

COMMONWEALTH OF MASSACHUSETTS

**Division of Administrative Law Appeals
14 Summer Street, 4th Floor
Malden, MA 02148
www.mass.gov/dala**

Keith Rogers,
Petitioner

v.

Docket No. CR-20-0216

State Board of Retirement,
Respondent

Appearance for Petitioner:

Keith Rogers
48 Brien Street
Agawam, MA 01001

Appearance for Respondent:

Brendan McGough, Esq.
State Board of Retirement
One Winter Street
Boston, MA 02108-4747¹

Administrative Magistrate:

Kenneth Bresler

SUMMARY OF DECISION

Petitioner did not prove that he was entitled to Group 4 classification.

DECISION

The petitioner, Keith Rogers, appeals the denial by the State Board of Retirement (SBR)

¹ Brendan McGough, Esq. represented the State Board of Retirement (SBR) at the hearing, but left SBR after the hearing. Melinda E. Troy, Esq. filed SBR's post-hearing brief, but later left SBR to become an Administrative Magistrate at the Division of Administrative Law Appeals. Mr. McGough then returned to SBR.

of his application for Group 4 classification. I held a hearing on October 20, 2022 by Webex, which I recorded. Mr. Rogers represented himself, testified, and was the only witness. I admitted 14 exhibits at the hearing, Exhibits A through N.

At the hearing, SBR asked to keep the record open to determine whether Mr. Rogers had, in his last year of work, worked more than 50 percent of his time as a prison steward, even though his title was Food Service Manager-C.O. With its post-hearing brief, SBR submitted an email chain between it and the Hampden County Sheriff's Department that confirmed that Mr. Rogers had, in his last year of work, worked more than 50 percent of his time as a prison steward.

After the hearing, I admitted Mr. Rogers's appeal as the fifteenth exhibit, Exhibit O, and the email chain between SBR and the Sheriff's Department as the sixteenth exhibit, Exhibit P. Both parties submitted post-hearing briefs in January 2023.

In May 2023, having a question about SBR's brief, I contacted SBR, asking that the case be assigned to another lawyer so that I could pose my question. My question was about

SBR's post-hearing brief and its reliance on various decisions from 1992. Those decisions were premised on the Hampden County Sheriff's [Department] adding "CO" to other titles. Does evidence exist that the Sheriff's Office still does that?

I received responses from two SBR lawyers that didn't answer my question to my satisfaction. On June 23, 2023 Mr. McGough, having returned to SBR, was assigned to this case again and responded:

I do not believe attempting to get more evidence on this issue will be fruitful, so it is my inclination to keep the record closed and proceed to a written decision.

Not having further evidence, I closed the record. In addition to the parties' briefs, I rely on SBR's prehearing memorandum.

Findings of Fact

1. Before retiring, Mr. Rogers held several positions in the Hampden County Sheriff's Department (HCSD), including C.O.-Prison Steward, C.O.-Shift Supervisor, and C.O.-Food Service Manager Officer. (Exs. B, C, and I)²

2. On January 28, 2020 Mr. Rogers applied for Group 4 classification for his service as a C.O.-Food Service Manager in the HCSD from January 6, 2013 to August 27, 2019. (Ex. I)

3. On April 30, 2020 SBR denied Mr. Rogers's application for Group 4 classification. (Ex. A)

4. On May 9, 2020 Mr. Rogers timely appealed. (Ex. O)

5. HCSD has two separate positions: Food Service Manager-C.O.; and Food Service Manager. The job descriptions were issued on the same day and appear to be identical. (Exs. E, F)³

Mr. Rogers's applications for Group 4 that are not on appeal

6. On May 7 and 8, 2020 Mr. Rogers filed various applications for his former positions to be reclassified in Group 4. (The applications state that he submitted a total of five applications, but only four are in evidence.) The titles and time periods on the applications (Ex. N) are as follows:

A. Correctional Officer/Prison Steward, October 27, 2003 to March 17, 2007;

² In the record and in discussion of similar cases, the abbreviation "C.O.," standing for "Correction Officer," "Corrections Officer," or "Correctional Officer," sometimes appears before other parts of a job title and sometimes after. The title that appears in this case's record is "Correctional Officer." The title in G.L. c. 32, §3 is "Correction Officer." Another title that appears in cases is "Corrections Officer." These differences are not significant.

³ If these two job descriptions are not identical, neither party has brought differences to my attention. Why HCSD has two positions with apparently identical duties and very similar titles is not in the record.

B. Correctional Officer/Shift Supervisor, March 18, 2007 to December 21, 2009;

C. Correctional Officer/Prison Steward, December 22, 2009 to August 4, 2012;

and

D. Correctional Officer/Shift Supervisor, August 5, 2012 to January 19, 2013.

7. On June 1 and July 30, 2020 SBR approved these four applications for Group 4 classification. (Exs. B, C)⁴

Discussion

Law of Group 4 classification

Members of contributory retirement systems are classified for retirement purposes in Groups 1 through 4, according to M.G. L. c. 32, § 3(2)(g). Classification is “properly based on the sole consideration of [the applicant’s] duties at the time of retirement.” *Maddocks v. Contributory Retirement Appeal Bd.*, 369 Mass. 488, 494 (1975). The applicant’s duties are largely determined by consulting his or her title or job description. The Petitioner must prove by a preponderance of the evidence each element necessary to establish a benefit under chapter 32. *Blanchette v. Contributory Retirement Appeal Bd.*, 20 Mass. App. Ct. 479, 483 (1985).

....

...In one of the few reported cases dealing with group classification, the Appeals Court stated:

... the Legislature has consistently described employees falling within Group 4 by naming their positions or titles rather than by describing the type of work they perform

Gaw v. Contributory Ret. Appeal Bd., 4 Mass. App. Ct. 250, 256 (1976).

⁴ Mr. Rogers’s purpose in introducing as exhibits these successful applications for Group 4 classification was apparently to bolster his application for Group 4 classification that is on appeal by demonstrating that SBR had approved similar of his applications for Group 4.

I note, but do not find significant, a slight overlap in applications. Mr. Rogers’s application for Group 4 classification through January 19, 2013 (Ex. N) was approved. (Ex. C). His application for Group 4 classification that is on appeal is for January 6, 2013 to August 27, 2019 (Ex. I), meaning that he is appealing the denial of a long period that includes 13 days that have already been approved for Group 4.

Group 4 members include “the sheriff, superintendent, assistant superintendent, assistant deputy superintendent and correction officers of county correctional facilities.” M.G. L. c. 32, §(3)(2)(g). Group classification may not be circumvented by changing a member’s title....*Psyz v. Contributory Retirement Appeal Bd.*, 403 Mass. 514 (1988).

Eileen Fitzgibbons v. State Board of Retirement, CR-09-606 (DALA 2016).

Survey of cases

I survey some (if not most or all) of the decisions involving petitioners with “C.O.” appended to their titles who have sought Group 4 classification.

I first discuss four related cases: *Paul Moriarty v. Hampden County Retirement Board*, CR-91-880 (DALA 1992); *Robert Jolicouer v. Hampden County Retirement Board*, CR-91-835 (DALA 1992); *Gerald Shaughnessy v. Hampden County Retirement Board*, CR-91-837 (DALA 1992); and *William Blanchard v. Hampden County Retirement Board*, CR-91-800, (DALA 1992). All four cases involved the HCSD. SBR cited the first three cases in its post-hearing brief. All four cases were decided on the same day by the same Administrative Magistrate. (A search of the Social Law Library database reveals a total of 63 cases whose holdings are probably the same. *See also e.g., Shaughnessy* (“A total of forty-nine cases involving the Hampden County Sheriff’s Department and the issue of reclassification were heard on March 12 and 13”).) The four cases contained this language:

What has happened here is the title “C.O.” has been added to the job description of almost all the employees of the Hampden County House of Correction staff. The Respondent has reviewed all of the positions of the House of Correction and where necessary reclassified them.

The decisions added: “The letters ‘C.O.’ have been tacked on to the end of the job title.”

All four decisions continued that the petitioner

does not perform correctional officer functions routinely or frequently. These functions are supplementary in character and the [petitioner's] major duties are more in line with a Group 2 employee....

More than three decades later, I do not know whether these factual assertions hold true for HCSD now. Hence, my inquiry to SBR on this issue, which led to its response that “attempting to get more evidence” would probably not “be fruitful.”

The petitioner in another case, *Robert Smith v. State Board of Retirement*, CR-10-827 (DALA 2013), was a Production Coordinator-C.O. in HCSD. DALA ruled that he was not entitled to Group 4 classification because, among other things, “[t]he Petitioner’s job title, Production Coordinator-C.O., is not a title set forth in Group 4.”

The petitioner in *Fitzgibbons v. State Board of Retirement*, CR-09-606 (DALA 2016) was a Senior Correction Officer/Nurse in the Middlesex County Sheriff’s Department. She had Group 2 classification, but sought Group 4. DALA ruled against her because “she mainly performed [her] duties in the capacity of a nurse rather than as a ‘corrections officer.’”

The petitioner in *Bernadette Comeau v. State Board of Retirement*, CR-12-373 (DALA 2017) was a Senior Corrections Officer/Teacher in the Middlesex County Sheriff’s Department. DALA ruled that she was not entitled to Group 4 classification, using a similar rationale as in *Smith*:

[T]he language of M.G.L. c. 32, § (3)(2)(g) includes many specific job titles applicable to employees of county sheriffs’ offices for Group 4 classification, but the position of SCO/Teacher is not listed in the provision. Comeau’s position was not included in Group 4 by the Legislature and I may not expand the list of job titles.

DALA implicitly rejected *Smith*’s rationale in *Steven Chomo v. State Board of Retirement*, CR-15-120 (DALA 2016). The petitioner’s title was CO I/Head Cook. The decision examined the petitioner’s duties, found that he performed a majority of a correctional officer’s

duties, and awarded him Group 4 classification. The Administrative Magistrate wrote:

I decline to hold that the addition of a specific designation to a position title automatically removes it from eligibility for Group 4 classification.

Job duties

I am aware that previous DALA decisions involving petitioners with “C.O.” appended to their titles have examined the petitioners’ job duties. At the hearing, both parties, with their presentations of evidence and incidental advocacy, asked me to examine Mr. Rogers’s job duties.

I decline to do so for three reasons. One, as quoted above, *Gaw* stated that

the Legislature has consistently described employees falling within Group 4 by naming their positions or titles rather than by describing the type of work they perform...

4 Mass. App. Ct. at 256. *Gaw* remains good law. For a tribunal to examine the job duties of a petitioner seeking Group 4 classification *and* to cite *Gaw*’s language seems to be inconsistent.

Two, because Mr. Rogers was given Group 2 classification and seeks Group 4 classification, I need to decide only whether Mr. Rogers deserves Group 4 classification, not whether Group 2 was appropriate. I do not need to examine Mr. Rogers’s job duties to determine whether he was properly classified in Group 2.

Three, of the four positions whose job descriptions are in evidence (Exs. E-H), none is for a correctional officer with no other function in the title. I have Mr. Rogers’s job duties (Ex. E) and his testimony about the similarities between his job and that of a correctional officer. But I do not have anywhere near enough evidence of what a correctional officer does. I could discuss Mr. Rogers’s job duties but to what end? To compare them to what?

The law of petitioners with “C.O.” appended to their titles seeking Group 4

I discern no dominant line of cases and no applicable case. I cannot compare Mr. Rogers's duties to that of a corrections officer, as other cases have done, because I do not have enough evidence of what a correctional officer does.

Mr. Rogers has not proved by a preponderance of the evidence, *Bagley v. Contributory Retirement Appeal Board*, 397 Mass. 255, 258 (1986), that he is entitled to Group 4 classification.

Conclusion and Order

I affirm SBR's denial of Mr. Rogers's application for Group 4 classification.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/

Kenneth Bresler
Administrative Magistrate

Dated: October 13, 2023