

COMMONWEALTH OF MASSACHUSETTS
Division of Administrative Law Appeals

Patricia Schmitz,
Petitioner

v.

Docket No. CR-21-0312

State Board of Retirement,
Respondent

Appearance for Petitioner:

Sally Clymer, Esq.

Appearance for Respondent:

Yande Lombe, Esq.

Administrative Magistrate:

Timothy M. Pomarole, Esq.

SUMMARY OF DECISION

The Petitioner appeals the decision of the State Board of Retirement to deny her request to classify her position as a court clinic psychologist to Group 2. The decision is affirmed. The Petitioner's principal work responsibilities involved clinical examinations of criminal defendants and others to make recommendations on matters such as criminal responsibility, competency to stand trial, and whether a prisoner should be committed to a mental health facility. Although these were important duties, they were not Group 2-qualifying work responsibilities.

DECISION

The Petitioner, Patricia Schmitz, appeals the decision of the State Board of Retirement ("Board") denying her request to classify her position as a Group 2.

I held a hearing on January 24, 2024, at the Division of Administrative Law Appeals (“DALA”). The hearing was recorded. I admitted into evidence Exhibits 1-11. Ms. Schmitz was the sole witness. The parties submitted post-hearing briefs, whereupon the record was closed.

FINDINGS OF FACT

Based on the evidence presented by the parties, along with reasonable inferences drawn therefrom, I make the following findings of fact:

1. Ms. Schmitz holds a Ph.D. in counseling psychology, a M.Ed. in counseling psychology, and a B.A. in psychology. She is a licensed psychologist and a designated forensic psychologist. (Exhibit 11).
2. From April 2000 through November 2021, Ms. Schmitz was employed by the Department of Mental Health as a Psychologist IV – Forensic Psychologist. (Exhibit 2). The functional title reflected in her Employee Performance Review forms was “Court Clinic Psychologist.” (Exhibit 5).
3. Starting in April 2000, Ms. Schmitz was assigned to Quincy District Court. Starting in 2015, she was assigned to Brockton District Court as well. She also provided coverage at other courts as needed. (Testimony; Exhibit 4).
4. The majority of her working hours, about 70%, were spent conducting forensic interviews as part of court-ordered forensic examinations. (Testimony).
5. Ms. Schmitz performed several kinds of forensic examinations. Many of her evaluations were conducted pursuant to G.L. c. 123, § 15 to determine a criminal defendant’s competency to stand trial or their criminal responsibility. (Testimony).

6. Ms. Schmitz also performed examinations to determine whether individuals met the statutory requirements for commitment to a mental health facility. Specifically, she performed examinations pursuant to:

- G.L. c. 123, § 12(e) (commitment of person with mental illness where failure to hospitalize “would create a likelihood of serious harm”);
- G.L. c. 123, § 18 (commitment of prisoners “in need of hospitalization by reason of mental illness”); and
- G.L. c. 123, § 35 (commitment of persons with alcohol or substance use disorders if “there is a likelihood of serious harm” as a result of such disorder)

(Testimony).

7. In examining whether someone met the criteria for commitment, Ms. Schmitz was concerned with their well-being (making sure “the right things happen for them”), as well as the safety of others. (Testimony).

8. Ms. Schmitz would often provide information or guidance to the individuals she was interviewing – for example, by encouraging an individual to remain medication-compliant or explaining the basis for the recommendation she would be making.

(Testimony).

9. After conducting an examination, Ms. Schmitz would provide a written report and/or testimony to the Court. The Court would be the ultimate decisionmaker (on whether an individual would be committed, for example, or was competent to stand trial). Ms. Schmitz’s recommendations were usually followed. (Testimony).

10. Ms. Schmitz would also make recommendations concerning treatment.

(Testimony).

11. Most of her interviews occurred in the courthouse’s lock-up area. The great majority of the individuals she examined were in custody, although a small number

were out on bail. (Testimony).

12. Ms. Schmitz invested considerable time and effort in conducting these examinations because they were the cornerstone of her recommendations. (Testimony).

13. Ms. Schmitz needed to deploy clinical skills to build the requisite trust with her examinees and employ well-honed interviewing and observational skills to be able to notice sometimes subtle indicia of the individual's emotional and mental state. (Testimony).

14. The rest of Ms. Schmitz's time was occupied with report writing, communicating with collaterals, and testifying in court. (Testimony).

15. On August 2, 2021, the Board denied Ms. Schmitz's request to classify her "Psychologist 4/Court Clinic Psychologist" position to Group 2. She was instead classified to Group 1. (Exhibit 6).

16. Ms. Schmitz filed a timely notice of appeal. (Exhibit 7).

CONCLUSION AND ORDER

Under Chapter 32, the retirement benefits of a Massachusetts public employee are shaped in part by the employee's classification into one of four "groups." G.L. c. 32, § 3(2)(g). For purposes of this decision, the two pertinent groups are Group 1 and Group 2. Group 1 is a catch-all group: "[o]fficials and general employees including clerical, administrative and technical workers, laborers, mechanics and all others not otherwise classified." G.L. c. 32, § 3. Group 2 includes employees "whose regular and major duties require them to have the care, custody, instruction or other supervision of prisoners." G.L. c. 32, § 3.

Group 2 classification is “properly based on the sole consideration of [the member’s] duties.” *Maddocks v. Contributory Ret. App. Bd.*, 369 Mass. 488, 494 (1975). The member’s job title and job description are “key information.” *Wilber v. State Bd. of Ret.*, CR-09-340 & CR-09-541, at *4 (Div. Admin. Law App. Mar. 27, 2015). They are not the last word on Group 2 eligibility, however, if the credible evidence shows that the member had duties different from (or additional to) those set forth in the job title and description. *Hayes v. State Bd. of Ret.*, CR-07-581, at *4 (Div. Admin. Law App. Mar. 12, 2009).

It was Ms. Schmitz’s burden to establish that her regular and major job duties – that is, those she spent more than 50% of her working hours performing – required “the care, custody, instruction or other supervision of prisoners.” *Forbes v. State Bd. of Ret.*, CR-13-146, at *7 (Contrib. Ret. App. Bd. Jan. 8, 2020).

Ms. Schmitz spent more than 50% of her working hours conducting examinations of prisoners. Mere contact with prisoners, however – even if regular and recurring – is insufficient to ground Group 2 classification. *Kalinkowski v. State Bd. of Ret.*, CR-12-506, at *7 (Div. Admin. Law App. April 7, 2017); *Pickett v. State Bd. of Ret.*, CR-06-447, 2007 WL 2580408, at *4 (Div. Admin. Law App. Aug. 7, 2007). The interactions must have constituted “care, custody, instruction or other supervision.”

Ms. Schmitz argues that her duties constituted “other supervision” of prisoners, relying upon my decision in *McKinney v. State Bd. of Ret.*, CR-17-230 & CR-17-868, 2023 WL 6537982 (Div. Admin. Law App. Sept. 29, 2023), in which I held that the member, the classification manager for a county house of correction, was entitled to Group 2

classification because her duties constituted “other supervision” of prisoners. Before turning to *McKinney*, however, I first discuss some other decisions that bear more generally on whether Ms. Schmitz’s duties fall under Group 2.

At their core, Ms. Schmitz’s examinations of prisoners were assessments to determine whether prisoners met certain legal criteria. The decisional law has generally concluded, however, that assessing members of a Group 2 population is not a Group 2-qualifying work responsibility. *See, e.g., Potter v. State Bd. of Ret.*, CR-19-0519, at *9 (Div. Admin. Law App. Dec. 16, 2022) (collecting cases). In particular, assessments made in order to determine whether an individual meets certain legal criteria or falls under a particular legal category have generally been deemed to fall outside of Group 2. For example, prior decisions have held that conducting hearings as a third-party neutral relating to individuals’ legal status falls outside the scope of Group 2. *See Branch-Kennedy v. State Bd. of Ret.*, CR-10-686 (Div. Admin. Law App. Mar. 27, 2011) (noting that, although the member interacted with parolees when conducting hearings as a parole examiner, those duties as a “third party neutral” were not Group-2 qualifying activities); *Fay v. State Bd. of Ret.*, CR-06-677 (Div. of Admin. Law App. Dec. 31, 2007) (determining that psychologist member of the Sex Offender Registry Board, “as a hearing officer, a third party neutral ... has no role in the care, custody or supervision over any of the sex offenders who are parties in her hearings”).

Along similar lines, one relatively recent decision has concluded that classifying inmates for purposes of determining housing, work assignments, and other matters, is

not a Group 2-eligible activity. *Crosby v. State Bd. of Ret.*, CR-23-0077, 2025 WL 1725641, at *4-6 (Div. Admin. Law App. June 13, 2025).

Magistrate Malkiel has helpfully observed, however, that “it would be a serious mistake to ossify a presumption that the work of ‘assessing’ qualifying populations does not belong in group 2.” *Ryan v. State Bd. of Ret.*, CR-22-0038, 2024 WL 4491675, at *5 (Div. Admin Law App. Aug. 16, 2024). Specifically, assessments that are intertwined with the member’s performance of his or her Group 2 duties might, in some circumstances, qualify for Group 2. In *Ryan*, for example, Magistrate Malkiel concluded that a juvenile counselor’s work responsibilities “that focused on evaluating her charges’ short-term and long-term needs were inextricable from her care-focused, custodial, and supervisory obligations” and thus were Group 2-qualifying work responsibilities. *Ryan, supra*, at *5. And in *Potter*, First Magistrate Rooney held that the member’s assessments of new patients to determine the treatment he and his colleagues would provide them constituted Group 2 care because they were “part and parcel of the care provided by him and the other staff.” *Potter, supra*, at *4.

Here, to the extent Ms. Schmitz examined prisoners to assess their competency to stand trial, their criminal responsibility, or whether they met the statutory criteria for involuntary commitment, these examinations – like the hearings in *Brach-Kennedy* and *Fay* and the classification boards in *Crosby* – were focused on categorizing or determining the legal status of individuals.

Moreover, although Ms. Schmitz’s examinations under G.L. c. 123, §§ 12, 18, and 35 may have taken into account her examinees’ best interests (thus making them care-

adjacent), they were, on balance, directed primarily to ascertaining whether the individuals met certain legal criteria. And while Ms. Schmitz provided treatment recommendations, these were recommendations for care that was to be provided by others – the examinations by which Ms. Schmitz arrived at those recommendations were not, themselves, treatment. *See Potter, supra*, at *9 (observing that assessments to “determine what care would be provided by a third party” are not eligible for Group 2) (collecting cases).

And, unlike the assessments in *Potter* and *Ryan*, Ms. Schmitz’s examinations were not an integral part of a broader set of Group 2-qualifying work responsibilities. Ms. Schmitz may have had occasion to examine the same individual more than once, but her interviews were essentially singular events, constituting the sum and substance of her interactions with a prisoner. Accordingly, under this Division’s line of assessment decisions, Ms. Schmitz’s duties cannot ground an entitlement to Group 2.

I do not think that *McKinney*, the principal decision upon which Ms. Schmitz relies, is necessarily to the contrary. Although Ms. McKinney’s primary work responsibility – conducting classification hearings – was similar to the duties at issue in *Branch-Kennedy*, *Fay*, and *Crosby* insofar as they involved categorizing prisoners and determining their status, the facts recited in *McKinney* indicate an important difference: the classification hearings that Ms. McKinney conducted seem to have been intertwined with her ongoing and personal oversight over inmates’ participation in various aspects

of institutional life.¹ In this respect, her classification responsibilities were like the Group 2-qualifying assessment duties described in *Ryan* and *Potter*. Accordingly, I do not view *McKinney* as necessarily incompatible with the assessment decisions outlined above. To the extent *McKinney* may be construed as inconsistent with those decisions, I decline to follow it.

Ms. Schmitz's duties, by contrast, while no less important, were not intertwined with broader Group 2 duties. Accordingly, *McKinney* does not assist Ms. Schmitz in this case.²

Before concluding, one final issue bears discussion. In *McKinney*, I identified three non-exclusive indicia of "other supervision" derived from discussions involving the more commonly discussed Group 2 criteria of "care," "custody," and "instruction." Those indicia may be summarized as "'personal and direct' interactions with a Group 2

¹ Ms. McKinney was charged with overall responsibility for the classification system at a country house of correction and the integration of classification and program services, and she had what was described as "constant" interactions with prisoners. *McKinney*, *supra*, at *2. This personal oversight is likely a Group 2-qualifying work responsibility. See *Mendonsa v. State Bd. of Ret.*, CR-12-595, 2021 WL 12298074, at *3-*4 (Contrib. Ret. App. Bd. Feb. 8, 2021) (concluding that positions involving, respectively, the "management and oversight" of housing units, oversight of "programming," and responsibility for "programming and inmate housing," as well as other duties, involved "substantial 'care, custody, or other supervision of prisoners'"); *Dunford v. State Bd. of Ret.*, CR-12-96, 2020 WL 14009544, at *7 (Contrib. Ret. App. Bd. Dec. 10, 2020) (holding that Director of Education at a county house of correction, whose duties included "overall supervision of inmate behavior" while utilizing educational services and who "was in charge of the earned good time credit program and assessed and advised inmates of their eligibility for good time credit," among other duties, was entitled to Group 2 classification).

² In *Crosby*, Magistrate Bresler criticizes *McKinney* and declines to follow it. *Crosby*, *supra*, at *5. I do not need to address those criticisms here. Regardless of whether *McKinney* was correctly decided, it does not assist Ms. Schmitz in this case.

population, ‘breadth and depth’ of responsibility, and ‘watchfulness and attention.’”

Long v. State Bd. of Ret., CR-20-0440, CR-21-0287, 2023 WL 6900305, at *6 (Div. Admin. Law App. Oct. 13, 2023) (quoting *McKinney*, *supra*, at *19-20). Ms. Schmitz argues that her work duties constitute “other supervision” because they meet those three indicia.

I leave to one side whether Ms. Schmitz’s duties meet the three indicia identified in *McKinney*.³ The language I used in *McKinney* when discussing those three indicia was overbroad. Notwithstanding some caveats in *McKinney* that they were not meant to be “exhaustive” and were confined to the correctional context, *McKinney*, *supra*, at *10, there is also language in *McKinney* indicating that if a Group 2 applicant’s responsibilities meet those three indicia, those duties therefore constitute “other supervision.” *Id.* To the extent *McKinney* may be fairly interpreted to suggest that meeting the three indicia outlined above suffices to meet the requirements for Group 2 classification, the suggestion is unsound. Although I believe the three indicia can be critical guideposts in helping determine whether work duties constitute “other supervision,” and may also be helpful in borderline or otherwise uncertain “care,”

³ Of the three criteria, the “breadth and depth of responsibility” criterion is the most problematic here. It requires the member to take on responsibility *for* an activity or condition of Group 2 individuals in the way, for example, “a clinician is responsible *for* the physical or mental well-being of her patients or custodial personnel are responsible *for* the safety and movement of their charges.” *Long*, *supra*, at *6 (Div. Admin. Law App. Oct. 13, 2023). Although Ms. Schmitz had responsibilities *to* the court system, and perhaps *to* her examinees, it is less clear that she was responsible *for* her examinees. Notably, this is in no way diminishes the importance of her work. After all, the judges called upon to make decisions concerning the individuals Ms. Schmitz had examined were exercising important responsibilities, but it would probably not be accurate to say that, in rendering their decisions, they were responsible *for* these individuals.

“custody,” or “instruction” cases, I do not believe they should be used as freestanding grounds for concluding that Group 2 status is warranted.

For the foregoing reasons, the Board’s decision is affirmed.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/ Timothy M. Pomarole

Timothy M. Pomarole, Esq.
Administrative Magistrate

Dated: July 3, 2026