COMMONWEALTH OF MASSACHUSETTS
Division of Administrative Law Appeals

DAWNMARIE GREENWOOD *Petitioner*	:	Docket No. CR-22-0066
	:	Date: June 7, 2024
v.	:	
STATE BOARD OF RETIREMENT *Respondent*	:	

Appearances:

For Petitioner: Thomas LaPorte, Esq.
For Respondent: Yande Lombe, Esq.

Administrative Magistrate:

Eric Tennen

SUMMARY OF DECISION

The Petitioner was a Residential Nurse II at Tewksbury Hospital. She worked as a floor nurse and then an admissions nurse. In both positions, she provided some combination of direct care and other supervision to her patients. And in both positions, she worked with “mentally ill” and “developmentally disabled” patients. Thus, she is entitled to Group 2 status.

DECISION

The Petitioner, Dawnmarie Greenwood, timely appeals a decision by the State Board of Retirement (“Board”) denying her application for reclassification to Group 2. On April 4, 2024, I conducted a virtual hearing using the WebEx platform with the consent of both parties. In addition to testifying herself, the Petitioner presented the testimony of several witnesses: Dr. Pradeep Reddy, Dr. Arianna O’Neill, Bonnie Spicer, Susan Doherty, and Gregg Baker.[1] The

[1] Many witnesses held multiple titles at Tewksbury and by the time of the hearing, some were working elsewhere. I reference the witness’s title only if it is relevant to the case.

Board did not present any witnesses. I admitted Exhibits A-U at the hearing without objection. The Board objected to Exhibit V; I denied its objection for the reasons stated at the hearing. The Petitioner objected to Exhibit W, which I received *de bene* and now admit into evidence.[2] The Petitioner submitted her closing brief on May 16, 2024; the Board submitted its closing brief on May 24, 2024 at which point I closed the administrative record.

FINDINGS OF FACT

Overview

1. The Petitioner worked for the Department of Public Health ("DPH") at Tewksbury State Hospital as a Registered Nurse II ("RN II") from May 11, 2003 until her retirement on November 24, 2021.[3] (Exs. R &T; Petitioner testimony.)

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[2] The exhibit is a current list of the different units at Tewksbury and the patient population they serve. The Petitioner's objection was that the list was not entirely accurate since the units and the populations they serve have changed over time and does not entirely reflect the period subject to this appeal. However, many witnesses testified about current issues at the hospital. The list helps place that testimony into context. It is admissible and relevant. In any event, I rely on witness testimony, not this exhibit, in understanding the hospital units and their patient population during the appeal period.

[3] The Petitioner's application for group classification specifically sought review of her work as an RN II at Tewksbury Hospital from May 11, 2003, through "the present" (at the time, she had not yet retired). (Ex. S.) However, in a letter attached to her application, she included a paragraph about her job as an RN II from 1998 through 2003 at Merrimack Education Collaborative Setting. Then, at the hearing, she testified that this appeal covered her entire career from 1998 to the present. In her closing brief, she attached an affidavit affirming that she listed only her years at Tewksbury (beginning in May 2003) in her application. While she did not list her prior years, she "intended" them to be reviewed.

The Board objected to reviewing her time at Merrimack in this appeal, explaining it only reviewed the time specified in her application. I agree with the Board that this appeal covers only that timeframe. The Petitioner did not call any witnesses or submit other evidence—outside her letter attached to her application and a post-hearing affidavit—about her work at Merrimack. More importantly, her application twice notes it covers her employment at Tewksbury hospital only from May 11, 2003 to the present.

2. During that time, the Petitioner held two different positions as an RN II. From May 11, 2003 until September 30, 2012, she was a floor nurse. From October 1, 2012 until her retirement, she worked as an admissions nurse. (Exs. O & P; Petitioner testimony.)

3. There are twelve units at Tewksbury: seven serve DPH and five serve the Department of Mental Health ("DMH"). (General[4] testimony.)

4. The Petitioner worked only on the DPH units so the facts relate only to the functioning of those units.

5. Patients come to Tewksbury via a referral from another institution. Patients admitted to the DPH units are all there for medical treatment. Which unit they are assigned to depends largely on factors unrelated to their anticipated treatment. For example, there is a unit of male sex offenders, for persons with traumatic brain injuries or Alzheimer's, for persons with substance abuse disorder, for patients transferred from the DMH units, for Department of Developmental Services ("DDS") clients, and a general medical unit. (General testimony.)

6. Tewksbury's patients are admitted from a variety of places such as acute care facilities, emergency rooms, and group homes (run by DMH and DDS[5]). There are no incarcerated individuals, but some patients were recently released from incarceration. Sometimes, patients from the DMH units will be transferred to a DPH unit. Tewksbury is considered a hospital of last resort because the facilities from which the patients come cannot adequately treat them and

[4] Multiple witnesses testified similarly about various facts to which there is no dispute. Instead of citing each witness, I refer to this testimony as "General testimony."

[5] Prior to 2009, the Department of Developmental Services was known as the Department of Mental Retardation. *M.D. v. DDS*., 83 Mass. App. Ct. 463, 463 n.2 (2013). Given the outdated phrasing, I refer to it as "DDS" even for events pre-dating 2009.

cannot find another option. For example, one of the admission criteria is that the patient has been refused admission by at least three other facilities. (Ex. T; Baker testimony; General testimony.)

7. Most patients carry psychiatric and/or substance abuse diagnoses. Those that do not still come with significant emotional and mental health problems or are cognitively limited. (General testimony.)

8. Some patients whose medical treatment is complete nevertheless remain at Tewksbury afterward because there is no suitable facility to take them. This happens most often with older patients and/or cognitively limited patients who, for whatever reason, do not receive DMH or DDS services. (O'Neill testimony.)

9. During her entire tenure, the Petitioner underwent continued training in handling various mental health issues such as suicide risk identification and prevention, psychological assessments, preventing and de-escalating violence, and more. (Exs. A-M.)

10. There is no dispute that because of the type of patient admitted to Tewksbury, working there can be dangerous. Patients regularly threaten and assault the staff, including the Petitioner. Staff are encouraged to wear body alarms in case of emergency.[6] (Ex. N; General testimony.)

11. When asked what percentage of the time a nurse spent treating a patient for their mental health issues, as opposed to their medical issues, every witness invariably said it was difficult to differentiate because the mental health issues were so intertwined with the medical conditions. Nevertheless, all witnesses generally agreed the breakdown was roughly 50/50. (General testimony.)

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[6] I credit every witness's testimony that the Petitioner's job was dangerous. However, "dangerousness is not, itself, a statutory criterion for inclusion in Group 2." *Saffie v. SBR*, CR-21-0020, 2023 WL 4548408 (DALA Jul. 7, 2023).

<u>Floor Nurse</u>

12. A floor nurse performs the kinds of duties one typically associates with nursing. They provide direct patient care at all stages of a patient's stay. The job description accurately captures a floor nurse's duties, as corroborated by each witness's testimony:

> Provides direct care to patients between 20-100+ years of age with chronic medical problems, with acute exacerbation at times and with diminished capabilities in [activities of daily living] needing consistent nursing care. Must assess, plan, implement and evaluate the direct and indirect care needs of patients. Provides direction and supervision to other staff.

(Ex. P; General testimony.)

13. As a floor nurse, the Petitioner was assigned primarily to one unit, but would sometimes be asked to float to another unit if needed. (General testimony.)

14. Floor nurses provide direct medical care to the patients for their medical problems. However, these patients almost all have mental health problems that can interfere with their medical treatment. Thus, patients with mental health diagnoses tend to take longer to treat. A procedure that might normally take 15 minutes could take twice as long, if not more, with those patients. The extra time usually involved getting the patient to simply comply with the treatment, something a nurse does not generally need to do with other patients. (General testimony.)

15. For example, a patient might be schizophrenic causing them to hear voices. That patient is at the hospital for a medical problem and requires medication. A nurse cannot just hand the patient their medicine and expect them to take it. Rather, the nurse needs to talk to the patient and establish rapport with them so that the patient trusts them. Then they can give the patient their medicine. (Spicer testimony.)

16. Or take patients with substance abuse disorders—which make up about half the Tewksbury population. These patients are in the earliest stages of withdrawal and require weeks

or months of hospitalization. Given the nature of substance abuse disorders, almost every person with a substance abuse disorder also carries a diagnosis of some type of mental illness. These mental illnesses result in them behaving in ways that make them difficult to manage. The patients exhibited so much threatening behavior that eventually the substance abuse unit was locked and alarmed. (Baker testimony.)

17. To be clear, the Petitioner was not a psychiatric nurse. She did not treat the patients' mental health issues, i.e. she did not provide therapy or prescribe medication. Her main task was to provide medical treatment; however, she had to invariably deal with the difficult behaviors the patients might exhibit on account of their mental/emotional difficulties. (General testimony.)

18. When a patient from a DMH unit was transferred to a DPH unit for medical care, their psychiatrist would continue to treat them. But DMH nurses did not follow the patient, so the DPH floor nurses tended to all their needs (with the exception of direct mental health treatment, such as therapy). (O'Neil testimony.)

19. When the Petitioner began in 2003, she was assigned primarily to C3/C4. That unit was colloquially called the "MeMe" unit (which was short for Medical/Mental). Despite the nickname, this unit primarily housed developmentally disabled patients, i.e. DDS clients or patients who would otherwise qualify for DDS services but for whatever reason never became a DDS client.[7] (O'Neill testimony; Petitioner testimony.)

20. Despite being primarily assigned there, the Petitioner floated when needed or when she worked overtime. Nevertheless, I credit her testimony that, for a majority of her time during this

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[7] In 2010, the hospital created a unit exclusively for DDS clients. Before that, DDS clients and other similarly developmentally disabled patients might be placed in any unit. But most were still placed primarily in the units Petitioner staffed. (O'Neill testimony; Petitioner testimony.)

point in her career, she treated primarily developmentally disabled patients. That stopped around 2007 or 2008, when she began working more at other units. (Petitioner testimony.)

21. Specifically, I find that the Petitioner spent over half or time providing direct care to developmentally disabled patients between May 11, 2003 and December 31, 2006.[8]

22. After that, she provided direct care to a mix of patients from all units until she changed positions. (Petitioner testimony.)

Admissions Nurse

23. In 2012, though still classified as an RN II, she transitioned to the position of admissions nurse. (Ex.O; Petitioner testimony.)

24. Her duties changed. She was now responsible for screening patients for placement at Tewksbury and helping them during the admissions process. (General testimony.)

25. Her job description explains her general duties as follows:

> Responsible to pre-screen referrals utilizing the admissions criteria, disseminates admission information to all appropriate departments. Markets Tewksbury Hospital in a positive quality manner using visual and written materials. Manages the Admissions Department in the Coordinator's absence.

(Ex. O.)

26. The Petitioner did not conduct medical assessments. That was already done by the referring facility. Rather, she was assessing whether Tewksbury could accommodate the patient and their medical needs. (Baker testimony; Doherty testimony.)

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[8] The Petitioner was unable to say when exactly she began working less with these patients. Her best estimate was around "2007 or 2008." Because that was vague, I would have to guess to pinpoint an exact date. Since the Petitioner has the burden of proof, I find she did not prove when exactly she made this transition. However, I credit her testimony that she worked a majority of her time with these patients up until at least 2007, thus why I find that she did so through December 31, 2006.

27. The Petitioner spent about half her time screening patients and the other half admitting them. (Doherty testimony.)

28. Screening patients started when Tewksbury received a referral from another facility. This process involved her doing many things that did not require patient interaction such as traveling to the facility, reviewing records, and speaking with the patient's treatment providers. (General testimony.)

29. But it did require some time to meet with the patient to go over several things such as explaining the admission process and institutional rules. She would do this when she traveled to the referring facility, often sitting alone with the patient for about an hour. (Doherty testimony; Petitioner testimony.)

30. After the referral was approved, the admissions process started. Patients would be transported to Tewksbury where the Petitioner met them. (General testimony.)

31. At this stage, the patients are in the proverbial no-man's land. They are at the hospital voluntarily, but they have not yet been admitted. Thus, they are no longer in the care of the sending facility and are not yet a Tewksbury patient. The Petitioner, as the admission nurse, was the only person responsible for that patient until they were admitted. (Baker testimony.)

32. That meant the Petitioner was normally alone with the patient. Sometimes, however, if the patient was particularly unruly, violent, or otherwise unmanageable, she might ask others like Mr. Baker for help. (Baker testimony.)

33. She accompanied the patients from the moment they arrived until they made it to their bed, and often beyond that. Admissions required extensive paperwork. The Petitioner provided the patient with hospital orientation, e.g. going over the hospital rules. But often, she also had to

administer direct medical care if the patient required medical attention in the moment. (Baker testimony; Petitioner testimony.)

34. The length of the admission process varied anywhere from an hour to several hours. The process was shorter if the patient was cooperative and a bed was immediately available. It was longer if the patient was uncooperative and/or a bed was not immediately available. (Baker testimony; Doherty testimony.)

35. As an admission nurse, she mostly worked with patients with substance abuse disorders being admitted into the substance abuse units since these patients made up over half of the population admitted to Tewksbury. (Baker testimony.)

36. While an admission nurse, she was sometimes asked to staff the medical floors. During the Covid-19 pandemic, she was asked more often because of staff shortages. (Petitioner testimony.)

37. I find that as an admissions nurse, she spent more than half her time providing direct care or other supervision to patients.[9] She provided direct care and other supervision during all of the admission process. She provided some direct care and other supervision during parts of the screening process. And she provided direct care to other patients when she staffed the medical floors.

38. The Petitioner sought Group 2 classification for her time at Tewksbury but the Board denied her request without elaboration. (Ex. Q.)

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[9] The Petitioner argues she had "custody" of the patients whenever she had to interview them alone or when she was with them during the admission process. However, given that these patients were voluntarily at the hospital, and could theoretically leave if they wanted to, I do not find that she had custody of the patients. As explained more fully below, what she did is better understood as "other supervision."

DISCUSSION

A member's retirement compensation is based, in part, on their group classification. Members are classified into four groups. G.L. c. 32, § 3(2)(g). Group 2 includes, but is not limited to, employees whose "regular and major duties require them to have the care, custody, instruction or other supervision of . . . persons who are mentally ill" or developmentally disabled.[10] G.L. c. 32, § 3(2)(g); *Burke v. State Bd. of Ret.*, CR-19-0394, 2023 WL 528742 (DALA Aug. 18, 2023). "[A]n employee who spends more than half of his or her time 'engaged in care, custody, instruction, or other supervision' of a population included in Group 2 engages in these responsibilities as part of his or her 'regular and major duties.'" *Desautel v. State Bd. of Ret*, CR-18-0080, *3 (CRAB Aug. 2, 2023).

A member who entered service before April 2012, and is seeking group reclassification, has two paths to determine their group status. They may seek classification "based on an evaluation of what her job responsibilities were in the twelve months preceding her retirement." *Bethel v. State Bd. of Ret.*, CR-19-0347, 2022 WL 16921448 (DALA Aug. 19, 2022)*; Maddocks v. CRAB*, 369 Mass. 488, 494 (1975). However, if that analysis does not yield the desired result, they "may now elect to pro-rate their retirement allowance based on the number of years they worked in positions within different classification groups." *Lorrey v. State Bd. of Ret.*, CR-09-553, *5 (CRAB Dec. 19, 2014), *citing* G.L. c. 32, § 5(2)(a).[11]

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[10] The statute uses the term "mentally defective." However, "[t]he term 'mentally defective" is obviously and badly archaic. *Burke*.

[11] G.L. c. 32, § 5(2)(a) provides in pertinent part:

> Any active member as of April 2, 2012, who has served in more than 1 group may elect to receive a retirement allowance consisting of pro-rated benefits based upon the percentage of total years of service that the member rendered in each group . . .

The Petitioner indicated in her application that she was seeking to pro-rate her service, perhaps unsure if her last year qualified for Group 2 status. Because I find that she qualifies for Group 2 status based on her last year of service, for brevity's sake, I could stop there. However, because my analysis is ultimately subject to appeal, I will also analyze other time periods at Tewksbury should proration be necessary. This would obviate the need for further findings on remand if that came to pass.

The Petitioner's tenure as an RN II at Tewksbury can be broken down into three periods: 1) her time as a floor nurse primarily working with developmentally disabled patients, 2) her time as a floor nurse after that, and 3) her time as an admissions nurse.

1. <u>Floor nurse from May 11, 2003 until December 31, 2006</u>.

The Petitioner's regular and major duties providing direct care to developmentally disabled patients as a floor nurse entitles her to Group 2 status. *Zelten v. State Bd. of Ret*, CR-22-0457, 2024 WL 664422 (DALA Feb. 9, 2024). Developmentally disabled patients are a population enumerated in Group 2. *Cassidy v. State Bd. of Ret*, CR-21-0400 (DALA Apr. 12, 2024). She is entitled to Group 2 status for this time period. *Id.*

2. <u>Floor nurse between December 31, 2006 and September 30, 2012.</u>

In addition to being eligible for Group 2 status during her initial years, she is also entitled to Group 2 status for her time as a floor nurse after that, but for a different reason. There is no dispute she continued to provide direct care to all her patients. Since she did not provide direct care to developmentally disabled patients more than half the time by this point, the question is whether she also provided care to persons who are "mentally ill."

Whether someone works with persons who are "mentally ill" has long been determined by the "primary diagnosis test." *Popp v. State Bd. of Ret*, CR-17-848 (CRAB Nov 16, 2023).

CRAB recently clarified the scope of the "primary diagnosis test": "Diagnoses are 'primary' in the pertinent sense if they 'truly drive the patients' care' or 'govern the care a patient receives.' Diagnoses are 'secondary' if they are 'merely incidental or derivative." *Zelten*, *quoting Popp* at *6.

Prior to *Popp*, a patient's primary diagnosis was often determined by the treatment they were receiving or the reason for their admission to a given facility. *See e.g. Burnes v. State Bd. of Ret*, CR-21-0084, 2023 WL 7018527 (DALA Oct. 20, 2023), *citing cases; Micle* ("patients were admitted to E-3 for other purposes namely, rehabilitative care or a heightened degree of medical supervision—and only secondarily received mental health care. Because their primary diagnosis was not related to mental illness, Ms. Micle's appeal for reclassification must be denied."); *Hong v. State Bd. of Ret*, CR-17-843, 2022 WL 16921455 (DALA May 6, 2022); *Richard v. State Bd. of Ret*, CR-16-72 and CR-16-226 (DALA Feb. 7, 2020). *Popp*, however, refocuses the inquiry away from the reason for admission or type of treatment provided back to the patient's overarching issues. Patients whose treatment is informed and influenced by a diagnosable mental condition are considered "mentally ill," i.e. their condition "drives" their care. Although prior to *Popp* employees of Tewksbury received less than consistent results,[12] *Popp* clarifies that an RN II like the Petitioner is entitled to Group 2 status.

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[12] *Compare and contrast* cases denying Group 2 status to Tewksbury employees, *Micle, supra,* (RN II); *Richard, supra*, (RN II): *Lorrey v. State Bd. of Ret*, CR-09-553 (CRAB Dec. 19, 2014)(nursing instructor), *Jump v. State Bd. of Ret*, CR-09-452 & 565 (DALA Jul.11, 2014)(Assistant Director of Nursing/RN VI); *Baron v. State Bd. of Ret*, CR-08-409 (DALA Dec. 14, 2012 (RN II); *Gaffar v. State Bd. of Ret*, CR-10-193 (DALA Oct. 18. 2013)(Physician III), with cases granting Group 2 status to Tewksbury employees, *Michaud v. State Bd. of Ret*, CR-11-424 (DALA Aug. 25, 2017) (licensed beautician at Tewksbury granted Group 2 status); *Bowden v. State Bd. of Ret*, CR-94-408 (DALA Jul. 15, 1994) (Assistant Director of Nursing).

The overwhelming majority of Tewksbury's patients, if not all, come from facilities designed to treat their mental health diagnosis or developmental disabilities. To be sure, these patients are coming to Tewksbury because they need medical care that the sending facility cannot provide but, also, because no other institution can accommodate the mental health problems that patient brings with them. Without mental health issues, the patients would not be at Tewksbury. But, also, without a medical need, the patients would not be at Tewksbury. Thus, both the patients' medical and mental health conditions are driving their care. *Cf. Hong* ("As a matter of plain language, a person suffering from a mental illness does not stop being 'mentally ill' in specific settings.").

This new formulation has been applied recently to an occupational therapist at Tewksbury. *See Zelten*. Relying on *Popp's* new formulation, Zelten merited Group 2 status for many of the same reasons articulated in this decision. The Board reads *Zelten* too narrowly, arguing it relied on the mere status of her patients as having developmental disabilities. However, *Zelten* made a larger point that the patients' disabilities directly impacted their care:

> Her patients' psychiatric and developmental conditions are not derivative of or incidental to their physical diagnoses. The patients' medical care is driven by the interrelated demands of their physical, psychiatric, and developmental issues. Their programs of treatment are designed to address the problems with impulse control, agitation, and aggression that make them unsuited to ordinary hospitals. Techniques focused on stress management and de-escalation are integral to their care. The hospital staff treats mental health symptoms as key elements of the patients' conditions.

Id.

That reasoning is consistent with my understanding of *Popp* and it leads me to the same result as in *Zelten*. The Petitioner could not just treat her patients' medical conditions. She had to accommodate their mental health needs. She had to spend time gaining a schizophrenic patient's trust before she could give them their medicine. Many of her patients were admitted with

substance abuse disorder and, in turn, posed a danger to the staff such that they were held in a locked unit; thus she had to deal with the violent threats of a patient suffering from withdrawal before she could provide medical care. *See Johnson v State Bd. of Ret.*, CR-18-586, 2022 WL 16921457 (Apr. 8, 2022) (patients involuntarily committed with substance abuse disorder considered "mentally ill"). She regularly used her psychological training—e.g. de-escalating tactics or identifying suicide threats—before, during, and after she provided basic medical care. In short, her patients' care was driven as much by their mental health and emotional needs as it was by their medical needs.

3. Admissions Nurse

The Petitioner's time as an admissions nurse provides yet a third analysis. This was the position she was in during her last year of service. She provided some amount of direct medical care to patients when they were being admitted to the hospital and required medical attention. And she also provided some direct care when she was asked to staff medical units. But mostly, she was with patients during the admission process doing other things. I find that for this work, she provided what is considered "other supervision." *McKinney v. State Bd. of Ret*, CR-17-230, 2023 WL 6537982 (DALA Sep. 29, 2023). "Other supervision" has a few characteristics: it should be "personal and direct," involve a "certain range and/or depth of responsibility," and require "watchfulness and attention." *Id*.

All those characteristics aptly describe the responsibilities the Petitioner had towards the patients with whom she interacted, both during the screening and admissions process. At times she was literally the only person in charge of the patients' wellbeing, and thus her interactions were personal and direct; she was responsible for the patients' medical and emotional well-being in the moment while also helping them understand the treatment they were about to receive; and

she had to be watchful and attentive, because no one else was. Finally, as noted above, in section 2, she provided this direct care and other supervision to "mentally ill" and developmentally disabled patients, i.e. the patients of Tewksbury Hospital.

The Board argues that the Petitioner's duties were mostly administrative, relying primarily on her job description. But the Petitioner's testimony, which I credit, explained her actual duties beyond what was written. *See Desautel v. State Bd. of Ret.*, CR-18-0080, *3 (CRAB Aug. 2, 2023) ("To determine an individual's regular and major job duties, we account for evidence of an individual's actual job responsibilities in addition to official job descriptions[.]").

CONCLUSION AND ORDER

The Board's decision denying the Petitioner's request for reclassification is **reversed**.[13]

SO, ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Eric Tennen

Eric Tennen
Administrative Magistrate

[13] When discussing its review in this case, the Board explained that its practice is to review only the last year of someone's employment. When the possibility of pro-rated service exists, this practice makes little sense—especially when the member specifically indicates in her application that she is seeking proration, like the Petitioner did here. Someone's duties could have changed over the years so that what they did in their last year does not reflect all their past duties. *See e.g. Burnes, supra*, (Petitioner worked all but her last year with a Group 2 population and the Board denied her Group 2 application in its entirety). The Board should look beyond a member's last year in these situations and potentially avoid unnecessary appeals or at least narrow their scope.