

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Yvonne Murphy,
Petitioner,

No. CR-23-0302

Dated: February 9, 2024

v.

State Board of Retirement,
Respondent.

Appearance for Petitioner:
Robert M. Novack, Esq.

Appearance for Respondent:
Teneshia C. Lewis, Esq.

Administrative Magistrate:
Yakov Malkiel

SUMMARY OF DECISION

For approximately sixteen years, the petitioner's regular and major duties required her to provide direct medical care to prisoners. With respect to those years, the petitioner is entitled to be classified in group 2 under G.L. c. 32, § 3(2)(g).

DECISION

Petitioner Yvonne Murphy appeals from a decision of the State Board of Retirement denying her application for prorated classification in group 2 under G.L. c. 32, § 3(2)(g). Ms. Murphy moves for summary decision. The motion is supported by affidavits from Ms. Murphy and from Steven J. Souza, Superintendent of the Bristol County Sherriff's Office (BCSO). The board has filed a memorandum in opposition. Neither party has indicated an interest in taking live testimony. *Cf.* 801 C.M.R. § 1.01(10)(c).

Findings of Fact

The following facts are not in genuine dispute:

1. Ms. Murphy is a registered nurse and a longtime BCSO employee. During the years 1992-1995, her job title was listed as “Registered Nurse.” During the years 1995-2008, her job title was listed as “Quality Assurance.” (Murphy Aff. ¶¶ 1, 2, 18; Souza Aff. ¶¶ 11, 12, 14.)

2. During the entire period 1992-2008, Ms. Murphy’s job duties centered around providing direct medical care to BCSO’s inmates. She conducted inmates’ medical intakes, triaged inmates’ medical issues, and made medical visits to sick inmates. She responded to inmates’ seizures, their attempted suicides, and their other medical emergencies. (Murphy Aff. ¶¶ 3-9, 11; Souza Aff. ¶¶ 4-6.)

3. Ms. Murphy discharged additional duties. She helped to manage the BCSO’s medical department, oversaw a contracted medical provider (after 1995), and was involved in workers’ compensation cases (after 2002). These responsibilities together consumed a minority of Ms. Murphy’s working hours. (Murphy Aff. ¶¶ 12-15; Souza Aff. ¶¶ 7-10.)

4. In 2008, Ms. Murphy was promoted to the position of Assistant Deputy Superintendent for Employee Health Services. In that position, she no longer interacted with inmates on a daily basis. (Souza Aff. ¶ 16.)

5. In December 2022, Ms. Murphy asked the board to classify her period of service during 1992-2008 in group 2 under G.L. c. 32, § 3(2)(g). The board voted to take no action on the application. Ms. Murphy timely appealed. (Murphy Aff. ¶ 16.)

Analysis

The retirement allowance of a Massachusetts public employee is dictated in part by the employee’s classification into one of four groups. G.L. c. 32, § 3(2)(g). Today, most employees may “elect to receive . . . pro-rated benefits” that the retirement board calculates by assigning each of the employee’s series of positions into the proper group. *Id.* § 5(2)(a).

Group 2 may yield favorable benefits as compared to group 1, the catch-all classification. Among other employees, group 2 covers those “whose regular and major duties require them to have the care, custody, instruction, or other supervision of prisoners” G.L. c. 32, § 3(2)(g). An employee’s “regular and major” duties are those that consume “more than half” of the employee’s workday. *Desautel v. State Bd. of Ret.*, No. CR-18-80, at *4 (CRAB Aug. 2, 2023). “Care” in this context means direct responsibility for patient well-being. *McKinney v. State Bd. of Ret.*, No. CR-17-230, 2023 WL 6537982, at *8, *10 (DALA Sept. 29, 2023).

On a motion for summary decision, the question is whether any “genuine issue of fact” stands between the moving party and an entitlement “to prevail as a matter of law.” 801 C.M.R. § 1.01(7)(h). An issue of fact is “genuine” if both parties possess a “reasonable expectation” of prevailing on it. *Goudreau v. Nikas*, 98 Mass. App. Ct. 266, 269-70 (2020). The existence or absence of a genuine issue of fact must be assessed based on the reading of the record that most favors the non-moving party. *Caitlin v. Bd. of Reg. of Architects*, 414 Mass. 1, 7 (1992).

Summary decision is sometimes described as the “functional equivalent of summary judgment.” *Ackerman v. Worcester Reg’l Ret. Bd.*, No. CR-11-405, at *22 (DALA Aug. 5, 2015). But there are differences of context. An important one is that a party to an administrative proceeding ordinarily cannot take depositions. Compare Mass. R. Civ. P. 30, with 801 C.M.R. § 1.01(8)(c). The strength of the showing that can be demanded from a non-movant on summary decision must be moderated accordingly. It sometimes may be sufficient for such a party to rely on a good-faith proffer concerning the testimony that is likely to be elicited at trial. See *Smith v. Gloucester Ret. Bd.*, No. CR-19-493, 2022 WL 16921469, at *4 (DALA Mar. 16, 2022); *Rochester Bituminous Prods., Inc. v. Fair Labor Div.*, No. LB-22-5, 2022 WL 19303188, at *1 (DALA Oct. 25, 2022).

With these forgiving standards in mind, there is nonetheless no trace of a genuine dispute of fact here. The affidavits of Ms. Murphy and Superintendent Souza support the findings of fact described earlier. The board does not say that any witnesses or documents will support different findings. The board does not describe any particular reason to doubt the affidavits' accuracy. It expresses no interest in cross-examining the affiants.

The briefs and affidavits suggest that, during the pertinent period, the BCSO failed to formalize job descriptions applicable to Ms. Murphy's positions. The board appears to believe that this lacuna may defeat Ms. Murphy's application. This approach is both unsupported and unjust. It is the employer and the board who are obligated to analyze and classify each employee's job soon after its commencement. *See* G.L. c. 32, § 3(2)(g); *Watson v. State Bd. of Ret.*, No. CR-21-105, 2023 WL 4846319, at *3 (DALA July 21, 2023). There is no textual or logical reason to believe that all members whose employers and boards have dropped the ball on this score belong in group 1.

The board adds in a letter that "DALA is the most effective forum" to resolve cases featuring sparse documentary records. But the boards are responsible for determining the rights and obligations of their members in the first instance. G.L. c. 32, § 20(5)(b). DALA's statutory role arises once a board has done its job and the aggrieved member has taken an appeal. *Id.* § 16(4). A board may not short-circuit the statutory procedure by declining to evaluate the available evidence, denying the member's application, and trusting that the member will obtain a proper hearing on appeal.

Conclusion and Order

Ms. Murphy's motion for summary decision is ALLOWED and the board's decision is REVERSED.

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate