

COMMONWEALTH OF MASSACHUSETTS  
DIVISION OF ADMINISTRATIVE LAW APPEALS

Middlesex, ss.

Patrick DePalo,  
Petitioner,

Docket No.: CR-22-0370

v.

State Board of Retirement,  
Respondent.

Appearances:

For Petitioner: Patrick DePalo, *pro se*

For Respondent: Brendan E. McGough, Esq.

Administrative Magistrate:

John G. Wheatley

**SUMMARY OF DECISION**

A state employee is ineligible for Group 2 classification under G. L. c. 32, § 3(2)(g) because his regular and major job duties as Chief of Office of Investigative Services (OIS) at the Department of Correction (DOC) did not require him “to have the care, custody, instruction or other supervision of prisoners.” Although his visits to DOC facilities included some time spent supervising prisoners, his primary responsibilities were administrative, including managing several DOC units, overseeing their investigations, and establishing DOC policies and procedures.

**DECISION**

The petitioner, Patrick DePalo, appeals the decision of the State Board of Retirement (Board) declining to grant him Group 2 classification for his service as Chief of OIS, pursuant to G. L. c. 32, § 3(2)(g).

I held an evidentiary hearing on October 10, 2024, at the Division of Administrative Law Appeals. DePalo and his former supervisor, Michael Grant, testified at the hearing. I admitted

twenty-one exhibits into evidence (Petitioner’s Exhibits 1-18 and Respondent’s Exhibits 1-3).

The petitioner filed a post-hearing brief on October 28, 2024, and the respondent filed a post-hearing brief on November 25, 2024, whereupon the hearing record closed.

**Findings of Fact**

Based upon the testimony and documentary evidence presented at the hearing, I make the following findings of fact:

1. Patrick DePalo began working for the DOC in 1989 as a Correction Officer I. He subsequently held other positions at the DOC, including Correction Officer II, Captain, Director of Security, Deputy Superintendent of Operations, and Chief of OIS. (Respondent’s Exhibit 3.)
2. From January 11, 2015, to August 4, 2018, DePalo held the position of Chief of OIS, which is the subject of this appeal. (Respondent’s Exhibit 3.)
3. The Chief of OIS “reports directly to the Deputy Commissioner” of the DOC and “is responsible for the Fugitive Apprehension Unit (FAU), Central Intelligence Unit (CIU), Criminal Prosecution Unit (CPU), the Internal Affairs Unit (IAU), and the Department’s Duty Station.” (Petitioner’s Exhibit 1, at 1.)
4. DePalo’s job duties as Chief of OIS are set forth in a human resources management questionnaire. The “major responsibility areas” of the position and the percentage of work time spent on those responsibilities are identified, in order of importance, as follows:

“What do you do?”	Percentage of Time
1. Responsible for reviewing all Internal Affairs and OIS functions involving investigations through completion. Assigning cases and providing oversight	

to the internal affairs investigators and OIS staff. Manage all units by prioritizing cases, delicate [sic] resources, oversee investigations, identify training, evaluate staff and maintain quality and effectiveness. 60%

2. Review, revise and enforce policies and procedures pertaining to employee misconduct, disorder management and escapes. 10%
3. Establish guidelines, priorities, training, and management systems for ensuring an efficient and effective unit operation. 10%
4. Direct and assist in the coordination of investigations involving sensitive and/or complex issues. 10%
5. Other duties as assigned. 10%”

(Petitioner’s Exhibit 1, at 2.)

5. As Chief of OIS, DePalo supervised approximately forty DOC employees. (Petitioner testimony; Petitioner’s Exhibit 1, at 3-4.)
6. DePalo spent roughly three to four days per week visiting DOC facilities. When not visiting the facilities, DePalo worked at the DOC headquarters in Milford. (Petitioner testimony.)
7. DePalo typically worked ten to twelve hours per day. (Petitioner testimony.)
8. During his visits to DOC facilities, DePalo oversaw investigations, interviewed inmates and staff involved in the investigations, monitored inmate telephone calls, and read inmate correspondence. (Petitioner testimony.)
9. During his interviews with the inmates, a correction officer or another staff member sometimes would also be present. (Petitioner testimony.)
10. DePalo interviewed some inmates regarding specific investigations involving street surveillance such as drug investigations. He interviewed others regarding issues with

facility staff. Afterwards he wrote reports with recommendations. (Petitioner testimony.)

11. DePalo also interviewed inmates to determine their security risk for purposes of identifying appropriate placement at a DOC facility with the proper level of security. He asked each inmate a “template” of questions to assess the inmate’s security risk. He “would try to stick to the same types of questions” for each inmate because once the determination regarding security risk was made, it affected the inmate’s placement, and some placements would later be challenged. He recorded the inmate’s answers to each question, then prepared a handwritten report for DOC staff to type. This report became part of the file that was used for determining the inmate’s placement. (Petitioner testimony.)
12. DePalo estimated that he was in contact with the prisoners for approximately four to five hours per day during his visits to DOC facilities. (Petitioner testimony.)
13. When DePalo was not visiting DOC facilities, he “was doing administrative functions.” (Petitioner testimony.)
14. Michael Grant, Deputy Commissioner for DOC, supervised DePalo’s work for a period when he was Chief of OIS. (Grant testimony.)
15. DePalo met with Grant on a weekly basis to discuss the outcomes of some of the inmate interviews. Grant did not manage DePalo’s daily work, but he estimated that DePalo likely spent 60-65% of his day doing inmate interviews. (Grant testimony.)

16. On April 25, 2022, the Board received an application from DePalo requesting classification in Group 4 for several of his positions at the DOC, including his position as Chief of OIS. (Respondent's Exhibit 3.)
17. On June 30, 2022, the Board denied DePalo's request for Group 4 classification for his position as Chief of OIS. The Board notified DePalo of its decision in a letter dated July 1, 2022. (Respondent's Exhibits 1, 3.)
18. On July 28, 2022, the Board considered DePalo's position as Chief of OIS for classification in Group 2. The Board voted to deny classifying this position in Group 2. (Respondent's Exhibit 2.)
19. On July 29, 2022, the Board sent a letter to DePalo to notify him of its decision to deny Group 2 classification for his service as Chief of OIS. However, the Board inadvertently stated in the letter that it had denied classification in Group 4 rather than in Group 2. (Petitioner's Exhibit 4.)
20. On August 26, 2022, the Board notified DePalo of its mistake and clarified that it had denied *Group 2* classification for his service as Chief of OIS. (Petitioner's Exhibit 5.)
21. On September 8, 2022, DePalo timely appealed the Board's decision to deny Group 2 classification for his position as Chief of OIS. (Petitioner's Exhibit 6.)

### **Analysis**

The retirement allowance afforded to members of the state employees' retirement system is determined, in part, by the classification of the employees' service into one of four groups. See G. L. c. 32, § 3(2)(g). By default, members whose positions do not meet the criteria for Groups 2, 3, or 4 fall within Group 1, which includes "[o]fficials and general employees

including clerical, administrative and technical workers, laborers, mechanics and all others not otherwise classified.” *Id.* Group 2 includes employees “whose regular and major duties require them to have the care, custody, instruction or other supervision of prisoners . . . .” *Id.* DePalo has elected to receive pro-rated benefits based on his years of service in each retirement group, pursuant to G. L. c. 32, § 5(2)(a). At issue is whether DePalo’s service as Chief of OIS meets the requirements for Group 2 classification or instead falls under Group 1.<sup>1</sup>

The Chief of OIS position is not among the specific job titles included in Group 2 under G. L. c. 32, § 3(2)(g). To prevail, therefore, DePalo must prove by a preponderance of the evidence that his “regular and major duties” involved the “care, custody, instruction or other supervision of prisoners.” G. L. c. 32, § 3(2)(g); *Peck v. State Bd. of Retirement*, No. CR-15-282, 2021 WL 12298080, at \*3-4 (Contrib. Ret. App. Bd. Feb. 8, 2021) (petitioner’s burden of proof). DePalo may satisfy this burden by showing that he spent more than half of his time engaged in providing such services. *Forbes v. State Bd. of Retirement*, No. CR-13-146, 2020 WL 14009545, at \*7 (Contrib. Ret. App. Bd. Jan. 8, 2020).

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<sup>1</sup> DePalo timely appealed the Board’s August 26, 2022, denial of Group 2 classification, but he did not file a prior timely appeal of the Board’s July 1, 2022, decision denying him Group 4 classification for the same position. Although the issue of Group 4 classification is not before me, I note that the Chief of OIS position is not included among the Group 4 positions identified in G. L. c. 32, § 3(2)(g). See, e.g., *Horton v. State Bd. of Retirement*, No. CR-17-846, 2025 WL 4030299, at \*2 (Contrib. Ret. App. Bd. Dec. 15, 2025) (correction program officer with the Department of Correction was ineligible for Group 4 classification because the position was not specifically listed as a Group 4 position in § 3(2)(g)); *Sheehan v. State Bd. of Retirement*, No. CR-25-0304, 2026 WL 714133, at \*3 (Div. Admin. Law App. Mar. 6, 2026) (criminal identification officer for Plymouth County Sheriff’s Department was ineligible for Group 4 because his position was not enumerated in § 3(2)(g)); *Doto v. State Bd. of Retirement*, No. CR-05-1184, 2005 WL 4541620, at \*2 (Div. Admin. Law App. Dec. 29, 2005) (director of security at MCI Concord did not qualify for Group 4 because the position was not listed as a Group 4 position in § 3(2)(g)).

To determine an employee's "regular and major duties," the responsibilities listed in the written job description are considered but are not dispositive. *Desautel v. State Bd. of Retirement*, No. CR-18-0080, 2023 WL 11806157, at \*2 (Contrib. Ret. App. Bd. Aug. 2, 2023); *Forbes, supra*, at \*5. Testimony or other evidence of the actual job duties performed by the employee may also be taken into account. *Desautel, supra*, at \*2. Employees "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, supra*, at \*2.

The work responsibilities set forth in DePalo's management questionnaire for his position as Chief of OIS reflect predominantly managerial and administrative duties. His primary function, noted to consume 60% of his work time, was to manage five DOC units and to oversee investigations involving inmates and DOC staff, including assigning and prioritizing cases, supervising investigators and staff, evaluating staff, and providing training. Another 20% of his time was spent establishing, reviewing, revising, and enforcing DOC policies, procedures, guidelines, and training and management systems. DePalo's administrative duties as Chief of OIS do not qualify him for Group 2 classification. See, e.g., *McLaughlin v. State Bd. of Retirement*, No. CR-19-0515, at 11-12 (Div. Admin. Law App. Dec. 23, 2022) (former Chief of OIS did not qualify for Group 2 because his duties were mostly administrative).

During his testimony, DePalo described some additional job duties that arguably constituted the "supervision of prisoners" under G. L. c. 32, § 3(2)(g). Specifically, DePalo met with prisoners at various DOC facilities and interviewed them either in connection with active investigations or to assess the prisoner's security risk level for purposes of proper facility

placement. See *McKinney v. State Bd. of Retirement*, Nos. CR-17-230 & CR-17-868, 2023 WL 6537982, at \*11 (Div. Admin. Law App. Sept. 29, 2023) (classification interviews of inmates constituted supervision of prisoners). But see *Crosby v. State Bd. of Retirement*, No. CR-23-0077, 2025 WL 1725651, at \*6 (Div. Admin. Law App. June 13, 2025) (conducting classification hearings of inmates to determine appropriate prison placement for jobs and housing did not qualify for Group 2). Even assuming the interviews qualified as the “supervision of prisoners,” however, DePalo spent less than half of his work time conducting those interviews. The rest of his time was spent performing managerial and administrative tasks, as indicated above (e.g., managing several DOC units, assigning cases, overseeing investigations, establishing DOC policies, etc.). Any supervision of inmates that was provided through interviewing them was therefore ancillary to DePalo’s primarily managerial and administrative functions as Chief of OIS. See *Mendonso v. State Bd. of Retirement*, No. CR-12-595, 2021 WL 12298074, at \*4 (Contrib. Ret. App. Bd. Feb. 8, 2021) (“[A] position is not classified in Group 2 when Group 2 duties are ancillary to a position’s primarily administrative functions.”).

### Conclusion

The decision of the State Board of Retirement denying Group 2 classification for the petitioner’s service as Chief of OIS is *affirmed*.

Dated: April 10, 2026

*/s/ John G. Wheatley*

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