

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

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Debra Antonelli,

Petitioner,

v.

Docket No. CR-20-0341

State Board of Retirement,

Date: February 16, 2024

Respondent.

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**Appearance for Petitioner:**

Debra Antonelli, *pro se*

**Appearance for Respondent:**

Yande Lombe, Esq.

**Administrative Magistrate:**

John G. Wheatley

**SUMMARY OF DECISION**

The State Board of Retirement (Board) properly denied the petitioner's requests to classify her service as a certified nursing assistant and as a registered nurse in Group 2 for retirement purposes. Although her "regular and major duties" required her to provide direct care to patients at Chelsea Soldiers' Home, the petitioner did not prove that the majority of her patients were "mentally ill or mentally defective" or that a majority of her time was spent caring for such patients. Accordingly, she does not satisfy the statutory requirements for Group 2 classification under G. L. c. 32, § 3(2)(g).

**DECISION**

The petitioner, Debra Antonelli, appeals the Board’s decision to deny her applications for Group 2 classification under G. L. c. 32, § 3(2)(g). Ms. Antonelli and the Board each filed a pre-hearing memorandum, which I have marked as briefs “A” and “B” respectively.

I held an evidentiary hearing on January 4, 2023, at the Division of Administrative Law Appeals in Malden. The hearing was recorded. I admitted fifteen documents into evidence at the hearing—the petitioner’s proposed exhibits A-J and the respondent’s proposed exhibits 1-5. Ms. Antonelli was the only testifying witness.

After the testimony concluded, I kept the proceeding open through April 19, 2023, to provide the parties an opportunity to file post-hearing briefs for consideration and for the Board to submit supplemental documents that it had requested from Chelsea Soldiers’ Home prior to the hearing. The Board filed a post-hearing memorandum on April 5, 2023, which I have marked as brief “C.” No further documents were received from either party, and I therefore closed the hearing record on April 20, 2023.

**FINDINGS OF FACT**

Based on the testimony and documentary evidence presented, I make the following findings of fact:

1. Ms. Antonelli was employed by Chelsea Soldiers’ Home from June 22, 1980, until her retirement on July 1, 2019. (Testimony; Exhibits 1, 3, 5.)
2. Chelsea Soldiers’ Home provides medical care and treatment to veterans. The facility is comprised of twelve units. During the time of Ms. Antonelli’s employment, seven units were dedicated to long-term care for veterans in need of residential care due to a variety

of medical diagnoses or disabilities, and the remaining five units were used for acute care including intensive care and surgical treatment. (Testimony.)

3. To qualify for long-term care at Chelsea Soldiers' Home, a veteran must receive an honorable discharge and have at least one year of residency in Massachusetts.

(Testimony.)

4. Many of the veterans in the long-term care units suffer from mental illnesses, such as schizophrenia, bipolar disorder, senile dementia, and post-traumatic stress disorder.

(Testimony.)

5. No specific medical diagnosis or disability is required for placement in the long-term care units, however, and veterans may qualify for long-term care due to physical ailments in addition to mental illness—for example, due to cardiovascular disease, pulmonary disease, diabetes, gastrointestinal bleeds, cancer, amputation, or multiple sclerosis, among other things. (Testimony.)

6. Ms. Antonelli was initially employed at Chelsea Soldiers' Home as a certified nursing assistant (CNA) while she attended nursing school. Her official job title was Nursing Assistant I. (Testimony; Exhibit 1.)

7. As a CNA, Ms. Antonelli was responsible for providing “daily care for the physically and/or cognitively impaired, [as well as] terminally ill and dying” patients. She provided such care only to the adult and geriatric patients in the long-term care units. Her duties included assisting the patients with bathing, shaving, toileting, mouth care, skin care, nail care, foot care, incontinence care, catheter care, colostomy care, dressing, feeding, cleaning their rooms, making their beds, and helping them ambulate. Virtually all her

time working as a CNA was spent providing direct care to patients. (Testimony; Exhibit 1 at 3-4 (Form 30 position description for Nursing Assistant I).)

8. In 1983, Ms. Antonelli received an associate degree in nursing from Catherine Labouré College. (Testimony; Exhibit 3.)
9. On May 23, 1983, Ms. Antonelli started job orientation and training for her anticipated employment as a registered nurse at Chelsea Soldiers' Home. (Testimony; Exhibit B.)
10. In March 1984, Ms. Antonelli passed the state licensing exam in nursing. (Testimony.)
11. On April 2, 1984, the Massachusetts Board of Registration in Nursing issued Ms. Antonelli her license as a Registered Nurse.<sup>1</sup> (See Verification of Licensure for License Number RN166287.)
12. On April 8, 1984,<sup>2</sup> Ms. Antonelli was promoted to the position of Registered Nurse I (RN 1). (Testimony; see Exhibit 2.)
13. As an RN 1, Ms. Antonelli continued to spend nearly all her work time providing direct care to patients. She spent approximately 80% of her time providing nursing care to patients in the long-term care units and 20% to patients in acute care units. (Testimony.)
14. She was responsible for providing "nursing care to Veteran adult and geriatric patients by assessing their health status[;] recording related health data[;] evaluating their unique

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<sup>1</sup> I take administrative notice of the date that Ms. Antonelli was issued her license as a Registered Nurse by the Board of Registration in Nursing, after giving notice to the parties and an opportunity to object in accordance with G. L. c. 30A, § 11(5).

<sup>2</sup> In completing the employing agency's section of Ms. Antonelli's group classification applications, her employer changed the dates of employment to indicate that she was employed as a registered nurse beginning May 23, 1983 (i.e., when she began orientation). At that time, however, Ms. Antonelli was not licensed as a registered nurse, she had not passed the state licensing exams in nursing, and for both of those reasons she did not meet the minimum requirements necessary to be employed as a registered nurse at Chelsea Soldiers' Home. (See Exhibit H at 2 (Form 30 for RN 1).) Ms. Antonelli had originally specified on her application that she started working as a registered nurse on April 8, 1984, which is consistent with the dates that she passed the licensing exams (March 1984) and was issued her Registered Nurse license (April 2, 1984).

physical[,] psychosocial and age specific needs; developing[] and implementing a plan of care in collaboration with the patient and/or family and other healthcare providers[;] and evaluating the outcomes of care.” (Exhibit H at 1.)

15. In around April of 1985, Ms. Antonelli was promoted to the position of Registered Nurse II (RN 2), after gaining a year of full-time experience as a registered nurse as required for promotion to an RN 2 at Chelsea Soldiers’ Home. (Testimony; Exhibit 2 at 4 (Form 30 for RN 2, Clause IX, Minimum Entrance Requirements).)
16. Ms. Antonelli’s job duties as an RN 2 were substantially the same as those she had as an RN 1. (Testimony; Exhibit 2; Exhibit H.)
17. She continued to spend almost all her time providing direct nursing care to patients, but her time was more evenly split between the acute care and long-term care units. At first, she spent approximately 75% of her time caring for long-term care patients and 25% caring for acute care patients. This balance shifted over time, such that in her last year as an RN 2 over half of her time was spent on nursing care to patients in the acute care units. (Testimony.)
18. On December 28, 1986, Ms. Antonelli was promoted to the position of Registered Nurse III (RN 3), which she described as an entry level management position. As an RN 3, Ms. Antonelli served as the “Nurse Manager” on the geriatric floor of the facility. She no longer spent the majority of her time providing direct care to the patients at Chelsea Soldiers’ Home, and she is not seeking Group 2 classification for that service. (Testimony; Exhibit J; see also Exhibits 1, 2.)
12. On or about July 13, 2018, Ms. Antonelli filed two applications for Group 2 classification with the Board in connection with her request for pro-rated service by group

classification—one application for her service as a certified nursing assistant (i.e., Nursing Assistant I), and one application for her service as a registered nurse (i.e., RN 1 and RN 2).<sup>3</sup> (Exhibits 1, 2.)

13. On August 31, 2018, the Board notified Ms. Antonelli that it decided to “table” her requests for Group 2 classification pending further information. (Exhibit E.)

14. By letter dated August 3, 2020, the Board notified Ms. Antonelli that it denied her requests for Group 2 classification. The Board did not specify the reason (or reasons) for the denial, stating only that it was “based on the facts and circumstances of [her] request[.]” (Exhibit 4 at 2; Exhibit F.)

15. On August 14, 2020, Ms. Antonelli timely appealed the Board’s decision. (Exhibit 5.)

#### **DISCUSSION**

Under G. L. c. 32, § 3(2)(g), members of the Massachusetts contributory retirement system are classified into four separate groups for retirement purposes (i.e., Group 1, 2, 3, or 4). Among other things, a member’s group classification affects the amount of the member’s retirement allowance through the corresponding retirement age factor used in its calculation under G. L. c. 32, § 5(2)(a). By default, members whose positions do not meet the criteria for Groups 2, 3, or 4 are classified in Group 1.<sup>4</sup> Group 2 includes, among others, employees “whose regular and major duties require them to have the care, custody, instruction or other supervision of . . . persons who are mentally ill or mentally defective.” G. L. c. 32, § 3(2)(g).

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<sup>3</sup> Ms. Antonelli’s second application, covering her service as an RN 1 and RN 2, identifies her job title as “Certified Nursing Assistant.” This is merely a typographical error, as it is clear from her testimony that this application was intended to cover her service as an RN 1 and RN 2.

<sup>4</sup> Group 1 includes: “Officials and general employees including clerical, administrative and technical workers, laborers, mechanics and all others not otherwise classified.” G. L. c. 32, § 3(2)(g).

Ms. Antonelli has elected to receive pro-rated benefits based on her years of service in each retirement group. See G. L. c. 32, § 5(2)(a) (“Any active member as of April 2, 2012, who has served in more than 1 group may elect to receive a retirement allowance consisting of pro-rated benefits based upon the percentage of total years of service that the member rendered in each group[.]”). At issue is whether her service as a Nursing Assistant I, RN 1, and RN 2 meets the requirements for Group 2 classification. To prevail, Ms. Antonelli must prove by a preponderance of the evidence that her “regular and major duties” required the care of “persons who are mentally ill or mentally defective,” pursuant to G. L. c. 32, § 3(2)(g). See *Peck v. State Bd. of Retirement*, CR-15-282, at \*3-4 (CRAB Feb. 8, 2021) (petitioner’s burden of proof); *Forbes v. State Bd. of Retirement*, CR-13-146, at \*7 (CRAB Jan. 8, 2020).

An employee who “spends more than half of his or her time” providing medical care to “a population included in Group 2 engages in these responsibilities as part of his or her ‘regular and major duties.’” *Desautel v. State Bd. of Retirement*, CR-18-0080, at \*4-5 (CRAB Aug. 2, 2023); *Peck*, CR-15-282, at \*3 (“Regular and major job duties’ has come to mean spending more than half the time having ‘the care, custody, instruction or other supervision’ of individuals within Group 2.”). In addition, the employee must be engaged in “direct patient care” to qualify for Group 2 classification, rather than services that are primarily administrative, advisory, or managerial in nature. *Peck*, CR-15-282, at \*3. See *Rebell v. Contributory Retirement Appeal Bd.*, 30 Mass. App. Ct. 1108, slip op. at 4 (Mar. 20, 1991) (noting that “care” in § 3(2)(g) indicates “charge, oversight, watchful regard and attention” [unpublished memorandum and order]).

The evidence presented at the hearing clearly established, beyond reasonable dispute, that Ms. Antonelli’s regular and major job duties throughout the period at issue involved direct care

to patients at Chelsea Soldiers' Home. The Board makes no argument to the contrary in its closing brief. At issue, therefore, is whether she provided such care to patients who fall "within one of the Group 2 categories listed under § 3(2)(g)." *Forbes*, CR-13-146, at \*4. In cases involving a mixed patient population, some of whom fall within a Group 2 category and others who do not, prior decisions have generally required proof that the majority of the patients receiving the employee's care are within an eligible category. See, e.g., *Troilo v. State Bd. of Retirement*, CR-19-0513, at \*6 (DALA May 20, 2022) (employee failed to prove that majority of patients were mentally ill); *Michaud v. State Bd. of Retirement*, CR-11-424, at \*9 (DALA Aug. 25, 2017) (Group 2 eligibility established by showing that majority of employee's patients were mentally ill or mentally defective); *Jump v. State Bd. of Retirement*, CR-09-452 & CR-09-565, at \*11 (DALA July 11, 2014) (employee failed to prove that majority of patients were mentally ill); *D'Urso v. State Bd. of Retirement*, CR-08-167, at \*8 (DALA Feb. 10, 2012) (employee failed to prove that majority of patients were prisoners or mentally ill).

Ms. Antonelli's appeal raises eligibility based on care provided to "mentally ill or mentally defective" patients under G. L. c. 32, § 3(2)(g). The archaic term "persons who are . . . mentally defective" refers to individuals with intellectual or developmental disabilities, such as those who receive services from the Department of Developmental Services. *Forbes*, CR-13-146, at \*6; *Zelten v. State Bd. of Retirement*, CR-22-0457, at \*4 (DALA Feb. 9, 2024). See 115 Code Mass. Regs. §§ 2.01 & 6.04 (definitions and eligibility requirements under Department of Developmental Services regulations). "Mentally ill" patients may include, for example, those who suffer from a "mental illness" under the definition and criteria adopted by the Department of Mental Health (DMH) for the purpose of involuntary commitment—i.e., patients "who suffer from a 'substantial disorder of thought, mood, perception, orientation, or memory which grossly



impairs judgment, behavior, capacity to recognize reality or ability to meet the ordinary demands of life’ and who present symptoms severe enough to qualify for involuntary commitment.” *Popp v. State Bd. of Retirement*, CR-17-848, at \*5 (CRAB Nov. 16, 2023) (quoting from the Department of Mental Health’s definition of “mental illness” for the purpose of involuntary commitment, 104 Code Mass. Regs. § 27.05(1)); *Pulik v. State Bd. of Retirement*, CR-10-605, at \*5-6 (CRAB July 10, 2012); *Nowill v. State Bd. of Retirement*, CR-08-558, at \*6-7 (CRAB May 17, 2012, as corrected July 10, 2012). Other examples of patients who may qualify as “mentally ill” for purposes of group classification include individuals who satisfy the diagnostic criteria for having a mental illness specified in the American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders or, relatedly, those who meet the clinical requirements for receiving DMH services. See, e.g., *State Bd. of Retirement v. Neergheen*, CR-07-0439, at \*5 (CRAB Nov. 3, 2009) (patients satisfied “DSM-IV” criteria for mental illness); *Neergheen v. State Bd. of Retirement*, CR-07-439, at \*7-8 (DALA July 24, 2009), and cases cited therein (patients satisfied criteria for receiving DMH services).

For purposes of evaluating a patient population under § 3(2)(g), CRAB requires a “primary diagnosis of mental illness” for a patient to qualify as mentally ill. *Popp*, CR-17-848, at \*5; *Lorrey v. State Bd. of Retirement*, CR-09-553, at \*3 (CRAB Dec. 19, 2014). A “primary diagnosis” is one that “truly drives” patient care or “govern[s] the care a patient receives,” as distinguished from “mental illness diagnoses which are merely incidental or derivative of physical illnesses.” *Popp*, CR-17-848, at \*6-7.

After weighing the testimony and documentary evidence presented at the hearing, I conclude that Ms. Antonelli has not met her burden of proving by a preponderance of the evidence that her regular and major duties required her to provide direct care to people with

mental illness or developmental disabilities. The evidence presented in this case was insufficient to prove that, during the period at issue, the majority Ms. Antonelli's patients had a primary diagnosis of mental illness or to otherwise show that over half of her time was spent providing care specifically to such patients. The patient population she served included veterans being treated for physical ailments as well as those under care for mental illness. There was not sufficient evidence presented to determine the ratio or percentage of those patients who had a mental illness diagnosis, much less show that a majority had a primary diagnosis of mental illness.<sup>5</sup> Compare *Pulik v. State Bd. of Retirement*, CR-10-605 (CRAB July 10, 2012) (certified nursing assistant who provided medical care solely to advanced dementia patients on a locked unit of Chelsea Soldiers' Home was entitled to Group 2 classification) with *Sheehan v. State Bd. of Retirement*, CR-00-1014 (DALA Aug. 3, 2001) (petitioner not entitled to Group 2 where majority of the patients at Chelsea Soldiers' Home had secondary, rather than primary, diagnosis of mental illness). Ms. Antonelli has not, therefore, established that she is entitled to Group 2 classification, pursuant to G. L. c. 32, § 3(2)(g).

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<sup>5</sup> I acknowledge the statistics cited by the petitioner concerning the patient demographics at the time of her retirement, which indicate among other things that most patients at Chelsea Soldiers' Home *in 2019* had a diagnosis of some form of dementia (including vascular dementia, Lewy body dementia, and Alzheimer's disease). I cannot assume, however, that a substantially identical or similar patient population was present during the period of service at issue (i.e., 1980-1986), and the evidentiary record does not contain any statistical data or other documentation concerning her patients' diagnoses during that time. Cf. *Popp*, CR-17-848, at \*3-4 (medical charts submitted into evidence showed that majority of patients had primary diagnosis of dementia).

**ORDER**

For the reasons stated above, the State Board of Retirement's decision to deny the petitioner's applications for Group 2 classification is affirmed.

Division of Administrative Law Appeals

*/s/ John G. Wheatley*

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John G. Wheatley  
Administrative Magistrate