

COMMONWEALTH OF MASSACHUSETTS
CONTRIBUTORY RETIREMENT APPEAL BOARD

PHILLIP TOMASZEWSKI,

Petitioner-Appellee

v.

STATE BOARD OF RETIREMENT

Respondent-Appellant.

CR-16-431

DECISION

Respondent State Board of Retirement (SBR) appeals from a decision of an administrative magistrate of the Division of Administrative Law Appeals (DALA), reversing the SBR's decision denying petitioner Phillip Tomaszewski's request for Group 2 classification. DALA entered a decision on December 20, 2019. SBR timely appealed the magistrate's decision to CRAB on December 31, 2019.

After giving careful consideration of the evidence in the record and the arguments presented by the parties, we adopt the magistrate's findings of fact 1 - 17 as our own and incorporate the DALA decision by reference. We affirm the DALA decision for the reasons stated in the Decision and Order, adding the following comments.

Background

Mr. Tomaszewski began working as a Campus Police Officer 1 at the Worcester Recovery Center and Hospital ("WRCH"), formerly known as Worcester State Hospital, in Worcester, Massachusetts in 1991.¹ The WRCH is a facility operated by the Commonwealth's

¹ See Exhibit 2; Finding of Fact 1.

Department of Mental Health (DMH).² Patients are admitted to WRCH because they are suffering from or believed to be suffering from, mental illness, and some suffer from drug addiction.³ Some of the patients are committed to the facility by the court, and others voluntarily admit themselves for mental health treatment.⁴ The WRCH houses adolescents and adults. Some patients are reported to be violent.⁵

Mr. Tomaszewski's responsibilities at the WRCH included: photographing, wandering and searching patients during admissions; restraining patients when needed; assisting with room searches while staff conduct searches; occasionally searching patient's person; conducting walk-throughs; responding to staff calls for assistance; escorting and transporting patients to medical and dental appointments and for medical treatments; providing first aid to patients in emergencies; guarding patients while in emergency room after hospital admission; escorting and transporting patients to court appointments; escorting patients to "in-house" court; searching for absent patients from facilities; monitoring and wandering visitors at the facility; assisting patients with complaints; patrolling exterior grounds; responding to motor vehicle accidents on grounds; conducting traffic stops; removing trespassers from grounds; attending roll call; completing reports; and directing team to various duties.⁶ Mr. Tomaszewski worked the 11:00 pm to 7:00 am shift and was the senior officer during this shift. There were typically three officers on duty during the shift.⁷

On June 6, 2016, Mr. Tomaszewski submitted a Group Classification Application Form requesting Group 2 classification.⁸ He also submitted a classification narrative, stating that he spent ninety percent of his working time in the custody and care of WRCH inmates.⁹ On August 25, 2016, the State Board of Retirement (SBR) denied Mr. Tomaszewski's request for Group 2 classification.¹⁰ On September 12, 2017, Mr. Tomaszewski requested that SBR reconsider his

² See Exhibit 2; FF 4.

³ See Witness Testimony at 14; FF 4.

⁴ *Id.*

⁵ See Exhibits: E, I, J, K, L, S, T, Z, EE-FF; FF 4.

⁶ See Exhibit 2; FF 5; Petitioner Testimony; Ha Testimony; FF 5.

⁷ FF 6, 7; Petitioner Testimony; Ha Testimony; FF 6.

⁸ See Exhibit 2; FF 3.

⁹ See Exhibit 2.

¹⁰ See Exhibit 3; FF 3.

request for Group 2 classification.¹¹ Simultaneously, he appealed SBR's decision denying his request to the Contributory Retirement Appeal Board (CRAB).¹² On October 3, 2017, SBR denied Mr. Tomaszewski's request for reconsideration of his request for Group 2 classification.¹³

The magistrate concluded that Mr. Tomaszewski was entitled to Group 2 classification pursuant to G.L. c. 32, § 3(2)(g), because his regular and major job duties at the WRCH involved the "care, custody, instruction or other supervision of persons, who [were] mentally ill."¹⁴ SBR filed a timely appeal.

Discussion

This case involves G.L. c. 32, § 3(2)(g), which provides Group 2 classification for "employees of the commonwealth or of any county whose regular and major duties require them to have the care, custody, instruction or other supervision of persons who are mentally ill."¹⁵ The issue of whether employees performing the duties of a Campus Police Officer are classified in Group 2 for retirement purposes have previously been considered by DALA.¹⁶ While there is a reliance on an employee's title and job description in determining group classification, *Gaw v. Contributory Retirement Appeal Bd.*, 4 Mass. App. Ct. 250 (1986), we also consider the

¹¹ See Exhibit 4; FF 3.

¹² See DALA decision FN 1; FF 3

¹³ See Exhibit 5; FF 3.

¹⁴ See DALA Decision at 10.

¹⁵ M.G.L. c. 32, §3(2)(g).

¹⁶ See *Madden v. State Bd. of Retirement*, CR-95-21 (DALA 1995)(Group 2 classification allowed for Campus Police Officer at Taunton State Police, where his duties required the power of arrest and protecting property and persons at facility, and where he served as Court officer to assist the Judicial system); *Melling v. State Bd. of Retirement*, CR-95-231 (DALA 1996)(Group 2 classification allowed for Campus Police Officer at MA Mental Health Center who worked 6 out an 8 hour workday engaged in the care, custody, instruction and supervision of patients); *Messina v. State Bd. of Retirement*, CR-05-352 (DALA 2005)(Campus Police Officer at Worcester State Hospital allowed Group 2 classification where employee regularly patrolled Star unit where patients were present and transported patients to off campus appointments); *contra Sykes v. State Bd. of Retirement*, CR-01-1029 (DALA 2002)(Group 2 classification denied for Campus Police Officer II at Taunton State Hospital, where the majority of his job duties were administrative and supervisory); *Lima v. State Bd. of Retirement*, CR-09-1069 (DALA 2012)(Group 2 classification denied for Campus Police Officer I at Taunton State Hospital, where contact with patients were incidental and ancillary to his regular duties of providing security to the facility rather than for persons); *Ward v. State Bd. of Retirement*, CR-01-1092 (DALA 2003)(Group 2 classification denied for Campus Police Officer at Lemuel Shattuck Hospital).

employee's job responsibilities at the time of retirement. *Maddocks v. Contributory Retirement Appeals Bd.*, 369 Mass. 488, 494 (1976). CRAB has held that Group 2 classification is proper where the employee spent more than half of the time engaged in "the care, custody, instruction or other supervision" of a Group 2 population. *See Currie v. State Bd. of Retirement*, CR-10-461 (CRAB)(Fabric Worker II working at Monson Developmental Center supervised residents 22.5 hours of 37.5 while residents worked in laundry was properly classified in Group 2).

Here, the DALA magistrate concluded that the substantial evidence in the record supports that Mr. Tomaszewski's regular and major duties involved the "care, custody, instruction or other supervision of persons who are mentally ill."¹⁷ SBR disagreed with the magistrate's decision. Specifically, it contends that Mr. Tomaszewski's regular and major duties did not require him to have "the care, custody, instruction or other supervision of mentally ill persons." Alternatively, SBR asserts that Mr. Tomaszewski failed to meet his burden of proving that he spent more than half his time engaged in "the care, custody, instruction or other supervision of mentally ill persons."¹⁸ In so arguing, SBR states that the testimonies of the witnesses were inconsistent, vague, and unsupported by the substantial evidence in the record and therefore, were not reliable to support Group 2 classification. We address these arguments below.

Whether the patients at WRCH was a Group 2 population is not at issue. What is at issue is whether Mr. Tomaszewski's regular and major duties entailed "the care, custody, instruction or other supervision" of mentally ill persons. SBR contends that while some of his duties involved patients, his regular and major duties were less-patient focused. SBR also argues that even though some of Mr. Tomaszewski's duties required him to be in the presence of patients at the WRCH, his regular and major duties did not entail "the care, custody, , instruction or other supervision" of patients at that facility. Rather, those duties were ancillary to the less-patient focused duties.¹⁹ Specifically, SBR notes that Mr. Tomaszewski's role as a Campus Police Officer required him to perform at least one walk through of all the units, speaking with the patients, frequent patient room searches, frequent calls to calm or quell the patients, and transport patients for medical care or court appearances.²⁰ However, during these duties, SBR contends the

¹⁷ M.G.L. c. 32, §3(2)(g).

¹⁸ See SBR Notice of Objections and Memorandum in Support of Objections.

¹⁹ SBR Memo P. 12.

²⁰ *Id.* at 8.

patients were actually in the custody or care of another person, like a doctor, dentist, or judge.²¹ Accordingly, SBR claims that Mr. Tomaszewski's regular and major duties did not encompass "the care, custody, instruction or other supervision" of mentally ill patients at the WRCH.

In concluding that the evidence demonstrated Mr. Tomaszewski's duties required him to have the care, custody, instruction, or other supervision of persons who are mentally ill pursuant to M.G.L. c. 32, §3(2)(g),²² the magistrate credited the testimonies of Mr. Tomaszewski and Mr. Ha.²³ Specifically, she determined that, while his job description listed duties that did not involve patients, Mr. Tomaszewski credibly testified that the duties involving the needs and safety of patients surpassed the less-patient focused duties. In so deciding, she also considered the email exchanges and the training manual for Campus Police Officers.²⁴ We incorporate her discussion at page 9 in the DALA decision. The magistrate found compelling the testimonies of Mr. Tomaszewski and Mr. Ha, explaining that the testimonies regarding the nature of their work as Campus Police Officers at WRCH were supported by the email exchanges and job description.²⁵ Here, the evidence reflects that Mr. Tomaszewski, and the other Campus Police Officers at WRCH, were responsible for processing and searching patients at admission, protecting patients from potentially dangerous visitors, conducting frequent walk throughs of the patient's units, remaining vigilant concerning patients prone to violence, properly transporting patients to medical facilities, administering first aid to patients when needed, calming behaviorally disruptive patients, searching patients for contraband, remaining with patients at medical appointments, maintaining constant observation of patients admitted to medical facilities, and assisting with handling complaints from patients.²⁶ Accordingly, we find the magistrate's decision reasonable and supported by the substantial evidence in the record. When the magistrate makes findings that rest on the resolution of credibility questions, we give "substantial deference" to the magistrate's decision. *See Vinal v. Contributory Retirement Appeal Bd.*, 13 Mass. App. Ct. 85, 101 (1982).

²¹ SBR Memo P 15.

²² *Id.* at 9.

²³ DALA Decision P. 8.

²⁴ Ex. B, E, O, Q, Z, AA-DD; FF 8-16.

²⁵ DALA Decision PP. 1-2, 9.

²⁶ *Id.*

To the extent that Mr. Tomaszewski's regular and major duties entailed the care, custody, instruction or other supervision of patients at WRCH, SBR asserts that he failed to meet his burden that he spent more than half his time providing care, custody, instruction or supervision of mentally ill patients, and in particular during his walk throughs, room searches, calming or quelling patients, transporting patients to UMass Medical, conducting patient intakes, escorting patients to the WRCH in-house court, and patrolling the grounds.²⁷ SBR argues that while the magistrate determined that "the bulk" of Mr. Tomaszewski's time was spent performing these duties, the amount of time spent engaged in these duties could not be defined from the testimonies of Mr. Tomaszewski and Mr. Ha because they were inconsistent, vague, and unsupported by the evidence. Thus, SBR urges that their testimonies could not be relied on to support the magistrate's decision.²⁸

Here, we defer to the magistrate who found the testimony of Mr. Tomaszewski and Mr. Ha credible and supported by the record evidence.²⁹ The magistrate ultimately found, considering all the evidence in the record, that while the Campus Police Officer's duties and the hours spent on the duties varied from day to day depending on the needs of the WRCH, the majority of Mr. Tomaszewski's time was patient focused and involved the safety of the patients and preventing patients from harming others.³⁰ The magistrate was not convinced that she had to specify the amount of time to arrive at this conclusion. Instead, as discussed above, she concluded from the record as a whole that Mr. Tomaszewski spent more than 50% of his time engaged in "the care, custody, instruction or other supervision" of mentally ill patients at WRCH.³¹ Given the deference afforded to the magistrate's credibility and substantive findings pursuant to *Vinal*, we find no reason to reverse her decision.

Conclusion

Mr. Tomaszewski's regular and major duties involved "the care, custody, instruction, or other supervision" of a Group 2 population. Accordingly, he is entitled to Group 2 classification

²⁷ See SBR Appeals Memo PP. 3-12.

²⁸ See *Id.* Specifically SBR Memo PP. 11-12, 16.

²⁹ DALA Decision PP. 9-10. See *Vinal* at 101.

³⁰ *Id.*

³¹ *Maddocks*, 369 Mass. at 495-497 (job description, as well as testimony, constituted substantial evidence to support group classification).

for his service with the Worcester Recovery Center and Hospital. The DALA decision is affirmed. *Affirm.*

SO ORDERED.

CONTRIBUTORY RETIREMENT APPEAL BOARD

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