

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Laura Ryan,
Petitioner,

No. CR-22-0038

Dated: August 16, 2024

v.

State Board of Retirement,
Respondent.

Appearances:

For Petitioner: Gerald A. McDonough, Esq.

For Respondent: Yande Lombe, Esq., John Durgin, Esq.

Administrative Magistrate:

Yakov Malkiel

SUMMARY OF DECISION

The petitioner worked in a series of juvenile delinquent commitment facilities. Although her job titles identified her as a “manager” and a “director,” the petitioner spent the great majority of her time providing direct and personal care to the facilities’ juveniles. She is entitled to be classified in group 2 under G.L. c. 32, § 3(2)(g).

DECISION

Petitioner Laura Ryan appeals from a decision of the State Board of Retirement declining to classify a period of her work history in group 2 under G.L. c. 32, § 3(2)(g). I held an evidentiary hearing on March 27, 2024. The witnesses were Ms. Ryan and two of her former colleagues, James Gustowski and Dr. Ken Rogers. I admitted into evidence exhibits marked 1-18. The record closed upon the submission of hearing briefs.

Findings of Fact

I find the following facts.¹

¹ These findings rely heavily Ms. Ryan’s testimony, which I find entirely credible.

Background

1. Ms. Ryan worked in various capacities with juvenile delinquents in the custody of the Department of Youth Services. She holds a master’s degree in counseling. During the period pertinent to this appeal, Ms. Ryan was also a licensed mental health counselor.

(Testimony.)

2. Ms. Ryan began working for DYS as a contractor in 1995. She was appointed to a non-temporary position in 1999. In 2022, she retired from a supervisory role. This appeal concentrates on a succession of four positions that Ms. Ryan held in the middle part of her career. (Exhibits 3, 4; testimony.)

Assessment Manager (Until 2005)

3. In March 2000, Ms. Ryan became DYS’s metro area assessment manager. Two clinicians who reported to her were responsible for conducting assessments of juveniles. An assessment analyzes a juvenile’s family history, educational background, criminal record, mental health issues, and other psychosocial factors. Its purpose is to inform DYS’s decision-making about where the juvenile should be placed and how the juvenile should be treated. (Exhibits 7, 11; testimony.)

4. One of Ms. Ryan’s leading responsibilities as assessment manager was to determine how long newly committed juveniles should be detained and in what type of facility (e.g., “staff secure” or “hardware secure”). These determinations were derived from a standardized grid, with adjustments tailored to a particular juvenile’s assessment. Ms. Ryan spent a large portion of her time in meetings about juveniles’ assigned terms and placements. The meetings were attended by the juveniles themselves, their family members, and their caseworkers. Ms. Ryan ran approximately 12-15 such meetings per week. (Exhibits 7, 11; testimony.)

5. Ms. Ryan worked mostly out of a DYS day reporting center in Roxbury.² Approximately fifteen juveniles who had been released into the community reported to the center after each school day. They received supplemental instruction, treatment, and other support there. Ms. Ryan was involved in the mental-health aspects of these juveniles' care. She met with them frequently to track, discuss, and work on their progress. She also filled in for unavailable center staff members. (Exhibits 7, 11; testimony.)

6. Ms. Ryan served in the assessment manager position for five years in all. Four years into the job (sometime in 2004), her HR classification was revised from "Youth Service Group Worker" to "Program Manager IV"; but her duties and day-to-day job title remained unchanged. (Exhibits 1, 7, 10, 13; testimony.)

Assessment Unit Clinical Director (2005-2008)

7. In January 2005, Ms. Ryan became the clinical director of DYS's metro assessment unit. The assessment unit was located in a DYS building in South Boston. It housed approximately fifteen juveniles at a time. (Exhibit 7; testimony.)

8. Juveniles were assigned to the assessment unit soon after being committed to DYS's custody. Generally they remained there for assessment periods of 45 days. Responsibility for performing the assessments was distributed among Ms. Ryan and two to three clinicians she supervised. (Exhibit 7; testimony.)

9. While juveniles were at the assessment unit, they underwent therapeutic activities. Each week, Ms. Ryan ran three dialectical behavioral therapy group sessions. In addition, she

² She was also assigned an office in South Boston, but she found that location inconvenient for her constituents. (Testimony.)

ran two or more weekly “community meetings” with all of the unit’s residents. (Exhibit 7; testimony.)

10. Ms. Ryan also met with the assessment unit’s juveniles on an individual basis. At these sessions, she addressed the juveniles’ mental health issues, reviewed their treatment plans, and developed constructive rapport with them. In the case of juveniles suffering from mental health issues, the sessions were as frequent as daily. (Exhibit 7; testimony.)

11. Ms. Ryan worked out of an office in the assessment unit. She regularly took part in the juveniles’ day-to-day activities. Crises and conflicts on the unit were frequent, and Ms. Ryan was involved in deescalating and resolving them. Administrative duties did not consume a large portion of her time. (Exhibit 7; testimony.)

Treatment Unit Clinical Director (2008-2011)

12. In July 2008, DYS reassigned Ms. Ryan and all of her colleagues to a new location and a new mission. They moved to a facility in Roslindale and became responsible for operating the metro *treatment* unit. Within the new unit, Ms. Ryan retained the title of clinical director. (Exhibits 7, 11; testimony.)

13. The treatment unit housed approximately fifteen juveniles at a time. They were assigned there for periods of eight months or more. The treatment unit focused not on evaluating the juveniles but on caring for them. (Exhibits 7, 11; testimony.)

14. At the treatment unit, Ms. Ryan no longer conducted assessments. Her workdays continued to consist primarily of meetings with juveniles. She met with each juvenile on the unit for a minimum of one counseling session per week. With some juveniles, she met daily. She ran at least five weekly group therapy sessions, focused on: dialectical behavioral therapy (twice), substance abuse, coping skills, and violent offenders. (Exhibits 7, 11; testimony.)

15. Ms. Ryan’s office was located within the treatment unit. She supervised three clinicians, meeting with each of them once per week to review treatment plans. (Exhibits 7, 11; testimony.)

Treatment Unit Program Director (2011-2014)

16. In August 2022, Ms. Ryan remained in the treatment unit but was promoted to the position of program director. She took on the overall responsibility for the unit’s juvenile population. Her office remained inside the unit. Her only direct report was an assistant director. (Exhibits 6, 7, 11; testimony.)

17. Ms. Ryan’s regularly scheduled programming diminished in her new role. She ran group therapy sessions only as a substitute for other unavailable staff. Her schedule of one-on-one therapy sessions was not as rigorous. On the other hand, she returned to conducting “community meetings” with the unit’s entire population twice or more per week. (Exhibit 11; testimony.)

18. Although her schedule became more varied, Ms. Ryan’s workdays continued to consist overwhelmingly of direct care for the wellbeing of the treatment unit’s juveniles. She kept constant, ongoing tabs on the juveniles and their activities. She checked in on the unit’s programming. She supervised juveniles who needed to be removed from their group activities. She escorted juveniles from one location to another. She responded to fistfights and other crises. She developed ongoing relationships with each of the juveniles in her unit. (Exhibits 8, 9, 11, 16; testimony.)

19. The treatment unit’s juveniles required uninterrupted oversight. Certain activities, especially outdoors, required more than the usual number of supervisors. Staff members became unavailable when they accompanied juveniles to offsite appointments. They were absent for

assorted other reasons. Ms. Ryan joined in the ongoing supervisory effort as often as necessary, which was a great deal of the time. (Exhibit 11; testimony.)

Consolidated Findings

20. Ms. Ryan devoted her career to supervising and caring for juveniles in DYS’s custody. Each of her positions entailed subtly different duties. But throughout the relevant period, she maintained ongoing responsibility for juveniles’ wellbeing. The care she provided was not technical or fleeting. She determined and adjusted juveniles’ treatment plans to address their changing needs. I credit her testimony that the portion of her working hours in which she worked with juveniles directly, in person, was 70% or more in each of her pertinent positions. She spent a decided minority of her days discharging administrative, supervisory, and not-in-person duties. (Exhibits 7, 11; testimony.)

Procedural History

21. In July 2021, Ms. Ryan asked the board to classify her work from 1999 through 2014 in group 2 under G.L. c. 32, § 3(2)(g). The board agreed with respect to the period from 1999 through 2004 (when she served as metro area assessment manager), but otherwise declined. Ms. Ryan timely appealed. (Exhibits 1, 2, 11-13.)

Analysis

A public employee’s retirement benefits are determined in part by the employee’s assignment into one of four groups. G.L. c. 32, § 3(2)(g). Today, most employees may receive prorated benefits derived from the “total years of service . . . rendered in each group.” § 5(2)(a). *See Coe v. State Bd. of Ret.*, No. CR-20-0007, 2024 WL 215932 (DALA Jan. 12, 2024).

Membership in group 2 may yield favorable benefits as compared to group 1, the catch-all category. The employees who qualify for group 2 include those “whose regular and major duties require them to have the care, custody, instruction or other supervision of . . . wayward

children.” § 3(2)(g). An employee’s “regular and major” duties are those that occupy “more than half” of the employee’s working hours. *Desautel v. State Bd. of Ret.*, No. CR-18-80, at *4 (CRAB Aug. 2, 2023). The parties agree that juvenile delinquents in DYS’s custody are “wayward children.” *Forbes v. State Bd. of Ret.*, No. CR-13-146, at *5-6 (CRAB Jan. 8, 2020).

The phrase “care, custody, instruction or other supervision” has come to embody exacting demands. It denotes “charge, oversight, watchful regard, and attention.” *Rebell v. Contributory Ret. Appeal Bd.*, 30 Mass. App. Ct. 1108, slip op. at 4 (1991) (unpublished memorandum opinion). That set of characteristics is not present in the case of employees whose duties are technical or routine; thoughtful, responsible discretion is required. *Sutkus v. State Bd. of Ret.*, No. CR-09-837 (CRAB Feb. 17, 2011). On the other hand, purely supervisory responsibilities also do not qualify. The employee’s responsibilities must be personal and “direct.” *Sheehan v. State Bd. of Ret.*, No. CR-00-1014 (CRAB Feb. 4, 2002). *See generally McKinney v. State Bd. of Ret.*, No. CR-17-230, 2023 WL 6537982 (DALA Sept. 29, 2023).

The board made its decision on the basis of Ms. Ryan’s written application. The narrative portion of the application referenced Ms. Ryan’s supervisees and her overarching responsibility for the wellbeing of the juveniles in her units. Each of Ms. Ryan’s job titles referred to her as a “manager” or a “director.” The board could not have doubted that Ms. Ryan shouldered thoughtful responsibility for the care of her charges. Its primary question was whether Ms. Ryan’s roles were sufficiently personal or direct.³

³ When a member’s application leaves a board with factual uncertainties, the board is empowered to “take evidence, subpoena witnesses, administer oaths and examine . . . books and records.” G.L. c. 32, § 20(5)(b). *Cf. Murphy v. State Bd. of Ret.*, No. CR-23-302, 2024 WL 664423 (DALA Feb. 9, 2024).

That question was resolved at the evidentiary hearing. In each of her relevant positions, Ms. Ryan worked in the immediate proximity of fifteen or so juvenile delinquents. She took part in the ongoing supervision and care of those juveniles throughout her working hours.

Responsibilities distinct from direct supervision and care consumed a small minority of her time.

Several administrative decisions have found members ineligible for group 2 on the theory that “assessing individuals to determine the services they require is not the direct provision of care.” *McKinney*, 2023 WL 6537982, at *8. The jobs of some public employees certainly may focus on directing clients toward the services of other professionals. In such instances, duties such as “planning, placement, and oversight,” *Albano v. State Bd. of Ret.*, No. CR-15-327, at *2 (CRAB July 23, 2018), may be “primarily administrative in nature,” *Frazer v. State Bd. of Ret.*, No. CR-18-318, at *9 (DALA Nov. 19, 2021). But it would be a serious mistake to ossify a presumption that the work of “assessing” qualifying populations does not belong in group 2. Anyone who has received a medical diagnosis or who has sat through an academic exam knows that assessments may be integral components of care and instruction. The same is true in the contexts of custody and other supervision. *See McKinney*, 2023 WL 6537982, at *7 (collecting cases); *Potter v. State Bd. of Ret.*, No. CR-19-519 (DALA Dec. 16, 2022). In the current case, the elements of Ms. Ryan’s jobs that focused evaluating her charges’ short-term and long-term needs were inextricable from her care-focused, custodial, and supervisory obligations.

Conclusion and Order

Ms. Ryan is entitled to be classified in group 2 under G.L. c. 32, § 3(2)(g) as to the entire period covered in her application. The board’s contrary decision is REVERSED.

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate