

COMMONWEALTH OF MASSACHUSETTS

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

Michael Horan,
Petitioner

v.

Docket No. CR-19-0413

State Board of Retirement,
Respondent

Appearance for Petitioner:

Gerald A. McDonough, Esq.
Law Offices of Thomas F. Gibson
2400 Massachusetts Avenue
Cambridge, MA 02140-1854

Appearance for Respondent:

Brendan McGough, Esq.
State Board of Retirement
One Winter Street
Boston, MA 02108-4747

Administrative Magistrate:

Kenneth Bresler

SUMMARY OF DECISION

Assistant District Attorney who also held titles of Chief of Staff and then Chief Legal Counsel was entitled to Group 4 classification.

DECISION

The petitioner, Michael Horan, appeals the denial by the State Board of Retirement (SBR) of his application for Group 4 classification.

I held a hearing on September 5, 2023 by Webex, which I recorded. Mr. Horan testified

and called District Attorney Timothy Cruz of Plymouth County as a witness. Eleven exhibits are part of the record.¹ Both parties submitted post-hearing briefs in February 2024.

Findings of Fact

1. Mr. Horan was appointed and sworn in as an Assistant District Attorney (A.D.A.) in Plymouth County in 1987, 2002, 2003, 2007, 2011, 2015, and 2019. (Ex. 5; Cruz testimony, Tr. 35-36, 45-46)

2. In 2001, Mr. Horan's job title was Chief of Staff. In 2012, it changed to Chief Legal Counsel. (Cruz testimony, Tr. 20-21; Horan testimony, Tr. 45)

3. Mr. Horan ran the office for Mr. Cruz. (Horan testimony, Tr. 43)

4. Mr. Horan and Mr. Cruz's First Assistant District Attorney were both ranked second in the hierarchy after Mr. Cruz. (Cruz testimony, Tr. 34)

5. Mr. Horan did not go to court and handle cases. (Cruz testimony, Tr. 35; Horan testimony, Tr. 64) He did not prosecute cases. (Horan testimony, Tr. 53)

6. Mr. Horan supervised the supervisor of A.D.A.s in District Court. Mr. Horan discussed and was involved in reducing charges, dismissing cases, and sentencing. Mr. Horan has fewer duties regarding A.D.A.s in Superior Court. He had a role in supervising A.D.A.s in the unit prosecuting sexually dangerous persons. (Horan testimony, Tr. 43-46)

¹ I reverse my decision to admit Exhibit 12. (Tr. 29-31) Not only is it irrelevant, it's inappropriate as an exhibit. If the Massachusetts District Attorneys Association (MDAA) wants to lobby the State Board of Retirement through the Treasurer of the Commonwealth about classification of Assistant District Attorneys (A.D.A.s), that is not within my purview. I will not be swayed by having MDAA's lobbying effort and policy position brought to my attention. *See also* Tr. 32 (striking the testimony of District Attorney Cruz that SBR is overreaching, and disallowing a question to him about the implications that ruling against Mr. Horan would have for the District Attorney's office).

7. At a certain point, Mr. Horan became less involved in District Court prosecuting.
(Horan testimony, Tr. 46)
8. On July 2, 2019, Mr. Horan applied for Group 4 classification. (Ex. 1)
9. On his application, Mr. Horan listed his job title as Chief Legal Counsel/Assistant District Attorney. (Ex. 1)
10. The member employment history of his application, completed by the District Attorney's Office, stated that Mr. Horan was an A.D.A. from January 20, 1987 to March 10, 1989; and Chief of Staff/Chief Legal Counsel from November 8, 2001 to July 26, 2019. (Ex. 1)
(His first stint as an A.D.A. is not at issue in this appeal.)
11. On July 29, 2019, SBR denied Mr. Horan's application for Group 4 classification.
(Ex. 7)
12. On August 14, 2019, DALA received Mr. Horan's timely appeal. (Ex. 11)

Discussion

G.L. c. 32, §3(2)(g) includes under Group 4 “district attorneys [and] assistant district attorneys who have been employed in such capacity for ten years or more.” Mr. Horan meets those two simple requirements.² He was sworn in as an Assistant District Attorney and served for more than ten years.

Members of contributory retirement systems are classified for retirement purposes in Groups 1 through 4, according to M.G.L. c. 32, § 3(2)(g)....

....

² I have carefully considered whether the words “in such capacity” are significant and constitute a third requirement. Neither is the case. The apparent purpose of the words “in such capacity” is to avoid repetition and add specificity in the statute. That is, the wording apparently specifies that the statute applies to District Attorneys and Assistant District Attorneys who have been employed as District Attorneys and Assistant District Attorneys for ten years or more, not D.A.s and A.D.A.s who previously had been government employees of some sort for ten years or more.

...In one of the few reported cases dealing with group classification, the Appeals Court stated:

... the Legislature has consistently described employees falling within Group 4 by naming their positions or titles rather than by describing the type of work they perform

Gaw v. Contributory Ret. Appeal Bd., 4 Mass. App. Ct. 250, 256 (1976).

Statutory language is to be interpreted according to its plain meaning. *New England Auto Max, Inc. v. Hanley*, No. SJC-13419, 2024 WL 2263546, at *3 (Mass. May 20, 2024). The statutory language granting Group 4 classification to Assistant District Attorneys is plain. A “literal construction” of the statute would not lead to “absurd or unreasonable” consequences, *Pysz v. Contributory Ret. Appeal Bd.*, 403 Mass. 514, 517 (1988), in this case.

In addition to having the title of Assistant District Attorney, Mr. Horan had more specific titles: First, he was Chief of Staff; later, he was Chief Legal Counsel. The statute does not require that A.D.A.s directly prosecute cases, appear in court, or have active caseloads. It would be an anomaly to require an A.D.A., such as a First Assistant District Attorney or Mr. Horan, to actively prosecute cases, appear in court, and have an active caseload, while not requiring it of a District Attorney.

I am aware of cases in which a sheriff’s office appended the title of “correction officer” to most, if not all, of its employees’ titles in an attempt to make them eligible for Group 4. *Keith Rogers v. State Board of Retirement*, CR-20-0216 (DALA 2023) (surveying cases). Those cases are not analogous to this case. For one thing, no evidence exists that the Plymouth County District Attorney’s Office awarded the title of Assistant District Attorney to most, if not all, of its employees or its lawyers in an attempt to make them eligible for Group 4.

It is conceivable that a lawyer working in a District Attorney’s Office is given the title of A.D.A. and assigned duties that are unrelated to the office’s core function of prosecuting

criminal defendants, such as real estate law (overseeing the office’s leases) or employment law (ensuring compliance). If that case arises, DALA will consider it and possibly revisit whether the words “in such capacity” are significant.

Mr. Horan argues through his lawyer that if I ruled against him, it would “undermine the work of the District Attorneys’ Offices,” and the public would “face consequences.” (Pet. Br. 14) I reject the appropriateness and merit of both arguments. I rule in favor of Mr. Horan, but not on the basis of those arguments.

The following argument by the petitioner is political, not legal, and is irrelevant:

That the voters in Plymouth Couty have elected and re-elected DA Cruz six times since his initial appointment in 2001 is evidence that the public supports the work that DA Cruz has done in office as well as the appointments that he has made.

(Pet. Br. 13)

Conclusion and Order

Mr. Horan is entitled to Group 4 classification. The SBR’s denial of Mr. Horan’s application for Group 4 classification is reversed.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/

Kenneth Bresler
Administrative Magistrate

Dated: May 31, 2024