

**COMMONWEALTH OF MASSACHUSETTS
CONTRIBUTORY RETIREMENT APPEAL BOARD**

SUSAN BURNES,

Petitioner-Appellee

v.

STATE BOARD OF RETIREMENT

Respondent-Appellant

CR-21-0084

DECISION

The respondent State Board of Retirement (SBR) appeals from a decision of an administrative magistrate of the Division of Administrative Law Appeals (DALA) pro-rating petitioner Susan Burnes' years of service and granting Group 2 classification for years of service prior to March 2020. The DALA magistrate held a hearing on July 31, 2023 and admitted Respondent exhibits 1 – 8 and Petitioner's exhibit 1. The DALA decision is dated October 20, 2023. SBR filed a timely appeal to us.

After reviewing the evidence in the record and the arguments presented by the parties, we adopt the magistrate's Findings of Fact 1-16 as our own and incorporate the DALA decision by reference. We affirm the DALA decision, adding the following.¹

¹ While we ultimately agree with the DALA decision, we do not agree with the magistrate's discussion regarding "primary diagnosis" on page 6 beginning with the second full paragraph to page 7. CRAB established in *Larose v. State Bd. of Retirement*, CR-20-357 (CRAB Sept. 2024) that § 3(2)(g) does not limit care to psychiatric or psychological treatment for a member to qualify for Group 2. CRAB stated that while individuals must have a "primary diagnosis" of mental illness for the member to qualify for Group 2 under G.L. c. 32, §3(2)(g), we deemed that a strict application of the primary diagnosis analysis would deviate from the plain reading of § 3(2)(g) and explained that the purpose of the primary diagnosis test is to distinguish between mental illness diagnoses that are incidental to physical illnesses from principally mentally ill patients. See also *Popp v. State Bd. of Retirement*, CR-17-848 (CRAB 2023); *Jameson v. State Bd. of Ret.*, CR-17-960 (CRAB Aug. 20, 2025); *Kotkin v. State Bd. of Ret.*, CR-17-1024 (CRAB Aug. 20, 2025); and *Niles v. State Bd. of Ret.*, CR-20-0236 (CRAB Aug. 20 2025).

Background. Ms. Burnes is a Licensed Practical Nurse II (LPN II) who began her employment at the Lemuel Shattuck Hospital (LSH) in 1990. LSH is a facility of the Department of Public Health (DPH) that provides care to economically and socially disadvantaged patients, many of which come from the Department of Corrections (DOC) and the Department of Mental Health (DMH).²

Ms. Burnes started as a general nurse practitioner in 8 North, a unit that exclusively treats prisoners from the DOC. She mainly worked with patients on post-operative care. She subsequently obtained her certification to become an intravenous infusion specialist and began working in various units, including the operating room (OR), post-anesthesia care unit (PACU), and the gastroenterology (GI) department. During this time, she performed patient intakes, conducted pre-procedure interviews, and prepared patients for their procedures. She also assisted patients during their recoveries of their hospital stays or for their discharges.³ When Ms. Burnes transferred to the OR and GI departments, prisoners still accounted for around 80% of her patient population.⁴

A majority of Ms. Burnes' other patients were DMH clients who came to LSH to undergo medical procedures. A small number of her patients were from the community and were either homeless or in difficult economic situations.⁵ Prior to March 2020, Ms. Burnes spent more than 50% of her workday directly caring for prisoners. In March 2020, Ms. Burnes' duties shifted with the onset of the COVID Pandemic. From March 2020 to March 2021, the OR was utilized less and other services slowed, so Ms. Burnes "floated" to different units based on its needs.⁶ She worked in varying units and although she was still treating DMH/psychiatric patients, the amount of time doing so declined.⁷ Most of her time during her last year of service was spent caring for non-prisoner patients for conditions other than mental illness.⁸

² Finding of Fact #1-2; Respondent Ex. 1; Testimony of Ms. Burnes.

³ Finding of Fact #5; Testimony of Ms. Burnes.

⁴ Finding of Fact #8; Testimony of Ms. Burnes.

⁵ Finding of Fact 9-10; Testimony of Ms. Burnes.

⁶ Finding of Fact #12; Testimony of Ms. Burnes.

⁷ Finding of Fact #13; Testimony of Ms. Burnes.

⁸ Finding of fact #16.

On January 1, 2021, Ms. Burnes submitted a Group Classification Application requesting her position be classified as Group 2. She also submitted a letter providing support for her request to be classified in Group 2. In this letter, Ms. Burnes asserted that the patients she cared for in the OR, PACU, and GI departments were mental health patients with multiple psychiatric diagnoses and that she also worked with many prisoners.⁹ On February 25, 2021, the SBR denied her request for Group 2 on the basis that she did not work with the required statutory population for the last year of her service as required.¹⁰ Ms. Burnes appealed the decision to DALA on March 4, 2021.

On October 22, 2023, the DALA magistrate affirmed SBR's decision to deny Ms. Burnes' request for Group 2 classification for the last year of her service holding that she did not work with the required population for more than 50% of her working hours. However, the DALA magistrate held that her prior service did fulfill the requirements of G.L. c. 32 § 3(2)(g), entitling her to Group 2 classification and pro-rated credit for every year other than her last. SBR timely appealed to CRAB, requesting that we reverse the DALA decision allowing Ms. Burnes prorated service for the years prior to her last.

Discussion. At issue in this case is G.L. c. 32, § 3(2)(g)'s provision that only "employees of the commonwealth or of any county... whose regular and major duties require them to have the care, custody, instruction, or other supervision of parolees or persons who are mentally ill or mentally defective" to be classified in Group 2 for retirement purposes. "Regular and major" job duties are those that require the employee to spend more than half their time performing. *Forbes v. State Bd. of Retirement*, CR-13-146 (DALA Dec. 23, 2016, aff'd CRAB Jan. 8, 2020) and *Curtin v. State Bd. of Retirement*, CR-13-317 (CRAB Jan. 8, 2020). Therefore, to be entitled to Group 2, the employee must be engaged in the "care, custody, instruction, or other supervision of parolees or persons who are mentally ill or mentally defective" for more than half their work time. *Richard v. State Bd. of Retirement*, CR-16-72 (DALA Feb. 2, 2020).

To determine an employee's Group classification, we look to the employee's job responsibilities in the twelve months preceding retirement. *Maddocks v. Contributory Retirement Appeal Bd.*, 369 Mass 488 (1976). In making this determination, we consider the job

⁹ Respondent Ex. 1-2.

¹⁰ Respondent Ex. 6.

description and the actual duties performed. *Gaw v. Contributory Retirement Appeal Bd.*, 4 Mass. App. Ct. 250 (1976). However, this application in determining group classification is mitigated by the provision that members employed prior to April 2012 may pro-rate their retirement allowance based on the number of years worked in different classification groups.¹¹ G.L. c.32, § 5(2)(a) states in pertinent parts:

“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; further, the retirement allowance for members who became members on or after April 2, 2012, and who served in more than 1 group, shall receive a retirement allowance consisting of pro-rated benefits based upon the percentage of total years of service that member rendered in each group. The pro-rated benefits shall be calculated in a manner prescribed by the commission. A member who entered service on or before April, 2, 2012 and seeks Group 2 or Group 4 classification and is no longer a public employee at the time of the member's retirement shall be classified based on the position from which the member was last employed.” (emphasis added).

Here, the magistrate found, and SBR does not dispute, that Ms. Burnes is not eligible for Group 2 classification for the last year of her service and thus is properly classified in Group 1 for retirement purposes. However, the SBR contends that the magistrate did not have jurisdiction to allow Ms. Burnes Group 2 classification for the years prior to her last year of service because the only period on appeal is her last year of service. This argument by SBR, however, fails to address the implications of § 5(2)(a). This provision is available to Ms. Burnes and allows an active member as of April 2, 2012, who served in more than one group, to pro-rate the time during which the member performed duties consistent with each of the group classification. Since Ms. Burnes was an active member as of April 2, 2012, the magistrate properly considered the group classification issue spanning Ms. Burnes' career. PERAC Memo #29, 2012 states:

“Section 14 of the Act provides for the pro-ration of benefits when a member serves in more than one job group during the course of his/her

¹¹ *Lorrey v. State Bd. of Ret.*, CR-09-553 (DALA Nov. 22, 2013; CRAB Dec. 19, 2014) (the strictness of the “last 12 months” test is mitigated by the 2011 amendment where “members who were employed prior to April 2, 2012, and who retire thereafter may now elect to pro-rate their retirement allowance based on the number of years they worked in positions within different classification groups”).

career. The pro-rated benefits will be based upon the amount of service rendered in each group.” (Emphasis added.)

When reading § 5(2)(a) together with PERAC Memo #29, 2012, Ms. Burnes is allowed to pro-rate the time during which she performed duties consistent with each of the group classification. SBR’s reliance on *Quinlan v. State Bd. of Ret.*, CR-19-0112 (DALA July 30, 2020), does not support its contentions and can be distinguished from this appeal. Unlike the circumstances in this appeal, the retirement board in *Quinlan* had not made a final decision and did not provide appeal rights to the petitioner.¹² See *Barnstable County Retirement Bd. v. PERAC*, CR-07-0163, decision on remand from Superior Court (CRAB Feb 17, 2021). There is no dispute DALA had jurisdiction to address the issues on appeal in this matter.

Since Ms. Burnes is permitted to pro-rate her service, we now turn to the issue of whether Ms. Burnes’ service prior to her last year of service warrants Group 2 classification. The SBR urges CRAB to reverse the DALA decision granting Group 2 classification for Ms. Burnes’ service for this period. First, the SBR asserts that there is no evidence to support Ms. Burnes’ contention that her major and regular job duties entailed providing “care, custody, instruction or other supervision” of a statutory Group 2 population. Secondly, the Board argues that while Ms. Burnes was assigned to the various units caring for prisoners, the prisoners were actually in the custody of correction officers, and therefore, Ms. Burnes failed to meet the requirements for Group 2 classification. After carefully considering the arguments presented by the parties, we conclude that the evidence in the record supports the determination that Ms. Burnes was correctly classified in Group 2.

In considering group classification, the plain language of the statute focuses on the member’s “regular and major job duties.” Prior to her last year, Ms. Burnes testified that she was assigned to work in 8-North, a unit that exclusively housed prisoners where she would care for their post-operative needs.¹³ She also cared for patients within the OR and GI departments, which comprised of approximately 80% prisoners.¹⁴ We agree with the magistrate that the

¹² *Quinlan v. State Bd. of Ret.*, CR-19-0112 (DALA July 30, 2020) (appeal was dismissed because petitioner was directed to appeal to the Board, not to DALA).

¹³ Finding of Fact #7; Testimony of Burnes, Transcript p. 10-13, 17, 28.

¹⁴ Finding of Fact #8; Testimony of Burnes.

evidence in the record demonstrates that Ms. Burnes spent more than half her time providing direct care to prisoners.¹⁵ Since Ms. Burnes’s regular and major job duties involved providing care to the statutory population within Group 2 for the period prior to her last year of employment, she was properly classified in Group 2. Here, the subsidiary findings made by the magistrate are entitled to “some deference” by CRAB, and those findings based on the magistrate’s credibility assessments of witness testimony are owed “substantial deference.” *Vinal v. Contributory Ret. Appeal Bd.*, Mass. App. Ct. 85, 97, 100 N.E.2d 440 (1982), *Kalu v. Boston Retirement Bd.*, 61 N.E.3d 455, 464 (Mass. App. 2016); *Murphy v. Contributory Retirement Appeal Bd.*, 463 Mass. 333, 336 (2012).

Additionally, SBR contends that Ms. Burnes should not be classified in Group 2 because the prisoners were in the custody of guards who accompany them to their appointments, and therefore, Ms. Burnes did not engage in the specific duties for Group 2 classification. The SBR argues that the facts of this case is similar to *Flynn v. State Bd. of Ret.*, CR-18-0423 (DALA June 11, 2021), where a registered nurse was not entitled to Group 2 classification because the patients were in the custody of correction officers. Consequently, the Board avers that the prisoners that Ms. Burnes treated were not in her custody, but in the custody of the corrections officers. Consistent with the finding in *Flynn*, SBR contends that Ms. Burnes should not be entitled to Group 2 classification. This, however, is an inaccurate interpretation of the statutory language. A plain language of the statute establishes that a member seeking Group 2 classification must have one of the listed responsibilities.¹⁶ The Legislature used the word “or” not “and” in drafting this specific provision. Thus, a member only needs to engage in one of the activities, either care *or* custody, to be entitled to Group 2. Here, it is possible for Ms. Burnes to be providing care, while the patient is also in the custody of the COs. Ms. Burnes satisfies one of the listed responsibilities of G.L. c. 32 § 3(2)(g) for Group 2 classification. Based on this conclusion, we find the cases SBR cited do not support its position denying Ms. Burnes’ request for Group 2 classification.

¹⁵ Transcript p. 10-13, 17, 28.

¹⁶ See *Kotkin v. State Bd. of Retirement*, CR-17-1024 (DALA May 2022) (aff’d CRAB Aug. 2025).

Conclusion. Ms. Burnes was an active member as of April 2, 2012 and is permitted to pro-rate the time during which she performed duties consistent with each of the group classification. Ms. Burnes' regular and major job duties involved the care, custody, instruction, or other supervision of a Group 2 population pursuant to G.L. c. 32, § 3(2)(g) during the period prior to her last year of service. Accordingly, Ms. Burnes is entitled to Group 2 classification for her service prior to the last year she worked. The DALA decision is affirmed. ***Affirm.***

SO ORDERED.

CONTRIBUTORY RETIREMENT APPEAL BOARD

Did not participate.

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