

**COMMONWEALTH OF MASSACHUSETTS CONTRIBUTORY  
RETIREMENT APPEAL BOARD**

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**DAVID NILES,**

**Petitioner-Appellee**

**v.**

**STATE BOARD OF RETIREMENT**

**Respondent-Appellant**

**CR-20-0236**

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**DECISION**

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The respondent-appellant State Board of Retirement (SBR) appeals from a decision of an administrative magistrate of the Division of Administrative Law Appeals (DALA) reversing SBR's decision to deny the petitioner-appellee David Niles Group 2 classification. The magistrate held a hearing on March 14, 2022 and admitted ten (10) exhibits.<sup>1</sup> The DALA decision is dated May 13, 2022.<sup>2</sup> SBR filed a timely appeal to us.

After reviewing the evidence in the record and the arguments presented by the parties, we adopt the magistrate's Findings of Fact 1-23 as our own with the changes noted.<sup>3</sup> We affirm the DALA decision that Mr. Niles was properly classified in Group 2 for retirement purposes.

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<sup>1</sup> The Exhibits total 34 pages and the Transcript totals 75 pages.

<sup>2</sup> The DALA decision total 12 pages.

<sup>3</sup> The following Findings of Fact are re-numbered as:

Finding of Fact 12 (on p. 6) is re-numbered to 16.

Finding of Fact 13 (on p. 6) is re-numbered to 17.

Finding of Fact 14 (on p. 6) is re-numbered to 18.

Finding of Fact 15 (on p. 7) is re-numbered to 19.

Finding of Fact 16 (on p. 8) is re-numbered to 20.

Finding of Fact 17 (on p. 8) is re-numbered to 21.

Finding of Fact 18 (on p. 8) is re-numbered to 22.

Finding of Fact 19 (on p. 8) is re-numbered to 23.

**Background.** Mr. Niles is a Licensed Practical Nurse II (LPN II) who began his employment at Lemuel Shattuck Hospital (LSH) in 1992.<sup>4</sup> LSH is a Department of Public Health (DPH) facility that provides care for economically disadvantaged and disenfranchised individuals without other treatment options. LSH treats patients in the custody of state agencies, such as the Department of Corrections (DOC) and the Department of Mental Health (DMH).<sup>5</sup> For fourteen (14) years, Mr. Niles was assigned to the Medical Behavior Unit in 6 South (“6S”).<sup>6</sup> This unit provided conjoint care for patients with medical and psychiatric conditions and those patients requiring a secure environment.<sup>7</sup> Medical treatment consisted of an interdisciplinary approach, where the patient and the staff address both psychosocial and behavioral issues that arise from the patients’ medical/psychiatric conditions. This interdisciplinary approach involved medicine, psychiatry, nursing, social work, physical therapy, occupational therapy, and expressive therapy. The professional psychiatric nursing staff within the interdisciplinary team was responsible for the development, management, and evaluation of the therapeutic treatment of the patients.<sup>8</sup>

In 2006, the 6S unit was dissolved and the patients were reassigned to state agencies.<sup>9</sup> Thereafter, Mr. Niles was assigned to 5 North (“5N”), where he has been employed.<sup>10</sup> 5N is an eighteen-bed medical surgical unit that focuses on treating both the medical and psychiatric care of elderly patients. There are no psychiatric staff on 5N but there is a psychiatrist on call, who provides psychiatric care which are carried out by Mr. Niles and other nursing staff within the unit. Some of the original patients of 5N were originally admitted when the unit served solely as a psychiatric/geriatric unit.<sup>11</sup> A multidisciplinary approach was used to address both the nursing care and psychiatric care for the elderly patients.<sup>12</sup>

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<sup>4</sup> Finding of Fact #1.

<sup>5</sup> Finding of Fact #2; Testimony of Mr. Niles.

<sup>6</sup> Finding of Fact #5; Testimony of Mr. Niles.

<sup>7</sup> Finding of Fact #6; Exhibit 10.

<sup>8</sup> *Id.*

<sup>9</sup> Finding of Fact #7; Testimony of Mr. Niles.

<sup>10</sup> Finding of Fact #8; Testimony of Mr. Niles.

<sup>11</sup> Finding of Fact #9; Ex. 7.

<sup>12</sup> Finding of Fact #9, 10; Ex. 7; Testimony of Mr. Niles.

Additionally, Mr. Niles was assigned to units 7 North (“7N”) and 8 North (“8N”) once or twice a month. 7N is a twenty-seven-bed unit that focuses on providing care to patients with acute medical/surgical problems and those in need of rehabilitative care. This unit also provides care to patients with chronic pulmonary disease and patients who need manual ventilation.<sup>13</sup> 8N is a “locked” unit for DOC prisoners and state penitentiary inmates. This unit holds up to twenty-nine (29) inmates, who are treated for acute medical/surgical, chronic illness, and end-of-life issues.<sup>14</sup> There is always a correction officer (CO) present at the door, and medical personnel are escorted by a CO into the unit to provide care for those inmates. Treatment included nursing assessment, nursing diagnosis, care planning, and implementation and evaluation of each patient based on individual needs.<sup>15</sup>

Mr. Niles worked from 7:00 a.m. to 3:30 p.m. He reported to the nursing station to consult the nursing staff going off duty. He attended to patients in their rooms, assessing them before administering their medications. Depending on the patients’ mental illnesses, Mr. Niles could spend up to half an hour administering medications to them.<sup>16</sup> Due to staffing shortages he had to work alongside the CNAs, providing direct care to the patients. There were usually no more than three CNAs per shift, and when a patient required 1:1 observation, this further reduced the number available to provide care to other patients. Mr. Niles’s duties included toileting and transferring patients from the bed to stretchers for treatment. The direct care provided by Mr. Niles comprised more than half his work duties.<sup>17</sup>

On March 16, 2020, Mr. Niles filed a Group Classification Application seeking Group 2 status for his employment as an LPN II at LSH. He attached a detailed narrative where he described his direct care to include “medication administration, wound care, constant patient assessing, patient teaching and all documentation related to such care.”<sup>18</sup> These job duties are

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<sup>13</sup> Finding of Fact #11; Ex. 8; Testimony of Mr. Niles.

<sup>14</sup> Finding of Fact #12; Ex. 9.

<sup>15</sup> Finding of Fact #13; Ex. 9; Testimony of Mr. Niles.

<sup>16</sup> Finding of Fact #16; Testimony of Mr. Niles.

<sup>17</sup> Finding of Fact #16, 17; Testimony of Mr. Niles.

<sup>18</sup> Ex. 3.

also reflected in his Job Description.<sup>19</sup> On April 30, 2020, SBR denied Mr. Niles' request for Group 2 classification.<sup>20</sup> On May 15, 2018, Mr. Niles filed a timely appeal to DALA.<sup>21</sup>

In a decision dated May 13, 2022, the magistrate allowed Mr. Nile's request for Group 2 classification. SBR filed a timely appeal to CRAB on May 23, 2022, urging us to conclude that Mr. Niles failed to meet his burden of proof that he spent more than half his working time caring for the required population of § 3(2)(g).

**Discussion.** At issue in this case is G.L. c. 32, § 3(2)(g)'s provision that only "employees of the commonwealth or of any county... whose regular and major duties require them to have the care, custody, instruction, or other supervision of parolees or persons who are mentally ill or mentally defective" to be classified in Group 2 for retirement purposes. "Regular and major" job duties are those that require the employee to spend more than half their time performing. *Forbes v. State Bd. of Retirement*, CR-13-146 (DALA Dec. 23, 2016, aff'd CRAB Jan. 8, 2020) and *Curtin v. State Bd. of Retirement*, CR-13-317 (CRAB Jan. 8, 2020). Therefore, to be entitled to Group 2, the employee must be engaged in the "care, custody, instruction, or other supervision of parolees or persons who are mentally ill or mentally defective" for more than half their work time. *Richard v. State Bd. of Retirement*, CR-16-72 (DALA Feb. 2, 2020).

SBR contends that Mr. Niles' regular and major job duties did not amount to the "care, custody, instruction, or other supervision" of a group 2 population. In support of its position, the Board argues that the magistrate failed to properly consider the "primary diagnosis" test, and because Mr. Niles' patients were not primarily treated for mental disorders, he did not care for a Group 2 population. Therefore, the Board denied his request to be classified in Group 2. We do not agree.

To determine an employee's Group classification, we look to the employee's current duties at the time of retirement. *Maddocks v. Contributory Retirement Appeal Bd.*, 369 Mass 488 (1976). In making this determination, we consider the job description and the actual duties performed. *Gaw v. Contributory Retirement Appeal Bd.*, 4 Mass. App. Ct. 250 (1976). We agree with the magistrate that the evidence in the record supports the conclusion that Mr. Niles' regular

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<sup>19</sup> Finding of Fact #14, 15; Ex. 4.

<sup>20</sup> Finding of Fact #18; Ex. 2.

<sup>21</sup> Finding of Fact #19; Ex. 1.

and major job duties consisted of providing “direct care” to a Group 2 patient population. *Forbes v. SBR*, CR-13-146 (CRAB Jan. 8, 2020). Our reasons follow.

At the time of his retirement, Mr. Niles was primarily assigned to the 5N unit, which is an eighteen-bed medical surgical unit that focuses on treating both the medical and psychiatric care of elderly patients. While 5N is not a locked unit, patients are on 15-minute checks and do not have the freedom to roam about freely.<sup>22</sup> A multidisciplinary approach was used to address both the nursing care and psychiatric care for the patients.<sup>23</sup> Although there are no psychiatric staff on 5N, there is a psychiatrist on call. The psychiatrist orders the psychiatric care, and those orders are carried out by Mr. Niles and other nursing staff within the unit. Mr. Niles explained that typically, he attended to patients in their rooms, assessing them before administering their medications. Depending on the patients’ mental illnesses, he could spend up to half an hour administering medications to them.<sup>24</sup> It is these duties that Mr. Niles noted, and the magistrate found compelling, comprised more than half his work time.

Additionally, Mr. Niles was also assigned to work in the 7N and 8N units once to twice a month. Patients of 7N were treated for acute medical/surgical problems and those in need of rehabilitative care.<sup>25</sup> 8N is a “locked” unit for DOC prisoners and state penitentiary inmates. Regardless of which unit Mr. Niles was assigned to work, the record reflects that the LSH treats patients in the custody of state agencies, such as the DOC and the DMH.<sup>26</sup> The SBR has not persuaded us that Mr. Niles was not engaged in the “care, custody, instruction or other supervision” of a Group 2 population as determined by the magistrate.

Nevertheless, the SBR argues that the magistrate failed to properly consider the “primary diagnosis” test. The Board contends that to be classified in Group 2, the primary diagnosis test discussed in *Pulik v. State Board of Retirement*, CR-10-605 (DALA Aug. 26, 2011, aff’d CRAB July 10, 2012) contemplates that the patients cared by Mr. Niles must primarily be treated for

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<sup>22</sup> Testimony of Mr. Niles.

<sup>23</sup> Finding of Fact #9, 10; Ex. 7; Testimony of Mr. Niles.

<sup>24</sup> Finding of Fact #16; Testimony of Mr. Niles.

<sup>25</sup> Finding of Fact #11; Ex. 8; Testimony of Mr. Niles.

<sup>26</sup> Finding of Fact #2; Testimony of Mr. Niles.

mental disorders. *See also Richard v. State Board of Retirement*, CR-16-72, CR-16-226 (DALA Feb. 7, 2020); and *Miers v. State Board of Retirement*, CR-06-441 (DALA Aug. 17, 2007).

We interpret the language of a statute in accordance with its plain meaning.<sup>27</sup> We stated in *Larose v. State Bd. of Retirement*, CR-20-357 (CRAB July 2024) that “we do not read § 3(2)(g) as limiting care to psychiatric or psychological treatment” to qualify for Group 2. While we have held that persons must have a “primary diagnosis” of mental illness to qualify for Group 2 under G.L. c. 32, § 3(2)(g),<sup>28</sup> we explained in *Popp v. State Bd. of Retirement*, CR-17-848 (CRAB 2023) that a strict application of the primary diagnosis analysis would deviate from the plain reading of § 3(2)(g) and noted that the purpose of the primary diagnosis test is to distinguish between mental illness diagnoses that are derivative of physical illnesses from principally mentally ill patients.<sup>29</sup> In this instance, this distinction still holds true.

In *Pulik*, CRAB held that although patients were diagnosed with dementia, they were also taking psychotropic medications and had diagnoses of behavioral disorders.<sup>30</sup> While patients had physical infirmities, employees were also dealing with their mental health issues by constantly

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<sup>27</sup> *New England Auto Max, Inc. v. Hanley*, 494 Mass. 87, 91 (2024) (Statutes are to be interpreted in accordance with their plain words); *See also Commonwealth v. Hatch*, 438 Mass. 618, 622 (2003) (quoting *Sullivan v. Brookline*, 435 Mass. 353, 360 (2001) (“[S]tatutory language should be given effect consistent with its plain meaning and in light of the aim of the Legislature unless to do so would achieve an illogical result.”)).

<sup>28</sup> *Pulik v. State Bd. Of Ret.*, CR-10-605 (CRAB Jul. 10, 2012) (holding that CRAB does not rely on secondary diagnoses in concluding that patients are mentally ill under G.L. c. 32 §3(2)(g)); *Lorrey v. State Bd. of Ret.*, CR-09-553 (DALA decision Nov. 22, 2013; affirmed by CRAB Dec. 19, 2014).

<sup>29</sup> *Nowill v. State Bd. Of Ret.*, CR-08-558 (DALA decision July 21, 2011; affirmed by CRAB May 17, 2012; CRAB decision on motion for reconsideration as corrected July 10, 2012) (excluding patients admitted for treatment of neuromuscular disorders with secondary mental illnesses); *Pulik*, CR-10-605 at 7 (discussing the unimportance of symptoms that merely correlate with a patient’s principal illness); *Popp v. State Bd. Of Ret.*, CR-17-848 (DALA decision Oct. 22, 2021; affirmed by CRAB Nov. 16, 2023) (held that an LPN II is not excluded from Group 2 classification because the purpose of the patient’s hospice diagnosis was to allow patients better access to care for dementia and that Popp’s work was still centered on the patient’s mental infirmities).

<sup>30</sup> *Pulik v. State Bd. of Ret.*, CR-10-605 (CRAB Jul. 10, 2012).

calming aggressive patients or dealing with patient attacks.<sup>31</sup> This was also true for Mr. Niles, where the patients' diagnoses of mental health disorders governed the care he provided.<sup>32</sup>

The magistrate determined that Mr. Niles' regular and major job duties required him to have the "care, custody, instruction or other supervision" of the statutory population required for Group 2 classification pursuant to G.L. c. 32, § 3(2)(g). We conclude the magistrate's decision is reasonable and defer to the magistrate's subsidiary and credibility findings. *Vinal v.*

*Contributory Ret. Appeal Bd.*, Mass. App. Ct. 85, 97, 100 N.E.2d 440 (1982), *Kalu v. Boston Retirement Bd.*, 61 N.E.3d 455, 464 (Mass. App. 2016).

**Conclusion.** Mr. Niles' major and regular job duties involved the "care, custody, instruction, or other supervision" of the statutory population pursuant to G.L. c. 32, § 3(2)(g). Accordingly, Mr. Niles is entitled to Group 2 classification. The DALA decision is affirmed. **Affirm.**

SO ORDERED.

CONTRIBUTORY RETIREMENT APPEAL BOARD

Did not participate

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Assistant Attorney General

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<sup>31</sup> Finding of Fact 16-17; Testimony of Mr. Niles; *Id.* (emphasizing the care components of the member's job, including the constant need to calm aggressive patients).

<sup>32</sup> *Popp v. State Bd. of Ret.*, CR-17-848 (CRAB Nov. 16, 2023) (holding that the dementia diagnosis of patients was what governed their care despite medical needs).

Date: August 20, 2025