

COMMONWEALTH OF MASSACHUSETTS

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

Colette Santa,
Petitioner

v.

Docket No. CR-23-0413

State Board of Retirement,
Respondent

Appearance for Petitioner:

Pro se

Appearance for Respondent:

John C. Durgin, Esq.
State Board of Retirement
One Ashburton Place, 12th Floor
Boston, MA 02127

Administrative Magistrate:

Kenneth Bresler

SUMMARY OF DECISION

Parole Board member sought but does not deserve Group 2 classification.

DECISION

The petitioner, Colette Santa, appeals the denial by the State Board of Retirement (SBR) of her application for Group 2 classification.

I held a hearing on February 11, 2025 by Webex, which I recorded. Ms. Santa represented herself, testified, and was the only witness. I admitted Petitioner's Exhibits 1 through 4, and Respondent's Exhibits 3 through 7.

At the end of the hearing, I gave Ms. Santa the option to submit a post-hearing brief, rely on her prehearing memorandum, or present an oral closing argument. Ms. Santa presented a closing argument – and then seemed to ask me to rely on her prehearing memorandum as well. I said that I had given her one option, but left open the possibility that I would read her prehearing memorandum again as I wrote this decision. I have read her prehearing memorandum and I cite it because it articulates her position better than her closing argument did. In some places, her prehearing memorandum also explained the facts of her role as a member of the Parole Board better than her testimony did.

SBR submitted a post-hearing brief in April 2025.

Findings of Fact

1. From January 1, 2018 to July 5, 2023, Ms. Santa was a member of the Massachusetts Parole Board. (Resp. Ex. 3)

2.

The Parole Board is the sole decisional authority in the Commonwealth for matters of parole granting and parole revocation.

(Pet. Ex. 2 (Human Resources Division, Management Questionnaire))

In Massachusetts,

parole is the procedure whereby certain offenders are released prior to the expiration of their sentence, permitting their sentence to be served in the community under supervision and subject to specific rules and conditions of behavior. Parole Board members act in a quasi-judicial function....

(Pet. Ex. 2 (Human Resources Division, Management Questionnaire))

3. On January 31, 2022, Ms. Santa signed a Management Questionnaire for the Human Resources Division. (The record does not reveal whether she signed the questionnaire as part of her future application for Group 2 classification. The record also does not reveal whether she

knew that the questionnaire would be considered during the application process.) (Resp. Ex. 3)

4. Under Major Responsibility Areas, Ms. Santa estimated the percentage of time that she spent on duties in the order of importance. (Resp. Ex. 3)

5. Ms. Santa wrote that she spent 65% of her time conducting release, rescission, and revocation hearings at state and county correctional facilities. Conducting hearings included educating and counseling the offender on effective reentry efforts they can undertake....Hearings are often conducted absent uniform[ed] security personnel....

(Pet. Ex. 3)

6. Revocation hearings entail deciding whether parolees (not prisoners) will have their parole revoked. (Testimony)

7. When Ms. Santa conducted revocation hearings, they could be either in a correction facility or in the community. (Testimony)

8. Of the 65% of her time that she spent conducting release, rescission, and revocation hearings, approximately 5% of that 65% entailed conducting revocation hearings for parolees. (Testimony)

9. Ms. Santa wrote that she spent 10% of her time conducting hearings for prisoners with life sentences at the Parole Board's central administrative office, (Resp. Ex. 3), that is parole hearings for prisoners who had been sentenced to life imprisonment. (Testimony)

10. Ms. Santa wrote that she spent 15% of her time reviewing offenders' case files, 5% of her time in hearings that were not in-person, and 5% of her time in executive sessions of the Parole Board. (Pet. Ex. 3) That is, during at least 25% of her time, she was not in contact with offenders.

11. In her last year of work, Ms. Santa spent approximately one-and-a-half hours per day

driving from duty to duty. (Testimony)

12. In her prehearing memorandum, Ms. Santa wrote that as a Parole Board member, she determined

how soon the parolee will be released into the community, how the parolee will conduct his behavior in the community, provide guidance, assistance, and advice as to [the] most beneficial housing, who the prisoner will and will not associate with, curfew, mental health treatment options, substance abuse treatment alternatives and medication compliance.

13. Ms. Santa's involvement with parolees was ongoing. For example, if she granted parole to a prisoner and imposed a curfew, and the prisoner who had become a parolee took a night-shift job, she would be the one to change curfew as a condition of parole. (Testimony)

14. When a prisoner who was housed in a segregation unit arrived at a hearing, the inmate was handcuffed. (Testimony)

15. Ms. Santa was not responsible for securing the facilities where she conducted hearings. (Testimony)

16. On June 22, 2023, Ms. Santa applied for Group 2 classification for her position as a member of the Parole Board. She submitted a total of three applications for Group 2 classification at the same time (Resp. Ex. 3), but the other two applications are not at issue.

17. On July 27, 2023, SBR denied Ms. Santa her application for Group 2 classification. On July 28, 2023, SBR informed her of the denial. (Resp. Ex. 4)

18. On July 30, 2023, Ms. Santa timely appealed. (Resp. Ex. 4)

Discussion

Members of retirement systems fall into four groups. Group 1 is the general group. G.L. c. 32, § 3(2)(g). Other groups, including Group 2, use a more desirable calculation for retirement benefits than does Group 1. Group 2 is for various employees, including those “whose regular

and major duties require them to have the care, custody, instruction or other supervision” of prisoners, parolees, and people who are mentally ill or have developmental disabilities. G.L. c. 32, § 3(2)(g). *See Anne Koch v. State Board of Retirement*, CR-09-449 *2 (CRAB 2014) (interpreting outdated term in statute to refer to developmental disabilities).

It is well established that (1) mere contact with and (2) exposure to risks from members of these populations does not establish Group 2 eligibility. *E.g., Andrea Long v. State Board of Retirement*, CR-20-0440, CR-21-0287, 2023 WL 6900305, at *4 (DALA 2023). Ms. Santa emphasized that she conducted parole hearings face-to-face with prisoners and parolees (*e.g.*, Pet. prehearing memorandum 8), but that is not a dispositive factor for receiving Group 2 classification.

“A key factor in assessing a member’s ‘regular and major’ duties is the member’s job title and description.” *Peter Forbes v. State Board of Retirement*, CR-13-146 (CRAB 2020). *See Maddocks v. Contributory Retirement Appeal Board*, 369 Mass. 488 (1976) (title and description of duties can be used to determine group classification). A job description can “serve as helpful evidence of actual duties” but is not dispositive. *Desautel v. State Board of Retirement*, CR-18-0080 (CRAB 2023).

In *Patricia Branch-Kennedy v. State Board of Retirement*, CR-10-686 (DALA 2011), a parole examiner sought Group 2 classification and was denied. The parole examiner’s

“regular and major duties” consisted of conducting parole hearings, writing summaries of her factual findings, and making parole recommendations to the Parole Board. None of these duties required the Petitioner to have the care, custody or instruction of parolees.

Patricia Branch-Kennedy v. State Board of Retirement, CR-10-686 (DALA 2011).

Although the parole examiner made “several creative arguments in her favor....[t]hese arguments [were] not persuasive.” The differences between a parole examiner’s duties and a

Parole Board member's duties are not significant. Neither are the differences between the facts in this case and *Branch-Kennedy*, which controls. Ms. Santa's duties did not require her to engage in care, custody, instruction, or supervision of prisoners or parolees.

Care

When Ms. Santa conducted parole hearings, she was not providing care for prisoners or parolees. *Branch-Kennedy*. She was collecting information from and about prisoners and parolees, and making decisions about their fate. See *Tara Gordon v. State Board of Retirement*, CR-10-453 (DALA 2016) (nurse case manager was entitled to Group 2 classification because she engaged in predosing for mentally ill people, administered medications to them, reported to doctors about effectiveness and side effects, and drove people to appointments, all of which entailed care).

When I asked Ms. Santa at the hearing how she cared for prisoners, she said, in effect and conclusorily, that she cared for them, in her view.

Custody

When Ms. Santa conducted parole hearings in prisons, she did not have custody of the prisoners, *Branch-Kennedy*, even though she may have been alone. The prisoners were in the custody of correction officers. *Id.* ("corrections officers nearby...held the inmates/parolees in their custody"). When Ms. Santa conducted hearings in the community for parolees, she did not have custody of them; no one had custody of them. *Id.* For a person to be physically present with prisoners, parolees, and people who are mentally ill or have developmental disabilities does not entail having custody of them. *Richard Kalinowski v. State Board of Retirement*, CR-12-506 (DALA 2017) (lawyer for prisoners did not have custody of them while he was in jail's secured areas).

Instruction

When Ms. Santa conducted parole hearings, she did not instruct the prisoners and parolees under G.L. c. 32, § 3(2)(g), *Branch-Kennedy*, even though she conveyed information to them about their options, how they could obtain parole, or why they were not eligible for parole. “Not all transmission of information constitutes instruction.” *Irene Daley-Horgan v. State Board of Retirement*, CR-22-0227 (DALA 2024). *See Gordon* (instructing mentally ill people in their personal care entails instruction for Group 2).

Branch-Kennedy held:

It stretches credulity to think that the Legislature could have meant that advising a parolee of his rights qualifies as instruction, as that term is used in G.L. c. 32, s. 3(2)(g).

It stretches almost as much credulity to think that conveying information to prisoners and parolees about their options, how they could obtain parole, or why they were not eligible for parole qualifies as instruction.

In her prehearing memorandum, Ms. Santa did not explain how her “impos[ing] conditions on a prisoner to help him live a responsible life after release from prison” and “serv[ing] as a reentry facilitator” entailed instruction. (Pet. prehearing memorandum 4)

Supervision

When Ms. Santa conducted parole hearings, she did not supervise the prisoners and parolees. She made decisions about them but did not supervise them. *See Stephen Terceira v. State Board of Retirement*, CR-10-0781 (DALA 2016) (maintenance engineer with background in heating, ventilation, and air conditioning deserved Group 2 classification because he trained and instructed inmates in duct work).

In her prehearing memorandum, Ms. Santa did not explain how her “ensuring [that] a

parolee remained a productive member of society” and that society is protected entailed supervision. (Pet. prehearing memorandum 5)

Conclusion and Order

The State Board of Retirement’s denial of the petitioner’s application for Group 2 classification is affirmed.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/

Kenneth Bresler
Administrative Magistrate

Dated: April 18, 2025