

**COMMONWEALTH OF MASSACHUSETTS**

**SUFFOLK, ss.**

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

**RICHARD TRUBIANO,**  
*Appellant*

v.

C-17-039

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

Appearance for Appellant:

Richard Trubiano, pro se

Appearance for Respondent:

Kenneth Langley, Esq.  
Wendy G. Friedman, Esq.  
Labor Relations Unit/Shared Services  
Executive Office of Environmental Affairs  
251 Causeway St., Suite 600  
Boston, MA 02114

Commissioner:

Cynthia A. Ittleman

**DECISION**

On February 23, 2017, the Appellant, Richard Trubiano (Mr. Trubiano or Appellant), pursuant to G.L. c. 30, s. 49, filed a timely appeal with the Civil Service Commission (Commission), contesting the decision of the Department of Conservation and Recreation (DCR or Respondent) to deny his request to be reclassified to the year-round title of Forest and Park Supervisor III (FPS III). A pre-hearing conference was held on March 28, 2017 at the offices of the Commission in Boston. A full hearing was held at the same location on June 1 and July 14, 2017.<sup>1</sup> The hearing was digitally recorded and both parties were provided with a CD of the

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<sup>1</sup> The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§1.00, *et seq.*, apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

hearing<sup>2</sup>. After the hearing, the parties submitted post-hearing memoranda. For the reasons stated herein, the appeal is denied.

**FINDINGS OF FACT:**

A total of sixteen (16) exhibits were entered into evidence at the hearing.<sup>3</sup> At the first day of the hearing, I asked the Respondent to produce two (2) affidavits of a person/s at EOEА with personal knowledge of: 1) EOEА’s seasonal hiring and seasonal promotions of year round employees; and 2) whether the Appellant’s Form 30 is accurate. The Respondent produced the two (2) affidavits, which were received at the Commission on June 19, 2017 and marked Exhibits 8 and 9, respectively. Based on these exhibits, the testimony of the following witnesses:

*Called by the Respondent:*

- Harry Pierre-Mike, Advisor (Director of Workforce Management prior to retirement), Human Resources, EOEА
- Germaine Valley Riordan, Performance and Policy Analyst, Human Resources, EOEА
- Danielle Daddabbo, Classification Coordinator, Human Resources, EOEА
- Susan Hamilton, Director of Park Operations, DCR

*Called by the Appellant:*

- Richard Trubiano, Appellant

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

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<sup>2</sup> 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 the substantial evidence, arbitrary and 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.

<sup>3</sup> The sixteen (16) exhibits were marked Exhibits 1, 1A-1H, and 2-7.

1. The Appellant is a long-term parks employee. (Testimony of Appellant) He was appointed to the position of FPS II at Hopkinton State Park in the DCR North Region – Metro West District<sup>4</sup> in 2004 or 2005. (Ex. 3; Stipulation) In season, he is temporarily promoted to FPS III. (Stipulation)

2. The origin of the seasonal appointments and promotions program is as follows,

... Over the past 15 years, the agency has lost thru (sic) attrition a number of year round employees. In 2008, the agency hired a number of year round staff via the legislatively created Beaches Commission. There was also substantial funding tied to this initiative that paid for the staff and equipment. At that time a select number of year round positions were posted as F&P Sup III in the summer and F&P Sup II in the winter months. Both titles were on the posting.

In 2012, that agency went thru (sic) a reorganization that officially blended the former MDC and DEM [Department of Environmental Management] regions and structure statewide. As part of this, the Rec Fac Sup IV [Recreation Facilities Supervisor], Grade 20's (sic) were now called Field Operation Team leaders [FOTLs] and took on more facilities under a complex structure. As an effort to allow these 20's (sic), who were facility supervisors at our large facilities, the ability to take on more parks, we supplemented them by posting a (sic) seasonal F&P Sup III positions where the facility did not have one. That was the case at Hopkinton. It was clear at the time of the interviews that this was a seasonal supervisory position. In the subsequent years, this position was on our seasonal hiring plan and filled by a recall process. (Ex. 8)(emphasis in original)<sup>5</sup>

3. The state's Human Resources Division (HRD) accepts DCR's seasonal appointments and promotions. Not all FSP IIs are seasonal FSP IIIs, like the Appellant. With respect to job titles, DCR's practice is to keep employees separated by two job titles so that their salaries do not overlap. (Testimony of Valley Riordan)

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<sup>4</sup> There are five (5) DCR Park regions in the state. (Testimony of Valley Riordan)

<sup>5</sup> Under the 2015 statewide early retirement incentive program, DCR lost additional employees. (Testimony of Valley Riordan)

4. The Hopkinton State Park's state website provides the following overview: "Hopkinton State Park includes a little bit of everything: 1,500 acres of forest crisscrossed by hiking trails, beaches, stocked fishing, first-come-first-served picnic areas, and a reservable group picnic site." (Administrative Notice, <https://www.mass.gov/locations/hopkinton-state-park>, September 11, 2018) Facilities at the Park include: a boathouse, a boat ramp, grills, a pavilion, picnic areas and restrooms. As of September 11, 2018, there was parking at the Park for one hundred (100) cars. (Id.) In winter, Hopkinton is mainly open for passive recreation. (Testimony of Daddabbo)
5. Also located in Hopkinton is Whitehall State Park. The Park's state website provides the following overview: "Whitehall State Park's main feature is the Whitehall Reservoir, where visitors can boat (boat ramp available) and fish. The reservoir is a popular icefishing spot, too. Hikers will find trails along the reservoir's edges." (Administrative Notice, <https://www.mass.gov/locations/whitehall-state-park>) Whitehall activities are: motorized boating, canoeing and kayaking, cross-country skiing, fishing, hiking, horseback riding, mountain biking and sailing. The available facility at Whitehall is a boat ramp. As of September 11, 2018, the Park had on-site free parking. (Id.)
6. Ashland Park is adjacent to Hopkinton State Park. The state park website provides the following overview: "Ashland State Park has 470 acres including a 157 acre reservoir. The park operates seasonally and offers hiking, biking, boating, swimming, and fishing. (Administrative Notice, <https://www.mass.gov/locations/ashland-state-park>, September 11, 2018) Facilities at the Ashland Park include: a boat ramp, picnic areas, restrooms and grilling. As of September 11, 2018, visitors could park for a fee. (Id.)

7. The Appellant requested to be reclassified to FPS III year-round on January 6, 2014. He wrote, in part, that he believed his Form 30 “mirrors” the duties and responsibilities of an FPS III year-round. He added that he should be promoted, in part, due to “certain personnel changes and more recent management re-organizations within DCR, I am by default, the current operations supervisor at the Hopkinton State Park Complex and assume a lead role in the daily operations”; “meeting[s] with Friends Groups, park user groups, as well as project managing with trades and vendor companies and staff”; performing like the FPS III at Cochituate State Park, Dun Pond State Park, Harold Parker State Park and others; “added properties [at Hopkinton] and their associated management responsibilities”; and that, unlike the Appellant, “many year-round [FPS IIIs] in the Department ... [have] only vacant positions under their perview (sic)”. (Stipulation; Ex. 1G)
8. The Appellant completed an Audit Interview Guide Form (Interview Guide) in this regard on June 9, 2015. The Appellant described the general basis of his appeal, in part, as follows,

On April 30 2012, the date to which the current State Park’s (sic) Re-organization (sic) Plan was implemented, my responsibilities and duties as the [FPS II] were performed at a higher classification as a result ... and the fact that the Lead Rec. Fac. Supervisor IV became the [FOTL] for the entire Metrowest District. I have taken on the role and have been performing duties and responsibilities as a [FPS III] ... Indeed I have been performing at an above level of F+P Sup. II since 2003 ... DCR’s definition of Hopkinton State Park as the ‘Flagship Park’ for the Metro west District ... with many complexes ..., greater than Cochituate State Park, and Great Brook Farm State Park, where currently there are [FPS IIIs] performing the day to day supervisory duties and responsibilities ..., the same duties I am currently performing year round ....”  
(Ex. 1E)

The Appellant also lists therein a variety of DCR and other state personnel, schools, volunteers and community groups with whom he is in contact at various times; additional

assignments he has been given, such as “appointed as Complex manager of 3 Waterfronts for their on and off season direct management and their associated staff and recreational use in planning, on and off season planning and equipment maintenance and ordering and training” per Jeff Cate, the Appellant’s supervisor, in 2011; receives and works with budgets; manages projects, oversee all repairs; inspects assigned areas for safety; and “[m]onitors the operation, administration, and maintenance of satellite areas of complex including Whitehall and Ashland State Parks.” (Id.) In addition, the Appellant wrote that he faces problems to solve such as personnel issues, equipment break downs, scheduling matters, and emergencies. The matters he would refer to others include dismissal of an employee, approval of overtime for park staff, crimes or major emergencies and approval of “specific directives”, such as plow plans, staffing matrices, disaster plan and “ultimate capital expenditures”. (Id.) The Appellant added that Mr. Cate “has assigned to me all the operations aspects of Supervisor at Hopkinton State Park complex and its Satellite Facilities.” (Id.) Asked to list people he supervises “year round”, the Appellant replied, “Rec Fac Repairer, Forest and Park Sup. I (2), Lifeguard II (2), Laborers I (8), and Lifeguards (16).” (Id.)<sup>6</sup>

9. Asked in the Interview Guide to list his duties and responsibilities, the Appellant listed:
  1. Maintain records, logs, reports, regarding assigned work to provide information and make recommendations, and any associated collection of fees. Including fishing and Boating Access permits, A-B bus permits, and Dock/Mooring/Pier Permits. Daily/weekly 25%
  2. Represent Agency at meetings with representatives of Friends Groups, scholastic Groups, Volunteers, Partnerships, SCA, and Local Community Groups monthly 10%

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<sup>6</sup> Since at least outdoor Lifeguards do not work off-season, they are clearly not year-round employees. As indicated in Lachappelle v. DCR, C-17-039, the FPS Specification requires all three (3) supervisors to directly supervise a number of (presumably) year-round employees and indirectly supervise even more employees and there has been significant attrition in DCR park employees, at least as of this time, the number of personnel that an FPS supervises should be given limited consideration in deciding reclassification requests.

3. Supervises Staff and assigns work as well as partakes in the operation and maintenance of the complex  
Daily 40%
4. Coordinate the work of volunteers, SCA personnel, Scout and Community Projects  
monthly 10%
5. Receives and works with budgets for assigned areas projecting needs, requests, and maintaining their associated records  
Daily/monthly 15%
6. Initiates, requests, monitors, project manage and assists with PSO work being performed at Facilities  
monthly 15%
7. Initiate, request, and partake and oversee all repairs to facility equipment and part requests  
Daily/wk 20%
8. Inspects assigned recreational areas for compliance in safety standards and determine maintenance and capital needs  
daily 35%
9. Monitors the operation, administration, and maintenance of satellite areas of complex including White hall (sic) and Ashland State Parks  
Daily/weekly 25%

(Ex. 1E)

10. By letter dated February 20, 2014, Ms. Penny Carney, DCR Director of Human

Resources, asked the Appellant to submit a current Form 30 (job description) signed by him and his supervisor, a completed Interview Guide, a current organizational chart signed by his supervisor, and any other material in support of his reclassification request.

(Ex. 1F)

11. EOEА then-Acting Director of Workforce Management Germain Valley Riordan

appointed Ms. Danielle Daddabbo, EOEА Human Resources Classification Coordinator, Human Resources, to be the primary person involved in reviewing the Appellant's reclassification request, along with several DCR human resources personnel. After receiving the Appellant's Interview Guide, Ms. Valley Riordan and another person (no longer working at DCR) interviewed the Appellant. (Testimony of Valley Riordan)

12. Ms. Valley Riordan has interacted with the Appellant previously in their work in the state parks. The Appellant has an extraordinary work reputation. (Testimony of Valley Riordan)

13. In considering the Appellant's reclassification request, DCR reviewed his Interview Guide, the comments of the Appellant's supervisors, the FPS Classification Specification (FPS Spec) and the Appellant's Form 30 (job description),. DCR did not consider the Appellant's FY 2014 EPRS because it did not believe it was required to do so.

(Testimony of Valley Riordan)

14. Mr. Jeff Cate, Field Operation Team Leader (FOTL), is the Appellant's immediate supervisor. In addition to overseeing all parts of the Hopkinton Complex, Mr. Cate also oversees Cochituate Park. (Testimony of Valley Riordan) Mr. Cate was asked to review and provide comments on the Appellant's completed Interview Guide. On June 23, 2015, Mr. Cate responded, indicating that he supported the Appellant's Interview Guide because some of his duties had been delegated to the Appellant. (Ex. 1E) Mr. Cate did not articulate the FPS III duties and responsibilities delegated to the Appellant, nor whether he performs the FPS III duties a majority of the time. (Administrative Notice)

15. Ms. Kathryn Garcia, District Manager, Mr. Cate's direct supervisor and the Appellant's indirect supervisor, was asked to review and provide comments on the Appellant's completed Interview Guide. On June 18, 2015, Ms. Garcia responded, indicating that she supported the Appellant's Interview Guide because of the size of the complex he oversees and because there are only three (3) staff members year-round. Ms. Garcia added that the Appellant "picks up the duties and responsibilities of an F&P III", although she did not articulate those delegated duties and responsibilities, nor whether he performs the FPS III duties a majority of the time. (Ex. 1D; Administrative Notice)

*Appellant's Form 30*

16. The Appellant's Form 30, dated January 6, 2014, general statement of duties and responsibilities provides that the FPS II, "[s]upervises the activities involved in the



operations and maintenance of the Hopkinton State Park Complex by supervising the maintenance, inspections, and patrolling of the forest and park recreational area and facilities. Oversees the daily activities, tasks, and schedules of the facility maintenance staff. Acts as facility supervisor in absence of lead supervisor. Complex includes Hopkinton, Ashland, Whitehall, Marlboro/Sudbury SF [State Forest], 4 Flood Control sites and assist as required at Cochituate/Callahan/Elm Bank.” (Ex. 1B)<sup>7</sup>(emphasis added)

17. The Appellant is supervised by Mr. Cate. The Appellant directly supervises one (1) Recreation Repairer year-round, as well as two (2) seasonal FPS Is, and two (2) seasonal lifeguards. He indirectly supervises summer seasonal laborers and lifeguards “based on average of prior years”. (Ex. 1B)

18. The FPS II duties and responsibilities include,

Supervises the maintenance of Hopkinton State Park Complex, including such activities as grounds maintenance, signage, building and equipment maintenance and repair, and removal of hazardous trees or limbs.  
Performs as the lead contact person for agency for Whitehall SP [State Park] issues.  
Performs duties associated with being designated the Metro West District Trails Coordinator.  
Inspects the condition of assigned recreational area and facilities ...  
Patrols areas and facilities to maintain security ...  
Manages and develops weekly work schedules for seasonal staff @ Hopkinton SP.

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<sup>7</sup> Susan Hamilton, now DCR Director of Park Operations, formerly North Region Director, testified at the Commission. As noted in the introduction here, at the hearing in this case, I asked DCR to produce two (2) affidavits - one (1) regarding the history of seasonal hiring and promotions of year-round employees and the accuracy of the Appellant’s Form 30 job description. With regard to the latter, Ms. Hamilton attested, “To the best of my knowledge Richard Trubiano’s Form 30 is accurate with these exceptions: Richard supervises the maintenance of Hopkinton, Whitehall, and Ashland State Park, not the entire Hopkinton Complex that includes Cochituate State Park and several other properties. Also, at this time, he is not asked to apply herbicides and insecticides. ...” (Ex. 9) While the Appellant’s responsibilities may have been modified, as suggested by Ms. Hamilton’s affidavit, such change is not reflected in the Appellant’s Form 30 and, therefore, is not included among these findings. However, I note that the record does not include information related to any work that the Appellant may perform at the Marlboro/Sudbury State Forest and four (4) Flood Control sites.

Represents the agency at meetings to provide information and gain cooperative partnerships.  
 Issues permits or gives permission for the use of the recreational facility and collects related fees.  
 Performs maintenance and operation of mechanism of multiple dam structures  
 ...  
 Maintains records and prepares work reports ...  
 Coordinates the activities and work of volunteers ...  
 Works with contracted vendors ... [for] repairs of maintenance ...  
 Develops park betterment work projects and coordinates purchase of supplies  
 ...  
 Coordinates and supervises the water program programming at 3 ...beaches.  
 Develops and presents information/interpretive programming to organized groups ...  
 Recommends policy change, budget needs to lead supervisor. ...  
 Inspects the condition of the state operated forest and park recreational areas to determine their suitability for public use, ensure compliance with safety standards and determine maintenance needs.  
 Patrols area to ensure compliance with the rules ...  
 Prepares reports and records relating to the lands, buildings, equipment, vehicles, attendance, income, expenditures, and personnel ...  
 Represents the division at various meetings and conferences with other state, federal and municipal agencies and community and other groups and provides information, agency objectives, and cooperation.  
 Maintains inventory of supply needs ...  
 Operates and performs routine maintenance on ... equipment and vehicles.  
 Interviews candidates for employment ... provides on the job training.  
 (Ex. 1B)

19. The FPS II minimum entrance requirements include “ ... at least (A) two years of full-time, or equivalent part-time, technical or professional experience in the field of forestry, parks or recreational management or (B) any equivalent combination of the required experience and substitutions[.]”....” (Id.)

*FPS Classification Specification (FPS Spec)*

20. The FPS Spec in use is dated 1987. It contains three (3) levels of Supervisor: FPS I, II and III. (Ex. 2)

21. In addition to the commonalities among the FPS I, II and II positions, FPS IIs,

1. Monitor the activities of recreational area personnel to ensure the maintenance of state forest and park areas for recreational purposes.
2. Confer with agency personnel concerning assigned unit activities to resolve problems, provide information and make recommendations.
3. Review reports and make recommendations concerning actions to be taken to resolve problems and/or to recommend changes in policies, procedures, etc. (Id.)

Further, FPS IIs **may** also “[p]repare budgets for the assigned area by projecting resource needs and preparing required documentation for agency’s budget request.” (Id.)

22. In addition to the commonalities, FPS IIIs,

1. Monitor the operation, administration and maintenance of 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.<sup>8</sup>
2. Represent the agency at meetings and conferences with representatives of federal, state and municipal agencies and community and other groups to provide information concerning agency objectives and to obtain their cooperation in achieving those goals and/or to resolve problems.
3. Prepare budgets for assigned areas by projecting resource needs and preparing required documentation for agency’s budget request.
4. Initiate requests for capital outlay funds and monitor capital outlay expenditures. (Id.)(emphasis added)

23. FPS IIs “... receive general supervision from Forest and Park Supervisors or other employees of higher grade who provide guidance on policies and procedures, assign work and review performance through conferences and reports for effectiveness and compliance with applicable rules and regulations.” (Id.) FPS IIIs receive the same

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<sup>8</sup> In her testimony, Ms. Valley Riordan listed the names of parks that she considered to be “major recreation areas” or a qualifying “heritage park” but added that different DCR Human Resources personnel may think that other state parks qualify as “major recreation areas” or as a “heritage park”. DCR should consider identifying such parks by a more objective standard. At the Commission hearing, Ms. Valley Riordan indicated that “metrics” would now be applied to assess reclassification requests.

supervision but only from employees of higher grade (not from other Forest and Park Supervisors). (Id.)

24. FPS IIs provide direct supervision for 1-10 personnel and indirect supervision for 6-25 personnel. (Id.)

25. FPS IIIs provide direct supervision for 5-15 personnel and indirect supervision for 10-50 personnel. (Id.)<sup>9</sup>

26. The minimum entrance requirements (MERs) for FPS IIs include, “ ... at least (A) three years of full-time, or equivalent part-time, technical or professional experience in the field of forestry, parks or recreational management and (B) of which at least one year must have been in a supervisory capacity, or (C) any equivalent combination of the required experience and the [educational] substitutions [listed therein] ....” (Id.)<sup>10</sup>

27. The MERs for FPS IIIs include, “ ...at least (A) four years of full-time, or equivalent part-time, technical or professional experience ... and (B) of which at least two years must have been in a supervisory capacity, or (C) any equivalent combination of the required experience and the [education] substitutions [listed therein] ....” (Id.)

*Appellant’s FY 2014 EPRS*<sup>11</sup>

28. The FY 2014 EPRS lists the Appellant’s title as FPS II, his supervisor was Mr. Cate and the EPRS reviewer was Kathryn Garcia. (Ex. 5)

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<sup>9</sup> As indicated in Lachapelle v DCR, C-16-131, given the attrition at DCR and its employment of seasonal employees, DCR should not factor the number of year-round employees a reclassification candidate supervises into determining whether to grant the reclassification request.

<sup>10</sup> Although the FPS III Spec MERs include three (3) years of full-time experience, the Appellant’s Form 30 states that the MERs include (2) years of full-time experience.

<sup>11</sup> The Appellant’s FY 2015 EPRS is Ex. 6 and his 2016 EPRS is Ex. 4. There are not referenced in this decision since the Appellant requested reclassification in FY 2014.

29. The Appellant’s work, overall, was rated “exceeds”. In addition, at the annual review, Mr. Cate wrote, “of particular note is waterfront direct management + infrastructure + vehicle maintenance.” (Id.)

30. The Appellant’s FY 2014 EPRS had four (4) duties:

1. Supervises the activities of employees and performs visitor services, maintenance, public safety, and resource protection functions.  
Performance Criteria ...
  - a. employees supervised in fair and equal manner.
  - b. employees properly trained and assigned appropriate job tasks.
  - c. ensure tasks are carried out in timely and complete manner.
  - d. communicates instructions clearly and effectively.
  - e. assure proper conduct/uniform adherence of employees.
  - f. keeps unit supervisor informed of routine functions and special problems. (Id.)

Mr. Cate added, “Waterfront operations management is exemplary.” (Id.)

2. Supervises the patrol and surveillance of all areas under jurisdiction.  
Performance Criteria: ...
  - a. ensure visitors are informed of regulation infractions through direct contact, signs etc.
  - b. any problems unenforceable are reported to proper enforcement authorities.
  - c. Incident reports are filed in complete and timely manner.
  - d. Continuous monitoring of parks for encroachments, illegal dumping, vandalism etc.
  - e. Maintains good working relationship with Whitehall SP Friends Group. (Id.)

Mr. Cate added, “Overall good – good working relationship with Friends of Whitehall[.]”

(Id.)

3. Maintains records and accounts and prepares reports.

Performance Criteria: ...

- a. records and reports are completed in complete and timely manner.
- b. files and records are accurate and to DCR standards.
- c. maintains waterfront operations/training paperwork for Hopkinton and Ashland SP[.]”

4. Supervises and participates in the cleaning and maintenance of facilities, grounds and equipment.

Performance Criteria: ...

- a. ensure all buildings and grounds are clean, safe condition.
- b. ensure park equipment and vehicles are kept, (sic) clean, safe, functional.
- c. works well as 'coach' with employees.
- d. major problems are reported to unit supervisor.
- e. purchase required supplies and equipment following DCR protocols.
- f. follows PSO protocols.

Mr. Cate added, “[c]ontinues to improve park facilities for public. Works DCR repair processes well (PSO + vehicles). High level of performance.” (*Id.*)

#### *DCR’s Determination and Appeal Therefrom*

31. After interviewing the Appellant and reviewing Appellant’s Interview Guide, Form 30 and FPS Specification, Ms. Daddabbo recommended to Ms. Valley Riordan that DCR deny the Appellant’s reclassification request. Ms. Daddabbo drafted the audit report, dated August 19, 2016, pertaining to the Appellant’s requested reclassification. The audit report stated, in part,

**DCR has an extensive Seasonal Promotion program** which provides employees the opportunity to apply for temporary promotional assignments throughout the agency. These temporary promotions are used to meet DCR’s needs during the time period when there is increased visitation, camping, events, and activities ... There is also increased responsibility due to the hiring of approximately 2000 seasonal staff agency wide and most seasonal promotions are supervisory in nature. If an employee applies for and receives a temporary seasonal promotion they are ‘called back’ to it each year [if they want] for the duration of the following seasons.

Mr. Trubiano receives a seasonal promotion to the title of [FPS III] each year during the summer season, from approximately the end of March or early April until mid November/early December. During this time he is compensated at the level and pay of a [FPS III].

... **there are no permanent changes in duties and responsibilities**, there is no basis to reallocate this position to a [FPS III] on a year round basis. ...the Respondent denied the Appellant’s reclassification request.  
(Ex. 1A)(emphasis added)

32. Ms. Daddabbo also drafted a letter dated August 19, 2016 to the Appellant denying his reclassification request, which letter was signed by Ms. Valley Riordan. (Testimony of Daddabbo; Ex. 1H)

33. On an unspecified date thereafter, the Appellant asked the state's Human Resources Division (HRD) to review the Respondent's denial of his reclassification request. (Administrative Notice)

34. By letter dated February 3, 2017, HRD denied the Appellant's appeal of the DCR decision. (Ex. 1)

35. The Appellant filed the instant appeal on February 23, 2017. (Administrative Notice)

### *Legal Standard*

Pursuant to G.L. c. 30, s. 49, the Commission is charged with hearing the appeal of an employee aggrieved by a classification decision of a personnel administrator regarding "any provision of the classification affecting his office or position." *Id.*

"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). It is well established that, in order to justify a reclassification, an employee must establish that he is performing duties encompassed within the higher level position the majority of the time. *See, e.g. Pellegrino v. Department of State Police*, 18 MCSR 261 (2005); Morawski v. Department of Revenue, 14 MCSR 188 (2001); Madison v. Department of Public Health, 12 MCSR 49 (1999); and Kennedy v. Holyoke Community College, 11 MCSR 302 (1998).

## *Analysis*

The Appellant has not established by a preponderance of the evidence that he performs the functions of a FPS III a majority of his time. His FY 2014 EPRS duties and performance and his FPS II Form 30 indicate that the Appellant performs the functions of an FPS II. The Appellant appears to meet the minimum entrance requirements for an FPS III. However, the Appellant does not perform the level-distinguishing duties of an FPS III as indicated in the FPS Spec. While the Appellant, like other DCR employees following significant attritions, has been asked to do more with less, that does not establish that he performs the functions of an FPS III a majority of the time. In his Interview Guide, the Appellant asserts that he is aware of FPS IIIs in other parks who perform “the same duties I am currently performing year round.” Ex. 1E. However, it is unclear what tasks FPS IIIs in other parks perform that the Appellant also performs a majority of his time warranting his reclassification to an FPS III year-round. Although his supervisors, Mr. Cate and Ms. Garcia, both wrote that they supported the Appellant’s reclassification to FPS III year-round, neither of them described the functions of an FPS III that the Appellant performs a majority of his time. To the contrary, DCR’s Appeal Audit Report Form specifically noted that, “there are no permanent changes in duties and responsibilities” for the Appellant when he receives the seasonal temporary promotion to FPS III. As a result, the Appellant retains his FPS II title in the off-season. In fact, it appears that the “temporary promotion” is, at least in part, financial, in recognition of the increased volume of work at the parks during their more active season rather than a change in their duties. There is no evidence in the record indicating that the Appellant’s seasonal assignments include those of an FPS III, nor is there any evidence that DCR performed a reclassification analysis before temporarily promoting the Appellant to FPS III. Moreover, DCR acknowledged that it extends



temporary promotions to supervisors due to the increase the number of seasonal employees requiring supervision, especially in view of the staff attritions.

Further, the FPS Spec specifically lists four (4) level-distinguishing duties of an FPS III. They are: 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 prepare documentation for DCR’s budget requests; and 4) “initiate requests for capital outlay funds and monitor capital outlay expenditures”. Ex. 2. Although it appears that the Appellant is directly responsible for operating Hopkinton State Park and has responsibilities at the adjacent smaller parks, which are significant responsibilities, he has not established by a preponderance of the evidence that his assignments involve a “major recreation area” or a “heritage park” with multiple facilities. The Appellant established that he works with other DCR and other state personnel, municipal police when there may be illegal activity at the parks, but there is no indication that he represents the parks at meetings and/or conferences with federal agencies. Lastly, there is no indication in the record that the Appellant prepares budgets for the parks to which he is assigned or prepares documentation for DCR’s budget requests, or that he initiates requests for capital outlay funds and monitors capital outlay expenditures as required by the FPS III Spec level-distinguishing duties.

Finally, the Appellant argues that the DCR process of reclassification requests was flawed. Specifically, he asserts that the DCR decision makers, Ms. Daddabbo, DCR Classification Coordinator, and Ms. Valley Riordan, then-Acting Director of Workforce Management, were not familiar with the parks where the Appellant works. While Ms. Daddabbo

and Ms. Valley Riordan acknowledged at the Commission hearing that they had not visited the locations where the Appellant works when considering his reclassification request, they solicited and received written comments from Mr. Cate, the Appellant's direct supervisor, and Ms. Garcia, his indirect supervisor. Thus, Ms. Daddabbo and Ms. Valley Riordan obtained information directly from the Appellant's supervisors about the work he performs. While both of these supervisors lauded the Appellant's work and supported the Appellant's request, they did not describe the FPS III functions that the Appellant performs a majority of the time. The Appellant further asserts that he should be reclassified to fill a vacant FPS III position. In particular, he asserts that Mr. Cate was an FPS III prior to being appointed to the position of FOTL. However, an agency is not required to fill a vacancy with a reclassification or otherwise.

#### *Conclusion*

Accordingly, for the above stated reasons, the reclassification appeal of Richard Trubiano, Docket No. C-17-039, is hereby denied.

Civil Service Commission

*/s/Cynthia A. Ittleman*

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Cynthia A. Ittleman, Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman and Stein (Commissioners) – Yes; and Tivnan (Commissioner) – No; Camuso (Commissioner) – absent)) on September 27, 2018.

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:

Richard Trubiano (Appellant)

Kenneth Langley, Esq. (for Respondent)

Debra Friedman, Esq. (for Respondent)

John Marra, Esq. (for HRD)