

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, ss.

**CIVIL SERVICE COMMISSION**  
One Ashburton Place, Room 503  
Boston, MA 02108  
(617) 979-1900

MARK DOWD,  
STUART MOLK,  
Appellants

v.

C- 18-053 (Dowd)  
C- 18-054 (Molk)

DEPARTMENT OF CONSERVATION  
AND RECREATION,  
Respondent

Appearance for Appellants:

Meghan Ventrella, Esq.  
Joseph DeLorey, Esq.<sup>1</sup>  
Associate General Counsel  
AFSCME Council 93  
8 Beacon Street  
Boston, MA 02108

Appearance for Respondent:

Ken Langley, Esq.  
Labor Relations  
Department of Conservation and Recreation  
1 Ashburton Place  
Boston, MA 02108

Commissioner:

Cynthia A. Ittleman

**DECISION**

On March 7, 2018, Mark Dowd (Appellant Dowd or Lt. Dowd)<sup>2</sup> and Stuart Molk (Appellant Molk or Lt. Molk)(Appellants), pursuant to G.L. c. 30, § 49, filed an appeal with the Civil Service Commission (Commission), contesting the decision of the state’s Human Resources

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<sup>1</sup> Attorney Ventrella represented the Appellants until April 22, 2019.

<sup>2</sup> Because his rank was Lieutenant when he requested an appeal of his classification to DCR, Appellant Dowd will be referred to as Lt. Dowd for the purposes of this decision.

Division (HRD) to affirm the decision of the Department of Conservation and Recreation (DCR) to deny their requests to be reclassified from Ranger II to Ranger III. The Commission consolidated the two cases and a prehearing was held on May 15, 2018. After the prehearings but prior to the hearing, both Appellants indicated that a promotional opportunity for the Ranger III position arose, that they applied for the promotion and that Appellant Dowd was promoted while Appellant Molk was not. Nonetheless, Appellant Dowd indicated that he wanted to continue with his reclassification appeal because he requested reclassification in 2015 and he seeks “backpay” for the intervening time period, alleging that he was performing the duties of a Ranger III since 2015. A two-day hearing was held at the Commission on September 18, 2018 and October 3, 2018.<sup>3</sup> The parties in both appeals submitted post-hearing briefs, the Appellants on November 21, 2018 and the Respondent on December 4, 2018. A transcript was made of the hearing.

## **FINDINGS OF FACT**

Appellant Molk submitted 15 exhibits (Molk Ex. 1-15) and Appellant Dowd submitted 15 exhibits (Dowd Ex. 1-15). The Appellants submitted one post-hearing exhibit which consisted of two affidavits (App. PH 1, Dowd; App. PH 1 Molk). The Respondent did not offer exhibits at the hearing. I ordered the Respondent to produce post-hearing exhibits. (DCR PH 1-4). These include an affidavit from EOEA Classification Specialist Danielle Daddabbo; an affidavit from EOEA Classification Specialist Kimberlee Costanza; Overtime Procedures for the State House and a memorandum regarding time off dated May 2015; and the DCR State House

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<sup>3</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.

Ranger Unit Post Orders, Directives, and Guidelines. Based on these documents, the testimony of:

*Called by the Appellants:*

- Mark Dowd, Appellant
- Stuart Molk, Appellant

*Called by Respondent:*

- Danielle Daddabbo, Classification and Compensation Specialist, EOEA<sup>4</sup>
- Michael Nelson, Acting Chief Ranger, DCR
- Adam Parr, Deputy Chief Ranger, DCR<sup>5</sup>

and taking administrative notice of all matters filed in the case and pertinent statutes, case law, regulations, policies and reasonable inferences drawn from the evidence, I make the following findings of facts:

*Background*

1. Lt. Molk applied for a reclassification from Ranger II (Lieutenant) to Ranger III (Captain) on September 12, 2015. (Molk Testimony; Molk Ex. 4). At the time of his request for reclassification, Lt. Molk had worked for DCR since 1995 as a Ranger I at the State House for six months and as a Ranger II thereafter. (Molk Testimony). Lt. Molk's previous employment includes 12 years as a licensed investigator and 14 years as Loss Prevention Manager. (Molk Ex. 4).

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<sup>4</sup> The two Appellants supervised Ms. Daddabbo from 2002 to 2015 prior to her change in position from Ranger I at the State House to Classification and Compensation Specialist at EOEA. Although Ms. Daddabbo's report denied the Appellants' request for reclassification, the better course would have been to refer her former longtime supervisors' reclassification requests to someone else at the EOEA Human Resource office.

<sup>5</sup> DCR Deputy Chief Parr's title has changed to Chief Ranger. (Parr Testimony). In this decision, Parr will be referred to as Deputy Chief, the title he had in 2015.

2. Lt. Dowd applied for reclassification from Ranger II to Ranger III on September 28, 2015. (Dowd Testimony; Dowd Resp. PH Ex. 1). At the time of his request for reclassification, Lt. Dowd had been a DCR employee for ten years as a DCR Ranger II at the State House. (Dowd Testimony; Dowd Ex. 4). Prior to working at the State House, he was assigned to the DCR Marine Unit as a Ranger I and Acting Ranger II. (Dowd Ex. 5).
3. The Ranger Classification Specification Series (Spec) is comprised of three (3) levels, Ranger I, Ranger II, and Ranger III. (Molk Ex. 1; Dowd Ex. 1). Rangers “patrol parks, reservations, historic sites, watershed conservation areas, and/or recreation areas in order to promote compliance with rules and regulations; protect natural and cultural resources; enhance visitor experiences through visibility, interpretive programming and visitor information; and perform related work as required.” (Molk Ex. 1; Dowd Ex. 1).
4. The Rangers assigned to the State House are responsible for the safety and security of people in and around the State House. (Molk Testimony, Dowd Testimony).
5. Depending upon staffing needs, approximately 14-17 Ranger Is and two lieutenants (Ranger IIs) are assigned to the State House during the day shift. (Molk Testimony, Dowd Testimony). Including the two Appellants, a total of 4 Ranger IIs were assigned to the State House and reported directly to the Captain (Captain A) who was a Ranger III. (Dowd Testimony).
6. Captain A reports directly to the DCR Deputy Chief Ranger. Deputy Chief Ranger Adam Parr is responsible for establishing work schedules and approving overtime and reports to the DCR Acting Chief Ranger Michael Nelson. (Parr Testimony).
7. DCR Policies and Directives (Directives) for Rangers assigned to the State House govern Ranger conduct and employee protocols. Issuing Directives to the staff is the responsibility

of the Deputy Director. (Parr Testimony; Resp. PH Ex. 4). For instance, a 2015 DCR policy states that overtime is to be scheduled according to a specific protocol involving a rotating list of Rangers and seniority to ensure fairness. (Resp. PH Ex. 3). Overtime should only be authorized by a manager. (Parr Testimony).

8. As co-workers, the Appellants often share supervisory duties that include personnel assignments. For instance, the Appellants created daily assignments for the Ranger Is at the State House, filling shifts when a Ranger was out sick and organized Rangers to ensure all areas were covered. They ensured that all shift assignments were covered with the appropriate number of staff when there was a large event at the State House. (Molk Testimony; Dowd Testimony; Dowd Ex. 1; Molk Ex. 1). However, actual work schedules are made by Dep. Chief Parr. Overtime authorizations are approved by a manager, not Ranger IIs and IIIs. (Testimony of Parr; Molk/Dowd Exs. 14 and 15).
9. The Appellants trained Rangers newly assigned to the State House by explaining the duties of the position and explaining procedures and policy as needed. (Molk Testimony; Dowd Testimony).
10. The Appellants coordinated and attended meetings with State House personnel regarding events at the State House. Such events included diplomatic visits, large protests, and professional events. The Appellants became the point personnel for the Boston Police during an event and had daily contact with outside agencies such as the Boston Police and the Governor's Office. They would decide between them who would attend meetings with the Bureau of State House (BSH) and other entities, splitting the responsibility "50/50". (Molk Testimony; Dowd Testimony; Molk Ex. 4; Dowd Ex. 4). When there was an emergency, both Appellants were in charge. (Molk Testimony).

11. When on duty before a snowstorm, the Appellants would be responsible for organizing the Rangers to post no-parking signs in consultation with the “Snow Desk.” However, this only occurred a few times each year. (Molk Testimony).
12. Lt. Dowd, in conjunction with Lt. Molk, drafted a document for Boston EMS during times of medical emergency so that EMS would utilize a particular door and elevators that accommodated stretchers in order to access the whole building. After they wrote the document, it became policy that was later issued by DCR. Further, Lt. Dowd ensured that the Rangers at the State House had functioning equipment, including 3 X-Ray machines and 3 Magnetometers to screen visitors at the State House. (Dowd Testimony; Dowd Ex. 1). The Appellants also gave input about making revisions to policy. Their recommendations “went up to the Deputy Chief.” (Molk Testimony).
13. When a new hire had a question involving human resource matters, the Appellants would try to answer the question, and if they could not, they would provide a phone number or the name of a person who could answer the question. (Molk Testimony; Dowd Testimony).
14. In discipline matters, the Appellants would correct a Ranger’s behavior if it violated policy or procedure. (Molk Testimony; Dowd Testimony). The Ranger III position (Captain A) was responsible for issuing a verbal warning and a written warning would be issued by the Deputy Chief. (Parr Testimony). Lt. Dowd was not authorized to discipline a Ranger. (Testimony of Dowd)
15. The Appellants’ duties did not involve creating the budget. The Appellants would, however, requisition office items or equipment such as radios from DCR Headquarters. (Molk Testimony; Parr Testimony).

16. Ranger Is at the State House issue parking tickets, after which the Appellants and other lieutenants collect the citations, review them, and give them to the Parking Clerk. (Molk Testimony).
17. In June 2017, after filing his reclassification appeal with the Commission, Lt. Dowd was named the Acting Captain (Ranger III) at the State House effective August 2017. He was working at the State House in that classification at the time of the hearing at the Commission. (Dowd Testimony).
18. As a Ranger III, Appellant Dowd is involved “to a greater extent” in the discipline process than he was as a Ranger II. (Dowd Testimony). Additionally, as Captain, Appellant Dowd addresses State House Rangers’ requests for vacation, which he did not do as a Ranger II. (Dowd Testimony).
19. The Captain (Ranger III) at the State House has oversight of the Ranger Is and Ranger IIs for twenty-four hours (all three shifts). When Appellant Dowd was promoted to Captain prior to the Commission hearing, he approved personnel changes and went to the State House once in the middle of the night after a report of an ill Ranger and an alarm. (Dowd Testimony).

*Appellants’ Request for Reclassification*

20. The process of an audit for reclassification requires the applicant to complete an Appeal Audit Interview Guide (Interview Guide), for the applicant to be interviewed by EOE Human Resources personnel, and for EOE’s review of the pertinent classification specification and the applicant’s current job duties. (Daddabbo Testimony; Resp. PH Ex. 1).
21. The Appellants each completed an Interview Guides and submitted supporting documentation and the document that Lt. Dowd, in consultation with Lt. Molk, created that

was later added to the DCR Directives. (Molk Testimony; Dowd Testimony; Molk Ex. 4; Dowd Ex. 4).

22. In his Interview Guide, Lt. Molk asserted that many other Ranger IIs who were not at the State House had less responsibility than he had and fewer duties but nonetheless had been moved to Ranger III positions. He wrote that his “current day-to-day job duties exceed the responsibilities listed in the job description and that there should be a specific job description for Rangers at the State House. (Molk Ex. 4).
23. Lt. Molk listed in his Interview Guide the primary purpose of his position is, “to directly supervise a staff of 14-17 Rangers who cover the day shift in the State House.” He listed his interactions within DCR and with other entities, such as the ones listed in Lt. Dowd’s Interview Guide, as “daily” or “as requested/required.” (Molk Testimony; Molk Ex. 4).
24. Under the heading “Job Changes” in the Interview Guide, Lt. Molk wrote,

The State House program was started in December 1995, twenty years ago. I was fortunate enough to be one of the 16 rangers who started in this program... With the events surrounding 9/11 in 2001, our responsibilities changed drastically. State House rangers now utilize sophisticated equipment (x-ray machines, metal detectors) in an effort to provide and promote a safe environment... We also respond to all medical emergencies which were initially handled by a licensed doctor/nurse... Over the years we have been trained to deal with the threat of “terrorist” and “active shooter” situations to the point of bullet proof vests being issued as part of our standard uniform/equipment.  
(Molk Ex. 4)

25. Lt. Dowd’s Interview Guide stated that the “Ranger II’s job at the State House had changed over the years and the Ranger Series grade system had not changed to compensate for the extra duties.” (Dowd Ex. 4).<sup>6</sup> Lt. Dowd also wrote that he was doing the work of Captain A, who is a Ranger III at the State House and supervised all the DCR Rangers working in the

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<sup>6</sup> Lt. Molk and Lt. Dowd reviewed each other’s Interview Guide. (Testimony of Molk)



State House. (Id.) However, Lt. Dowd copied Captain A on certain documents, like reports and email messages. Lt. Dowd believed that Captain A, who was in charge 24 hours a day, was not a good supervisor, he would not let Lt. Dowd do what he (Lt. Dowd) wanted to do and he (Captain A) could not make decisions and always deferred to his (Captain A's) boss. Lt. Dowd complained to one of his superiors a couple of times a year that Captain A was not getting his work done. (Dowd Testimony).<sup>7</sup> Lt. Molk concurred with Lt. Dowd that Captain A was not a good supervisor, asserting that one of the State House Lt. Rangers would attend meetings for scheduled events and Captain A would rarely attend such meetings, that Captain A would forward emails to the Lieutenants, and he complained to a superior about Captain A. Lt. Molk had little to do with disciplinary and budgetary matters. (Testimony of Molk)

26. On his Interview Guide, Lt. Dowd wrote that the primary purpose of the Ranger III position as overseeing the daily operations of the Rangers at the State House who provide round-the-clock security for the building, the people in the building, and visitors to the building. (Dowd Ex. 4).

27. Neither Appellant listed the percentages of time duties were performed but wrote how often he performed those duties using descriptors such as “daily” or “as needed”. (Molk Testimony, Molk Ex. 4; Dowd Testimony; Dowd Ex. 4).

28. In their Interview Guides, the Appellants wrote that they had near-daily interactions with internal staff such as DCR Deputy Chief Parr and with other entities, including the Massachusetts State Police Protective Services, the Boston Police, the Bureau of State House (BSH), members of the House of Representatives and Senate and the public. (Dowd Testimony; Dowd Ex. 4; Molk Testimony, Molk Ex. 4). They, or a couple of other Ranger

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<sup>7</sup> Captain A left his job in June 2018. (Testimony of Dowd)

IIs, would sometimes be the point person for the Rangers at the State House when there was an emergency or a specific request. (Molk Testimony; Dowd Testimony).

29. Under the section of the Interview Guide that asked, “What problems/issues would be referred to someone else?”, Lt. Dowd and Lt. Molk wrote, in essence, that they would refer a serious breach of DCR policy or BSH policy to Captain A or DCR Deputy Chief Ranger Parr. (Dowd Ex. 4; Molk Ex. 4).
30. In his Interview Guide, Lt. Dowd wrote that he was not involved in the employee grievance process. (Dowd Ex. 4) Lt. Molk’s Interview Guide indicated that he was not involved in the employee grievance process (as a supervisor) and only one occasion would he approve leave time requested by Ranger Is. (Molk Ex. 4).
31. As part of EOEAs’ review of the Appellants’ request for reclassification, the Appellants’ supervisors submitted their written opinions of the Appellants’ requests for reclassification. In their letters, then-Chief Park Ranger Snow and Deputy Chief Ranger Parr did not support either reclassification request. Noting that the duties of a Ranger II at the State House had changed, then-Chief Park Ranger Snow and Deputy Chief Ranger Parr recommended that the human resource office conduct a review of the Ranger classification specification. (Parr Testimony, Daddabbo Testimony, Dowd Ex. 6, 7). At least some of the reasons that the Appellants were not Ranger IIIs were that they did not issue discipline, approve/disapprove Rangers’ overtime requests, and did not participate in the hiring process. Additionally, this reclassification would disrupt the chain of command at the State House because both the Appellants and their supervisor would be Ranger IIIs. (Parr Testimony; Daddabbo Testimony, Dowd Exs. 6, 7).<sup>8</sup>

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<sup>8</sup> Rangers I, II and III are members of the same union. (Testimony of Dowd)

32. Ms. Daddabbo, a Classification Specialist at the EOEAs human resource office, interviewed Lt. Dowd and Lt. Molk in response to their reclassification request. With Ms. Daddabbo at both interviews was another EOEAs Classification Specialist, Kimberlee Costanza. (Daddabbo Testimony; Resp. PH 2).
33. After the interviews, Ms. Daddabbo reviewed the Appellants' requests for reclassification with Kimberlee Costanza and administrative leaders at EOEAs and DCR and wrote an audit report for each Appellant. The report concluded that the Appellants were properly classified as Ranger IIs. (Daddabbo Testimony; Dowd Ex. 8; Molk Ex. 8; Resp. PH 1).
34. EOEAs denied the Appellants' requests for classification on July 13, 2017. (Daddabbo Testimony, Resp. PH Ex. 1).
35. Lt. Molk appealed EOEAs to HRD on August 3, 2017 and Lt. Dowd appealed EOEAs decision on August 8, 2017. On February 26, 2018, HRD denied both Appellants' requests. (Molk Ex. 10; Dowd Ex. 10).

#### *Ranger Classification Specification*

36. The Summary of the Ranger Series Classification Specifications (Specifications) encompasses all Ranger duties for all parks, historic sites, and other Massachusetts lands where Rangers are assigned. (Molk Ex. 1; Dowd, Ex. 1).
37. The Specification, last modified in 1995, does not fully portray some of the duties of Rangers assigned to the State House and refer to duties for Rangers in the field.<sup>9</sup> (Molk Testimony; Dowd Testimony; Daddabbo Testimony; Molk Exs. 1, 6, 7; Dowd, Exs. 1, 6, 7; (Resp. PH Ex. 2).

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<sup>9</sup> For instance, the Ranger Classification Specification states that a Ranger "assists as needed in the prevention, suppression and control of forest fires, a responsibility a Ranger at the State House in Boston would not likely encounter, although they would be required to perform such duties when they are in the field.

38. Duties of Ranger IIs that are relevant to this appeal include:

- “Supervise daily ranger services through scheduling and assignment of staff and activities, and ensure compliance with department policies; conduct evaluations/appraisals of employees and evaluate the readiness of equipment.
- Provide on the job training and orientation for assigned rangers.
- Oversee assigned inter-divisional and inter-agency projects by planning meetings and meeting agenda and coordinating the activities of project teams.”

Additionally, Ranger IIs may also “procure equipment and supplies via approved budgetary procedures.” (Molk Ex. 1; Dowd Ex. 1).

39. According to the Specifications, Ranger IIIs perform all of the duties of Ranger IIs but also perform the following duties that distinguish Ranger IIIs from Ranger IIs (“distinguishing characteristics”):

Duty 1. Oversee and coordinate activities of subordinates at designated recreational areas by conducting meetings, reviewing and preparing reports, issuing procedural directives and controlling and distributing equipment needed in order to ensure efficiency of operations and maintain rules and regulations and enforcement policy continuity across assigned areas.

Duty 2. Conduct formal training programs related to rules and regulations enforcement, search and rescue, informational and educational subjects pertaining to recreation, and other matters.

Duty 3. Review reports, correspondence, expense accounts, etc. for accuracy, completeness and content.

Duty 4. Act as ranger incident commander, when applicable during searches.

Duty 5. Prepare budget request and administer program budget.

Duty 6. Recommend revisions to division/department policies and procedures.

Duty 7. Review narratives and statistical reports.

Duty 8. Draft or recommend cooperative agreements with other agencies, organizations, special interest groups, Friends (sic) groups, state and other police agencies and departments, and the media; develop and coordinate inter-agency and inter-divisional projects.

Duty 9. Coordinate and monitor program activities in order to ensure effect operations and compliance with established standards...

Duty 10. Develop visitor surveys, analyze data and prepares reports related to statistical studies; perform continuing visitor services analysis and research.

Duty 11. Coordinate ranger activities, initiatives, activities [sic] and schedules with site supervisors and staff; work closely with department supervisors and administrators on park management issues and planning efforts.

Duty 12. Administer citation records and reports; oversee department files in accordance with official laws and procedures (emphasis added). (Molk Ex. 1; Dowd Ex. 1)(emphasis added).

Ranger IIIs may also, based on their assignment, “represent the agency/division at meetings and conferences to provide information concerning agency objectives.” (Molk Ex. 1; Dowd Ex. 1).

40. According to the Specification, Ranger IIs exercise direct supervision over, assign work to, and review the performance of 1-5 rangers and have indirect supervision over 5-10 seasonal staff. Ranger IIIs exercise direct supervision over, assign work to, and review the performance of 1-5 rangers and have indirect supervision over 6 or more rangers and 6 or more seasonal staff. (Molk Ex. 1; Dowd Ex. 1).
41. The job duties listed job description of a Ranger III and those listed in the job description of a Ranger II partially overlap except that the Ranger III job description includes the 12 distinguishing duties from the Specification (listed above). (Molk Exs. 2 and 3; Dowd Exs. 2 and 3).
42. The Appellants do not have Ranger II job descriptions with their names on them. (Molk Testimony, Dowd Testimony) and no EPRS had been conducted for the Appellants for years. (Molk Testimony; Dowd Testimony). Lt. Dowd did not discuss the lack of EPRS reports with Captain A. (Testimony of Dowd)

43. The Appellants filed the instant appeals with the Commission. (Administrative Notice)

*Applicable Law*

G.L. c. 30, § 49 provides:

“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. . . 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. If said commission finds that the office or position of the person appealing warrants a different position reallocation . . . it shall be effective as of the date of appeal . . .”

“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). In order to justify a reclassification, an employee must establish that she is performing distinguishing duties encompassed within the higher-level position the majority (i.e., at least 50% or more) of the time. *See, e.g.*, Pellegrino v. Department of State Police, 18 MCSR 261 (2005) (at least 51%); Morawski v. Department of Revenue, 14 MCSR 188 (2001) (more than 50%); Madison v. Department of Public Health, 12 MCSR 49 (1999) (at least 50%); Kennedy v. Holyoke Community College, 11 MCSR 302 (1998) (at least 50%).

What must be shown is that the Appellants perform the “distinguishing duties” of the Ranger III position at least 50% of the time and, in making this calculation, duties which fall within both the higher and lower title do not count as “distinguishing duties.” *See* Lannigan v. Department of Developmental Services, 30 MCSR 494 (2017).

*Analysis*

The Appellants have failed to establish by a preponderance of the evidence that as Ranger IIs they performed the functions of a Ranger III more than 50% of the time. Rather, they showed that they performed only some of the distinguishing duties of a Ranger III at the State House and

did not establish that they performed even those duties more than half the time. The distinguishing duties of a Ranger III that the Appellants did perform were reviewing parking citations for accuracy, acting as the ranger incident commander, being involved in responding to medical emergencies at the State House and were in contact with outside agencies, such as the Boston Police, to foster collaboration on management issues and planning events. In addition, Appellant Dowd, in consultation from Appellant Molk, drafted one document regarding emergency personnel in order to organize a safe and reliable route for EMS personnel to reach all floors of the State House through one entrance and by using an appropriate set of elevators, which the Appellants' superiors subsequently converted to a policy. This activity falls under the Ranger III responsibility to draft or recommend revisions to existing policies. Additionally, the Appellants coordinated efforts to manage State House issues and planning efforts with the SHB. They both interacted with a variety of State entities and assisted with planning the daily activities for events at the State House.<sup>10</sup> The Appellants coordinated with outside entities to ensure parking at the State House during snow emergencies was properly handled, although it only occurred a few times each winter.

The preponderance of evidence does not show, however, that the Appellants performed these distinguishing duties more than 50% of the time. Neither Appellant indicated the percentage of time he spent on the duties he listed, and that information did not emerge from Ms. Daddabbo's report following her interviews of the Appellants. Neither Appellant stated which Ranger III duties were performed consistently, to the extent that they were primarily functioning as Captains rather than Lieutenants as they alleged.

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<sup>10</sup> There is not enough information in the record to determine whether the Appellants performed Ranger III distinguishing duties 7, "Review narratives and statistical reports," and 10, "Develop visitor surveys, analyze data and prepares reports related to statistical studies; perform continuing visitor services analysis and research", nor was there enough information in the record to determine if Ranger IIIs assigned to the State House perform such duties.

Further, the Appellants did not perform a number of the distinguishing duties of a Ranger III at all. The first duty in the Specification that distinguishes a Ranger II from a Ranger III specifies that Ranger IIIs “oversee personnel and activities by conducting meetings, reviewing and preparing reports, issuing procedural directives, and controlling and distributing necessary equipment.” It is true that the Appellants regularly gathered the Rangers they oversaw for meetings and also controlled and distributed equipment such as radios. The Appellants created a schedule for Ranger I daily assignments but did not create the entire work schedule for all Rangers, approve vacation requests, or issue directives. Rather, Deputy Chief Ranger Parr wrote and issued procedural directives and was responsible for the overall scheduling of all Rangers assigned to the State House.

The responsibility of a Ranger III to “conduct formal training programs related to rules and regulations enforcement ...” is seemingly similar to the responsibility of a Ranger II to “provide on the job training and orientation for assigned rangers.” The Appellants trained new DCR employees, or existing DCR employees transferred to the State House, and the Appellants performed these duties on an as-needed basis, informally. For instance, when a new hire had a question involving human resource matters, the Appellants would try to answer the question, and if they could not, they would provide a phone number or the name of someone who could answer the question. The as-needed basis of providing orientations and on-the-job trainings distinguishes this Ranger II duty from the presentation of a formal training program related to rules and regulations enforcement that a Ranger III would perform.

The area that further distinguishes the roles of a Ranger II and a Ranger III is the discipline of DCR employees. When they would see someone not performing according to policy or procedure, the Appellants would correct their actions. However, the Appellants did not take



part in the formal discipline process. Rather, “Captain A” would issue a counseling or a verbal warning and a written discipline would come from the Deputy Chief Ranger Parr. Testimony at the Commission hearing supports this important difference between Ranger II and Ranger III duties. Appellant Dowd acknowledged that he has a bigger role in discipline now that he is a Ranger III than he had as a Ranger II. The evidence also showed that the Appellants did not administer the budget. The Appellants would request materials but did not oversee budgetary matters for the Rangers working at the State House.

Being on call for the State House for all three shifts, effectively 24 hours a day, is another important distinction between the duties of a Ranger II and Ranger III. It is the duty of a Ranger III to respond to calls during all three shifts to deal with personnel or other related matters at the State House. The broad oversight and constant responsibility of the Ranger III is vastly different than oversight over just one shift, after which the Ranger IIs go home with no further State House responsibilities until their next shift.

Appellant Molk wrote in his Interview Guide that his job duties have changed significantly since the events of September 11, 2001 and Appellant Dowd wrote in his Interview Guide that although the Ranger IIs duties had changed over the years, the Ranger IIs had not been compensated therefor. The Appellants perform an important security role at the State House and their supervisors have recommended that the Ranger classification specification be altered to better reflect their duties.<sup>11</sup> A change in job duties does not mean the Appellants have mostly performed the duties of a higher classification. Thus, the Appellants, as Ranger IIs, have not shown by a preponderance of evidence that they perform the job responsibilities of a Ranger III

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<sup>11</sup> Deputy Chief Parr indicated that there had been some initial discussion about possible review and/or revisions to the Ranger classification specification but no changes had been made and there was no indication when and if any revisions would be made. (Testimony of Parr)

more than 50% of the time. Appellant Dowd having failed to establish by a preponderance of the evidence that he performed the tasks of a Ranger III more than 50% of the time prior to being promoted to Ranger III is not entitled to backpay.

*Conclusion*

Accordingly, for the above stated reasons, the reclassification appeals of both Appellant Dowd and Appellant Molk, docketed, respectively, C-18-053 and C-18-054, are 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 April 8, 2021.

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)(1), 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 as stated below.

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 from the effective date specified in 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:

Joseph DeLorey, Esq. (for Appellants)

Ken Langley, Esq. (for Respondent)