

**COMMONWEALTH OF MASSACHUSETTS
DIVISION OF ADMINISTRATIVE LAW APPEALS**

May 27, 2022

Middlesex, ss.

Docket No. CR-15-479

LUIS SPENCER, Petitioner

v.

STATE BOARD OF RETIREMENT, Respondent

DECISION

Appearance for Petitioner:

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Appearance for Respondent:

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Administrative Magistrate:

Mark L. Silverstein, Esq.

Summary of Decision

Retirement - Computation of Retirement Benefits - (1) Computing and Adjusting Retirement Allowance - Creditable Service Purchases - Prior Nonmembership Service - Military Service - Treatment as purchase of time credited toward retirement rather than as additional service classified in Groups 2 or 4 - (2) Reclassification of service to Group 2 - Service as Deputy Administrator/Director of Security of Correctional Facility Boot Camp - Major duties requiring maximized care, custody and supervision of prisoners - Preponderance of evidence - Credible testimony of petitioner and Management Position Description Questionnaire (MPDQ).

A now-retired Department of Corrections employee who served as a Corrections Officer and then as Commissioner, until he resigned under pressure before he retired, does not prevail in appealing the classification of his prior military service in Group 1. He prevails, however, in challenging the classification of his prior service as a correctional facility boot camp supervisor as Group 1 service, and that service must be reclassified in Group 2 in recalculating his retirement benefit.

(1) Because the petitioner performed the military service he purchased for retirement credit after he terminated his initial period of state service (as a Correction Officer) and, as well, his membership in the Massachusetts State Employees Retirement System, rather than on leave from state service, and returned to state service after being honorably discharged, his military service purchase was a simple purchase of time credited toward his retirement, and did not result in enhanced treatment by adding this purchased service to the his creditable service in groups 2 or 4 for retirement purposes. In addition, a final determination by the Supreme Judicial Court that he was not entitled to revert to Group 4 civil service status as a Corrections Officer following his resignation as Corrections Commissioner under pressure, but nonetheless voluntarily, precludes the classification of his military service in Group 4.

(2) Because the petitioner has shown by a preponderance of the evidence, including his credible testimony as to his job duties and his MPDQ, that his major duties as correctional facility boot camp supervisor required him to have the care, custody, instruction or other supervision of inmates at the facility most of the time, his service in this position met the requirements for Group 2 classification, and it must be reclassified in Group 2 in recomputing his retirement benefits.

Background

Petitioner Luis Spencer was employed as a Corrections Officer by the Massachusetts

Department of Corrections, a position in which he was classified in Group 4 for retirement purposes, when he terminated his state employment and membership in the Massachusetts State Employees Retirement System (MSERS) on January 16, 1982 to join the United States Air Force and pursue a military career. Following an honorable discharge from the Air Force, he rejoined the Department of Corrections on October 20, 1985 and again became a member of MSERS. Mr. Spencer rose in rank over the next six years, becoming a Corrections Officer Captain in 1991, and then the Director of Security at MCI-Plymouth, a state corrections facility, in January 1993. From September 5, 1993 until April 8, 1995, Mr. Spencer served as the Deputy Administrator/Director of Security of the Department's 158-inmate minimum security correctional "boot camp" facility at the Bridgewater, Massachusetts Correctional Complex. He then served as Superintendent at several Massachusetts correctional facilities until the beginning of October 2008, a position the Board would classify in Group 2 for retirement purposes because his regular and major duties required him to have the care, custody, instruction or other supervision of prisoners. *See* M.G.L. c. 32, § 3(2)(g). During this period of state service, Mr. Spencer purchased (in September 1996) his prior active duty military service for Massachusetts retirement credit.

Beginning in October 2008, Mr. Spencer held high-level administrative positions in the Department of Corrections, culminating in his appointment as the Department's Commissioner in May 2011. In July 2014, Mr. Spencer resigned as Department

Commissioner “under pressure . . . in the midst of a public investigation of his oversight of Bridgewater State Hospital.” *Spencer v. Civil Service Comm’n*, 479 Mass. 210, 211, 93 N.E.3d 840, 842 (2018).¹ In his resignation letter, Mr. Spencer asked the Commonwealth’s Human Resources Department Commissioner to allow him to revert back to his last uniformed (and Group 4-classified) civil service position as Correction Officer, which he had held until early January 1993. *Id.*; 479 Mass. at 213-14 and n.4; 93 N.E.3d at 844 and n.4. Mr. Spencer did so in order to be able to retire within a year, with retirement benefits at 80 percent of his Correction Officer salary, rather than at a significantly lower 50.4 percent of his salary as Department Commissioner, a Group 1 position for retirement purposes. *See Spencer*; 479 Mass. at 214, 93 N.E.3d at 844.

In July 2014, the Commonwealth’s Human Resources Department Commissioner rejected Mr. Spencer’s request to revert back to his last uniformed (and Group 4-classified) civil service position, which he had held until early January 1993. *Id.*; 479 Mass. at 213-14 and n.4; 93 N.E.3d at 844 and n.4. The Secretary of the Executive Office of Public Safety and Security informed Mr. Spencer that the Governor would accept his resignation only if it was unconditional, meaning that his resignation could not be on condition that he revert

^{1/} The investigation had focused upon an inmate’s death at Bridgewater State Hospital in March 2014, followed in July 2014 by another incident at the hospital involving the alleged abuse of a mental health patient by a correction officer. *Spencer*; 479 Mass. at 211-12, 93 N.E.3d at 843-44.

to his prior Correction Officer position. The Secretary then sent Mr. Spencer a “revised” resignation letter identical to what he had submitted, but with the request to revert to his Correction Officer position removed, and a notation that Mr. Spencer had resigned from his management position on July 24, 2014 was entered on the Department’s paperwork. *Id.*; 479 Mass. at 214-15, 93 N.E.3d at 844-45. The Secretary informed him verbally, on July 30, 2014, that his request to revert was denied. Mr. Spencer then requested that he be allowed to revert to the acting deputy commissioner position he had held before being appointed Department of Corrections Commissioner. This request, too, was denied, and Mr. Spencer appealed the denial to the Civil Service Commission. *Id.*; 479 Mass. at 215; 93 N.E.3d at 845.

No longer a Department of Corrections Commissioner or manager in any other capacity, but not yet retired, Mr. Spencer filed a superannuation retirement application with the State Board in mid-January 2015. His retirement became effective on January 31, 2015. At that time, he asked the Board to explain how it calculated his retirement benefits— in particular how it treated the military service he purchased in its computations. Adhering to its prior proration of Mr. Spencer’s various types of state service, the Board responded that it had classified his Corrections Officer service in Group 4, and his service as correctional facility superintendent in Group 2. The remainder of Mr. Spencer’s service was, by implication, categorized for retirement purposes in Group 1—his service from September 5,

1993 until April 8, 1995 as the Deputy Administrator/Director of the Bridgewater Correctional Complex boot camp facility; and his high-level administrative position service in the Department of Corrections from October 2008 until his resignation as Commissioner on July 24, 2014. The Board also explained that because Mr. Spencer had separated from state service and taken a full refund of his retirement contributions rather than taking a leave of absence before performing his military service, the military service he purchased after returning to state service was treated as a purchase of credit for retirement purposes and not as having been performed in a group classification higher than Group 1.

The Board's response included a statement of Mr. Spencer's appeal rights pursuant to M.G.L. c. 32, § 16(4). On August 13, 2015, Mr. Spencer filed a timely appeal in which he asserted that the military service he purchased should have been treated as creditable service performed by him as a Group 2 or 4 member in service rather than categorized as if it had been performed in Group 1. He also challenged the Board's Group 1 classification of his service from September 5, 1993 to April 8, 1995, as the Deputy Administrator/ Director of Security for the inmate boot camp at the Bridgewater, Massachusetts Correctional Complex. He claimed that this service should have been classified in Group 2 because most of his regular and major duties required him to have the custody, instruction and other supervision of prisoners, as required by M.G.L. c. 32, § 3(2)(g).

A hearing was scheduled originally for September 7, 2016. At Mr. Spencer's request,

I continued the hearing while he pursued a civil service appeal of the Department of Corrections's decision denying his request to be restored to his prior Group 4 civil service position as a Corrections Officer. Mr. Spencer asserted that a restoration of his Group 4 classification would likely require the treatment of his military service purchase as having been performed by a Group 4 member in service, which would moot this appeal. He asserted his right to revert to prior civil service status under M.G.L. c. 30, § 46D, arguing that the statute applied not only to an involuntary termination of service but, as well, to a resignation from an administrative position under pressure to do so.

The Department of Corrections' decision was affirmed by the Civil Service Commission, and by the Superior Court. I granted Mr. Spencer's motion to maintain the stay of adjudication here while he pursued an appeal of the Superior Court's decision. The Supreme Judicial Court (SJC) *sua sponte* ordered the appeal transferred to it. On March 27, 2018, the SJC affirmed the denial of Mr. Spencer's request to be restored to his Group 4 civil service position.²

^{2/} In affirming the denial of Mr. Spencer's request to revert to the civil service position (Correction Officer) he had held until early January, 1993, the SJC held that:

(1) Although his resignation as Department of Corrections Commissioner had been "under pressure" in the midst of a public investigation, Mr. Spencer's resignation was "voluntary," rather than an "involuntary termination," under the Civil Service Statute, *citing* M.G.L. c. 30, § 46D;

(2) In the circumstances his case presented, Mr. Spencer had no right to revert to his prior Civil Service position under M.G.L. c. 30, § 46D as he would have had if there had been

The adjudication of this appeal proceeded subsequently. The parties filed a joint pre-hearing memorandum on August 30, 2018, together with a statement of agreed facts, and 17 proposed exhibits that I marked in evidence without objection. I held a hearing at DALA in Malden, Massachusetts on February 5, 2020. At the outset of the hearing, I marked four additional exhibits in evidence. (Exhs. 18-21.)³ As a result, there are a total of 21 hearing exhibits in evidence.

an involuntary termination of his services within the meaning of the statute; and

(3) The Civil Service Commission’s interpretation of ambiguous statutory language (as to the meaning of “termination of services” and “voluntary” resignation) was reasonable, as it “applies the same rules for reversion to managers as it does to all other civil service employees and avoids the type of manipulation of retirement benefits at issue” in Mr. Spencer’s case.

Spencer; 479 Mass. At 211, 93 N.E.2d at 842. The SJC concluded that although faced with a difficult choice of resigning without conditions or being terminated involuntarily, Mr. Spencer’s choice to resign was nonetheless one that he made freely. Among other things, this choice spared him “a difficult and costly process that “would have likely raised issues better left undisturbed,” allowed him to leave the Department of Corrections on his own terms; he avoided not only “further intense public scrutiny of his performance during a high profile investigation of Bridgewater State Hospital,” but also “the termination process altogether.” *Id.*; 479 Mass. at 222, 93 N.E.3d 850.

³/ These exhibits were Mr. Spencer’s letter resigning at the end of his first period of state employment dated December 23, 1981 (Exh. 18); a list of new employees at a Massachusetts correctional facility (MCI Norfolk), including Mr. Spencer, following his return to state service, effective October 20, 1985 (Exh. 19); a report of Mr. Spencer’s employment at the end of his first period of state employment, dated January 16, 1982 (Exh. 20); and several documents pertaining to Mr. Spencer’s termination of his first period state employment (Exh. 21.) These documents included Mr. Spencer’s notice of resignation from state employment, dated January 23, 1982; his request to the Massachusetts Employees Retirement System for the return of his accumulated retirement system contributions when he terminated his first period of state employment and his initial period of MSERS membership, dated March 12, 1982); and a printout of Mr. Spencer’s rates of pay during his first and last periods of state service.

I recorded the hearing digitally. Mr. Spencer alone testified during the hearing. Following the completion of his testimony, the parties waived closing statements, and the record was closed except for the receipt of post-hearing briefs and a transcript of the hearing made from the digital recording. The closure of state offices, including DALA and the State Board of Retirement, in early March 2020 delayed the filing of post-hearing briefs by several months. Mr. Spencer filed his post-hearing brief on June 12, 2020, along with the hearing transcript.⁴ The State Board filed a reply brief on November 6, 2020, and Mr. Spencer filed a supplemental brief on November 12, 2020.

Findings of Fact

Based upon the testimony, hearing exhibits and other evidence in the record, the reasonable inferences drawn from them, and the parties' statement of agreed facts included in their prehearing memorandum ("Agreed Facts"), I make the following findings of fact:

1. The Commonwealth first employed Luis Spencer as a Campus Police Officer for the Department of Mental Health from December 17, 1978 to July 5, 1980. During that time, Mr. Spencer was a member-in-service of the Massachusetts State Employees retirement System ("the System"). (Agreed Facts at para. 1, *citing* Exh. 3.)

⁴/ The Transcript (cited as "TR" in this Decision), does not displace the digital recording of the hearing as the recording of record. However, it provides a convenient means of identifying cited testimony with specificity.

2. The Department of Corrections (“the Department”) hired Mr. Spencer as a Correction Officer 1 on July 6, 1980. (Agreed Facts at para. 2, *citing* Exh. 7.)

3. Mr. Spencer terminated his service with the Department on January 16, 1982 to join the United States Air Force. (Agreed Facts at para. 3, *citing* Exh. 7.)

4. Mr. Spencer subsequently terminated his membership in, and withdrew his total accumulated retirement contributions from, the System. (Agreed Facts at para. 4, *citing* Exh. 17.)

5. Mr. Spencer served in the United States Air Force from January 19, 1982 until September 19, 1985. He had expected to serve a four-year tour of duty, but accepted an early discharge, following three years and eight months of active duty service, due to an Air Force personnel reduction. Mr. Spencer received an honorable discharge. (Agreed Facts at para. 5, *citing* Exh. 6; TR. 12; Spencer direct testimony.)

6. On October 6, 1985, the Department rehired Mr. Spencer as a Correction Officer 1, and he became a new member of the System. He served as a Correction Officer I at MCI Norfolk (from October 20, 1985 until September 20, 1988). (Agreed Facts at paras. 6-7, *citing* Exhs. 4 and 7.) The Board classified Mr. Spencer’s service as a Correction Officer from October 20, 1985 through September 30, 1988 in Group 4 for retirement purposes. (Exh. 1: Letter, Nicola Favorito, Executive Director, State Board of Retirement, to Luis Spencer, dated July 31, 2015, at 1.)

7. On September 25, 1988, the Department promoted Mr. Spencer to Correction Officer II. From October 1, 1988 until December 31, 1988, Mr. Spencer served as a Correction Officer with the rank of Sergeant at Bridgewater State Hospital and at the Department's Southeast Correctional Center. (Agreed Facts at para. 7, *citing* Exh. 8; TR. 14: Spencer direct testimony.) The Department classified Mr. Spencer's Corrections Officer service from October 1, 1988 until December 31, 1988 in Group 4 for retirement purposes. (Exh. 1 at 1.)

8. On July 28, 1991, the Department promoted Mr. Spencer, who was still serving as a Correction Officer, to the rank of Captain at MCI Norfolk, bypassing the position of lieutenant. Mr. Spencer served in this position until January 9, 1993. (Agreed Facts, para. 8, *citing* Exh. 4; TR. 15: Spencer direct testimony.) The Board classified Mr. Spencer's service at MCI Norfolk from January 1, 1989 until January 1, 1993 in Group 4 for retirement purposes. (Exh. 1 at 1.)

9. On January 10, 1993, the Department promoted Mr. Spencer to the position of Director of Security at MCI Norfolk, which he held until March 31, 1993, when he was transferred in the same position to MCI Plymouth. He served as Director of Security at MCI Plymouth until September 4, 1993. The Board classified Mr. Spencer's Director of Security service at MCI Norfolk and MCI Plymouth from January 10, 1993 until September 4, 1993 in Group 2 for retirement purposes. (Agreed Facts at para. 9, *citing* Exh. 3; TR. 16: Spencer

direct testimony; Exh. 1 at 1.)

10. Effective September 5, 1993, Mr. Spencer was promoted by the Department Commissioner to the position of Deputy Administrator/Director of Security of the Department's 158-inmate minimum security correctional boot camp facility at the Bridgewater, Massachusetts Correctional Complex. He served in this position until April 8, 1995. (Agreed Facts at para. 10, *citing* Exh. 5; TR. 16-17: Spencer direct testimony.)

11. The boot camp at Bridgewater was the first such facility in the Commonwealth. (Agreed Facts at para. 10; TR. 17: Spencer direct testimony.)

(a) The boot camp applied a paramilitary approach to change the behavior of the mostly youthful offenders, many with substance abuse, anger management and violence problems who opted for this program as an alternative to the medium security environment of a prison facility. (TR. 17: Spencer direct testimony.) The program was intended to be for first-time offenders, but Mr. Spencer learned quickly that there were actually few first-time offenders, and many inmates presented with multiple arraignments. Inmates in the boot camp program could choose to leave and return to a regular prison environment, but the management objective he pursued was to try and counsel the boot camp participants to remain in the program, stay motivated, and give the program a chance to work for them. (TR. 21-22: Spencer direct testimony.)

(b) Mr. Spencer was involved with boot camp staff and inmates throughout each day, and made himself available in the barracks starting at 5 a.m., when physical training (“PT”) began as it did in the military. He stayed in the barracks throughout each work day. (TR. 17: Spencer direct testimony.)

(c) While on duty in the barracks, Mr. Spencer engaged in group dialogues with the inmates to get a better sense of their individual experiences in the facility, so he could better monitor the boot camp and maintain a “balance” for each inmate in what was a very tense paramilitary environment. (TR. 17-18: Spencer direct testimony.)

(d) Mr. Spencer had an office inside the MCI Plymouth Facility and access to it was controlled. He had a computer and telephone in his office, and an administrative assistant who took minutes at meetings and drafted memos. (TR. 71: Spencer cross-examination.) Inmates who wanted to do so could speak with Mr. Spencer in his office or ask questions during a limited time period on each of three days each week that were referred-to as “happy hour.” (TR. 72-73: Spencer cross-examination.) If an inmate needed to have a private conversation, Mr. Spencer would have him brought to see him in the office. (TR. 74: Spencer redirect examination.) However, Mr. Spencer described his work at the boot camp as not involving “sitting behind a desk,” since one could not do that and learn much about what was going on

in the facility. (TR. 20: Spencer direct examination.) Desk-sitting was mostly impossible for Mr. Spencer, anyway; each day, he was expected to tour the facility often, maintaining a close relationship with inmates and staff, learning what was occurring in the barracks, making sure that “things were under control,” making sure that the facility was clean and orderly (which also demonstrated that the staff were in charge), monitoring the barracks “climate,” and maintaining a “positive culture” that was both positive and motivational. In short, he engaged in “management by walking around.” (TR. 19-21: Spencer direct testimony; TR. 65: Spencer cross-examination.) Mr. Spencer explained that “climate” referred primarily to tension in a facility that was visible from body language and how people were interacting with each other, something one needed to assess by speaking to people, finding out what was on their mind, and identifying potential problems. (TR. 63-64: Spencer cross-examination.)

, (e) Although Mr. Spencer’s duties and the degree of his contact with inmates at the boot camp were similar to what they had been as director of security at MCI Plymouth, he was more involved with inmates at the boot camp because of its paramilitary environment and barracks design. (TR. 22-23: Spencer direct testimony.)

(f) The degree of Mr. Spencer’s involvement with inmates was highest for him when he was working inside a correctional facility, as it was at the boot camp, and lowest when he served (after 2008) as an assistant deputy commissioner, and in higher

commissioner-related positions, as the duties of those positions were performed mostly outside correctional facilities. (TR. 27: Spencer direct testimony.)

(g) The Board declined to classify Mr. Spencer's service between September 5, 1993 and April 8, 1995 as the Bridgewater boot camp's Deputy Administrator/Director of Security in Groups 2 or 4 for retirement purposes, as a result of which this service was classified in Group 1. (Exh. 1.)

12. From April 9, 1995 to October 4, 2008, Mr. Spencer served as Superintendent at several of the Department's correctional facilities, including MCI Lancaster, MCI Plymouth Prison Camp, Old Colony Correctional Center, and MCI Norfolk. (Agreed Facts at para. 11, *citing* Exh. 3; Exh. 1 at 1.) Mr. Spencer's service during this period as correctional facility Superintendent was classified by the State Board of Retirement in Group 2 for retirement purposes. (Exh. 1 at 1.)

13. During the same time period, Mr. Spencer purchased his prior military service and his prior state service time.

(a) On September 24, 1996, Mr. Spencer purchased, for Massachusetts retirement credit, his three years and eight months of military service (January 19, 1982 to September 19, 1985). This purchase cost him approximately \$9,000, nearly the amount of the retirement contributions he withdrew when he left state service in early 1982. He paid this purchase over a five-year period and completed the payment

in late 2001. (Agreed Facts at para. 13, *citing* Exh. 6; TR. 30-31: Spencer direct testimony.)

(b) On June 16, 2015, Mr. Spencer purchased, for retirement credit purposes, his prior state service time from 1978 to 1982. (Agreed Facts at para. 14, *citing* Exh. 17; TR. 30: Spencer direct testimony.)

14. From October 5, 2008 until July 2014, Mr. Spencer held several high-level administrative positions in the Department, including Assistant Deputy Commissioner, Acting Commissioner, Acting Deputy Commissioner of Prisons, Acting Commissioner, and then Commissioner. (Agreed Facts, para. 12, *citing* Exh. 13.)

15. In July 2014, Mr. Spencer resigned as Commissioner of the Department of Corrections, and his request to revert to his prior position as Correction Officer, which was classified for retirement purposes in Group 4, or to his immediately-prior managerial position as the Department's acting deputy commissioner, was denied. Mr. Spencer appealed to the Civil Service Commission, which affirmed the denial of his request to revert, and the Commission's decision was affirmed by the Massachusetts Superior Court and then by the Supreme Judicial Court. (*See Spencer v. Civil Service Comm'n*, 479 Mass. 210, 211, 93 N.E.3d 840, 842 (2018).)

16. Following his resignation as Commissioner, and the denial of his request to revert to his prior Correction Officer position, Mr. Spencer anticipated that he would retire,

a decision that was his to make after he resigned as Commissioner. (*Spencer*; 479 Mass. at 222, 93 N.E.3d at 850.) In August 2014, he filled out several Group Classification Questionnaires with the Board regarding the various positions he had held at the Department, including his position, from September 5, 1993 to April 8, 1995, as the Deputy Administrator/ Director of Security for the boot camp at the Bridgewater, Massachusetts Correctional Complex. Several of the questionnaires were completed by others, possibly Department of Corrections Human Resources personnel. As completed, they reflected or described Mr. Spencer's job duties accurately. (Agreed Facts, para. 16, *citing* Exh. 5; TR. 27-29: Spencer direct testimony.)

17. As part of his response to the Group Classification Questionnaire regarding his position as Deputy Administrator/ Director of the inmate boot camp, Mr. Spencer and/or the Department submitted a "Management Position Description Questionnaire" ("MPDQ") that included a "position summary" stating his responsibilities as boot camp Deputy Administrator/ Director; a description of his "major responsibility areas" in this position; a "working relationships list" identifying his most frequent contacts (by their respective positions) while he served as boot camp Deputy Administrator/Director, and the purpose of those contacts; and the qualifications that were required for this position. (See Exh. 5: Group Classification Questionnaire documents).

(a) The MPDQ's "position summary" stated that as Deputy Administrator/

Director of the boot camp, Mr. Spencer was responsible for planning, developing and managing this facility, which was the first of its kind in the Commonwealth. His responsibilities were described as including, but not limited to, “the protection of the public, facility security, inmate classification and treatment, program, personnel selection and management, community relations and support services.” The position summary stated that he was on call 24 hours a day, seven days a week to respond to “facility emergencies’ and to “provide assistance to Shift Commanders;” that he managed 83 boot camp employees; and that he oversaw a vendor service contract that furnished educational and substance abuse treatment to inmates.

(b) The MPDQ listed, as Mr. Spencer’s “major responsibility areas,” meeting with key management staff, and managing, developing and supervising staff reporting to the boot camp administrator; meeting with vendor service providers; reviewing aftercare programming with parole representatives; meeting with community representatives and municipal organizations; and managing a personnel; budget of approximately 2.5 million dollars.

(c) Per the MPDQ, Mr. Spencer’s contacts were mostly with county sheriffs, the Department of Corrections Deputy Commissioner and Assistant Deputy Commissioner, and Superintendents from other Department facilities, and the purpose of these contacts was “[c]onsultation on personnel matters—regular discussion and

mutual advice on a variety of matters which affect the operation of the facility.”

(d) The qualifications that the MPDQ listed for Mr. Spencer’s boot camp position were knowledge of “the criminal justice system, system operations, classifications and programs,” and “the ability to manage a variety of multidisciplinary staff” and to “set personnel and health and safety goals.” Per the qualifications statement, the person holding Mr. Spencer’s boot camp position was not required to attend or complete the Department’s Correction Officers Academy.

18. On October 31, 2014, the Board notified Mr. Spencer that it had pro-rated his Group membership for retirement purposes, in view of his employment history. (Agreed Facts at para. 17.)

(a) The Board classified Mr. Spencer’s service as a Correction Officer in Group 4 for retirement purposes. This included his periods of service as Correction Officer 1 (at Department of Corrections Central, August 18, 1980 to January 16, 1983; and at MCI Norfolk (October 20, 1985 until September 30, 1988) and as Correction Officer 2 (at Bridgewater, October 1, 1988 until December 31, 1988; and at MCI Norfolk, January 1, 1989 until January 9, 1993). (Agreed Facts at para. 17(a), *citing* Exh. 4.)

(b) The Board classified the periods of Mr. Spencer’s service as Campus Police Officer (1978-80), Director of Security at MCI Plymouth (1993), and Superintendent

at various MCI correctional facilities (1995-2008) in Group 2. (Agreed Facts, para. 17(b), *citing* Exh. 3.)

(c) The Board's October 31, 2014 Group status determination did not address Mr. Spencer's other periods of service—from September 5, 1993 to April 8, 1995 as Deputy Administrator/Director of Security of the 158-inmate minimum security correctional boot camp at the Bridgewater, Massachusetts Correctional Complex, and, from October 5, 2008 until his resignation as the Department's Commissioner in July 2014, his service in high-level administrative positions in the Department of Corrections—Assistant Commissioner, Deputy Commissioner and Commissioner. However, it is undisputed that the Board classified this service in Group 1.

19. Mr. Spencer filed a superannuation retirement application with the Board on January 16, 2015. His retirement became effective on January 31, 2015. He is currently receiving a pension. (Agreed Facts, para. 15, *citing* Exh. 16.)

20. On January 31, 2015, Mr. Spencer asked the Board to explain how it calculated his retirement benefits—in particular how it treated the military service he had purchased. The Board informed Mr. Spencer that in calculating his monthly retirement benefit payment, it had classified his military service time in Group 1. The Board gave two reasons for doing this. First, before entering the Air Force, Mr. Spencer had separated from state service and taken a refund of his retirement contributions rather than taking a leave of absence. Second,

because the retirement statute, M.G.L. c. 32, did not categorize military service purchased for retirement credit in any particular group, the Board had categorized Mr. Spencer's military service in Group 1 for the purpose of computing his retirement benefit. (*See* Exh. 1.)

21. On July 31, 2015, following Mr. Spencer's inquiry regarding his final pension calculations, the Board sent Mr. Spencer a letter explaining its calculations and final position regarding his group classifications for the positions he had held as a state employee. Its group determinations for Mr. Spencer's various positions did not change from what they had been on October 31, 2014. As a result:

(a) The Board's left unchanged its prior determination that Mr. Spencer's periods of service as a Correction Officer were classified in group 4 for retirement purposes (August 18, 1980 to January 16, 1983; October 20, 1985 until January 9, 1993.) (Exh. 1: Letter, Nicola Favorito, Executive Director, State Board of Retirement, to Luis Spencer, dated July 31, 2015, at 1.)

(b) The Board also left unchanged its prior Group 2 classification of Mr. Spencer's service as Superintendent at various MCI facilities through early October 2008. This included his service as Superintendent at MCI Norfolk (from January 10, 1993 to March 31, 1993), MCI Plymouth (February 1, 1993 to September 4, 1993), MCI Lancaster (April 9, 1995 to July 31, 1997, and MCI Central (August 1, 1997 and October 4, 2008). (*Id.*)

(c) The Board's July 31, 2015 determination did not include, in Group 2, Mr. Spencer's position from September 5, 1993 to April 8, 1995 as Deputy Administrator/Director of Security of the boot camp at the Bridgewater, Massachusetts Correctional Complex. As was true of its October 31, 2014 group classification determination, the Board's July 31, 2015 determination did not address this period of Mr. Spencer's service at the correctional boot camp, or his service in high-level Department administrative positions from October 5, 2008 until his resignation as the Department's Commissioner in July 2014. (Exh. 1 at 1.) It is undisputed that the Board classified this service in Group 1, however, in computing Mr. Spencer's retirement benefits.

22. The Board also determined, on July 31, 2015, that the three years and eight months of military service Mr. Spencer had purchased for retirement credit (January 19, 1982 to September 19, 1985) "was credited as a service purchase and not as a leave of absence." That was because Mr. Spencer had separated from state service in 1982 and taken a refund of his retirement contributions. Because M.G.L. c. 32 "does not provide for a Group classification of such service," the Board categorized the military service Mr. Spencer had purchased after he returned to state service in 1985 in Group 1 service for retirement purposes. (Exh. 1 at 2.)

23. The Board's July 31, 2015 letter included a notice to Mr. Spencer of his right

to appeal the Board's determination within 15 days. (*Id.*)

24. Mr. Spencer filed a timely appeal of the Board's decision on August 13, 2015. In his appeal request, Mr. Spencer stated that he was challenging the Group 1 classification of (a) his military service time; and (b) his service from September 5, 1993 to April 8, 1995 as Deputy Administrator/Director of Security of the Bridgewater boot camp. (Exh. 2: Appeal by Mr. Spencer to the Chief Magistrate of the Division of Administrative Law Appeals, dated Aug. 13, 2015.)

Discussion

1. Creditable Service Purchases—An Overview

(a) *Public employee retirement benefits.* The retirement benefit (or allowance) paid to a retired public employee retirement system member consists of an annuity and a pension. The annuity comprises the retirement deductions taken from the employee's pay while he performed service credited for retirement purposes (creditable service). Those deductions are deposited by the retirement board in an annuity savings account and earn interest. The annuity portion of the employee's retirement allowance comprises the total amount of retirement deductions and interest earned on them that are in the employee's annuity savings account when he retires. The pension is "the difference between the total retirement allowance specified by law and the annuity" The employee's retirement allowance

(meaning his annuity and his pension) depends upon his age at retirement, his length of creditable service (the service that counts for retirement purposes), the amount of his average annual rate of regular compensation, and his “group classification” for retirement purposes.

⁵ (b) *Group classification for retirement purpose.* A retirement board assigns employees in the retirement system it administers to one of four groups (Groups 1, 2, 3 or 4) based upon the group classifications established by M.G.L. c. 32, § 3. Per M.G.L. c. 32, § 3(2)(g):

Group 1 members are “[o]fficials and general employees including clerical, administrative and technical workers, laborers, mechanics, and all others not otherwise classified;

Group 2 includes certain employees with hazardous occupations, such as court officers, public works building police, ambulance attendants, mental health hospital attendants, social workers employed by the Department of Children and Families; and, as well:

employees of the commonwealth or of any county, regardless of any official classification, except the sheriff, superintendent, deputy superintendent, assistant deputy superintendent and correction officers of county correctional facilities, whose regular and major duties require them to have the care, custody, instruction or other supervision of prisoners

Group 3 is made up of state police officers; and

⁵/ See “Massachusetts Public Employees’ Retirement Guide: Members Prior to April 2, 2012–Retirement Allowance,” <https://www.mass.gov/info-details/retirement-allowance>.

Group 4 consists of public safety officers, officials, and employees, such as police officers, firefighters, and certain correction officers, including “employees of the department of correction who are employed at any correctional institution or prison camp under the control of said department and who hold the position of correction officer”

Group classification is important because it affects when a public employee retirement system member may retire and when he will attain maximal retirement allowances. Thus, for example, “persons classified in Group 4 attain maximum retirement allowances . . . at an earlier age than those classified in Group 1,” and, in addition, a system member who prevails in seeking Group 4 classification (or reclassification) may also be entitled to a correspondingly greater survivor's allowance than he would be if he were classified in Group 1. *Gaw v. Contributory Retirement Appeal Bd.*, 4 Mass. App. Ct. 250, 251, 345 N.E.2d 908, 909 (1976).

(c) *Creditable service purchases*. Creditable service for public employee retirement system members—one of the factors taken into account in computing a retiring or retired member's retirement allowance (comprising the annuity and pension)—is categorized as either “membership service” or “nonmembership service.” Membership service is service that was performed when the employee was required to be an employee retirement system member, and made contributions to that system via payroll deductions. Nonmembership

service is service that did not require retirement system membership but was eligible to be purchased for retirement credit. This type of creditable service may include (where allowed by M.G.L. c. 32) prior public service in other states (up to limits the statute prescribes), and some types of prior military service.

M.G.L. c. 32 specifies military service that may be purchased by public employee retirement system members for retirement credit. A system member who qualifies as a “veteran who served in the armed forces of the United States” may purchase up to four years of “active service in the armed services of the United States,” that resulted in an honorable discharge, as creditable service to be counted toward his retirement allowance, in addition to the creditable service the member has earned during public employment. M.G.L. c. 32, § 4(1)(h)); *see also Stanton v. Quincy Bd. of Retirement*, Docket No. CR-18-0121, Decision (Mass. Div. of Admin. Law App., Jun. 28, 2019).

Generally, the cost of purchasing past nonmembership service for retirement credit is based on what the retirement system member would have paid in contributions to his employee retirement system when he was a Massachusetts public employee, or what he actually paid for and withdrew or used, plus interest to the date of the creditable service purchase. This purchase may result in increased retirement benefits if it is made when a retirement system member’s service is near or at the maximum retirement allowance to which

he would be entitled upon retiring.⁶ This was apparently the case for Mr. Spencer when, after performing his military service and receiving an honorable discharge, he returned to state service with the Department of Corrections in 1985 and began his retirement system membership anew.

(d) *Superannuation retirement benefit.* When retirement is based upon superannuation (reaching a certain age and meeting other requirements such as those pertaining to length of service), the retirement benefit is calculated as follows:

The member's benefit rate is multiplied by the member's highest three year average annual rate of regular compensation, and then that product is multiplied by the member's creditable service.

<https://www.mass.gov/info-details/retirement-allowance>.

The retirement system member's age at retirement and group classification determines his retirement benefit rate, which is "a specific percentage of the amount of the average annual rate of regular compensation." This percentage is slightly higher for a Group 2 member (or for service classified in Group 2) than it is for a Group 1 member, and is slightly higher for a Group 4 member (or for service classified in Group 4) than it is for a Group 2 member. *Id.*

⁶/ See Massachusetts Teachers' Retirement System, "Apply for Retirement– Step 1: Understand the Retirement Formulation and Process," <https://mtrs.state.ma.us/retire/>.

2. Whether the Military Service Mr. Spencer Purchased is Properly Treated as Time Credited Toward Retirement, or Whether it Adds to Mr. Spencer's Service in Group 2 or Group 4.

The three years and eight months of military service Mr. Spencer purchased for retirement credit was performed after he had terminated his state employment and his membership in the Massachusetts State Employees Retirement System. At his request, he was refunded the full amount of his employee retirement contributions as a MSERS member.

Without question, Mr. Spencer purchased an additional three years and eight months of creditable service time for retirement purposes, making him eligible to retire for superannuation sooner than he could have otherwise, and/or increasing his monthly retirement benefit if he retired with more than the minimum number years needed to do so.

The military service purchase was at least a simple purchase of creditable service time. Credited as such, this purchased service would affect only one of the multipliers in the calculation of Mr. Spencer's retirement benefit—the number of years by which is multiplied the product of the member's three year average annual rate of compensation and his benefit rate. (*See* discussion above at 19.) With his military service purchase, this multiplier would be three years and eight months more than it would have been otherwise.

There would be a greater retirement benefit for Mr. Spencer if he had performed his military service while on leave from state service. Leave, if requested and granted, would have left intact Mr. Spencer's membership in MSERS, with none of his prior retirement

contributions returned to him. His state service would not have been terminated, and he would have been restored to the corrections officer position from which he had been granted leave to perform active duty military service. Mr. Spencer's service as a corrections officer was classified in Group 4 for retirement purposes. Had he performed military service on leave from that position, Mr. Spencer's subsequent purchase of his military service would have resulted not only in three years and eight months of additional service credited toward retirement, but, as well, an additional three years and eight months of years of Group 4 service—from eight years and eight months (shown in the Board's October 2014 and July 2015 group classifications of his state service) to twelve years and four months. The result would have been a higher pension at an earlier age, a benefit reflecting the significantly more hazardous duties that Group 4 positions entail. *See Spencer v. Civil Service Comm'n*; 479 Mass. at 220, 93 N.E.3d at 848-49.

However, there is no evidence that Mr. Spencer requested such leave, and he concedes that he is not pursuing any claim of having performed his military service while on leave from his Corrections Officer position. (*See* Petitioner's Post-Hearing Brief (Jun. 12, 2020) at 16-17.)

That leaves Mr. Spencer's military service purchase as a simple purchase of creditable service for retirement. Because this military service was not performed while on leave from his state service, Mr. Spencer's only legal basis for enhancing his purchased military service

by treating it as additional service rendered in a group higher than Group 1 would have been by way of the civil service reverter to his prior Corrections Officer position he sought after he resigned as Commissioner. As Mr. Spencer noted in moving to stay adjudication here pending the outcome of his civil service reverter appeal pursuant to M.G.L. c. 30, § 46D, a decision restoring him to the tenured civil service correction officer position he had held at MCI Norfolk until January 9, 1993 pursuant to M.G.L. c. 30, § 46D would have likely made this appeal academic by reclassifying most of his Group 2 and Group 1 service as Group 4 service.

That did not happen, however. Having determined that Mr. Spencer's resignation as Commissioner was not involuntary, despite the difficult choice with which he was presented in July 2014, the Supreme Judicial Court held that Mr. Spencer had no right to revert to his civil service status as a Corrections Officer under section 46D. With no right to revert, Mr. Spencer lost the only legal basis he would have had for having his purchased military service added to his Group 4 creditable service.

Determining that the military service Mr. Spencer purchased after his return to state service should be categorized as Group 4 service would be, in effect, an end run around the SJC's 2018 decision. Although *Spencer* decided a civil service appeal, its rejection of reverter to the Corrections Officer position as of the date of Mr. Spencer's resignation as Commissioner on July 24, 2014 had other ramifications. It eliminated the only legal basis for

adding Mr. Spencer's nonmembership military service to the service categorized as Group 4 service (eight years and eight months, per its July 31, 2015 determination) rather than treating it as a simple purchase of service time. Mr. Spencer was well aware of this risk when he sought to stay adjudication here pending what he hoped would be a favorable Group 4 reverter decision in his civil service appeal. With an adverse decision instead, he is precluded from pursuing Group 4 classification of military service he performed outside of state service (and MSERS membership) without a leave of absence.

Having elected to pursue, unsuccessfully, a civil service-based reverter to a Corrections Officer position, service in which is classified for retirement purposes in Group 4, Mr. Spencer is now left with an SJC decision that precludes an enhanced treatment of his purchased military service as having been performed in Group 4. The consequences are personal to his retirement situation, and not (as he argues here) universal to all State Employee Retirement System members who are both veterans and serve as employees in public safety positions such as police officers, firefighters and correctional officers.

The disposition of his civil service appeal aside, Mr. Spencer's circumstances appear to be unique, or at least confined to very few public safety employees—rather than request and obtain leave to perform military service, he terminated his state service and retirement system membership. And had his retirement contributions refunded in full, before performing military service, and he returned to state service following his honorable

discharge. All of this was by choice. As a result, I do not agree with Mr. Spencer's argument that rejecting enhanced treatment of his purchased military service visits an unfair adverse retirement consequence upon public safety employees with veteran status generally. (*See* Petitioner's Post-Hearing Brief (Jun. 12, 2020) at 17-20.)

To sum up: Mr. Spencer's military service was not performed on leave from state service, and the SJC decided that he had no right to revert, following his resignation as Corrections Commissioner, to a civil service status that would have likely resulted in the addition of his three years and eight months of purchased military service to his Group 4 service time. There remains, as a result, no basis for treating this purchased military service as anything but a simple purchase of additional service time for retirement credit. It does not, and cannot, add to the years of his service classified as having been performed in Group 4. In adding to his total years of service only, the military service purchase affects only one of the multipliers in the calculation of Mr. Spencer's retirement benefit—the number of years by which is multiplied the product of the member's three year average annual rate of compensation and his benefit rate. With the military service purchase, this multiplier is three years and eight months more than it would have been otherwise.

The only other possible "enhancement" of Mr. Spencer's otherwise simple purchase of additional service time retirement credit would be to add it to the Group 2 service Mr. Spencer performed at various times through October 4, 2008. However, because Mr. Spencer

did not perform his military service while on leave from state service, its purchase as nonmember service was a simple purchase of service time for retirement credit, not a purchase of additional service classified in any Group higher than Group 1. If this outcome is contrary to legislative intent or public policy, it is for the legislature to clarify that prior military service not performed on leave from state service (and not while remaining a member of a public employee retirement system), is to be credited not only as additional service time for retirement credit but also as enhancing service classified in Group 2 or Group 4 for retirement purposes.

3. Whether Mr. Spencer's Service from September 5, 1993 to April 8, 1995 as Deputy Administrator/Director of Security of the Bridgewater Correctional Complex Boot Camp Should be Reclassified from Group 1 to Group 2

a. Applicable Law

In providing a four-group system for classifying public employee service for retirement purposes, M.G.L. c. 32, § 3(2)(g) places, in Group 2, “employees of the Commonwealth or of any county, regardless of any official classification, except the sheriff, superintendent, deputy superintendent, assistant deputy superintendent and correction officers of county correctional facilities, whose regular and major duties require them to have the care, custody, instruction or other supervision of prisoners.” Group 1 has been recognized as the “catch-all” category that includes “[o]fficials and general employees including clerical,

administrative and technical workers, laborers, mechanics and all others not otherwise classified.” *Mendonsa v. State Bd. of Retirement*, Docket No. CR-11-424, Decision at 7-8 (Mass. Div. of Admin. Law App., Nov. 17, 2017); *see also Levesque v. State Bd. of Retirement*, Docket No. CR-16-501, Decision at 8 (Mass. Div. of Admin. Law App., Aug. 20, 2021.)

Generally, the determination of an employee’s proper group classification for retirement purposes “is based on the job he held and the duties he performed at the time of retirement.” *Mendonsa* at 8, quoting *Maddocks v. Contributory Retirement Appeal Bd.*, 369 Mass. 488, 493, 340 N.E.2d 503, 507 (1976). This general rule has practical limits when (as in Mr. Spencer’s case) the employee’s service encompassed different jobs and duties in different positions during different periods of his public service. In that case, and where the proration of service in multiple Groups is allowed or required, proper group classification is determined for each of these positions.⁷

Mendonsa provides an example of such pro-rating of service in multiple retirement classes by a Department of Corrections employee who, like Mr. Spencer, performed service

⁷/ Per St. 2011, c. 176, § 14, all employees who became members of a public employee retirement system before April 2, 2012 (as did Mr. Spencer) may elect to have their creditable service in more than one retirement group pro-rated based upon the percentage of total service rendered in each such group, while employees who became members of a public employee retirement system after that date must have their service in more than one retirement group pro-rated. This changed the prior requirement that an employee’s group status for retirement purposes be determined as of the last year of employment prior to retirement. The change effected by St. 2011, c. 176, § 14 was codified in the General Laws subsequently. *See* M.G.L. c. 32, § 5(2)(a).

in more than one retirement Group, including service in a deputy supervisory position. Mr. Mendonsa had held a variety of positions and jobs at various correctional facilities as to which the State Board of Retirement denied Group 2 classification, the last of which was the position he held when he filed an application for superannuation retirement in 2012 (Deputy Superintendent/Program Manager 8 at a correctional center). Each of the positions for which the Board had denied Group 2 classification was analyzed separately to determine, as to each one, whether the preponderance of the petitioner's regular and major duties (that is, at least 51 percent of them) embodied the care, custody, instruction or other supervision of prisoners. In doing so, DALA Chief Administrative Magistrate Edward B, McGrath reached a separate conclusion that the petitioner was entitled to Group 2 classification for each of the positions in question.

To prove by a preponderance of the evidence that at least 51 percent of his regular and major duties embodied the care, custody, instruction or other supervision of prisoners means showing that prisoner care, custody, instruction or other supervision of prisoners was not merely incidental to, or in the context of, some greater administrative function. *Mendonsa*; Decision at 8, *citing Giard v. State Bd. of Retirement*, Docket No. CR-08-347, Decision at 4 (Mass. Div. of Admin. Law App., Jun. 12, 2012). Determining whether this was the case "depends on an individualized examination of the [employee's] regular duties." *Mendonsa*; Decision at 8, *quoting Morreale v. State Bd. of Retirement*, Docket No. CR-15-332, Decision

at 6 (Mass. Div. of Admin. Law App., Mar. 10, 2017). The retirement system member’s “job description and actual duties performed are important considerations to be weighed when determining the member’s group classification.” *Mendonsa*; Decision at 809, quoting *Gaw v. Contributory Retirement Appeal Bd.*, 4 Mass. App. Ct., 250, 256, 345 N.E.2d 908, 912 (1976).

b. Determining Whether a Correctional Position Meets Group 2 Requirements as to Inmate Care, Custody, Instruction or Supervision

Mendonsa is especially helpful in determining what is needed to show, by a preponderance of the evidence, that Mr. Spencer’s performance of his regular and major duties as Deputy Administrator/Director of Security of the Bridgewater Correctional Complex Boot Camp (from September 5, 1993 to April 8, 1995) required that he have the care, custody, instruction or supervision of prisoners more than 51 percent of the time, and that inmate supervision was not merely an ancillary or incidental function, or one performed in the context of some greater administrative function. Among other things, *Mendonsa* addresses this issue directly in the context of Department of Corrections facility management and inmate supervision, and was decided relatively recently.

At issue in *Mendonsa* was whether Group 2 requirements were met in each of three different positions Mr. Mendonsa performed at Department of Corrections facilities, including a Deputy Superintendent position. The evidence that proved persuasive as to

inmate supervision in each of these positions included the retirement system member's credible testimony and the applicable Management Position Description Questionnaire (MPDQ).

(a) Mr. Mendonsa served as "Unit Manager/Program Manager 3" at the North Central Correctional Center, a medium security prison in Gardner, Massachusetts between June 30, 1996 and July 11, 1998. In this position, he was responsible for the management, oversight, and safety and security of two offender housing units and approximately 16 employees who worked in these units. *Mendonsa*; Decision at 3. The MPDQ stated that the unit manager assumed "full responsibility for security, safety, operations and sanitation" for the units, and managed inmate classification and the disciplinary system within each unit, and was responsible for the training and evaluation of all unit team staff members, enforcing police procedures through inspections, and ensuring compliance with Department of Corrections and Institution police procedure. *Id.* at 3-4. The MPDQ also stated that the unit manager was required to "resolve all staff and inmate complaints; make decisions on inmate housing placement; and maintain safe, secure and clean housing for staff and inmates." *Id.* In remaining in constant communication with inmates, the unit manager "often" was responsible for "telling the inmate information which he will not like." *Id.*; Decision at 4. The MPDQ also stated that the unit manager's position combined both management and technical aspects of security and inmate management." *Id.*

Because Mr. Mendonsa was “responsible for the safety and security of the staff and offenders inside the housing units,” he “reviewed the daily record” to determine whether any of the inmates in his unit had committed disciplinary violations and needed to be moved to a different unit or segregated from the general population. *Mendonsa*; Decision at 3. He toured both housing units “to ensure cell decorum which entailed checking cleanliness and searching for contraband; participating in classification hearings with inmates to evaluate their development; meeting new inmates; and participating in staff access meetings where inmates received the opportunity to talk with staff members about their concerns.” *Id.* Mr. Mendonsa testified that approximately 70-75 percent of his day was spent communicating with inmates. *Id.* He “gave credible testimony that he handled all interactions with inmates by himself but kept a radio so that he could call upon another employee for assistance if needed.” *Mendonsa*; Decision at 9-10. The exhibits and Mr. Mendonsa’ testimony also showed that “[a] major aspect of his role was touring the facility and performing checks within each housing unit,” which required that he be familiar with the inmates “for classification purposes,” and that he took “a ‘hands-on’ approach in order to sufficiently perform these job duties.” *Id.* at 10. Among other things, Mr. Mendonsa personally handled interactions with inmates, and was familiar with them. Touring the facility and performing checks within each housing unit was a major part of his role as manager and supervisor. As a result, Mr. Mendonsa spent at least 51 percent of his work time having the care, custody

or other supervision of prisoners. *Id.*

(b) Mr. Mendonsa served as “Director of Treatment/Program Manager 4” at the Souza-Baranowski Correctional Center, a maximum security center in Shirley, Massachusetts that housed both maximum and medium security inmates, between July 12, 1998 and January 3, 1999. He then served as “Director of Treatment./Program Manager 5” at the same facility (between January 3, 1999 and November 30, 2003. *Mendonsa*; Decision at 4, 5-6. In both positions, Mr. Spencer developed and implemented programs for inmates, including alternatives to violence, a program he ran at the Correctional Center on weekends. *Id.* at 4. While he did this, Mr. Mendonsa sat with the inmates in the same room to check decorum, insure the inmates were participating, and monitor the program’s success. *Id.*

Mr. Mendonsa was also responsible for inmate housing assignments based in large part upon individual inmates’ rehabilitative needs. As Director of Treatment/Program Manager 4 and 5 at the Souza-Baranowski Correctional Center, Mr. Mendonsa’s role was “to oversee all programming for the maximum security inmates in a population that comprised both maximum and medium security inmates.” *Id.* He was also responsible for inmate housing assignments based in large part upon individual inmates’ rehabilitative needs. *Mendonsa*; Decision at 10-11. Per the MPDQ, the unit manager was also responsible for the inmates’ abuse treatment plans, and for determining which inmates were in good condition or had more individual rehabilitative needs, for example if they were psychologically

impaired. *Id.* at 5.

He spent approximately 15 percent of his time in an office located inside the facility, “in close proximity to the programming areas.” *Id.* On a typical day, Mr. Mendonsa began work by reading the daily reports “to learn of any disciplinary reports incurred by inmates in his unit and relocate them as needed.” *Id.* For the remainder of the day, Mr. Mendonsa toured “the program areas including the library, chapel, gym, recreation yards, and education classrooms.” *Id.* As he did this, he “ensured decorum, checked equipment, confirmed that the programs he developed were being implemented, spoke with inmates to see whether their needs were being met, and monitored gang activity.” *Id.* at 4-5. Per Mr. Mendonsa’s testimony, this placed him in daily contact with inmates. *Id.* at 5.

Based upon this evidence, Chief Administrative Magistrate McGrath was persuaded that Mr. Mendonsa’s employment as Director of Treatment/Program Manager 4 and 5 required that he spend a majority of his time supervising inmates during their participation in facility programs. *Mendonsa*; Decision at 10. He noted, in particular, that Mr. Mendonsa “was in charge of developing, implementing, and overseeing programs which included the library services, chapel, gym, recreation activities, education classrooms, and other programs he created.” *Id.* at 10-11. In addition, Mr. Mendonsa’s office “was located inside of the facility near the programming areas.” *Id.* at 11. Therefore, while Mr. Mendonsa “conducted some administrative duties, he spent a majority of his time supervising inmates during their

participation and cooperation in the facility's programs." *Id.*

(c) As "Deputy Superintendent, Program Manager 8," initially at the North Center Correctional Facility in Gardner (from December 1, 2003 to May, 2005) and then at Souza-Baranowski Correctional Center in Shirley (from May 2005 until he retired in 2012), Mr. Mendonsa was responsible (per the MPDQ for this position) for the "management of the Classification and Treatment Division of a medium security institution with a population of more than 1,200 inmates." *Mendonsa*; Decision at 6. In this position, he was responsible for all inmate housing and activities including education, religion, recreation and library services, and inspecting and interacting directly, and daily, with the inmate population. This required that Mr. Mendonsa manage and administer six blocks housing inmates, including a segregation unit and health services unit, and the facility's treatment department (including its educational, psychological, religious, library and community services); and serving as "Institutional liaison with Health Services, Industries Divisions and the Parole Board." The mission of the Classification and Treatment Division, per the MPDQ, was "to identify the security and programmatic needs of inmates, recommending via the classification process the appropriate security level in which inmates should be placed and providing those treatment services which will facilitate their reintegration into the community." *Id.* Per the MPDQ, the Deputy Superintendent was to meet with staff and inmates to resolve issues; supervise the Segregation Unit; resolve conflicts between staff; review daily incident reports; and take

corrective action when appropriate. *Id.*

Chief Magistrate McGrath found it significant that Mr. Mendonsa performed hands-on work with inmates, as well as with facility staff. His work included facility inspection, engaging in one-on-one contact with inmates, and checking inmates's sleeping quarters, which was "usually the duty of a lower level employee." *Mendonsa*; Decision at 11-12. In fact, Mr. Mendonsa was, as Deputy Superintendent, "responsible for all inmate housing and activity and it was, therefore, his responsibility to supervise the inmate population." *Id.* at 12. This responsibility for inmate supervision was neither occasional nor ancillary to Mr. Mendonsa's administrative duties, and nor was it "in the context of some greater administrative function." *Id.*; Decision at 13. Instead, it was daily, and face-to-face. Mr. Mendonsa "handled all inmate interactions on his own and would only call for assistance if it was needed," and Mr. Mendonsa "spent as much time supervising and communicating with inmates as much as possible," *Id.*

*c. Mr. Spencer's Boot Camp Position Met Group 2 Requirements
as to Inmate Care, Custody Instruction or Supervision*

Mr. Spencer's testimony regarding his job duties in this position and the degree of inmate care, custody, instruction and supervision it required of him was credible. He was consistent, during both direct and cross-examination, in describing the time he spent attending to administrative duties as minimal in comparison with being present in the barrack

and interacting with inmates and staff, monitoring a tense environment regularly and, regularly as well, confirming that inmates were participating in programs from physical training to dealing with behavioral issues, and alternatives to violence in resolving issues.

Mr. Spencer's MPDQ required that he be on call round the clock; his duties placed him inside the boot camp facility directly with inmates; his office was inside the facility, too, although he was in the office minimally; and the programs he developed and oversaw related directly to the safety and rehabilitation of prisoners in the boot camp. He was directly responsible for boot camp security and safety. Most of all, the work Mr. Spencer performed in his boot camp position was "hands on," as was the work Mr. Mendonsa performed in his correctional facility supervisory positions.

Per the MPDQ's position summary for the boot camp's Deputy Administrator Position, Mr. Spencer was responsible for planning, developing and managing this facility, inmate classification and treatment, the protection of the public, and facility security; he was also responsible for developing prisoner programs, selecting boot camp personnel, the boot camp's community relations, and its support services. (*See* Finding 17.) The position summary stated that he was on call 24 hours a day, seven days a week to respond to "facility emergencies" and to "provide assistance to Shift Commanders." (*Id.*) In contrast, the MPDQ did not state that Mr. Spencer was on constant call to perform administrative duties the form listed, even though it categorized these as key areas of responsibility—overseeing vendor

service contracts that provided inmates with educational and substance abuse treatment; meeting with key management staff; managing, developing and supervising staff reporting to the boot camp administrator; reviewing aftercare programming with parole representatives; meeting with community representatives and municipal organizations; managing a budget of approximately 2.5 million dollars; and meeting with county sheriffs and top Department of Correction superintendents and administrators regarding facility operation issues. Significantly, Mr. Spencer was not on constant call to perform any of these duties. As a result, Mr. Spencer was not required to spend most of his time performing them. Instead, he was required to spend most of his time performing duties requiring that he communicate with and supervise boot camp inmates directly, and that he be able to do so at any time and all the time.

Mr. Spencer's testimony amplified credibly what his duty priorities were, and the degree to which performing them required that he have the custody, control and supervision of prisoners. As was true for Mr. Mendonsa, Mr. Spencer was on duty within the facility of which he was the Deputy Administrator and the Director of Security, He was required to remain aware and informed of conditions, actual and potential, within the barracks. Doing so required regular, daily, frequent and direct interaction with inmates. All of these factors are persuasive that Mr. Spencer's major duties required him to have the custody, control and supervision of prisoners, and that he could not have performed those duties effectively, and

could not have preserved security and safety within the boot camp facility successfully otherwise.

Specifically, per his credible testimony, Mr. Spencer performed his duties as Deputy Administrator/Director of Security of the correctional boot camp facility at the Bridgewater, Massachusetts Correctional Complex from inside the barracks of this paramilitary facility, starting at 5 a.m., when physical training began, as it did in the military. He stayed in the barracks all day, every day, and was directly involved with boot camp staff and inmates throughout each day. While on duty in the barracks, Mr. Spencer engaged in group dialogues with the inmates to get a better sense of their individual experiences in the facility, so he could better monitor the boot camp and maintain a “balance” for each inmate in what was a very tense paramilitary environment. Mr. Spencer’s office was also inside the facility, and access to it was controlled, but he spent little time in it, mostly because doing so was nearly impossible. He was expected to tour the facility often each day, maintaining a close relationship with inmates and staff, knowing what was occurring in the barracks, making sure that “things were under control,” making sure that the facility was clean and orderly (which also demonstrated that the staff were in charge), monitoring the barracks “climate” and maintaining a “positive culture” that was both positive and motivational; in short, he engaged in “management by walking around.” Mr., Spencer’s duties and the degree of his contact with inmates at the boot camp was similar to what they had been as director of

security at MCI Plymouth, but at the boot camp he was more involved with inmates and had to be, on account of the program's paramilitary environment and barracks design. (*See* Findings 11(b)-(e).)

Mr. Spencer's contact with the boot camp inmates was regular and constant, not occasional or infrequent. Mr. Spencer needed to be ready to perform it round the clock every day. His interaction with boot camp inmates was face-to-face, and required constant dialogue with and observation of the inmates, both individually and as a population within the barracks. Maximizing this interaction, and the prisoner supervision and administration it required, was essential to keeping a tense paramilitary correctional atmosphere safe, as well as successful for the inmates who elected this program as an alternative to the standard prison environment. As was the case in *Mendoza*, Mr. Spencer was "engaged in the care, custody, instruction or other supervision of prisoners during the performance of his own regular and major duties," so much so that this contact with prisoners "cannot be found to be ancillary" to his duties, merely incidental, or in the context of some greater administrative function." *See Mendoza*; Decision at 13.

Disposition

For the reasons stated above:

(1) So much of the Board's decision as treated Mr. Spencer's purchased military

service as having been made for retirement credit, but without being accorded enhanced treatment as adding to the years of Mr. Spencer's service in Groups 2 or 4, is *affirmed*; and

(2) So much of the Board's decision as classified Mr. Spencer's service from September 5, 1993 to April 8, 1995 as Deputy Administrator/Director of Security of the Bridgewater Correctional Complex Boot Camp in Group 1 for retirement purposes is *reversed*, and the Board is instructed to recalculate Mr. Spencer's retirement benefit by reclassifying his boot camp service in Group 2.

SO ORDERED.

Notice of Appeal Rights

This is the Final Decision of the Division of Administrative Law Appeals (DALA) in this matter. It may be appealed to the Contributory Retirement Appeal Board (CRAB) no later than fifteen (15) days following the date of the DALA Decision.

M.G.L. c. 32, § 16(4) provides in pertinent part that a retirement appeal decision such as this Decision:

shall be final and binding upon the board involved and upon all other parties, and shall be complied with by such board and by such parties, unless within *fifteen days* after such decision, (1) either party objects to such decision, in writing, to the contributory retirement appeal board, or (2) the contributory retirement appeal board orders, in writing, that said board shall review such decision

(Emphasis added.)

A party objecting to this Decision shall mail specific objections to Uyen M. Tran, Esq., Assistant Attorney General, Chair, Contributory Retirement Appeal Board, Office of Attorney General, One Ashburton Place, 18th floor, Boston, MA 02108. Copies must be sent to the Division of Administrative Law Appeals, 14 Summer St., 4th floor, Malden, MA 02148, and to the other party or parties involved in the case.

Proceedings before CRAB are governed by CRAB Standing Orders, which may be found at: <https://www.mass.gov/how-to/file-a-public-employment-retirement-appeal>. Pursuant to CRAB Standing Order 2008-1, para. 4.a(2), the notice of appeal must include (a) the date of this DALA Decision; (b) a copy of the DALA Decision; and (c) a statement of the part or parts of the DALA Decision to which objection is made.

The notice of objection must be postmarked or delivered in hand to CRAB no later than fifteen days following the date of the DALA decision. Electronic submissions do not satisfy this filing requirement.

Pursuant to CRAB Standing Order 2008-1, paragraph 4.a(3), within forty days following the date of the DALA decision, the appellant (the party who filed the Notice of Objection to the DALA Decision) must supplement the Notice of Objection by filing with the Chair of CRAB three copies each, and by serving on each other party one copy, of:

(a) All exhibits admitted into evidence before DALA, numbered as they were numbered on admission;

(b) A memorandum of no more than twenty pages containing a clear and

precise statement of the relief sought and the findings of fact, if any, and legal conclusions to which objection is made, together with a clear and precise statement of the particular facts, with exact references to the record, and authorities specifically supporting each objection; and

(c) If CRAB's passing on an objection may require a review of oral proceedings before DALA, the transcript of the relevant portion of those proceedings.

Do not send any such supplementary materials or exhibits to DALA. Failure to follow CRAB's procedures could lead to sanctions, including dismissal of the appeal.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/ Mark L. Silverstein

Mark L. Silverstein
Administrative Magistrate

Dated: May 27, 2022