

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, ss.

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

JAMES BRISLIN,  
Appellant

v.

C-18-062

MASSACHUSETTS COMMISSION AGAINST  
DISCRIMINATION,  
Respondent

Appearance for Appellant:

Lan Kantany, Esq.  
Connor & Morneau, LLP  
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Springfield, MA 01103

Appearance for Respondent::

Michael Downey, Esq.  
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The Leverett Saltonstall Building  
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Commissioner:

Christopher C. Bowman

**DECISION**

On March 31, 2018, the Appellant, James Brislin (Mr. Brislin), pursuant to the provisions of G.L. c. 30, s. 49, filed an appeal with the Civil Service Commission (Commission), contesting the decision of the state's Human Resources Division (HRD) to deny his request for reclassification from Program Coordinator I (PC I) to Program Coordinator II (PC II), which it rendered on behalf of Respondent Massachusetts Commission Against Discrimination (MCAD).

On April 24, 2018, I held a pre-hearing conference at the offices of the Commission. I held a full

hearing at the same location over three days on July 26, 2018, September 7, 2018, and November 20, 2018.<sup>1</sup> All witnesses, with the exception of the Mr. Brislin, were sequestered. The full hearing was digitally recorded and both parties received three (3) CDs of the proceeding. On February 4, 2019, the parties submitted proposed decisions.

### **FINDINGS OF FACT:**

The following documents were entered into evidence: Joint Exhibits 1 – 9; Respondent Exhibits 1-11; Appellant Exhibits 1-27; and Lettered Exhibits A – H. Based on these documents and the testimony of the following witnesses:

*Called by MCAD:*

- Sunila Thomas-George, Esq., Current Chairwoman, MCAD;
- Melanie Louie, Fiscal Officer, MCAD
- Geraldine Fasnacht, Esq., Enforcement Advisor Unit Supervisor, MCAD
- Nancy Daiute, Personnel Analyst, Organizational Development Group, HRD

*Called by Mr. Brislin:*

- James Bailey Brislin, Esq., Appellant
- Jamie R. Williamson, Former Chairwoman, MCAD
- Yaw Gyebi, Jr., Esq., Former Chief of Enforcement, MCAD

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

1. Mr. Brislin obtained a “bachelor of philosophy” degree from the Catholic University of America in 2006. He also has a juris doctor from Western New England College, which he obtained in 2013. (Testimony of Appellant)

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<sup>1</sup> 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. He is a member of the bar in the Commonwealth of Massachusetts and in the U.S. District Court for the District Court of Massachusetts.” (Testimony of Appellant) While attending law school, he was employed as a “legislative research and strategy director” at the Family Institute of Connecticut. Prior to that, he worked as a sales support specialist at the Aetna Life Insurance Company in their Middletown, CT facility. (Testimony of Appellant)
3. MCAD’s mission is to eradicate discrimination in the Commonwealth of Massachusetts by investigating, prosecuting and adjudicating complaints of discrimination that occur in a variety of societal activities including but not limited to employment, housing, and access to places of public accommodation, education and outreach. (Testimony of Thomas George)
4. MCAD is led by three Commissioners, each appointed to three-year terms, one of which is designated as Chair by the Governor. MCAD’s statewide investigations are divided into three geographical sections, with each area of coverage allocated to one of the three Commissioners. The MCAD’s Springfield office is home to one Commissioner who covers investigations in the Berkshires, Springfield and most of Worcester. A second Commissioner, stationed at the MCAD’s Boston headquarters, oversees investigations east of Worcester, including Boston, as well as the area north of Boston. (Testimony of Thomas George)
5. Sunila Thomas George is currently MCAD’s Chairwoman. Ms. Thomas George’s office is located in the MCAD’s Boston office. In her capacity as Investigating Commissioner, Ms. Thomas George is responsible for overseeing investigations for all areas south of Boston, including the Cape & Islands region. (Testimony of Thomas George)

6. As Chairwoman of the MCAD, Ms. Thomas George also serves as an Agency Head, overseeing staff, the Agency's budget, legislative affairs and overall day-to-day operations. (Testimony of Thomas George)
7. In 2012, Mr. Brislin obtained an internship in the Springfield office of MCAD, earning academic credit while enrolled in law school. (Testimony of Appellant)
8. According to Mr. Brislin, during his internship, he "was certified under Rule 303, and under my Rule 303 certification, I was allowed to assist in representing complainants in .. conciliation." (Testimony of Appellant)
9. According to Mr. Brislin, he was "basically the complainant's lawyer. I say 'assist', because the Commission's attorneys assist the complainant with preparing their case rather than representing the complainant. They are representing the Commission itself, but I ... basically was the complainant's attorney in these conciliation hearings." (Testimony of Appellant)
10. Mr. Brislin continued working as an intern until July of 2012 when he applied and was hired by the MCAD as a contracted employee on a full-time basis. (Testimony of Appellant)
11. The position for which Mr. Brislin was hired was funded by a United States Department of Housing and Urban Development (HUD) grant awarded to MCAD. Mr. Brislin's contracted role had him involved in conducting investigations into fair housing and housing discrimination cases. (Testimony of Appellant)
12. In 2014, Mr. Brislin transitioned to a new contracted position, funded by a separate HUD grant, as a Fair Housing Policy Analyst. Under this grant, Mr. Brislin dealt with relevant legislation, policy and procedures. (Testimony of Appellant)

13. During a Commissioners' meeting in 2015, Jamie Williamson (Ms. Williamson), the Commissioner who was designated as Chair at the time, and whose office was located in Springfield, stated that she wanted to create a full-time regular employee position for Mr. Brislin to provide Mr. Brislin with the benefits inherent in a full-time position for the Commonwealth. (Testimony of Thomas George)
14. Though she had not yet determined a specific job title for the position, Ms. Williamson shared what she envisioned in terms of the duties to be performed by the Appellant in the new role. He'd be tasked with preparing monthly and annual reports from the MCAD's Case Management System (CMS), assisting the Springfield office's personnel with basic level desktop IT support, in addition to serving as a "legislative liaison." Ms. Williamson further proposed that the position would be assigned to the Springfield office where she was located. (Testimony of Thomas George)
15. Ms. Thomas George had concerns about the proposal. With the State House located in Boston, Ms. Thomas George questioned Mr. Brislin's ability to provide effective legislative liaison services from Springfield. She also shared her doubts that the proposal best served the agency's needs. With the backlog of investigations constantly rising, Ms. Thomas George suggested that perhaps it would make more sense to create a new investigator position instead. (Testimony of Thomas George)
16. In December 2016, MCAD posted the vacancy as a Program Coordinator I (PC I) position. (Joint Exhibit 2)
17. The duties listed in the job posting were identical to those set forth by Ms. Williamson in her meeting with the Commissioners. (Testimony of Thomas George)

18. Mr. Brislin, still employed in a contractor status as the Fair Housing Policy Analyst, submitted an application for consideration. MCAD hired Mr. Brislin for the PC I vacancy in January of 2016. (Testimony of Appellant)

19. Eight (8) duties and responsibilities were contained in the job description (Form 30) for the position:

- 1) Assist, prepare and analyze CMS reports, memoranda, etc. for accuracy, completeness, and content for reporting and to take the appropriate action to resolve problems.
- 2) Support and assist department personnel with computer software and hardware issues;
- 3) Assist with and provide technical assistance with the present Case Management System (CMS);
- 4) Coordinate communication and outreach between MCAD and legislators, community members, elected officials and non-government officials from designated regions of Massachusetts;
- 5) Performs, develops and provides research, special data collection, reports and proposals to MCAD Senior Staff.
- 6) Actively tracks and reports on legislation and political activity of relevance to the MCAD;
- 7) Perform operational risk assessments and reporting;
- 8) Provides operation testing and coordination for the field offices including but not limited to the Continuity of Operations Plan (COOP);
- 9) Perform other work/projects/tasks as assigned and be an energetic, enthusiastic and committed advocate for all of MCAD's programs.

(Joint Exhibit 1)

20. During the first quarter of 2017, Mr. Brislin began "making waves with Lennie De Souza Smith [former CFO]. I was telling her that it's not fair; that I have far more duties, far more

complex duties than people higher classified than me at MCAD and that, you know – and, of course, they kept piling them on and on.” (Testimony of Appellant)

21. When Ms. De Souza Smith left MCAD in May 2017, Mr. Brislin continued to “militate” for reclassification with then-Chairwoman Williamson. (Testimony of Appellant)

22. On September 5, 2017, Ms. Williamson, while still occupying the Chairwomanship of the MCAD, emailed Melanie Louie, Fiscal Officer for MCAD, stating:

“Melanie:

Please be advised that James Brislin has been promoted to PC II Grade 12 Step 7 for an annual salary of \$66,142.00 this is effective September 5, 2017. Please make the necessary adjustments and place a copy of this email in his file.

Thank you.

Jamie”

(Joint Exhibit 5)

23. Ms. Louie replied approximately thirty (30) minutes later as follows:

“Ok, just confirming that James Brislin is currently a PCI Grade 10 Step 4 for an annual salary of \$54,687.62 and he is promoting to PC II Grade 12 Step 7 for an annual salary of \$66,142.44 which is an increase of \$11,484.40 = 21% raise. This is 5 steps higher than our normal practice per Unit 6 contract, section 12.5. (emphasis in original)

Also, based on the union contract, all promotion (sic) must be posted. See below language from Union 6 contract.

....” (Joint Exhibit 5)

24. Ms. Williamson, the same day (September 5, 2017), replied as follows:

“Dear Melanie,

After I performed a complete review of the body of work (desk audit) that James has been providing the MCAD, I realized that he was misclassified and should have been a PCII. His work on CMS is a critical function of the work we do as outlined in our audit. When the staff have been misclassified it is our obligation to correct the misclassification and that is

what is being done. I should not have used the term promotion. He is being reclassified.  
(emphasis added)

....” (Joint Exhibit 5)

25. At the time of the above-referenced email exchange, Ms. Louie was aware, through conversation with Ms. Williamson, that Ms. Williamson may not be re-appointed as an MCAD Commissioner. Ms. Louie opted not to process Ms. Williamson’s request as she believed it was inconsistent with the collective bargaining agreement. Further, Ms. Louie was concerned that the request was more akin to a favor to Mr. Brislin, prior to her departure, as opposed to a bona fide reclassification. (Testimony of Ms. Louie)
26. Ms. Williamson and Ms. Louie spoke by phone later that day on September 5, 2017 at which time Ms. Louie asked Ms. Williamson to produce a copy of the desk audit referenced in her email. Ms. Williamson was unable to produce a copy of it. Instead, Ms. Williamson asked Ms. Louie to forward a blank desk audit form to Mr. Brislin, which Ms. Louie did.  
  
(Testimony of Ms. Louie)
27. Ms. Thomas George was designated to succeed Ms. Williamson as Chairwoman of MCAD effective September 12, 2017. (Testimony of Thomas George)
28. Ms. Williamson’s tenure on the Commission ended on September 30, 2017. (Testimony of Williamson)
29. Ms. Thomas George, the new Chairwoman, approached Ms. Louie on September 13, 2017 to catch up on ongoing matters of importance. After mentioning items such as the spending plan, Ms. Louie shared the developments related to Ms. Williamson’s request to promote/reclassify Mr. Brislin. Ms. Louie mentioned that Mr. Brislin had not yet submitted a complete copy of his Interview Guide. Ms. Thomas George told her to hold off on further discussion until he did. (Testimony of Louie)



30. Approximately three days after her designation as Chairwoman, Ms. Thomas George met with Ms. Williamson to discuss outstanding issues that needed an immediate response. One of the topics raised by Ms. Williamson related to her attempt to reclassify Mr. Brislin. Ms. Thomas George asked if the proper paperwork had been submitted to which Ms. Williamson replied that it hadn't, but that she intended to have it submitted shortly thereafter. (Testimony of Thomas George)

31. On September 18, 2017, Ms. Williamson sent the following email to Melanie Louie, with a copy to Ms. Thomas George:

"Melanie,

Suni and I discussed James's reclassification that was to be effective September 5. He is expecting to see this reflected in his next paycheck. If this is going to be a problem, he should be notified immediately. Thanks.

Jamie" (Respondent Exhibit 1)

32. On September 18, 2017, Chairwoman Thomas-George sent an email to Mr. Brislin, copied to MCAD General Counsel Connie McGrane and Ms. Louie which stated in part:

"... Also, I received an email from Jamie requesting a reclassification on your position. I have forwarded her emails regarding your request to Connie at this time and I will wait for her recommendation. If you have a copy of the desk audit that was submitted or completed, please forward to myself, Connie and Melanie." (Respondent Exhibit 2)

33. That same day (September 18, 2017), Mr. Brislin sent the following reply email:

"Good Evening Chair-

It is my understanding that the reclassification of my position occurred on September 5, 2017 and thus should be effective for this pay period. I completed the desk audit form with Commissioner Williamson on September 6, 2017<sup>2</sup> (which she was still the Chairwoman) and the completed form is in her possession. I tried calling her earlier today, was unable to reach her, and left her a message. Please reach out to Commissioner Williamson for a copy of the Desk Audit. Beyond the information contained in the Desk Audit form, the necessity of

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<sup>2</sup> September 6, 2017 is one day after the email exchange in which Ms. Williamson told Ms. Louie that a desk audit had already been completed.

reclassification can be further evidenced by the fact that my immediate predecessor, [JT], was classified as a Program Coordinator III. (See below screenshot of [www.massopenbooks.org](http://www.massopenbooks.org)) It is my understanding that I am responsible for a far-broader portfolio of duties than he ever was, and thus should not be classified below him.

If you have any questions about this, please do not hesitate to contact me.

Kindest regards,  
JBB.”

(Respondent Exhibit 2)

34. On September 19, 2017, Ms. Thomas George sent a reply email, adding Ms. Williamson to the distribution list, stating:

“Thanks for the email James. This is very helpful!

Jamie – when you get a chance, could you please forward a copy of the 9/6/17 desk audit that James is referring to.

Thanks so much!!

Suni” (Respondent Exhibit 2)

35. MCAD did not receive a copy of Mr. Brislin’s Interview Guide until early October 2017, after Ms. Williamson’s departure. (Testimony of Thomas-George)

36. Joint Exhibit 6 is an Interview Guide that contains Mr. Brislin’s signature with a date of September 6, 2017 and Ms. Williamson’s signature with a date of September 7, 2017.

Next to “Official Title” on the Interview Guide, it

states: “Program Coordinator II  
Program Coordinator I (Former)”

(Joint Exhibit 6)

37. The Interview Guide, signed by Mr. Brislin, lists the following duties and approximate percentage of time spent on each duty as follows:

1. Develops, organizes, and implements the Commission's legislative strategy, with particular focus on budgetary matters. (40%)
2. Prepares and analyzes CMS data for reports, memoranda, etc. Reviews data for accuracy, completeness, and content. Submits data to federal partners for payment. When necessary takes appropriate action to resolve problems. (40%)
3. Provides first-level technical support in the MCAD's field offices. (8%)
4. Recommends actions and strategies to reengineer and optimize agency business processes and practices. (e.g., Electronic submission of position statements and other documents, backlog and intake strategies, etc. (4%)
5. Coordinates the MCAD's records management activities, including records destruction project. (4%)
6. Manages special projects (including the special investigator) and performing other duties as assigned. (4%) (Joint Exhibit 6)

38. Now in possession of the completed Interview Guide, Ms. Thomas George consulted MCAD General Counsel McGrane to discuss their options. For a variety of reasons, Ms. Thomas George suggested to refer the reclassification request to the Commonwealth's Human Resources Division (HRD). First, MCAD had a vacancy in the Chief of Operations and Finance position that would ordinarily handle such a request. Second, Ms. Thomas George was concerned about the timing and circumstances regarding this request.

(Testimony of Ms. Thomas George)

39. On November 7, 2017, Ms. McGrane contacted Nancy Daiute, Personnel Analyst III for the HRD's Classification and Compensation unit, to ask if she would take on the responsibility of conducting the review of Mr. Brislin's reclassification. (Respondent Exhibit 4) Ms. Daiute agreed to perform the review, and Mr. Brislin was notified of this development by email on November 9, 2017. (Respondent Exhibit 3)

40. Soon after Ms. McGrane's November 9, 2017 email, Ms. Daiute contacted Mr. Brislin to schedule a meeting (Desk Audit), which is designed to offer him the additional opportunity to expound on his job duties and responsibilities. (Testimony of Ms. Daiute)
41. Due to scheduling conflicts caused by Mr. Brislin's request to have a union representative and/or his personal attorney present at the Desk Audit, it did not take place until February 13, 2018. Ms. Daiute was joined by the then-Director of HRD's Civil Service Unit, George Bibilos. In the meantime, Ms. Daiute read through Mr. Brislin's Interview Guide in order to gain a preliminary understanding of his position. (Testimony of Ms. Daiute)
42. Ms. Daiute didn't glean anything new at the Desk Audit as Mr. Brislin simply confirmed what he had already conveyed in his Interview Guide. (Testimony of Ms. Daiute)
43. Ms. Daiute subsequently conducted a formal review of Mr. Brislin's reclassification by comparing his interview guide against the Classification Specification for the PC Series. Based on her review of the totality of Mr. Brislin's description of his position, Ms. Daiute denied Mr. Brislin's request to be reclassified from PC I to PC II. (Testimony of Daiute)
44. Mr. Brislin filed a timely appeal of HRD's decision with the Commission. (Stipulated Fact)
45. While Mr. Brislin's appeal was pending with the Commission, he resigned from MCAD to begin employment with a federal agency.
46. Mr. Brislin has also filed a complaint of discrimination with MCAD stating in part that MCAD "... retaliated against him for engaging in protected activity by failing to process his lawfully approved reclassification ...". (emphasis added) (Exhibit A)
47. At or around the same time, Mr. Brislin also filed a grievance stating the following:
- "The grievant has not been compensated at the salary rate commensurate with his job classification since September 5, 2017. The grievant was promoted to a PC II on September 5, 2017 but the MCAD has denied compensation at the higher salary rate to the grievant.

The Union and the grievant contend that the [MCAD] violated the CBA without just cause.”  
(emphasis added)

(Exhibit A)

48. The Civil Service Commission is responsible for conducting a de novo review of a request for reclassification.

49. As referenced above, the Interview Guide signed by Mr. Brislin stated that he performed the follow job duties:

1. Develops, organizes, and implements the Commission’s legislative strategy, with particular focus on budgetary matters. (40%)
2. Prepares and analyzes CMS data for reports, memoranda, etc. Reviews data for accuracy, completeness, and content. Submits data to federal partners for payment. When necessary takes appropriate action to resolve problems. (40%)
3. Provides first-level technical support in the MCAD’s field offices. (8%)
4. Recommends actions and strategies to reengineer and optimize agency business processes and practices. (e.g.. Electronic submission of position statements and other documents, backlog and intake strategies, etc. (4%)
5. Coordinates the MCAD’s records management activities, including records destruction project. (4%)
6. Manages special projects (including the special investigator) and performing other duties as assigned. (4%) (Joint Exhibit 6)

50. According to the Program Coordinator Classification Specifications:

“Incumbents of positions in this series coordinate and monitor assigned program activities; review and analyze data concerning agency programs; provide technical assistance and advice to agency personnel and others; respond to inquiries; maintain liaison with various agencies; and perform related work as required. The basic purpose of this work is to coordinate, monitor, develop and implement programs for an assigned agency.” (Joint Exhibit 3)

51. Examples of duties common to all series, including a PC I include:

1. Coordinating and monitoring assigned program activities in order to ensure effective operations and compliance with established standards.

2. Reviewing and analyzing data concerning assigned agency programs in order to determine progress and effectiveness, to make recommendations for changes in procedures, guidelines, etc. and to devise methods of accomplishing program objectives
3. Providing technical assistance and advice to agency personnel and others concerning assigned programs in order to exchange information, resolve problems and to ensure compliance with established policies, procedures and standards.
4. Responding to inquiries from agency staff and others in order to provide information concerning agency programs.
5. Maintaining liaison with various private, local, state and federal agencies and others in order to exchange information and/or to resolve problems.
6. Performs related duties such as attending meetings and conferences; maintaining records; and preparing reports. (Joint Exhibit 3)

52. The level-distinguishing duties of a PC II include:

1. Providing on-the-job training and orientation for employees.
2. Developing and implementing procedures and guidelines to accomplish assigned agency program objectives and goals.
3. Reviewing reports, memoranda, etc. for completeness, accuracy and content.
4. Conferring with management staff and other agency personnel in order to determine program requirements and availability of resources and to develop the criteria and standards for program evaluation.
5. Evaluating program activities in order to determine progress and effectiveness and to make recommendations concerning changes as needed. (Joint Exhibit 3)

*Legal Standard*

“Any manager or employee of the commonwealth objecting to any provision of the classification affecting his office or position may appeal in writing to the personnel administrator and shall be entitled to a hearing upon such appeal . . . . Any manager or employee or group of employees further aggrieved after appeal to the personnel administrator may appeal to the civil

service commission. Said commission shall hear all appeals as if said appeals were originally entered before it.” M.G.L. c. 30, § 49.

Mr. Brislin must show that he is improperly classified and to do so, he must show he performs the distinguishing duties of the PC II title more than 50% of the time. See Gaffey v. Dept. of Revenue, C-11-126 (July 18, 2011); see also Bhandari v. Exec. Office of Admin. and Finance, 28 MCSR 9 (2015) (finding 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....”).

### *Analysis*

The genesis of this appeal had nothing to do with a bona fide request for reclassification. Rather, a few weeks prior to her anticipated departure, the then-outgoing Chairwoman of MCAD directed a subordinate to “promote” Mr. Brislin from PC I to PC II and increase his pay by 21%. But for the immediate and principled push-back by career state employee Melanie Louie, this impermissible directive may have been implemented. Instead, Ms. Louie reminded the outgoing Chairwoman that promotional vacancies for collective bargaining positions must be *posted*, allowing other candidates to be fairly considered, and, when promoted, the pay increase may not exceed the limits established in the collective bargaining agreement, which the directive here would have done.

Mr. Brislin, in his testimony before the Commission, dismisses the request for a “promotion” in September 2017 as a mere mix-up regarding terminology, stating, “... she (Ms. Williamson) had initially told Melanie that I was being promoted, *which, of course, was erroneous* but Jamie came from the private sector, and she was want to, you know, confuse terminology and whatnot ...”. Yet, on November 22, 2017, Mr. Brislin filed a grievance stating: “The grievant has not

been compensated at the salary rate commensurate with his job classification since September 5, 2017. The grievant was promoted to a PC II on September 5, 2017 but the MCAD has denied compensation at the higher salary rate to the grievant. The Union and the grievant contend that the [MCAD] violated the CBA without just cause.” (emphasis added)

Further confirming that this was not a bona fide request for reclassification is that the required interview guide that must accompany a request for reclassification had not been completed at the time Ms. Williamson sent the directive regarding Mr. Brislin’s promotion and pay raise to Ms. Louie. Mr. Brislin acknowledges that the interview guide was not completed until after Ms. Williamson sent her directive to Ms. Louie. While Mr. Brislin testified that the interview guide was completed “the next day or the day after”, the interview guide was not actually provided to the new MCAD Chairwoman until October 2017.

Notwithstanding the troubling sequence of events that had occurred, the newly-designated Chairwoman asked the state’s Human Resources Division to conduct an independent review of Mr. Brislin’s job duties and determine whether a reclassification to PC II was appropriate. An experienced HRD employee, Nancy Daiute, who offered credible testimony before the Commission, conducted a thorough review of Mr. Brislin’s job duties, which included reviewing the interview guide that was signed by Mr. Brislin, and meeting with Mr. Brislin to do a desk audit. Ms. Daiute, after conducting a thorough review and consulting with the then-Director of HRD’s civil service unit, concluded that Mr. Brislin did not spend more than 50% of his time performing the duties of a PC II.

As referenced in the findings, the interview guide signed by Mr. Brislin, and relied upon by Ms. Daiute, states that, as of September 2017, he spent 40% of his time developing, organizing and implementing the Commission’s legislative strategy, with particular focus on budgetary



matters and 40% of his time spent preparing and analyzing CMS data for reports, memoranda, etc; reviewing data for accuracy, completeness, and content; submitting data to federal partners for payment; and, when appropriate, taking appropriate action to resolve problems. Among the remaining duties listed, Mr. Brislin wrote on his interview guide that he spent 4% of his time “manag[ing] special projects (including the special investigator) and performing other duties as assigned.”

The “special investigator” project refers to an MCAD initiative in which MCAD, beginning in 2016, brought on former interns as contract employees to assist with closing out some of the older cases pending at MCAD at the time.

In his direct testimony before the Commission, Mr. Brislin spent considerable time discussing how he, as part of his job duties and responsibilities, created the program “from scratch” stating: “There was nothing like it that had existed before, and I created it from scratch. I built the infrastructure. I recruited the staff. And I managed it to its successful completion.” Mr. Brislin went on to state: “I – I ran the onboarding process for them. I created the – I created all the employment documents that they needed to fill out ...”. During his testimony, Mr. Brislin estimated that, when the project was in “full swing” he spent “half or more” of his time on the project. All of these statements are not accurate and/or not supported by the record.

First, as referenced above, Mr. Brislin stated on his interview guide that he spent 4% of his time managing special projects, including the special investigator project and performing other duties as assigned. During cross examination, Mr. Brislin was asked to explain the discrepancy between his testimony and what he wrote on the interview guide. In response, Mr. Brislin clarified that he spent 30 to 50% of his time on the special investigator project, not more than half. Asked to square that new 30 to 50% estimate with the 4% listed in the interview guide, Mr.

Brislin stated: “You know, I prepared it with Chairwoman Williamson, but we didn’t have an HR person to help us with it.” Mr. Brislin went on to testify that: “But – I have also had nearly a year to think about my duties since that was signed. It has also been a year since that form was signed.” Asked why he didn’t clarify these percentages when he met with Ms. Daiute, several months after completing the interview guide, Mr. Brislin stated: “.. the reflection that has occurred, occurred primarily after the denial of the reclassification, you know.”

Whether the time spent on the special investigator project was 4%, 30-50% or “more than half”, other parts of Mr. Brislin’s testimony regarding this project were unsupported by the record. A version of the project had been used by MCAD before, Mr. Brislin did not create it from scratch, he did not recruit the contractors and he did not create any of the forms that were used to onboard contractors.

Geraldine Fasnacht has been employed by MCAD for over fifteen (15) years and currently serves as supervisor of the enforcement supervisors. She offered informed, credible testimony regarding similar projects in the past as well as Mr. Brislin’s role in the most recent project. According to Ms. Fasnacht, it was “common practice” to hire contractors to work on the backlog, stating: “... it wasn’t a novel idea to get contractors to help with backlog cases.” Here, the only variation was that MCAD would focus on contracting with prior interns. In regard to recruiting candidates, Ms. Fasnacht talked with enforcement advisors themselves about which interns they had seen in the past who would be a good fit for this project and who had done an outstanding job in the past. The enforcement advisors talked directly with the contracted special investigators who were assigned to them to see how many cases they could manage. Ms. Fasnacht was the sole person responsible for assigning the contracted special investigators to enforcement advisors. Mr. Fasnacht recounted that Mr. Brislin’s role was “administrative”

stating: “Any administrative [matters] had to do with making sure they had had contracts and had completed their paperwork and that they were paid for each case.” Mr. Brislin was also responsible for creating “drop boxes” so the contracted employees could access the case files. If the contracted investigators experienced issues of availability or inability to complete cases, they would talk directly to Ms. Fasnacht. Mr. Brislin had no role regarding the substance of the decisions that were drafted by the contract employees. Ms. Fasnacht acknowledged that Mr. Brislin had made recommendations regarding assignments, but that some of those recommendations were counterproductive. For example, one special investigator completed over one hundred (100) draft decisions. Since it was impossible to have one enforcement advisor review all of those draft decisions, Ms. Fasnacht assigned those decisions to multiple enforcement advisors. For administrative convenience, Mr. Brislin recommended not assigning more than one enforcement advisor to a contracted employee. For the reasons stated above, Mr. Brislin’s recommendation could not be implemented.

Mr. Brislin also did not “create” the forms used to onboard the contracted employees or ensure payment for their services. Rather, he used longstanding, pre-existing forms, including the state’s Standard Contract Form and a confidentiality agreement that MCAD had been having contractors sign for years.

The record, including the documents submitted as exhibits, do show that Mr. Brislin had an important role in ensuring that contractors completed all employment paperwork, received assigned cases, got paid for their services and that cases were properly tracked and reported on the CMS report. His role, however, did not constitute program coordination. Rather, the record shows that Ms. Fasnacht, in addition to other supervisory duties, coordinated this project in

regard to all substantive matters, with important administrative support being provided by Mr. Brislin.

That turns to the other duties listed in Mr. Brislin's Interview Guide, including his then-estimate that he spent 40% of his time on legislative / budgetary matters and 40% of his time on CMS-related issues. Mr. Brislin effectively argues that he was serving as MCAD's de-facto Legislative Director, "providing political and governmental expertise and serv[ing] as a key advisor to MCAD's Chair / Commissioners / Senior Management" and "develop[ing] and foster[ing] relationships with key policymakers in the Executive and Legislative branches as well as administrative agencies." I credit Ms. Williamson's testimony that, for a period of time in 2016 and 2017, she relied on Mr. Brislin, who worked with her in the Springfield office, to assist her with interactions with legislative matters, including attending legislative meetings with her, tracking MCAD-related legislation and communication with legislators and their staffs. Mr. Brislin's interview guide, however, overstates the role he played, including his written statement that he "focused on budgetary matters." Mr. Brislin's "focus on budgetary matters" was primarily limited to drafting a cover sheet / narrative to accompany MCAD's annual budget requests to the Executive Office of Administration & Finance and the House and Senate Ways and Means Committees. Mr. Brislin had no substantive role in developing the actual budget and/or spending plans by MCAD. Further, while Mr. Brislin did produce an excel spreadsheet used to track MCAD-related legislation, the evidence does not show that he played a substantive role in developing legislation, preparing analyses and recommendations related to MCAD-related legislation and/or any duties that would constitute "coordination" of MCAD's legislative agenda. Importantly, at or around the time that Mr. Brislin completed his interview guide, dated September 6, 2017, but not submitted until October 2017, the bulk of legislative-related duties

were about to be or had already been transferred to the incoming Chairwoman who was assigned to the Boston office. To the extent that Mr. Brislin had a supportive role in legislative affairs on or around September 6, 2017, those duties were no longer ongoing shortly after that date.

That leaves the CMS-related duties performed by Mr. Brislin. During his testimony, Mr. Brislin stated: “Gosh, so besides producing reports I was, you know, I produced the monthly enforcement reports, and, you know, particularly with the departure of [JT], as I basically jumped into the *database administrator role* and taught myself SQL ...”. According to the credible testimony of Chairwoman Thomas-George, MCAD relies on a Case Management System (CMS) that was first developed in 1999 to track cases, produce reports, generate letters, etc. Over the years, the CMS has been maintained by a combination of in-house MCAD employees, contractors working at MCAD offices, outside vendors and the state’s IT professionals.

“JT” is a person who first served as a contractor, then as a full-time employee and, after moving out of state, continued for a short period of time serving as a contractor. When contracting with JT no longer became feasible, Mr. Brislin assumed part of his job duties, including printing reports using pre-existing queries and, in certain cases, modifying those reports to include additional information requested by MCAD managers. I credit Mr. Brislin’s testimony that he self-taught himself SQL, allowing him to modify reports and perform limited trouble-shooting on CMS. The record does not support his testimony, however, that he was the “database administrator” for MCAD. Unfortunately, during his testimony, he appeared to overreach when describing his duties, at one point stating that he performed “regression analyses” even though he appeared unable to define what a regression analysis is. Chairwoman

Thomas-George walked through the various individuals and entities that are responsible for maintaining and upgrading CMS and the limited, but important role that Mr. Brislin plays in printing pre-existing reports and producing modified reports. These duties do not, however, constitute the role of “database administrator” or program coordination duties.

In summary, this appeal does not involve a bona fide reclassification appeal filed by a state employee or manager. Rather, it is an ex post facto attempt to justify an impermissible request to promote Mr. Brislin without posting the position and grant him a pay raise that was not permitted by the collective bargaining agreement.

Even, however, when viewed as a reclassification appeal, the evidence does not show that Mr. Brislin, while he was employed at MCAD, spent the majority of his time coordinating a program or programs. Rather, while he was employed at MCAD, Mr. Brislin provided important and valued administrative support, particularly to the former Chairwoman.

*Conclusion*

For all of the above reasons, Mr. Brislin’s appeal under Docket No. C-18-062 is hereby ***denied***.

reasons, the appeal under Docket No. C-16-137 is hereby ***denied***.

Civil Service Commission

/s/ Christopher Bowman  
Christopher C. Bowman  
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on July 18, 2019.

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 to:

Lan T. Kantany, Esq. (for Appellant)

Michael Downey, Esq. (for Respondent)