problems.

Prepares budgets for assigned areas by projecting resource needs and preparing required documentation for agency's budget request.

Initiates requests for capital outlay funds and monitor (sic) capital outlay expenditures. ...

Minimum entrance requirements: Applicants must have at least (A) three years of full-time, or equivalent part-time, technical or professional experience in the field of forestry, parks or recreational management and (B) of which at least one year must have been in a supervisory capacity, or (C) any equivalent combination of the required experience and the substitutions below ...

(Ex. 7)(emphasis added)

4. The FPS II Minimum Entrance Requirements (MERs) in the job posting were the same as the MERs for FPS IIs (not the MERs for FPS III). Specifically, the job posting stated that applicants, "... must have at least (A) three years of full-time, or equivalent part-time, technical or professional experience in the field of forestry, parks or recreational management and (B) of which at least one year must have been in a supervisory capacity, or (C) any equivalent combination of the required experience" and identified educational substitutions.

(Ex. 1 – FPS Classification Specification (FPS Spec)).
5. The job posting does not indicate the number of people whom the FPS II supervises directly and/or indirectly, who supervises the FPS II and the qualifications required at time of hire. (Ex. 1 – FPS Spec)
6. Between March, 2011, when the Appellant was appointed FPS II, and March, 2015, about the time that he requested reclassification to FPS III, the Appellant had been assigned to five (5) different locations. The Appellant was assigned to Webb State Park (Webb Park) seasonally 2012 – 2013. He was assigned to Webb Park year-round since March 8, 2014. (Ex. 1) In or around August 2015, the Appellant was out of work due to an injury. (Ex. 8 – August 24, 2015 email)

7. Webb Park, where the Appellant is assigned, “ ... is a peninsula that extends half a mile into Hingham Bay. Visitors are treated to scenic views of Boston's harbor and skyline, and groups can rent a pavilion for special events from May - October. Available activities include fishing, picnicking, and walking.” (Administrative Notice: <https://www.mass.gov/locations/webb-memorial-state-park>) Park hours are dawn to dusk. Parking on-site is free. Activities at Webb Park include canoeing, kayaking, cross-country skiing, fishing and hiking. Facilities at Webb Park include picnic areas (including grills), restrooms, a small “Pavilion” which may be rented, and restrooms. Dogs are permitted at Webb Park but they must be on a leash. (*Id.*) The “Pavilion” is frequently used in season but used perhaps once or twice per week off-season until the end of November. (Testimony of Appellant) Webb Park has a cooperative management agreement with the National Park Service (NPS) that permits NPS to work at Webb Park and use DCR equipment. (Ex. 8 – March 25, 2016 email from Ms. Kane to Appellant)
8. Pursuant to a “Special Use Permit” granted by DCR in 2016 and in effect until 2020, there is a private yacht club located in Webb Park, the South Shore Yacht Club, which is owned, operated and maintained by the yacht club. (Post-Hearing Exhibits) It is unknown if such a permit existed when the Appellant requested reclassification in 2015 and whether any such prior permit required the Appellant to maintain and operate the yacht club. (Administrative Notice)
9. Pursuant to a 1978 lease between DCR and the South Shore Association for Retarded Citizens, Inc. (ARC), ARC operates various activities for its clients in a section of Webb Park. (Post-Hearing Exhibits)

10. A satellite park near Webb Park is Stodders Neck. Stodders Neck is a “ ... peninsula at the mouth of the Back River.” (Administrative Notice: <https://www.mass.gov/locations/stodders-neck-abigail-adams-park>) Its hours are dawn to dusk and activities there are running, walking, fishing and having picnics. There is free parking on-site. (Id.)
11. Another satellite park near Webb Park is the Abigail Adams State Park. It provides areas for people to run and walk, with free parking. (Administrative Notice: <https://www.mass.gov/locations/stodders-neck-abigail-adams-park>) Attached to, and incorporated herein is a map of Webb Park, Stodders Neck and the Abigail Adams State Park from the DCR website: <https://www.mass.gov/locations/webb-memorial-state-park>. The “Kibby Property” is a part of, and a small extension to the Abigail Adams Park. (Ex. 1 - February 28, 2017 email message)
12. As of approximately 2014, the Appellant’s responsibilities included a small park in the Webb complex called “Gateway Park”. (Ex. 1 – February 26, 2014 email) However, in response to a February 2017 inquiry of the Appellant regarding Gateway Park, Mr. Tobin, the Appellant’s immediate supervisor, indicated that he (Mr. Tobin) had,
- “ ... moved the Gateway Park back to the Hingham HQ last summer when [the Appellant was] out. We have worked out a plan with the Hingham DPW and they have been maintaining much of the park. To supplement their efforts we have a Laborer assigned to Hingham and he cut the grass. It worked out better for us and the park and we intend to follow this plan again this summer. ...”
(Ex. 1 – February 28, 2017 email)
13. The Appellant’s immediate supervisor is Steve Gammon, an FPS III at the Wompatuck State Park in the South Region. Mr. Gammon’s supervisor is Matt Tobin, Field Operations Team Leader (FOTL) for the Nantasket Complex. Mr. Tobin’s supervisor is

Ms. Susan Kane, Program Manager V for the South Region. (Testimony of Appellant, and Kane)

14. Following a discussion between Ms. Kane and Mr. Tobin regarding this case, Mr. Tobin prepared a chart, entitled “Comparison of Supervisor Responsibilities Nantasket FOT[L]”, offering information pertaining to a variety of features of Webb Park, Nantasket, and Wompatuck Park. Although this chart does not indicate the time period covered by the chart, it appears that Webb Park, where the Appellant is an FPS II, contains approximately eighty (80) acres; Nantasket, where an FPS III is the supervisor, contains approximately 150 acres; and Wompatuck Park, where an FPS III is the supervisor, has approximately 4,000 acres. In addition, the chart suggests that between the three parks, Nantasket produces much more revenue than Wompatuck, which produces much more revenue than Webb. In addition, the chart suggests that while Webb Park has few seasonal employees, Wompatuck Park has approximately a dozen seasonal employees, and Nantasket has at least dozens of seasonal employees. For the unspecified time period of the chart, minimal special use permits were issued for Webb Park while approximately one dozen special use permits were issued for Nantasket and many more special use permits were issued for Wompatuck Park than were issued for Nantasket. Similarly, the number of recreational permits issued for Webb Park is far less than the number of such permits issued for Nantasket, which issued far fewer such permits than Wompatuck Park. (Ex. 10) It should be noted, however, that, with regard to permits, Mr. Tobin “coordinates the one Special Use permit at Webb State Park as well as all 33 Recreational Site Reservations through the Reserve America [RA] website. All permitting of the pavilion at Webb State Park is done through an online reservation

system called Reserve America. [Mr. Tobin] manages this system for Webb State Park ... The F&P III's (sic) at Nantasket and Wompatuck manage all of their own permitting (Special Use and Recreational)" (Post-Hearing Exhibit - Ms. Kane's September 15, 2017 affidavit)

Appellant's Request for Reclassification

15. The Appellant completed an Interview Guide to request reclassification. Asked to state the reasons for his reclassification request, the Appellant wrote that he maintains two (2) "major recreation areas and two satellite parks": Webb Park, which has thirty-six (36) acres, Stodders Neck, with thirty-five (35) acres, and Abigail Adams Park, with seven (7) acres. In addition, he maintains another one (1) acre recently added to the Abigail Adams Park. (Ex. 1)
16. The Appellant described his relationships with others within DCR, writing that his contacts include South Region District Manager Susan Kane, FOTL Matt Tobin at Nantasket Beach, and the Boston Park Maintenance Support office. Outside of DCR, the Appellant indicated that he is in contact with the Norwell Barracks of the State Police, the Weymouth Police and Fire Departments, the state Environmental Police, the Boy Scouts, the Campfire Girls, and the Special Olympics organization. (Ex. 1)
17. In response to the Interview Guide question asking what changes he has experienced on the job, the Appellant wrote, in part, that, "[o]ver the past three spring to fall seasons I've been responsible for maintenance & operation of four parks that are collectively referred to as the Webb 'cluster'." (Ex. 1) In addition, the Appellant wrote that he has considerable autonomy and he answers to a FOTL, as he believes that an FPS III does. (Id.)

18. The Appellant described his job responsibilities in the Interview Guide, indicating the frequency with which he performs his responsibilities and the percentage of his time addressing those responsibilities. The Appellant wrote, in part,

1. Patrol parks, parkways, roadways and parking areas and areas of heavy patrol influx for potential health hazards, damaged trees and tree limbs or any other potential danger to the general public. Daily, 100% of time
2. Perform inspection of moving/grooming equipment to ensure their proper safety and overall efficient to effectively executive their normal operation. .. Daily, 100% of time
3. Perform routine maintenance to all mowing/grooming, snow removal, tree pruning, chainsaw, wood chipper & John Deere Tractor/loader & all other pertinent equipment that are used in the performance of essential duties. Order parts for equipment with prior approval from FOTL/Matt Tobin – as needed (monthly, annually (sic))... Daily, 100% of time ...
Large scale leaf removal in our parks when leaf vacuum is available. Monthly, 30% of time
4. Operate John Deere tractor with it's (sic) various attachments for spreading and moving loam, stone dust for trails/paths. Remove large pier and float pilings from beaches and snow removal provided conditions are safe. Weekly/Month, 70% of time
5. Ensure that the overall cleanliness of parks is acceptable and safe to provide a positive experience for the patrons. This includes the public restrooms at Webb Memorial State Park. Daily, 100% of time
6. Educate the public regarding the various types of flora & fauna indigenous/non indigenous to our parks. Weekly, 60% of time
7. Train seasonal employees in the safe methods of operation of equipment, trailers, wood chippers, chain saws, dump body vehicles, standing/riding (sic) mowing, grooming & all other job related power & hand tools. Supervise full time and seasonal staff. Daily, 100% of time
8. Perform all related paperwork. This includes invoice preparation, payroll for seasonal staff, Vacation request forms, accident/incident forms, maintenance request forms, purchase orders & all other work related documents. Also Employee Performance Review Sheets are submitted to the FOTL at the end of the season. All the above, 100% of time

9. Refuse/trash removal from all related areas/parks. Remove & replace damaged 50 gallon steel barrels from all pertinent facilities/parks. Ensure the cleanliness of parking areas and report road surface damaged to FOTL or Park Maintenance/Support. Daily, 70% of time
(Ex. 1)(emphasis added)

19. Asked who assigns, reviews and approves his work, the Appellant responded that Matt Tobin is his immediate supervisor. The Appellant added, “[a]s the site supervisor it is my responsibility to assess, prioritize & implement the daily operations of the Webb cluster. Curtial (sic) projects needing approval are given to Mr. Tobin ... Project lists are submitted to my immediate supervisor as needed. If a special assignment exists Mr. Tobin is consulted regarding timelines & logistics that are essential ... I have a high level of autonomy ... Mr. Tobin evaluates my performance through the EPRS”. (Ex. 1) However, the Appellant states that he “no longer sign[s] Employee Evaluation Review Forms from Matthew Tobin”; as reason therefor, the Appellant asserts that Mr. Tobin “rarely complies with DCR timelines and does not permit the 2 day review time of the document allotted in the Collective Bargaining Agreement”. (Ex. 9)
20. Asked whom he supervises, the Appellant wrote that “[f]rom the end of April to the first week in October I am assigned 3 seasonal employees who (sic) I supervise ... At times I may be responsible for supervising full time and part time employees from both the Nantasket Beach Reservation or Wompatuck State Park. ...”, including Maintenance Equipment Operator, FPS I and a Laborer I. (Ex. 1) The Appellant cannot authorize overtime or participate in grievances. (Id.)
21. The Interview Guide asks reclassification candidates to describe any unusual working conditions. The Appellant wrote, in part, “... I am solely assigned to Webb Memorial State Park from the second week in October until the last week in April. This translates

to a solo operation during this time period. I receive some support occasionally (sic) from Nantasket Beach Reservation ...”, among other places. (Ex. 1)(emphasis added)

22. The Appellant obtains approval for spending for supplies from Mr. Tobin and/or Ms. Kane. (Ex. 6 - August 2, 2012 email; Ex. 8 – December 1, 2014 email)

FPS Classification Specification (FPS Spec)

23. The FPS Spec in use is dated 1987. It contains three (3) levels of Supervisor: FPS I, II and III. (Ex. 1)

24. In addition to the commonalities among the FPS I, II and III positions noted above, FPS IIs,

1. Monitor the activities of recreational area personnel to ensure the maintenance of state forest and park areas for recreational purposes.
2. Confer with agency personnel concerning assigned unit activities to resolve problems, provide information and make recommendations.
3. Review reports and make recommendations concerning actions to be taken to resolve problems and/or to recommend changes in policies, procedures, etc. (Id.)

Further, FPS IIs may also “[p]repare budgets for the assigned area by projecting resource needs and preparing required documentation for agency’s budget request.”

(Id.)(emphasis added)

25. In addition to the commonalities, FPS IIIs also,

1. Monitor the operation, administration and maintenance of a major recreation area with one or more satellite areas or a heritage park consisting of a visitors (sic) center, extensive grounds and multiple recreational facilities including performance stages, boathouses, etc.
2. Represent the agency at meetings and conferences with representatives of federal, state and municipal agencies and community and other groups to provide information concerning agency objectives and to obtain their cooperation in achieving those goals and/or to resolve problems.
3. Prepare budgets for assigned areas by projecting resource needs and preparing required documentation for agency’s budget request.

4. Initiate requests for capital outlay funds and monitor capital outlay expenditures.
(Id.)(emphasis added)

These are often referred to as the level-distinguishing duties of an FPS III.

(Administrative Notice) These level-distinguishing duties for an FPS III were included in the job posting for the FPS II position in the Boston Harbor to which the Appellant was appointed in 2011. (Ex. 7)

26. FPS IIs “... receive general supervision from Forest and Park Supervisors or other employees of higher grade who provide guidance on policies and procedures, assign work and review performance through conferences and reports for effectiveness and compliance with applicable rules and regulations.” (Ex. 1) FPS IIIs receive the same supervision but only from employees of higher grade (not from other Forest and Park Supervisors). (Id.)

27. FPS IIs provide direct supervision for 1-10 personnel and indirect supervision for 6-25 personnel. (Id.)

28. FPS IIIs provide direct supervision for 5-15 personnel and indirect supervision for 10-50 personnel. (Id.)⁴

29. The minimum entrance requirements (MERs) for FPS IIs include, “ ... at least (A) three years of full-time, or equivalent part-time, technical or professional experience in the field of forestry, parks or recreational management and (B) of which at least one year

⁴ As indicated in Lachapelle v DCR, C-16-131, given the decades-old FPS Classification Specification, the attrition at DCR and its greater reliance on additional seasonal employees, DCR should not factor the number of year-round employees a reclassification candidate supervises into determining whether to grant the reclassification request.

must have been in a supervisory capacity, or (C) any equivalent combination of the required experience and the [educational] substitutions [listed therein]” (*Id.*)⁵

30. The MERs for FPS IIIs include, “ ...at least (A) four years of full-time, or equivalent part-time, technical or professional experience ... and (B) of which at least two years must have been in a supervisory capacity, or (C) any equivalent combination of the required experience and the [education] substitutions [listed therein]” (*Id.*)

31. The Appellant appears to satisfy the MERs for both FPS II and FPS III. (Ex. 1)

Appellant’s Form 30 Job Description

32. The Appellant offered and I entered into the record Ex. 1, which includes a Form 30 job description for the title FPS II, although it does not have the Appellant’s name on it, it does not indicate the park/s where the Appellant was assigned, and it is not signed by the Appellant or a supervisor. (Exs. 1 and 8)⁶

33. The FPS II Form 30 “General Statement of Duties and Responsibilities” states,

“[t]he incumbent is responsible for supervising the maintenance of assigned recreational areas; inspecting the condition of state-operated forest and park recreational areas and facilities; patrolling recreational areas and facilities; permitting the use of recreational facilities, park areas, etc.; organizing and implementing recreational and cultural programs. The basic purpose of their work is to supervise the activities involved in the maintenance of state-operated forest and park recreational areas and facilities.” (Ex. 1)

The FPS III Form 30 in the record contains the same General Statement of Duties and Responsibilities as the FPS II Form 30. (Ex. 1; Administrative Notice)

⁵ Although the FPS III Spec MERs include three (3) years of full-time experience, the Appellant’s Form 30 states that the MERs include (2) years of full-time experience.

⁶ As a result, the precise origin of the Form 30 in the record is unknown. On Marcy 31, 2015, Mr. Tobin wrote to the Appellant indicating that he would give the Appellant a “fresh copy” of his Form 30. (Ex. 8) The Respondent did not object to inclusion in the record of the Form 30 offered by the Appellant.

I note that the numbering of the items on the second page of both the FPS II Form 30 and the FPS III Form 30 in the record are inaccurate.

34. The FPS II Form 30 does not indicate who supervises the FPS II, nor does it indicate the staff that the FPS II supervises, directly or indirectly. (Ex. 1) The FPS III Form 30 also does not indicate whom the FPS III supervises, nor who supervises the FPS III. (Ex. 1; Administrative Notice)

35. The “Detailed Statement of Duties and Responsibilities” in the FPS II Form 30 includes, in part,

Supervises the maintenance of assigned recreational areas, including such activities as grounds maintenance, building and equipment maintenance, and repair and removal of hazardous trees or limbs.

Inspects the condition of state-operated forest and park recreation areas and facilities ...

Patrols recreational areas and facilities to maintain security and ensures compliance with applicable rules ...

Issues permits or gives permission for the use of recreational facilities, park areas, etc. and collects related fees.

Maintains records and prepares report concerning assigned work ... and make appropriate recommendations.

Organizes and implements recreational and cultural programs ...

Coordinates the activities and work of volunteers ...

Determines supply needs; operates and performs routine maintenance of various types of equipment and vehicles ...

Monitors the operation, administration and maintenance of a major recreation area with one or more satellite areas or a heritage park consisting of a visitors (sic) center, extensive grounds and multiple recreational facilities including performance stages, boathouses, etc.

Represents the agency at meetings and conferences with representatives of federal, state and municipal agencies and community and other groups to provide information ... and to obtain their cooperation ... and/or to resolve problems. Prepares budgets for assigned areas by projecting resource needs and preparing required documentation for agency’s budget request.

Initiates requests for capital outlay and monitor (sic) capital outlay expenditures.
(Ex. 1)

The FPS III Form 30 Detailed Statement of Duties and Responsibilities is the same. (Ex. 1; Administrative Notice)

36. The FPS II Form 30 provides that FPS IIs also,

Monitor the activities of recreational area personnel to ensure the maintenance of state forest and park areas for recreational purposes.

Confer with agency personnel concerning assigned unit activities to resolve problems, provide information and make recommendations.

Review reports and make recommendations concerning actions to be taken to resolve problems and/or to recommend changes in policies, procedures, etc.
(Ex. 1)

The FPS III Form 30 is different from the FPS II Form 30 in that it states, instead, that FPS IIIs also,

Monitor the operation, administration and maintenance of a major recreation area with one or more satellite areas, or a heritage park consisting of a visitors (sic) center, extensive grounds and multiple recreational facilities including performance stages, boathouses, etc.

represent the agency at meetings and conferences with representatives of federal, state and municipal agencies and community and other groups to provide information concerning agency objectives and to obtain their cooperation in achieving those goals and/or to resolve problems.

Prepares budgets for assigned areas by projecting resource needs and preparing required documentation for agency's budget request.

Initiate requests for capital outlay funds and monitor capital outlay expenditures.
(Ex. 1)

37. The FPS II Form 30 adds,

Based on assignment, incumbents of positions at this level may also:

Prepare budgets for the assigned area by projecting resource needs and preparing required documentation for agency's budget request.
(Ex. 1)(emphasis added)

The FPS III Form 30 contains no such addition. (Ex. 1; Administrative Notice)

38. The FPS II Form 30 Qualifications Required at Hire are include,

Knowledge of laws, rules, regulations, policies, procedures, specifications, standards and guidelines governing assigned unit activities.
Knowledge of geographic composition of the assigned work area.
Knowledge of the types and uses of agency forms.
(Ex. 1)

The Qualifications Required at Hire are the same in the FPS III Form 30. (Ex. 1; Administrative Notice)

39. The MERs in the FPS III Form 30 require a minimum of four (4) years of experience, whereas the MERs in the FPS II Form 30 require a minimum of three (3) years of experience. (Ex. 1)

Appellant's 2015 EPRS

40. There is no indication in the record that the Respondent considered the Appellant's 2015 EPRS in considering that Appellant's reclassification request. (Administrative Notice)

41. The Appellant's March 31, 2015 EPRS⁷ indicates that he had four (4) duties,

1. "Supervise season staff, DOC crews, and/or volunteers at assigned parks and recreation facilities. Assign daily tasks, train staff, prioritize and plan projects and maintenance tasks, maintain/submit daily work log, sign-in and payroll sheets ... Performance Criteria: Staff is properly engaged, parks and facilities are kept well maintained, safe, neat and clean. Projects are aligned with agency objectives and completed in a through (sic), safe and timely manner. Staff is well trained and supervised." (Ex. 8)
Mr. Tobin rated the Appellant "meets" and added, "Jamie does a fair job supervising his staff and maintaining his parks." (Id.)
2. "With the assistance of the Parks Coordinator, develop and implement site improvement projects in keeping with agency objective sic) and benefiting (sic) the park[.] Performance Criteria: projects are prioritized as to benefit to the public, material, time and staff available. Projects are well planned and

⁷ The typed Evaluation Year is indicated to be "July 1 2013 to June 30 2014". However, Mr. Tobin, the Appellant's immediate supervisor signed it with the hand-written date March 31, 2015, which indicates that the EPRS is for fiscal year 2015, the year in which the Appellant requested reclassification.

carried out to completion in a timely manner. Progress or issues and concerns are reported to supervisor regularly.” (Id.)

Mr. Tobin rated the Appellant “meets” and added, “A fall/winter/Spring project list was developed. Record snows have hindered progress. I will review the list with Jamie and help get (sic) thing back on track.” (Id.)

3. “Maintain tools and equipment and operating systems in good working condition. Performance Criteria: All park equipment is checked before and after use and basic repairs effected. Larger, more complicated problems reported to supervisor. Work space is kept neat, safe and clean.” (Ex. 8) Mr. Tobin rated the Appellant “meets” and added, “Jamie does a fine job taking care of his equipment and reporting/following through on larger issues.” (Id.)
4. “Liaison with all DCR patrons in a positive helpful manner, interact with agency and inter agency (sic) staff in a productive team oriented manner. Performance Criteria: All interactions with the public are polite and professional, public concerns or comments are addressed appropriately. Problems and concerns are addressed in a respectful manner through the proper chain of command. Works with other employees with a team oriented attitude.” (Id.)
Mr. Tobin rated the Appellant “meets” and added, “Jamie continues to be polite and professional in his interactions with the public and agency staff.” (Id.)

Processing of Appellant’s Reclassification Request

42. In response to the Appellant’s request for reclassification, the Respondent, in a letter dated March 20, 2015, instructed the Appellant to submit an organizational chart signed by his supervisor and his Form 30 job description signed by the Appellant and his supervisor, in addition to the completed Interview Guide. Mr. Tobin gave the Appellant a “fresh copy” of his Form 30. The Appellant asked Mr. Tobin for a copy of the organizational chart and he referred the Appellant to Ms. Kane. Ms. Kane did not have one and referred the Appellant to the Respondent’s Human Resources office. (Exs. 1 and 8)

43. By letter dated October 13, 2016, Ms. Daddabbo, EOE Human Resources Classification Coordinator, notified the Appellant that reclassification interviews would not be conducted until the pending human resources reorganization was completed. (Ex. 1)
44. On February 23, 2017, Ms. Daddabbo informed the Appellant that there would be an audit interview on March 7, 2017 regarding his reclassification request. (Ex. 1)
45. Ms. Daddabbo and Ms. Costanza, EOE Classification and Compensation Specialist, interviewed the Appellant for approximately forty-five (45) minutes at the DCR Hingham Harbor Islands office. (Testimony of Costanza)
46. After Ms. Daddabbo and Ms. Costanza interviewed the Appellant, at least one (1) of them visited Webb Park and its satellites. They found that the Appellant's parks were not as big as the Appellant had said they were. Ms. Costanza also reviewed the DCR website for the parks where the Appellant is assigned in order to gain additional information. (Testimony of Daddabbo and Costanza)
47. Before reaching their decision, Ms. Costanza and Ms. Daddabbo reviewed the Appellant's Interview Guide, the FPS Classification, and the Appellant's Form 30. In addition, they reviewed the information they had obtained about the Appellant's reclassification request with their supervisor, Ms. Mary Beth Bernard, the Director of Talent and Workforce Management. Ms. Bernard agreed with Ms. Costanza and Ms. Daddabbo to deny the Appellant's request because he was not performing the duties of an FPS III a majority of the time and that he was performing the duties of an FPS II. (Testimony of Daddabbo and Costanza)
48. On March 31, 2017, Ms. Daddabbo and Ms. Costanza completed a "non-Management Appeal Audit Report Form stating, in part,

“... The position of [FPS III] is responsible for monitoring the operation, administration and maintenance of a major recreation area with one or more satellite areas or a heritage park consisting of a visitor’s center, extensive grounds and multiple recreational facilities including performance stages, boathouses, etc; representing the agency at meetings, preparing budgets and initiating requests for capital outlay funds. While Webb Memorial Park has some satellite areas, it is not classified as a ‘major’ recreational area. It is used mostly for passive recreation, dog walking, picnicking, etc. There is only one building which houses public bathrooms and the appellants’ (sic) office/garage.

The appellant may feel that visitor increases, staff reductions and amenity usage has been an increase in his work load, but the assigned job duties and responsibilities remain the same. ... He also supervises only 1 – 2 seasonal employees.

The Classification Review Team reviewed all documentation submitted by the appellant as well as comments from his supervisors. ... It has also been determined that there have been no significant changes to the assigned duties and responsibilities that would warrant reallocation of this position” (Ex. 1)(emphasis added)

49. By letter dated March 31, 2017, Ms. Daddabbo informed the Appellant that his reclassification request was denied. (Ex. 1)
50. On April 12, 2017, the Appellant appealed the Respondent’s decision to the state’s Human Resources Division (HRD). (Ex. 1)
51. By letter dated June 22, 2017, HRD informed the Appellant that his appeal of the Respondent’s decision was denied. (Ex. 1)
52. On June 28, 2017, the Appellant filed the instant appeal at the Commission.
(Administrative Notice)

Legal Standard

Pursuant to G.L. c. 30, s. 49, the 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); and Kennedy v. Holyoke Community College, 11 MCSR 302 (1998).

Analysis

Although the Appellant appears to satisfy the Minimum Entrance Requirements for both FPS II and FPS III, he has not established by a preponderance of the evidence that he performs the functions of a FPS III a majority of the time. The Interview Guide specifically asks applicants to indicate the frequency with which they perform the duties of the reclassification they seek and the percentage of time they spend performing those duties. While the Appellant indicated in his Interview Guide the frequency with which he performs certain duties, he failed to accurately state the percentage of his time performing such duties. Specifically, of the ten (10) duties the Appellant listed, he wrote that he spends 100% of his time performing each of five (5) duties. Clearly, if someone is performing one duty 100% of the time, he or she cannot be performing other duties 100% of the time. For two (2) of the ten (10) duties, the Appellant wrote that he performs them each 70% of the time and for one (1) other duty, the Appellant wrote that he spends 60% of his time. Other evidence in the record does not present a more accurate picture of the percent of the time that the Appellant performs the duties that he asserts constitute

performing the duties of an FPS III a majority of the time. Further, most of the duties that the Appellant listed in his Interview Guide are common to the FPS Spec series.

The FPS Spec specifically lists four (4) level-distinguishing duties of an FPS III. They are: 1) operate “a major recreation area with one or more satellite areas or a heritage park consisting of a visitors (sic) center, extensive grounds and multiple recreational facilities including performance stages, boathouses, etc.”; 2) represent DCR at meetings and conferences with federal, state and municipal agencies; 3) prepare budgets and prepare documentation for DCR’s budget requests; and 4) “initiate requests for capital outlay funds and monitor capital outlay expenditures”. Ex. 2. Although it appears that the Appellant is directly responsible for operating Webb Park and has responsibilities at smaller satellites, he has not established by a preponderance of the evidence that his assignments involve a “major recreation area” or a “heritage park” with multiple facilities. Webb Park and its satellites are the smaller parks, have fewer permits issued (which are issued for Webb Park on a website overseen by Mr. Tobin) and have much lower revenues, compared to nearby Nantasket and Wamptuck Park. Although the FPS II job posting produced by the Appellant, to which position he was appointed after his grievance, states that the position is in a “major park”, this appears to be an error in the posting. In addition, there is information missing from the job posting, such as whom he would supervise and who would supervise him. Further, the posting states that a minimum of three (3) years of experience is required for the FPS II, which accurately reflects the FPS Spec. If, however, the job posting was intended for an FPS III, it would have indicated, *inter alia*, that a minimum of four (4) years of experience is required. Moreover, it is the FPS Spec, the candidate’s Form 30 and pertinent EPRS that are determinative, not a job posting. The Appellant was appointed to

the title of FPS II, not FPS III. When the Appellant requested reclassification, his assignment was at Webb Park and its satellites, which do not constitute a “major park”.

The Appellant established that he works with other DCR and other state personnel, municipal police and community organizations at times but there is no indication that he represents DCR parks at meetings and/or conferences with federal agencies. The FPS Spec specifically indicates that an FPS III:

[r]epresents the agency at meetings and conferences with representatives of federal, state and municipal agencies and community and other groups to provide information concerning agency objectives and to obtain their cooperation in achieving those goals and/or to resolve problems.

Ex. 1 – FPS Spec.

While it is accurate to state that the National Park Service (NPS) uses Webb Park and its equipment on occasion, it is done according to a cooperative agreement between DCR and the NPS and it does not involve meetings or conferences, wherein the Appellant represents DCR, to address DCR objectives or obtain NPS’ cooperation in addressing DCR’s goals, or to resolve existing problems.

There is inadequate information in the record to indicate that the Appellant “initiate[s] requests for capital outlay funds and monitor[s] capital outlay expenditures” as required by the FPS III Spec level-distinguishing duties, pursuant to the level distinguishing duties. I understand “capital” outlay and expenditures to refer to “costs that are incurred in the acquisition or improvement of property (as capital assets) or that are otherwise chargeable to a capital account”. <https://www.merriam-webster.com/legal/capital%20expenditure> (October 4, 2018). In Exhibit 6, the Appellant provided a number of documents indicating that he was involved in the purchase of equipment, services for work done and for supplies for Webb Park and/or its satellites. However, the documents do not appear to relate to capital outlays and expenditures.

The level-distinguishing duties also require an FPS III to prepare budgets and documentation for DCR's budget requests but evidence of the Appellant's involvement in the preparation of budgets or documentation for DCR's budget requests was found wanting.

While the Appellant, like other DCR employees in the wake of significant attrition, has been asked to do more with less, that does not establish that he performs the functions of an FPS III a majority of the time. DCR's Appeal Audit Report Form specifically notes that there has been "... no significant changes to the assigned duties and responsibilities that would warrant reallocation of this position ...". Ex. 1

Finally, while the burden is on the appellant in a reclassification appeal to establish by a preponderance of the evidence that he or she performs the functions of the title he or she seeks and performs those functions a majority of the time, the appeal also presents the opportunity to assess the employer's reclassification process. I find that the DCR process was adequate. Ms. Daddabbo and Ms. Costanza reviewed the Appellant's Interview Guide, the FPS Spec and his Form 30. Had they also reviewed the Appellant's 2015 EPRS, the process would have been improved. Here, the Commission has reviewed the Appellant's EPRS and found that it confirms that the Appellant's duties are those of an FPS II. Ms. Daddabbo and Ms. Costanza consulted the Appellant's supervisors. In addition, they interviewed the Appellant. After interviewing the Appellant, either (or both) Ms. Daddabbo and Ms. Costanza went to view the Appellant's assigned location. There they found that the Appellant's work location was smaller than the Appellant had represented, further confirming that the Appellant performs the duties of an FPS II. That said, I strongly urge the Respondent to establish appropriate objective criteria to determine whether a park is a "major park", a reference contained in the FPS Spec, to ensure clarity and transparency in the processing of FPS reclassification requests.

Conclusion

Accordingly, for the above stated reasons, the reclassification appeal of Mr. Graham, Docket No. C-17-131, is hereby denied.

Civil Service Commission

/s/Cynthia A. Ittleman

Cynthia A. Ittleman, Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Stein and Tivnan (Ittleman – absent), Commissioners) on November 8, 2018.

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:

Richard Trubiano (Appellant)
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Debra Friedman, Esq. (for Respondent)
John Marra, Esq. (for HRD)