

**COMMONWEALTH OF MASSACHUSETTS
CONTRIBUTORY RETIREMENT APPEAL BOARD**

RANDOLPH HORTON,

Petitioner-Appellant

v.

STATE BOARD OF RETIREMENT,

Respondent-Appellee.

CR-17-846

DECISION

The petitioner-appellant Randolph Horton appeals from a June 25, 2021 decision of the Division of Administrative Law Appeals (DALA) affirming the State Board of Retirement's decision denying his request for Group 4 classification for his service as Correctional Program Officer A/B (CPO) with the Department of Corrections (DOC). The magistrate held a hearing on December 8, 2020 and admitted eight exhibits into evidence. Mr. Horton testified on his own behalf, and the State Board of Retirement (Board) offered no witnesses. The DALA decision is dated June 25, 2021. Mr. Horton filed a timely appeal to us.

After reviewing the evidence in the record and the arguments presented by both parties, we adopt the magistrate's Findings of Fact as our own, except for

Findings of Fact Nos. 11 and 12,¹ and we incorporate the DALA decision by reference. For the reasons below, we affirm the magistrate's ultimate decision, incorporating the discussion from pages 7 to the end of the last full paragraph on page 8, and add the following comments.

Background. Mr. Horton worked as a Correctional Program Officer A/B (CPO) for the Department of Corrections from August 1983 until April 1993.² He began working as a Probation Officer with the Trial Court in May 1993 and retired from that position in September 2017.³

¹ Finding of Fact #11 is based on Exhibit 6, which is a March 28, 2014 letter from the then-Executive Director of the Board to two state legislators in support of the prospective application of legislation that would have included Correctional Program Officers in the Group 4 classification. We find there are two problems with Finding of Fact #11 as written. First, Finding of Fact #11 contains statements about the present status of certain correctional facilities, but there is no evidence that these statements, which were taken from Exhibit 6 and written in 2014, were still true in 2021 when the DALA decision was written. Second, Finding of Fact #11 describes the nature of the CPO job before and after the 1990s, but neither Exhibit 6 nor any other exhibit in the record contains any such temporal reference. We therefore amend Finding of Fact #11 to state the following:

According to a March 28, 2014 letter from the State Board of Retirement's Executive Director, Nicola Favorito, Esq., to two legislators in support of the prospective application of legislation that would have included CPOs in the Group 4 classification, the CPOs' training and responsibilities had come to mirror those of traditional DOC Correction Officers already classified in Group 4. As examples, Mr. Favorito stated that in facilities such as Pondville and South Middlesex, which were minimum security or pre-release facilities, the CPOs provided security in addition to overseeing the administration of inmate programs. According to Mr. Favorito, no COs were assigned to those two facilities.

We strike Finding of Fact #12 in its entirety because, as explained in the Discussion section, no exhibits in the record support it.

² Finding of Fact #2.

³ Finding of Fact #9.

In May 2017, Mr. Horton submitted a group classification questionnaire to the Board, seeking Group 4 classification for his work as a CPO.⁴ The Board denied Mr. Horton's request, and he appealed the Board's decision to DALA. In his appeal letter to DALA, Mr. Horton stated that he believed that the Board's decision was unjust because, according to Mr. Horton, other individuals who had worked as CPOs during the same period as Mr. Horton had been granted Group 4 classification for their CPO work.

The magistrate affirmed the Board's decision on the grounds that the CPO title does not appear in the list of Group 4 positions in G.L. c. 32, § 3(2)(g). The magistrate addressed Mr. Horton's allegations of unfairness by distinguishing his work as a CPO from that of Paul Duford, a retired CPO who stated in an affidavit submitted by Mr. Horton that he had been granted Group 4 classification.⁵ Further, the magistrate stated that even if she were inclined to grant Mr. Horton's request, DALA lacked the authority to provide an equitable remedy that contradicts statutory language.

Mr. Horton timely appealed the DALA decision. Mr. Horton's objections to the DALA decision were rooted in his allegation that for seven months, the Board granted Group 4 classification for the CPO A/B position. Mr. Horton argued that because of this alleged practice and precedent, he should be granted Group 4 status and need not show that the CPO title is listed G.L. c. 32, § 3(2)(g) as a Group 4

⁴ Finding of Fact #10; Ex. 3.

⁵ Ex. 8.

position. Mr. Horton also objected to the magistrate's comparison of his job duties to those of Mr. Duford, arguing that Group 4 classification is by title and that it would be unjust, unfair, discriminatory and arbitrary to grant one of them Group 4 classification, but not the other. Finally, Mr. Horton objected to the magistrate's statement that DALA lacked the authority to provide an equitable remedy, asserting that the equitable remedy would be to reverse the Board's decision to deny his request for Group 4 classification.

Discussion. We agree with and affirm the magistrate's decision that Mr. Horton was ineligible for Group 4 classification because the CPO title is not listed in G.L. c. 32, § 3(2)(g) as a Group 4 position. As the courts have observed, the Legislature has largely described employees categorized within Group 4 by naming their positions or titles, rather than by describing the types of work they perform. *E.g., Hunter v. Contributory Retirement Appeal Board*, 80 Mass.App.Ct. 257, 260-61 (2011), *citing Gaw v. Contributory Retirement Appeal Board*, 4 Mass.App.Ct. 250, 254 (1976). CRAB has previously taken the position that employees in the CPO position are not eligible for Group 4 status because CPO is not listed as a Group 4 title in G.L. c. 32, § 3(2)(g), and we do so again here. *Ball v. State Board of Retirement*, CR-05-443 (CRAB Jan. 3, 2007); *Lachance v. State Board of Retirement*, CR-04-644 (CRAB March 6, 2006).

Mr. Horton's argument that he is entitled to Group 4 classification because the Board allegedly had a practice of granting Group 4 status to employees in the CPO A/B position is unavailing. The benefits to which members of retirement

systems are entitled are defined and limited by G.L. c. 32, and DALA and CRAB are unable to grant Mr. Horton beyond what the retirement law provides. *Clothier v. Teachers' Retirement Syst.*, 78 Mass. App. Ct. 143, 146 (2010). We cannot award an employee an extra-statutory benefit on the grounds that a board did so in another similar case. To conclude otherwise would be to enable individual retirement boards to effectively amend the retirement law by establishing precedent contrary to the statutory language and controlling legal authority.

Although we agree with the ultimate legal conclusion in the DALA decision, we disagree with much of the decision's discussion about fairness, for both legal and factual reasons. The magistrate distinguished the nature and timing of Mr. Horton's work as a CPO from that of Mr. Duford and said that these distinctions undermined "Mr. Horton's arguments concerning fairness and consistency."⁶ We find this discussion to be legally unnecessary – and potentially confusing for employees – given that an employee's entitlement to Group 4 classification is based on their job position or title, not the nature of their work.

In addition, the DALA decision's discussion about fairness is grounded in factual assertions that are not supported by the exhibits in the record. The decision states, citing Exhibits 6 and 8, that the Board had a "limited change" in its classification policy in which it classified CPOs as Group 4 in the instances when "their training and responsibilities [had] come to mirror those of traditional DOC

⁶ DALA, p. 9.

[Correction Officers].”⁷ However, neither Exhibits 6 and 8 nor any other exhibits in the record state that the Board had a limited policy of classifying CPOs as Group 4. Second, the decision states, citing Exhibit 6, that current CPOs, unlike those from the 1980s and 1990s, perform duties akin to Correction Officers.⁸ However, neither Exhibit 6 nor any other exhibit contains a reference to CPOs’ duties in the 1980s and 1990s.⁹ We therefore further disagree with the magistrate’s discussion of fairness because it is grounded in facts that are unsupported by evidence in the record.

Conclusion. We affirm the DALA decision affirming the Board’s denial of Mr. Horton’s request for his work as CPO-A/B to be classified in Group 4. **Affirm.**

SO ORDERED.

CONTRIBUTORY RETIREMENT APPEAL BOARD

Did Not Participate

Melinda E. Troy, Esq.
Assistant Attorney General
Chair
Attorney General’s Appointee

⁷ DALA, p. 8-9.

⁸ DALA, p. 9.

⁹ The Board makes this assertion in page 6 of its pre-hearing memorandum and page 7 of its post-hearing memorandum, but attorney statements in briefs are not evidence. *See, e.g., Calvary Chapel of Bangor v. Mills*, 52 F.4th 40, 47, n.4 (1st Cir. 2022)(it is a truism that statements by lawyers in their briefs are not evidence)(citation omitted).

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Date: December 15, 2025