

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

RENEE LaCHAPELLE,
Appellant

v.

C-16-136

DEPARTMENT OF CONSERVATION
AND RECREATION,
Respondent

Appearance for Appellant:

Renee Lachapelle, pro se

Appearance for Respondent:

Kenneth Langley, Esq.
Wendy G. Friedman, 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 August 5, 2016, the Appellant, Renee LaChapelle (Ms. LaChapelle 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 her request for reclassification from the title Forest and Park Supervisor II (FPS II) to Forest and Park Supervisor III (FPS III). A pre-hearing conference was held on September 20, 2016 at the offices of the Commission in Boston. A full hearing was held at the

same location on November 1, 2016.¹ The hearing was digitally recorded and both parties were provided with a CD of the hearing².

At the outset of the hearing, the Respondent made an oral motion to dismiss the appeal as untimely, arguing that the Appellant failed to file her appeal until August 5, 2016, which is more than the thirty (30) days allowed under 801 CMR 1.01(6)(b) to appeal the decision of an agency decision (the state's Human Resources Division (HRD)), which is dated June 2, 2016. The pro se Appellant opposed the motion. The motion was denied at that time.

Upon review of the full record here, the appeal to the Commission was untimely. The HRD decision denying the Appellant's appeal states that the Appellant may appeal its decision to the Commission but does not indicate any time limitation for such an appeal. G.L. c. 30, s. 49 contains no time limitation for appealing a reclassification decision of HRD. However, the Commission adopted the Standard Adjudicatory Rules of Practice and Procedures, 801 CMR 1.00, *et seq.*, effective Dec. 1, 1999. 801 CMR 1.01(6)(b) provides that if there is no pertinent filing deadline provided by statute or agency rule, the filing deadline shall be thirty (30) days from the date of the agency action being appealed. By letter dated June 27, 2016, the Appellant asked the Commission to review HRD's denial of her reclassification. The Commission received the Appellant's letter on July 28, 2016 and returned it to the Appellant on July 28, 2016 indicating that the appeal was incomplete because it did not include the required appeal fee. Also on July 28, 2016, I left a voicemail message on the Appellant's phone providing the same information. On August 5, 2016, the Appellant filed the instant appeal (with the appeal fee).

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.

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.

Having filed her appeal on August 5, 2016, more than thirty (30) days after HRD denied her appeal, the Appellant's appeal to the Commission was untimely and subject to dismissal.

However, even if the appeal to the Commission was timely, it must be denied on the merits as determined herein.

At the hearing, I asked the Respondent to produce a list of all FPS IIs and IIIs at DCR and their locations.³ Based on the information produced by the Respondent, the Appellant thereafter asked for information indicating which FPS IIs had requested, and were granted reclassification within the previous three (3) years. On March 8, 2017, the Respondent produced the information that the Appellant requested. The Respondent's documents submitted on March 1 and 8, 2017 are marked and entered into the record and will be appropriately redacted.

The Respondent submitted a post-hearing brief; the Appellant did not. For the reasons stated herein, the appeal is denied.

FINDINGS OF FACT:

A total of thirty-one (31) exhibits were entered into evidence at the hearing. Following the hearing, as noted above, the Respondent produced two (2) additional documents which were also entered into evidence.⁴ Based on these exhibits, the testimony of the following witnesses:

Called by the Respondent:

- Christopher Hookie, District Manager, Central Valley District, DCR

³ The Respondent's exhibit 15 (R.Ex. 15) indicates that in 2016, in the Central Region, there were two (2) different park "complexes": the Blackstone Complex, which includes the Purgatory Park where the Appellant works; and the Quinsigamond "Complex", which includes other parks. In the Blackstone Complex, there were two (2) FPS IIIs and one (1 – the Appellant) FPS II; in addition ten (10) of the eleven (11) other staff positions in the Blackstone Complex were vacant. In the Quinsigamond Complex there were two (2) FPS III positions, one (1) FPS II position and one (1) FPS I position, all of which were vacant; in addition seven (7) of the ten (10) staff positions were vacant. (R.Ex. 15)

⁴ The Appellant submitted sixteen (16) exhibits (A.Ex. 1 through 16) at the hearing. The Respondent submitted fifteen (15) exhibits (R.Ex. 1 through 15) at the hearing. R.Ex. 16 is the Respondent's list of FPS IIs and IIIs statewide and R.Ex. 17 is the Respondent's list of FPS IIs who had applied recently for reclassification to FPS III and the result of their request.

Called by the Appellant:

- Jeanne Gilleney-Decenzo, Regional Ranger III for Central Massachusetts, DCR
- Brad Gallant, FPS III, Dunn State Park in Gardner, DCR
- Renee Lachapelle, 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:

Background

1. The Appellant has worked for many years at Massachusetts state parks. In 1987, she began working at the former Department of Environmental Management (DEM)⁵ as a clerk. She then went to work at the Quinsigamond Park as a Laborer I. Thereafter, she returned to work at Quinsigamond Park but was laid off in 1988. She then worked at Quinsigamond Park for a couple of seasons. In 1991, the Appellant was employed at Purgatory Chasm State Reservation, and the surrounding Sutton State Forest (Purgatory/Sutton or camps), as a Laborer I. In 1997, she was appointed to a year-round position at Wells State Park in Sturbridge. The Appellant later worked in Brimfield State Park in the winter. She returned to Purgatory/Sutton in 1998 and her position was reallocated to Laborer II. In 2007, the Appellant's supervisor was demoted. In 2008, the Appellant was appointed Acting FPS II, which position she stayed in for approximately one (1) year. In January 2009, the Appellant applied for, and was appointed to the position of FPS II in Purgatory/Sutton Park (Grade 16). (Testimony of Appellant; A.Ex. 3)

⁵ In or about 2003, the DEM was merged with the Metropolitan District Commission to create the DCR. (Administrative Notice)

2. Activities and/or facilities at Purgatory/Sutton include a visitors' center, Purgatory Chasm, use of a boat ramp (but it does not have a beach), rock climbing, hiking, a playground (closed in snow), fishing, mountain bike trails, a brook, and a pond.
Purgatory and Sutton are closed when there's ice and snow, although some people may go showshoeing or cross-country skiing there anyway. (Testimony of Appellant and Hookie)
3. Purgatory Sutton is popular in the warm weather but is used little in cold weather.
Therefore, if DCR has to cut back on parks, Purgatory would be one of the camps near the top of this list to be fully closed in winter. (Testimony of Hookie)
4. At Purgatory/Sutton, the Appellant writes a number of reports, including attendance, incidents, revenue, storm damage, and daily, weekly, and monthly reports, which go through the Field Operations Team Leader (FOTL)(Grade 20) and/or regional manager; she manages Purgatory/Sutton; she signs time sheets when employees are there; if things at Purgatory/Sutton break, she handles it or a contractor or DCR staff from another location assist in the repairs, giving the contractors and/or staff the guidance needed; she works with police and fire rescue personnel when needed at Purgatory/Sutton; and she plows and shovels the parks herself. She does not sign contracts for Purgatory/Sutton.
The Appellant has access to funds at Home Depot for work to be done at the camps; this funding is made available to all FPSs by approval from either the regional office or district manager. (Testimony of Appellant). If the Appellant has a project to do, she submits a request for it and Mr. Hookie reviews it; final approval for projects is ultimately made by the DCR Boston office. (Testimony of Hookie)

5. Ms. Jeanne Gilleney-Decenzo is a Regional Ranger III for Central Massachusetts, which includes Purgatory/Sutton. Purgatory Chasm is the draw at Purgatory/Sutton. (Testimony of Gilleney-Decenzo)
6. Until recently, the Appellant's immediate supervisor was Val Stegemoen, the FOTL for the Blackstone Complex in the Central Region, which includes Purgatory/Sutton. (R.Ex. 11) The Appellant communicated with Mr. Stegemoen but not every day. Mr. Stegemoen ran his own camp but he knew what was going on at Purgatory/Sutton. (Testimony of Appellant)
7. Mr. Stegemoen's supervisor, until recently, was Chris Hookie, the Central Region District Manager (Program Manager V). (R.Ex. 15) Mr. Hookie has worked at DCR for more than a decade and worked in natural resources in two (2) other states for three (3) additional decades. Since Mr. Stegemoen left his position, Mr. Hookie communicates with the Appellant by email and/or visits every couple of weeks or so, as needed. (Testimony of Hookie)
8. By letter dated July 16, 2012, the Appellant asked DCR to reclassify her from a FPS II (Grade 16) to FPS III (Grade 18). (Testimony of Appellant; R.Ex. 1) There has not been a FPS III at Purgatory since approximately 1991. (Testimony of Appellant)
9. On August 14, 2012, the Appellant also submitted a completed "Appeal Form" to Ms. Penny Carney, the DCR Director of Human Resources, attaching a detailed description of the reasons that she believed support her reclassification request. For example, in 2008, she was "instrumental in getting the new playground project ... completed[]" (R.Ex. 6); in 2009, she took the lead on a parking lot resurfacing project and adding a lawn connecting the three (3) parking lots; also in 2009, she requested funds from the park

Trust Fund to improve the park and building new walking bridges, working with the Sutton Conservation Commission and others; in 2011, she worked with staff to develop a Purgatory Children’s Nature Library; in 2011, she was working on a butterfly/rock garden, working with a DCR architect, archeologist and the Mass. Historical Commission; the park has had an “increase in attendance and incidents” (id.); and she manages Purgatory/Sutton and the Visitors Center. She listed her duties as including supervising and performing maintenance, inspecting/monitoring the different parts of the parks and facilities (including 1600 acres of forest land), issuing recreational permits, preparing various work plans and reports, coordinate service projects for students, representing the agency at regional meetings, supervisors’ conferences, a safety committee, DCR training in local communities, working closely with municipal agencies concerning land acquisition and emergency response and others at DCR, prepare conservation Trust Fund project justification and budgets, and initiate requests for capital projects. (Id.) The Appellant did not indicate in in this document the percent of her time spent on each of the duties she listed. (Administrative Notice)

10. At or around March 2017, there were twenty-nine (29) FPS IIs at various DCR parks and forty-one (41) FPS IIIs at various parks. (R.Ex. 16) One (1) of the FPS IIs on R.Ex. 16 had been reclassified. (Id.) By March 8, 2017, twelve (12) FPS IIs (including the Appellant) had requested reclassification to FPS III. (R.Ex. 17) Of the twelve (12) who requested reclassification, nine (9) had been “denied”, “closed” or “withdrawn” and three (3) were still pending. (Id.)⁶

⁶In addition to the Appellant, two (2) other FPS IIs seeking reclassification to FPS III filed appeals at the Commission: Francis Graham v. DCR, C-17-131, and Richard Trubiano v. DCR, C-17-039. Decisions in the Graham and Trubiano cases will be issued after the decision in this case.

Appellant's Interview Guide

11. On July 24, 2013, the Appellant completed an Appeal Audit Interview Guide (Interview Guide). In the Interview Guide, the Appellant wrote, in part,

I feel the work I am performing on a daily basis along with the responsibility and pressures that come with managing such a unique and challenging DCR facility warrant such an upgrade. With the steady increase of visitors to our facility, loss of year round staff, the unique features of the Chasm, the new playground and a well used (sic) Visitor's Center ; (sic) my duties, challenges and incidents have all increased as well.

(R.Ex. 8)(emphasis added)⁷

12. In the Interview Guide, the Appellant described the primary purpose of her job, in part, as,

Monitor the operation, administration and maintenance & provide visitor services for 1,800 acres of forest land, including trails, fire roads, and the Chasm proper (1/4 mile long gorge). Five buildings including the Visitor Center, playground and several satellite areas that include the Singletary Boat Ramp, Dudley Memorial Forest, and an MOA to maintain existing trails of the abutting Whitinsville Water Company for the purpose of passive recreation, including hiking, biking, horseback riding, X country skiing and snowshoeing.

(Id.)⁸

13. Asked to describe with whom she comes in contact in the Interview Guide, the Appellant

indicated, in part, that she is in contact within DCR with,

various District Safety Committees to discuss state safety issues and policies and conduct safety inspections in parks in the District;

four (4) to five (5) times per year she was in contact with the DCR Landscape Architect in Boston to plan and develop landscape projects at Purgatory/Sutton; three (3) to four (4) times per year she was in contact with the DCR Boston office to plan and develop Conservation Trust Fund projects at Purgatory/Sutton; and five (5) to ten (10) times per year she was in contact with the DCR Boston office to construct a playground in 2008;⁹

⁷ The Appellant offered information about increased park attendance at Purgatory/Sutton and some other parks. However, that information is not dispositive because it is for FY 15 and the Appellant requested reclassification in 2012. (*See, e.g.*, A.Ex. 9)

⁸ The Chasm "gorge" is approximately ¼ mile long and it is a geologic formation, with cliffs and boulders. (Testimony of Gilleney-Decenzo)

Regarding contact outside of DCR, the Appellant reported that she was in contact, in part, with,

nearby police and fire department personnel up to fifteen (15) to twenty (20) items per year;

the Metacomet Land Trust Environmental Education outreach program three (3) to four (4) times per year;

Girl Scout and Boy Scout from New England states regarding camping, fifteen (15) to twenty (20) times per season;

the State Police Millbury barracks as needed; and

town DPW to assist park staff, approximately five (5) to ten (10) times per year.

(R.Ex. 8)

14. Asked in the Interview Guide to describe any job changes in her position, the Appellant wrote, in part, that in 2007, she lost two (2) year round staff due to retirement (a FPS I and a Facility Repairer); as a result, she worked alone for two (2) winters performing any and all daily tasks. In 2008, the Appellant wrote, her administrative duties increased because of requirements given to her by the Regional Director, including preparation of emergency action plans, winterization reports, hurricane preparedness, boundary marking verification, and damages assessment reports. In addition, the Appellant listed the installment of “pay and display machines” for parking, as well as changes to radio communications for local rescue operations. (R.Ex. 8) However, DCR did not authorize the use of the parking pay and display machines at Purgatory/Sutton until a couple of

⁹ Among the Appellants’ exhibits are A.Ex. 11, which is a license agreement between DCR and the Whitinsville Water Company, permitting public access to land owned by the Water Company adjacent to Purgatory Park and Sutton State Forest. However, A.Ex. 11 is of limited value in this case since the agreement was signed in 2014, two (2) years after the Appellant requested reclassification, and the Appellant is not a signatory to the agreement.

years after they were installed in 2012; a couple of years later, DCR ceased use of the pay and display machines at Purgatory/Sutton. (Testimony of Appellant)¹⁰

15. The Appellant listed her job duties in the Interview Guide, in part, and ascribed the amount of time she spent on each, as follows:

1. Monitor and supervise the operation, administration and maintenance of 1800 acres of Forest land, trails including a Chasm, playground, buildings including a Visitor's (sic) Center, vehicles, seasonal water system and satellites (Singletary boat ramp, Dudley Memorial forest, Whitinsville Water Co. area and Sutton State Forest. Daily 40%
2. Prepare work plans, weekly narratives, recaps, work schedules, time sheets, attendance, park safety inspections, monthly vehicle reports, storm reports, emergency action plans, storm damage assessments, park inventory, schedule the use of visitor's Center meeting room, fishing tournament events at Singletary boat ramp, register and schedule technical rock climbing in the Chasm and issue recreational permits for scout camping at Dudley Memorial Forest. Daily, weekly and monthly 20%
3. Inspect the condition of trails, forest fire roads, buildings, playground, chasm, Visitor's (sic) Center, Singletary board ramp to determine their ability for public use and to ensure compliance with safety standards and determine maintenance needs. Daily Weekly 10%
4. Patrol recreation areas, chasm, trails, playground and fire roads to maintain security and to ensure compliance with applicable rules, regulations and policies. Daily, Weekly 10%
5. Represent the agency at regional meetings, Supervisor's (sic) conference, DCR training, statewide and district safety committee meetings and inspections, DCR training and emergency training. Work closely with municipal agencies such as Sutton Police and Fire Departments, town administrators and town assessor. Monthly, Yearly 10%
6. Work with Purgatory V.S.S. [Visitors' Services Supervisor] (now vacant) to implement recreational, nature and Conservation Trust Fund programs. For example: Fire Day Hike, Park Serve Day, create a children's nature library,

¹⁰ R.Ex. 14 indicates parking revenue at certain parks for some or all of FY 15 and 16. It appears that the "pay and display" automated parking payment system was not in operation at the Chasm in 2012, when the Appellant requested reclassification. Therefore, the information in R.Ex. 14 is not dispositive in this case. However, I note that, for example, in FY 2016, parking revenue for the Chasm was approximately \$95,000, at Walden Pond in Concord it was approximately \$339,000, and at Borderland Park (near Brockton) it was approximately \$282,000.

and create Conservation Trust funded projections to enhance our visitor's (sic) experience. Yearly 5%

7. Perform routine maintenance on small engine equipment, vehicles and playground equipment. Maintain Visitor's (sic) Center, maintenance building, pump house building and seasonal water systems. Weekly, Monthly 5%
 8. Initiate request for capital projects and improvements. Prepare cost estimates for each project and prepare park related work repair and solicit 3 bids for each repair. Yearly 5%
 9. Prepare Conservation Trust fund project justification and budgets. Prepare equipment needs and cost for each project. ... Yearly 5%
- (R.Ex. 8)

16. Asked in the Interview Guide to describe the authority she exercises, the Appellant wrote,

in part,

... I have the authority to prepare my staff's ... weekly work schedules, time sheets, work plans and assign daily works tasks. I also have the authority to make any adjustments or amendments as needed. If an incident or injury occurs in the park it is my responsibility to assess the situation and make decisions on what action will be taken; when and what emergency personnel is needed. I make all decisions regarding the use and scheduling of the Visitors (sic) Center meeting room, fishing tournaments at Singletary Board Ramp, and scout camping at the Dudley Memorial Forest.

(R.Ex 8)¹¹

17. Asked in the Interview Guide what problems/issues would be referred to someone else,

the Appellant wrote, "If there is a facility repair that cannot be fixed by myself or my staff, I would then contact my supervisor or the business manager to inform them ... I would then wait for the authority to move forward with the repair. Another issue would be a staff disciplinary problem that cannot be resolved by myself or staff member, I would call my supervisor and/or Dist. Manager to assist" (R.Ex. 8)(emphasis added)

¹¹ The Appellant's exhibits A.Ex. 15, 16 and 17 indicate the number of injuries to park visitors at at least some state parks, indicating that Purgatory/Sutton appeared to have the highest number of injuries but the information provided pertains to FY 15-16, three (3) years after the Appellant requested reclassification. Even if the information represented injuries at all state parks in FY 12-13, it would not establish that the Appellant was performing as an FPS III a majority of the time.

18. Asked who was her immediate supervisor on a daily basis, how work was assigned to her and who evaluates her job performance in the Interview Guide, the Appellant wrote, “My immediate Supervisor on a daily basis is the Field Operator Team Leader, Val Stegemoen, who works out of the Blackstone Heritage State Park in Uxbridge, Ma. However, on a daily basis I assign all work plans to be done at Purgatory ... If there is a special work assignment needed ..., Val would contact me by phone or email. Val Stegemoen, FOTL evaluates my job performance in person using the EPRS form and form 30 in 3 stages.” (R.Ex. 8)

19. The Interview Guide asks,

Whose work do you supervise on a daily basis? This means year round employees who report to you for their work assignment every day. Indicate by official payroll title those positions which report directly to you (must be agency employees).

(R.Ex. 8)

The Appellant responded,

Long term seasonal staff: Visitors Services Supervisor
Forest & Parks Supervisor I
Laborer I
Laborer I

Year round: Laborer II – transfer to another region in May 2012[.]

(Id.)

20. In the Interview Guide, the Appellant indicated that for the person/s she supervised, she assigned and directed their work, determines the means and materials for performing work, inspect the quality of work, provide verbal or written discipline, formally review work performance (e.g. EPRS), recommend formal disciplinary action, establish work schedules, train employees, participate in grievances, and approve leave time but she does not authorized overtime. She also indicated that she supervised four (4) subordinates (the year round Laborer II, two (2) long-term seasonal Laborers I, and one

(1) short-term Laborer II. She functionally supervised one (FPS I, formally long-term seasonal but then year round), and a Visitor Services Supervisor, a long-term seasonal employee. (R.Ex. 8)¹²

21. Asked about any unusual work conditions on the Interview Guide, the Appellant mentioned the Chasm, which she maintains but can also involve responding to emergencies at the Chasm, which requires that she hike the boulders to assist someone who is injured there, in good and bad weather, at times alone. (R.Ex. 8)
22. In her Interview Guide, the Appellant indicated that she believed the skills necessary for her current job are “computer knowledge, communication skills ..., Visitors (sic) services skills, problem solving skills and first aid and CPR” She further listed basic maintenance and repair knowledge, minor small engine repair skills, ability to manage time and the ability to prioritize any work demands” (R.Ex. 8) The medical emergencies that happen at the Chasm can be very challenging, including a recent suicide there. (Id.)(*see also* A.Ex. 10)
23. On August 14, 2012, the Appellant also submitted a completed Appeal Form to Ms. Penny Carney, the DCR Director of Human Resources, attaching a detailed description of the reasons she believed support her reclassification request. For example, in 2008, she was “instrumental in getting the new playground project ... completed[.]”; in 2009, she took the lead on a parking lot resurfacing project and adding a lawn connecting the three (3) parking lots; also in 2009, she requested funds from the park Trust Fund to improve the park and building new walking bridges, working with the Sutton Conservation

¹² The Appellant typed her entries into the Interview Guide but there are a few handwritten notations on the form and it is unclear if she wrote the notations or if they are comments by someone else. One of the written comments, for example states that the Visitors’ Services Supervisor had been now been assigned to another park. (R.Ex. 8, p. 7)

Commission and others; in 2011 worked with staff to develop a Purgatory Children's Nature Library; in 2011 she was working on a butterfly/rock garden, working with a DCR architect, archeologist and the Mass. Historical Commission; the park has had an "increase in attendance and incidents"; and she manages the Chasm and Visitors Center. (R.Ex. 6) She listed her duties as including supervising and performing maintenance, inspecting/monitoring the different parts of the parks and facilities (including 1600 acres of forest land), issuing recreational permits, preparing various work plans and reports, coordinate service projects for students, representing the agency at regional meetings, supervisors' conferences, a safety committee, DCR training in local communities, working closely with municipal agencies concerning land acquisition and emergency response and others at DCR, prepare conservation Trust Fund project justification and budgets, and initiate requests for capital projects. (Id.) The Appellant did not indicate in this document the percent of her time spent on each of the duties she listed.

(Administrative Notice)

24. On July 24, 2013, Ms. Ferrando sent the Appellant's completed Interview Guide to Mr. Hookie, District Manager, and Mr. Stegemoen, FOTL, by email, indicating that the Appellant's audit interview was conducted that day and soliciting their comments on the Appellant's reclassification request. (R.Ex. 13)
25. On August 6, 2013, Chris Hookie, Central Valley District Manager, signed a memo regarding the Appellant's completed Interview Guide stating, in part, that he agreed with the general content and answers to the Interview Guide questions, but he did not believe the reclassification was warranted for a number of reasons:

1. The Chasm is “mainly a seasonal operation, very busy in the late spring, Summer , (sic) and early Fall, and nearly shut down in the early spring and late Fall shoulder season and all winter, (sic)[;]
2. ... [the Appellant] is currently the only year round staff member with a Summer seasonal addition of 8 staff. The most the park ever had was 3 year round staff members ... The classification specification for a F&P Sup III indicates that the Sup must directly supervise a staff between 5-15 and indirectly supervise a staff of 10-50. Staffing levels at Purgatory Chasm SR historically does not reflect that. (It is noted that year round (sic) staffing levels of all parks are/have been diminished due to budgetary constraints)[;]
3. [the] Chasm currently is a day use facility, operating from sunrise to sunset. The facility does not have a small VC that consists of an office, restrooms, a lobby and one conference room. Facilities that are operated by F&P Sup III’s as listed in the F&P III classification specifications include either/including large active [visitors’ centers], an active waterfront, campground, performance stages, and/or boathouses.
4. [Purgatory/Sutton] currently does not generate revenue. ... Plans are to install up to 3 Pay & Display [parking] machines at [Purgatory/Sutton]. When the machines are in place, put in operation, and a history of extensive revenue collection is established, this component of a reallocation upgrade could be considered ...[;]
5. [Purgatory/Sutton] does have an increase in injuries due to the nature of the facility. It is a rock climbing park. Plus other incidents that have included a recent suicide, this is not unique to [Purgatory ...[;]
6. ... All DCR parks are having to do more with less[;]
7. ... All the increased administrative duties [the Appellant] listed are not unique to [the Chasm]. ... These are daily operation reports and requirements and are ‘Common Duties’ as indicated in the F&P Sup classification Specification Series. ...[;]
8. ... it is true that [the Chasm] is a very busy facility during the recreation season, and the facility is fully staffed for the recreation season. The ‘extended shoulder season’ can be an issue, with the reduction of staffing and Fall visitation still at high levels. These staffing reduction levels are DCR-wide ...[;]
9. ... I could see an F&P Sup III operation at [the Chasm] in the future if the following – A) A history of positive revenue collection is established, B) FT staffing levels increased to increase/include year round programming, C) increased usage of VC conference room ..., D) establishment of camping policies and revenue collection at scout camp, and E) an increase in satellite facility operations But at this time, in my opinion, the reallocation of the F&P II to a Sup III at [the Chasm] is not justified.

(A.Ex. 2)(emphasis added)

26. On August 7, 2013, Mr. Stegemoen, evaluated the Appellant's Interview Guide as follows,

... I ... agree with the content and answers of [the Appellant] ... However, at this time, I do not consider the management of the Purgatory Chasm as the equal to a facility with a waterfront such as Douglas State Forest, nor with a camp ground, nor with a Heritage State Park. Purgatory Chasm has a natural feature that is a well known attraction within the Commonwealth and throughout New England plus has its associated risks. This State Reservation plus surrounding State Forest may not be ready for an upgrade but sooner or later, a Visitor Center with full visitor services, introduction of Pay and Display revenue stream, a playground with increasing popularity, continued land acquisition with greenway corridor connecting to other open space and new recreational usage considerations shall all contribute to justifying it with a F&P supervisor III position.

(A.Ex. 3)(emphasis added)

Appellant's Form 30

27. The Form 30 general statement of duties and responsibilities provides that the FPS II, “[s]upervises and coordinates the maintenance, operation and programs for Purgatory Chasm State Reservation, Sutton State Forest, and the Singletary Boat ramp, a total of 1800 acres which includes a Visitor Center.” (R.Ex. 10)¹³

28. The FPS II receives supervision from Chris Hookie, District Manager, and Val Stegemoen, then-Recreation Facilities Supervisor IV. (Id.)

29. The FPS II direct reporting staff are a Laborer II, a Seasonal Visitor Services Supervisor/Interpreter, an FPS I, and two (2) Seasonal Laborers I. (Id.)

30. The FPS II duties and responsibilities include,

1. Supervises the maintenance of assigned recreational areas, buildings, grounds and equipment.

¹³ I note that the Appellant describes Purgatory/Summit as being 1,600 acres, not 1,800. *Supra.*

2. Inspects the condition of the state operated forest and park recreational areas to determine their suitability for public use, ensure compliance with safety standards and determine maintenance needs.
3. Patrols area to ensure compliance with the rules ...
4. Prepares reports and records relating to the lands, buildings, equipment, vehicles, attendance, income, expenditures, and personnel ...
5. Represents the division at various meetings and conferences with other state, federal and municipal agencies and community and other groups and provides information, agency objectives, and cooperation.
6. Assists in the coordination of rescue activities.
7. Prepares operating and capital budgets.
8. Initiates and coordinates land acquisition proposals.
9. Interviews, hires and trains new staff....

(Id.)

31. The FPS II qualifications include,

Knowledge of the techniques, methods, safety practices, materials, and equipment necessary for park management.

Ability to understand, apply, and explain the laws, rules, and regulations, policies procedures, ...

Knowledge of the methods and techniques used in the care and maintenance of trees and shrubs.

Ability to maintain accurate records.

Ability to prepare reports.

Ability to give oral instructions ...

Ability to maintain a calm manner in emergency situations....

Ability to supervise, including planning and assigning work”

(R.Ex. 1)

32. The FPS II minimum entrance requirements 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 at least one year must have been in a supervisory capacity, or (C) any equivalent combination of the required experience”

(Id.)

Appellant's FY 2012 EPRS

33. At the Appellant's EPRS was signed by the Appellant and her immediate supervisor, Val Stegemoen.¹⁴ (R.Ex. 12)
34. At the annual review, the Appellant's performance was rated "exceeds" and Mr. Stegemoen added "Renee has been doing a great job. Purgatory has been operating safely and usage has been increasing." (Id.)
35. The Appellant's EPRS lists four (4) duties. Duty 1 states, "[s]upervises the management of the buildings, grounds, forests, and recreation areas in the Purgatory Chasm State Reservation and the Sutton State Forest." The Appellant's annual review performance was rated "exceeds" and her supervisor added, "Even with the increase in attendance, the park is kept clean, safe and well maintained (sic)." (Id.)
36. The Appellant's EPRS Duty 2 states, "[i]nterviews, hires, trains, and schedules crew; assigns crew maintenance tasks. Maintains communications and harmonious relationships with staff, other department personnel, and outside entities". (Id.) At her annual review, the Appellant's performance in this regard was rated "meets". (Id.)
37. The Appellant's EPRS Duty 3 states, "[p]repares budgets, spending plans, work plans, reports, and record related to park property, maintenance practices, personnel, and attendance." (Id.) The Appellant's annual review rating was "meets". (Id.)
38. The Appellant's EPRS Duty 4 states, "[i]nspects area to insure compliance with park rules, regulations, policies and procedures." (Id.) The Appellant's annual review was rated "exceeds". In addition, Mr. Stegemoen wrote, "Renee with returning staff have maintained the park safe and orderly." (Id.)

¹⁴ A reviewer also signed the Appellant's FY 2012 EPRS but the signature is not legible. (R.Ex. 12)

FPS Classification Specification (FPS Spec)

39. The FPS Spec in use is dated 1987. It contains three (3) levels of Supervisor. The FPS I is on level 14 pay grade, FPS II is on level 16 pay grade, and FPS III is on level 18 pay grade. The FPS I is the first-level supervisory job in the series, the FPS II is the second-level supervisory job, and the FPS III is the third-level supervisory job in the series.

(R.Ex. 1)

40. In addition to the commonalities among the FPS I, II and II positions, 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.)

41. In addition to the commonalities, FPS IIIs,

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)

42. 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.” (Id.) FPS IIIs receive the same supervision but only from employees of higher grade (not from other Forest and Park Supervisors). (Id.)
43. FPS IIs provide direct supervision for 1-10 personnel and indirect supervision for 6-25 personnel. (Id.)
44. FPS IIIs provide direct supervision for 5-15 personnel and indirect supervision for 10-50 personnel. (Id.)
45. 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 must have been in a supervisory capacity, or (C) any equivalent combination of the required experience and the [educational] substitutions [listed therein]” (Id.)
46. 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.)

Processing of Appellant's Reclassification Request

47. On July 8, 2013, Ms. Cheryl Ferrando, of the DCR Human Resources Office, Classification Unit, informed the Appellant that she would be interviewed in connection with her reclassification request on July 16, 2013. (A.Ex. 9)

48. By letter dated February 4, 2015 to the Appellant, Ms. Carney, DCR Director of Human Resources, informed the Appellant that her request was denied, stating, in part, “An appeal audit of your position was conducted and the results have been reviewed. Accordingly we find that the duties being performed by you do not warrant the reallocation of your position and that you are properly classified. We, there, regret to inform you that we must deny your appeal.” (R.Ex. 2) This letter further advised the Appellant that she could appeal the DCR decision to HRD under G.L. c. 30, s. 49. (Id.) The letter did not state any time limitation within which to appeal to HRD. (Administrative Notice)

49. On February 5, 2015, Mr. Harry Pierre-Mike, Director of Workforce Management, and Ms. Carney signed an Audit Report Form that states, in part,

[FPS III] is the highest level within the series and is utilized for those positions responsible for an entire unit of operation or that has program responsibility which significantly impacts multiple levels of the department. The appellant may feel that visitor increases, staff reductions and amenity usage has been an increase in her work load, but the assigned job duties and responsibilities remain the same. An increase in the volume of work is not a basis for reallocation nor does it have any bearing on the appellant’s appeal for reallocation to a higher title. The title of [FPS II] remains consistent with the assigned duties and level of responsibilities of the appellant and is comparable with other similarly properly classified positions within DCR. Also this title is a proper fit within the current organizational structure. The appellant is a highly valued employee who is reliable and hard-working; however, work performance does not determine proper classification, although it is a determining factor in a promotional opportunity.

Conclusion:

The Classification Review Team reviewed all documentation submitted by the appellant. there have been no significant changes to the assigned duties and responsibilities that would warrant reallocation. ...

(R.Ex. 3)¹⁵

¹⁵ It is unknown if the Audit Report Form was provided to the Appellant prior to her appeal at the Commission.

50. There is no indication that DCR consulted Dunn State Park FPS III Brad Gallant, who has worked with the Appellant, in rendering its decision to deny the Appellant's reclassification request. (Administrative Notice). Mr. Gallant did not indicate in his testimony the functions of an FPS III that the Appellant performs a majority of the time. (Administrative Notice)

51. By letter dated March 29, 2015, the Appellant appealed the DCR decision to HRD. (A.Ex. 4)

52. By letter addressed to HRD dated December 10, 2015, Sutton Police Lieutenant Perry strongly supported the Appellant's reclassification appeal based on having worked with her on many occasions over the previous "several years", having participated in "hundreds" of calls for service at Purgatory Park and having noticed a "sharp increase" in the number of Park visitors. (A.Ex. 5) However, the recommendation letter does not indicate that the Appellant performs the work of an FPS III a majority of the time. (Administrative Notice)

53. By letter dated December 23, 2015, Sutton Fire Chief Belsito strongly supported the Appellant's reclassification request based on his detailed work experience with her at the pertinent time. (A.Ex. 4)¹⁶ However, the recommendation letter does not indicate that the Appellant performs the work of an FPS III a majority of the time. (Administrative Notice)

54. By letter dated June 2, 2016, HRD informed the Appellant briefly that, "[a]fter reviewing the appeal documentation, we find the class of [FPS II] covers the duties being performed

¹⁶ Although the Chief's letter is dated 2015, it would appear that the Chief's worked with the Appellant at least as of 2012, the year in which the Appellant requested reclassification. The Chief's letter was addressed "To Whom It May Concern" but, giving the date of the letter, the letter may have been sent to HRD during its consideration of the Appellant's appeal to HRD earlier the same year as the letter.

by you. We therefore regret to inform you that we must deny your appeal” and that the Appellant may appeal the HRD decision at the Commission, pursuant to G.L. c. 30, s. 39. that her appeal was denied. (Administrative Notice)

55. Reclassification from FPS II to FPS III is based on the park’s classification, not the employee. The park classification is based on the size of the park, how many visitors it has, how much revenue it brings in, and whether it has a guarded water front.

Appeal to the Commission

56. On August 5, 2016, the Appellant filed the instant appeal. (Administrative Notice)

57. At the Commission hearing, Ms. Jeanne Gilleney-Decenzo was called by the Appellant to testify. Ms. Gilleney-Decenzo is the Regional Ranger for the Central Region, including Purgatory/Sutton, and is an official of AFSCME Local 2948. As a Ranger III in the Central Region, Ms. Gilleney-Decenzo is involved in enforcement of park rules and regulations. In addition, she is involved generally in public safety matters and crowd control, she reviews permits, manages DCR employees in her team, she manages incident reporting for the region, and she performs search and rescue work with the State Police and the State Environmental Police. Ms. Gilleney-Decenzo spoke highly of the Appellant, stating that the Appellant has performed well and shown leadership, noting that the number of visitors at Purgatory/Sutton has increased. With regard to her search and rescue function, Ms. Gilleney-Decenzo assists the Appellant with minor to major medical incidents, of which there are a number. Further, Ms. Gilleney-Decenzo knows the Appellant well since she often assists the Appellant, who is short-staffed. (Testimony of Gilleney-Decenzo) There is no indication that DCR consulted Ranger Gilleney-Decenzo, who has worked with the Appellant, in rendering its decision. Ms. Gilleney-

Decenzo did not indicate in her testimony the functions of an FPS III that the Appellant performs a majority of the time. (Administrative Notice)

58. The Appellant called Mr. Brad Gallant as a witness at the Commission hearing. Mr. Gallant is a long-term state employee who has worked with the Appellant previously for years. He is an FPS III at Dunn State Park in Gardner, which is also in the Central DCR Region. He was an FPS II from 2006-2011. Mr. Gallant is President of AFCSME Local 2948. Facilities at Dunn State Park include hiking trails, picnic area, playground, swimming (with four (4) or five (5) lifeguards), an active visitors center, weddings, cross-country meets, church outings, business meetings; in addition, Dunn has at least two (2) satellite state parks for which Mr. Gallant is responsible. There are some differences between an FPS II and FPS III, such as the number of people each supervises, but there has been so much attrition that there's less of a difference in that regard. DCR makes distinctions between FPS IIs and IIIs based on park attendance and traffic even though that distinction is not contained in the FPS Spec and not otherwise in writing.

(Testimony of Gallant) Mr. Gallant is not aware if the Appellant makes spending decisions, for example, as an FPS III can, or if she requires a superior's approval. Mr. Gallant did not indicate in his testimony the functions of an FPS III that the Appellant performs a majority of the time. (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

The Appellant has not established by a preponderance of the evidence that she performs the functions of an FPS III a majority of the time. All who testified spoke highly of the Appellant’s work and she appears to satisfy the MERs of an FPS III. However, the Appellant does not supervise the number of employees required of a FPS. I note that a number of parks in at least the DCR Central Region have minimal staff and/or seasonal staff only. The Appellant noted that, with reduced staff, she has had to perform more tasks. It is clear that the Appellant is not the only DCR employee, at least in the central region, who has been asked to do more with less. That an employee is required to perform added tasks does not establish that the employee performs a majority of the tasks of a higher classification. Given the significant reduction in staff, the FPS III Spec requiring that an FPS III directly supervise 5-15 employees and indirectly supervise 10-50 employees cannot be applied here.

The Spec also contains a number of applicable requirements that the Appellant does not and/or has not established that she performs a majority of her time. First, the FPS Spec provides that an FPS III “monitor[s] 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.” R.Ex. 10. The term “major recreation area” provides DCR wide latitude in determining whether a park warrants having an FPS III. The Appellant works at Purgatory/Sutton, which, although it appears to be large, has limited activities: biking, fishing, hiking, rock climbing activities, a visitors’ center, a boat ramp and a pond. In addition, while the camps are popular in warmer weather, the camps are all but closed the rest of the year. In fact, Regional Manager Hookie indicated that Purgatory/Sutton would be high up on the list to be fully closed in the winter if there was a need to make cutbacks. Second, the Spec requires FPS IIIs to represent DCR at meetings with federal agencies, in addition to local agencies, in pursuit of common goals and to address problems. Third, while it was established that the Appellant works with local and state agencies, there is no indication that the Appellant represents DCR in meetings and conferences with federal agencies, as required by the FPS III Spec. Third, this Spec requires FPS IIIs to “prepare budgets” for assigned areas. The Appellant appears to prepare budgets for Purgatory/Sutton but the FPS II Spec specifically provides that an FPS II may do so as well.

The tasks that the Appellant performs fall well within the bounds of the FPS II Spec, as verified in her EPRS. For example, while maintaining Purgatory/Sutton and supervising any appropriate personnel, she also organizes activities at the parks, she confers with agency personnel regarding Purgatory/Sutton activities to resolve problems and provides information and makes recommendations about the parks; she drafts and reviews reports and makes recommendations about changes in policies; and she receives general supervision from Forest and Park Supervisors or other employees of higher grade. Although the Appellant has access to funds for park repairs at Home Depot, the funding is approved by her superiors. While the

Purgatory Chasm presents unusual safety challenges, those challenges have not changed and do not justify the Appellant's reclassification. Thus, the Appellant has not established that she performs the functions of a FPS III a majority of the time.

Conclusion

Accordingly, for the above stated reasons, the reclassification appeal of Renee Lachapelle, Docket No. C-16-136, is hereby denied.

Civil Service Commission

/s/Cynthia A. Ittleman

Cynthia A. Ittleman, Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on September 13, 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:

Renee Lachapelle (Appellant)
Kenneth Langley, Esq. (for Respondent)
Debra Friedman, Esq. (for Respondent)
John Marra, Esq. (for HRD)