

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

**Division of Administrative Law Appeals**

**Maribel Fournier,**  
Petitioner

v.

Docket No. CR-22-0311

**State Board of Retirement**  
Respondent

**Appearance for Petitioner:**

Maribel Fournier, *Pro Se*

**Appearance for Respondent:**

Yande Lombe, Esq.  
State Board of Retirement  
One Winter Street, 8<sup>th</sup> Floor  
Boston MA 02108

**Administrative Magistrate:**

Timothy M. Pomarole, Esq.

**SUMMARY OF DECISION**

The petitioner appeals the State Board of Retirement's declination to act on her second request to classify her Deputy State Fire Marshal position as Group 4. It is doubtful that this Division has jurisdiction to consider this appeal because this second classification request largely rehashes her first request, the denial of which she failed to appeal. Even if this Division had jurisdiction to consider this appeal, it would be unavailing. The position of Deputy State Fire Marshal is not one of the positions or titles the Legislature expressly designated for inclusion in Group 4.

**DECISION**

The petitioner, Maribel Fournier, appeals the decision of the State Board of Retirement ("the Board") to classify her position as Group 1 rather than Group 4.

This case has been submitted on the papers pursuant to 801 CMR 1.01(10)(c). I admit into evidence Petitioner's Exhibits 1-9 and Respondent's Exhibit 1.

## **FINDINGS OF FACT**

Based on the evidence presented by the parties, along with reasonable inferences drawn therefrom, I make the following findings of fact:

1. Ms. Fournier is employed with the Department of Fire Services. Her official job title is Program Manager IX. Her functional job title is Deputy State Fire Marshal. (Petitioner's Exhibit 7).
2. Ms. Fournier first requested Group 4 classification in April of 2020. (Respondent's Exhibit 1).
3. In a letter dated June 26, 2020, the Board informed Ms. Fournier that it had denied her request to classify her position as Group 4. (Petitioner's Exhibit 2).
4. When she received the denial letter, she telephoned and e-mailed the contact person on the denial letter because she had questions about the denial and the appeal process and wanted to have all the necessary information to file a "thorough appeal for [DALA's] review." She never heard back from this individual. (Petitioner's Exhibit 3).
5. There is no dispute that Ms. Fournier did not file an appeal from the June 2020 denial.
6. On June 7, 2021, Ms. Fournier submitted a second application to classify her position as Group 4. The second application is, in substance, the same as the first. (Petitioner's Exhibit 1; Respondent's Exhibit 1).
7. In a letter dated July 22, 2022, the Board informed Ms. Fournier that it had declined to act on her most recent request to classify her position to Group 4. (Petitioner's Exhibit 2).
8. In a letter dated July 26, 2022, Ms. Fournier timely appealed the Board's

declination to this Division. (Petitioner's Exhibit 3).

### **CONCLUSION AND ORDER**

As a threshold matter, I observe that the denial of Ms. Fournier's first application is not before this Division because Ms. Fournier did not file an appeal from that denial. *See LaRocco v. Norfolk County Ret. Sys.*, CR-08-175, at \*8 (DALA Feb. 10, 2012) (timely filing of appeal prerequisite to consideration by DALA) (citations omitted).

As for the declination to consider the second application, the Board suggests that DALA lacks jurisdiction to consider this appeal because the second application merely repackages the first application, the denial of which Ms. Fournier failed to appeal. There is some support in the decisional law for the proposition that the denial of a second application is not an appealable event if it merely repackages one that has already been denied. *Lospennato v. State Bd. of Ret.*, CR-08-614, at 8 (DALA June 15, 2012) ("A retirement board's review of a matter that it has previously decided does not necessarily constitute a new action from which there is a statutory right of appeal, especially where, as here, the Petitioner has not presented any new evidence along with the second request.") (citations omitted).

Matters may stand on a different footing when the applicant presents a change of circumstances or presents colorable grounds for reconsideration. *See Corcoran v. Worcester Reg. Ret. Bd.*, CR-13-243, at \*2 (CRAB Nov. 3, 2015) (holding that DALA's denial of a request for reconsideration may ground an appeal to CRAB even though an appeal from the original DALA decision would be time-barred); *Reid R. v. Pittsfield Ret. Bd.*, CR-21-0302, CR-21-0379 (DALA Aug. 4, 2023) (observing that, for purposes of *res judicata*, "even if the board's decision here were preclusive, it is not clear that the

precluded ‘claim’ would have encompassed successive applications based on new diagnoses”).

Here, however, Ms. Fournier’s second application is nearly identical to the already denied first application. Accordingly, it is unlikely that DALA has jurisdiction over this appeal. In any case, for the reasons set forth below, even if DALA had jurisdiction in this case, the Board properly declined to classify Ms. Fournier’s position as Group 4.

The retirement benefits of a Massachusetts public employee are shaped in part by the employee's classification into one of four “groups.” G.L. c. 32, § 3(2)(g). For purposes of this appeal, the relevant group is Group 4. The statute designates Group 4 employees “by naming their positions or titles rather than by describing the type of work they perform.” *Gaw v. CRAB*, 4 Mass. App. Ct. 250, 255 (1976). The relevant Group 4 positions/titles are:

the chief fire warden and the district fire wardens in the executive office of environmental affairs and the fire marshal of the department of fire services in the executive office of public safety; but the fire marshal shall have been a member of group 4 for ten years or have had ten years or more employment at the department of fire services or its predecessor agencies, the division of fire prevention and the Massachusetts firefighting academy, before being eligible for benefits under this section.

G.L. c. 32, § 3.

Ms. Fournier’s position is not one of those expressly identified in Group 4. To her credit, Ms. Fournier appears to acknowledge this. The *gravamen* of her appeal is that her position should be classified as Group 4 because her duties are as vital to public safety and as hazardous as those of the State Fire Marshal position, which *is* classified as Group 4. The argument is unavailing.

I do not doubt the vital importance of Ms. Fournier’s position or the hazards it entails. And I acknowledge that “[g]enerally speaking, Group 4 covers public safety

positions and other positions that expose employees to physical danger.” *Pub. Emp. Ret. Admin. Comm’n v. CRAB*, Suffolk Superior Court Civil Action No. 113755, 2013 WL 3204088, at \*2 (Mass. Super. May 23, 2013), *aff’d sub nom. Pub. Emp. Ret. Admin. Comm’n v. Madden*, 86 Mass. App. Ct. 1107 (2014). But dangerousness is a general characterization of the positions the Legislature has assigned to Group 4; dangerousness is not, itself, a statutory criterion for inclusion in Group 4. *See Ret. Bd. of Taunton v. CRAB*, 56 Mass. App. Ct. 914, 915(2002) (Chapter 32 “does not by its terms impose a hazardous duty requirement for classification in Group 4”).

And even if it would have been more sensible to include the Deputy State Fire Marshal position alongside the State Fire Marshal position in Group 4, this Division is not empowered to look beyond the express bounds of the statute. *See King v. Viscoloid Co.*, 219 Mass. 420, 425 (1914) (observing that it is generally not permissible to “read into [a] statute a provision which the Legislature did not see fit to put there, whether the omission came from inadvertence or of set purpose”).

The decision of the State Board of Retirement is affirmed.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS,

*/s/ Timothy M. Pomarole*

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Timothy M. Pomarole, Esq.  
Administrative Magistrate

Dated: April 12, 2024