

COMMONWEALTH OF MASSACHUSETTS

**Division of Administrative Law Appeals  
14 Summer Street, 4th Floor  
Malden, MA 02148  
[www.mass.gov/dala](http://www.mass.gov/dala)**

**Joseph Crosby,**  
Petitioner

v.

Docket No. CR-23-0077

**State Board of Retirement,**  
Respondent

**Appearance for Petitioner:**

Joseph Crosby

**Appearance for Respondent:**

John Durgin, Esq.  
Senior Associate General Counsel  
State Board of Retirement

**Administrative Magistrate:**

Kenneth Bresler

**SUMMARY OF DECISION**

Petitioner, who classified prisoners for jobs and housing, was not engaged in care, custody, instruction, or other supervision of them and is not entitled to Group 2 classification.

**DECISION**

The petitioner, Joseph Crosby, appeals the denial by the State Board of Retirement (SBR) of his application for Group 2 classification.

I held a hearing on December 10, 2024 by Webex, which I recorded. Mr. Crosby testified and called the only other witnesses: Zezinha Mitchell, the Assistant Deputy Superintendent of the Suffolk County House of Correction (HOC); and William Sweeney, former director of

Human Resources for the Suffolk County Sheriff's Department and current superintendent of the HOC. I admitted 13 exhibits. Both parties submitted post-hearing briefs in February 2025.

### **Findings of Fact**

1. From September 27, 2010 to May 6, 2023, Mr. Crosby was a Custody Assessment Manager in the Suffolk County Sheriff's Department (SCSD). (Ex. 1)

2. The majority of Mr. Crosby's duties in the last year of his employment entailed determining classifications for inmates (that is, determining which housing units and any job assignments were appropriate for them) and processing and trying to resolve grievances (such as grievances that inmates had about their treatment in the House of Correction by an SCSD employee, medical treatment, disposition of their property, or their account at the House of Correction canteen. (Crosby testimony)<sup>1</sup>

3. A Position Description for Custody Assessment Manager listed these Duties and Responsibilities:

1. Determine appropriate classification of inmates based on the inmate interview, court records, the nature of the charges pending against them, their program participation, their behavior while incarcerated, and any relevant medical considerations;
2. Chair classification boards and review hearings to determine appropriate classification status and address inmate appeals of board decisions;
3. Serve as a board member at special management classification hearings;
4. Serve as Inmate Grievance Coordinator. Conduct investigations and meet with inmates to discuss outcomes and address complaints;
5. Supervise inmate assessment and assignment for housing and programming needs. Evaluate, analyze, and assess all relevant factors involved with the assignment of inmates;

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<sup>1</sup> This decision uses "classification" in two different ways. Mr. Crosby argues that his duties classifying *prisoners* (his job) entitled *him* to Group 2 classification (a desirable state pension category).

6. Conduct classification intakes, as well as ASU and LSIR<sup>2</sup> assessments with inmates;
7. Oversee the housing assignment of all inmates within the facility. Develop and maintain waiting lists of individual inmates for all in-house movement and community correction placements, as well as transfers to other correctional facilities.
8. Serve as liaison to other divisions and outside agencies....
9. Maintain classification lists, assignments, program placements, and any other...records.....
10. Submit periodic summary reports....
11. Conduct DNA testing of inmates....
12. Prepare and analyze statistical data, and prepare reports....
13. Supervise subordinate staff....
14. Assist in the development and maintenance of policy and procedures....  
.....

(Ex . 1)

4. On a typical Tuesday, for example, Mr. Crosby's schedule was as follows:

6:30-7:00am	Arrival at HOC
7:00-7:30am	Review email/office
7:30am	Bld <sup>3</sup> 1 Female units
	Conduct Classifications
	respond to Grievances
9:00am	Chair inmate ASU/SHU
	Boards/request
	Review email/office
Lunch	
1:00pm	Follow up in Bld 1 units
	Classifications and Grievances
2:30pm	Computer/office
3:00pm	Leave work

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<sup>2</sup> "ASU" stands for "Assigned Segregation Unit." The record does not reveal what "LSIR" stands for.

<sup>3</sup> Presumably "Building."

(Ex. 2)

5. Mr. Crosby's schedule was very similar on other days of the week. (Ex. 2)

6. When Mr. Crosby held classification board hearings, the other two board members were the inmate's caseworker and a correction officer from the inmate's unit.  
(Crosby testimony)

7. Mr. Crosby's handling of inmates' grievances did not entail conducting formal hearings. Inmates grieved, for example, problems with their medical treatment, issues at the canteen, and not getting a job assignment. He sometimes acted as an inmate's advocate to resolve the grievance with other prison personnel. (Crosby testimony)

8. Mr. Crosby estimated that in his last year of employment, he spent 55% of his time conducting classification hearings, 15% of his time engaged in paperwork related to classification, 10% of his time conducting Assigned Segregation Unit (ASU) hearings, 5% of his time conducting Special Housing Unit (SHU) hearings, and 35% of his time handling inmates' grievances. (The estimated percentages do not total 100%.) (Crosby testimony)

9. On October 25, 2022, Mr. Crosby applied for Group 2 classification. He did not seek prorated classification. (Ex. 1)

10. In his application, Mr. Crosby sought Group 2 classification for his work as a Custody Assessment Manager from September 27, 2010 to May 6, 2023. (Ex. 1, p. 2<sup>4</sup>)

11. On January 26, 2023, SBR denied his application for Group 2 classification; on January 27, 2023, it informed him of the denial. (Ex. 8)

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<sup>4</sup> Exhibit 1, page 2 provides a different date range.

12. On February 3, 2023, Mr. Crosby timely appealed. (Ex. 9)

13. In his appeal letter, Mr. Crosby emphasized his contact with inmates. (Ex. 9)

### **Discussion**

When I asked Mr. Crosby what he did to care for inmates, he testified that he cared about them, but did not care for them, and that he indirectly provided care. (Crosby testimony)

When I asked Mr. Crosby what he did to instruct inmates, he testified that he indirectly instructed them. When he explained to inmates their individual service plans, which he did not draft, he also considered that to constitute instructing them. (Crosby testimony)

When I asked Mr. Crosby what he did to supervise inmates, he testified that his conducting hearings did not quite entail supervising inmates, but that he indirectly supervised them. (Crosby testimony)

Members of retirement systems fall into four groups. Group 1 is the general group. G.L. c. 32, § 3(2)(g). Other groups, including Group 2, use a more desirable calculation for retirement benefits than does Group 1. Group 2 is for various employees, including those “whose regular and major duties require them to have the care, custody, instruction or other supervision” of prisoners, parolees, and people who are mentally ill or have development disabilities. G.L. c. 32, § 3(2)(g). *See Anne Koch v. State Board of Retirement*, CR-09-449 \*2, 2014 WL 13121797 (Cont. Ret. App. Bd. Oct. 9, 2014) (interpreting outdated term in statute to refer to developmental disabilities).

It is well established that (1) mere contact with and (2) exposure to risks from members of these populations does not establish Group 2 eligibility. *E.g., Andrea Long v. State Board of Retirement*, CR-20-0440, CR-21-0287, 2023 WL 6900305, at \*4 (Div. Admin. Law App. Oct. 13, 2023). “It is not enough, for Group 2 classification purposes, that an employee's job entails

regular interaction with mentally ill persons. The statute requires more.” *Bruce Frazer v. State Board of Retirement*, CR-18-0318, \*6 (Div. Admin. Law App. Nov. 19, 2021).

“A key factor in assessing a member’s ‘regular and major’ duties is the member’s job title and description.” *Peter Forbes v. State Board of Retirement*, CR-13-146, 2020 WL 14009545 (Cont. Ret. App. Bd. Jan. 28, 2020). *See Maddocks v. Contributory Retirement Appeals Board*, 369 Mass.488, 495 (title and description of duties can be used to determine group classification). A job description can “serve as helpful evidence of actual duties” but is not dispositive. *Richard Desautel v. State Board of Retirement*, CR-18-0080, 2023 WL 11806157 (Cont. Ret. App. Bd. Aug. 2, 2023).

To determine whether a prison employee who classifies prisoners is entitled to Group 2 classification requires examining previous assessment and classification cases. As summarized in a 2021 DALA decision:

Numerous DALA decisions have considered whether workers are eligible for Group 2 classification when their contact with mentally ill people served primarily to assess this population for eligibility for government assistance and to determine appropriate services. These cases have uniformly concluded that such jobs are administrative in nature and not eligible for Group 2 classification. *See, e.g., Alfaro v. State Bd. of Retirement*, Docket No. CR-17-229 (Div. of Admin. L. App., May 29, 2020) (Mental health case manager employed by the Department of Public Health to assess clients, develop individual service plans, monitor the implementation of service plans, coordinate delivery of services, maintain case records, chair case management teams, and develop policies and procedures was not entitled to Group 2 classification because these roles were mainly administrative or supervisory and did not involve direct care of mentally ill persons.); *Gasser v. State Bd. of Retirement*, Docket No. 15-254 (Div. of Admin. L. App., March 3, 2017) (DMH social worker classified as Group 1 because his role required him to assess mentally ill persons and arrange for third parties to provide care rather than providing direct care himself.); *Albano v. State Bd. of Retirement*, Docket No. CR-15-327 (Div. of Admin L. App., July 29, 2016) (Human service coordinator for the Department of Disability Services was properly classified in Group 1 because she did not provide direct care to mentally ill persons for more than 50% of her employment time and the bulk of her job was spent developing service plans for clients, identifying appropriate services, and monitoring the services provided.); *Flacks v. State Bd. of Retirement*, Docket No.

CR-03-348 (Div. of Admin. L. App., June 18, 2004) (DMH clinical social worker whose primary function was to determine client eligibility for DMH services through file review, clinical interview, diagnostic assessment, and care plan was not eligible for Group 2 classification because his job was primarily administrative.)

*Frazer* \*6-7. *Frazer* and its progeny stand for the proposition that collecting information and assessing members of the relevant populations so that *others* may provide care, custody, instruction, or other supervision does not by itself entail care, custody, instruction, or other supervision. That differs from an assessment made by a person who will be one of the people providing the care itself. In that situation, the “assessments cannot be separated from the treatment itself.” *Jay Potter v. State Board of Retirement*, CR-19-0519, \*9 (Div. of Admin. Law App. Dec. 16, 2022).

Mr. Crosby relies on three prisoner classification decisions holding that classifying prisoners is a Group 2 activity. These decisions focus on some of the details of what performing a classification entails and find in these details, that performing an assessment involves care or supervision.

The oldest of these decisions determined that the Assistant Director of Classification in the Suffolk County Sheriff’s Department who sought to participate in an early retirement program that was open only to Group 1 members could not do so because his position put him in Group 2. The magistrate determined that the Assistant Director performed Group 2 work because he met prisoners on “a one to one basis with no guards anywhere in attendance” and spent a great deal of time with each inmate reviewing their individual situation...to determine their proper classification as well as the parameters of their allowable visitation schedule.” *Charles Goodman v. Boston Retirement Board*, CR-02-1105 (Div. of Admin. Law App. Jan 30, 2002). However, it

does not necessarily follow that for a retirement system member to have spent a lot of time with prisoners to review their situations and determine their classification and visitation schedule means that the member cared for, instructed, or supervised prisoners. The Contributory Retirement Appeal Board affirmed the decision that petitioner was ineligible for the early retirement program without commenting on the standard to be applied to prisoner assessment cases. *Goodman*.

A few years later, the same magistrate determined that a Correction Program Officer 1 whose duties involved “interviewing inmates for classification as well as advising them on educational and vocational opportunities available to them” was in Group 2 because she was “responsible for interviewing and advising inmates.” *Carlene LaChance v. State Board of Retirement*, CR-04-644 (Div. of Admin. Law App. Sept. 2, 2005). The Contributory Retirement Appeal Board affirmed this conclusory decision without comment. *LaChance*, CR-04-644 (Cont. Ret. App. Bd. Mar. 6, 2006).

More recently, a magistrate determined that the Chief Classification Manager at the Bristol County House of Correction was in Group 2 based on the following:

- the employee had a “good understanding of how to deal with inmates”
- prisoners’ conditions required her to take “different approaches” with them;
- the position required the employee to use “at least some professional judgment or discernment” and “interpersonal skills, discernment, and sound judgment”;
- the position “involve[d] a certain range and/or depth of responsibility”;
- the position entailed “shoulder[ing] a certain responsibility for the well-being of prisoners”;
- the position entailed “not just...performing a specific task conscientiously and well, but [also] attending more broadly to the well-being of those in their care”;
- the employee’s “interactions had an impact on fundamental aspects of inmates’ custody”;
- the employee “need[ed] to adjust” to prisoners’ characteristics,” be “adroit in modulating her approach” to prisoners,” and to take “intelligent notice” of them; and
- the position “required her to have direct and substantive interactions with inmates, to



thoughtfully attend to their individual circumstances and characteristics, and to make determinations or furnish advice on a range of subjects, many of which subjects had a direct bearing on the fundamental aspects of the inmates' incarceration.”

*McKinney v. State Board of Retirement*, CR-17-230, 2023 WL 6537982 (Div. of Admin.

Law App. Sept. 29, 2023).<sup>5</sup> However, an employee's intake into a facility of members of the relevant populations, no matter how significant the work or how conscientiously

done, does not qualify the employee for Group 2 classification. *E.g.*, *Harold Berube v.*

*State Board of Retirement*, CR-05-853 (Div. of Admin. Law App. ALA Oct. 20, 2006)

(face-to-face screening interviews with individuals seeking mental health care from the

Department of Social Services did not constitute care, custody, instruction or other

supervision of persons who are mentally ill).

To the extent the *Goodman*, *LaChance* and *McKinney* decisions stand for the proposition that an assessment of prisoners, standing alone, is enough to place a person who performs that task into Group 2, I decline to follow them. As I stated at the outset, assessing an individual for care by others is not providing care itself. The weight of decisions on this issue is that

“[d]etermining eligibility of clients for services...is an administrative duty and not direct care.”

*Ellen Alfaro v. State Bd. of Retirement*, Docket No. CR-17-229 (Div. of Admin. L. App., May

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<sup>5</sup> *McKinney*, like many other Group 2 decisions, cited *Rebell v. Contributory Retirement Appeal Board*, 89-P-1259, 30 Mass. App. Ct. 1108, 569 N.E.2d 858 (1991); *McKinney* also parsed *Rebell*. *Rebell* is an unpublished case decided by a panel of the Appeals Court (not the whole Court) under former Massachusetts Appeal Rule 1:28 and which was for appeals in two categories: appeals with “no substantial question of law” or with “some clear error of law.” Under Rule 1:28, no party could cite in submissions to the Appeals Court any decision issued under Rule 1:28 before February 26, 2008. *Rebell* should not be given much, if any, weight when the Appeals Court itself would not and did not accept citations to *Rebell* in submissions. For the particular proposition for which it stands – that drawing blood from a prisoner is not Group 2 work – there are better sources. See *Victor Azzi v. State Board of Retirement*, CR-00-1135 (Div of Admin. Law App. 2001, Aug. 31, 2001 *aff'd* Cont. Ret. App. Bd. Feb. 4, 2002).

29, 2020) It is also not instruction, for “[n]ot all transmission of information constitutes instruction.” *Irene Daley-Horgan v. State Board of Retirement*, CR-22-0227, 2024 WL 5107627 (Div. Admin. Law App. Dec. 6, 2024). It is also not supervision, for assessing where a person should be housed in a prison is not supervising their activity.

Mr. Crosby’s job description demonstrates that he was not engaged in the care, custody, instruction or other supervision of inmates. His testimony confirmed that he was not engaged in the direct care, custody, instruction, or other supervision of inmates. The following do not constitute care, custody, instruction or other supervision of inmates; some are clearly administrative:

- classifying inmates;
- chairing classification hearings;
- participating in other hearings;
- meeting with inmates about their grievances and investigating the grievances;
- supervising inmate assessments and assignments;
- conducting intakes and other assessments;
- overseeing inmates’ housing assignments;
- serving as liaison to other divisions and outside agencies;
- maintaining classification records;
- submitting periodic summary reports;
- conducting inmates’ DNA testing;
- preparing and analyzing statistical data and reports;
- supervising staff; and
- developing and maintaining policy and procedures.

*See Colette Santa v. State Board of Retirement*, CR-23-0413, 2025 WL 1191221 (Div. Admin. Law App. April 18, 2025) (Parole Board member who presided over parole hearings was not engaged in care, custody, supervision, or instruction of prisoners or parolees, and was not entitled to Group 2 classification).

### **Conclusion and Order**

The petitioner was not engaged in the care, custody, instruction, or other supervision of prisoners for a majority of his time during his last year of work. He is not entitled to Group 2 classification. The State Board of Retirement's denial of his application is affirmed.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/

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Kenneth Bresler  
Administrative Magistrate

Dated: June 13, 2025