

# A Public Employee Case Study: Oliver Payne

Commonwealth of Massachusetts  
Public Employee Retirement Administration Commission

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***Commonwealth of Massachusetts***

**Public Employee Retirement Administration Commission**

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Mr. Oliver Payne (a fictitious character) lives with his wife and two grown children in Mexico, Massachusetts. Mr. Payne served in the Air Force in Vietnam and was honorably discharged in 1975. Mr. Payne's mother is still living at 82. His father died at age 60 from a heart attack as a result of coronary artery disease. Mr. Payne has four siblings. He has an older brother and two younger brothers, all have been diagnosed with hypertension. He has one sister who is in good health.

▷ *Reference: M.G.L. c. 32, § 94*

Impairment of health caused by hypertension or heart disease, resulting in disability or death of paid fire or police department member; presumption.

▷ *Reference: 840 CMR 10.04 (3)*

In making the finding required by 840 CMR 10.04 (1)(c) the retirement board shall apply the following presumptions. (a) The retirement board shall presume that any condition of impairment of health caused by hypertension or heart disease resulting in total or partial disability or death to a member as described in M.G. L. c. 32, § 94 was suffered in the line of duty unless the contrary is shown by competent evidence.

Mr. Payne came to the retirement board with a completed Physician's Statement and a narrative report from Dr. Kindness dated June 30, 2007. The statement submitted to PERAC along with the Request for Appointment of a Regional Medical Panel gives the following information:

▷ *Reference: 840 CMR 10.06 (1)*

Voluntary Retirement. Any member in service who becomes totally and permanently unable to perform the essential duties of his or her job under the circumstances described in M.G.L. c. 32, § 6 (relating to ordinary disability) or § 7 (relating to accidental disability) may file an application for retirement. Every member-applicant shall also file:...(b) A certificate from a licensed medical doctor.

Mr. Payne is 58 years old. He has worked as a firefighter since 1978. He injured his back on January 20, 2001 while fighting a fire during a snow storm. In an effort to assist one of his fellow fire fighters, he fell over a snow bank and twisted his left knee. Although he was experiencing pain, Mr. Payne continued to work until February 10, 2001. He came for an examination of his knee injury on February 15, 2001. The physician ordered x-rays of his knee which were reviewed.

▷ *Reference: Disability Retirement: Frequently Asked Questions*

If a member has an accident on the job, or is exposed to a health hazard, it is critically important that notice of injury is filed with the retirement board, in addition to the notice filed with the employer...The notice of injury serves as the official record...

While Mr. Payne's medical history was being taken, he referenced several other work incidents. He stated that in the course of his work activities, he injured his neck, right shoulder, and left hand. Because of ongoing complaints of joint and muscle pain, he was diagnosed with fibromyalgia and referred to Dr. Hake for pain management.

▷ *Reference: M.G.L. c. 32, § 7*

...personal injury sustained or hazard undergone as a result of, and while in the performance of his duties at some definite place and at some definite time on or after the date of his becoming a member..."

M.G.L. c. 32, § 6 (3)(b)

...the medical panel shall consist of three physicians, who shall not be associated physicians, and who shall be selected for the purpose of examining the member whose retirement is under consideration and shall, so far as practicable, be skilled in the particular branch of medicine or surgery involved in the case."

In addition, the medical history revealed that Dr. McKee performed a total left knee replacement on March 15, 2002. Mr. Payne stated that most days his knee is pain free. However; he has difficulty with standing for long periods and needs to rest after walking short distances.

▷ *Reference: 840 CMR 10.06 (1)(g)*

Authorizations on such other form as may be required by a person, institution or other agency having custody of the member's records, for release of medical or insurance records relating to the member as follows:

1. records of the member's personal physicians and of the physician submitting the certificate described in 840 CMR 10.06 (1)(b);
2. records of all physicians or medical institutions examining or treating the member for the condition or personal injury upon which the application is based;
3. records of all physical examinations performed within the five year period prior to the application or, if none are available for that period, the most recent;
4. the member's workers' compensation records or, if applicable, any records in connection with application for or receipt of benefits pursuant to M.G.L. c. 41, § 111F;
5. the member's medical records for the last five years;
6. the accident or claim reports for the last five years of any insurer in connection with the personal injury sustained or the hazard undergone upon which the application is based;...

Mr. Payne presented with complaints of back, right shoulder, left knee, left hand, and neck pain. In June of 2000, as part of a routine physical examination, he was also diagnosed with hypertension. On June 24, 2002 he was evaluated for chronic obstructive pulmonary disease. He is now using an Albuterol inhaler as needed. Medical history also revealed that Mr. Payne had a history of cigarette use, smoking one pack per day until quitting in 1998.

▷ *Reference: 840 CMR 10.04 Standard for Decision, Findings of Fact. (1)*

No retirement for ordinary or accidental disability shall be allowed unless the retirement board, based on substantial evidence, makes findings of the facts upon which it relied in making its decision. The board must find that:

- a. The member is unable to perform the essential duties of his position; and
- b. The inability is likely to be permanent; and
- c. If the application is for accidental disability retirement, that the incapacity is the natural and proximate result of a personal injury sustained or hazard undergone while in the performance of the member's duties at some definite place and some definite time without serious and willful misconduct on the member's part;...

In the physician's opinion, Oliver Payne is permanently disabled from performing the duties of a firefighter. As a result of his condition, Mr. Payne would be unable to ambulate on uneven ground and wet surfaces as there would be a high risk for re-injuring his compromised left knee. The potential for smoke inhalation could aggravate his chronic obstructive pulmonary disease, (COPD) putting himself and other firefighters at risk for injury. The physician found that his condition is permanent and was caused by the January 20, 2001 incident at work.

▷ *Reference: M.G.L. c. 32, § 7*

... any member in service....who is unable to perform the essential duties of his job and that such inability is likely to be permanent by reason of a personal injury sustained or a hazard undergone as a result of and while in the performance of his duties at some definite place and at some definite time on or after the date of his becoming a member ...

Mr. Payne came to the retirement board requesting an Application for Accidental Disability Retirement. He also brought a bill from Dr. Kindness for \$650.00 for completing the Physician's Statement and providing a two page narrative report.

▷ *Reference: 840 CMR 10.06 Proceedings for Ordinary or Accidental Disability Retirement; Additional Information*

Proceedings for ordinary or accidental disability retirement may be brought by filing an application with the retirement board and with the employer. The application shall consist of the forms prescribed by 840 CMR 10.06, and shall be considered filed as of the date upon which the applicant completes and submits all the required forms to the retirement board. If the retirement board or the Commission believes any part of the application contains false, fictitious or fraudulent information, the board or the Commission shall notify the Attorney General or the appropriate district attorney

▷ *Reference: Disability Retirement: Frequently asked Questions*

The retirement board will ask the personal physician to complete a form and to provide a written report that contains a diagnosis of the condition, and information about the member's medical treatment and history. The physician will be asked to assess the member's ability to perform the essential duties of his/her job, and to discuss whether or not the disability is likely to be permanent. Please note that if the member chooses to do so, the member may personally convey the form to his/her physician. The board will request copies of the records from the other physician, hospitals, and insurance companies that the member has identified in the application.

▷ *Reference: 840 CMR. 10.02 Purpose of Standard Rules Retirement Board Policy*

The purpose of 840 CMR 10.00 is to establish uniform standards and procedures to be applied by retirement boards in ordinary and accidental disability retirement proceedings and procedures under M.G.L. c. 32, §§ 6, 7, 8 and 91A. It shall be the policy of the retirement board to make every reasonable effort to assist retirement system members to exercise all rights and obtain all benefits to which entitled and as authorized by the laws governing ordinary and accidental disability retirement, while protecting the retirement system and the public against claims and payments for disability retirement not authorized by law.

The board submitted a request for regional medical panel for the knee injury to PERAC. They completed the Request for a Regional Medical Panel with the list of treating physicians. They enclosed the required Physician's Statement Pertaining to a Member's Application for Disability Retirement, and the physician's report that supported the medical basis for his conclusion. They also enclosed the Regional Medical Panel Selection form with Mr. Payne's choice for his panel.

▷ *Reference: 840 CMR 10.08 Medical Panel, Formation and Instruction to Panel*

(1) Except as provided in 840 CME 10.09, upon receiving an application for disability retirement, the retirement board shall petition the Commission to schedule a medical examination of the member by a regional medical panel....

(4) Such regional medical panel shall meet within 60 days after appointment by the Commission to conduct its examination. If the panel fails to meet within 60 days, the Commission shall require the three physicians to conduct such examinations separately. If the commission determines that it is unlikely the medical panel will be able to meet within 60 days, the Commission may, with the written consent of the member, authorize separate examinations.

PERAC reviewed the information and called the retirement board to confirm which type of panel was being requested. The board indicated that the member would obtain information about his other possibly disabling conditions; however, they were requesting an orthopedic panel at this time. As indicated on the Regional Medical Panel Selection form signed by Mr. Payne, PERAC scheduled a joint orthopedic examination to evaluate his application for the knee injury.

▷ *Reference: 840 CMR 10.10 Examination by Medical Panel*

(1) Notice: In proceedings for disability retirement the Commission shall give all parties at least 14 days notice of the medical panel examination. An applicant may waive his or her right to 14 days notice by filing a written waiver with the Commission. Examinations shall be held at a reasonable convenient time and place for all parties.

(3) Medical Tests: The medical panel may suggest any "non-invasive" medical test which the panel considers necessary to render an opinion of the member's medical condition. The Commission shall assume the cost of any non-invasive test suggested by the medical panel up to an amount that the Commission shall determine annually. This annual determination will be communicated to all retirement boards during the month of January. No test the cost of which exceeds the annual amount determined by the Commission shall be ordered or required by the medical panel without the advance approval of the Commission.

(4) Representation: At the election of the member and employer respectively, the member's physician and employer's physician, may be present and may answer questions from the panel during the decision making process of the panel.

Notification letters were sent regarding the examination. Mr. Payne attended the examination with his wife and attorney. Mr. Payne brought his x-rays with him. The medical panel doctors told the member they wanted updated x-rays of the knee.

Mr. Payne called the retirement board to complain about the brevity of the exam; he thought the doctors did not give him enough time to explain his other numerous medical problems. He was also concerned as to how he was going to obtain new x-rays and questioned who would pay for them. The retirement board referred Mr. Payne to PERAC. Mr. Payne called PERAC and offered his perceptions about the evaluation. The PERAC Case Manager discussed the Disability Unit's Quality Assurance Program. Mr. Payne was asked to send a letter concerning his experience and to complete the PERAC Medical Examination Questionnaire that was mailed to his home. Mr. Payne did write to his Case Manager regarding his experience with the medical panel physi-

cians. PERAC sent the letter to the examining physicians. They responded and their response was sent to Mr. Payne and his retirement board. A copy was also retained in the PERAC vendor (physician) file.

The medical panel physicians contacted PERAC and requested that the member provide his discharge summary from Healing Hands Hospital. They also asked that he provide updated x-rays. PERAC sent a memo to the board, with a copy to Mr. Payne, advising that the physicians now require the member's discharge summary and updated x-rays. Mr. Payne may elect to pay the cost of his medical records. However, if the member is unable to incur this cost, it becomes the responsibility of the retirement board. The cost of providing the updated x-rays are assumed by PERAC in accordance with the scheduled PERAC medical fee rate. Mr. Payne chose to submit the requested medical information and the new x-rays to PERAC. The information was forwarded on to the medical panel physicians for review.

The medical panel submitted the completed certificate and narrative report to PERAC. PERAC reviewed the report for completion and sent the certificate and narrative to the retirement board five days later. When the report was first received, it was subjected to PERAC's quality assurance (QA) review. The PERAC Case Manager examined the report to determine if the start and end time of the examination was provided; whether all parties who attended the examination were documented in the report; if the physicians received a copy of the member's job description and if the job description was reviewed. The medical panel physicians answered yes to all certificate questions and commented on each in the narrative report. The certificate and reports were sent to the retirement board for review.

### **Questions for Consideration:**

- Are all the injuries related to the one incident or were there multiple incident dates and/or series of exposures?

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- Does the board have a complete listing of all physicians who treated the member for all related injuries/exposures?

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- In this case study, the member has numerous medical diagnoses. The Physician's Statement and narrative report only address the orthopedic injury. Should the board obtain information regarding the other conditions, or just proceed with the orthopedic injury claim?

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- What would be needed for a cardiology or pulmonary panel to be convened for Mr. Payne since, as a fire-fighter, he would be entitled to the heart and lung presumptions?

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- The pulmonary diagnosis was determined after the applicant stopped working. Does this impact his eligibility to apply?

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- The treating physician addresses Mr. Payne's numerous cardiac and pulmonary risk factors. How do these risk factors impact his eligibility for the presumption(s)?

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- How does the board handle the request for payment for Mr. Payne's Physician Statement and narrative report?

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- How does the retirement board handle the request for payment of provision of medical records?

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