

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Pamela O'Rourke,
Petitioner,

No. CR-22-0288

Dated: February 21, 2025

v.

State Board of Retirement,
Respondent.

Appearances:

For Petitioner: Pamela O'Rourke, *pro se*

For Respondent: Brendan E. McGough, Esq.

Administrative Magistrate:

Natalie S. Monroe

SUMMARY OF DECISION

The petitioner, a former emergency department nurse, did not demonstrate by a preponderance of the evidence that her major and regular duties required her to care for prisoners, parolees, and individuals with mental illnesses. Consequently, the petitioner is not entitled to be classified in Group 2 under G.L. c. 32, § 3(2)(g). The State Board of Retirement's denial of her application for Group 2 classification is affirmed.

DECISION

The petitioner, Pamela O'Rourke, appeals the vote of the State Board of Retirement (board) denying her application for Group 2 classification under G.L. c. 32, § 3(2)(g). I held a hearing by Webex on September 30, 2024. Ms. O'Rourke testified and was the only witness. I admitted nine exhibits (Exhibits 1-9) into evidence. I marked the board's prehearing memorandum as Exhibit A for identification and Ms. O'Rourke's prehearing memorandum as Exhibit B for identification.

Findings of Fact

Based upon the testimony and other evidence in the record, the reasonable inferences drawn therefrom, and my assessment of the witness's credibility, I make the following findings of fact:

Background Facts

1. From September 8, 1991, to June 26, 1999, Ms. O'Rourke worked as a nurse in the emergency department at the University of Massachusetts Medical Center (UMass Medical Center).¹ (Ex. 1.)

2. Ms. O'Rourke worked at UMass Medical Center's main campus in Worcester. (Petitioner Testimony.)

3. While Ms. O'Rourke was employed there, the emergency department at UMass Medical Center served the public, treating patients of all ages for medical emergencies, including traumatic injuries and acute illnesses. (Petitioner Testimony; Ex. 2.)

4. While Ms. O'Rourke was at UMass Medical Center, some emergency department patients were parolees or prisoners from area jails and prisons. (Petitioner Testimony.)

5. Throughout her career at UMass Medical Center, Ms. O'Rourke cared for patients of all ages, from newborns to the elderly. (Petitioner Testimony; Exs. 2, 5, 6, 8, 9.)

6. Throughout her career at UMass Medical Center, Ms. O'Rourke treated patients with a wide range of diagnoses and medical emergencies, such as patients with respiratory, renal, cardiac, neurological, and orthopedic emergencies. (Petitioner Testimony; Ex. Exs. 2, 5, 6, 8, 9.)

¹ In 1998, UMass Medical Center became UMass Memorial Health. This decision uses UMass Medical Center because that was the name of the hospital when Ms. O'Rourke worked there.

7. Ms. O'Rourke also treated individuals experiencing psychiatric emergencies (Exs. 5, 6, 8, 9), and individuals with substance abuse disorder, suicidal tendencies, phobias, and schizophrenia. (Petitioner Testimony; Ex. 2.)

8. Ms. O'Rourke medically and physically restrained patients when needed, recognized and supported the psycho-physiological needs of her patients, and was exposed to volatile, violent and unpredictable situations. (Petitioner Testimony.)

9. While at UMass Medical Center, Ms. O'Rourke did not spend more than 50% of her time caring for prisoners and parolees. (Petitioner Testimony; Exs. 6, 8, 9.)

10. On June 26, 1999, Ms. O'Rourke left UMass Medical Center due to a merger. (Petitioner Testimony; Ex. 2.)

11. Ms. O'Rourke did not return to state service. (Exs. 1-2)

Procedural History

12. On May 9, 2022, Ms. O'Rourke filed an Application for Group Classification with the board requesting to be classified in Group 2 for retirement purposes, and to receive pro-rated member benefits for her work at UMass Medical Center.

13. On June 30, 2022, the board considered and denied Ms. O'Rourke's application for Group 2 classification. (Ex. 3.)

14. On July 1, 2022, the board notified Ms. O'Rourke by letter that it had denied her application for Group 2 classification. (Ex. 3.)

15. On July 13, 2022, Ms. O'Rourke timely appealed the board's denial of her application. (Ex. 4.)

Analysis

The board properly denied Ms. O'Rourke's request for Group 2 classification.

A public employee's retirement benefits are partially determined by their classification into one of four groups, as outlined in G.L. c. 32, § 3(2)(g). Group 2 membership may offer more favorable benefits compared to Group 1, which serves as the general classification category. Employees eligible for Group 2 include those "whose regular and major duties require them to have the care, custody, instruction or other supervision of prisoners, ... parolees or persons who are mentally ill..." *Id.*

An employee's "regular and major" duties are those that comprise "more than half" of the employee's working hours. *Desautel v. State Bd. of Ret.*, No. CR-18-80, 2023 WL 11806157, at *4 (Contributory Ret. App. Bd. Aug. 2, 2023); *Forbes v. State Bd. of Ret.*, No. CR-13-146, 2020 WL 14009545, at *4-5 (Contributory Ret. App. Bd. Jan. 8, 2020). "[E]vidence of an individual's actual job responsibilities, along with ... official job descriptions" are central to determining an individual's regular and major job duties. *Desautel*, 2023 WL 11806157, at *2.

An individual seeking to be classified in Group 2 must prove by preponderance of the evidence "each element necessary to establish entitlement to a benefit under Chapter 32." *Peck v. State Bd. of Ret.*, CR-15-282, 2021 WL 12298080, at *2 (Contributory Ret. App. Bd. Feb. 8, 2021).

Ms. O'Rourke spent a majority of her time providing direct care to patients. She has not, however, met her burden of proving that she spent more than 50% of her time caring for prisoners, parolees, and persons who were mentally ill.

It is uncontested that Ms. O'Rourke provided care to prisoners and parolees in an emergency department setting. However, when asked whether these statutory populations comprised more than 50% of her daily workload, Ms. O'Rourke responded, "probably not."

(Petitioner Testimony.) She could not estimate the percentage of time she spent daily caring for prisoners and parolees. (Petitioner Testimony.) Additionally, Ms. O'Rourke presented no evidence regarding how much time she spent caring for patients with mental health diagnoses. Nor did she specify how frequently her patients' mental health diagnoses "drove" or "governed" their course of treatment. *See Popp v. State Bd. of Ret.*, No. CR-17-848, 2023 WL 11806173 (Contributory Ret. App. Bd. Nov. 16, 2023) (for Group 2 purposes, the patients' mental illnesses must drive the care they receive; the illnesses cannot be "merely incidental or derivative of physical illness diagnoses").

Ms. O'Rourke's job description specified that she was required to recognize and support her patients with psychiatric needs, but it did not state whether she spent more than 50% of her time doing so. Similarly, her performance reviews did not contain information which could establish that Ms. O'Rourke cared for patients in the statutory populations for more than 50% of her daily duties. Each review mentioned caring for patients in a psychiatric emergency once in the multi-page document, and they did not mention providing care to prisoners or parolees at all.

Ms. O'Rourke was a dedicated emergency department nurse who had a very demanding job. Her testimony and the evidence provided, however, did not establish that she provided care to prisoners, parolees, and those with mental health diagnoses more than 50% of the time.

Conclusion and Order

In view of the foregoing, the board's decision is AFFIRMED.

Division of Administrative Law Appeals

Natalie S. Monroe /s/

Natalie S. Monroe
Chief Administrative Magistrate