

**COMMONWEALTH OF MASSACHUSETTS**

**Middlesex, ss.**

**Division of Administrative Law Appeals**

**Kathleen Howard,**  
Petitioner,

No. CR-23-0151

Dated: April 25, 2025

v.

**State Board of Retirement,**  
Respondent.

**Appearances:**

For Petitioner: Kathleen Howard (pro se)

For Respondent: John Durgin, Esq.

**Administrative Magistrate:**

Yakov Malkiel

**SUMMARY OF DECISION**

The petitioner works at a correctional facility. She has not carried her burden of proving that she devotes more than half of her working hours to the care, custody, instruction, or other supervision of the facility's inmates. She consequently is not entitled to be classified in group 2 under G.L. c. 32, § 3(2)(g).

**DECISION**

Petitioner Kathleen Howard appeals from a decision of the State Board of Retirement (board) declining to classify her in group 2 under G.L. c. 32, § 3(2)(g). After Ms. Howard failed to appear for a scheduled evidentiary hearing, the parties agreed to submit the appeal on the papers. *See* 801 C.M.R. § 1.01(10)(c). I admit into evidence exhibits marked 1-7.

**Findings of Fact**

I find the following facts.

1. Ms. Howard has been a state employee since 2011. She serves as a commitment manager at the Massachusetts Correctional Institution in Framingham. That facility houses pretrial detainees, sentenced inmates, and civilly committed individuals. Most or all of its occupants are women. (Exhibits 1-2, 4.)

2. The record includes a questionnaire in which Ms. Howard describes her job duties in detail. In a summary section, Ms. Howard writes:

I am responsible for the overall management and operation of the commitment and records compilation process . . . . I serve as the liaison . . . with other outside criminal justice agencies . . . . I provide indirect supervision and support to admissions staff . . . . I am called upon to provide inmate records and testify in Superior Court . . . . I have the responsibility of investigating and responding to . . . outside inquiries.

(Exhibit 3.)

3. In a paragraph about inmate releases, Ms. Howard explains that she audits each inmate's file, confirms the computation of the inmate's service time, notifies other agencies about the inmate's release, formally identifies the inmate, ensures that the inmate possesses the appropriate property and paperwork, and escorts the inmate out of the facility. (Exhibit 3.)

4. In a paragraph about her supervision of the facility's records-related units, Ms. Howard lists the following duties:

Supervising, training, and supporting staff . . . . Monitoring the work load, updating office manuals, meeting with staff . . . . Audit[ing] court and hospital trips . . . . Audit[ing] and maintain[ing] spreadsheets . . . . Ensur[ing] all applicable departments are notified of . . . updates . . . .

Ms. Howard adds that she manages personnel issues, proposes new institutional policies, and implements such policies when they are adopted. (Exhibit 3.)

5. In a paragraph about her service to constituents, Ms. Howard writes that she has "daily contact with inmates/detainees." She explains that such contacts occur during the release process, in group sessions, and at one-on-one meetings, where Ms. Howard gives inmates explanations about their sentences, earned good time, and "outstanding legal issues." Ms. Howard's meetings with inmates take place at the Framingham facility, either in her office or in the prison yard. (Exhibits 1-3.)

6. In June 2022, Ms. Howard asked the board to classify her in group 2 under G.L. c. 32, § 3(2)(g). The board declined, and this timely appeal followed. (Exhibits 5-7.)<sup>1</sup>

### Analysis

The retirement allowance of a Massachusetts public employee depends in part on the employee's classification into one of four groups. "Group 2" includes, among other employees, those "whose regular and major duties require them to have the care, custody, instruction or other supervision of prisoners." G.L. c. 32, § 3(2)(g). *See generally* *Rebell v. Contributory Ret. Appeal Bd.*, 30 Mass. App. Ct. 1108 (1991) (unpublished memorandum opinion).

A large number of employees may spend some portions of their working hours providing care, custody, instruction, or other supervision to inmates. The case law has read the statute's reference to an employee's "regular and major duties" as a significant limitation on the universe of eligible individuals. Group 2 is open only to employees who spend "more than half of their time" on the requisite types of work. *See Larose v. State Bd. of Ret.*, No. CR-20-357, 2024 WL 4201310, at \*2 (Contributory Ret. App. Bd. Sept. 4, 2024); *Desautel v. State Bd. of Ret.*, No. CR-18-80, 2023 WL 11806157, at \*2 (Contributory Ret. App. Bd. Aug. 2, 2023).

The record suggests a possibility that Ms. Howard may be involved in some group 2-type work. When Ms. Howard escorts inmates out of the Framingham facility or meets with them one

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<sup>1</sup> Analytically speaking, there may be reason to wonder whether the board's decision "aggrieved" Ms. Howard, who has not stated an intent to retire, and who might therefore end up retiring out of a different position (or not at all). *See* G.L. c. 32, § 16(4); *Bretschneider v. Public Emp. Ret. Admin. Comm'n*, No. CR-09-701 (Div. Admin. Law App. Nov. 13, 2009). *See also* *Board of Health of Sturbridge v. Board of Health of Southbridge*, 461 Mass. 548, 557 (2012). But the Contributory Retirement Appeal Board has treated appeals from group-classification decisions as appealable regardless of whether the member's retirement is imminent. *See, e.g., Curtin v. State Bd. of Ret.*, No. CR-13-317, 2020 WL 14009546 (Contributory Ret. App. Bd. Jan. 8, 2020); *Camara v. State Bd. of Ret.*, No. CR-15-460, 2017 WL 11905821 (Contributory Ret. App. Bd. Dec. 21, 2017).

on one, she arguably may be exercising sufficient control over their freedom of movement to be viewed as having them in her “custody.” *Kalinkowski v. State Bd. of Ret.*, CR-12-506, at \*7 (Div. Admin. Law App. Apr. 7, 2017). When Ms. Howard provides guidance to inmates about their legal issues, she arguably may be engaged in “instruction.” *Cf. Burciaga v. State Bd. of Ret.*, CR-03-940, at \*5 (Div. Admin. Law App. Mar. 25, 2005).

It is not necessary to reach firm conclusions on these points. Ms. Howard clearly has not carried her burden of proving that she performs group 2-eligible work during more than half of her working hours. *See Peck v. State Bd. of Ret.*, No. CR-15-282, 2021 WL 12298080, at \*4 (Contributory Ret. App. Bd. Feb. 8, 2021). The record evidence of Ms. Howard’s duties consists principally of her detailed questionnaire. That document portrays Ms. Howard’s job as focused first and foremost on compiling records, auditing them, communicating with other government bodies, and supervising other facility personnel. If face-to-face custody and supervision of inmates consume more than half of Ms. Howard’s professional time, nothing in the paper record so indicates, and Ms. Howard has declined to augment her case with sworn testimony.

### **Conclusion and Order**

In view of the foregoing, the board’s decision is AFFIRMED.

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate