COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. Division of Administrative Law Appeals

 One Congress Street, 11th Floor

 Boston, MA 02114

**MICHAEL O’BRIEN**, (617) 626-7200

 *Petitioner* Fax: (617) 626-7220

 **www.mass.gov/dala**

*v.* Docket No: CR-14-721

**STATE BOARD OF RETIREMENT,** Date: March 25, 2016

 *Respondent*

**Appearance for Petitioner**:

Michael O'Brien

55 Moran Street

North Attleboro, MA 02760

**Appearance for Respondent**:

Salvatore Coco, Esq.

State Board of Retirement

One Winter Street, 8th Floor

Boston, MA 02108

**Administrative Magistrate**:

Angela McConney Scheepers, Esq.

**SUMMARY OF DECISION**

 A Mental Retardation Specialist Supervisor spent most of his shift providing direct care to mentally ill patients, entitling him to classification in Group 2. The State Retirement Board’s denial of his application to reclassify him in Group 2 is reversed.

**DECISION**

 The petitioner, Michael O’Brien, appeals the denial by the State Board of Retirement (Board) to reclassify his February 16, 1986 to March 6, 1993 employment service from Group 1 to Group 2.

This hearing was held at the Division of Administrative Law Appeals (DALA) on February 24, 2016. The hearing was digitally recorded. I marked Mr. OBrien’s Pre-Hearing Memorandum “A” for identification. I marked the Board’s Pre-Hearing Memorandum “B” for identification. I admitted Exhibits 1 – 10 into evidence. Mr. O’Brien testified on his own behalf.

The Board called no witnesses. The parties presented oral closing arguments.

**FINDINGS OF FACT**

Based on the documents admitted into evidence and the testimony presented at the hearing, I make the following findings of fact:

1. From December 28, 1980 until March 6, 1993, Mr. O’Brien worked for the Department of Mental Retardation (DMR)[[1]](#footnote-1)at the Wrentham Development Center (WDC), a facility that covered 100 acres. He performed work in the Developmental Service Worker series. (Exhibits 1, 2, 4-11.)
2. Mr. O’Brien holds an Associate’s Degree. He received training on the job and also attended in-service training in order to improve/enhance skills. (Exhibits 5 and 13; Testimony of O’Brien.)
3. Mr. O’Brien worked as a Mental Retardation Assistant, the entry-level service job in this series, from December 28, 1980 until July 11, 1981. (Exhibits 2 and 6.)[[2]](#footnote-2)
4. Mr. O’Brien worked as a Mental Retardation Technician, the second-level service job in this series, from July 12, 1981 until June 26, 1982. (Exhibits 2 and 6.)[[3]](#footnote-3)
5. Mr. O’Brien worked as a Mental Retardation Specialist, the first-level supervisory job in this series, from June 27, 1982 until February 15, 1986. (Exhibits 2 and 6.)[[4]](#footnote-4)
6. On February 16, 1986, Mr. O’Brien was promoted to Mental Retardation Specialist Supervisor, the second-level supervisory job in this series. He remained in that position until he left DDS. (Exhibits 2, 6 and 14.)
7. According to the May 1996 Massachusetts Department of Personnel Administration Classification Specification, examples of duties common to all levels in the Developmental Service Worker series included:
8. Provides programmatic direct care services in daily living/social skills by instructing and /or assisting all individuals, irrespective of clinical diagnosis or level of difficulty, in: eating, bathing, toileting, dressing, clothing maintenance, self preservation, manners and norms, to ensure the human rights of the individual are met.
9. Assists in the implementation of habilitative, behavioral, and recreational programs, by: integrating the Individual Support Plan (ISP) objectives into the individual’s daily schedule; providing information, based on observation, regarding an individual’s behavior, needs, desires, or problems; making recommendations concerning the individual and his/her ISP; attends the individual’s review meetings, and participates as a member of the Interdisciplinary Team.
10. Performs program-related housekeeping/maintenance duties to support the individual’s needs, including, but not limited to: cleaning rooms (including bathrooms – while adhering to established sanitary measures), making beds, emptying trash, cleaning stoves, laundry, carpets, changing light bulbs, completing preventive maintenance safety checklist based on visual inspection of wheelchairs and other specialized adaptive equipment, washing wheelchairs and maintaining Activities of Daily Living (ADL) supplies.
11. Documents, maintains, and reviews confidential individual records, which may include: daily reports, log notes of behavior information and treatment of individuals, communication book, annual reviews, evaluations, progress notes, and all other documents, as required.
12. Performs program-related food shopping/cooking duties to support the individual’s needs, such as preparing and assisting individuals to prepare lunches to be taken to day program sites, meals and snacks.
13. Transports and accompanies individuals as need to day programs, religious services, doctor’s appointments, recreational activities, shopping for personal item (clothing, music, family gifts, etc.) and all other activities and appointment/treatment areas, and may assist professional or medical staff in providing services to individuals; transports specialized equipment to vendors for repairs.
14. *Performs crisis intervention in emergency situations when necessary; duties may include, but are not limited to: contacting on-call services, arranging for hospitalization, assisting in the evacuation of individuals from home/program site in the event of a fire or a fire drill.*
15. Provides and participates in leisure activities for individuals.
16. Interacts with individuals and families of individuals in a positive, respectful, responsive, and open manner.
17. Maintains accountability for individual’s funds that are distributed for recreational/shopping activities, and provides the receipts and/or other pertinent information; purchases and/or picks up needed household/individual supplies, individual’s records and information, etc.; and records purchases.
18. Maintains individual’s rights by complying with the Department of Mental Retardation, local, state, and federal regulations which include advocating and promoting dignity and respect, protecting the rights of each individual, and providing individuals opportunities to exercise their rights; reports all incidences of abuse, neglect, or mistreatment to the supervisor and the Disabled Persons Protection Commission (DPPC), and completes all related paperwork.
19. Performs miscellaneous support duties, such as relaying information regarding appointments, health status, changes in order, behavior, diet, etc., and distributes supplies (e.g. toothbrushes, clothing, etc.) to individuals, and performs other related duties as required, which are reasonably necessary to ensure that proper communication and support exists at the program site.

(Exhibit 6.) (Emphasis added.)

1. The Classification Specification provided for differences between levels in the series:

Mental Retardation Worker II:

Incumbents of this positions at this level and higher also:

1. Monitor MRW Is to ensure that they are acting as advocates, and demonstrating respect and positive regard for individuals with mental retardation.
2. Ensure that approved policies, procedures and services are provided throughout tour of duty.

Mental Retardation Worker III:

Incumbents of this positions at this level and higher also:

1. Present programs to staff and are responsible to monitor the performance of staff in program implementation.
2. Ensure adequate staff coverage for all shifts.
3. Communicate to appropriate staff regarding maintenance of residence/living environment, including making arrangements for minor household maintenance.
4. Interview staff and make recommendations to supervisor and/or unit administration.

Mental Retardation Worker IV:

Incumbents of this positions at this level and higher also:

1. Identify training needs of subordinate staff.
2. Maintain attendance records of subordinate staff.
3. Monitor the performance of subordinate staff.
4. Hire, counsel, and make recommendations re: disciplinary action to unit administration.
5. Seek additional clinical assistance and input, directly or through the Service Coordinator, QMRP, or other appropriate staff.

(Exhibit 6.)

1. The Classification Specification provided for supervision received:

Mental Retardation Worker I:

Incumbents of positions at this level receive direct supervision from Mental Retardation Workers or other employees of higher grade who provide training or instruction, assign work and review performance for effectiveness.

Mental Retardation Worker II:

Incumbents of positions at this level receive direct supervision from Mental Retardation Workers or other employees of higher grade who provide training or instruction, assign work and review performance for effectiveness.

Mental Retardation Worker III:

Incumbents of positions at this level receive general supervision from Mental Retardation Workers or other employees of higher grade who provide guidance on policy and procedure, assign work and review performance for effectiveness.

Mental Retardation Worker IV:

Incumbents of positions at this level receive general supervision from administrative or other employees of higher grade who provide policy guidance, assign work and review performance for effectiveness.

 (Exhibit 6.)

1. The Classification Specification provided for supervision exercised:

Mental Retardation Worker I:

None.

Mental Retardation Worker II:

Incumbents of positions at this level may exercise functional supervision (i.e. over certain but not all activities on a temporary basis) in role as shift supervisor/working supervisor over, assists, in assigning work to, and reviewing the performance of 1-8 personnel of lower grade.

Mental Retardation Worker III:

Incumbents of positions at this level exercise direct supervision (i.e. not through an intermediate level supervisor) over, assign work to, and review the performance of 1-35 service personnel of lower grade.

Mental Retardation Worker IV:

Incumbents of positions at this level exercise direct supervision (i.e. not through an intermediate level supervisor) over, assign work to, and review the performance of 5-35 service personnel of lower grade, and indirect supervision (i.e. though an intermediate level supervisor) over 35-75 service personnel of lower grade.

 (Exhibit 6.)

1. According to the Detailed Statement of Duties and Responsibilities of the Form 30 for the position of Mental Retardation Worker IV, the incumbent’s primary duties were scheduling and supervisory duties. (Exhibit 5.)
2. The incumbent’s scheduling duties included the following:
3. Establishing and maintaining required coverage by (a) scheduling advanced creditable time; (b) booking sufficient staff to meet required FTEs and minimums, and (c) maintaining required coverage reports (including O.T. reports, Nursing coverage, census, etc.), to comply with regulations and contribute to a cost effective operation.
4. Coordinates staff assignments and schedules by planning and overseeing (a) building and apartment assignments; (b) program assignments; (c) clinics; (d) inservices, and; (e) meetings; to maximize staff utilization and continuity of client care.
5. Coordinates clients’ daily schedules by (a) scheduling clients for clinics; (b) coordinating transporting of clients, and (c) insuring client/staff participation in scheduled free time activities; to insure provision of needed services and opportunities.

(Exhibit 5.)

1. The incumbent’s supervisory duties included the following:
2. Directly supervising MRWs III by (a) giving direction and providing feedback on performance; (b) meeting regularly or as needed, and; (c) facilitating conflict resolution regarding staff, work assignments, client care and programs; to insure the occurrence of consistent, effective on site supervision of staff and client care.
3. Participating in performance appraisal by (a) setting supervisory performance standards; (b) conducting performance planning session, mid-year review and annual performance evaluation for MRWs III; (c) reviewing evaluations of MRWs II done by MRWs III; (d) analyzing and intervening in performance problems, and; (e) filling out attendance section for direct care evaluations; to insure MRWs I, II and III understanding of expectations standards, and areas needing improvement.
4. Indirectly supervising MRWs III, II and I staff by (a) conveying and discussion Wrentham and Unit policies with all staff, (b) demonstrating working knowledge of union contract agreements; (c) demonstrating working knowledge of State and Federal regulations; (d) coordinating the flow of information concerning residential, clinical, maintenance and support service issues; (e) coordinating staff activities in emergencies and crisis situation, and; (f) identifying staff training needs/provision for supervisory training; to help assure information sharing and effective and consistent implementation of regs, collective bargaining agreements, policies and procedures.
5. Monitoring client care by a) visiting buildings and /or apartments daily to insure proper client care, b) visiting program sites, c) supporting implementation of client programs, and d) filling out client 1:1 reports to assist in assuring compliance with established techniques, systems, programs and practices.

(Exhibit 5.)

1. According to the Form 30, the incumbent also had Personnel responsibilities and participated in the hiring process, assisted in promotional review and selection and assisted with attendance monitoring. The incumbent was also responsible for unit attendance at meetings in order to represent the Unit in the planning and development of services and information exchange. The incumbent was responsible for the Unit’s records and documentation, including but not limited to, the sign-in log, posting of notices, maintenance logs, employee accident and injury logs, building census books and daily log book, and the maintenance of time logs to ensure accurate recording and communication of data. (Exhibit 5.)
2. Mr. O’Brien worked the second shift, 2:45 p.m. to 11:15 p.m., in the WDC’s Unit 4. He was responsible for one hundred and twenty mentally ill or mentally defective individuals spread over seven individual buildings. Mr. O’Brien supervised three MRWs III directly; thirty other staff members reported to him indirectly. (Testimony of O’Brien.)
3. Although the Form 30 and the Classification Specification list supervisory duties, during his seven years and twenty-two days as a Mental Retardation Specialist Supervisor, Mr. O’Brien continued to provide direct care during recreational activities and in the residential setting. During a typical eight-hour shift, Mr. O’Brien spent 75% of his time providing direct care to mentally ill patients. (Exhibit 11; Testimony of O’Brien.)
4. When Mr. O’Brien arrived on his shift at 2:45 p.m., he worked on the coverage for the evening shift, moving staff around to ensure adequate coverage. At 3:15 p.m., he worked on other administrative duties until 3:45 p.m. On evenings without disturbances, at 3:45 p.m., Mr. O’Brien would go over to the school building where three programs (usually the residents doing piecework) would be taking place. In the residence halls, the residents would participate in leisurely activities. From 4:30 p.m. until 5:00 p.m., the residents got ready for dinner. At dinner time at 5:00 p.m., two staff members were responsible for feeding eight to nine individuals. Mr. O’Brien also assisted in feeding individuals. At 6:00 p.m., staff were free to eat. At 7:00 p.m., Mr. O’Brien assisted staff in getting ready to go to other parts of the large campus to lead leisurely activities. At 9:00 p.m., Mr. O’Brien returned to the residential buildings to help get residents ready for bed. At 10:00 p.m., Mr. O’Brien returned to his office to review the staffing for the third shift. (Testimony of O’Brien.)
5. As the Mental Retardation Specialist Supervisor, Mr. O’Brien was responsible for grounds-wide crisis coverage. He responded to behavioral crises with the residents, which involved physical intervention with assaultive individuals. These crises occurred at least three days per week and lasted for several hours, sometimes for the entire shift. Some weeks, a crisis occurred every day. Mr. O’Brien was twice recognized for his crisis management: on February 6, 1988 by the Assistant Unit Director, Mark D’Arcangelo, and on June 12, 1992 by the assistant superintendents and superintendent of the then-Wrentham State School. (Exhibit 11.)
6. In Mr. O’Brien’s FY ’89 EPRS, Mr. Parslow wrote, “... emergencies and crises are handled in an efficient & timely fashion to maximize safety and avoid injuries.” (Exhibit 9.)
7. On or about August 20, 2014, Mr. O’Brien completed Group Classification Questionnaires for his service as a Mental Retardation Assistant, Mental Retardation Technician, Mental Retardation Specialist and Mental Retardation Specialist Supervisor, in order to be reclassified from Group 1 to Group 2. (Exhibit 4.)
8. On October 30, 2014, the Board approved Mr. O’Brien’s application for reclassification from Group 1 to Group 2 for his work as a Mental Retardation Assistant, Mental Retardation Technician and Mental Retardation Specialist. (Exhibit 2; Testimony of O’Brien.)
9. On October 30, 2014, the Board denied Mr. O’Brien’s application to be reclassified from Group 1 to Group 2 for his work as a Mental Retardation Specialist Supervisor. (Exhibit 1; Testimony of O’Brien.)
10. On November 13, 2014, Mr. O’Brien filed an appeal at DALA. (Exhibit 3; Testimony of O’Brien.)

**CONCLUSION AND ORDER**

 For retirement purposes, employees are classified in Groups 1 to 4. Mr. O’Brien seeks to reclassify his service for his work as a Mental Retardation Specialist Supervisor from Group 1, which comprises general employees who are not otherwise in other groups, to Group 2, which includes employees

… whose regular and major duties require them to have the care, custody, instruction or other supervision of…persons who are mentally ill…

G.L. c. 32, § 3(2)(g).

 Mr. O’Brien testified credibly that he spent 75% of a typical eight-hour shift directly caring for mentally ill patients. No witness or document contradicted him. Thus, he has proved his case by a preponderance of the evidence, *i.e.*, that it was more likely than not. *Sargent v. Massachusetts Accident Co.*, 307 Mass. 246, 250 (1940).

 The Board argues that Mr. O’Brien was more of a supervisor of other personnel than a provider of direct care to mentally ill persons. However, the Board accepted that Mr. O’Brien provided direct care services in his immediate preceding position of Mental Retardation Specialist, the first-level supervisory position in the Developmental Service Worker series.[[5]](#footnote-5) It is true that Mr. O’Brien increased his supervisory responsibilities when he was promoted to the position of Mental Retardation Technician and Mental Retardation Specialist in 1986. (Exhibits 5, 6, 9 and 10.) Nonetheless, his “regular and major duties” were to care for mentally ill persons. G.L. c. 32, § 3(2)(g). Therefore, he should be in Group 2.

 The SRB’s decision is reversed. It will reclassify Mr. O’Brien in Group 2.

 DIVISION OF ADMINISTRATIVE LAW APPEALS

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 Angela McConney Scheepers

 Administrative Magistrate

Dated:

1. Now known as the Department of Developmental Services (DDS). [↑](#footnote-ref-1)
2. The Massachusetts Department of Personnel Administration Classification Specification, dated May 1996, listed this job title as Mental Retardation Worker I. (Exhibit 6.) [↑](#footnote-ref-2)
3. The Massachusetts Department of Personnel Administration Classification Specification, dated May 1996, listed this job title as Mental Retardation Worker II. (Exhibit 6.) [↑](#footnote-ref-3)
4. The Massachusetts Department of Personnel Administration Classification Specification, dated May 1996, listed this job title as Mental Retardation Worker III. (Exhibit 6.) [↑](#footnote-ref-4)
5. That position assigned the incumbent the responsibility for monitoring the performance of staff in program implementation. (Exhibit 6.) [↑](#footnote-ref-5)