

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Rosario Small,
Petitioner

v.

Docket No. CR-22-0113
Date: Aug. 2, 2024

State Board of Retirement,
Respondent

Appearance for Petitioner:

Rosario Small, *pro se*

Appearance for Respondent:

Jennifer Hunt, Esq.
State Board of Retirement
One Winter Street, 8th Floor
Boston, MA 02108

Administrative Magistrate:

Kenneth J. Forton

SUMMARY OF DECISION

Registered Nurse II at Tewksbury Hospital is entitled to Group 2 classification. *See G.L. c. 32, § 3(2)(g)*. While on paper Petitioner's patients were admitted to her hospital unit with a primary diagnosis of traumatic brain injury or other neurological conditions, in practice most of these patients had mental illness diagnoses alongside any diagnoses of physical illness. Petitioner established by a preponderance of the evidence that a majority of her care for the patients on her unit was driven by their mental illnesses. *See Popp v. State Bd. of Retirement*, CR-17-848, at *5 (CRAB Nov. 16, 2023).

DECISION

Petitioner Rosario Small timely appealed, under G.L. c. 32, § 16(4), Respondent State Board of Retirement's denial of her application to be classified in Group 2. I held a

hearing on April 23, 2024. It was recorded digitally. I admitted four exhibits. (Exhibits 1-4.) Alma Domanowski, a former Tewksbury RN II, and Donna Guiney, a former Tewksbury nurse manager, testified on Ms. Small's behalf. Ms. Small also testified on her own behalf. Respondent did not call any witnesses.

At the conclusion of the hearing, I ordered the Board to investigate its decision to award Ms. Domanowski, a similarly situated RN II, Group 2 classification. On May 2, 2024, the Board replied with a letter and three attachments. After reviewing the documents, I gave the parties an opportunity to file closing briefs. Neither party filed a closing brief.

FINDINGS OF FACT

I make the following findings of fact:

1. Rosario Small was employed from January 1988 until her retirement in February 2022 by the Department of Public Health (DPH) as a Registered Nurse II at Tewksbury Hospital (Tewksbury). (Exhibit 1.)
2. Alma Domanowski was an RN II at Tewksbury from 1988 until her retirement in 2019. (Exhibit 3.) Ms. Domanowski worked on units A4 and E3. (Testimony Domanowski.)
3. Donna Guiney was a nurse manager on Unit E3 from 2020 to 2023. Ms. Guiney oversaw staffing for the E3 unit and worked directly with Ms. Small for three years. (Testimony Guiney.)
4. Tewksbury is a state facility with multiple patient units. In the 12 months immediately preceding her retirement, Ms. Small worked on unit E3. E3 typically housed between 34 and 46 patients. (Testimony Small, Domanowski.)

5. Tewksbury Hospital provided the following description of unit E3:

Neurologic Rehabilitation Unit also providing post-acute care for individuals with orthopedic needs. This interdisciplinary staff assists patients to relearn essential daily functions, coping mechanisms, impulse control, and mood regulation. Programming includes a special adaptive equipment program that supports the functional challenges of brain and orthopedic injury. Patients include those with Traumatic Brain Injuries from various etiologies (MVA, GSW, traumatic falls, etc.), Post Op Orthopedic procedures (elective, emergency, post traumatic), and Neurologic conditions (stroke, MS, spinal cord injuries) with resultant injury, wounds, and wound care needs.

(Exhibit 2.)

6. Though unit E3 housed patients with traumatic brain injuries and neurological conditions, it also took in overflow patients from other units in the hospital as well as from outside the hospital because E3 was equipped to deal with very troublesome patients. (Testimony Domanowski, Guiney.)

7. In addition to the medical diagnoses that led to their placement on E3, most patients also had mental health diagnoses such as schizophrenia, paranoia, multiple personality disorder, anxiety, depression, neurological disorders, and other mental illnesses. (Testimony Domanowski, Guiney.)

8. At any given time, 60-75% of the patients on E3 had mental illness diagnoses that required ongoing treatment from psychiatrists and psychologists even though they also carried a diagnosis of traumatic brain injury or neurological conditions on their medical records. Approximately 20% of the patients on E3 had *only* traumatic brain injury or neurological conditions without any mental illness diagnoses. (Testimony Guiney.)

9. Unit E3 was an alarmed unit. Patients wore ankle bracelets that would lock the door when they approached it. (Testimony Guiney.)

10. Ms. Small rounded with psychiatrists at least every week. She worked with psychologists and psychiatrists to adjust mental health medication and treatment plans. Many of the patients were prescribed strong drugs like Haldol, Ativan, and Depakote that could take a considerable amount of time to get dialed in. (Testimony Guiney.)

11. Inside unit E3, there were one-on-one private rooms for patients who exhibited erratic behaviors and posed a risk to the safety of other patients, staff members, and themselves. These patients were admitted to E3 because other units refused to take them due to their violent behaviors. Often, Ms. Small was assigned to these one-on-one rooms because she had developed a reputation for her ability to de-escalate difficult patient behaviors with her calm demeanor and soothing voice. (Testimony Guiney, Domanowski.)

12. Caring for these very difficult mentally ill patients took a significantly longer time than dealing with mentally ill patients outside the one-on-one units or the non-mentally ill patients because Ms. Small would be required to attempt the same tasks with them sometimes three or four times before she could finish the task. (Testimony Guiney.)

13. Ms. Small was called to most of the unit's "help calls" while she was on duty. These occurred when patients were violent and out of control. (Testimony Guiney, Small.)

14. Tewksbury Hospital provided the following general statement of the duties and responsibilities of an RN II:

Provides direct care to patients . . . 20–100+ years of age with chronic medical problems, with acute exacerbation at times and with diminished

capabilities in [Activities of Daily Living] needing consistent nursing care. Must assess, plan, implement and evaluate the direct and indirect care needs of patients. Provides direction and supervision to other staff.

(Exhibit 1.)

15. In her last year working at Tewksbury, Ms. Small worked morning and early afternoon shifts, providing direct care to the patients on E3 in addition to assisting them with feeding, toileting, bathing, medication administration and treatment. Ms. Small was also responsible for monitoring patient behavior. (Testimony Small; Exhibit 4.)

16. Ms. Small routinely dealt with unpredictable behaviors from patients who were diagnosed with depression, suicidal ideation, mood disorders, schizophrenia and other mental illnesses. (Exhibit 4.)

17. Ms. Guiney, having supervised Ms. Small in the past, corroborated Ms. Small's description of her work. (Testimony Guiney.)

18. By application dated July 8, 2021, Ms. Small applied for Group 2 classification for her position of RN II. (Exhibit 1.)

19. The Board voted to deny Ms. Small's request and notified her by letter on March 1, 2022. (Exhibit 3.)

20. On March 14, 2022, Ms. Small filed a timely appeal of the Board's decision. (Exhibit 4.)

CONCLUSION AND ORDER

G.L. c. 32, § 3(2)(g) classifies contributory retirement system members into four groups to determine, in part, what benefits they are entitled to when they retire. The purpose of the grouping system is to "provid[e] early retirement incentive to employees

with hazardous duties.” *Pysz v. Contributory Ret. Appeal Bd.*, 403 Mass. 514, 518 (1988); see *Spencer v. Civ. Serv. Comm’n*, 479 Mass, 210, 220 (2018). Groups 1 and 2 are relevant to this case. Group 2 includes “employees of the commonwealth . . . whose regular and major duties require them to have the care, custody, instruction or other supervision of . . . persons who are mentally ill or mentally defective” G.L. c. 32, § 3(2)(g). Group 1 includes “[o]fficials and general employees including clerical, administrative and technical workers, laborers, mechanics and all others not otherwise classified.” *Id.*

An employee’s “regular and major” duties are those that consume “more than half” of the employee’s working hours. *Desautel v. State Bd. of Retirement*, CR-18-80, at *4 (CRAB Aug. 2, 2023). The determination of job duties for group classification purposes is based on the evaluation of what an employee’s job responsibilities were in the twelve months preceding her retirement. *Maddocks v. Contributory Retirement Appeal Bd.*, 369 Mass. 488, 494 (1976). It is Ms. Small’s burden to establish by a preponderance of the evidence that during the last year of her employment, her regular and major job duties involved the care of mentally ill persons. *Forbes v. State Bd. of Retirement*, CR-13-146, at *7 (CRAB Jan. 8, 2020).

In the last year preceding her retirement, Ms. Small was assigned to unit E3. There is no dispute that her core job duties consisted of providing direct care to patients and that the majority of Ms. Small’s time was spent providing direct nursing care to individuals who were ill. The question is whether over half of her work time was spent providing care to patients who were *mentally* ill, as required for classification in Group 2.

Cases considering Group 2 classification for work involving mentally ill persons

have drawn a distinction between patients who receive care because of their mental illness and patients who receive other care for which a diagnosis of mental illness is incidental. CRAB has called this the primary diagnosis test. See *Pulik v. State Bd. of Retirement*, CR-10-605 (CRAB July 10, 2012); *Nowill v. State Bd. of Retirement*, CR-08-558 (CRAB May 17, 2012). In *Popp v. State Bd. of Retirement*, CR-17-848, at *5 (CRAB Nov. 16, 2023), CRAB refocused its interpretation of the primary diagnosis test when it decided that a certified nurse assistant caring for patients who had primary diagnoses of hospice was eligible for Group 2 classification. Under *Popp*'s analysis, the purpose of the primary diagnosis test is to discern what "truly drive[s] the patients' care." *Id.* Thus, a member can still classify as Group 2 if the member cared for patients whose mental illness conditions drove their care even when the patients did not have, on record, mental illnesses as their primary diagnoses. *Zelten v. State Bd. of Retirement*, CR-22-0457, at *3 (DALA Feb. 9, 2024).

Here, Ms. Guiney, a veteran nurse manager, credibly testified that about 60-75% of the patients on E3 had mental illness diagnoses that required ongoing treatment from psychiatrists and psychologists, even while some of them had a primary diagnosis of traumatic brain injury or neurological conditions on record. While most patients on E3 were admitted for treatment for their traumatic brain injury or neurological conditions, only approximately 20% of the patients on E3 had only traumatic brain injury or neurological conditions without any mental illness diagnoses. Like other staff members on unit E3, one of Ms. Small's core duties was to help her patients with treatments and medications for their mental health diagnoses and manage their violent behaviors when they arise. The majority of patients admitted to E3 were there because they exhibited

severe behavior issues caused by their mental illness diagnoses, in addition to their physical injuries.

The Board argues that Ms. Small is properly classified in Group 1 because she did not spend a majority of her time caring for patients with primary diagnoses of mental illness. Though admission to unit E3 did not require patients to have a primary diagnosis of mental illness, most of the patients did in fact have, and were treated for their, mental illness diagnoses alongside their traumatic brain injury and neurological conditions. The design of unit E3, from the alarmed doors to its use of individual units for patients exhibiting particularly violent behaviors, supports the conclusion that the mental illness diagnoses of the patients on E3 were not incidental to their physical diagnoses.

The weight of the evidence is that the mental illness diagnoses of a majority of Ms. Small's patients were not incidental to their traumatic brain injury or neurological condition diagnoses. Here, the mental illness diagnoses of Ms. Small's patients truly drove the care while their diagnoses of traumatic brain injury or neurological conditions were used so that these patients could be admitted to a unit where they could be sufficiently cared for.

Moreover, Ms. Small spent a significant amount of her time working with those patients who were severely mentally ill, usually confined to the unit's one-on-one rooms. According to her former supervisor, she was often in the one-on-one rooms with those patients because she had superior de-escalation skills. Even with those skills, Ms. Small spent much more time with the more confined patients because taking care of them often required several attempts to do something as simple as eating or taking medication. Ms. Small also spent more time with the severely mentally ill because she was ordered to

respond to the majority of “help calls,” where patients on the unit were truly out of control and she could help de-escalate their behaviors. A preponderance of the evidence supports the conclusion that Ms. Small spent a majority of her working hours caring for mentally ill patients whose care was driven by their mental illness.

Based on the above analysis, I conclude that Ms. Small is entitled to Group 2 classification. The decision of the Board is hereby reversed.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/ Kenneth J. Forton

Kenneth J. Forton
Administrative Magistrate

DATED: Aug. 2, 2024