

**COMMONWEALTH OF MASSACHUSETTS**

**CIVIL SERVICE COMMISSION**  
100 Cambridge Street, Suite 200  
Boston, MA 02114  
(617) 979-1900

**MICHAEL LUIBIL,**  
*Appellant*

v.

**DEPARTMENT OF  
CONSERVATION AND RECREATION,**  
*Respondent*

Docket Number:	C-24-183
Appearance for Appellant:	Michael Luibil, <i>pro se</i>
Appearance for Respondent:	Corinne Walsh, Esq. Alexis Demerjian, Esq. Executive Office of Energy and Environmental Affairs 100 Cambridge Stret Boston, MA 02114
Commissioner:	Shawn C. Dooley <sup>1</sup>

**SUMMARY OF DECISION**

The Commission allowed the appeal of a state employee seeking reclassification to the position of Forester II as he performs the level distinguishing duties of this classification more than 50% of the time and he performs the supervisory responsibilities associated with this position.

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<sup>1</sup> The Commission acknowledges the assistance of Law Clerk Jason Walker, in the drafting of this decision.

## DECISION

On December 4, 2024, the Appellant, Michael Luibil (Appellant), 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 Division (HRD) to affirm the determination of the Department of Conservation and Recreation (DCR) denying his request to be reclassified from Forester I to Forester II. On January 7, 2025, a remote pre-hearing conference was held. On March 11, 2025, I conducted an in-person full hearing at the offices of the Commission in Boston. The hearing was recorded via Webex.<sup>2</sup> Both parties filed proposed decisions. For the reasons set forth below, the Appellant's appeal is *allowed*.

## FINDINGS OF FACT

The Appellant entered into evidence 14 exhibits (App. Exhs. 1-14) and DCR entered seven exhibits (Resp. Exhs. 1-7) into evidence. Based upon the documents entered into evidence and the testimony of the following witnesses:

*Called by DCR:*

- Germaine Vallely, EEA HR Classification Specialist

*Called by the Appellant:*

- Nicole Keleher, Director of Forest Health

and taking administrative notice of all matters filed in the case and pertinent statutes, regulations,

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<sup>2</sup> A link to the audio/video recording was provided to the parties. 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 they wish to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion. If such an appeal is filed, the recording provided to the parties should be used to transcribe the hearing.

case law and policies, and reasonable inferences therefrom, a preponderance of the evidence establishes the following findings of fact:

1. Since 2010, the Appellant has been employed as a Forester I within the Forest Health Program by the Department of Conservation and Recreation (DCR). He is currently the Eastern Tree Crew Supervisor. (*Testimony of Keleher; Resp.Ex.3*)
2. The Forester classification series has three levels: Forester I, Forester II, and Forester III. Additionally, DCR employs Forestry Assistants, who rank below Forester I, and Landscape Architects, who have the same rank as a Forester III. (*App.Ex.6; Testimony of Keleher*)
3. On August 22, 2022, the Appellant appealed his Forester I classification to the Executive Office of Energy and Environmental Affairs' Human Resources Department (EEA HR), seeking to be reclassified as a Forester II. (*Resp.Ex.2*)
4. On March 19, 2024, EEA HR denied the Appellant's reclassification. (*Resp.Ex.6*)
5. EEA HR's denial letter stated: "By all accounts [the Appellant] is considered a valuable employee by his supervisors. Based on his audit interview, audit appeal documents, EPRS, Supervisor Comments and other submitted documents, [the Appellant] is not performing work consistent with the Forester II Job Specifications. Additionally, he reports to a Forester II. Accordingly, his appeal is denied." (*App.Ex.3*)
6. Following this denial, the Appellant filed a subsequent appeal with the state's Human Resources Division (HRD). (*Testimony of Vallely*)
7. On November 19, 2024, HRD denied the Appellant's appeal. (*Resp.Ex.7*)
8. Subsequently, the Appellant timely appealed his reclassification denial to the Commission. (*Administrative Record*)

9. The Appellant’s direct supervisor is Jeffrey Enochs. Mr. Enochs was previously a Forester II, but he was reclassified to a Landscape Architect (equivalent to a Forester III) in 2024.  
*(Testimony of Vallely and Keleher)*
10. Nicole Keleher has been the Forest Health Director for DCR since 2019 and oversees the Forest Health Program. *(Testimony of Keleher)*
11. Ms. Keleher directly supervises Mr. Enochs. Ms. Keleher has a weekly one-on-one call with the Appellant and is familiar with his work. *(Testimony of Keleher)*
12. During his initial appeals to DCR, Ms. Keleher and Peter Church, the Director of Forest Stewardship, both submitted a letter supporting the Appellant’s reclassification as a Forester II. *(App.Exs.1,2,7, & 8)*

*The Forester Series*

13. The Forester series was established in—and has not been updated since—1995. *(Testimony of Vallely)*
14. Since 1995, DCR has become more focused on arboriculture and less on logging and timber sales, which were its main focus in 1995. Neither the Forester I nor Forester II job descriptions precisely match the Appellant’s actual job responsibilities. *(Testimony of Vallely & Keleher)*
15. Over a year ago, DCR’s Director of Forest Stewardship requested that HRD restructure the Forester series to align with DCR’s modern operations. To date there has been no updates to the Forester series approved by HRD. *(App.Ex.8)*
16. The levels in the Forester job series are:
  - a. Forester I – the entry-level professional job in this series;

- b. Forester II – the second-level professional job in this series, or based on assignment, the first-level supervisory job in this series; and
- c. Forester III – the first-level supervisory job in this series, or based on assignment, the second-level supervisory job in this series. (*App.Ex.6*)

### *Supervisory Duties*

17. Forester II employees “receive general supervision from foresters or other employees of higher grade who provide policy and procedural guidance, assign work and review performance through conferences and reports for conformance with professional standards and compliance with laws, rules, regulations and established procedures.” (*App.Ex.6*)
18. Forester II employees “exercise contract, program, project or consultant supervision over and review the performance of 1-15 timber harvesting contractors or forestry consultants, and may exercise direct supervision (i.e., not through an intermediate level supervisor) over, assign work to and review the performance of 1-5 technical and professional personnel.” (*App.Ex.6*)
19. The Appellant has supervised a tree crew, staffed by full-time DCR employees, since 2019. Currently, his tree crew has two employees. (*Resp.Ex.3*)
20. The current tree crew members were originally hired as Forestry Assistants, but they were each reclassified to Forester I, the same classification as the Appellant, in 2023. (*Testimony of Keleher*)
21. Though the crew members are not always physically with him, the Appellant assigns them their daily tasks, gives direction, and follows up with them on project status. He also provides training. (*Testimony of Keleher*)

22. Additionally, the Appellant conducts the Employee Performance Review System (EPRS) reviews for both employees. (*Testimony of Keleher*)
23. Mr. Enochs serves as the administrative superior and is in charge of recording the time of all of the Forester I's, including the Appellant and the members of his tree crew. (*Testimony of Vallely*)

*Other Level Distinguishing Duties of a Forester II*

24. Level distinguishing duties of the Forester II classification from the 1995 specifications include the following:
- a. Oversee forest resource management and maintenance activities for an entire forestry land management program district or water supply watershed area by reviewing, evaluating, developing and drafting comprehensive forest management plans and operating procedures for that entire forestry district or watershed area.
  - b. Provide technical assistance under agency service forestry and state lands management programs to private and municipal forestland owners and the primary forest industry in areas such in silviculture, wildlife habitat characteristics, proper management practices to protect against soil erosion and water pollution, protection of rare and endangered species and other non-timber values, insect and disease infestation and marketing and utilization of forestry products; approve cutting plans of Foresters from own and other state agencies; administer the forest Stewardship Program and other federal cost share programs.
  - c. Provide technical advice regarding new land acquisitions for the district or watershed area by reviewing the forestry characteristics of the land and plan and

conduct timber inventory valuation for these acquisitions in order to assist others in making land acquisition decisions.

- d. Assist in the development and implementation of an agency-wide system of contracts for the sale of various forest products including stumpage, logs, pulpwood and fuelwood by recommending and disseminating contracting procedures.
- e. Conduct meetings, task forces and/or conferences with agency staff and professionals in related disciplines on issues such as meeting forest management goals, updating silvicultural techniques, and new forest resource management procedures.
- f. Represent agency at local public hearings, advisory committee meetings and task forces concerning forest resource management.
- g. Conduct environmental impact and economic analyses of forest resource management programs for assigned watershed area or statewide program.
- h. Collaborate with professional staff in related disciplines in the preparation of forest resource management plans and research projects.
- i. Assist in designing, coordinating and conducting training programs for agency staff, consultant foresters, timber harvesters, landowners and other organizations (including Department of Environmental Protection and U.S.D.A. Soil Conservation Service, Agricultural Soil and Conservation Stabilization and Forest Service) to enhance the delivery of program and improve skills in forest resource management and environmental protection on lands of the Commonwealth.

- j. Serve as a liaison to municipal, federal and state agencies and other organizations regarding forest resource management and environmental protection on lands of the Commonwealth.
- k. Apply for and coordinate the expenditure of federal grants designated for forest resource management program.
- l. Perform related duties such as evaluating and developing software applications, preparing specifications for equipment and supplies to be purchased for program and developing statistical methodologies and standards for the inventory of forest land. (*App.Ex.6*)

25. Eric Reynolds is a Forester II directly under Ms. Keleher. He holds a job with similar responsibilities to the Appellant except in the Western Massachusetts region. (*App.Ex.9; testimony of Valley & Keleher*)

26. During his appeal, the Appellant gave a breakdown of his work tasks and the percentage of his time spent on each task. This is the breakdown, along with which Forester I / Forester II duty most closely matches the task:

<b>Task</b>	<b>% of Time</b>	<b>Closest L.D.D.</b>
Supervise, schedule, assign, train, and work with tree crew.	45%	F. II, 1 – Oversee forest resource management...
Assess tree concerns reported from parks and public. Determine if action is needed.	15%	F. I, 2 – ... surveying forested lands ...
Survey parks, campgrounds, and other DCR lands for tree issues/tree maintenance needs.	15%	F. I, 2 – ... surveying forested lands ...
Maintain tree crew equipment such as chainsaws, etc.	10%	F. I, 10 – ... maintaining field equipment ...
Specify and monitor tree removal contracts and perform final walkthrough for approval.	10%	F. I, 3 – Monitors and assures compliance ... by contractors ...



Task	% of Time	Closest L.D.D.
Write specifications for upcoming equipment purchases, order arboriculture and other tree crew supplies, maintain inventory and distribute as needed.	5%	F. II, 12 – ... prepar[e] specifications for equipment ...

*(Resp.Ex.3)*

27. Combined with his supervisory duties, the Appellant performs the following level-distinguishing duties of a Forester II more than 50% of the time:

- a. #1, “Oversee forest resource management...”
- b. #4, “Assist in the development and implementation of an agency-wide system of contracts...”
- c. #5, “Conduct meetings, task forces and/or conferences...”
- d. #6, “Represent agency at [various public and/or governmental] meetings”
- e. #7, “Conduct environmental impact and economic analyses of forest resource management programs...”
- f. #8, “Collaborate with professional staff...”
- g. #10, “Serve as a liaison to municipal, federal and state agencies and other organizations regarding forest resource management...”
- h. #12, “Perform related duties [regarding software, equipment, supplies, and statistical methods]”. *(Testimony of Keleher)*

**LEGAL STANDARD**

Section 49 of G.L. c. 30 provides:

A manager or an employee of the commonwealth objecting to any provision of the classification affecting the manager or employee's office or position may appeal in writing to the personnel administrator. Any . . . 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 . . . it shall be effective as of the day of the appeal.

Generally speaking, “the bar for proving that one’s position is misclassified is set very high.”

Shields v. Department of Revenue, 21 MCSR 263, 266 (2008). To prevail in a reclassification, an appellant must prove, by a preponderance of evidence, that they perform a majority of the functions of the classification title they seek and that they perform those functions a majority of the time. See, e.g., Thompson v. Division of Insurance and HRD, 29 MCSR 565 (2016). Stated differently, in order to justify a reclassification, an employee must establish that they are performing 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%). Further, “[w]here duties are equally applicable to both the lower and higher titles, although they may be described slightly differently for each title, those types of overlapping duties are not distinguishing duties of the higher title.” Saunders v. Department of Labor Standards, 32 MSCR 413, 415 (2019).

However, when the classification series covering the positions is so dated that it no longer reflects how the positions are used in practice, then the majority standard may be judged holistically, considering factors such as official job descriptions for other instances of the positions and a reasonable extrapolation of the positions in the outdated series. See Strong v. Department of Pub. Health, 37 MCSR 193, 199 (2024) (upholding reclassification of registered nurse where series was 37 years old).

## **ANALYSIS**

### *The Appellant Supervised Two Forester I Employees in the Manner of a Forester II*

The Appellant is the direct supervisor for the other two Forester I level employees in the region. Per the forestry series specification, Forester I is “the entry-level professional job,” and Forester II is “the second-level professional job ... or ... the first-level supervisory job.” The “Supervision Exercised” of a Forester I involves, at most, mere oversight over non-professional employees. This clearly excludes oversight of Forester I employees, or more comprehensive management of any kind of employee. The “Supervision Exercised” of a Forester II includes direct supervision of any employee and oversight of professional employees, including Forester I’s. Additionally, both DCR and EEA HR view recording time and conducting performance reviews as important aspects of “supervising.”

The tree crew members are Forester I employees, which are “professional personnel,” not contractors, maintenance equipment operators, or laborers. Though the Appellant is not their administrative superior, he has assigned their work since they started at DCR. Though the Appellant does not record their work time, he does conduct their performance reviews and approves their leave time, which are important indicators of being a supervisor. He oversees their daily tasks and they report back to him as to the status of the projects. He is the person they contact if they have an issue, need help or guidance, and is responsible for their ongoing training. The fact that he has supervised them since they were hired as Forestry Assistants and they have now been promoted to Forester I to more closely align with their duties further supports the argument that the Appellant should be a Forester II. Ms. Vallely argued during her testimony that Forester I’s can supervise. This is true for a limited kind of supervision, but the Appellant exercises supervision that clearly exceeds the Forester I “Supervision Exercised” description.

Ms. Valley also testified that at neither the time of his appeal nor at the time of the hearing did the Appellant exercise any supervision, even the kind that can be performed by a Forester I. She did not make this claim in reference to any specific part of the Forester series. She did not support the claim with any documentation, investigation, or any other evidence, even when I prompted her to address this during the hearing. Her claim that he had no supervisory duties seems to have been based solely on the fact that he had no direct administrative reports, which is not how supervision is defined in the Forester series. Therefore, I do not credit Ms. Valley's claim that the Appellant does not "supervise." Moreover, in interpreting the series, I give weight to its datedness and the fact that his superiors believed he supervised the members of his crew. Finally, even if it is not an exact match, the supervision the Appellant exercises is clearly closer to a Forester II than a Forester I.

*The Appellant Spends Most of His Time Performing Level Distinguishing Duties of a Forester II*

In his initial appeal, the Appellant submitted a breakdown of his time. I credit this breakdown of the Appellant's time. DCR provided no alternative, did not dispute the breakdown in the record or at the hearing, and the breakdown is reasonable based on Ms. Keleher's description of the Appellant's duties. DCR *did* dispute: (1) that the Appellant's description of his first work task inaccurately described his work as "supervising", and (2) that, as described, less than 51% of the Appellant's time is spent on Forester II level distinguishing duties. As stated above, I find that the Appellant does "supervise" his tree crew in a manner consistent with the Forester II role. This is important for determining how the Forestry II duties should be interpreted in light of the Appellant's case.

Given that the job specifications are outdated, it is appropriate to interpret the series in light of a modern forestry employment context. See Strong, 37 MCSR at 199 (holding other evidence, such as job descriptions and work performed today that simply did not exist when the specifications were drafted, may influence reclassification appeal because nursing series not updated in thirty-seven years although nursing has evolved greatly since 1987). The Respondent analyzed the Appellant’s work by going through each of the Forester II level distinguishing duties and asking, “how much time do you spend on this duty?” With a better series that is more up to date with the modern world, that might be the right approach. But with this series, which requires interpretation, such a literal approach is too likely to ignore work that the employee performs that falls under a more modern conception of a Forester II level distinguishing duty. Instead, the proper approach is to ask, for each of the tasks in the Appellant’s breakdown: “In light of modern forestry work and the intent behind the original forestry series, should this task be interpreted as falling under any of the Forester II level distinguishing duties?” The Appellant’s first task, which comprises 45% of his time, is to “Supervise, schedule, assign, train, and work with tree crew.” Of the Forester I or II duties, I find that this task closely matches duty #1 of the Forest II L.D.D.’s: “Oversee forest resource management and maintenance activities for an entire forestry land management program district[.]” First, this is a reasonable description of the Appellant’s work—particularly because his assigned area covers one-third of Massachusetts. Second, it is a strange oversight in the Forester II duties that “supervising” is not mentioned. As described above, a Forester II can clearly exercise supervision in ways that a Forester I cannot. One would think that this extra responsibility would be somehow captured in the level-distinguishing duties of a Forester II, but it is not. In theory, an employee could spend 100% of their work time exercising supervision that clearly falls exclusively under a Forester II but spend

0% of their time performing a level-distinguishing duty of a Forester II. In a case with a more recent series, which leaves less room for interpretation, this paradox might be difficult to resolve. In this case, however, this issue is easily resolved by interpreting the Forester II explicitly defined duties to capture the role's exclusive supervisory responsibilities. Therefore, it is fitting to count the Appellant's supervising of his tree crew as "oversee[ing] forest resource management." Third, there are no Forester I duties that are a reasonable match for this task. The Appellant's final task, which is 5% of his time, is to "[w]rite specifications for upcoming equipment purchases, order arboriculture and other tree crew supplies, maintain inventory and distribute as needed." This clearly falls under Forester II duty #12, which includes preparing specifications for equipment to be purchased for the forestry program. Combined, these two tasks are 50% of the Appellant's work time. At the hearing, Ms. Keleher also identified six other Forester II level distinguishing duties that the Appellant performed (#4, #5, #6, #7, #8, & #10), albeit not so frequently that he accounted for them in the breakdown of his regular work time. Since he must spend *some* time attending to so many of the Forester II level distinguishing duties, I find that the Appellant spends the majority of his time performing the level distinguishing duties of a Forester II.

The Respondent raised the argument that much of his daily activities fall under Forester I, especially on days when he was not supervising the other crew members in person. Since the Forester II classification includes duties of Forester I, one would expect a Forester II to also be performing Forester I duties. The fact that there is so much overlap does not negate the reality that the Appellant is performing as a Forester II.

Eric Reynolds is a Forester II in western Massachusetts whose job is most similar to the Appellant's in that district. He primarily "assesses, implements and manages tree risk

assessment to ensure hazardous trees are properly managed, removed or pruned for safe public recreation on DCR lands,” and nothing in the specific breakdown of the role’s duties suggests that this would constitute less than half of his total time on the job.<sup>3</sup> Ms. Keleher’s description of the Appellant’s work is apparently equally applicable to Mr. Reynolds. Therefore, given the outdated nature of the Forester series, I must interpret Ms. Keleher’s remarks as consistent with Mr. Reynolds’s Forester II classification. For these reasons, I do not credit Ms. Keleher’s assessment that over half of the Appellant’s time is covered by Forester I common duties. Finally, the other reason cited by EEA HR for denying his reclassification, that his direct superior was only a Forester II, is no longer true as he has been re-classified as a Landscape Architect which is equivalent to a Forester III. Accordingly, for all the foregoing reasons, the Appellant’s appeal is allowed.

## CONCLUSION

For all the above-stated reasons, the appeal of Michael Luibil, filed under docket number C-24-183, is hereby *allowed*. In accordance with G.L. c. 30, § 49, his position shall be reclassified, effective the date that his appeal was filed with HRD, with commensurate compensation retroactive to that date, and the change documented appropriately in the personnel file applicable to this position and in his EPRS forms.

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<sup>3</sup> It was not properly established in the hearing that this was, in fact, Mr. Reynolds’s job description, because the Appellant did not establish its authenticity by witness testimony. Nevertheless, Ms. Valley did testify that it was a reasonable description of Mr. Reynolds’s position, and the Appellant did submit it into evidence under oath. Therefore, I find by the preponderance of the evidence that it is the official job description for Mr. Reynolds’s position.

Civil Service Commission

/s/ Shawn C. Dooley  
Shawn C. Dooley  
Commissioner

By vote of the Civil Service Commission (Bowman, Chair; Dooley, Markey, McConney, & Stein, Commissioners) on July 10, 2025.

Either party may file a motion for reconsideration within ten days of 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.

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:  
Michael Luibil (Appellant)  
Corinne Walsh, Esq. & Alexis Demerjian, Esq. (for Respondent)