

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

100 Cambridge St., Suite 200
Boston, MA 02114
(617) 979-1900

STANLEY SLEPOY,

Appellant

Case No.: C-20-005

v.

MassDOT,

Respondent

DECISION

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

Pursuant to 801 CMR 1.01 (11) (c), the Magistrate issued the attached Tentative Decision to the Commission. The Appellant submitted objections and the Respondent submitted a reply to those objections. In the Appellant's Objections to the Tentative Decision (Appellant's Objections), the Appellant submitted the following objections:¹

1. The admission of Exhibit 26 [Affidavit of Scott Bosworth] was [in] error and the conclusions drawn from said document are inappropriate.
2. The conclusion that the Appellant does not meet the minimum entrance requirements of the position he and his supervisor assert he has [been] performing is not supported by substantial evidence.

I. Appellant's Objection Concerning Exhibit 26

As to the first objection, the Appellant proffers the following bases of error in the admission of Exhibit 26: (1) Exhibit 26 is hearsay evidence that was refuted by the Appellant's in-person testimony (Appellant's Objections p. 3); (2) Bosworth did not testify at the hearing (Appellant's Objections p. 2); and (3) the Magistrate failed to observe [the Commission]'s "admonition that

¹ The Respondent did not submit any objections but did file Respondent's Reply to Appellant's Objections.

Exhibit 9 was only to be discredited upon reflection of evidence at hearing....” (Appellant’s Objections p. 3.)

In matters before the Commission, hearsay evidence is generally admissible so long as the evidence contains indicia of reliability and probative value. Once admitted by the Magistrate’s January 4, 2023 decision, whether or not the Appellant’s in-person testimony contradicted Exhibit 26, is a matter that would go to the weight of the evidence, not its admissibility. Here, after a review of the record, the Commission finds that the Magistrate’s decision to enter Exhibit 26 into evidence was not an error as Exhibit 26 clearly possesses probative value. Notably, several pieces of evidence corroborate the reliability of Exhibit 26, not least of which Exhibit 24 and testimony provided during the hearing.

Second, the Appellant cites Bosworth’s failure to testify at the hearing as a basis for error in the Magistrate’s admission of Exhibit 26. (Appellant’s Objections p. 2.) The Magistrate’s January 4, 2023 ruling admitting Exhibit 26 into evidence afforded *both* parties the opportunity to subpoena the affiant, Bosworth, for the second day of hearings. (Administrative Record, Email dated 1/4/2023 from John Wheatley.) This allowance provided, “If live testimony is desired (*e.g. for petitioner’s counsel to cross-examine*), either party may request a subpoena....” (*Id.* emphasis added.) Here, the Appellant chose not to subpoena Bosworth, where he was explicitly provided the opportunity to do so, and yet he is simultaneously asking the Commission to draw a negative inference against the Respondent. Such an inference is not warranted. Where the Magistrate allowed into evidence Exhibit 26, the consequences of the Appellant’s decision to refrain from subpoenaing Bosworth must be borne by the Appellant.

Third, the Appellant contends that as a basis for error in the admission of Exhibit 26 the Magistrate failed to observe [the Commission’s] “admonition, as part of a pre-hearing conference conducted by the Commission, that Exhibit 9 [a Form 30, i.e. job description, that was completed by the Appellant and signed by Bosworth] was only to be discredited upon reflection of evidence at hearing.” (Appellant’s Objections p. 3.) However, in considering Exhibit 9 during the pre-hearing, the Commission held, “Other evidence [to be addressed at the full hearing] will determine the weight, *if any*, that may be assigned to this document offered by the Appellant.” (Appellant’s Objections p. 2, emphasis added.) The Commission intentionally left it to the discretion of the presiding officer, the Magistrate, what treatment should be afforded to Exhibit 9.

Nonetheless, were this Commission to adopt the Appellant's position that the Magistrate’s admission of Exhibit 26 was in error, the full record before the Magistrate demonstrates that Exhibit 26 served to corroborate other substantive and impeachment evidence submitted during the full hearing.² Thus, notwithstanding Exhibit 26, the Magistrate’s decision is supported by sufficient evidence.

² Bosworth in Exhibit 26 stated that the Appellant “never performed the duties of a Federal Coordinator V...” This statement corroborates substantively, for example, Bosworth’s statement in Exhibit 24 where he writes that the Appellant, “does not perform in the capacity of a Federal Aid Coordinator V.” Additionally, Exhibit 26 also presents impeachment value, corroborating several other pieces of impeachment evidence before the Magistrate, notably the Appellant’s own admission as well as Gubbins’s testimony, that would allow the Magistrate to discredit Exhibit 9 entirely based upon the Appellant’s completion of the Form 30 himself.

For the reasons stated above, this objection is overruled.

II. Appellant's Objection on the Minimum Entrance Requirements

As to their second objection, the Appellant states: "Inexplicably, the Tentative Decision (at page 14) asserts that the Appellant '...plainly does not meet the minimum entrance requirements for the (petitioned for) position of FAC-V, having none of the requisite ... work experience.'" (Appellant's Objections p. 3.) As a preliminary matter, the Appellant omits the following language from the Tentative Decision: "civil engineering degrees and." This omission is significant. It presents an incomplete picture of the Tentative Decision's findings and of the minimum entrance requirements for the FAC-V position.³

The Appellant's argument in support of his objection, that the Appellant's performance of FAC-V duties over three years is sufficient evidence to find that the Appellant meets the minimum entrance requirements, is without merit. Even assuming that the Appellant was performing FAC-V duties, the Appellant's position conflates actual performance with threshold qualifications that an individual must possess to even be considered for the position. In this case, the minimum qualifications required for the position were considered and addressed in the Tentative Decision, and included six years of *civil engineering* experience, at least four of which had to have been in a professional capacity or a combination of the required *civil engineering* experience and some form of a degree in civil engineering. (Tentative Decision p. 5.) By the Appellant's own admission, he lacks a degree in civil engineering or civil engineering technology, and he has no technical or professional experience in the field of civil engineering. (Tentative Decision pgs. 6 and 14.) The objection is hereby overruled.⁴

III. Decision

After careful review and consideration of the Tentative Decision, attached, as well as the Appellant's objections and the Respondent's reply, the Commission today voted to affirm and adopt the Tentative Decision issued by the Magistrate, thus making the attached Tentative Decision, together with this document, the Final Decision of the Commission.

Accordingly, the Appellant's appeal under Docket No. C-20-005 is hereby *denied*.

By vote of the Civil Service Commission (Bowman, Chair; Dooley, McConney, Stein and Tivnan, Commissioners) on December 28, 2023.

³ The complete sentence in the Tentative Decision reads: "The Appellant does not purport to be a civil engineer, and he plainly does not meet the minimum entrance requirements for the (petitioned for) position of FAC-V, having none of the requisite *civil engineering degrees and* work experience." (Emphasis added)

⁴ The Commission notes that, notwithstanding Exhibit 26, the Appellant's failure to meet the minimum entrance requirements alone would likely be dispositive in this matter.

Civil Service Commission

/s/ Christopher C. Bowman

Christopher C. Bowman

Chair

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d).

Notice to:

Michael F. Manning, Esq. (for Appellant)

Erik Pike, Esq. (for Respondent)

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

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

STANLEY SLEPOY,

Appellant,

v.

MASSACHUSETTS DEPARTMENT
OF TRANSPORTATION,

Respondent.

CSC Docket No. C-20-005
DALA Docket No. CS-22-0263

Appearance for Appellant:

Michael Manning, Esq.
NAGE
159 Burgin Parkway
Quincy, MA 02169

Appearance for Respondent:

Erik F. Pike
Patrick Atwell, Esq.
MassDOT
10 Park Plaza
Boston, MA 02116

Administrative Magistrate:

John G. Wheatley⁵

SUMMARY OF TENTATIVE DECISION

The Appellant failed to show that he performed the level-distinguishing duties of Federal Aid Coordinator V more than 50% of time. I therefore recommend that the Civil Service Commission deny his reclassification appeal.

⁵ I acknowledge and appreciate the assistance of Law Clerk Daniel Taylor, Esq. with the preparation of this Tentative Decision.

TENTATIVE DECISION

On January 28, 2020, the Appellant, Stanley Slepoy (Appellant), pursuant to G. L. c. 30, § 49, timely appealed to the Civil Service Commission (Commission), contesting the October 11, 2019, decision of the Massachusetts Department of Transportation (MassDOT) to deny his request for reclassification from Right of Way Agent III (ROWA-III) to Federal Aid Coordinator V (FAC-V), and the December 9, 2019, affirmation of that denial by the Commonwealth's Human Resources Division. I held a full hearing at the offices of the Commission on December 16, 2022,⁶ and via Webex on March 9, 2023. Both days of the hearing were digitally recorded using Webex.

FINDINGS OF FACT:

Twenty-six exhibits were entered into evidence at the hearing, fifteen by the Appellant and eleven by the Respondent. Both parties submitted post-hearing briefs. The following witnesses testified:

Called by the Appellant:

- Stanley Slepoy, Appellant, Office of Real Estate and Asset Development, MassDOT
- Craig McKeown, Director, Office of Real Estate and Asset Development, MassDOT
- Martin Polera, Business Development Manager, Office of Real Estate and Asset Development, MassDOT

Called by MassDOT:

- Amy Lynch, Manager, Classification and Compensation, MassDOT
- Craig McKeown, Director, Office of Real Estate and Asset Development, MassDOT
- Martin Polera, Business Development Manager, Office of Real Estate and Asset Development, MassDOT
- Bryan Gubbins, Former Deputy Director, Office of Real Estate and Asset Development, MassDOT

Based on the exhibits admitted into evidence, the witness testimony, the parties'

⁶ The parties declined to participate in a remote hearing while COVID-19 emergency restrictions were in place.

stipulated facts, reasonable inferences drawn therefrom, and taking administrative notice of pertinent rules, statutes, regulations, case law, policies, and the pleadings filed in this case, I make the following findings of fact:

1. The Appellant has been employed by MassDOT since July 31, 1988. He has been classified as a Right of Way Agent III since July 7, 2002. (Testimony of Appellant; J. Ex. 14.)
2. In 2013, as part of a reorganization within MassDOT, the Appellant and two others were transferred to the Office of Real Estate and Asset Development (OREAD). (Testimony of Appellant; Testimony of McKeown.)
3. Beginning in July 2016, the Appellant took on additional job duties, largely dealing with project management and long-term coordination with local, state, and federal offices. (Testimony of Appellant; Testimony of McKeown.)
4. On September 19, 2016, the Appellant filed a classification appeal with MassDOT's human resources department, alleging that he was improperly classified as a ROWA-III and is more properly classified as a FAC-V. (Testimony of Appellant; J. Ex. 2.)
5. Upon receiving the Appellant's appeal, MassDOT performed an audit that included review of his most recent Employee Performance Review System (EPRS) Form, his "Form 30" job description, management notes, and job specifications for the positions of FAC-V and ROWA-III. (Testimony of Lynch; J. Ex. 23.)
6. On September 20, 2019, MassDOT issued a preliminary recommendation of denial of the Appellant's appeal, finding that the specifications for the position of ROWA-III appropriately described the Appellant's daily activities. This was followed by a formal denial dated October 11, 2019. (J. Ex. 14; J. Ex. 23.)

7. On November 15, 2019, the Appellant appealed MassDOT's denial to the Commonwealth's Human Resources Division. (J. Ex. 13; J. Ex. 14.)
8. In a letter dated December 9, 2019, the Human Resources Division affirmed MassDOT's denial of the Appellant's appeal. (J. Ex. 14.)
9. The Appellant further appealed this denial to the Commission on January 3, 2020. (J. Ex. 1.)
10. The "Classification Specification" for the ROWA series, approved July 1, 1987, summarizes the series as follows:

Incumbents of positions in this series review and/or conduct appraisals; provide technical assistance on such matters as land takings, relocation of businesses and homeowners, etc.; make on site visits of properties and structures; conduct research at various sources of property data; respond to inquiries from land owners and others; negotiate with landowners; and perform related work as required.

The basic purpose of this work is to perform a variety of activities including property appraisal and relocation assistance in connection with real property acquisition by state government.

(J. Ex. 10.)

11. The "Classification Specification" for the FAC series, approved May 1, 1989, summarizes the series as follows:

Incumbents of positions in this series gather the civil engineering data required for substantiating requests for federal funding for the construction or improvement of public roads and related projects; prepare and submit documentation for approval of proposed projects; act as liaison with federal agencies on matters relating to the funding of public road programs and projects; and perform related work as required.

The basic purpose of this work is to coordinate agency activities for federal programs providing funds for the construction or improvement of public roads and related projects.

(J. Ex. 11.)

12. The Minimum Entrance Requirements for a FAC-V, as described in the series Classification

Specification, are as follows:

Applicants must have at least (A) six years of full-time, or equivalent part-time, technical or professional experience in civil engineering work in such areas as construction, survey, design, transportation, hydraulics, structural, sanitary, drafting, environmental, highway, architectural, airport, soils, and materials of which (B) at least four years must have been in a professional capacity, or (C) any equivalent combination of the required experience and the substitutions below.

Substitutions:

- I. An Associate's degree with a major in civil engineering* or civil engineering technology* may be substituted for a maximum of one year of the required (A) experience.**
- II. A Bachelor's degree with a major in civil engineering* or civil engineering technology* may be substituted for a maximum of two years of the required (A) experience.**
- III. A Graduate degree with a major in civil engineering* may be substituted for a maximum of three years of the required (A) experience and one year of the required (B) experience.**

* The terms civil engineering and civil engineering technology include related engineering disciplines such as construction, survey, hydraulics, design, transportation, structural, soils, sanitary, environmental, drafting, highway, architectural, mining, airport and materials.

** Education towards such a degree will be prorated on the basis of the proportion of the requirements actually completed.

NOTE: Educational substitutions will only be permitted for a maximum of one year of the required (B) experience.

(J. Ex. 11.)

13. The Appellant holds a Bachelor of Science degree in political science from Salem State

University, with a minor in economics. The Appellant has also taken several courses related to management and real estate. (Testimony of Appellant; J. Ex. 5.)

14. The Appellant does not hold a degree in civil engineering or civil engineering technology and has no technical or professional experience in the field of civil engineering. (Testimony of

Appellant; J. Ex. 5.)

15. The position of FAC-V is the third-level supervisor in the series, described in the

Classification Specification as exercising the following supervision:

Incumbents of positions at this level exercise direct supervision (i.e. not through an intermediate level supervisor) over, assign work to and review the performance of 5-10 professional, technical or administrative personnel; and indirect supervision (i.e. through an intermediate level supervisor) over 6-15 professional, technical, or clerical personnel.

(J. Ex. 11.)

16. The Appellant did not, during the period pertinent to this appeal, supervise any employees.

(Testimony of Appellant; J. Ex. 4.)

17. The Classification Specification for the FAC series describes the duties common to all levels

in the series as follows:

1. Gathers, processes, and submits the engineering plans, specifications, estimates and other documentation for requests for federal funding for the construction or improvement of public roads and related projects, and prepares grant requests for submission to federal agencies.
2. Compiles data for reports and prepares charts, graphs, and tables for presentation of information.
3. Coordinates department efforts and acts as liaison with federal agencies on matters relating to funding of public road programs and projects.
4. Processes requests and establishes engineering work order numbers for agency projects and activities.
5. Performs related duties such as interpreting or clarifying policies and procedures; analyzing expenditure of funds; preparing reports; writing correspondence and memoranda; and maintaining records and files.

(J. Ex. 11.)

18. According to the Classification Specification, the additional duties of each level in the FAC series are as follows:

Federal Aid Coordinator II:

Incumbents of positions at this level or higher also:

1. Compile information from various sources for inclusion in reports and brochures.
2. Prepare comparative analyses of data collected from studies and surveys in order to provide information and make recommendations.
3. Prepare agreement estimates for federal aid projects for submission to federal agencies.
4. Prepare summary list for all federal aid activities.
5. Update federal route system maps for determining federal funding eligibility.

Federal Aid Coordinator III:

Incumbents of positions at this level or higher also:

1. Confer with agency staff and others to define the purpose and scope of proposed programs and projects.
2. Monitor the expenditure of federal funds to ensure conformance with federal approved terms and to ensure that sufficient funds are available for program needs.
3. Assist in supervising the preparation of federal aid project agreements and agreement modifications by reviewing specifications and data.
4. Provide training for subordinates on unit and agency procedures.

Federal Aid Coordinator IV:

Incumbents of positions at this level or higher also:

1. Supervise the preparation and submission of federal aid project requests by coordinating and reviewing work of unit.
2. Compile engineering data for the submission of proposed federal aid projects for preliminary engineering approval.
3. Supervise the maintenance of control records for all federal aid funding categories.
4. Issue a monthly status summary for all federal aid funding categories.
5. Supervise the establishment of engineering work orders for all agency projects and activities.
6. Supervise the preparation and maintenance of the advertising schedule for all agency projects.

Federal Aid Coordinator V:

Incumbents of positions at this level also:

1. Perform administrative duties of account manager for all capital expenditure accounts, including supervising the setting up of initial encumbrances for force accounts and consultant contracts.
2. Coordinate development of the agency advertising schedule for construction projects by soliciting information from agency units.
3. Supervise and coordinate the activities of the agency's federal aid section by reviewing and comparing work done by each unit in order [to] ensure efficiency and consistency of operations.

(J. Ex. 11.)

19. The Classification Specification for the ROWA series describes the job duties common to all levels in the series as follows:

1. Review appraisals and/or conduct appraisals applying standard appraisal techniques and agency guidelines.
2. Provides technical assistance in such matters as land taking, relocation of businesses and individual homeowners,

property values and related information concerning assigned unit programs.

3. Makes on site visit of properties and structures in order to obtain information for record and appraisal purposes.
4. Conducts research at various sources of property data including the Registry of Deeds and the Municipal Assessor[’s] Office in order to obtain required information concerning property such as titles, liens, easements, dimensions, etc.
5. Responds to inquiries by providing information to landowners and others concerning policies and procedures governing land takings, status of cases, timetables, etc.
6. Negotiates with landowners for the purchase of real property and/or payment for damages, etc.
7. Performs related duties such as reviewing and analyzing various data, preparing reports, maintaining records and attending conferences and meetings.

(J. Ex. 10.)

20. According to the Classification Specification, the additional duties of each level in the

ROWA series are as follows:

Right of Way Agent II:

Incumbents of positions at this level and higher also:

1. Establish and maintain liaison with engineers and other professionals, legislative groups, federal, state and municipal agencies and others in such matters as planning and reviewing projects, investigating and resolving problems, advising on agency regulations, etc.
2. Make recommendations concerning the course of action to be taken relative to the acquisition of property.
3. Recommend the amount of money to be paid for property to be purchased or acquired.

Right of Way Agent III:

Incumbents of positions at this level and higher also:

1. Oversee and coordinate assigned unit activities in order to ensure effective operations and compliance with established standards and applicable laws, rules and regulations.
2. Review reports for accuracy, completeness and content.

(J. Ex. 10.)

21. The Appellant's most recent EPRS form is dated June 1, 2017, but it concerns his performance during the 2016 fiscal year (i.e., July 1, 2015, through June 30, 2016), which is prior to the period in which the Appellant alleges his duties changed. (J. Ex. 8.)

22. The last Form 30 properly completed for the Appellant's current classification was prepared on March 14, 2011. The form provides the following detailed statement of the Appellant's duties and responsibilities:

OVERSEES THE GENERAL BUSINESS ACTIVITIES OF PROPERTY MANAGEMENT CASES TO ENSURE COMPLIANCE WITH GOVERNMENTAL RULES AND REGULATIONS AND THE STANDARD OPERATING PROCEDURES OF THE RIGHT OF WAY BUREAU.

REVIEWS REQUESTS FOR SURPLUS PROPERTY AND FOLLOWS THE STANDARD OPERATING PROCEDURES FOR DISPOSING OF SURPLUS STATE OWNED LAND FROM INITIATION THROUGH ADMINISTRATOR APPROVAL, TRANSFER TO OREAD, AND SALE OR LEASE.

PROVIDE TECHNICAL ASSISTANCE TO AGENCY STAFF, CONTRACTORS, AND OTHERS CONCERNING POLICIES AND PROCEDURES ON BUSINESS RELATED MATTERS ENSURING COMPLIANCE THROUGH INFORMATION PROVIDED.

MAINTAINS RECORDS, ATTENDS MEETINGS, CONTACTS VENORDS AND CONTRACTORS REGARDING PROPERTY DISPOSITIONS AND PROPERLY FILES CASE FOLDERS.

CONFERS WITH AGENCY STAFF TO COORDINATE EFFORTS REGARDING DISPOSITIONS, PROGRAMS AND ACTIVITIES.

(J. Ex. 6.)

23. A more recent Form 30 was prepared by the Appellant himself.⁷ Therein, the Appellant lists his title as “Federal Aid Coordinator V.” (Testimony of Appellant; J. Ex. 9.)

24. Although the form was signed by Undersecretary and Chief Strategic Officer of MassDOT Scott Bosworth on January 15, 2019, he does not believe that the Appellant has ever performed the duties of a FAC-V.⁸ (J. Ex. 9; J. Ex. 24; Ex. 26.)

25. The Form 30 prepared by the Appellant provides the following detailed statement of his duties and responsibilities:

Organize, develop and implement plans to support the use, disposition and development of MassDOT real property assets.

Provide recommendations, changes and enhancements to the Office of Real Estate and Asset Development’s (OREAD) existing resources to increase and maximize efficiency of the unit.

Act as liaison to all local municipalities, Counties and State Agencies regarding Real Estate Dispositions.

Act as liaison to FHWA’s Realty Services for Consent and Agreement Real Estate Surplus and final disposition.

Organize, coordinate and continually update OREAD’s “MassDOT Real Estate Disposition Manual[”] for consent and approval by FHWA’s Realty Services.

⁷ The Appellant contends that he created this form on the instruction of Bryan Gubbins, but at the hearing for this matter Mr. Gubbins denied ever giving such an instruction. (Testimony of Appellant; Testimony of Gubbins.) I credit Mr. Gubbins’s testimony on this issue.

⁸ Scott Bosworth wrote in a September 20, 2019, e-mail message to MassDOT’s human resources division that the Appellant “does not perform in the capacity of a Federal Aid Coordinator V.” (J. Ex. 24.) Mr. Bosworth reasserted his position in an affidavit dated February 27, 2020, and further opined that the “2011 Form 30 and Mr. Slepoy’s EPRS forms accurately describe the duties that Mr. Slepoy currently performs, which are the duties of a Right of Way Agent III.” (Ex. 26.)

Evaluate operational procedures and provide recommendations for compliance with identified goals and objectives.

Identify underutilized assets and dispose of or develop them to increase revenue while promoting economic development.

Specialize in the disposition of OREAD's real estate assets for Affordable Housing.

Specialize in the disposition of OREAD's real estate assets for Renewable Energy uses.

Perform financial analysis, forecasting and valuation regarding the disposition and development of non-core real estate.

Establish work completion schedules and project priorities.

Negotiate agreements with competing interest stakeholders.

(J. Ex. 9.)

26. In the course of his appeal, the Appellant completed an "Interview Guide," in which he described the distribution of his duties in the following manner (noting the percentage of his time spent on each duty):

1. Coordinates development of the agency advertising schedule for projects by soliciting information from agency units and Consultants involved in land disposition projects. (5%)
2. Performs administrative duties of account manager for capital expenditure accounts, including supervising the setting up of initial encumbrances for force accounts and consultant contracts. (5%)
3. Identify underutilized assets and dispose of or develop them to increase revenue while promoting economic development. Evaluate operational procedures and provide recommendations for compliance with identified goals and objectives. (5%)
4. Act as liaison to FHWA's Realty Services for Consent and Agreement Real Estate Surplus and final disposition. Organize, coordinate and continually update OREAD's "MassDOT Real Estate Disposition Manual["] for consent and approval by FHWA's Realty Services. (55%)

5. Supervises and coordinates the activities of the unit's federal aid section by reviewing and comparing work done by each unit in order to ensure efficiency and consistency of operations. (5%)
6. Gathers, processes and submits the engineering plans, specifications, estimates and other documentation for requests for federal funding for the construction, improvement or alteration of public roads and related projects, prepares requests for submission to federal agencies. (5%)
7. Coordinates department efforts and acts as liaison with federal agencies on matters relating to funding of public road programs and projects such as FHWA Title 23. Processes requests of federal aid numbers for agency projects and activities. Performs duties such as interpreting or clarifying policies. (20%)

(J. Ex. 4.)

DISCUSSION:

Legal Standard

General Laws c. 30, § 49, states in relevant part:

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 manager or employee or group of employees further aggrieved after appeal to the personnel administrator may appeal to the civil service commission. Said commission shall hear all appeals as if said appeals were originally entered before it.

The Appellant has the burden of proving that he is improperly classified. *Massenburg v. MassDOT*, 35 MCSR 123, 128 (2022). To do so, he must show that he performs the level-distinguishing duties of a Federal Aid Coordinator V more than 50% of the time, on a regular basis. *Id.*; *Bhandari v. Executive Office for Admin. & Finance*, 28 MCSR 9, 14 (2015) (employee must perform the duties of the higher-level position a majority of the time); *Gaffey v. Department of Revenue*, 24 MCSR 380, 381 (2011). See also *Roscoe v. Department of*

Environmental Protection, 15 MCSR 47, 48 (2002) (“The determining factor of a reclassification is the distribution of time that an individual spends performing the function of a job classification.”). 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 MCSR 413, 415 (2019).

Analysis

There is no question that the Appellant is a dedicated employee who has been trusted with greater responsibility over time. Indeed, the Appellant may wish to explore through his union whether he is entitled to compensation for any out-of-grade work he has performed over the past several years (for example, under a collective bargaining agreement). However, the Appellant has not shown that he regularly spends the majority of his working time performing the FAC-V position’s level-distinguishing duties, as required to prevail in a reclassification appeal.

The Appellant’s work involved real estate project management, including issues relating to the acquisition, utilization, and disposition of properties used for public projects. Some of those projects may have involved federal funding, but his work did not involve the engineering duties described in the FAC series. The FAC series involves duties primarily related to the compilation of civil engineering data as it pertains to an agency’s requests for federal aid. The Appellant does not purport to be a civil engineer, and he plainly does not meet the minimum entrance requirements for the position of FAC-V, having none of the requisite civil engineering degrees or work experience.

While the record contains several different, overlapping descriptions of the Appellant’s duties, ranging in date from 2011 to the Appellant’s sworn testimony in 2022, none of those descriptions identify level-distinguishing duties sufficient to satisfy the Appellant’s burden of proving he is improperly classified. Even the two position descriptions that the Appellant prepared—i.e., the Interview Guide and the Form 30 dated January 15, 2019—fail to establish that the Appellant regularly spends a majority of his working time performing the duties of a FAC-V. Only the duties that do not fall within the Classification Specification for a ROWA-III are properly considered level-distinguishing duties of a FAC-V, and a clear majority of the Appellant’s duties fit within the scope of his current classification.

For example, the ROWA-III Classification Specification includes the duty to “[o]versee and coordinate assigned unit activities in order to ensure effective operations and compliance with established standards and applicable laws, rules and regulations.” The duties common to all levels in that series include the duty to “review appraisals,” to “negotiate with landowners for the purchase of real property and/or payment for damages,” and to analyze various data and prepare reports. Most of the Appellant’s duties enumerated in his January 2019 Form 30 fall within this sphere of duties assigned to a ROWA-III.⁹

Each of those duties, as described by the Appellant, clearly involve oversight of OREAD activities to ensure effective operations or otherwise effect compliance with federal laws, regulations, and OREAD standards, which is consistent with the description of duties assigned to a ROWA-III under the ROWA Classification Specification. And while said description does

⁹ I do not consider the Appellant’s “copy-and-paste” of the FAC-V duties under the form’s “General Statement of Duties and Responsibilities” to be an accurate reflection of the Appellant’s work, given the far more individualized description that follows under “Detailed Statement of Duties and Responsibilities.”

specifically name the Appellant’s activities relating to the disposition of property as falling within the remit of the series, I find it plausible that the provision for negotiations for the purchase of property and duties related to appraisals encompass such tasks. In any case, the FAC series touches on the disposition of property even less directly, as it is primarily concerned with requests for federal aid and compliance with the associated requirements.

Further, the ROWA-II specifications (the duties of which apply to higher levels within the series) describe a duty to “[e]stablish and maintain liaison with . . . federal, state and municipal agencies and others in such matters as planning and reviewing projects, investigating and resolving problems, advising on agency regulations, etc.” Several of the duties that the Appellant listed on the 2019 Form 30 are substantially consistent with that description, such as:

Act as liaison to all local municipalities, Counties and State Agencies regarding Real Estate Dispositions.

Act as liaison to FHWA’s Realty Services for Consent and Agreement Real Estate Surplus and final disposition.

Organize, coordinate and continually update OREAD’s “MassDOT Real Estate Disposition Manual” for consent and approval by FHWA’s Realty Services.¹⁰

The latter two such duties also appear word-for-word in the Appellant’s Interview Guide and are described as taking up 55% of the Appellant’s regular working time. Therein, the Appellant also estimates that up to 20% of his time is spent serving as a liaison to federal agencies on “matters related to road programs,” processing “requests of federal aid numbers for agency projects and activities,” and “interpreting or clarifying policies.” That these duties fit within the specifications for a ROWA-III as well as a FAC-V means that they are not level-distinguishing duties of a FAC-V for purposes of reclassification. Accordingly, by the

¹⁰ See J. Ex. 4.

Appellant's own estimation, he spends a clear majority of his time on activities other than the level-distinguishing duties of a FAC-V.

RECOMMENDATION OF DALA MAGISTRATE:

For all the above reasons, the Appellant has failed to prove that he is improperly classified. I therefore recommend that the Civil Service Commission *deny* the Appellant's appeal under CSC Docket No. C-20-005.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/ John G. Wheatley

John G. Wheatley
Administrative Magistrate

Date: November 10, 2023