**Philip Tomaszewski,**

 Petitioner

 v.

**State Board of Retirement,**

 Respondent

Docket No. CR-16-431

Dated: December 20, 2019

**Appearance for the Petitioner:**

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**Appearance for the Respondent:**

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State Board of Retirement

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**Administrative Magistrate:**

**Kristin M. Palace, Esq.**

**Summary of Decision**

The Petitioner, Philip Tomaszewski, a member of the State retirement system and a Campus Police Officer I retired from the Worcester Recovery Center and Hospital, is entitled to classification in Retirement Group 2 because his regular and major duties involved the “care, custody, instruction or other supervision of persons who are mentally ill.” M.G.L. c. 32, § 3(2)(g).

**Decision**

Philip Tomaszewski, the Petitioner in this matter, appeals the State Board of Retirement’s denial of his application to change his retirement group classification from Group 1 to Group 2. On August 13, 2019, I conducted a hearing at the Division of Administrative Law Appeals’ offices at 14 Summer Street, Malden, Massachusetts. The hearing was recorded digitally. I admitted a total of 40 exhibits into the record, marked as Exhibits A through Z, AA through HH, and 1 through 8. There were two witnesses at the hearing, Mr. Tomaszewski and Mr. Lloyd Ha, a former colleague of Mr. Tomaszewski. After the hearing, the parties obtained a written transcript of the proceedings and submitted it at the time they submitted their post-hearing briefs. The record closed on November 22, 2019.

Findings of Fact

Based on the documentary and testimonial evidence, reasonable inferences drawn therefrom, and my assessment of the witnesses’ credibility, I make the following findings of fact:

1. Philip Tomaszewski was employed for more than 20 years by the Commonwealth of Massachusetts as a Campus Police Officer I at the Worcester Recovery Center and Hospital, formerly known as Worcester State Hospital. (Testimony of Petitioner, Exhibit 2.)
2. Petitioner is a member of the State Retirement System. (Exhibit 2.)
3. In 2016, Petitioner requested that the State Board of Retirement (the “Board”) reclassify his position from Group 1 to Group 2. The Board denied his request by letter dated August 30, 2016 and advised Petitioner of his right to appeal. Petitioner filed a timely request for a hearing with the Division of Administrative Law Appeals. Petitioner also contemporaneously requested reconsideration of the Board’s decision. While his appeal was pending and in connection with the request for reconsideration, Petitioner submitted a Group Classification Questionnaire to the Board dated June 30, 2017.[[1]](#footnote-1) The Board again denied reclassification on October 3, 2017. The reconsideration decision did not include notice of any appeal rights. (Exhibits 2, 3, 4, 5, 6.)
4. The Worcester Recovery Center and Hospital (“WRCH”) is a facility run by the Commonwealth’s Department of Mental Health. Patients are admitted to WRCH because they are suffering from, or believed to be suffering from, mental illness. Some suffer from drug addiction. A significant percentage of the patients, more than 50%, are court-involved. Some of the patients have been committed to the facility by the court, others are there voluntarily for treatment of mental illness. The facility houses both adolescents and adults. Some of the patients are violent. (Testimony of Petitioner.)
5. As a Campus Police Officer I, Petitioner’s job duties included photographing, “wanding” (i.e., using a search wand to detect metal objects), and otherwise searching patients during admission and escorting them to their units; restraining patients with handcuffs when required; assisting with room searches by remaining with the patient while staff searched the patient’s room for contraband (smoking materials, alcohol, weapons) and occasionally searching the patient’s person; walking through the units; responding to staff calls for assistance with calming and quieting unruly patients or restoring order when violence occurred; escorting and transporting patients to hospitals when medical treatment was needed; providing first aid to patients in emergencies; guarding patients while they were in the emergency room or after they had been admitted to the hospital; escorting and transporting patients to electroshock therapy appointments and dentist appointments; escorting and transporting patients to court appointments outside WRCH; escorting patients to the “in-house” court; searching for patients who were absent without permission from the facility; monitoring and “wanding” or otherwise searching visitors to the facility; assisting with patient complaints; patrolling the exterior grounds of WRCH; responding to motor vehicle accidents on the WRCH grounds; conducting traffic stops; removing trespassers from the grounds; attending roll call; filling out reports; and directing his team to various duties. (Testimony of Petitioner; Testimony of Ha; Exhibits 2, A through Z, AA through EE, GG, HH.)
6. Petitioner was the senior officer on duty on his shift. As such, he directed where his fellow officers would report at the beginning of the shift. He was not responsible for performance evaluations, buying supplies, or attending regular meetings with shift commanders or with the chief of operations. His supervisory responsibilities were light; paperwork took no more than 30 minutes per shift. (Testimony of Petitioner.)
7. Petitioner worked the 11 p.m. to 7 a.m. shift. There were typically three men on duty during that shift. Overtime was frequently required. Officers were required to stay and complete whatever duty they were performing if they were not relieved by another officer. Petitioner worked 20 to 30 hours of overtime per month. (Testimony of Petitioner, Testimony of Ha.)
8. Petitioner’s first priority during his shift was performing walk-throughs of the units. He and other officers were supposed to perform a minimum of two walk-throughs each shift, but usually they did not have time to complete this duty. During the walk-throughs, they would speak with the patients and try to build a rapport with them. Although he tried to have two officers perform the walk-through together, often this was impossible because of a lack of staffing or the press of other duties. When units had patients who were known to be violent, more frequent walk-throughs were required. (Testimony of Petitioner, Exhibits B, E.)
9. Room searches for contraband were common during Petitioner’s shift, frequently occurring at least twice per night, sometimes more. During a room search, Petitioner would take the patient outside his room and stay with him while staff conducted the search. He would ask the patient to consent to a search of his person, and would search the patient if consent was given. Room searches took approximately 30 minutes to complete. (Testimony of Petitioner, Testimony of Ha, Exhibit O.)
10. Petitioner was also called frequently to the units to assist the staff in calming down or quelling a patient. These calls could range from a couple per week to three or four in a night. Violence was not uncommon, and calming a violent patient took time, often as much as a half hour and sometimes much longer. (Testimony of Petitioner; Testimony of Ha; Exhibits E, Q, Z.)
11. Patients were transported to UMass Medical Center by Campus Police Officers (CPOs) approximately 10 to 15 times each month. It was typical for a CPO during Petitioner’s shift to transport a patient once or twice a week. Mental Health Workers would typically accompany the patient and the CPO to the hospital, and would stay only until a patient was admitted. In contrast, a CPO was required to stay with the patient to keep the patient and others safe as long as the patient remained in the hospital. CPOs were required to guard patients in the hospital 24 hours a day, seven days a week. If Petitioner transported a patient near the end of his shift, he was required to stay with the patient until he was relieved by another officer. If a patient was admitted, officers would serve two to four hour shifts guarding the patient, staying in the patient’s room and maintaining constant observation. Petitioner typically served shifts guarding patients at the hospital 10 to 15 times each month. (Testimony of Petitioner; Testimony of Ha; Exhibits R, S, V, HH.)
12. Most patient admissions to WRCH took place during the last half hour of Petitioner’s regular shift, although emergency admissions could take place during the night as well. Petitioner usually processed three to five regular admissions daily during the latter part of his shift. During these admissions he would be responsible for searching and/or “wanding” the patient and his belongings, taking custody of valuables, photographing the patient, and escorting the patient to the unit. Admissions typically took 15 minutes to one-half hour each, and Petitioner would stay until they were complete if his relief did not arrive. (Testimony of Petitioner; Exhibits A, B.)
13. Petitioner transported patients to electroshock treatments approximately once per week. These appointments were scheduled for 5:30 a.m. and 6:30 a.m. Mental health workers were sometimes, but not always, present for these appointments. Petitioner was required to remain with the patient. (Testimony of Petitioner, Exhibit P.)
14. Petitioner transported patients to dentist appointments approximately once each week. Typically, CPOs took more than one patient at a time. Petitioner was present in the exam room with the patient or right outside the door during any dental work in order to ensure everyone’s safety. If a mental health worker was present, which was not always possible because of staffing constraints, the mental health worker waited in the waiting room. (Testimony of Petitioner, Exhibit P.)
15. Once or twice a week, Petitioner would escort patients to a courtroom inside the WRCH facility. He would stay for the entire proceeding. There was no bailiff or other security officer present. A mental health worker was sometimes, but not always, present. (Testimony of Petitioner, Testimony of Ha.)
16. Once or twice a month, Petitioner would escort patients to an appointment at a court outside of the WRCH facility. This occurred when the CPOs at WRCH were short-staffed and Petitioner had to stay and do overtime. Petitioner would remain with the patient during that time. Mental health workers were sometimes, but not always, present. (Testimony of Petitioner, Testimony of Ha.)
17. Although patrolling the outside grounds was part of Petitioner’s job duties, many nights he was unable to do this because of other required duties. If he had time, he would patrol the grounds, and doing so could take one to two hours. He would also enforce traffic rules on the grounds, and he conducted about one traffic stop each week. CPOs did not have the authority to issue traffic tickets at WRCH. Occasionally he was called upon to remove trespassers from the grounds. (Testimony of Petitioner, Testimony of Ha.)

Discussion and Order

Under M.G.L. c. 32, § 3(2)(g), members of the Massachusetts contributory retirement system are classified into four groups for retirement purposes. Groups 1 and 2 are relevant to this case.[[2]](#footnote-2) Most state employees fall into Group 1 which includes “[o]fficials and general employees including clerical, administrative and technical workers, laborers, mechanics and all others not otherwise classified.” Group 2 is comprised of a collection of job categories, including certain types of police, fire, and safety workers. Group 2 also includes employees “whose regular and major duties require them to have the care, custody, instruction or other supervision of persons who are mentally ill.” Group 2 provides employees with more advantageous retirement benefits than does Group 1.

Petitioner seeks here to have his position reclassified from Group 1 to Group 2. As the Petitioner, he carries the burden of proof in this proceeding. *Hill v. State Bd. of Retirement,* Docket No. CR-07-605, Decision at 11 (Div. of Admin. L. App., June 12, 2009). In order to prevail, Petitioner must establish either that his job title is among those listed in Group 2 or that his “regular and major duties” included taking care of, having custody of, instructing, or supervising persons who were mentally ill. M.G.L. c. 32, § 3(2)(g). Petitioner does not seek classification in Group 2 by virtue of his job title. Rather, he claims inclusion under the theory that his regular and major job duties included “the care, custody, instruction, or other supervision of” mentally ill persons. *Id.*  Accordingly, he was required to prove those facts by a preponderance of the evidence.

Group classification is based on consideration of what an employee’s job responsibilities were at the time of his retirement. *Maddocks v. Contributory Retirement Appeals Bd.,* 340 N.E. 2d. 503 (1976). Petitioner testified that in the last several years of his employment the majority of his job involved caring for, having custody of, or supervising the mentally ill patients at WRCH. Petitioner explained that during a typical work day he would perform at least one walk through of all the units, spending time speaking with patients and building rapport with them, an important task in minimizing violence. Room searches were frequent and would occupy an hour or more each night, during which time the Petitioner would stand with the patient, engage him in conversation, and otherwise keep him occupied and safe. Calls to calm or quell violent patients were also frequent, ranging from a few each week to several per shift. It took time to restore equilibrium, with each incident requiring 30 minutes or more of Petitioner’s shift. Requests to transport patients for medical care were also common and were particularly time intensive as CPOs were required to stay with the patients for the entirety of the appointment or the hospital admission. Less frequent, but still regular, duties included accompanying patients to court appointments and searching for patients who were missing.

The documentary evidence supports Petitioner’s description of his duties. Petitioner submitted multiple emails from his supervisor reminding Campus Police Officers of their responsibilities to properly and thoroughly process, photograph, and search patients at admission; properly escort patients to their assigned units, including using restraints when necessary; protect patients from potentially threatening visitors; conduct frequent unit walk-throughs; remain vigilant concerning certain patients prone to violence; properly transport patients to medical facilities; administer first aid to patients when needed; calm behaviorally disruptive patients; search patients for contraband; remain with patients at medical clinic appointments; maintain constant observation of patients admitted to medical facilities; and assist with handling complaints from patients. The training manual for Campus Police Officers and other policy documents include procedures for properly carrying out the duties listed above.

The Board argues that while Petitioner may have had some duties involving patients, these were not his regular and major duties, or, in the alternative, that Petitioner failed to carry his burden of proving this point. While it is true that Petitioner’s job description places duties which do not involve direct contact with patients – patrolling the grounds, enforcing motor vehicle laws on campus – in an order of greater prominence on the page than those which do, Petitioner credibly testified that the duty to address the needs and safety of the patients took precedence over other, less patient-focused duties. Indeed, in one email reminding his staff to visit certain units hourly, Petitioner’s supervisor relegates concerns about illegal parking and hazardous driving as issues to be addressed during shift changes. Petitioner’s and Officer Ha’s testimony and the documentary evidence established that while the types of activity and the hours spent on each activity varied day to day depending on the needs of WRCH, the majority of Petitioner’s time was patient-focused and involved ensuring the safety of the patients and preventing patients from harming others.

I reject the Board’s contention that unless I can determine precisely how many hours Petitioner spent patrolling the grounds on a weekly basis, I must conclude that Petitioner has failed to prove his case. It was Petitioner’s burden to establish, by a preponderance of the evidence, that his “regular and major duties” involved the “care, custody, instruction or other supervision of persons who are mentally ill.” The totality of the evidence supported Petitioner’s claim that the bulk of his time, i.e., more than 50%, was spent performing duties that involved the “care, custody, instruction or other supervision” of mentally ill patients. Petitioner has carried his burden. I conclude that Petitioner is entitled to Group 2 classification.

The decision of the Board is reversed.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

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Kristin M. Palace

Administrative Magistrate

1. It is unclear to me whether the 2017 group classification request form was the only one Petitioner submitted or whether it was an amendment to an earlier version submitted in 2016. Only the 2017 form appears in the record. [↑](#footnote-ref-1)
2. Group 3 includes certain members of the state police, and Group 4 is comprised of a number of specifically named positions whose duties are generally considered arduous or hazardous. *See, Paula v. State Bd. of Retirement,* Docket No. CR-13-335 (Div. of Admin. L. App., March 27, 2015). Petitioner does not claim that he should be included in either of these groups. [↑](#footnote-ref-2)