COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Stephen Larose,
Petitioner,

v.

State Board of Retirement,
Respondent.

No. CR-20-357

Dated: January 27, 2023

Appearance for Petitioner:
Laura E. Larose, Esq.
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Appearance for Respondent:
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Administrative Magistrate:
Yakov Malkiel

SUMMARY OF DECISION

The petitioner worked as a physician's assistant at a mental health facility. His regular and major duties required him to care for mentally ill individuals. He is therefore entitled to be classified in group 2 under G.L. 32, c. § 3(2)(g).

DECISION

Petitioner Stephen Larose appeals from a decision of the State Board of Retirement declining to classify him in group 2 under G.L. c. 32, § 3(2)(g). An evidentiary hearing took place on January 3, 2023. The witnesses were Mr. Larose and his former supervisor, Dr. Thomas Hicks. I admitted into evidence exhibits marked 1-12. The record closed upon the submission of hearing briefs.

Findings of Fact

I find the following facts:

1. Mr. Larose worked as a physician's assistant from 1997 until 2020. His first position was at the Westborough State Hospital. For approximately the last decade of his career, Mr. Larose worked at the Worcester Recovery Center and Hospital (WRCH). (Larose testimony; Exhibits 10, 12.)

2. WRCH is a locked facility operated by the Department of Mental Health. Patients are admitted to the facility to receive continuing treatment for serious mental illnesses. Among these illnesses are schizophrenia, bipolar disorder, and paranoid personality disorder. (Larose testimony; Hicks testimony.)

3. Mr. Larose's job description assigned him an array of duties. They included interviewing patients, conducting physical examinations, performing medical procedures, prescribing medication, recommending treatment plans, and evaluating patients' responses to treatment. Mr. Larose was not charged with significant administrative responsibilities. (Larose testimony; Exhibits 5, 10.)

4. Mr. Larose divided his working hours between the hospital's patient wards and its medical-care clinic. Patients were seen at the clinic if they were considered sufficiently stable and safe to leave the wards. During visits to the clinic, patients were accompanied by mental-health workers. (Larose testimony; Hicks testimony; Exhibit 11.)

5. Both on the wards and at the clinic, Mr. Larose spent the majority of his time seeing patients. Face-to-face patient interactions took up approximately 5-6 hours of his 8.5-hour workdays. When he was not seeing patients, Mr. Larose tended to other aspects of medical care: he conferred with nurses, reviewed laboratory results, wrote treatment notes, and prepared referral papers. (Larose testimony; Hicks testimony; Exhibits 6-11.)

6. Mr. Larose's work focused on his patients' physical medical health. Among the conditions he treated most often were hypertension, hyperlipidemia, diabetes, and infections. In mentally ill patients, such conditions often are caused or worsened by self-harm or deficient self-care. Mental illnesses also affect and complicate the treatment of physical medical issues. Mentally ill patients tend to provide unreliable information, to resist or refuse treatment, and even to assault their caregivers. Psychiatric medications may also entail physical side effects. (Larose testimony; Hicks testimony.)

7. Personnel at WRCH used the phrase "primary diagnosis" to denote the main impetus for treatment of a patient. On billing forms, the facility's providers of physical medical care generally listed a physical issue as the patient's primary diagnosis. But from WRCH's institutional perspective, the primary diagnosis of each facility patient was a severe mental illness. (Hicks testimony.)

8. Mr. Larose applied to retire for superannuation in late 2020. He asked the board to classify him in group 2 under G.L. c. 32, § 3(2)(g). The board declined, and Mr. Larose timely appealed. (Exhibits 1-3, 10.)

Analysis

The retirement benefits of a Massachusetts public employee are determined in part by the employee's classification into one of four groups. G.L. c. 32, § 3(2)(g). The group classification of an employee who joined a public retirement system before 2012 is most often based on the position from which the employee retired. *See* G.L. c. 32, §§ 3(2)(g), 5(2)(a); *Maddocks v. Contributory Ret. Appeal Bd.*, 369 Mass. 488, 493-94 (1976).

Membership in group 2 may yield favorable benefits as compared to group 1, the catch-all classification. Group 2 includes, among other employees, those "whose regular and major duties require them to have the care, custody, instruction, or other supervision of . . . persons

who are mentally ill." § 3(2)(g). The board's position is that, within the meaning of this statute, Mr. Larose's work did not count as "care," and his patients did not count as "persons who are mentally ill."

"Care" for purposes of group 2 does not include administrative or technical duties. It is limited to "direct patient care." *Sheehan v. State Bd. of Ret.*, No. CR-00-1014 (CRAB Feb. 4, 2002); *Morreale v. State Bd. of Ret.*, No. CR-15-332, 2017 WL 3440540, at *6 (DALA Mar. 10, 2017). To belong in group 2, a member must show that he was engaged in this type of care for "more than half" of his working hours. *Forbes v. State Bd. of Ret.*, No. CR-13-146, at 7 & nn.21-22 (CRAB Jan. 8, 2020).

Mr. Larose satisfies this condition. The tasks that the board identifies as arguably outside the "care" rubric are Mr. Larose's discussions with other medical providers and his preparation of medical paperwork. But it is difficult to view proper medical care as separable from consultations and record-keeping. *Cf.* 243 C.M.R. § 2.07(13)(a) (requiring physicians to maintain complete medical records). It would therefore be plausible to view *all* of Mr. Larose's work as "direct patient care." In any event, he spent at least a majority of his time face-to-face with his patients—diagnosing, treating, and otherwise directly caring for them.[1]

"Mentally ill" individuals in the group 2 context are only those with "primary diagnoses of mental illness." *Lorrey v. State Bd. of Ret.*, No. CR-09-553, at 3-4 (CRAB Dec. 19, 2014). Although the "primary diagnosis" requirement has made little sense to DALA's magistrates, we are constrained to enforce it. *See Micle v. State Bd. of Ret.*, No. CR-18-657, at 6-9 (DALA Oct.

[1] The board notes that Mr. Larose's patients often were accompanied by other individuals during their sessions with Mr. Larose. This fact has no apparent bearing on whether Mr. Larose provided "care" to his patients within the meaning of § 3(2)(g).

21, 2022); *Hong v. State Bd. of Ret.*, No. CR-17-843, 2022 WL 16921455, at *3-4 (DALA May 6, 2022). *See generally Iran Air v. Kugelman*, 996 F.2d 1253, 1260 (D.C. Cir. 1993).

This requirement is satisfied here. The facilities at issue in cases such as *Micle* and *Hong* took in mentally ill individuals (in the colloquial sense) to treat their physical medical problems. WRCH is different in this respect. The conditions that bring patients to the facility are their severe mental illnesses. As a prior DALA decision found, patients "are admitted to WRCH *because* they are suffering from . . . mental illness." *Tomaszewski v. State Bd. of Ret.*, No. CR-16-431, at 3 (DALA Dec. 20, 2019) (emphasis added). Mr. Larose's patients were therefore "persons who are mentally ill" within the meaning of group 2.

The board theorizes that even patients hospitalized because of mental illnesses may be viewed as having physical primary diagnoses for purposes of specific encounters, such as their sessions with Mr. Larose. This theory takes an already difficult rule too far. The precedents calling for a primary diagnosis of mental illness could not have imagined that patients might take on and discard a series of primary diagnoses during the course of the day.

Further, the practical effect of the board's theory would be that group 2 could not reach members who provide physical medical care to mentally ill individuals. This would be an erroneous result. Both prisoners and mentally ill individuals require a variety of types of "care, custody, instruction, or other supervision." § 3(2)(g). "Care" in this context is not restricted to psychiatric or psychological treatment. *See Neergheen v. State Bd. of Ret.*, No. CR-07-439 (CRAB Nov. 3, 2009); *Correa v. State Bd. of Ret.*, No. CR-12-682 (DALA May 25, 2018).[2]

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[2] The magistrate in *Borucki v. State Bd. of Ret.*, No. CR-12-683, at 7 (DALA Apr. 22, 2016), noted that the "focus of the care [the member] rendered was on [her patients'] physical, not mental infirmities." But the decisive factor in that matter was that "[t]he units to which [the

Members providing physical medical care to mentally ill patients tend to occupy the type of positions that the retirement law's grouping system hopes to allocate to a younger workforce. *See Spencer v. Civ. Serv. Comm'n*, 479 Mass. 210, 220 (2018); *Pysz v. Contributory Ret. Appeal Bd.*, 403 Mass. 514, 518 (1988).

Conclusion and Order

Mr. Larose is entitled to be classified in group 2 under G.L. c. 32, § 3(2)(g). The board's contrary decision is REVERSED.

Division of Administrative Law Appeals

/s/ Yakov Malkiel
Yakov Malkiel
Administrative Magistrate

member] was assigned did not house individuals whose primary diagnosis was [a mental illness]." *Id.*