COMMONWEALTH OF MASSACHUSETTS

**Division of Administrative Law Appeals**

**1 Congress Street, 11th Floor**

**Boston, MA 02114**

**www.mass.gov/dala**

**Charlene Correia**,

Petitioner

v. Docket No. CR-12-682

**State Board of Retirement**,

Respondent

**Appearance for Petitioner**:

James H. Quirk, Jr.

Post Office Box 268

Yarmouthport, MA 02675-0268

**Appearance for Respondent**:

Kathryn Doty, Esq.

State Board of Retirement

One Winter Street, 8th Floor

Boston, MA 02108

**Administrative Magistrate**:

Kenneth Bresler

**SUMMARY OF DECISION**

State Board of Retirement’s denial of Group 2 classification to a supervising nurse who directly cared for mentally ill patients more than 50% of the time during her last year of work is reversed.

**DECISION**

 The petitioner, Charlene Correia, appealed the denial by the State Board of Retirement (SBR) of her application to be reclassified in Group 2.

 I held a hearing on September 6, 2017, which I recorded digitally. I reopened the record and held a second day of hearing on May 17, 2018, for reasons that I explain below. Ms. Correia testified on September 6, 2017. She called Susan L. Davis as a witness on May 17, 2018. MTRS called no witnesses.

 I accepted into evidence 23 exhibits. On my own initiative, I admitted Exhibit 24, which is Ms. Correia’s appeal letter and the envelope that it arrived in. Both parties submitted post-hearing briefs.

**Findings of Fact**

 1. Ms. Correia is a registered nurse who worked at Taunton State Hospital for 30 years, from 1982 through 2012. (Correia testimony, Exs. 10, 13.)

 2. Taunton State Hospital is run by the Department of Mental Health. (Ex. 3.) All of its patients in Ms. Correia’s last year of employment were mentally ill. (Correia testimony.)

 3. In her last year of employment, Ms. Correia’s job title was Registered Nurse 4, or RN-4. (Ex. 3; Correia testimony.)

 4. RN-4s were supervisors and did not directly care for patients. (Correia testimony.)

 5. Registered Nurse 2s, or RN-2s, were among the nurses who directly cared for patients. (Correia testimony.)

 6. As part of Taunton State Hospital’s plan to avoid paying overtime to RN-2s, if an RN-2 was absent from a shift because of sickness or vacation, and if more than one RN-4 was on duty, an RN-4, such as Ms. Correia, would assume the duties of an RN-2, specifically a charge nurse; that is, a nurse in charge. In other words, a supervisor without direct-care duties for patients would became a charge nurse with direct-care duties for a shift. (Ex. 3, Correia testimony.)

 7. When Ms. Correia worked as a charge nurse, her duties included taking patients’ vital signs, conducting skin assessments, monitoring nutrition, changing dressings, administering oxygen, conducting the patient admission procedure, and restraining patients. (Ex. 3.)

8. On October 9, 2012, Ms. Correia signed a classification questionnaire. (Ex. 3.)

 9. Also on October 9, 2012, Ms. Correia wrote a letter to SBR, asking to be reclassified from Group 1 to Group 2. (Ex. 4.)

 10. Around this time, Ms. Correia reviewed the documents recording her shifts and prepared a grid that she titled “Charlene Correia, RN4 Productive Time Analysis: Direct Care vs Supervisory Shifts.” (Ex. 16.)

 11. The grid that Ms. Correia prepared covered April 2011 through March 2012. (Ex. 16.)

 12. Ms. Correia’s last year of work was the calendar year 2012. (Ex. 13.) In other words, Ms. Correia’s grid covered the first three months of her last 12 months, but not the final nine months.[[1]](#footnote-1)

 13. In April 2011, Ms. Correia worked 17 shifts, seven as a supervisor, 10 as a charge nurse. She spent 58% of her time caring for mentally ill patients. (Ex. 16.)

14. In May 2011, Ms. Correia worked 23 shifts, 11 as a supervisor, 12 as a charge nurse. She spent 52% of her time caring for mentally ill patients. (Ex. 16.)

15. In June 2011, Ms. Correia worked 14 shifts, seven as a supervisor, seven as a charge nurse. She spent 50% of her time caring for mentally ill patients. (Ex. 16.)

16. In July 2011, Ms. Correia worked 20 shifts, 14 as a supervisor, six as a charge nurse. She spent 30% of her time caring for mentally ill patients. (Ex. 16.)

17. In August 2011, Ms. Correia worked 14 shifts, seven as a supervisor, seven as a charge nurse. She spent 50% of her time caring for mentally ill patients. (Ex. 16.)

18. In September 2011, Ms. Correia worked 20 shifts, 10 as a supervisor, 10 as a charge nurse. She spent 50% of her time caring for mentally ill patients. (Ex. 16.)

19. In October 2011, Ms. Correia worked 20 shifts, 10 as a supervisor, 10 as a charge nurse. She spent 50% of her time caring for mentally ill patients. (Ex. 16.)

20. In November 2011, Ms. Correia worked 12 shifts, five as a supervisor, seven as a charge nurse. She spent 58% of her time caring for mentally ill patients. (Ex. 16.)

21. In December 2011, Ms. Correia worked eight shifts, three as a supervisor, five as a charge nurse. She spent 62% of her time caring for mentally ill patients. (Ex. 16.)

22. In January 2012, Ms. Correia worked 26 shifts, eight as a supervisor, 18 as a charge nurse. She spent 69% of her time caring for mentally ill patients. (Ex. 16.)

23. In February 2012, Ms. Correia worked 20 shifts, seven as a supervisor, 13 as a charge nurse. She spent 65% of her time caring for mentally ill patients. (Ex. 16.)

24. In March 2012, Ms. Correia worked 20 shifts, eight as a supervisor, 12 as a charge nurse. She spent 60% of her time caring for mentally ill patients. (Ex. 16.)

 25. On November 29, 2012, SBR denied Ms. Correia’s request for reclassification to Group 2. On December 4, 2012, it informed her of the denial. (Ex. 5.)

 26. On December 10, 2012, Ms. Correia timely appealed. She did so with a letter addressed to SBR and mailed to DALA, which DALA received on Dec. 17, 2012. (Ex. 24.)

**Discussion**

 Group 1 is for the majority of the Commonwealth’s employees. G.L. c. 32, § 3(2)(g). Group 2 is a more favorable category, once an employee retires, and is for employees, among others, “whose regular and major duties require them to have the care, custody, instruction or other supervision of…persons who are mentally ill.” G.L. c. 32, § 3(2)(g).

 The “regular and major duties” requirement in G.L. c. 32, § 3(2)(g) has come to mean that an employee must spend more than half of his or her time engaged in those duties.

*Peter Forbes v. State Board of Retirement*, CR-13-146 (DALA 2016)(citations omitted). The period that matters is an employee’s last year of his employment. *See e.g.*, *Ernestine Gibbs v. State Board of Retirement*, CR-11-754 (DALA 2016).

 In three of Ms. Correia’s last 12 months, she cared for mentally ill persons significantly more than 50% of the time. In four of the last nine months of 2011, Ms. Correia cared for mentally ill persons more than 50% of the time. From Ms. Correia’s grid (Ex. 16), and her testimony and Ms. Davis’s testimony that she generally cared for patients more than 50% of the time, I conclude that in the last 12 months of her employment, Ms. Correia cared for mentally ill persons more than 50% of the time. Having done so, she is entitled to Group 2 classification. SBR’s decision to deny her Group 2 classification is reversed.

**Conclusion and Order**

 In the last year of Ms. Correia’s employment, she cared for mentally ill persons more than 50% of the time. She deserves classification in Group 2. SBR’s decision to deny her application to be reclassified to Group 2 is reversed.

 DIVISION OF ADMINISTRATIVE LAW APPEALS

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 Kenneth Bresler

 Administrative Magistrate

Dated: May 25, 2018

1. When I initially began drafting this decision, I noticed that Exhibit 16 did not cover all of Ms. Correia’s last 12 months of employment. Because group classification must be based on the last 12 months of employment, *e.g,* *Peter Forbes v. State Board of Retirement*, CR-13-146 (DALA 2016), I reopened the record and gave Ms. Correia the opportunity to review the shift records and redo Exhibit 16. At the second day of hearing, Ms. Davis testified that the shift records summarized by Exhibit 16 are no longer available, and Exhibit 16 cannot be revised, but that Ms. Correia generally worked more than half of her time caring for mentally ill patients.

 My reopening the record is not a procedural precedent. I do not commit myself or the Division of Administrative Law Appeals to reopening the record when I or a fellow Administrative Magistrate notices a deficiency in a petitioner’s appeal. [↑](#footnote-ref-1)