

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Jacqueline McKinney,
Petitioner

v.

Docket Nos. CR-17-230 and CR-17-868

State Board of Retirement,
Respondent

Appearance for Petitioner:

Jacqueline McKinney, *Pro Se*

Appearance for Respondent:

Yande Lombe, Esq.
State Board of Retirement
One Winter Street, 8th Floor
Boston MA 02108

Administrative Magistrate:

Timothy M. Pomarole, Esq.

SUMMARY OF DECISION

The petitioner, a former chief classification manager for a county house of correction, has filed two appeals of the State Retirement Board's decision to deny her Group 2 classification. One of these appeals is dismissed as untimely. The other appeal is meritorious. Her regular and major job duties required her to engage in substantive, individualized interactions with inmates in the form of classification interviews to determine security and programming needs and counseling inmates concerning institutional matters. Accordingly, she is entitled to Group 2 classification.

DECISION

The petitioner, Jacqueline McKinney, was the Chief Classification Manager for the Bristol County House of Correction ("BCHC"). She appeals the decision of the State

Board of Retirement (“the Board”) to classify her position as Group 1, rather than Group 2.

I held a hearing on January 25, 2023, via the WebEx teleconferencing platform. The hearing was recorded. I admitted eleven exhibits (Exhibits 1-11) into evidence.¹

FINDINGS OF FACT

Based on the evidence presented by the parties, along with reasonable inferences drawn therefrom, I make the following findings of fact:

1. Ms. McKinney worked at the Bristol County House of Correction from April 1987 to September 30, 2017, whereupon she retired. (Exhibit 3).
2. She was the Chief Classification Manager from July 1, 2016 to her retirement on September 30, 2017. (Exhibit 3). In the correctional setting, “classification” is the “system by which the security and program needs of each individual for whom confinement was ordered is determined.” 103 CMR 902.1, County Correctional Facilities, Definitions.
3. A “Chief Classification Manager” position description dated July 8, 2016 provides the following general statement of duties and responsibilities:

Provides supervision for the classification counselors I & II and oversees the integration of classification and program services to inmates, performs daily classification duties in the institution which involves constant contact with inmates. This includes, but is not limited to, preparing classification reports and treatment plans for inmates as well as assisting inmates with their reintegration needs.

(Exhibit 4).
4. The position description recites the following duties and responsibilities:

¹ Exhibits 1-10 were the Respondent’s proposed exhibits. Exhibit 11, a support staff evaluation form, was offered by the Petitioner.

1. responsible for the overall daily operation of the facility housing unit classification system, including but not limited to areas of facility orientations, program services eligibility and work assignments, earned good time, records of program attendance including recreation and other specific inmate court appearances, and changes resulting in classification to either higher or lower security
2. he/she shall supervise the classification counselors who provide direct inmate care services in the housing units
3. he/she shall review all 6-part folders.
4. he/she shall assist in the preparation and execution of pre- audits to prepare for upcoming audits and accreditations with the [Department of Correction, American Correctional Association, U.S. Immigration and Customs Enforcement, National Commission on Correctional Health Care], *etc....*
5. he/she shall schedule and may act as chairperson of the classification boards assuring the assigned housing unit correction officers actively participate in the classification process.
6. he/she shall review all classification findings and recommendations in compliance with standards and sheriff's office policy assuring the accuracy of information and appropriate level of classification for each inmate. [T]his process may include but not be limited to initial classboards, 60 day and special reviews and reclassification.
7. he/she shall assist the supt/asst. supt/deputy superintendents in the planning and execution of all matters pertaining to the management and administration of all Bristol County Sheriff's Office correctional facilities, including attending meetings as necessary.
8. he/she may meet with inmates as needed regarding received inmate grievances, classification recommendations and appeals, and housing placement concerns related to programmatic issues and reintegrative opportunities and/or earned good time issues or sentence calculation.
9. serves as a member of the sheriff's office policy team in providing input to the development of all policy regarding housing unit management and classification affecting the housing units he/she supervises
10. performs other related duties as designated by the sheriff.

(Exhibit 4).

5. The Chief Classification Manager position description states that the position

requires “constant contact with inmates.” (Exhibit 4). In her testimony, Ms. McKinney also characterized her inmate contact as “constant.” I have no difficulty finding that most of Ms. McKinney’s workday involved direct interactions with inmates. The nature of these inmate contacts will be discussed later in these findings of fact.

6. The Chief Classification Manager position description contained in this record does not list the qualifications required for the position. (Exhibit 4). The position description for Ms. McKinney’s prior position, Senior Classification Manager, does include qualifications. (Exhibit 5). Based on Ms. McKinney’s testimony that there was significant overlap in the duties and the similarities between the job duties outlined in both position descriptions, I find that Ms. McKinney’s responsibilities as a Chief Classification Manager were quite similar to her responsibilities as a Senior Classification Manager. (McKinney Test.). Because of this similarity, I consider the qualifications recited in the Senior Classification Manager position description to be germane to understanding Ms. McKinney’s job duties as a Chief Classification Manager. The qualifications include the following: “Ability to interpret inmate habits, attitudes and exercise good interpersonal skills in communicating housing unit operations expectations [to] both fellow employees and inmates assigned to housing units he/she supervises”; “Possess the ability to interact professionally with both staff and inmate populations”; and “He/she shall have a proven ability to interview inmates and acknowledge and assess the situations of management of risk prevalent with combining at-risk groups, *i.e.*,

protective custody, custody safe-keep, co-mingling pre-trial and sentence inmates.” (Exhibit 5).

7. A support staff evaluation form dated December 21, 2016, notes that Ms. McKinney “is knowledgeable over a wide range of job responsibilities,” “has a good rapport with inmates,” and that she “wears many hats and is always willing to assist when needed.” (Exhibit 6).
8. Ms. McKinney received training that at least partially overlapped with that provided to correction officers, including topics such as key control, hostage situations, and defensive techniques. (Ms. McKinney Test.). I do not find that Ms. McKinney received all of the training that a correction officer receives.
9. I credit Ms. McKinney’s testimony that her job also required her to have a good understanding of how to deal with inmates, many of whom presented with problematic conditions or behaviors, such those arising from mental health or substance abuse problems. (McKinney Test.).
10. Ms. McKinney’s office was located within one of the housing units at BCHC. (McKinney Test.).
11. Ms. McKinney served as the chair of inmate classification boards. These boards were staffed by Ms. McKinney, a correctional officer, and a case worker. (McKinney Test.).
12. These boards are tasked with assessing inmates to make recommendations regarding their housing assignments, to determine the appropriate level of custody, and to ascertain their programming needs. (McKinney Test.; see

also; 103 CMR 942.01, County Correctional Facilities, Classification Plan (county correctional facilities are required to develop plan for classification “in terms of custody required, housing assignment and participation in correctional programs”)).

13. These boards would be convened upon an inmate’s intake into the facility. (McKinney Test.). Although Ms. McKinney’s testimony was not entirely clear on this point, based on the position description (Exhibit 4) and 103 CMR 942.04(3), County Correctional Facilities, Procedure for Classification, I infer that classification boards also would be convened on other, later occasions. In other words, an inmate would be classified upon intake, but could be also classified on other, subsequent occasions while in the custody of the BCHC. To choose one example, a disciplinary violation might occasion a review to determine if the inmate needs to be reclassified to a higher security status. I find that, due to these subsequent classifications, as well as Ms. McKinney’s other duties, Ms. McKinney’s involvement with an inmate would not necessarily conclude with the initial classification, but might well continue, in various forms, throughout the inmate’s incarceration at BCHC.
14. The classification process usually involves interviews with the inmate. (A wholly uncooperative inmate might leave the board with no choice but to proceed without the benefit of his participation.). (McKinney Test.; 103 CMR 942.04(2), County Correctional Facilities, Procedure for Classification).
15. Inmates might manifest various conditions or behaviors during their classification boards, such as substance abuse withdrawal symptoms or mental

health crises. These conditions would require different approaches by Ms. McKinney. (McKinney Test.).

16. If an inmate was actively disruptive during the classification board, the correctional officer sitting on the board would be the one to remove or otherwise deal with the inmate. (McKinney Test.).
17. Based on Ms. McKinney's position as chair of classification boards, her years of experience, and my inference that the correctional officers and case workers assigned to a board would vary, I draw the inference that Ms. McKinney would direct the proceedings and that her conclusions and opinions would, practically speaking, be accorded a measure of deference and respect in the boards' ultimate recommendations, even if her vote was nominally only one of three.
18. The classification boards would make recommendations regarding inmates' housing assignments, but the ultimate decision --- based, in part, on bed availability --- would rest with someone higher up in the chain of command, perhaps the Deputy Superintendent for Classification. (McKinney Test.).
Based on the existence of a three-person panel, Ms. McKinney's years of experience, the fact that classification goals and practices are set forth in regulations and in institutional policies and procedures, and the general busyness of a correctional institution, I infer that the recommendation of the classifications board would carry significant weight with the ultimate decisionmaker.
19. Ms. McKinney testified that she would employ a "tool" during the

classification process. (McKinney Test.).² I do not draw any inference that this tool could be employed in a merely mechanical manner, or could mechanically direct the overall classification process, such that it supplanted the exercise of at least some professional judgment or discernment. In any case, to the extent the utilization of this classification tool required Ms. McKinney to elicit information from inmates, who may have mental health, substance abuse, or criminogenic issues, I find that Ms. McKinney needed to use interpersonal skills, discernment, and sound judgment. (McKinney Test.; Exhibit 5 (qualifications)).

20. Ms. McKinney would conduct between seven and ten classification boards a day. The amount of time these boards would take varied, but it was possible to complete two to three classification hearings in one to one-and-one-half hours. (McKinney Test.).
21. Inmates on the unit could, and frequently did, approach Ms. McKinney with questions. Ms. McKinney testified that she could be “bombarded” with questions. (McKinney Test.). Although there was a procedure for inmates to schedule a time to speak with her, she would sometimes answer more straightforward questions then and there. (McKinney Test.). Ms. McKinney

² Ms. McKinney did not describe the “tool” she used, but I assume it was some kind of objective point-based classification instrument, through which certain criteria (such as age and severity of current offense) are scored and weighted, ultimately leading to a score that corresponds to a presumptive custody level. These point-based determinations are subject to certain policy-based “overrides” within the discretion of the classification professional. See *Objective Jail Classification Systems: A Guide for Jail Administrators*, U.S. Department of Justice, National Institute of Corrections (Feb. 1998) (<https://s3.amazonaws.com/static.nicic.gov/Library/014373.pdf> (last visited September 18, 2023)).

did not explain what these questions concerned. I infer that these questions were not limited to the classification process alone, but likely included issues relating to programming, reintegration, and other issues as well. I base this inference on:

- Her job description, which included “meet[ing] with inmates as needed regarding received inmate grievances, classification recommendations and appeals, and housing placement concerns related to programmatic issues and reintegrative opportunities and/or earned good time issues or sentence calculation” (Exhibit 4);
- The observation in her evaluation that she “is knowledgeable over a wide range of job responsibilities” and “wears many hats” (Exhibit 6); and
- Ms. McKinney’s testimony concerning the general breadth of her duties.

22. Ms. McKinney would often go cell to cell to speak with inmates, and if there was something she could not do through the cell, she would rely on a unit officer to remove the inmate from the cell. Sometimes, Ms. McKinney would be shadowed by a unit officer, but it would appear that, more frequently, she was not. Correctional officers remained nearby, however. (McKinney Test).³

23. Ms. McKinney’s duties included contacting courts, parole officers, probation officers, and attorneys. (McKinney Test.).

24. Ms. McKinney supervised between four to six people, who I gather were inmate case workers. She completed annual performance reviews and

³ It is not clear from the record why Ms. McKinney went to individual inmate cells --- whether it was for purposes of classification interviews, to answer inmate questions, to engage in ancillary communications, or for some other purpose. I assume it was not the first of these, since Ms. McKinney gave no indication that she would be accompanied by the other two members of the classification board on these visits, but I am not sure the purpose is material. What is material about these visits is that Ms. McKinney was by no means a stranger to the various units and moved freely, subject to institutional events and specific concerns on the part of unit officers. Also relevant is the fact that she did not exercise hands-on custody of inmates and that correctional officers were nearby.

participated in weekly meetings. Ms. McKinney would frequently step in and cover for these individuals when they were unavailable or on vacation.

(McKinney Test.). There was no testimony, and I do not find, that Ms.

McKinney's strictly supervisory duties (that is, leaving aside her role as a substitute for absent colleagues) occupied a substantial portion of her day-to-day activities as compared to her other responsibilities.

25. On March 9, 2017, Ms. McKinney submitted a Group Classification Questionnaire seeking Group 2 classification for her position as a Chief Classification Manager from July 1, 2016 through "the present." (Exhibit 3).
26. On April 28, 2017, the Board denied Ms. McKinney's request for her position as Senior Classification Manager to be classified in Group 2. (Exhibit 1).
27. Ms. McKinney timely appealed the decision via a letter received by this Division on May 10, 2017. (Exhibit 2). This appeal was assigned docket number CR-17-230.
28. On August 10, 2017, Ms. McKinney applied for superannuation retirement. (Exhibit 10).
29. On August 10, 2017, Ms. McKinney again requested that her position as Chief Classification Manager be classified in Group 2. (Exhibit 9).
30. On August 31, 2017 the Board denied Ms. McKinney's second request for her position as Chief Classification Manager to be classified in Group 2. (Exhibit 7). Ms. McKinney was so informed via a letter dated September 7, 2017. (Id.).
31. By letter received by DALA on September 29, 2017, Ms. McKinney

appealed the August 31, 2017 denial. (Exhibit 8). This appeal was assigned docket number CR-17-868.

CONCLUSION AND ORDER

Ms. McKinney appeals the Board's April 28, 2017 decision denying her Group 2 classification request (Case No. CR-17-230) and the Board's August 31, 2017 decision again denying her classification request (Case No. CR-17-868). For the reasons that follow, the second of these two appeals, Case No. CR-17-868, is dismissed on jurisdictional grounds. The first appeal, Case No. CR-17-230, is meritorious and warrants reversal of the Board's August 31, 2017 decision.

I. CR-17-868

The Board argues that Case No. CR-17-868 is untimely and must be dismissed. I agree. Case No. CR-17-868 is Ms. McKinney's appeal of the Board's August 31, 2017 denial of her second request to classify her Chief Classification Manager position to Group 2. The Board informed Ms. McKinney of the denial in a letter dated September 7, 2017. Under G.L. c. 32, § 16(4), Ms. McKinney had fifteen days after receipt of this letter to file her appeal of this decision. There is a presumption that she received the letter within three days of mailing. Worcester County Sheriff's Office v. State Bd. of Ret., CR-08-169, at *12 (DALA September 30, 2011). Ms. McKinney's appeal was received by this Division on September 29, 2017, which was approximately twenty-six days after the day on which she presumptively received the Board's denial letter. Case No. CR-17-868 is thus untimely and must be dismissed.

II. CR-17-230

A. Group Classifications

The retirement benefits of a Massachusetts public employee are shaped in part by the employee's classification into one of four “groups.” G.L. c. 32, § 3(2)(g). For purposes of this decision the two pertinent groups are Group 1 and Group 2. Group 1 is a catch-all group: “[o]fficials and general employees including clerical, administrative and technical workers, laborers, mechanics and all others not otherwise classified.” G.L. c. 32, § 3. Group 2 includes employees “whose regular and major duties require them to have the care, custody, instruction or other supervision of prisoners.” G.L. c. 32, § 3.

Group 2 classification is “properly based on the sole consideration of [the member's] duties.” Maddocks v. Contributory Retirement Appeal Bd., 369 Mass. 488, 494 (1975). It was Ms. McKinney’s burden to establish that her regular and major job duties – that is, those she spent more than 50% of her working hours performing – required “the care, custody, instruction or other supervision of prisoners.” Forbes v. State Bd. of Ret., Docket No. CR-13-146, at *7 (CRAB January 8, 2020).

Two general principles articulated in prior decisions inform the Group 2 analysis for correctional professionals. First, exposure to the dangers attendant to employment in a correctional institution does not establish an entitlement to Group 2 classification. Woodward v. State Bd. of Ret., CR-20-0359, at *10 (DALA Dec. 17, 2021); Kelley v. Boston Ret. Bd., CR-03-34, at *8 (DALA Feb. 13, 2004) (affirmed by CRAB September 1, 2004); Kalinkowski v. State Bd. of Ret., CR-12-506, at *7 (DALA April 7, 2017); Ellis v. State Bd. of Ret., CR-17-281, at *6 (DALA Aug. 4, 2020). Second, mere contact with inmates is insufficient to ground Group 2 classification. Kalinkowski, at *7. What

matters is that the interactions amount to “care, custody, instruction or other supervision of prisoners.”

This Division has had occasion to consider the appropriate Group assignments for correctional classification professionals. Two of those decisions, discussed below, determined that work duties quite similar to Ms. McKinney’s entitled the petitioners to Group 2 classification.

In Goodman v. Boston Ret. Bd., CR-02-1105 (DALA January 30, 2002) (affirmed by CRAB on November 12, 2003), DALA concluded that the petitioner, the Assistant Director of Classification for the Suffolk County Sheriff, was improperly classified to Group 1 and should have been classified to Group 2. The magistrate concluded that Group 2 classification was appropriate because the “majority of the Petitioner’s work-week was spent dealing with inmates on an individual basis either with respect to interviewing them to determine their proper classification status within the facility or meeting with them concerning their specific contact visit situation.” Id. at *8. The petitioner “spent a great deal of time with each inmate reviewing their individual situation in order to determine their proper classification as well as the parameters of their allowable visitation schedule.” Id. at *9. These duties constituted the “care and instruction or other supervision” of prisoners. Id.

The magistrate also observed that the petitioner, a former correctional officer, was familiar with the procedures for dealing with “problematic inmates,” and met with inmates one-on-one, without the presence of a correctional officer. Id. at *7.

CRAB affirmed the Group 2 classification, noting that the petitioner’s “duties included formulating the list of inmate contact visits, interviewing and counseling

inmates regarding the contact visits and classifying inmates in the facility” and that he spent the “majority of his work week dealing with inmates on an individual basis with respect to contact visits and classification status.” Goodman v. Boston Ret. Bd., CR-02-1105, at *1-2 (CRAB November 12, 2003).

In LaChance v. State Bd. of Ret., CR-04-644 (September 2, 2005) (affirmed by CRAB March 6, 2006), the petitioner was a Correction Program Officer II. Her duties “included interviewing inmates for classification as well as advising them on educational and vocational opportunities available to them.” Id. at *3. The magistrate concluded: “Since the Petitioner is responsible for interviewing and advising inmates, her regular and major job duties do require her to have the care, custody, or supervision of prisoners. As such, she is entitled to be classified in Group 2 for retirement purposes.” Id. at *6.

The duties set forth in Goodman and LaChance reflect some commonalities. First, both required the petitioners to interview inmates for purposes of classification. Second, both required the petitioners to provide inmates with advice concerning topics within their purview. In Goodman, it was “counseling inmates regarding the contact visits” and in LaChance it was “advising [inmates] on educational and vocational opportunities available to them.”

Like the classification professionals in Goodman and LaChance, I conclude that Ms. McKinney, whose responsibilities also centered on classification interviews and the provision of advice, is entitled to Group 2 classification. But, on the record before me, I do so on a basis that was not reached by Goodman or LaChance. Ms. McKinney’s duties do not fall comfortably under the familiar categories of “care,” “custody,” or “instruction” as those terms have been construed in the decisional law. Instead, they

constitute “other supervision.” As explained in greater detail below, “or other supervision” is a residual clause, the scope and application of which is informed by its three antecedents (care, custody, and instruction), but is not limited by the specific requirements of these three criteria.

Before turning to “other supervision,” it may be useful to explain why Ms. McKinney’s duties did not fall under the more familiar and commonly invoked criteria of “care,” “custody,” and “instruction.”

To constitute care for purpose of Group 2 classification, the provision of care must be direct. Hong v. State Bd. of Ret., CR-17-843, 2022 WL 16921455, at *3 (DALA May 6, 2022). Several decisions have concluded that assessing individuals to determine the services they require is not the direct provision of care. See Frazer v. State Bd. of Ret., CR-18-0318, * 6-7 (DALA Nov. 19, 2021) (collecting cases) (citations omitted).⁴ Although Ms. McKinney’s classification duties may have identified services and programming to meet an inmate’s needs (many of which I infer may constitute care or be care-adjacent), those duties guided the *future* provision of care but do not, themselves, constitute direct care for purposes of the statute. Moreover, while some share of Ms. McKinney’s classification efforts addressed the provision of services, other facets of the classification process concern non-care considerations, such as security. See 103 CMR 902.01, County Correctional Facilities, Definitions (classification is a system that determines, among other things, security needs); 103 CMR 942.03 (5), (7), County

⁴ I acknowledge Potter v. State Bd. of Ret., CR-19-0519 (DALA Dec. 16, 2022), which held that assessments could, in some cases, constitute direct care if the member is determining what care the member and the member’s fellow clinicians would be providing. Assuming for the sake of argument that certain institutional programming and services could constitute care, Ms. McKinney did not provide post-classification programming and services herself.

Correctional Facilities, Minimum Requirements for Custody (Required) (requiring security needs to be considered and addressed in classification plan).

Nor did Ms. McKinney's major duties require her to have custody of inmates. Custody in the correctional context has been interpreted to involve the exercise of physical control over prisoners and control over the doors and gates of secure areas. Kalinkowski, supra, at *7; Colon v. State Bd. of Ret., CR-12-622, at *5-6 (DALA April 7, 2012). Although the classification process is an integral component of the comprehensive physical control a correctional institution exercises over prisoners, the performance of classification duties does not, itself, require the personal application of physical control by classification personnel.

Instruction includes classroom teaching, as one might expect. Dunford v. State Bd. of Ret., CR-12-96, at *6 (DALA March 24, 2017). But it also may include the provision of guidance and information outside of the classroom and encompass non-academic subject matters. Giard v. State Bd. of Ret., CR-08-347, at *5-6 (DALA June 8, 2012) (infectious disease case manager who administered injections, provided noninvasive medical treatments, and counseled inmates on how to take medication and on disease management and infection prevention “provide[d] education and care for inmates); Burciaga v. State Bd. of Ret., CR-03-940, at *5 (DALA March 25, 2005) (social worker instructed clients “in hygiene skills, in social skills, in budgeting their financial needs, and in helping them with filling out job applications and in interviewing for work.”). It is possible that Ms. McKinney's provision of advice could constitute instruction for purposes of Group 2 classification, but I need not reach that question

because the record does not establish that Ms. McKinney spent more than half of her time providing any such instruction.

Before turning to “or other supervision” as a residual or catch-all clause, I note that some decisions rely upon supervision (in the more circumscribed sense of directing or superintending the performance of a particular set of tasks) as a specific and separate basis for grounding an entitlement to Group 2 classification. Most of these cases involve authority to direct specific tasks. See, e.g., Simmarano v. State Bd. of Ret., CR-07-352, 2008 WL 7555795, at *2-3 (DALA Aug. 7, 2008) (DYS building maintenance supervisor was engaged in supervision and was entitled to Group 2 classification where he trained youths in DYS custody and ensured that they performed maintenance work correctly); White v. State Bd. of Ret., CR-06-895, 2007 WL 809842, at * 1-2 (DALA Jan. 19, 2007) (manager of DOC’s central clothing warehouse engaged in supervision because he would train inmates, provide them with warehouse tasks, and confirm they had performed the tasks correctly). Others involve intervening in specific events, such as inmate recreational programs. See, e.g., Priest v. State Bd. of Ret., CR-06-519, at *6-9 (DALA Aug. 17, 2007) (DOC Director of Treatment personally monitored inmate recreational and other programs and, among other things, ensured that these programs were not used for gang activities, deescalated conflicts and arguments among participants, and generally oversaw their proper and safe operations). With these decisions as the relevant points of reference, it is not apparent how Ms. McKinney’s job responsibilities could be considered supervisory in the sense of directing inmates to perform specific tasks.

The cases above treat supervision as a discrete basis (like care, custody, and instruction) for grounding Group 2 classification, which is sensible. But the term

“supervision” contains a broader meaning as well because it is nestled within the phrase “or other supervision.” As the Appeals Court has noted, “or other supervision” is a “modifying phrase.” Rebell v. Contributory Ret. Appeal Bd., 30 Mass. App. Ct. 1108 (1991) (unpublished disposition) (suggesting that care should be understood in light of “the modifying phrase ‘or other supervision’”). It is a residual or catch-all clause that sets forth a general category of job tasks that may not be captured fully by the terms “care,” “custody,” or “instruction.” Cf. Nelson v. Conservation Commission of Wayland, 90 Mass. App. Ct. 133, 134 (2016) (phrase “and other areas where groundwater, flowing or standing surface water or ice provide a significant part of the supporting substrate for a hydrophilic plant community, or emergent and submergent plant communities in inland waters” sets forth catch-all clause in definition of “wetlands”); Commonwealth v. Perry, 455 Mass. 1010, 1011 (2009) (phrase “or other dangerous weapon” in G.L. c. 269, § 10(b) sets forth catch-all clause).⁵

Although it functions as a “catch-all” provision, the “other supervision” clause is not an escape hatch, an excuse to justify Group 2 classification when the member’s job duties fall short of meeting the requirements of care, custody, or instruction. Under the doctrine of *ejusdem generis*, “[w]here general words follow specific words in a statutory enumeration, the general words are construed to embrace only objects similar in nature to

⁵ This assumes that the phrase “or other supervision” applies to “care,” “custody,” and “instruction” rather than “instruction” only. Under the series modifier rule of statutory construction, a phrase modifies all other items in a list where “the listed items are simple and parallel without unexpected internal modifiers or structure.” Lockhart v. United States, 577 U.S. 347, 352 (2016). Here, the structure is simple and parallel, which would suggest that the series modifier rule is appropriate. Accordingly, and consistent with the Rebell case, in which “or other supervision” was deemed to apply to “care,” I believe that the most reasonable construction is that “or other supervision” applies to all three preceding nouns.

those objects enumerated by the preceding words.” Banushi v. Dorfman, 438 Mass. 242, 244 (2002) (quoting 2A N.J. Singer, Sutherland Statutory Construction § 47.17, at 273–274 (6th ed. rev.2000)). Accordingly, the meaning of “other supervision” should be understood with reference to care, custody, and instruction.⁶

Some indicia of “other supervision” suggest themselves based on how “care,” “custody,” and “instruction” have been interpreted in the decisional law. I limit myself here to the correctional setting. The following indicia may overlap. And I do not view them as exhaustive.

First, “other supervision” should be personal and direct. Cf. McLaughlin v. State Bd. of Ret., CR-19-0515, 2022 WL 16921450, at *5 (DALA Oct. 14, 2022) (observing that although petitioner’s duties “indirectly concerned care and custody of prisoners,” Group 2 classification “requires direct care and custody of prisoners”); Camara v. State Bd. of Ret., CR-15-460, 2016 WL 5872291, at *4 (DALA Sept. 16, 2016) (concluding that petitioner failed to meet burden of proving his major job duties were “providing direct care, custody, instruction or other supervision” of the subject population).

Second, “other supervision” will likely involve a certain range and/or depth of responsibility. In the care context, for example, the member must shoulder a certain responsibility for the well-being of prisoners, as compared with more technical or circumscribed responsibilities, such as collecting blood or urine samples. Hong v. State Bd. of Ret., CR-17-843, 2022 WL 16921455, at *3 (DALA May 6, 2022) (quoting Sutkus v. State Bd. of Ret., CR-09-837 (CRAB Feb. 17, 2011)). As important as the

⁶ I would also note that whatever else “other supervision” as a catch-all may encompass, it almost certainly includes “supervision” in the more circumscribed sense of overseeing or directing a task or activity.

latter duties are, individuals caring for inmates (within the meaning of the statute) are responsible not just for performing a specific task conscientiously and well, but for attending more broadly to the well-being of those in their care.

Custody, too, involves breadth and depth of responsibility. The exercise of custody entails the responsibility inherent in wide-ranging physical control as well as the resulting responsibility for the security and well-being of individuals who are not allowed to fully look after their own safety. As for instruction and supervision (in the sense of overseeing the performance of specific tasks), teachers and managers are exemplars of authority --- empowered and entrusted, within the scope of their responsibilities, with making decisions that their pupils/supervisees cannot fully make for themselves and with assessing their performance.

Third, “other supervision” will likely require watchfulness and attention. The Supreme Court of Minnesota, citing The American Heritage Dictionary of the English Language, noted that a “close synonym of supervision is ‘care,’ which means, in relevant part, ‘watchful oversight.’” Matter of Restorff, 932 N.W.2d 12, 21 (Minn. 2019) (quoting The American Heritage Dictionary of the English Language 1750 (5th ed. 2011)) (internal citation omitted). This definition jibes well with the definition of care as “charge, oversight, watchful regard, and attention” set forth in Rebell, *supra*. Like care, custody requires watchful regard as the person exercising custody must maintain an awareness of the population to maintain good order, public safety, and the safety of the inmates themselves. And those providing instruction to what may frequently be a challenging population cannot proceed productively without attentiveness.

Ms. McKinney's primary job responsibilities, which centered on classification interviews and the provision of advice to inmates, displayed the characteristics of "other supervision" described above.

First, Ms. McKinney's interactions, with respect to both her classification interviews and her provision of information to inmates, were personal and direct.

Second, Ms. McKinney's duties required both breadth and depth of responsibility. Ms. McKinney's classification duties required her to have substantive interactions with inmates, and determinations arising (at least in part) from those interactions had an impact on fundamental aspects of inmates' custody, including security levels, housing, and institutional operations. And I have also found that Ms. McKinney would respond to inmate questions on a wide range of topics. Ms. McKinney's duties were not the correctional equivalent of a blood draw. *Cf. Sutkus, supra* (the collection of samples from patients is not "care" within the meaning of Chapter 32). Her responsibilities were wider and more profound.

Finally, Ms. McKinney's duties required watchful regard. Ms. McKinney spoke convincingly about the need to adjust to the characteristics of the inmate with whom she was interacting. And I have little doubt that Ms. McKinney was adroit in modulating her approach and that this modulation required her to take intelligent notice and account of the individual appearing before her. Similarly, I question whether she could effectively advise inmates on issues such as "classification recommendations" and "housing placement concerns related to programmatic issues and reintegrative opportunities," (Exhibit 4), unless she exercised some measure of watchful regard.

In sum, Ms. McKinney's regular and major duties required her to have direct and substantive interactions with inmates, to thoughtfully attend to their individual circumstances and characteristics, and to make determinations or furnish advice on a range of subjects, many of which subjects had a direct bearing on the fundamental aspects of the inmates' incarceration. I conclude that Ms. McKinney's duties constituted "other supervision."

It bears mentioning that the fact that Ms. McKinney chaired classification boards that were staffed with two other individuals does not vitiate her entitlement to Group 2 classification. See White v. State Bd. of Ret., CR-06-895, 2007 WL 809842, at * 1-2 (DALA Jan. 19, 2007) (member working with another employee supervised inmates at DOC central clothing warehouse); cf. Pickett v. State Bd. of Ret., CR-06-447, 2007 WL 2580408, at *3 (DALA Aug. 7, 2007) (observing that fact that mentally ill persons complaining of human rights violation may have an attorney or other staff person present during member's interview and investigation of those complaints did not diminish the need for member to employ skills and training to successfully interact with complainants). An example drawn from the custody context should make this plain: if an inmate housing unit was staffed by two unit officers, it is doubtful that their custodial duties would be discounted merely because they worked in tandem.⁷

This last observation calls to mind another issue: the proximity of correctional officers. In Goodman, the magistrate noted that the member met with inmates without the presence of a correctional officer. Goodman, *supra*, at *7. Other decisions, too, have taken note of the presence or absence of correctional officers in their discussion of

⁷ Although custodial responsibilities may be shared, as in the case of two officers assigned to the same housing unit, they need not be.

classification status. Surely, proximity to correctional officers may be germane to the issue of whether a petitioner exercises custody over inmates. But it is far less clear what salience proximity to correctional officers has when considering the other criteria of Group 2 classification – care, for example. In Ms. McKinney’s case, her entitlement to Group 2 classification turns on her classification and advising duties, not on whether she was in the habit of, say, handcuffing inmates or escorting them during court visits. Whether correctional officers were present, nearby, or absent is entirely irrelevant in this case. Cf. Jameson v. State Bd. of Ret., CR-17-960, at *17 (DALA June 3, 2022) (holding that when duties of physician at Lemuel Shattuck Hospital involved care of prisoners it was irrelevant that these prisoners were within the custody of correctional personnel).

It also bears mentioning that Ms. McKinney’s supervision of case workers does not preclude Group 2 classification status. Her supervisory responsibilities did not occupy more than half her time. Contrast Jacobsen-Canastra v. State Bd. of Ret., CR-05-599, at *4 (DALA Oct. 23, 2017) (denying Group 2 classification status because, *inter alia*, petitioner’s “regular and major” duties were supervisory and administrative).

Ms. McKinney’s appeal in Case No. CR-17-868 is dismissed. As for Case No. CR-17-230, the Board’s decision denying Ms. McKinney’s Group 2 classification request is REVERSED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/ Timothy M. Pomarole

Timothy M. Pomarole, Esq.
Administrative Magistrate

Dated: September 29, 2023