

**COMMONWEALTH OF MASSACHUSETTS
DIVISION OF ADMINISTRATIVE LAW APPEALS**

Oscar Febres,
Petitioner

v.

Docket No. CR-24-0055

State Board of Retirement,
Respondent

Appearance for Petitioner:

Oscar Febres

Appearance for Respondent:

John Durgin, Esq.

Administrative Magistrate:

Kenneth Bresler

SUMMARY OF DECISION

Petitioner, a campus police chief, was not eligible for Group 2 classification because he did not spend more than 50 percent of his time caring for, having custody of, or instructing people who were mentally ill.

DECISION

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

I held a hearing on June 17, 2025 by Webex, which I recorded. Mr. Febres represented himself, testified, and called no other witness. I admitted nine exhibits, A through J.

Mr. Febres relied on his prehearing memorandum and testimony, rather than a closing memorandum. SBR filed its closing memorandum on July 31, 2025.

Findings of Fact

1. The Worcester Recovery Center and Hospital is part of the Department of Mental Health (DMH). (Ex. D, p. 4)
2. Patients at the Worcester Recovery Center and Hospital were mentally ill. (Testimony)
3. At the Worcester Recovery Center and Hospital, Mr. Febres was a campus police officer from July 8, 2012 to August 3, 2019; a campus police sergeant from August 4, 2019 to April 8, 2023; and a campus police chief from April 9, 2023 to March 22, 2024. (Ex. D)¹
4. The job description (Form 30) for Campus Police Officer II (which was apparently campus police sergeant) read in part:
 1. Supervises, coordinates, and participates in the daily activities of the Campus police....
 2. Plans, establishes, and monitors...security, safety, and emergency procedures....Ensures compliance with laws, regulations, department policies, procedures, and protocols....Plans and prepares work schedules....
 -
 5. Conducts investigations....

(Ex. H) The job description was accurate. (Testimony)

5. As sergeant, Mr. Febres supervised six police officers. (Testimony)
6. The job description (Form 30) for Campus Police Chief reads in part:
 1. Plans, establishes and monitors appropriate security and emergency procedures for the hospital...to ensure the safety...of institution employees, students, faculty, patients, clients and visitors.
 2. Supervises and coordinates the activities of Campus Police Officers....

¹ Thus, in Mr. Febres's last year of employment, he was a campus police chief for almost a year and campus police sergeant for about two-and-a-half weeks.

....

6. Prepares and submits reports....

7. Develops and maintains liaison with local, state, federal and other professional law enforcement agencies....

....

9. Supervises and participates in the investigation of crimes....

....

(Ex. I) The job description was accurate. (Testimony)

7. As police chief, Mr. Febres supervised dispatchers, three police sergeants, and 19 to 20 police officers. (Testimony)

8. In his last year of employment, primarily as police chief, Mr. Febres's shift began at 6:00 a.m. and ended at 2:00 p.m., although his typical day ended at 5:00 p.m. (Testimony)

9. In a typical day as police chief, Mr. Febres:

A. attended a daily 8:00 a.m. meeting for 20 minutes; attended a daily 10:00 a.m. meeting for one hour; and met with the recovery center's chief executive officer for half an hour. (Testimony)

B. spent three to four hours in his office. (Testimony)

C. was in the presence of patients one-and-half to two hours, mainly by walking around the residential units, supervising personnel. (Testimony)

10. On January 4, 2024, Mr. Febres applied for Group 2 classification. (Ex. D)

11. Mr. Febres submitted one application and did not seek pro-rated service. (Ex. D)

12. On January 26, 2023, SBR denied Mr. Febres's application for Group 2 classification.

(Ex. E)

13. On February 6, 2024, Mr. Febres timely appealed. (Ex. F)

14. Mr. Febres's appeal stated in part, "My duties as a Campus Police Officer with the Department of Mental Health at Worcester Recovery Center and Hospital" put him "in direct contact with clients/patients all the time." There has "not been a single day that I don't have direct Contact with Patients." (Ex. F)

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 people who are mentally ill. G.L. c. 32, § 3(2)(g).

As his own advocate, Mr. Febres's position was that he sought Group 2 classification because he had cared for, had custody of, instructed, and supervised people who are mentally ill. As a witness, Mr. Febres conceded that he had not supervised mentally ill people.

It is well established that mere contact with 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, 20232023 WL 6900305, at *4 (DALA 2023).

"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 v. Contributory Retirement Appeal Board*, 369 Mass. 488, 495 (1976) (title and

description of duties can be used to determine group classification).

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 their time engaged in those duties. *Peter Forbes v. State Board of Retirement*, CR-13-146 (DALA 2016). Mr. Febres did not meet that threshold when the evidence is viewed from a few different perspectives.

One, the job description for campus police chief contains no duties entailing care, custody, or instruction of mentally ill people.

Two, in a typical day, Mr. Febres as police chief spent over two hours in meetings, and three to four hours in his office. That means that he spent at least 60 percent of his official shift and almost or over 50 percent of his typical day *not* caring for, having custody of, or instructing mentally ill people.

Three, in a typical day, Mr. Febres as police chief spent two hours – or 25 percent of his official shift, and almost 20 percent of his typical day – in the *presence* of mentally ill people. Even if being in the presence of mentally ill people sufficed to establish eligibility for Group 2, Mr. Febres did not meet the requisite 50 percent threshold.

Four, according to Mr. Febres, his caring for mentally ill people entailed taking their complaints. However, taking complaints from people does not entail caring for them. *Lori Carlson v. State Board of Retirement*, CR-23-0303 (Div. Admin. L. App. Aug. 8, 2025) (Bresler, A.M.)

According to Mr. Febres, his custody and instruction of mentally ill people entailed the three or four medical appointments that he took them to. However, those appointments of one to two hours each did not come close to satisfying the 50 percent threshold.

In his last year of employment, Mr. Febres also worked for about two-and-a-half weeks as a police sergeant. Even if Mr. Febres had spent a sizable amount of time during those two-and-a-half weeks caring for, having custody of, or instructing people who were mentally ill, he could not have met the requirement of having done so for more than 50 percent of his time in his last year.

Conclusion and Order

SBR's denial of the petitioner's application for Group 2 classification is affirmed.

Dated: January 23, 2026

/s/

Kenneth Bresler
Administrative Magistrate
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