

**COMMONWEALTH OF MASSACHUSETTS**

**Middlesex, ss.**

**Division of Administrative Law Appeals**

**Lori Lowrey,**  
Petitioner,

No. CR-19-202

Dated: October 28, 2022

v.

**State Board of Retirement,**  
Respondent.

**Appearance for Petitioner:**

Lori Lowrey (pro se)  
24 Slab Ridge Road  
Assonet, MA 02702

**Appearance for Respondent:**

Brendan McGough, Esq.  
One Winter Street  
Boston, MA 02108

**Administrative Magistrate:**

Yakov Malkiel

**SUMMARY OF DECISION**

The petitioner served as an assistant deputy superintendent in a county jail. Her position was not a sham. She was therefore entitled to prorated group 4 status under G.L. c. 32, §§ 3(2)(g), 5(2)(a).

**DECISION**

Petitioner Lori Lowrey brought this appeal in response to the State Board of Retirement's refusal to classify her entire career of service in group 4 under G.L. c. 32, § 3(2)(g). During the appeal's pendency, the parties narrowed the dispute to whether one of Ms. Lowrey's several prior positions belongs in group 4 on a prorated basis. An in-person evidentiary hearing took place on October 24, 2022. Ms. Lowrey was the only witness. I admitted into evidence an affidavit from Ms. Lowrey and exhibits marked 1-8.

### Findings of Fact

I find the following facts.

1. Ms. Lowrey owns a bachelor's degree in nursing. She began working for the Bristol County Sheriff's Office in 1986. At first, she served as a clerk. After attending a standard training program, she became a correction officer. (Lowrey testimony.)

2. In 1990, Ms. Lowrey was made the ranking officer of a new correctional facility's health services unit. Her new title was "assistant deputy superintendent: health services." She remained in that role until 1995. (Lowrey testimony; Exhibit 4.)

3. Ms. Lowrey's responsibilities in her new role combined administrative, medical, and correctional elements. She had two offices, but spent most of her time inside the health services unit. She supervised between two and twelve correction officers on a given day. She also managed medical personnel, transportation officers, and a records clerk. (Lowrey testimony; Exhibits 4, 5.)

4. Ms. Lowrey oversaw the health services unit's expenditures and payroll. She occasionally dispensed medication. But her primary responsibilities were correctional. She met with each of the unit's inmates every day. She responded to inmate requests and grievances. She shackled inmates multiple times per week. She was involved in frequent adversarial interactions with them. (Lowrey testimony; Exhibits 4, 5.)

5. In March 2019, Ms. Lowrey asked the board to classify her in group 4 for retirement purposes. By then, she had served in one or more subsequent positions. The board denied Ms. Lowrey's request, and she timely appealed. (Administrative record.)

6. A stay was entered so that the parties could pursue a settlement. The settlement's anticipated essence was that Ms. Lowrey would be classified in group 4 as to specific prior positions only, on a prorated basis. Thereafter, the board agreed to grant group 4 status to Ms.

Lowrey's early work as a correction officer, but not to her 1990-1995 work as "assistant deputy superintendent: health services." The appeal proceeded to an evidentiary hearing as to the latter position only. (Exhibits 4, 5; administrative record.)

### Analysis

A public employee's retirement benefits are shaped in part by the employee's assignment to one of four groups. G.L. c. 32, § 3(2)(g). Membership in group 4 may yield favorable benefits as compared to group 1, the catch-all classification. At one time, an employee's group classification was based invariably on the position from which he or she retired. *Maddocks v. Contributory Ret. Appeal Bd.*, 369 Mass. 488, 493-94 (1976). Today, most employees may "elect to receive . . . pro-rated benefits," which the retirement board calculates by assigning each of the employee's positions into the proper group. G.L. c. 32, § 5(2)(a).

At a high level of generality, the purpose of the quadripartite grouping system is to "provid[e] early retirement incentive to employees with hazardous duties." *Pysz v. Contributory Ret. Appeal Bd.*, 403 Mass. 514, 518 (1988). A legislature constructing this type of system is presented with at least two possible employee-sorting strategies. A nuanced but labor-intensive strategy would examine the work that each employee personally performed. A blunter, more easily administrable approach would rely on formal datapoints, such as the employee's job title or employing entity.

Overall, § 3(2)(g) features a blend of these strategies. The portion of the section devoted to group 4 uses the blunter instrument: it identifies eligible employees 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, 254 (1976). Having swelled over time, group 4's list of positions and titles is now "a wide array" that is "not entirely homogenous." *Fine v. Contributory Ret. Appeal Bd.*, 401 Mass. 639, 643 (1988). The duties of some group 4 members

are truly hazardous; the duties of others are not. *See Retirement Bd. of Taunton v. Contributory Ret. Appeal Bd.*, 56 Mass. App. Ct. 914, 915 (2002).

Among the positions listed in the group 4 catalogue are the “sheriff, superintendent, assistant superintendent, assistant deputy superintendent and correction officers of county correctional facilities.” § 3(2)(g). During the pertinent period, Ms. Lowrey was one of her facility’s assistant deputy superintendents. The board concedes that an employer may specify a *type* of assistant deputy superintendent (e.g., “health services”) without thereby ejecting the employee from group 4. *See Daly v. State Bd. of Ret.*, No. CR-01-647 (CRAB Jan. 31, 2003) (a “correction officer/secretary” belonged in group 4); *Mate v. State Bd. of Ret.*, No. CR-00-595 (DALA Mar. 27, 2001) (same for a “correction officer/supply”).

The decisional law has demarcated a narrow set of employees who may appear to serve in group 4 positions but who must be denied group 4 benefits. An employee belongs in this category if his or her job title is illusory—a “sham.” *See generally Black’s Law Dictionary* 1585 (10th ed. 2014). A title is a sham in this context if it was given to the employee nominally, as a pension-manipulation tactic, and not for the purpose of defining the employee’s role. *See Spencer*, 479 Mass. at 220; *Pysz*, 403 Mass. at 516-18; *Public Emp. Ret. Admin. Comm’n v. Madden*, 86 Mass. App. Ct. 1107 (2014) (unpublished memorandum opinion); *Justice v. State Bd. of Ret.*, No. CR-06-81 (CRAB n.d.). The board invokes the foregoing authorities in its arguments, but the sham rule is plainly inapplicable here. Ms. Lowrey was not assigned to her position for any artificial purpose. Her job entrusted her with important, challenging responsibilities, which she discharged faithfully. *See Murphy v. State Bd. of Ret.*, No. CR-15-

623, at 8, 11 (DALA May 27, 2016); *Francis v. Bristol Cty. Ret. Bd.*, No. CR-99-345 (DALA Jan. 19, 2001).<sup>1</sup>

The essence of the board’s theory is that positions such as “assistant deputy superintendent” entail *inherent* duties. The board relies on *Paula v. State Bd. of Ret.*, No. CR-13-335 (DALA Mar. 27, 2015), where the magistrate indicated that correctional personnel belong in group 4 only if their duties involve face-to-face or otherwise hazardous work with prisoners. Ms. Lowrey satisfied this standard on a daily basis. It is therefore unnecessary to dissect *Paula*’s merits. *See Murphy, supra*, at 9-10.<sup>2</sup>

The board’s final argument is that Ms. Lowrey’s job duties were more “supervisory” in nature than those of a bona fide assistant deputy superintendent. But *even if* the governing statute calls for an examination of each employee’s duties (which is legally questionable); and *even if* an assistant deputy superintendent ordinarily would not shoulder supervisory responsibilities (which seems implausible); then Ms. Lowrey was doing the substantive job of an “assistant superintendent” or a “superintendent”—positions that *also* belong in group 4. *See* G.L. c. 32, § 3(2)(g).

### Conclusion and Order

For purposes of calculating Ms. Lowrey’s benefits, the board is required to classify her service as an “assistant deputy superintendent: health services” in group 4 under G.L. c. 32, § 3(2)(g). The board’s contrary decision is REVERSED.

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<sup>1</sup> It may be that the “sham” analysis also applies where an employer designs a job’s title and duties with pension manipulation in mind. No evidence suggests that this occurred here.

<sup>2</sup> Broadly speaking, *Paula*’s analysis is at odds with group 4’s focus on formal “positions or titles.” *Gaw*, 4 Mass. App. Ct. at 254. And because group 4 covers even the highest-ranking correctional officials, it is difficult to infer that the Legislature viewed hazardous prisoner interactions as indispensable.

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate