

COMMONWEALTH OF MASSACHUSETTS
Division of Administrative Law Appeals

DOROTHY CAMPBELL	:	Docket No. CR-21-0041
<i>Petitioner</i>	:	
	:	
v.	:	Date: June 23, 2023
	:	
CAMBRIDGE RETIREMENT	:	
BOARD,	:	
<i>Respondent</i>	:	

Appearance for Petitioner:

Melissa M. Lanouette, Esq.
Jeffrey Glassman Injury Lawyers
Boston, MA 02110

Appearance for Respondent:

James H. Quirk, Jr., Esq.
Cambridge Retirement Board
Yarmouthport, MA 02675

Administrative Magistrate:

Eric Tennen

SUMMARY OF DECISION

Petitioner, Dorothy Campbell, a nurse, is a municipal employee. She applied to reclassify her status from Group 1 to Group 2. However, she, not an “employ[ee] of the commonwealth or of any county” as required under G.L. c. 32, § 3(2)(g). The fact that the rigors of Ms. Campbell’s position might have otherwise qualified her for Group 2 membership does not override the clear statutory criteria that only state or county employees can be Group 2 members in this context. The Board’s decision is affirmed.

DECISION

The Petitioner, Dorothy Campbell, appeals a decision by the Respondent, Cambridge Retirement Board (“Board”), denying her application for reclassification to Group 2. The Board filed a motion for summary decision, which the Petitioner opposed. After a hearing, I denied the motion because I concluded that it would be better to have a full evidentiary record of the Petitioner’s duties—which were unclear based on the paper submissions.

On June 14, 2023 I conducted a hearing via the Webex platform. I presided over the hearing from the Division of Administrative Law Appeal (“DALA”) office located at 14 Summer Street, 4th Floor, Malden, MA 02148. The Petitioner testified on her behalf, as did two witnesses, Jeanne Holbrok and Rachel Walinjom; the Board did not present any witnesses. I also admitted Exhibits 1 – 11 into evidence. At the close of the hearing, the parties presented summations, at which point I closed the administrative record.

FINDINGS OF FACT

Based on the evidence presented by the parties, I make the following findings of fact:

1. The Petitioner began working for the Cambridge Hospital on January 1, 1996. It was a municipal hospital owned and run by the city. (Exs. 4 & 11; Petitioner testimony.)
2. As an employee of the City of Cambridge, she was not an employee of a county or the Commonwealth; she was a municipal employee.
3. When she began her employment at the hospital, the Petitioner became a member of the Cambridge Retirement System. (Ex. 3.)
4. Shortly after she began working at the hospital, the Legislature created the Cambridge Health Alliance, which combined the Cambridge Hospital and Somerville Hospital into a quasi-

corporate nonprofit entity. This entity is overseen by the Cambridge Public Health Commission. (Ex. 11.)

5. The legislation provided that, anyone like the Petitioner, who was already a member of the Cambridge Retirement Board, would continue to be a member and receive the same rights and privileges if they continued to work for this new entity. (Ex. 11.)

6. The Petitioner is a registered nurse (“RN”) and worked in that capacity until her retirement in 2021. (Exs. 4, 5; Petitioner testimony.)

7. Throughout her career, the Petitioner worked with acutely mentally ill individuals in an inpatient setting. She primarily worked in the Cahill-4 unit, which housed 18 psychiatrically committed individuals. They all had mental health diagnoses which ran the gamut from depression to schizophrenia. (Petitioner, Holbrok, and Walinjom testimony.)

8. Her duties required almost constant patient interaction and monitoring. She was responsible for assessing and treating her patients on a daily basis. Almost 90% of her job involved direct patient care. (Petitioner, Holbrok, and Walinjom testimony.)

9. Her job was dangerous because her patients could, and sometimes did, become violent. She had to respond in those situations and restrain or otherwise deal with the patient. (Petitioner, Holbrok, and Walinjom testimony.)

10. In December 2020, the Petitioner applied to be reclassified from a Group 1 to Group 2 employee. (Ex. 3.)

11. On January 14, 2021, the Board denied her request on the basis that she was not a state or county employee in accordance with G.L. c. 32, § 3. (Ex. 2.)

12. That same day, the Petitioner filed a timely appeal. (Ex. 1.)

CONCLUSION AND ORDER

Although the Petitioner has provided ample evidence that she cared for mentally ill individuals, her appeal turns instead on her status as a municipal employee. In establishing which positions qualify for Group 2 membership, G.L. c. 32, § 3(2)(g) requires 1) that the member be an “employee[] of the commonwealth or of any county” 2) “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 . . .”

The Board does not dispute the Petitioner meets the second requirement, and I agree. Her regular and major duties involved the care and custody of mentally ill persons. For almost 25 years, the Petitioner performed a thankless job that exposed her to physical and emotional risks. She worked with a population who could sometimes be violent. Most of her work involved patient interaction. By all accounts, she was a dedicated, hard-working nurse who merits praise. Unfortunately, that is not enough.

The Petitioner does not meet the first requirement because she is a municipal employee. She was not an employee of the Commonwealth or any county when she began her employment; nor did she become one when the Legislature created the health alliance. *See* Mass. Stat. 1996, c. 147, § 4(d) (“the commission shall be deemed to be a municipal agency for the purposes of said chapter two hundred and sixty-eight A. . .”). In a similar case, DALA explained that an employee of a political subdivision who cared for the mentally ill did not qualify for Group 2 status, even though his duties otherwise met the statutory criteria since “employees of Massachusetts cities and towns are not entitled to Group 2 classification status exclusively because their ‘regular and major duties require them to have the care, custody, instruction or other supervision of, . . . persons who are mentally ill.’” *LeClerc v. MTRS*, CR-14-0436 (DALA Jan. 16, 2015). DALA’s

decision was affirmed by CRAB and then the Superior Court. *See LeClerc v. MTRS*, CR-14-0436 (CRAB Dec. 2, 2015); *LeClerc v. MTRS, et al.*, Docket No. 15-3296-H (Suffolk Superior April 5, 2017). Both forums agreed the statute was clear—one either is, or is not, an employee of the Commonwealth or any county; and the Petitioner here is not.

The Petitioner candidly acknowledges this but argues the statute should be interpreted to include employees like her. Otherwise, she says, it creates an absurd result irrationally differentiating her from other nurses who perform the same job. *See e.g. Johnson v. State Bd. of Ret.*, CR-18-0586 (DALA Ap. 8, 2022) (nurse at Taunton State Hospital, Women’s Recovery from Addictions Program, entitled to Group 2 status). While the statute disfavors municipal employees, ruling otherwise would wrongly ignore the Legislature’s unambiguous statutory criteria for Group 2 membership. The statute, while perhaps unfair, is not absurd. The Legislature consistently draws lines in group classification that include and exclude similar positions. *See e.g. Connor v. Plymouth Cty. Ret. Assc.*, CR-20-0142, 2022 WL 18398943, (DALA Dec. 2, 2022) (Animal Control officer not entitled to Group 4 classification even though her duties were similar to a police officer’s). When the Legislature created the Cambridge Health Alliance, it could have revisited the group status of employees like the Petitioner. It declined to do so.

To the extent the Petitioner’s argument goes beyond statutory interpretation, and seeks an equitable remedy, she has no recourse at this level. “Although I am sympathetic to the inequities [the Petitioner] perceives, DALA has no jurisdiction to hear equitable claims of unfairness.” *McLaughlin v. State Bd. of Ret.*, CR-19-0515, 2022 WL 16921450, (DALA Oct 14, 2022), *citing Bristol County Ret. Bd. v. CRAB*, 65 Mass. App. Ct. 443, 451-52 (2006).

The Board's decision denying the Petitioner's request for reclassification is **affirmed**.

SO, ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Eric Tennen

Eric Tennen
Administrative Magistrate