COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION NO. 18-03672

FRANCIS GRAHAM

vs.

CIVIL SERVICE COMMISSION & another[1]

MEMORANDUM OF DECISION AND ORDER ON CROSS-MOTIONS FOR JUDGMENT ON THE PLEADINGS

The plaintiff Francis Graham ("plaintiff" or "Graham") brings this action *pro se* pursuant to G. L. c. 31, § 44, and G. L. c. 30A, § 14, seeking judicial review of the decision of the defendant the Civil Service Commission ("Commission") to deny his request to be reclassified from his position as a Forest & Park Supervisor II ("FPS II") with the defendant the Department of Conservation & Recreation ("DCR") to a FPS III. Presently before the court are the parties' cross-motions for judgment on the pleadings. For the following reasons, the defendants' motion is **ALLOWED**, and the plaintiff's motion is **DENIED**.

BACKGROUND

The following facts are taken from the administrative record. The court reserves further recitation of the facts for its discussion below.

The plaintiff has been a DCR employee for over twenty years. In March 2011, he was appointed to the position of FPS II, Grade 16. At that time, the plaintiff was assigned to George's Island State Park in the Boston Harbor Islands, and later to other parks. The plaintiff was assigned seasonally to Webb Memorial State Park ("Webb Park") in Weymouth in 2012 and

[1] Department of Conservation & Recreation

2013, and he has been assigned there year-round since March 2014. The plaintiff's immediate supervisor is Matt Tobin, Field Operations Team Leader ("FOTL"), Grade 20 – a higher level position than a FPS III – for the Nantasket Complex.[2] Tobin, in turn, reports to Susan Kane, the Islands District Manager for DCR.

Around March 2015, the plaintiff appealed his classification as a FPS II to DCR's Director of Human Resources and requested to be reclassified as a FPS III pursuant to G. L. c. 30, § 49. A.R. at 501. In support of his request, the plaintiff explained that he was the supervisor directly responsible for the operation and maintenance of a "major" recreation area with three satellite areas, and that he worked directly with federal employees from the National Park Service as well as from state and municipal agencies such as the Massachusetts State & Environmental Police. *Id.* at 501-502. The plaintiff further explained that he maintains a certain level of autonomy in his position and makes decisions with the approval of the FOTL. *Id.* at 503. He also explained that his responsibilities include "capital outlay as used to acquire assets or the means to improve the 'useful life' of existing assets . . . , [and that he] initiate[s] the requests and project specific resource needs . . . [,] prepare[s] invoice documentation in cooperation with vendors and forward[s] them to the appropriate team member or leader for approval." *Id.* at 504. The plaintiff also explained:

> Due to the agency's past and current hiring practices that are well beyond my control, I am limited to a smaller staff base. These hiring practices affect many incumbents within the Forest and Park Supervisor 3 series. This lack of hiring places more responsibility on both supervisors and staff. Over the past few seasons my level of responsibility has increase[d] with no additional seasonal staff. I understand the budget cuts but [t]his does not negate the reality that my workload has increased. I simply request that I am compensated for the responsibilities and regular duties that I execute.

[2] The plaintiff represents that Tobin has since been promoted to Grade 21.

Id. at 503. Following his initial request, the plaintiff was required to provide a current job description on a "Form 30" and to complete an "Interview Guide." In the Interview Guide, the plaintiff was required to provide information on the following topics: basis of appeal; primary purpose of position; relationship with others; job changes; job responsibilities; most difficult or complex duties; equipment operation; problem solving; authority exercised; problems/issues referred to someone else; assignment review and approval of work; supervisor responsibility; supervisor authority; functional supervision; working conditions; job requirements; education/licenses; skills/knowledge/ability required; work experience; and additional information. *Id.* at 508-518.

Due to the reorganization of the Human Resources Department, the plaintiff's reallocation/audit interview was put on hold until March 2017. At that time, the plaintiff was interviewed by Danielle Daddaboo and Kimberlee Costanza, two classification specialists in the Human Resources Department of the Executive Office of Energy and Environmental Affairs ("EEA"). Following the interview, Daddaboo and Costanza notified the plaintiff that his reclassification request was denied. In reaching this decision, they explained that a FPS III "is responsible for monitoring the operation, administration and maintenance of a major recreation area with one or more satellite areas or a heritage park consisting of a visitor's center, extensive grounds and multiple recreational facilities including performance stages, boathouses, etc; representing the agency at meetings, preparing budgets and initiating requests for capital outlay funds." *Id.* at 536. They concluded that Webb Park was not a "major" recreational area, even though it had some satellite areas, because it was "used mostly for passive recreation, dog walking, picnicking, etc." and because there was only one building housing public bathrooms and the plaintiff's office/garage. *Id.* Ultimately, Daddaboo and Costanza concluded that the

plaintiff's duties and responsibilities were within the scope of a FPS II, and that there had not been significant changes such that a reallocation of the position was warranted. *Id.* They explained, the plaintiff "may feel that visitor increases, staff reductions and amenity usage has been an increase in his work load, but the assigned job duties and responsibilities remain the same. An increase in the volume of work is not a basis for reallocation nor does it have any bearing on the [plaintiff's] appeal for reallocation to a higher title. He also supervises only 1-2 seasonal employees." *Id.*

The plaintiff appealed the denial of his reclassification request to the Human Resources Division of the Commonwealth ("HRD"). In June 2017, HRD informed the plaintiff that it concurred with EEA's decision that his duties fell within the specifications of a FPS II, and therefore his appeal was denied. *Id.* at 538. The plaintiff promptly appealed HRD's decision to the Commission.

In September 2017, the Commission held a *de novo* hearing on the plaintiff's reclassification request. The plaintiff, Daddaboo, Costanza, and Kane testified before the Commission. The plaintiff, who was represented by counsel, introduced nine exhibits into evidence, while DCR admitted one.[3] Following the hearing, DCR submitted an affidavit from Kane providing additional information concerning DCR's sole exhibit and additional related documents; the plaintiff submitted several emails in response, to which the Commission took administrative notice, and photographs.

In November 2018, the Commission issued its decision denying the plaintiff's appeal. Specifically, the Commission concluded that the plaintiff satisfied the Minimum Entrance Requirements for the FPS II and FPS III positions, but failed to meet his burden of proving by a

[3] Each of the plaintiff's exhibits consist of several different documents. See A.R. at 478-846.

preponderance of the evidence that he performed the responsibilities of a FPS III more than 50% of the time. Shortly thereafter, the plaintiff submitted a *pro se* motion for reconsideration of the Commission's decision, asserting that there were several factual errors which may have impacted the decision.[4] In January 2019, the Commission allowed in part the plaintiff's motion and issued a Clarified Decision ("Decision") correcting two clerical/mechanical errors that did not affect its ultimate determination that the plaintiff's reclassification request should be denied.[5]

In reaching its Decision, the Commission concluded that there were four level-distinguishing duties of a FPS III, in that they: (1) "operate 'a major recreation area with one or more satellite areas or a heritage park consisting of a visitors (sic) center, extensive grounds and multiple recreational facilities including performance stages, boathouses, etc.;'" (2) "represent DCR at meetings and conferences with federal, state and municipal agencies;" (3) "prepare budgets and documentation for DCR's budget requests;" and (4) "initiate requests for capital outlay funds and monitor capital outlay expenditures." *Id.* at 474. The Commission found that the plaintiff did not perform these required duties.

The Commission concluded that the areas for which the plaintiff was not responsible were not a "major recreation area" or a "heritage park" with multiple facilities. *Id.* To this point, the Commission found that the plaintiff was assigned to the "Webb complex" which includes Webb Park, a peninsula extending half a mile into Hingham Bay with picnic areas with grills, restrooms, and a small "Pavilion" that can be rented. *Id.* at 458. The Webb complex also includes two satellite parks: Stodders Neck which is a peninsula at the mouth of the Back River

[4] The Commission accepted the motion after receiving a withdrawal of appearance form from the plaintiff's counsel.
[5] Specifically, the Commission corrected clerical/mechanical errors regarding: the location of the South Shore Yacht Club and the plaintiff's name in the "Notice" section of the decision. A.R. at 451. The Commission denied the motion in all other respects.

open from dawn to dusk for running, walking, fishing, and picnicking; and Abigail Adams State Park which provides areas for patrons to run and walk, and includes a small extension known as the Kibby Property. The private South Shore Yacht Club ("Yacht Club") operates in or near Abigail Adams Park pursuant to a special use permit issued by DCR, but DCR does not own, operate, or maintain the Yacht Club. *Id.* Finally, Gateway Park, a small park that was, in part, maintained by the Hingham Department of Public Works, became part of the Webb complex in 2014. *Id.* at 459.

The Commission considered a chart submitted by DCR that compared the Webb complex to Nantasket and Wompatuck Parks, which are two areas in the region that are overseen by a FPS III. *Id.* at 460. Nantasket is approximately 150 acres and has dozens of seasonal employees, while Wompatuck Park is approximately 4,000 acres and has approximately a dozen seasonal employees. *Id.* In contrast to those parks, the Webb complex is decidedly smaller with approximately 80 acres and a few seasonal employees. *Id.* The chart also reflected that the Webb complex produces the least amount of revenue and issues the fewest special use and recreational permits among the three parks. *Id.* Moreover, the Webb Park permits were coordinated by Tobin, and the permitting for the pavilion was done through an online reservation system. *Id.* at 460-461.

The Commission concluded that the Webb complex was not a "major recreation area" or "major park" because "Webb Park and its satellites are the smaller parks, have fewer permits issued (which are issued for Webb Park on a website overseen by Mr. Tobin) and have much lower revenues, compared to nearby Nantasket and Womptuck Parks." *Id.* at 474. However, the Commission also recognized that those terms are undefined and "strongly urge[d] [DCR] to

establish appropriate objective criteria to determine whether a park is a 'major park' . . . to ensure clarity and transparency in the processing of FPS reclassification requests." *Id.* at 476.

The Commission also concluded that the plaintiff failed to demonstrate that he represented DCR at meetings and conferences with federal, state, and municipal agencies. The Commission noted that while the plaintiff works with outside entities including other state personnel, municipal police, and community organizations, and that personnel from the National Park Service use Webb Park pursuant to an agreement, this work "does not involve meetings or conference, wherein [the plaintiff] represents DCR, to address DCR objectives or obtain NPS' cooperation in addressing DCR's goals, or to resolve existing problems." *Id.* at 475.

Finally, the Commission found that there was inadequate evidence to demonstrate that the plaintiff initiated requests for capital outlay funds or monitored capital outlay expenditures. The Commission noted evidence in the record demonstrating that he was involved in purchasing equipment, services for work done, and supplies for the Webb complex. However, the Commission concluded that these documents did not relate to capital outlays and expenditures which refer to "costs that are incurred in the acquisition or improvement of property (as a capital assets) or that are otherwise chargeable to a capital account." *Id.* at 475. For these reasons, the Commission concluded that the plaintiff failed to demonstrate that he should be reclassified as a FPS III.

While the motion for reconsideration was pending before the Commission, on November 27, 2018, the plaintiff initiated this action challenging the Commission's decision to deny his reclassification request. Following the Commission's decision on that motion and its issuance of the Clarified Decision, the plaintiff filed his First Amended Complaint. The plaintiff requests that this court set aside the Commission's Decision and enter an order directing DCR to

reclassify him as a FPS III effective as of the date that DCR received his reclassification request in March 2015.

DISCUSSION

I. Standard of Review

A state employee may seek to be reclassified to a higher position by filing a written appeal with his or her personnel administrator pursuant to G. L. c. 30, § 49. If the personnel administrator concludes that reclassification is not warranted, the employee may appeal that decision to the Commission. If the Commission affirms the personnel administrator's decision, the employee may seek judicial review of the Commission's decision under G. L. c. 31, § 44. Pursuant to G. L. c. 31, § 44, the court reviews the Commission's decision to determine if it violates any of the standards set forth in G. L. c. 30A, § 14(7). Specifically, this court must uphold the Commission's decision unless it is unsupported by substantial evidence, based upon on error of law, arbitrary and capricious, or an abuse of discretion. *Boston Police Dep't* v. *Civil Serv. Comm'n*, 483 Mass. 461, 469 (2019), citing G. L. c. 30A, § 14(7). "Substantial evidence is 'such evidence as a reasonable mind might accept as adequate to support a conclusion.'" *Boston Police Dep't*, 483 Mass. at 469, quoting G. L. c. 30A, § 1(6).

In conducting its review, the court "consider[s] the entire administrative record and take[s] into account whatever 'fairly detracts from its weight.'" *Andrews* v. *Civil Serv. Comm'n*, 446 Mass. 611, 616 (2006), quoting *New Boston Garden Corp.* v. *Assessors of Boston*, 383 Mass. 456, 466 (1981). The court may not substitute its judgment for that of the Commission. *Massachusetts Ass'n of Minority Law Enf't Officers* v. *Abban*, 434 Mass. 256, 262-263 (2001). Rather, the court is required to "give due weight to the experience, technical competence, and specialized knowledge of the agency, as well as to the discretionary authority conferred upon it."

Boston Police Dep't, 483 Mass. at 474, quoting G. L. c. 30A, § 14(7). The plaintiff bears the "heavy burden" of demonstrating the invalidity of the Commission's decision. *Abban*, 434 Mass. at 263-264.

II. Analysis

The plaintiff alleges that the Commission erred in concluding that he does not perform the job responsibilities of a FPS III more than 50% of the time. The crux of the plaintiff's argument is that the Commission failed to consider some evidence that supported his position that reclassification was warranted, and relied on other evidence that it should not have credited.[6] As a result, the plaintiff contends that the Commission's decision is not supported by substantial evidence, is arbitrary and capricious, and reflects an abuse of discretion. For the reasons that follow, the court must affirm the Commission's decision.

There was substantial evidence to support the Commission's finding that there are four-level-distinguishing duties of a FPS III. Indeed, those duties of a FPS III were delineated in the Classification Specification ("Class Specs") for the FPS Series and in the position descriptions in the Form 30 that were included in the record. See A.R. at 479-480. Compare *id.* at 497 (Form 30 for FPS III) with *id.* at 495 (Form 30 for FPS II).[7] The Class Specs also provided that a FSP III exercises direct supervision over, assigns work to, and reviews the performance of five to

[6] The plaintiff alleges a host of errors with the Commission's decision, each of which the court has considered. In the interest of efficiency, the court references what it deems to be the plaintiff's main arguments in this decision. To the extent that the court does not reference a particular argument, the court has determined that it does not provide a basis to set aside the Commission's decision. For example, the court cannot revisit the Commission's decision to credit Kane's testimony. See *Andrews*, 446 Mass. at 616 (court must defer to the credibility determinations of the Commission).

[7] The plaintiff argues that the certain evidence should have been presented to the Commission, including testimony from Tobin, his direct supervisor, and other versions of the Form 30 that were not produced by the agency. However, the court's review under G. L. c. 30A is restricted to the record before the Commission. See G. L. c. 30A, § 14(5).

fifteen recreational area and clerical personnel, whereas a FSP II exercises direct supervision over one to ten such personnel. *Id.* at 480-481.

There also was substantial evidence to support the Commission's finding that the plaintiff did not perform these level-distinguishing duties more than 50% of the time.[8] The Commission first concluded that the plaintiff did not operate a "major recreation area" or a "heritage park" with multiple facilities. The Commission acknowledged that DCR has not set objective criteria for the determining whether a park is a "major park," and urged the DCR to do so. *Id.* at 476. However, the Commission determined whether the Webb complex was a "major park area" by considering its size, revenue, and number of permits issued, and by reference to the comparator data from the nearby Nantasket and Wompatuck Parks which are both managed by a FPS III. See *id.* at 1042-1043 (Kane testimony) (noting that there was no official statute or policy defining "major recreational area" but that DCR typically looks at "visitorship, infrastructure, numbers of buildings, whether it has a beach . . . a guarded or designated waterfront"). The court discerns no error in the Commission utilizing this criteria to make its determination.[9] See *Boston*

[8] As a general matter, the Commission noted that the evidence in the record did not present a clear picture of the percentage of time that the plaintiff performs each of his duties. A.R. at 473-474. The record supports this point. For example, in his "Interview Guide," the plaintiff represented that he performed several job functions daily "100%" of the time. See *id.* at 511. The plaintiff's testimony during the Commission hearing did not provide further clarification in some instances. See, e.g., *id.* at 909-916 (stating that he spends 70% of the time monitoring operations, administration, and maintenance of the Webb complex, 51-55% of the time on budgets and related paperwork, and 60% of the time representing the agency with outside governmental and community groups); *id.* at 932-933 (stating that he monitors operations, administration, and maintenance of the Webb complex 70% of the time, but that he also spends a "fairly large portion" of his time creating budgets and figuring out capital outlays).

[9] The Commission maintains that its determination that the roughly 80-acre Webb complex is not a "major park" or "major recreation area" is consistent with three earlier decisions that it submitted as an addendum to the defendants' cross-motion. See *Trubiano* v. *Dept. of Conservation & Recreation*, 31 MCSR 298 (Civ. Serv. Comm'n Sept. 27, 2018) (denying request to be reclassified from a FPS II to FPS III year-round where appellant was responsible for 1,500-acre park and adjacent 470-acre park); *LaChapelle* v. *Dept. of Conservation & Recreation*, 31 MCSR 283 (Civ. Serv. Comm'n Sept 13, 2018) (denying request to be reclassified from a FPS II to FPS III where appellant was responsible for 1,800-acre park); *Kology* v. *Dept. of Conservation & Recreation*, 21 MCSR 475 (Civ. Serv. Comm'n Aug. 22, 2008) (denying request to be reclassified from a FPS II to FPS III where appellant was responsible for 3,200-acre park, and a 82-acre satellite area).

Police Dep't, 483 Mass. at 474 (court must give deference to Commission's specialized knowledge and technical competence).

The plaintiff argues that other parks (i.e., Castle Park/Fort Independence, Roxbury Heritage Park, and George's Island/Fort Warren), not referenced in the Decision, are more comparable to the Webb complex. See, e.g., A.R. at 606-611, 930-931. However, it was within the Commission's discretion to credit and rely on the evidence concerning the Nantasket and Wompatuck Parks, as opposed to those advanced by the plaintiff as to this issue. See *Andrews*, 446 Mass. at 617, quoting *Abramowitz* v. *Director of the Div. of Employment Sec.*, 390 Mass. 168, 173 (1983) ("If the [hearing officer's] findings are . . . supported [by evidence], it is not open to the [Superior] Court . . . to substitute other views as to what should be the determination of the facts."). See also *Catlin* v. *Board of Registration of Architects*, 414 Mass. 1, 6 (1992) (hearing examiner is not required to reference all evidence in its decision, and its failure to refer to a particular piece of evidence does not imply its failure to consider it). The plaintiff also points out that the posting for the FPS II position to which he was ultimately appointed includes in the "duties" section the four level-distinguishing duties of a FPS III and references the area as a "major park." A.R. at 485, 488. The Commission considered this evidence. It concluded that the inclusion of the reference to a "major park" in the job posting was an error because some required information was missing from the posting, i.e., who would supervise the plaintiff and who would be supervised by him, and because the posting included other information reflective of a FPS II and not a FPS III position, i.e., that the position required three as opposed to four years of experience. *Id.* at 474. Ultimately, the Commission found that the information contained in the Class Specs and Form 30, and not the job posting, was determinative. *Id.* It was within the Commission's discretion to make such a choice between these conflicting views

where the view it adopted was supported by substantial evidence. See *Lisbon* v. *Contributory Ret. Appeal Bd.*, 41 Mass. App. Ct. 246, 257 (1996), quoting *Southern Worcester County Regional Vocational Sch. Dist.* v. *Labor Relations Comm'n*, 386 Mass. 414, 420 (1982) ("If the agency has, in the discretionary exercise of its expertise, made a 'choice between two fairly conflicting views,' and its selection reflects reasonable evidence, '[a] court may not displace [the agency's] choice . . . even [if] the court would . . . have made a different choice . . .'" (internal quotations omitted)). Thus, the court finds no error with the Commission's conclusion that the plaintiff did not perform the FSP III-distinguishing duty of operating a major recreation area or a heritage park.

The Commission also concluded that the plaintiff did not represent DCR at meetings or conferences with federal, state, or municipal agencies. The plaintiff maintains that he is the direct point of contact for certain governmental entities, including the National Park Service. The Commission acknowledged that the plaintiff does in fact liaise with such agencies and other outside groups. See A.R. at 32 (Form 30) ("Coordinates the work of volunteer groups, DCR and other state agencies, police, rangers services etc."). However, it determined that this was not the type of work where the plaintiff *represented* DCR, meaning that he was not charged with addressing DCR objectives or resolving existing problems, at meetings or conferences. *Id.* at 475. The Commission's conclusion is supported by the record. See *id.* at 913-918, 970-973, 1024-1026.

Finally, the Commission found that the plaintiff did not demonstrate that he initiated requests for capital outlay funds or monitored capital outlay expenditures. The Commission adopted a reasonable definition of "capital outlay and expenditures" in that they must be relate to capital assets or a capital account. The record only reflects that the plaintiff gathered quotes for

Notice sent
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equipment needed for the Webb complex and that those requests had to be approved by others.[10] (sc) See *id.* at 903-907. The Commission reasonably concluded that this evidence does not support the position that the plaintiff had direct responsibility over capital outlay and expenditures. See *id.* at 612-691.

Applying the requisite standard, the court sees no basis to set aside the Commission's Decision which was legally tenable and supported by substantial evidence. See *Leominster* v. *Stratton*, 58 Mass. App. Ct. 726, 728 (2003) (judicial review of a Commission decision is "not the occasion for a retrial of the case;" rather, "[t]he open question on judicial review is whether, taking the facts as found [by the commission], the action of the commission was legally tenable."). Accordingly, the Decision is affirmed.

ORDER

For the foregoing reasons, Plaintiff Francis Graham's Motion for Judgment on the Pleadings (Docket No. 9) is **DENIED**, and Defendants Civil Service Commission and Department of Conservation & Recreation's Cross-Motion for Judgment on the Pleadings (Docket No. 11) is **ALLOWED**.

SO ORDERED.

Joseph F. Leighton, Jr.
Associate Justice of the Superior Court

DATED: January 28, 2020

[10] The record reflects that FPS IIs like the plaintiff and FPS IIIs perform the same responsibilities concerning the budget, including obtaining quotes and submitting requests for equipment, etc. See A.R. at 1044. However, the record does not support the conclusion that the plaintiff performs these budgetary functions more than 50% of his total work time.