

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

One Ashburton Place: Room 503
Boston, MA 02108
(617) 979-1900

TEWEDAJ
GEBRESELASSIE,
Appellant

C-22-048

v.

DEPARTMENT OF
REVENUE,
Respondent

DECISION

Pursuant to G.L. c. 31, § 2(b) and/or G.L. c. 7, § 4H, a Magistrate from the Division of Administrative Law Appeals (DALA), was assigned to conduct a full evidentiary hearing regarding this matter on behalf of the Civil Service Commission (Commission).

Pursuant to 801 CMR 1.01 (11) (c), the Magistrate issued the attached Tentative Decision to the Commission and the parties had thirty days to provide written objections to the Commission. No written objections were received.

After careful review and consideration, the Commission voted to affirm and adopt the Tentative Decision of the Magistrate, thus making this the Final Decision of the Commission.

The decision of DOR to deny the Appellant's request for reclassification is affirmed and the Appellant's appeal under Docket No. C-22-048 is hereby *denied*.

By vote of the Civil Service Commission (Bowman, Chair; Dooley, McConney, Stein and Tivnan, Commissioners) on January 26, 2023.

Civil Service Commission

/s/ Christopher C. Bowman
Christopher C. Bowman
Chair

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:

Tewedaj Gebreselassie (Appellant)

Joshua Prada, Esq. (for Respondent)

James Rooney, Esq. (Acting Chief Administrative Magistrate, DALA)

COMMONWEALTH OF MASSACHUSETTS

**DIVISION OF ADMINISTRATIVE
LAW APPEALS**

14 Summer Street – 4th Floor
Malden, MA 02148
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www.mass.gov/dala

TEWEDAJ GEBRESELASSIE,
Appellant

v.

C-22-048
CS-22-0168

DEPARTMENT OF REVENUE,
Respondent

Appearance for Appellant:

Tewedaj Gebreselassie
Malden, MA
pro se

Appearance for Respondent:

Joshua J. Prada, Esq.
Counsel, Office of Labor Relations
Massachusetts Department of Revenue
P.O. Box 7093
Boston, MA 02204

Administrative Magistrate:

Kenneth Bresler

SUMMARY

The Administrative Magistrate of the Division of Administrative Law Appeals (DALA) recommends that the Civil Service Commission deny the Appellant’s reclassification appeal.

TENTATIVE DECISION OF DALA MAGISTRATE

On March 17, 2022, the Appellant, Tewedaj Gebreselassie, pursuant to G.L. c. 30, § 49, filed a timely appeal with the Civil Service Commission (Commission), contesting the decision of the Department of Revenue (DOR) not to reclassify her from Tax Examiner II (TE II) to Tax

Examiner III (TE III). (Stipulation) The Commission held a prehearing conference on May 3, 2022 and referred the appeal to DALA.¹ I held a full hearing in person at the Commission, One Ashburton Place, Room 503, Boston on July 21, 2022.² The hearing was digitally recorded.³ The parties submitted post-hearing arguments.

FINDINGS OF FACT:

I entered 18 exhibits into evidence at the hearing. Based on the exhibits and the testimony of the following witnesses:

Called by the Appellant:

- Tewedaj Gebreselassie, Appellant;
- Victoria Perkins, a retired DOR employee;

Called by the Respondent:

- Geralyn Page, Administrator, Department of Revenue;
- Evan Garcia, Director, Miscellaneous Excise Unit

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

¹ At the prehearing conference, Ms. Gebreselassie stated that during her work as a TE II, two TE IIIs left their positions and that she inherited their work without receiving the title of TE III. Commission Chair Christopher C. Bowman instructed DOR to present evidence at the hearing whether these two TE IIIs had been identified as working undergrade. At the hearing, DOR presented testimony that Ms. Perkins, whom Ms. Gebreselassie called as a witness, was a TE III who performed TE II duties in Ms. Gebreselassie’s unit.

² The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§ 1.01 (formal rules) apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

³ If there is a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to supply the court with a transcript of this hearing to the extent that he/she wishes to challenge the decision as unsupported by substantial evidence, arbitrary or 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.

fact:⁴

1. Ms. Gebreselassie is a TE II in DOR's Miscellaneous Excise Tax Unit who wishes to be reclassified as a TE III. (*E.g.*, Ex. 3)

2. The level distinguishing duties for a TE III are:

- Review audit activities, including audit reports, for content, accuracy, and completeness.
- Back-up supervisor with functional supervision of other employees or personnel during a specific task or review and/or approve of the work of other Tax Examiners.
- Specialized and unique duties, lead field teams assigned to trade shows, and “uncollectible at this time” cases.
- Examiner in charge of conducting Small Business Workshops.
- Develops and provides outreach sessions, lectures and written materials to educate taxpayers, practitioners, and community organizations.
- Works with DOR staff and vendors to test and implement Web and IVR⁵ applications and interactive worksheets.
- Reviews the accuracy of scripts and forms, making recommendations... for change, as needed.
- Completes more complex, large dollar amount problem and review sets.
- Conducts specialized, complex desk audits that involve multiple audit issues.

(Ex. 15, p. 77, Ex. 16)

⁴ At the beginning of the hearing, I had questions for the parties based on their prehearing submissions: What is the PACT ACT? What are stamp orders? What is a PIVOT table? What are GeniSys queues? What is the relevance of Bank of America?

Rather than answering or stipulating at the beginning of the hearing, the parties assured me that testimony would answer those questions. The parties did not give or elicit testimony that directly answered those questions. I gather from the testimony that GeniSys queues consist of taxpayer inquiries or other tasks in a program called GeniSys. Tax examiners accept the inquiries, which they then answer or resolve, or tasks, which they then complete. From the testimony, I can guess the answers to my other questions, but I will not do so.

As will be seen below, the evidence did not explain other references and acronyms.

Ms. Gebreselassie has the burden of proof in her appeal, *Harriet F. Fishman v. Department of Public Health*, C-20-094 (CSC 2022), including favorably comparing her duties to those of a TE III. To the extent that missing information and explanations keep me from favorably comparing her duties to those of a TE III, she has failed to meet her burden.

⁵ The evidence did not explain this acronym.

3. On April 29, 2021, Ms. Gebreselassie emailed Ms. Page, asking how to begin the process of seeking to become reclassified as a TE III. (Ex. 3, p. 6; stipulation)

4. On May 4, 2021, Ms. Gebreselassie emailed to Ms. Page her Employee Performance Review Form (called an “EPRS,” which stands for “Employee Performance Review System) and Form 30, which described her duties as a TE II. (Ex. 4, p. 8)

5. On or after May 20, 2021, Ms. Gebreselassie emailed DOR the answers to the Interview Guide. (Ex. 5, p. 26).

6. When asked the basis for her appeal, Ms. Gebreselassie wrote:

I currently have taken on more work and responsibility for the day to day function of the Miscellaneous desk audit group. Not only am I completing work that is in my Form 30 I also have to do a lot more work than I have done before which is not on my Form 30. ⁶ I have spent at least three hours per day only on Pact Act Reports. I get at least 10 report[s] a day and since all this is done manually it takes a long time to complete. I have been the main person who handles the PACT Act reports. I had to create new spread sheets and I have organized folders...to keep track of all the information the taxpayer has reported. Now I have been in[un]dated with work which at times I have to work past my scheduled hours just to make sure everything is completed. Each month I have to monitor to make sure I get the 120 Pact Act reports and if there are taxpayers missing their reports I have to personally contact each and every[]one of those taxpayers who have missed it.

Also before I was only respon[]sible for approving stamp orders and processing the Bank of America report. Now I am doing a lot more than before. I am the main person making sure others who approve the stamp orders and input information on the manually created spreadsheets are processing the approvals and inputting the data correctly. I also have to figure out errors on payments for the stamp orders. Most of the time the Stampers forget either to put the correct order # or they do not pay on time (before the due dates). When the stamper do[es] not pay before the due dates[,] [t]heir compensation has to be disallowed and I have to manually adjust their Cigarette stamp order through Genesis [sic]. [A] [f]ew times[,] even if the stamper put their Cigarette stamp order via

⁶ Ms. Gebreselassie did not present evidence, at least not in a comprehensible way that did not require me to parse it, that these other duties were on the Form 30 for a TE III.

SPICA[,]⁷ it did not go to the Stamper account so I have to manually key each orders via stamper Cigarette account. Most of the time our excel spreadsheet is messed up every day by few of our co-workers[,] I spent [a] few hours to fix the excel spreadsheet. I have to contact [a] few of the stampers every day either to remind them that their payment [sic] or to manually key their suspended payment. Sometimes the stamper payment does not go [through] Bank of America ACH Report so I have to also do transaction research on Bank of America to find the payment. I am also doing the new PIVOT Table for the Bank of America report and daily stamp orders spreadsheets. I am the only one who is doing that so far on a daily bas[i]s. This is all time consuming and multiple times I need to stay extra hours without pay to fix all these issues. This is something I did not need to do before but I have gradually taken on this responsibility and I would like to get compensated for all the extra work that I have to do.

(Ex. 5, p. 29)

7. When asked to describe the basic purpose of her job, Ms. Gebreselassie wrote:

- Oversee the daily download from the Bank of America account
- Review each stamper's account to ensure that due diligence is followed to ensure that adequate credit is maintained on their credit bond, and, if necessary, immediately contact stamper of insufficient credit bond funds.
- Approve each cigarette stamp order for every stamper and update the wholesale/retailers spreadsheet daily through (SICPA)- Meyercord's website.⁸
- Email, use MassTax Connect, and/or contact by phone taxpayers, distributors, and retailers who are requesting to apply and/or renew their cigarette, cigar, and electronic delivery licenses.
- Working different queues such as responding to e-messages via MTC,⁹ calling taxpayers, approve refunds, review/correct cigar, cigarette, alcohol, beverage, and electronic delivery system returns. Also allocate suspended payments to the right taxpayer account.
- Five 9 phone coverage¹⁰ at least three times in a week
- Creates abatements and refunds for cigarette stamps returned to DOR or to vendors after verifying that all requirements have been met.
- Provides assistance to marijuana and Electronic Delivery system businesses with specialized registration, return filing, record keeping and payment issues.

(Ex. 5, p. 30)

⁷ This may be intended to be a reference to SICPA, which appears later. The evidence did not explain either acronym.

⁸ The evidence did not explain this reference.

⁹ Presumably, MassTax Connect.

¹⁰ The evidence did not explain this reference.

8. When asked if there had been significant job changes since her appointment, Ms.

Gebreselassie wrote:

Yes[,] there has been a significant job change starting in 2018. The nature of my job changes are as follows.

- I review and correct different tax type returns;
- Respond to different tax type e-message on daily basis;
- Took on full responsibility for the daily Bank of America report and approve the cigarette stamp orders and contact the stamper daily if there is a discrepancy
- Took full responsibility to train new tax examiner, supervisors and other co-workers.
- Perform minimum cigarette pricing for wholesale and retailers four times per year and publish on the DOR website which used to be done [a] maximum [of] twice per year.
- Review and make sure each stamper/distributor/manufacture submitted the correct documents every year for renewal of their license.
- Create and maintain new procedures for minimum cigarette pricing, PACT registration and create a new folder for each new/old Taxpayer[,] which consists of an excel spreadsheet for this population.
- Discuss and explain the new PACT registration forms, laws and Marijuana Excise Tax.

(Ex. 5, pp. 31-32)

9. When asked her specific duties and how much time she spent on each of them, Ms.

Gebreselassie responded:

- Review daily downloads and print ACH credit reports from Bank of America website. (20%)
- Approve daily cigarette stamp orders that are orders from the stampers/distributors. (20%)
- Reviewing and approving new PACT registrations, monthly reports, and electronic delivery licenses. (20%)
- Interact with taxpayer, stampers, manufacturers, and distributors for various reasons such as missing/incorrect documents, late/non-payment of dues, missing the correct stamp orders, and allocating suspended payment to the correct stampers. (10%)
- Daily research on Genisys and Bank of America ACH reports to locate payment transactions. (5%)
- Interact and coordinate with my co-workers on a daily basis to ensure that we are on the same page regarding approval of cigarette stamps. (5%)
- Five 9 phone coverage (20%)
- Review and correct returns. (5%)

(Ex. 5)¹¹

10. On September 14, 2021, Miss Garcia emailed Ms. Page as follows:

I'll break[]down every function mentioned by Tewedaj. Please let me know if you have any questions or need further clarification.

- PACT ACT Reports: These reports are submitted to DOR by manufacturers detailing all sales of cigarettes and vaping products imported into MA. They are due on the 10th of every month. Reports are sent via email or by paper mail. The reports received by mail are scanned by the supervisors or me and emailed. Once received they are saved, filed in a shared drive and the date the report was received is entered in a spreadsheet. Currently, 2 examiners handle this function along with a supervisor if needed. Tewedaj is one of those employees. There are no specialized skills or review/approval of work by the examiner. This can take a couple of hours a month to complete.
- Distribution of PACT ACT Report: There is a semi-annual report that gets sent to the legislature by the supervisor. Tewedaj gathers the total number of PACT ACT reports received for a 6-month period and provides that number to the supervisor. This is for cigarettes and not vaping products. We get about 35 cigarette reports a month. The distribution report is not a breakdown of who or how much product, just how many reports received. There are no specialized skills or review/approval of work by the examiner. The amount of time to perform this activity is less than 1 hour and it is done only twice a year.
- Stamp orders/BOA¹² reports: Cigarette stamp orders are reviewed and approved on the SICPA website¹³ and payment is required before approval. The BOA reports are downloaded every morning to confirm the payments and if payment has been received, the order is approved. The order can also be approved if the taxpayer has a security bond on file and the total of all their unpaid orders including the current one is less than the amount of the bond. If payments are not received, the examiners contact the stamper by phone/email to discuss

¹¹ These percentages add to 105%. Since neither party recognized this error, let alone discussed, at the hearing or in their post-hearing briefs, how to recalibrate how much time Ms. Gebreselassie spent on each duty, I am left not knowing even Ms. Gebreselassie's own estimate of how she spent her time. In its post-hearing brief, DOR summarized her duties differently and assigned different percentages, *while citing this exhibit*. (Resp. Br. 1-2) Apparently, DOR used the percentages of time that *Ms. Page testified* that Ms. Gebreselassie spent on her duties. (Resp. Br. 6-7).

¹² Presumably, Bank of America.

¹³ The evidence did not explain this acronym.

options. While access to both SICPA and BOA information is restricted based on need and use, there are no specialized skills required to approve stamp orders and it is an entry level tax examiner duty. The amount of time to perform this activity is one to two hours on any day it is assigned to an employee. We have 7 employees performing this activity (2 each day) on a rotating schedule so employees in the rotation typically do this for 6-9 hours per month. The reason 2 people do this each day is that we use a 2 person verification process on stamp orders. If one examiner agrees that payment has been made, a second examiner will review the payments and orders to verify that conclusion. Examiners rotate their position in the approval process; three times a month, Tewedaj is the first examiner in the review process, three times a month she is the 2nd. I do not consider this to be the equivalent of having the second examiner approving the work of the first examiner, it is more like running a calculator tape twice to confirm the result (if the discrepancy [is] in the determinations, all we know is that one of the two is wrong). Towards the end of the day the supervisor checks the SICPA database and spreadsheet for accuracy and any discrepancies.

- OTPA Reports:¹⁴ Every month there are 2 reports sent to finance. One details the revenue received for cigars/smoking tobacco, smokeless tobacco and vaping products and the other details the stamps sales for the month. Tewedaj does not verify for accuracy. Sending these reports can take a couple of hours a month.
- Every month an examiner that has access to Genisys revenue reports sends the monthly totals to Tewedaj. The cigars/smoking tobacco, smokeless tobacco and vaping products revenue is entered on a spreadsheet and copied to an email sent to finance. This is done once a month and can take up to an hour to complete.
- The stamp sales are generated from a spreadsheet on the shared drive. That spreadsheet is completed by the examiners assigned to reviewing and approving the stamp orders on a daily basis. She sends a copy of the spreadsheet to finance. This monthly report can take an hour to complete (less than 1% of her work time).
- I'm not sure what she's referring to when she mentions QA review.¹⁵ Tewedaj does not review anyone else's work for completeness or accuracy.
- She works queue's just like everyone else. From answering e-messages, approving license applications, white paper mail and reviewing/approving refunds.

On the specific level distinguishing duties you asked about:

¹⁴ The evidence did not explain this acronym.

¹⁵ Presumably, quality assurance.

1. Review audit activities including audit reports for content, accuracy, and completeness.
 - Tewedaj does not review audit activities[,] including audit reports for content, accuracy and completeness.

3. Specialized and unique duties, leader of field team assigned to trade shows, and “uncollectible at this time” cases.
 - Tewedaj does not have specialized and unique duties, is not the leader of a field team assigned to trade shows and does not work uncollectible cases.

9. Conducts specialized, complex desk audits that involve multiple audit issues.
 - Tewedaj does not conduct specialized, complex desk audits that involve multiple audit issues.

(Ex. 7)

11. On September 17, 2021, DOR preliminarily denied Ms. Gebreselassie’s request to be reclassified as TE III. It wrote:

Justification: Incumbent does not perform the duties listed below a majority of the time:

- Review audit activities, including audit reports, for content, accuracy, and completeness.
- Back-up supervisor with functional supervision of other employees or personnel during a specific task or review and/or approve of the work of other tax examiners.
- Perform specialized and unique duties, lead field teams assigned to trade shows, and “uncollectible at this time” cases.
- Examiner in charge of conducting Small Business Workshops.
- Develop and provide outreach sessions, lectures, and written materials to educate taxpayers, practitioners, and community organizations.
- Work with DOR staff and vendors to test and implement Web and IVR applications and interactive worksheets.
- Review the accuracy of scripts and forms, making recommendations for change, as needed.
- Complete more complex, large dollar amount problem and review sets.
- Conduct specialized, complex desk audits that involve multiple audit issues.

(Ex. 8)

12. Ms. Gebreselassie did not lead field teams assigned to trade shows, listed in the third

level distinguishing duty. (Gebreselassie testimony)

13. Ms. Gebreselassie did not conduct Small Business Workshops, the fourth distinguishing duty. (Gebreselassie testimony)

14. Ms. Gebreselassie did not develop and provide outreach sessions, lectures, and written materials to educate taxpayers, practitioners, and community organizations, the fifth level distinguishing duty. (Gebreselassie testimony)¹⁶

15. On September 24, 2021, Ms. Gebreselassie submitted a rebuttal to the denial of her request for reclassification. She wrote that the duties listed in the preliminary denial are

not duties that are completed within the Miscellaneous Excise Tax Unit. The Unit focuses on completely different tax types and the basis should be focused on the work that is done within the unit I work in and not a different unit.

- I believe I am currently performing the duties of a Tax Examiner III in The Miscellaneous Excise Tax Unit. I hold a graduate degree in business administration (i.e. MBA) and I have been performing the required duties within the same unit for the past 6 years.

- My daily duties include reviewing and approving registration and license applications for both distributor's and retailer's tobacco products[,] such as cigarette, cigar and vaping licenses.

- I also review fuels, alcohol, and cannabis taxes - including, but not limited to, all licensing and filing documentation.

- I also make necessary adjustments to alcohol beverage returns, ensuring the compliance of the returns with the Departmental requirements in compliance with related public written statements.

¹⁶ It is unclear whether Ms. Gebreselassie testified that she did or did not work with DOR staff and vendors to test and implement Web and IVR applications and interactive worksheets, the sixth level distinguishing duty, and whether she did or did not conduct specialized, complex desk audits that involve multiple audit issues, the ninth level distinguishing duty. As for other level distinguishing duties, the parties presented unclear or conflicting testimony, or at least DOR presented testimony that Ms. Gebreselassie spent small amounts of time on the duties. Only when Ms. Gebreselassie testified that she did *not* perform a duty could I make a finding about that duty.

- I assist supervisors in training new employees and provide them guidance in handling phone and written inquiries.

- I also deal with taxpayers and their representatives including business owners, tax professionals, lawyers over the phone and in writing and via e-mail as needed in the process of reviewing inquiries addressed to our unit.

- On a daily basis, I provide to our customers/user[]s explanation and clarifications of our instructions, policies and laws and educate them accordingly of the business practice and compliance requirements of our unit.

- I am proficient in using Genisys and MassTaxConnect and excel in reviewing captured data and providing related reports.

In the performance of my job responsibilities, I promote and adhere to the Department of Revenue's one stop shopping service requirement in that I provide a full, accurate and courteous service to the taxpayers of the Commonwealth. As a public servant, I always strive to find ways of improving the service I provide to the taxpayers. As such, I do not shy away in making suggestions to improve procedures and processes to improve efficiency in the work performed and to provide quality and timely service that the taxpayers deserve.

(Ex. 9)

16. Ms. Gebreselassie did not assert that she performed level distinguishing duties. (Ex. 9)

17. On November 5, 2021, DOR emailed its final decision to Ms. Gebreselassie. DOR wrote in a letter that it found that

the duties being performed by you at the time you filed your reclassification appeal do not warrant the reallocation of your position.

(Ex. 10)

18. Ms. Gebreselassie appealed DOR's final decision to the Human Resources Division (HRD) of the Executive Office of Administration and Finance. (Ex. 11)

19. On March 14, 2022, HRD concurred with DOR, writing to Ms. Gebreselassie that "the duties being performed by you do not warrant the reallocation of your position...." (Ex. 11)

20. On March 17, 2022, Ms. Gebreselassie timely appealed to the Commission.

(Stipulation)

Legal Standard

The Appellant has the burden of proving that she is improperly classified. To do so, she must show that she performs the duties of the...title [she seeks] more than 50% of the time, on a regular basis. *E.g., Gaffey v. Dep't of Revenue*, 24 MCSR 380, 381 (2011); *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 the duties encompassed within the higher-level position a majority of the time . . .”). In making this calculation, duties which fall within both the higher and lower title do not count as “distinguishing duties.” *See Lannigan v. Dep't of Developmental Services*, 30 MCSR 494 (2017).

Harriet F. Fishman v. Department of Public Health, 35 MCSR 205 (CSC 2022).

Analysis

The purpose of a post-hearing brief is to summarize the evidence, apply it to the law, and advocate for one's position. The purpose of a post-hearing brief is not to attempt to rebut the testimony of hearing witnesses through unsworn statements that are not subject to cross-examination. I gave Ms. Gebreselassie the opportunity to (1) ask questions of DOR's witnesses and (2) testify in rebuttal to DOR's witnesses' testimony. She cannot use her post-hearing brief to do so. Much of her post-hearing brief appears to consist of statements that are not in evidence, or, if they are in evidence, lack a citation to the record that would allow me to assess the accuracy of her statements.

Ms. Gebreselassie is dedicated, works hard, has a master's degree in finance, and collects millions of dollars in revenue for the Commonwealth. However, those are not the relevant criteria to become a TE III. The relevant issue is whether she meets the legal standard that I discuss above.

Ms. Gebreselassie did not relate the duties that she performs to any level distinguishing duties or explain her duties clearly enough to allow me to relate them to any level distinguishing

duties.

Ms. Gebreselassie concentrated on testifying about her duties, rather than the percentage of time that she spent on them. The only comprehensive evidence from Ms. Gebreselassie about the *percentage* of time that she spent on what duties is Exhibit 5.

The problems with Exhibit 5 include these: The percentages add up to 105%; some of the duties are not self-explanatory (*e.g.*, “Five 9 phone coverage”); and Ms. Gebreselassie has not proved which of these duties are level distinguishing. *Cf. Anne Hartnett v. DOR*, 30 MCSR 398 (CSC 2017) (“even had Ms. Hartnett proved that she performs this duty as contemplated by the Specification, she has not provided any information to suggest what percent of the time, if any, that she performs it”)

Recommendation of DALA Magistrate

Ms. Gebreselassie has not shown that she performs the duties of a TE III more than 50% of the time. Accordingly, for all of the above stated-reasons, I recommend that the Civil Service Commission **deny** her appeal.

/s/

Kenneth Bresler
Administrative Magistrate

Date: October 25, 2022

Notice:
Tewedaj Gebreselassie (for Appellant)
Joshua J. Prada, Esq. (for Respondent)