COMMONWEALTH OF MASSACHUSETTS CONTRIBUTORY RETIREMENT APPEAL BOARD

JOHN JAMESON

Petitioner-Appellee

v.

STATE BOARD OF RETIREMENT

Respondent-Appellant.

CR-17-960

DECISION

The respondent-appellant State Board of Retirement (SBR) appeals from a decision of an administrative magistrate of the Division of Administrative Law Appeals (DALA) reversing SBR's decision denying the petitioner John Jameson Group 2 classification. The magistrate held a hearing on November 11, 2021 and admitted ten exhibits.[1] The DALA decision is dated June 3, 2022.[2] SBR 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 Finding of Facts 1 - 42 as our own and incorporate the DALA decision by reference with the following change.[3] We affirm the magistrate's decision that Dr. Jameson was properly classified in Group 2 for retirement purposes.

Background. Dr. Jameson was employed by the Massachusetts Department of Public Health (DPH) at Lemuel Shattuck Hospital (LSH) from July 1, 1990, until his retirement on November 30, 2017.[4] He held the position of Physician II. The position description for

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[1] The Exhibits and Transcript total 240 pages.
[2] The DALA decision totals 18 pages.
[3] We amend Finding of Fact 36 to reflect the following: *On October 2, 2017, the State Board of Retirement received Dr. Jameson's Application for Group Classification, which he applied for Group 2 classification for the duration of his employment at Shattuck. (Exhibit. G.)*
[4] Finding of Fact #1; Exs. A, B, G, I.

Physician II listed fourteen duties. This position had no supervisory responsibilities.[5] Under the direction of the Chief Medical Officer, Kenneth Freedman, M.D., Dr. Jameson served as an ear, nose, throat (ENT) surgeon. He was the only ENT physician at LSH during his tenure.[6] He served in the ENT clinic and in surgery at LSH.

Dr. Jameson provided medical care to a patient population at LSH that included prisoners in the custody of the Department of Corrections (DOC) or House of Corrections (HOC), psychiatric patients from the Department of Mental Health (DMH), and private patients from the general public.[7] Over 50% of his patients were prisoners, and the majority of the remaining patients were referred from DMH.[8] His patients most commonly suffered from schizophrenia, bipolar disorder, and post-traumatic stress disorder (PTSD).[9] Of the patients in the ENT clinic, 85-90% of Dr. Jameson's patients were prisoners of the DOC or HOC and clients of DMH with mental illnesses. This patient population also encompassed 90% of his patients in surgery.[10] The patients from the general public consisted mostly of homeless individuals and some patients who had been receiving medical care at LSH for many years.[11] Dr. Jameson also treated patients with mental illnesses from Tewksbury Hospital, Bridgewater State Hospital, as well as patients under the care of DMH who were admitted to LSH. While LSH had DMH-designated units, he was not assigned to serve in those units. Nevertheless, he treated patients sent to the clinic from those units and occasionally went to those units to treat patients.[12]

As noted above, Dr. Jameson ran the ENT clinic at LSH for the treatment of ear, nose, and throat conditions. He generally saw between 12-15 patients daily. Some patients were managed medically, while others needed surgery.[13] On a typical day, Dr. Jameson reviewed the scheduled patient list provided by the outpatient department upon his arrival. For patients

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[5] Finding of Facts #5-6; Ex. C.
[6] Finding of Facts #3-4, 7; Exs. A, B, C, G.
[7] Finding of Fact #8.
[8] Finding of Fact 10.
[9] Finding of Fact #13.
[10] Finding of Fact 11.
[11] Finding of Fact 12.
[12] Finding of Fact #21; The DALA decision and SBR's specific objections focus only on the prison population as opposed to the mentally ill patients so those patients will not be addressed below. This is just for background knowledge.
[13] Finding of Fact 12-13.

presenting at their initial visits, he interviewed them, obtained a medical history, performed a physical examination, and ordered any necessary testings. He made medical assessments, advised the patients of treatment options, developed and implemented treatment plans, and provided treatment instructions. Following each visit, he completed clinical notes and "billing sheets" for LSH to use for billing purposes.[14] Dr. Jameson also provided surgical treatment for varying disorders, including but not limited to chronic ear disease, hearing loss, throat cancer, nasal obstruction, and tonsilitis. He gave medical advice on treatment options and educated patients on medical procedures, as well as pre- and post- operative care. Postoperatively, Dr. Jameson was responsible for all of the patient's post-surgical care and treatment until discharge, which included medication management for mental health patients from DMH based on their clinical needs. Patients generally returned to the clinic for post-operative visits for follow-up evaluations and care from Dr. Jameson.[15]

Incarcerated patients were usually placed in a holding area in the basement of the hospital and escorted individually by one or two correctional officers (COs) to the medical appointments. The COs remained within the examination room or in the adjacent room. COs were also present in the operating area and recovery room. For some exams, the COs entered the rooms to release the prisoner's shackles so that an examination could be performed.[16] While he was not assigned to work in 8 North, a DOC locked unit, Dr. Jameson occasionally provided postoperative care to patients assigned to 8 North. He also went to 8 North to discharge patients. Patients assigned to 8 North were also brought to the ENT clinic for treatment.[17]

Because Dr. Jameson was the only ENT doctor, he was almost always "on call" when not on duty. On occasion, he was required to go to the hospital to provide urgent treatment or give general advice over the telephone.[18] Three to four times a year, he gave a 45-minute lecture to a group of three to seven medical residents on an ENT subject during lunchtime.[19] On a few occasions, he gave surgical "grand rounds," which were 45-minute slideshow presentations and a

[14] Findings of Fact #12-16
[15] Findings of Fact #22-25; Exs. A, C; Jameson Testimony.
[16] Findings of Fact #17-19.
[17] Finding of Fact #27.
[18] Finding of Fact #31; Jameson Testimony.
[19] Finding of Fact #32.

discussion.[20] He did not serve on any hospital committees but participated on the "tumor board" when he had a patient with cancer. This entailed attending meetings to discuss the patient. Dr. Jameson spent minimal time on administrative tasks and paperwork. He considered this a "negligible" part of his workday.[21]

During his tenure, Dr. Jameson performed clinical and surgical duties on separate workdays. In his last year of employment, he had one day a week where these duties were consolidated into a single workday, which usually required eight to nine hours of work a day. He attended to patients in the clinic for the first half of the day and performed surgeries in the second half of the day. On average, Dr. Jameson saw between ten and twenty patients throughout the morning, spending only approximately 15-20 minutes with each patient due to the volume of appointments. He had little time outside of scheduled appointments to perform administrative tasks or other tasks not involving direct patient care.[22] After seeing patients in the clinic, Dr. Jameson spent approximately five hours performing surgeries in the latter half of the day. He typically performed one to three surgical procedures, lasting anywhere from forty-five minutes to several hours depending on the procedure.[23]

In an Application for Group Classification dated September 27, 2017, Dr. Jameson requested Group 2 classification for his employment at LSH.[24] He also submitted a letter describing his work at LSH, which was cosigned by Dr. Freedman, the Chief Medical Officer. He stated that over 80% of his patients came from DOC and DMH of which he had direct care and custody. He also noted that he evaluated mental health patients in the ENT clinic, on the floors and in the operating room, and while in the operating room, he had care and custody of those patients, treating them for a variety of conditions.[25] On October 26, 2017, SBR denied Dr. Jameson's request for Group 2 classification.[26] On November 3, 2017, Dr. Jameson requested reconsideration of SBR's decision, again cosigned by Dr. Freedman.[27] On November 10, 2017,

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[20] Finding of Fact #33.
[21] Findings of Fact #34-35.
[22] Finding of Fact #28.
[23] Findings of Fact #29-30.
[24] Finding of Fact #36; Ex. G.
[25] Finding of Fact #37; Ex. G.
[26] Finding of Fact #38; Ex. D.
[27] Finding of Fact #39; Ex. B.

he filed a timely appeal to DALA.[28] He also filed a Superannuation Retirement Application on November 15, 2017 with an effective retirement date of November 30, 2017.[29] On November 21, 2017, SBR denied his request for reconsideration.[30] On June 3, 2022, the DALA magistrate reversed SBR's decision denying Dr. Jameson's request for Group 2 classification, concluding that Dr. Jameson's regular and major job duties entailed the "care, custody, instruction or other supervision" of a Group 2 population.[31] SBR filed a timely appeal to us.

Discussion. This matter involves G.L. c. 32, § 3(2)(g)'s provision that Group 2 retirement classification includes "employees of the commonwealth or of any county whose regular and major duties require them to have the care, custody, instruction or other supervision of prisoners… or persons who are mentally ill or mentally defective." "Regular and major" job duties are those that require the employee to spend more than half their time performing. *Forbes v. State Bd. of Retirement*, CR-13-146 (DALA Dec. 23, 2016, aff'd CRAB Jan. 8, 2020) and *Curtin v. State Bd. of Retirement*, CR-13-317 (CRAB Jan. 8, 2020). Therefore, to be entitled to Group 2, the employee must be engaged in the "care, custody, instruction, or other supervision of parolees or persons who are mentally ill or mentally defective" for more than half their work time. *Richard v. State Bd. of Retirement*, CR-16-72 (DALA Feb. 2, 2020).

SBR contends that Dr. Jameson's regular and major duties as an ENT surgeon did not amount to the "care, custody, instruction, or other supervision" of a group 2 population as required by § 3(2)(g). The Board argues that the magistrate failed to properly consider the "primary diagnosis" test and because Dr. Jameson's patients were not primarily treated for mental disorders, he did not care for a Group 2 population. Thus, SBR concluded that his application for Group 2 classification was properly denied. We are not persuaded by SBR's arguments.

To determine an employee's Group classification, we look to the employee's current duties at the time of retirement. *Maddocks v. Contributory Retirement Appeal Bd.*, 369 Mass 488 (1976). In making this determination, we consider the job description and the actual duties

[28] Finding of Fact #40; Ex. F.
[29] Finding of Fact #41; Ex. I.
[30] Finding of Fact #42; Ex. E.
[31] DALA Decision p. 17.

performed. *Gaw v. Contributory Retirement Appeal Bd*., 4 Mass. App. Ct. 250 (1976). We agree with the magistrate that the evidence in the record supports the conclusion that Dr. Jameson's regular and major job duties consisted of providing "direct care" to a Group 2 patient population. *Forbes v. SBR*, CR-13-146 (CRAB Jan. 8, 2020). Our reasons follow.

At the time of his retirement, the magistrate properly concluded that Dr. Jameson engaged in the "direct care" of a Group 2 patient population. *Forbes v. SBR*, CR-13-146 (CRAB Jan. 8, 2020). He determined that when examining his job title and duties at the time of retirement,[32] Dr. Jameson engaged in the "direct care," of his patients, rather than engaged in ancillary duties. *Id*. Particularly, the position description for Physician II describes direct care duties. Dr. Jameson also testified to the direct care responsibilities he had while serving as the ENT physician at LSH. This was further confirmed by testimonies of his colleagues, Ms. Susan Galvin and Ms. Patricia Roberts.[33]

Additionally, for Group 2 classification, the magistrate determined that Dr. Jameson's regular and major duties required him to have the "care, custody, instruction or other supervision" of a Group 2 population – that is prisoners and mentally ill individuals. To establish this, Dr. Jameson demonstrated that more than half of his patient population fell within Group 2. Through his testimony, as well as that of his colleagues, Dr. Jameson established that he spent more than half his time engaged in the "care, custody, instruction or other supervision" of prisoners and mentally ill individuals. In fact, he testified that prisoners and mentally ill individuals encompassed approximately 80-95% of his patients. Ms. Galvin, a nurse who worked with Dr. Jameson in the ENT clinic, testified that only 10-15% of patients served by Dr. Jameson in the ENT clinic were neither prisoners or mentally ill individuals. Ms. Roberts, the nurse manager in the recovery unit of LSH, testified that approximately 90% of his patients were prisoners or mentally ill persons. In so deciding, the magistrate credited Dr. Jameson's testimony, as well as the testimonies of Ms. Galvin and Ms. Roberts, which he determined collectively and in conjunction with the documentary evidence in the record, supported Dr. Jameson's contention that he should be classified in Group 2. Here, we find the magistrate's

[32] Maddocks v. CRAB, 369 Mass. 488, 493-494 (1976).
[33] Hearing testimony. at ___.

decision to be reasonable and defer to his findings on credibility. *Vinal v. Contributory Retirement Appeal Bd*., 13 Mass. App. Ct., 85, 99-100 (1982).

Additionally, SBR contends that the magistrate failed to properly consider the "primary diagnosis" test in determining that Dr. Jameson spent more than half his time treating mentally ill persons for Group 2 classification. The Board asserted that Dr. Jameson primarily evaluated and treated the patients for physical health conditions and not any underlying psychiatric conditions. Therefore, Dr. Jameson was not "caring" for "mentally ill" individuals.

We interpret the language of a statute in accordance with its plain meaning.[34] We stated in *Larose v. State Bd. of Retirement*, CR-20-357 (CRAB July 2024) that "we do not read § 3(2)(g) as limiting care to psychiatric or psychological treatment" to qualify for Group 2. While we have held that persons must have a "primary diagnosis" of mental illness to qualify for Group 2 under G.L. c. 32, § 3(2)(g),[35] we explained in *Popp v. State Bd. of Retirement*, CR-17-848 (CRAB 2023) that a strict application of the primary diagnosis analysis would deviate from the plain reading of § 3(2)(g) and noted that the purpose of the primary diagnosis test is to distinguish between mental illness diagnoses that are derivative of physical illnesses from principally mentally ill patients.[36]

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[34] *New England Auto Max, Inc. v. Hanley*, 494 Mass. 87, 91 (2024) (Statutes are to be interpreted in accordance with their plain words); See also *Commonwealth v. Hatch*, 438 Mass. 618, 622 (2003) (quoting *Sullivan v. Brookline*, 435 Mass. 353, 360 (2001)("[S]tatutory language should be given effect consistent with its plain meaning and in light of the aim of the Legislature unless to do so would achieve an illogical result.").

[35] *Pulik v. State Bd. Of Ret.,* CR-10-605 (CRAB Jul. 10, 2012) (holding that CRAB does not rely on secondary diagnoses in concluding that patients are mentally ill under G.L. c. 32 §3(2)(g)); *Lorrey v. State Bd. of Ret*., CR-09-553 (DALA decision Nov. 22, 2013; affirmed by CRAB Dec. 19, 2014).

[36] *Nowill v. State Bd. Of Ret.*, CR-08-558 (DALA decision July 21, 2011; affirmed by CRAB May 17, 2012; CRAB decision on motion for reconsideration as corrected July 10, 2012) (excluding patients admitted for treatment of neuromuscular disorders with secondary mental illnesses); *Pulik*, CR-10-605 at 7 (discussing the unimportance of symptoms that merely correlate with a patient's principal illness); *Popp v. State Bd. Of Ret.*, CR-17-848 (DALA decision Oct. 22, 2021; affirmed by CRAB Nov. 16, 2023) (held that an LPN II is not excluded from Group 2 classification because the purpose of the patient's hospice diagnosis was to allow patients better access to care for dementia and that Popp's work was still centered on the patient's mental infirmities).

In this instance, the above distinction still holds true. The magistrate determined that Dr. Jameson had established he spent more than half his time treating prisoners of the DOC or HOC, another Group 2 population. Specifically, the magistrate found creditable that Dr. Jameson testified more than 50% of his patients were DOC and HOC inmates, and therefore, he spent more than half his time providing direct care to a Group 2 population. This was also confirmed by the testimonies of Ms. Galvin and Ms. Roberts. Accordingly, the magistrate correctly concluded that Dr. Jameson's regular and major duties involved providing direct care of prisoners – a Group 2 population. This decision is reasonable, and we defer to the magistrate's subsidiary and credibility findings. *Vinal v. Contributory Ret. Appeal Bd.*, Mass. App. Ct. 85, 97, 100 N.E.2d 440 (1982), *Kalu v. Boston Retirement Bd*., 61 N.E.3d 455, 464 (Mass. App. 2016). Based on this conclusion, we find the cases SBR cited do not support its position denying Dr. Jameson's request for Group 2 classification.

Conclusion. The DALA decision granting Dr. Jameson's request for Group 2 classification is affirmed. Dr. Jameson's major and regular job duties involved the "care, custody, instruction, or other supervision" of the statutory population within G.L. c. 32, § 3(2)(g). Accordingly, he is entitled to Group 2 classification for his service with the Lemuel Shattuck Hospital. ***Affirm***.

SO ORDERED.

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Date: August 20, 2025