COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. Division of Administrative Law Appeals

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Anthony M. Mendonsa

 Petitioner Docket No: CR-11-424

v.

State Board of Retirement Date Issued: November 17, 2017

 Respondent

**Appearance for Petitioner:**

Patrick M. McAvoy, Esq.

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723 Main Street

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**Appearance for Respondent**

Candace L. Hodge, Esq.

State Board of Retirement

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**Administrative Magistrate**

Edward B. McGrath, Esq.

Chief Administrative Magistrate

**SUMMARY OF DECISION**

 The Petitioner proved by a preponderance of the evidence that his major duties required him to have the care, custody, instruction or other supervision of prisoners, and the Respondent’s decision to classify his positions of Unit Manager/Program Manager 3, Director of Treatment/Program Manager 4, Director of Treatment/Program Manager 5, and Deputy Superintendent/Program Manager 8 in Group 1 is, therefore, reversed.

**DECISION**

The Petitioner, Anthony Mendonsa, timely appealed under G.L. c. 32, §16(4) the decision of the Respondent, the State Board of Retirement (the “Board”), denying his request to classify Unit Manager/Program Manager 3, Director of Treatment/Program Manager 4, Director of Treatment/Program Manager 5, and Deputy Superintendent/Program Manager 8 as Group 2 for retirement purposes. I held a hearing, which was digitally recorded, on September 14, 2017. The Petitioner was the only witness. The Petitioner submitted a pre-hearing memorandum that I marked as “A” for identification. The Respondent submitted a pre-hearing memorandum that I marked as “B” for identification.

The parties submitted ten (10) exhibits, which were marked and entered into evidence by agreement. On October 2, 2017, I received the closing memorandum for the Petitioner, which I marked “C” for identification. On October 3, 2017, I received the closing memorandum for the Respondent, which I marked “D” for identification. Thereupon, the administrative record closed.

**FINDINGS OF FACT**

 Based upon the testimony and exhibits presented at the hearing, and reasonable inferences from them, I make the following findings of fact:

 1. The Petitioner was born in1955. On July 13, 1978, he began working for the Department of Corrections at MCI Shirley Minimum Security Prison in Shirley, Massachusetts as a Counselor. (Ex. 4).

 2. The Petitioner was promoted to the position of Correction Social Worker on December 2, 1979, and then on June 7, 1981, he was promoted again to the position of Correction Counselor. (Ex. 4).

 3. The Petitioner transitioned into the position of Administrative Assistant at MCI Shirley Minimum Security Prison on September 4, 1983 and worked in that capacity until September 21, 1986, when he advanced to the position of Correction Counselor 2 to take part in the Medfield Prison Project in Medfield, Massachusetts. On July 2, 1995, the Petitioner was promoted to the level of Correction Program Officer 3 at the Longwood Treatment Center in Brookline, Massachusetts. (Ex. 4 & Testimony).

 4. On June 30, 1996, the Petitioner continued to advance in his career to the position of Unit Manager/Program Manager 3 at North Central Correctional Center, a Medium Security prison, in Gardner, Massachusetts. His role was comprised of the management and oversight of two offender housing units along with the supervision of approximately sixteen employees. He was responsible for the safety and security of the staff and offenders inside the housing units. His daily duties included reading the daily record to see whether any of the inmates in his unit had received disciplinary violations and needed to be moved to a different unit or segregated from the population; touring both housing units to ensure cell decorum which entailed checking cleanliness and searching for contraband; participating in classification hearings with inmates to evaluate their development; meeting new inmates; and, participating in staff access meetings where inmates received the opportunity to talk with staff members about their concerns. (Exs. 4, 6, & Testimony).

 5. About 70% to 75% of the Petitioner’s time each day was spent communicating with inmates. Normally, he conducted his tours of the housing units alone, without a Correction Officer escorting him; however, he always kept a radio in his possession just in case any of the inmates became violent, and he needed assistance. (Exs. 4, 6, & Testimony).

 6. The Management Position Description Questionnaire (“MPDQ”) explained the “Position Summary” of a Unit Manager as:

 A Unit Manager is responsible for the total operation of six (6) inmate housing units to include supervision of approximately 350 inmates and a Unit Team consisting of two (2) Sergeants, eighteen (18) Correction Officers, four (4) Correction Counselors and one (1) Steno II. Unit manger assumes full administrative responsibility for security, safety, operations and sanitation for the units, manages inmate classification and disciplinary system within the unit. Responsible for training and evaluation of all Unit Team staff members, enforces police procedures through inspections, and ensures compliance with DOC and Institution police and procedure.

(Ex. 10).

 7. Portions of the MPDQ provide, in relevant part, that the Unit Manager is expected to resolve all staff and inmate complaints; make decisions on inmate housing placement; and maintain safe, secure, and clean housing units for staff and inmates. The Unit Manager is “in constant communication with inmates” and “often is responsible for telling the inmate information which he will not like.” Additionally, the position combines both management and technical aspects of security and inmate management. (Ex. 10).

 8. On July 12, 1998, the Petitioner advanced to the position of Director of Treatment/Program Manager 4 at the Souza-Baranowski Correctional Center, a Maximum Security Center, in Shirley, Massachusetts that housed both maximum and medium custody inmates. His role was to oversee all programming for the maximum security inmates. He was also able to develop and implement programming. For example, he developed a program regarding alternatives to violence and facilitated the sessions on weekends. During the implementation of this program, he sat in the same room with the inmates to check decorum, make sure they were participating, and monitor the success of the program. His office, where he spent approximately 15% of his time, was located inside of the facility, in close proximity to the programming areas. On a typical day, when the Petitioner arrived to work, he would read the daily report to learn of any disciplinary reports incurred by inmates within his unit and relocate them as needed. After this was completed, for the remainder of the day, he would tour the program areas including the library, chapel, gym, recreation yards, and education classrooms. During this task, he ensured decorum, checked equipment, confirmed that the programs he developed were being implemented, spoke with inmates to see whether their needs were being met, and monitored gang activity. This resulted in daily contact with inmates. (Ex. 4 & Testimony).

 9. The MPDQ stated, in relevant part, that the Petitioner had responsibility over, among other things, inmate housing assignments; inmate orientation intake; and abuse treatment plans. He maintained “daily contact with inmates who [were] in good physical condition as well as those who [were] psychologically impaired…relat[ing] directly to the rehabilitative needs of the individual inmates.”[[1]](#footnote-1) (Ex. 10).

 10. On January 3, 1999, the Petitioner was promoted to Director of Treatment/Program Manager 5 for pay advancement reasons and his duties did not change from when he was the Director of Treatment/Program Manager 4. (Ex. 4 & Testimony).

 11. The Petitioner transitioned into the position of Deputy Superintendent/Program Manager 8 at North Center Correctional Center in Gardner, Massachusetts on December 1, 2003. He was responsible for all inmate housing and activities. Similar to his last position, he possessed responsibility for all offender programming including education, religion, recreation, and library services. On a daily basis, he would read the morning reports, brief with staff, and tour the housing units where he would interact with the inmate population. There were times during his day that were spent in his office, which was located inside of the facility. He spent as much time in the field as possible, which resulted in constant interaction with the inmates. (Ex. 4 & Testimony).

 12. During May of 2005, the Petitioner was transferred to Souza-Baranowski Correctional Center in Shirley, MA to continue in the same role, Deputy Superintendent/Program Manager 8. He was responsible for programming and inmate housing for the entire facility which included sixteen housing units. He conducted daily tours where he would interact with staff and inmates to ensure all programs were being implemented. He also conducted searches of cells to check for contraband, sometimes by himself and sometimes with Corrections Officers. (Ex. 4 & Testimony).

 13. The MPDQ included a “Summary of Position” for the position of Deputy Superintendent:

 The Deputy Superintendent is responsible for the management of the Classification and Treatment Division of a medium security institution with a population of more than 1,200 inmates. This includes the administration of Unit Management (the six blocks which house inmates), the Special Units (Departmental Segregation Unit, institutional segregation unit, and Health Services Unit), and the Treatment Department (educational, psychological, religious, library, and community services). In addition, the Deputy Superintendent serves as institutional liaison with Health Services, Industries Divisions and the Parole Board. The mission of this division is to identify the security and programmatic needs of inmates, recommending via the classification process the appropriate security level in which inmates should be placed and providing those treatment services which will facilitate their reintegration into the community.

(Ex. 10).

 14. According to the MPDQ, the Deputy Superintendent met with staff and inmates to resolve issues, supervised the Segregation Unit, resolved conflict between staff, and reviewed daily incident reports, and taking corrective action when appropriate. (Ex. 10).

 15. During the course of his career in the Department of Corrections, the Petitioner incorporated as much “first-hand experience” in the field as possible, in order to effectively incorporate change and fulfill his job duties. (Testimony).

 16. The Petitioner applied for superannuation retirement on June 12, 2012 with an effective date of June 30, 2012. He requested to be classified in Group 2 except for the last nine months of his employment as Superintendent, which he requested to be classified in Group 1. (Ex. 7).

 17. On June 12, 2012, the Petitioner completed a Group Classification Questionnaire and attached his resume and accompanied either a MPDQ or Employee Performance Review Form for each position. (Exs. 8, 9, 10).

 18. A majority of the Employee Performance Review Forms stated that the Petitioner either met or exceeded his performance criteria. (Ex. 9).

 19. The Petitioner’s resume was constructed with the objective of obtaining a senior level management position and highlighted his supervisory skills and experience. (Ex. 9 & Testimony).

 20. By decision of October 2, 2012, the Board sent notification to the Petitioner that his request for Group 2 was denied for Administrative Assistant, Unit Manager/Program Manager 3, Director of Treatment/Program Manager 4, Director of Treatment/Program Manager 5, and Deputy Superintendent/Program Manager 8. Instead, these positions were classified in Group 1. (Ex. 4).

 21. By letter postmarked October 17, 2012, the Petitioner timely appealed the decision of the Board with the Contributory Retirement Appeal Board (“CRAB”) for all of the positions that were classified as Group 1 except Administrative Assistant. (Ex. 6).

**DISCUSSION**

After careful consideration of the evidence presented in this case, the Board’s decision to deny Group 2 classification for Unit Manager/Program Manager 3, Director of Treatment/Program Manager 4, Director of Treatment/Program Manager 5, and Deputy Superintendent/Program Manager 8 is reversed. Members of the contributory retirement system are classified into four groups. G.L. c. 32, §3(2)(g). Group 2 classification includes “employees of the Commonwealth or of any county, regardless of any official classification, except the sheriff, superintendent, deputy superintendent, assistant deputy superintendent and correction officers of county correctional facilities, whose regular and major duties require them to have the care, custody, instruction or other supervision of prisoners.” *Id.* Group 1 has been recognized as the “catch-all” category. *Maddocks v. Contributory Retirement Appeal Board*, [369 Mass. 488, 493 (1976)](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1975117459&pubNum=0000578&originatingDoc=Ic1de5c5f4f5c11e798dc8b09b4f043e0&refType=RP&fi=co_pp_sp_578_507&originationContext=document&transitionType=DocumentItem&contextData=%28sc.Search%29#co_pp_sp_578_507). This group includes “[o]fficials and general employees including clerical, administrative and technical workers, laborers, mechanics and all others not otherwise classified.” G.L. c. 32, §3(2)(g).

 “The determination of the proper group classification of an employee for retirement purposes is based on the job he held and the duties he performed at the time of retirement.” [*Maddocks*, 369 Mass. at 494](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1975117459&pubNum=0000578&originatingDoc=Ic1de5c5f4f5c11e798dc8b09b4f043e0&refType=RP&fi=co_pp_sp_578_507&originationContext=document&transitionType=DocumentItem&contextData=%28sc.Search%29#co_pp_sp_578_507). The Petitioner is required to prove by a preponderance of the evidence that his regular and major duties, or at least 51 % of his duties, embodied the “care, custody, instruction or other supervision of prisoners.” *McCalla v. State Board of Retirement,* CR-07-1040 at 7 (DALA, Mar. 11, 2011).Moreover, “when the Petitioner rendered care, instruction or other supervision to any individual inmate or in group sessions, such conduct must not have been merely incidental or in the context of some greater administrative function.” *Giard v. State Board of Retirement*, CR-08-347 at 4 (DALA, June 12, 2012) (citing *Hunter v. Contributory Retirement Appeal Board*, [80 Mass. App. Ct. 257](http://sll.gvpi.net/document.php?id=sjcapp:80_mass_app_ct_257), 262 (2010)). “When it is disputed whether the member had care, custody, instruction or other supervision of a class of persons specified in the Group 2 description, the resolution depends on an individualized examination of the regular and major duties of that employee.” *Morreale v. State Board of Retirement*, CR-15-332 at 6 (DALA, Mar. 10, 2017). “The member’s job description and actual duties performed are important considerations to be weighed when determining the member’s group classification.” *Gaw v. Contributory Retirement Appeal Board*, 4 Mass. App. Ct. 250, 256 (1976). 

 Based on the evidence in the record, I am persuaded that the regular and major duties of the Petitioner’s work during his service as Unit Manager/Program Manager 3, Director of Treatment/Program Manager 4, Director of Treatment/Program Manager 5, and Deputy Superintendent/Program Manager 8 required him to provide the “care, custody, instruction, or other supervision of prisoners.” *See Priest v. State Board of Retirement*, CR-06-519 at 5-6 (DALA, Aug. 17, 2007).

 *a. Unit Manager/Program Manager 3*

 In *Bailey v. State Board of Retirement*, the Petitioner appealed the Board’s decision to classify her as Group 1 for her service as Head Nurse/Director of Nursing at the Worcester County Sheriff's Office. CR-07-724 at 1 (DALA, June 27, 2008). It was her responsibility to supervise thirty-one employees, maintain records, attend meetings at other jails, draft policies and procedures, and spend at least two hours each day providing or directly supervising the provision of medical care to inmates which included daily rounds for at least a portion of the facility and responding to medical emergencies. *Id.* at 2. The Petitioner was “nearly always accompanied by a Correction Officer whenever she entered a prison cell.” *Id.* at 1. Because any duties that could potentially be classified as Group 2 were “ancillary to her primary functions, which were largely administrative in nature,” her position did not meet the statutory requirements of a Group 2 classification. *Id*. at 8.

 Here, the Petitioner was in frequent communication with inmates during his employment as Unit Manager/Program Manager 3. (Exs. 6, 10, & Testimony). The Petitioner gave credible testimony that he handled all interactions by himself but kept a radio so that he could call upon another employee for assistance if needed. (Testimony). A major aspect of his role was touring the facility and performing checks within each housing unit. (Exs. 6, 10, & Testimony). It also required familiarity of the inmates for classification purposes. (Exs. 6, 10, & Testimony)*.* The Petitioner performed a “hands-on” approach in order to sufficiently perform these job duties which subsequently resulted in at least 51% or more of the “care, custody, or other supervision of prisoners.” *See* *Judge v. State Board of Retirement*, CR-03-142 (DALA, April 30, 2004).

 *b. Director of Treatment/Program Manager 4 and 5*

 In *Priest,* the Director of Treatment at a medium security facility appealed the Board’s decision to classify his positon as Group 1*.* CR-06-519 at 1. In his role, he supervised inmates as they participated in recreational games, religious services, library activities, and educational classes and ensured that inmates were not utilizing any of the services for gang-related activity or getting into arguments during participation in any of the services. *Id.* at 2. He also handled all interactions with inmates by himself and only called upon a Correction Officer for assistance if an inmate became violent or extremely disruptive. *Id.* at 7. The Director of Treatment’s office was located inside of the facility, where he would conduct meetings with inmates on a daily basis to address their concerns about the available services and resolve those issues. *Id.* at 3. He was responsible for the Special Housing Unit and made daily rounds there. *Id.* Additionally, he supervised eleven employees. *Id.* The Petitioner’s position was ordered to be reclassified as Group 2 in light of his compelling testimony, which showed that he spent a majority of his time supervising inmates during their participation in facility programs. *Id.* at 7.

 Here, I am persuaded that the Petitioner’s employment as the Director of Treatment/Program 4 and 5 rose to the level of supervision found in *Priest*. Similarly, the Petitioner was in charge of developing, implementing, and overseeing programs which included the library services, chapel, gym, recreation activities, education classrooms, and other programs he created. (Ex. 6 & Testimony). His office was located inside of the facility near the programming areas. (Ex. 6 & Testimony). Even though the Petitioner conducted some administrative duties, he spent a majority of his time supervising inmates during their participation and cooperation in the facility’s programs. (Exs. 6, 10 & Testimony).

 *c. Deputy Superintendent/Program Manager 8*

 In *Whalen v. State Board of Retirement*, the Petitioner was employed as the Deputy Superintendent at South Middlesex Correctional Center in Framingham, MA and appealed the Board’s decision denying her request for Group 4 classification. CR-03-137 at 1 (DALA, May 14, 2004). Although her request for Group 4 classification was denied, the Petitioner’s position as Deputy Superintendent was found to be entitled to Group 2, because her credible testimony, along with the MPDQ and other evidence admitted, corroborated the finding that a major and regular part of her duties were the care, custody, and supervision of inmates. *Id.* at 7. The Petitioner admitted her role included being a manager. *Id*. at 3. Despite this, she performed more “hands-on work with staff and with inmates,” because she was expected to make daily inspections of the facility where she would walk through inmate living quarters and engage in one on one contact with inmates, supervise the day to day operations of the facility, meet with new inmates, and arrange of transfers of male inmates when the facility was in the process of switching to an all-female facility. *Id.* at 4. It was determined that the lack a formal job description did not prevent her entitlement of a Group 2 classification, because “[t]o find Group 1 more appropriate [would] ignore her continual contact with inmates.” *Id.* at 7.

 Here, I find that *Whalen* is particularly instructive in concluding that the Petitioner’s position as Deputy Superintendent/Program Manager 8 at North Center Correctional Center and Souza-Baranowski Correctional Center is entitled to the classification of Group 2. The Petitioner performed similar job duties as the Petitioner in *Whalen* seeing that they both were responsible for inspecting their facility, engaged in one on one contact with inmates, and conducted a significant amount of hands-on work. (Exs. 4, 6, 10, & Testimony). In fact, the Petitioner’s duties in the instant case involved more care, custody, and supervision of inmates than those of the Petitioner in *Whalen*, because he conducted searches of inmate sleeping quarters which is usually the duty of a lower level employee. *See Whalen*, CR-03-137 at 4 (explaining that even though Petitioner was not performing searches anymore supervision of this duty was sufficient for entitlement of Group 2). Further, the Petitioner in the instant matter was responsible for all inmate housing and activity and it was, therefore, his responsibility to supervise the inmate population.

 In this case, the Petitioner testified credibly to the care, custody, or supervision of inmates he provided at different facilities. The MPDQs were instructive in analyzing the rudiments of the Petitioner’s job duties. I conclude that to find the positions of Unit Manager/Program Manager 3, Director of Treatment/Program Manager 4, Director of Treatment/Program Manager 5, and Deputy Superintendent/Program Manager 8 as Group 1 would disregard the constant contact that the Petitioner had with inmates for several years for the Department of Corrections. *See, e.g., Whalen*, CR-03-137 at 7; *Priest*, CR-06-519 at 7; *but cf.* *Bailey*, CR-07-724 at 7.

 The Respondent argued that even if the Petitioner’s regular and major job duties were providing care, custody, supervision, or other instruction to individual inmates, such conduct was merely incidental and in the context of some greater administrative function. However, I find to the contrary. In *Malkofsky v. Boston Retirement Board*, the Petitioner was denied a Group 2 classification, because her primary role was to provide information concerning inmates’ activities in the community to the public. CR-03-572 at 5 (DALA, Sept. 16, 2005). Although the Petitioner in *Malkofsky* hadoccasional contact with inmates, such contact did not amount to care, custody, instruction, or other supervision, since the contact was ancillary to her duties as she was first and foremost a liaison to the Boston community, and she only infrequently supervised inmates who were normally under the supervision of a Correction Officer. *Id.*

 Here, the Petitioner had daily face-to-face contact with inmates. He handled all inmate interactions on his own and would only call for assistance if it was needed. In order to successfully perform his own job duties, the Petitioner spent as much time supervising and communicating with inmates as possible. Because the Petitioner engaged in the care, custody, instruction, or other supervision of inmates during the performance of his own regular and major job duties, such contact cannot be found to be ancillary to his duties, merely incidental, or in the context of some greater administrative function. (Exs. 4, 6, 10, & Testimony).

**CONCLUSION AND ORDER**

The Board incorrectly denied the Petitioner’s Group 2 classification request for his service as Unit Manager/Program Manager 3, Director of Treatment/Program Manager 4, Director of Treatment/Program Manager 5, and Deputy Superintendent/Program Manager 8. The Board’s decision is, therefore, REVERSED, and it is instructed to recalculate the Petitioner’s benefits using Group 2.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

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Edward B. McGrath

Chief Administrative Magistrate

Dated:

1. Both parties stipulated to the submission of a MPDQ from Oct. 10, 1992 for the “Director of Classification/Program Manager II” that was not completed by or meant for the Petitioner at the time of its making. I have noted the inconsistencies based on the other evidence. [↑](#footnote-ref-1)