

COMMONWEALTH OF MASSACHUSETTS

**Division of Administrative Law Appeals
14 Summer Street, 4th Floor
Malden, MA 02148
www.mass.gov/dala**

Irene Daley-Horgan,
Petitioner

v.

Docket No. CR-22-0227

State Board of Retirement,
Respondent

Appearance for Petitioner:

Irene Daley-Horgan
785 Washington Street, Unit 202
Norwood, MA 02071

Appearance for Respondent:

John Durgin, Esq.
Senior Associate General Counsel
Office of the Treasurer and Receiver-General
One Ashburton Place, 12th Floor
Boston, MA 02108

Administrative Magistrate:

Kenneth Bresler

SUMMARY OF DECISION

Paralegal in the Suffolk County Sheriff's Department applied for Group 2 classification for instructing prisoners. She did not prove by a preponderance of the evidence that she instructed prisoners for more than 50% of the time in her last year of employment. Denial of Group 2 classification is affirmed.

DECISION

The petitioner, Irene Daley-Horgan, appeals the denial by the State Board of Retirement (SBR) of her application for Group 2 classification.

I held a hearing on August 7, 2024 by Webex, which I recorded. Ms. Daley-Horgan represented herself, testified, and was the only witness. I admitted Exhibits A through P. Both parties submitted post-hearing briefs.

Findings of Fact

Decision by Boston Retirement Board, 2002

1. On January 30, 2002, the Boston Retirement Board (BRB) granted the Suffolk County Sheriff's Department's request that 22 positions be classified in Group 2. (Ex. B)¹

2. BRB's letter states in part:

The Board has reviewed the job descriptions provided, and each *appears* to meet the statutory requirements for Group 2. The job titles and descriptions included are as follows:

(Ex. B) (emphasis added) Job titles, but no descriptions, followed.²

3. Preceding each job title was a code starting with SC, such as SC17. (Ex. B) "SC" may stand for "Suffolk County," but the record does not explain what the codes are.

4. Of the 22 positions approved for Group 2 classification, the job titles for nine contain the word "Supervisor." Six job titles contain the word "Administrative." One approved position was Executive Chef. (Ex. B)

5. Among the positions approved for Group 2 classification was "Paralegal." (Ex. B)

¹ The letter is dated January 31, 2001 but refers to the Boston Retirement Board's decision of January 30, 2002. One year, 2001 or 2002, is correct. I guess that 2002 is correct. *See* SBR prehearing memorandum at 13, n.2. Ms. Daley-Horgan testified that the City of Boston conducted an audit in 2009, but Exhibit B does not support that year.

² Although Ms. Daley-Horgan testified that BRB had conducted an audit, the letter makes it sound more like a review of written job descriptions, followed by a hedged decision.

6. The letter ends with: “Once again...this change in classification is valid only for the job titles listed in this letter.” (Ex. B) (It is unclear what “[o]nce again” refers to; the letter itself does not previously state anything comparable.)

Position: administrative assistant, 1986-88

7. According to Ms. Daley-Horgan’s resume, from 1986 to 1988, she was an administrative assistant to Social and Legal Services in the SCSD. (Ex. K, p. 13) (The resume is undated, but it is attached to and referenced in SCSD’s letter to SBR, dated January 28, 2022. Ms. Daley-Horgan testified that she created it in 2023.)

8. As an administrative assistant, according to her resume, Ms. Daley-Horgan assigned new inmates to caseworkers; tracked inmates through the legal system; assisted in computerization; assisted lawyers with preparing for court; worked with area courts; provided information about inmate custody to “various departments” (it is unclear whether these were departments in or outside of the Suffolk County Sheriff’s Department); and performed general office management tasks. (Ex. K, p. 13)

Position: caseworker, 1988-94

9. Ms. Daley-Horgan was a caseworker from 1988 to 1994. (Ex. K, p. 12) (This service is not part of this appeal. Various documents give a different position title: social worker. (Ex. I, pp. 7, 8, 11, 12, 13, 14))

Position: paralegal, Inmate Legal Service, 1994-99

10. According to her resume, Ms. Daley-Horgan was an Inmate Legal Service Paralegal from 1994 to 1999. (Ex. K, p. 12) (An SCSD document gave her a different title in 1994: Senior Administrative Assistant. (Ex. I, p. 14))

11. According to her resume, as an Inmate Legal Service Paralegal, Ms. Daley-Horgan

created and taught legal education programs to the jail population; provided legal research and support for inmates; responded to inmates' legal requests in writing and one-on-one "counseling"; classified new inmates legally; prepared inmates for bail appeals to alleviate jail overcrowding; produced confidential criminal records for the Criminal Justice Information System; and created a legal dictionary for inmates. (Ex. K, p. 12) (It is unclear if and how "jail population" differs from "inmates. (It is also unclear whether the resume's varying references to offenders, inmates, and detainees was significant.) It is unclear what "counseling" means in the context of responding to "inmate legal requests." Does it mean that she answered questions? She provided legal advice?)

Position: paralegal, General Counsel's office, 1999-2013

12. According to her resume, Ms. Daley-Horgan was a General Counsel Paralegal from 1999 to 2013. (Ex. K, p. 12)

13. According to her resume, as General Counsel Paralegal, Ms. Daley-Horgan assisted the general counsel and other staff attorneys at the jail and House of Correction. Of the eight bullet-point items in this job entry, half of the last item was "responding to inmate legal requests[,] including notarizing documents." (Ex. K, p. 12)

Position: Inmate Legal Service MM, 2013 on

14. According to her resume, Ms. Daley-Horgan was an Inmate Legal Service MM in the Nashua Street Jail/Suffolk House of Correction from 2013 to the present. (Ex. K, p. 11) ("MM" stands for "middle management." (Daley-Horgan testimony))

15. According to her resume, as an Inmate Legal Service MM, Ms. Daley-Horgan:

A. provided legal support to sentenced inmates and "pretrial and federal detainees," including "understanding the court process, charges, motions, good time jail credits,

family issues, etc.” (Ex. K, p. 11)

B. was “[r]esponsible for the direct support of the Peace Unit,” which housed offenders younger than 25. (Ex. K, p. 11, testimony) (It is unclear what “responsible,” “direct,” and “support” mean. She provided direct support or she was responsible for making sure that someone else provided direct support? It is unclear who or what was supported (inmates in the Peace Unit, or the Peace Unit as an entity) and how.)

C. acted as “[l]iaison with the Massachusetts Bail project providing bail resources to qualified inmates.” (Ex. K, p. 11) (It is unclear whether she or the project provided resources.)

D. assisted the Classification Division; worked with the Budget Division; worked with the Program Service Division to coordinate efforts for population’s human service needs; worked with the Superintendent’s Office to coordinate mental health and court evaluations; worked with the Medical Division to coordinate mental health commitments for detainees; and “[p]rovide[d] support to the Sheriff’s Bail Appeal Project assisting Attorneys in providing CJIS [Criminal Justice Information System] information to complete their appeal requests.” (It is unclear, but it sounds as though Ms. Daley-Horgan assisted a project that, in turn, assisted lawyers.) (Ex. K, p. 11)

16. In addition to her resume, another document described Ms. Daley-Horgan’s duties as an Inmate Legal Service MM starting in 2013: a Position Description. The Position Description used a different title: Management Assistant – Inmate Legal Services (Ex. K, p. 4)

17. The duties and responsibilities of the position of Management Assistant – Inmate Legal Services. (Ex. K, p. 4) were as follows:

1. Meets daily with inmates to provide assistance with and access to legal services.

2. Responds to inmate requests and provides regular updates.
3. Instructs on and facilitates inmate interactions with the courts, including speedy trial petitions, jail credit issues, habeas corpus matters, etc.
4. Prepare documentation for and attends bail review sessions.
5. Formulates curriculum and teaches classes to explain the role of the Inmate Legal Services Division and a general overview of the court processes to the inmate population.
6. Assists the Classification Division to ensure the proper classification and housing assignments of inmates.
7. Responsible for moderate to complex level of quantitative and qualitative analysis of pertinent subject matter.
8. Provides information to command staff, the courts, and other government agencies as requested.
9. Performs general office duties as assigned.
10. Other duties as the Sheriff may request from time to time.

(Ex. K, p. 4)

18. In addition to the duties and responsibilities above, the Position Description listed 13 qualifications, including various computer skills. (Ex. K, p. 5)

19. Qualification 3 included “[a]bility to interact with the public....” and work with people in SCSD, other organizations, and private industry. It included “[h]igh levels of customer service....” (It is unclear who the customers were in this context, but inmates were not mentioned in this qualification. (Ex. K, p. 5))

20. Qualification 6 included the ability to work with coworkers and consultants. (Ex. K, p. 5)

21. Qualification 10 was “[a]bility to research legal issues and explain these issues to the inmate population.” (Ex. K, p. 5)

22. Qualification 11 was “[k]nowledge of the court system in order to help inmates navigate and understand their current environment.” (Ex. K, p. 5)

23. In addition to duties and responsibilities, and qualifications, the Position Description listed 10 essential functions. (Ex. K, pp. 5-6)

24. Essential Function 2 was “[m]eeting with inmates...one-on-one...and in a group setting.” (Ex. K, pp. 5)

25. Essential Function 3 was “[v]isiting units to meet with inmates and discuss court documentation and processes.” (Ex. K, pp. 5)

26. Essential Function 4 was “[p]reparing documentation and attending bail review sessions.” (Ex. K, pp. 5)

27. In addition to duties and responsibilities, qualifications, and essential functions, the Position Description listed nine Minimal Physical Requirements for Essential Functions. (Ex. K, p. 6)

28. Some of the minimal physical requirements are simple, such as “Sit or stand periodically for 8 hours” and “Write and type.” Requirement 4 was “[l]isten to, observe, and respond to inmate questions...at bail review sessions.” (Ex. K, p. 6)

29. According to Ms. Daley-Horgan, the Position Description was accurate for the work that she did from 2013 on. (Daley-Horgan testimony)

30. In addition to her resume and Position Description, still another document described Ms. Daley-Horgan’s duties, at least in 2021: a Management Performance Evaluation. (Ex. C) (Although the evidence contains an earlier Management Performance Evaluation, the 2021 evaluation is the closest to her last year of service, January 28, 2022 to January 27, 2023.)

31. The Management Performance Evaluation listed Ms. Daley-Horgan’s title as

“Paralegal (MM).” (Ex. C / Ex. K, p. 7) (In contrast, her resume listed her title as Inmate Legal Service MM. (Ex. K, p. 11) The Position Description listed her title as Management Assistant – Inmate Legal Services. (Ex. K, p. 4))

32. The Management Performance Evaluation listed four primary responsibilities:

1. Makes face-to-face visits with detainees in Quarantine Units...not only to educate them about the services provided by ILS [Inmate Legal Services], but also to promote human interaction...to assist in improving their mental health; provides consistent access to legal materials and education in a safe and effective manner in light of the continued effects of COVID-19 pandemic; visits and consults with inmate/detainee population; performs on-line legal research services;

2. Facilitates attorney/client communication through scheduling of attorney conference calls and zoom conferences pursuant to SJC Order and CPCS [Committee for Public Counsel Services] directives....

3. Serves as liaison between the Mass Bail Fund (MBF) and SCSD;

4. Compiles bail-related paperwork, creates files, runs board of probation records and classifies new pre-trial detainees; files motions for habes [habeas corpus petitions] with various Massachusetts courts; assesses criminal information for PREA³ eligibility; assists with administrative duties of ILS'[s] Administrative Assistant.

(Ex. C / Ex. K, p. 7)

Ms. Daley-Horgan's testimony about her paralegal duties

Ms. Daley-Horgan testified as follows⁴:

33. She and other paralegals instructed inmates how to do things, but the inmates had their own lawyers and the paralegals did not interfere with that relationship.

34. She and other paralegals conducted legal research for the inmates about statutes and the charges against them. Her testimony made it sound as if the paralegals

³ Presumably, the Prison Rape Elimination Act.

⁴ I put it this way because much of Ms. Daley-Horgan's testimony was unclear.

printed research and brought it to inmates in their cells. (It is unclear what legal research that Ms. Daley-Horgan and other paralegals did for the inmates if the inmates had their own lawyers.)

35. She and other paralegals created and taught various classes to inmates. The classes lasted 30 to 45 minutes. The topics included search and seizure, restraining orders, the school zone law, how the court system worked, and what inmates could expect at trial. (It is unclear why Ms. Daley-Horgan taught inmates about what they could expect at trial if the inmates had lawyers.) At one point, Ms. Daley-Horgan testified that maybe she taught one class per day. Later, she testified that maybe she taught one class per month. As the inmate population changed, she might teach a class on a topic that she had previously taught. (It was unclear whether this testimony applied to all of her work as a paralegal from 2013 on, whether it applied to her last year of work as a paralegal, and how the COVID-19 pandemic affected the classes.)

36. Ms. Daley-Horgan and other paralegals went cell-to-cell to tell inmates how to handle issues with the Department of Children and Families (DCF), how to make sure that their families were cared for, getting Social Security benefits while incarcerated, and their rights to not lose their housing. Ms. Daley-Horgan referred to this cell-to-cell interaction with inmates as individualized instruction. (It was unclear whether this testimony applied to all of her work as a paralegal from 2013 on and whether it applied to her last year of work as a paralegal.)

37. During the COVID-19 pandemic, inmates' mental health was the SCSB's "number 1 focus." Her testimony and her Management Performance Evaluation (Ex. C / Ex. K, p. 7) made it sound as if she and other paralegals visited inmates at their cells to

interact with them in general, not only to act as paralegals. (Ms. Daley-Horgan could not specify how long the pandemic affected her duties, specifically whether the pandemic affected her duties into 2022.)

38. Ms. Daley-Horgan's last substantive testimony was that she instructed inmates daily and that she spent 50% of her time instructing them.⁵ She did not elaborate or identify what she counted as instruction. She did not specify how much of her time she spent, for example, visiting inmates cell-to-cell for their mental health; visiting inmates cell-to-cell to tell them how to handle DCF issues, for example; and how much time she spent conducting research for inmates and delivering it to them.

February 2022 application

39. On an undated application that SBR received on February 4, 2022, Ms. Daley-Horgan applied for Group 2 classification. She was 57 years old. (Ex. K)

40. Ms. Daley-Horgan stated that she was not seeking prorated service by group classification. (Ex. K)

41. Ms. Daley-Horgan stated that from November 12, 1986 to the present, she was a Legal Service Paralegal (MM5) in the Suffolk County Sheriff's Department. (Ex. J)

42. In the section of the application completed by the human resources department, the Suffolk County Sheriff's Office stated that for the same period, from November 12, 1986 to the present, her position was Management Assistant. (Ex. J)

43. On May 31, 2022, SBR denied Ms. Daley-Horgan's application for Group 2 classification. (Ex. J)

44. On June 1, 2022, Ms. Daley-Horgan timely appealed. (Ex. N)

⁵ Note that this is a legal conclusion, not factual testimony.

October 2022 application

45. On October 4, 2022, Ms. Daley-Horgan applied for Group 2 classification. (Ex. I, p. 2)

46. On her application, Ms. Daley-Horgan stated that she was seeking prorated service by group classification and that she was submitting two group classification applications and that she had submitted the previous application separately. (Ex. I, p. 2)

47. On her application, Ms. Daley-Horgan stated that from September 7, 1988 through June 1, 1994, she was a caseworker in the Suffolk County Sheriff's Department. (Ex. 1)

48. On December 29, 2022, SBR approved Ms. Daley-Horgan's service from September 7, 1988 through June 1, 1994 as a caseworker for Group 2 classification. (Ex. L)⁶

49. The process by which Ms. Daley-Horgan came to submit her second group classification application – *e.g.*, did she communicate with SBR, which indicated that her service as a caseworker might qualify as Group 2? – is unknown, despite my inquiry to the parties.

Discussion

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.” G.L. c. 32, § 3(2)(g). Ms. Daley-Horgan's theory of her appeal is that she instructed prisoners; she does not contend that she cared for, had custody of, or otherwise supervised prisoners. (*E.g.*, Pet. Br. 2)

⁶ What is now on appeal is SBR's denial of Ms. Daley-Horgan's February 2022 application for Group 2 classification for the following service: from November 12, 1986 through September 6, 1988; and June 2, 1994 to her retirement on January 27, 2023.

For retirement system members who began service before 2012, such as Ms. Daley-Horgan, their group generally depends on their duties when they retire. *Maddocks v. Contributory Retirement Appeal Board*, 369 Mass. 488, 494 (1976). *See also* G.L. c. 32, § 3(2)(g) (an employee “must be actively performing the duties of said position for which the member seeks classification for not less than 12 consecutive months immediately preceding ...retirement”).

“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 (CRAB 2020). *See Maddocks*, 369 Mass. at 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.

...[I]ndividuals who serve in a supervisory capacity but are required to provide direct care on a regular basis for more than half of their working hours are eligible for Group 2 classification even though their job also involved supervision and administration.

Desautel v. State Board of Retirement, CR-18-0080 (CRAB 2023) (footnote omitted).

The “regular and major duties” requirement in G.L. c. 32, § 3(2)(g) has come to mean that a retirement system member must spend more than half of their time engaged in those duties. *Forbes*, CR-13-146.

A retirement system member who began service before April 2, 2012, such as Ms. Daley-Horgan, may, but does not have to, elect to receive “pro-rated [retirement] benefits based upon the percentage of total years of service that the member rendered in each group.” G.L. c. 32, § 5(2)(a).

The issues presented by Ms. Daley-Horgan’s appeal are: Did she seek prorated benefits in this appeal? Did she instruct *prisoners* (as opposed to, for example, detainees)? Did she engage

in *instruction*? Did she instruct prisoners more than 50% of her time? Did she instruct prisoners more than 50% of her time *in the last year of her employment*? What is the effect of BRB's 2002 classification of various SCSD employees in Group 2?

Did Ms. Daley-Horgan seek prorated benefits in this appeal?

No. In February 2022, Ms. Daley-Horgan applied for Group 2 classification for November 12, 1986 to the time of her application, and stated that she was *not* seeking prorated service by group classification. (Ex. K) SBR denied this application for Group 2 classification and Ms. Daley-Horgan timely appealed. (Exs. J, N)

In October 2022, after SBR's denial and Ms. Daley-Horgan's appeal, she applied for Group 2 classification for her service as a caseworker from September 7, 1988 through June 1, 1994. (Ex. I, p. 2) SBR approved that application. (Ex. L) Ms. Daley-Horgan's October 2022 application and SBR's approval of it transformed her appeal retroactively and implicitly. Her appeal – this appeal – was no longer an appeal of SBR's denial of Group 2 classification for all of her service between November 12, 1986 to the time of her February 2022 application. Her appeal became an appeal of SBR's denial of Group 2 classification for her service from November 12, 1986 through September 6, 1988; and June 2, 1994 to her retirement on January 27, 2023, as I stated above.

Ms. Daley-Horgan's October 2022 application and SBR's approval of it did *not* retroactively and implicitly transform (1) her February 2022 application into an application for prorated service and (2) her appeal into an appeal of a denial of prorated service. We know that Ms. Daley-Horgan's February 2022 application was not an application for prorated service because it *stated that it was not an application for prorated service* and because it did not entail separate applications for administrative assistant, 1986-88; paralegal, Inmate Legal Service,

1994-99; paralegal, General Counsel’s office, 1999-2013; and Inmate Legal Service MM, from 2013 on. We know that Ms. Daley-Horgan’s appeal is not an appeal of denial of *prorated* service from November 12, 1986 through September 6, 1988; and June 2, 1994 to her retirement on January 27, 2023 because Ms. Daley-Horgan did not apply for prorated service for those periods; SBR did not deny her application for prorated service for those periods; her written appeal does not mention prorated service and she has not attempted to amend it; and Ms. Daley-Horgan did not testify about her positions as an administrative assistant, 1986-88; paralegal, Inmate Legal Service, 1994-99; and paralegal, General Counsel’s office, 1999-2013.

And because this appeal is an appeal of the denial of Ms. Daley-Horgan’s non-prorated application for Group 2 classification, I examine only her last year of service.

Did Ms. Daley-Horgan instruct *prisoners*?

While G.L. c. 32, § 3(2)(g) refers to “prisoners,” Ms. Daley-Horgan’s resume refers to “pretrial and federal detainees” (Ex. K, p. 11), and the Management Performance Evaluation refers to “detainees,” the “inmate/detainee population,” and “pre-trial detainees.” (Ex. C / Ex. K, p. 7) Ms. Daley-Horgan testified about “instructing inmates as well as detainees.” The issue arises whether the distinctions are significant.

Chapter 32 does not define “prisoner.” However, Chapter 125 does define the word, “[a]s used in this chapter and elsewhere in the general laws, unless the context otherwise requires...” G.L. c. 125, § 1. The definition is: “a committed offender and *such other person as is placed in custody in a correctional facility in accordance with law.*” G.L. c. 125, § 1[m]. The definition of “committed offender,” in turn, is: “a person convicted of a crime and committed, under sentence, to a correctional facility.” G.L. c. 125, § 1[c].

Linda Hanover v. State Board of Retirement, CR-17-0828, CR-18-0228 (DALA 2022) (footnote omitted, emphasis added). Three more definitions are in order: An inmate is

a committed offender or such other person as is placed in custody in a correctional facility in accordance with law.

G.L. c. 125, § 1(i). Thus, “prisoner,” “committed offender,” and “inmate” appear to be synonyms.

A correctional facility is

any building, enclosure, space or structure used for the custody, control and rehabilitation of committed offenders *and of such other persons as may be placed in custody therein in accordance with law.*

G.L. c. 125, § 1(d) (emphasis added).

And a county correctional facility is

any correctional facility owned, operated, administered or subject to the control of a county of the commonwealth.

G.L. c. 125, § 1(e).

Therefore, if a jail is a correctional facility, anyone incarcerated there is a prisoner, whether or not the person has been convicted of a crime. So, is a jail a correctional facility?

G.L. c. 127, § 36 refers to “any of the correctional institutions of the commonwealth or any jail or house of correction in the commonwealth,” implying that a jail is not a correctional facility. Similarly, G.L. c. 127, § 36C distinguishes among a “correctional institution, jail or house of correction,” implying that a jail is not a correctional facility.

However, G.L. c. 127, § 38B (b) & (c) refers to “a correctional facility, including any jail, house of correction, trial court detention facility or state prison,” meaning that a jail is a correctional facility.

Furthermore, G.L. c. 127, § 8 requires “[e]ach jailer and superintendent of a house of correction [to] have a prison book,” implying that a jail is a prison. If that is so, then a person incarcerated in a jail is a prisoner.

The General Laws may not resolve this issue but, the Supreme Judicial Court has written:

The word “prisoner,” in its “common and approved usage,” refers to an individual who is either serving a criminal sentence or awaiting trial. See 12 Oxford English Dictionary 513 (2d ed.1989) (“one who is kept in custody...as the result of a legal process, either as having been condemned to imprisonment as a punishment, or as awaiting trial for some offence”); Webster’s Third New Int’l Dictionary 1804 (1993) (“a person held under arrest or in prison”); Black’s Law Dictionary 1213 (7th ed. 1999) (“A person who is serving time in prison”; “a person who has been apprehended by a law-enforcement officer and is in custody, regardless of whether the person has yet been put in prison”).

Commonwealth v. Gillis, 448 Mass. 354, 358–59 (2007). See also *Amy Johnson v. State Board of Retirement*, CR-18-586 (DALA 2022).

It appears that the detainees and offenders with whom Ms. Daley-Horgan was interacting were prisoners.

Did Ms. Daley-Horgan engage in instruction for more than 50 % of her time in the last year of her employment?

Ms. Daley-Horgan taught classes once a day or once a month for 30 to 45 minutes.

(Daley-Horgan testimony) It is unclear when she did so: whether it was before the pandemic or whether it was in the last year of her employment. In any event, her classroom instruction did not constitute more than 50 % of her approximately eight-hour workday.

When a government employee instructs a prisoner (or a member of other populations that are relevant for Group 2 classification, such as mentally ill people), instruction may occur outside of a classroom. That’s what I said in a factual finding in a decision, although I did not discuss it legally. *Stephen Terceira v. State Board of Retirement*, CR-10-781 (DALA 2016) (assistant maintenance engineer in a sheriff’s office instructed inmates in duct work, including how to cut holes in ducts). See also *Andrea Long v. State Board of Retirement*, CR-20-0440, CR-21-0287 (DALA 2023).

A Child/Adolescent Case Manager was granted Group 2 classification because, among

other things, she routinely instructed her clients “in a number of daily living skills,” including hygiene skills, social skills, and financial budgeting “and in helping them with filling out job applications and in interviewing for work.” *Linda Lu (Schulz) Burciaga v. State Board of Retirement*, CR-03-940, (DALA 2005).

Was Ms. Daley-Horgan instructing prisoners when she acted as a paralegal? No. For a paralegal to provide legal services to inmates does not entail instructing them. *Carlos Colon v. State Board of Retirement*, CR-12-622 (DALA 2017) (Bresler, A.M.). See also *Richard Kalinowski v. State Board of Retirement*, CR-12-506 (DALA 2017) (for a lawyer to provide legal services to inmates does not entail instructing them) (Bresler, A.M.); *Robert F. Fandel v. State Retirement Board*, CR-93-215, (DALA 1995) (being a lawyer did not entail “‘custody, instruction or supervision’ of inmates in the manner contemplated for bona fide Group II employees”).

During the pandemic, Ms. Daley-Horgan went cell-to-cell to interact with prisoners.

However:

- It is unclear whether Ms. Daley-Horgan did so in the last year of her employment.
- It is unclear how much of her time Ms. Daley-Horgan went cell-to-cell to interact with prisoners.
- Ms. Daley-Horgan’s testimony and her Management Performance Evaluation (Ex. C / Ex. K, p. 7) made it sound as if she visited prisoners at their cells during the pandemic mainly to interact with them for their mental health, which would not constitute instructing them.
- She conducted legal research for the inmates about statutes and the charges against them, which would constitute acting as a paralegal and not instructing prisoners.

- Ms. Daley-Horgan’s testimony made it sound as if she printed research and brought it to prisoners in their cells, which would not constitute instructing them.

- Ms. Daley-Horgan went cell-to-cell to tell inmates how to handle issues with the Department of Children and Families (DCF), how to make sure that their families were cared for, how to get Social Security benefits while incarcerated, and their rights to not lose their housing. Daley-Horgan referred to this cell-to-cell interaction with inmates as individualized instruction, although it sounds like social work. Not all transmission of information constitutes instruction. Answering individual questions is akin to legal advice, which is not instruction. If Ms. Daley-Horgan presented classes on these subjects before the pandemic, and the exigencies of the pandemic required that she present a class prisoner-by-prisoner cell-to-cell, that might constitute instruction. However, Ms. Daley-Horgan did not make it clear whether that was the case. Furthermore, it is unclear whether Ms. Daley-Horgan went cell-to-cell discussing these topics during the last year of her employment and if so, how much time she spent doing so.

Ms. Daley-Horgan’s last substantive testimony was that she instructed inmates daily and that she spent 50% of her time instructing them. However, that is a legal conclusion, not factual testimony. Ms. Daley-Horgan did not prove by a preponderance of the evidence that her various interactions with prisoners constituted instruction and that she instructed prisoners for more than 50 % of her time during the last year of her employment.

What is the effect of BRB’s 2002 classification of various SCSD employees in Group 2?

BRB’s classification in 2002 of various SCSD employees in Group 2 does not bind this appeal for multiple reasons. The 2002 classification is not “established precedent,” as Ms. Daley-Horgan argues. (Pet br. 3) The reasons are:

- The Division of Administrative Law Appeals and the Contributory Retirement Appeal Board are not bound by previous classification decisions by other boards, especially if the decisions are wrong. *Hunter v. Contributory Retirement Appeal Board*, 80 Mass. App. Ct. 257, 263 (2011); *Andrea Long v. State Board of Retirement*.

- *The specific issue of whether BRB's classification in 2002 of various SCSD employees in Group 2 is binding on SRB and DALA has already been decided. In Andrea Long v. State Board of Retirement, DALA found that the 2002 classification – the same classification in that case and in this case, based on the same January 31, 2002 letter – is not binding. The case of Long v. SBR is established precedent, not BRB's 2002 classification.*

- I ruled in 2017 that a paralegal for prisoners is not entitled to Group 2 classification. *Colon v. State Board of Retirement*. If Ms. Daley-Horgan is correct that BRB's January 31, 2002 letter is established precedent, then it pre-overruled my 2017 decision. That cannot be the law.

- The process by which BRB classified some SCSD employees in Group 2 was a comprehensive “audit” and a “conscientious review,” according to Ms. Daley-Horgan's testimony. She implies that it deserves deference for that reason. But BRB's process consisted of reviewing written job descriptions and deciding that jobs *appeared* to be in Group 2. (Ex. B) That process was not comprehensive, and less comprehensive than the instant process, which involved sworn testimony.

- BRB's January 30, 2002 letter refers to job descriptions, but they are not attached to the letter and are not part of the record. It is simply unknown how similar or dissimilar Ms. Daley-Horgan's job duties were to the paralegal position that BRB classified in Group 2.

- Of the 22 positions approved for Group 2 classification, the job titles for nine contain the word “Supervisor.” Six job titles contain the word “Administrative.” (Ex. B) The supervisors

were presumably supervising employees, not prisoners. The administrative personnel were presumably handling administrative matters. It is unclear from the letter how the supervisors and administrative personnel were eligible for Group 2 classification, but the letter on its face does not invite deference. Rather, it invites skepticism.

- Among the positions approved for Group 2 classification was “Paralegal.” (Ex. B) The letter ends with: “Once again...this change in classification is valid only for the job titles listed in this letter.” (Ex. B) However, it is unclear what Ms. Daley-Horgan’s title was: Paralegal (MM) (Ex. C / Ex. K, p. 7), Inmate Legal Service MM (Ex. K, p. 11), Management Assistant – Inmate Legal Services (Ex. K, p. 4), or Management Assistant. (Ex. J). The letter on its face does not clearly apply to Ms. Daley-Horgan.

- By the time that Ms. Daley-Horgan retired on January 27, 2023, the January 31, 2002 letter was 21 years old. Circumstances had changed – such as the upheavals wrought by the COVID-19 pandemic.

Ms. Daley-Horgan testified that she made a retirement decision based on BRB’s 2002 classification. I note two things. One, it was unfortunate but not reasonable to rely on a classification that was two decades old; hedged (the letter used “appears”); not clearly applicable on its face to Ms. Daley-Horgan; and did not include a description of the job in 2002. Two, Ms. Daley-Horgan testified that she moved in 2013 from being a paralegal in the SCSD’s General Counsel’s office to being a paralegal in Inmate Legal Services because she preferred working with inmates rather than against them. It is unclear which retirement decision she made based on the 2002 classification. She ended up working with inmates (even if she did not instruct them for more than 50% of the time in her last year of employment), which was her preference.

Ms. Daley-Horgan argued that when SBR denied her Group 2 classification without conducting a comprehensive review of all jobs in SCSD, it was “arbitrary and unfounded.” (Pet. Br. 3) It was not. SBR need not look at all positions in SCSD, including, say, the Supervisor of Religious and Volunteer Programs (Ex. B), to determine that Ms. Daley-Horgan’s paralegal duties did not merit Group 2 classification. I, too, need not look at all positions in SCSD to determine the same thing.

Ms. Daley-Horgan had a valuable job, but she did not prove by a preponderance of the evidence that she instructed prisoners for more than 50% of the time in her last year of employment.

Conclusion and Order

The State Board of Retirement’s denial of the petitioner’s application for Group 2 classification is affirmed.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/

Kenneth Bresler
Administrative Magistrate

Dated: December 6, 2024