COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. Division of Administrative Law Appeals

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**CHARLES ALIANO**, Docket No: CR-13-284 *Petitioner*

Date Issued: July 13, 2018

*v.*

**SOMERVILLE RETIREMENT BOARD**,

 *Respondent*

**Appearance for Petitioner:**

Ron St. Pierre, Esq.

1 Merrimac Street, Suite 20

Newburyport, MA 01950

**Appearance for Respondent:**

Francis X. Wright, Jr.

City Solicitor

City of Somerville

93 Highland Avenue

Somerville, MA 02143

**Administrative Magistrate:**

Angela McConney Scheepers, Esq.

**SUMMARY**

The medical panel neither lacked pertinent facts nor employed an erroneous standard in issuing the negative certificate. The Somerville Retirement Board’s decision to deny Charles Aliano’s application for accidental disability retirement benefits is affirmed.

**DECISION**

Pursuant to G.L. c. 32, § 16(4), Petitioner, Charles Aliano, appealed the April 25, 2013 decision of the Somerville Retirement Board (Board), denying his application for accidental disability retirement benefits. Mr. Aliano’s appeal was timely.

On July 23, 2014, Mr. Aliano filed a motion to expedite hearing. On July 23, 2014, the Division of Administrative Law Appeal (DALA) allowed the motion, and issued a First Pre-Hearing Order, directing that Mr. Aliano file a Pre-Hearing Memorandum containing a statement of relevant facts, witness list, exhibits and a summary of legal issues by August 23, 2014. The Order also directed that the Board submit a Pre-Hearing Memorandum in response to Mr. Aliano’s statement, a witness list, exhibits and a summary of the legal issues by September 23, 2014.

On March 10, 2015, the parties informed the administrative magistrate that they had agreed to jointly request that a new medical panel be convened. The administrative magistrate ordered the parties to submit a joint status report by July 10, 2015, informing DALA of the convening of the panel and the withdrawal of the appeal. On July 8, 2015, the parties informed the administrative magistrate that they were unable to agree to all of the terms of requesting a new medical panel, and requested a hearing date.

 DALA scheduled a hearing for November 9, 2016. The parties then informed this administrative magistrate that they wished to submit their respective cases on the documents and waived the hearing. 801 C.M.R. 1.01(10)(c).

On November 9, 2016, Mr. Aliano submitted a supplemental Pre-Hearing Memorandum, in which he asserted that the Board had erred by relying on the medical panel’s erroneous certificate. He proposed the following findings of fact:

1. The Petitioner sustained a neck and back injury when he fell down stairs at work on 10/5/1999 which led to increasing pain and neurological issues.
2. As a result of the pain and neurological issues, the Petitioner has been unable to perform the essential duties of his job since 10/3/2011.
3. The opinions of the medical panel examiners are inadequate, as the examiners misstated several key facts.
4. The matter should be remanded for the petitioner to be examined by a new medical panel to cure the inadequacies in the current medical panel opinions.

I marked Mr. Aliano’s Pre-Hearing Memorandum and supplemental memorandum “A” for identification. I marked the Board’s Pre-Hearing Memorandum “B” for identification.

Both parties submitted Post-Hearing Briefs on December 19, 2016. Mr. Aliano faxed DALA on June 5, 2018, inquiring about the status of his matter, whereupon the administrative record closed.

I entered the following exhibits into evidence:

Exhibit 1: Operative Note regarding Petitioner’s Cervical Laminectomy at St. Elizabeth’s Medical Center, 6/17/1998;

Exhibit 2: Occupational Injury Report, 10/5/1999;

Exhibit 3: Letters by Dr. David Weinberg, 11/3/1999, 4/5/2000; 6/8/2000, 5/22/2012, 10/31/2012, 4/5/2013, 8/2/2013, 8/7/2014;

Exhibit 4: MRI Report, 3/ 28/2000;

Exhibit 5: Operative Note regarding Petitioner’s Lumbar Decompression, 10/3/2011;

Exhibit 6: Medical Report by Dr. Weinberg, 12/12/2011.

Exhibit 7: Letters by Dr. Epstein, 3/13/2012 and 7/11/2012;

Exhibit 8: Disability Report by Dr. Weinberg, 3/5/2012;

Exhibit 9: Fitness for Duty evaluation by Dr. Stefanos Kales at Cambridge Health Alliance, 6/19/2012;

Exhibit 10: Involuntary Retirement Application for Ordinary Disability Retirement, with Description of Petitioner’s job duties, 8/15/2012;

Exhibit 11: Order of Payment §34 and §35, 9/13/2012;

Exhibit 12: Treating Physician’s Statement by Dr. David Epstein, 12/3/2012;

Exhibit 13: PERAC Medical Panel evaluation, 3/5/2013;

Exhibit 14: Letter from Petitioner’s then counsel to Respondent addressing perceived inadequacies present in the Medical Panel’s report, 4/5/2013;

Exhibit 15: Notice of Retirement Board Action on Disability Retirement Application, 5/ 8/2013;

Exhibit 16: Letter from PERAC approving Respondent’s actions, 6/ 26/2013;

Exhibit 17: Dr. Weinberg medical report, 8/ 2/2013;

Exhibit 18: Agreement for Redeeming Liability by Lump Sum, 5/ 27/2014;

Exhibit 19: Dr. Epstein progress notes, 7/17/2014, updated 7/ 23/2014; and

Exhibit 20: Mr. Aliano’s appeal to DALA, 5/21/2013.

**FINDINGS OF FACT**

Based on the evidence, I make the following findings of fact:

1. Petitioner, Charles Aliano was born in 1955, and was hired by the City of Somerville (City) on November 17, 1980. He served as the full-time supervisor of custodians and heating plants, Grade V, Building and Grounds Division. (Exhibits 9 and 10.)
2. The essential duties of the incumbent of the position included the following:
* Supervising, assigning, scheduling and inspecting the work of custodians and some senior custodians;
* Inspecting buildings and/or grounds for safety, security cleanliness, and fire hazards in order to determine need for repair;
* Maintaining, adjusting and performing preventive maintenance on the heating, ventilating and grounds;
* Opening and securing buildings;
* Setting up furniture and equipment;
* Replenishing restroom supplies, collecting and disposing of building trash;
* Sweeping, mopping, waxing and sealing floors;
* Maintaining carpet, washing walls, furniture and equipment;
* Cutting grass, raking leaves, shoveling snow and/or sand, salting building grounds, catch basins, overpasses, etc.;
* Operating or using hand tools and cleaning equipment;
* Supervising directly or indirectly one or more custodians, handymen, maintenance workers or laborers;
* Preparing work schedules and assigning work;
* Providing in-service training and training of personnel in operations of duties;
* Inspecting work and directing corrective action if needed;
* Disciplining building custodians;
* Regulating feed water treatment, oil conditions and specifications, boiler conditions and recommended repairs;
* Monitoring low water cut-off and safety valves;
* Submitting reports and operating data per boiler; heating system including piping and heaters.

(Exhibit 10.)

1. On May 11, 1998, Mr. Aliano began treating with neurologist David H. Weinberg, M.D. for cervical spine dysfunction secondary to significant degenerative cervical spondylosis.[[1]](#footnote-1) On June 17, 1998, Mr. Aliano underwent cervical decompression surgery, and gradually returned to normal activities. (Exhibits 1, 6, 9 and 17.)
2. Mr. Aliano’s returned to work with restrictions as imposed by Dr. Weinberg. His recovery was incomplete and still continuing on October 5, 1999. Mr. Aliano performed limited duty until his last day of work. (Exhibits 1, 6 and 9.)
3. On October 5, 1999, Mr. Aliano was performing heating work in the attic of City Hall, when he stepped on debris on the staircase. Mr. Aliano slipped sideways and backwards down three steps, and landed on his buttocks, low back and mid-back. (Exhibits 2 and 17.)
4. Mr. Aliano filed a Report of Occupational Injury on October 5, 1999, noting that he had sustained injury to his back, as well as his arms and legs. Mr. Aliano returned to work on limited duty. (Exhibit 2.)
5. On November 3, 1999, Dr. Weinberg examined Mr. Aliano, who complained of significant pain in the low back and right hip region and an increase in neck pain. Dr. Weinberg notes that, “[c]ervical spine and lumbar spine appearance is unchanged with a reduction in mobility in both, similar to previous exams.” Under “Impression,” Dr. Weinberg notes that:

Mr. Aliano presents with a complicated situation due to his significant cervical spine disease, his postoperative status and his lumbar spinal stenosis that has not been treated and I believe has been predominantly asymptomatic. He is clearly worse following his traumatic injury, *but most of the abnormalities are consistent with prior deficits (before surgical decompression)*. I believe all the worsening is myelopathic and the fact that it is slowly improving and that it involves predominantly sensory function supports a conservative, observational approach.

(Exhibit 3.) (Emphasis added.)

1. On March 28, 2000, Petitioner underwent a cervical magnetic resonance imaging study (MRI). Dr. Weinberg reviewed the MRI, and observed moderate spinal stenosis[[2]](#footnote-2) below the site of the cervical decompression surgery, with a disc herniation as a component and a mild left C7 root compression. (Exhibits 3 and 4.)
2. On June 8, 2000, Dr. Weinberg noted significant improvement in Mr. Aliano’s neck and left arm due to physical therapy. However, the patient was not back to his original baseline preceding the October 5, 1999 work-related incident. Later, Mr. Aliano self-discontinued the prescribed physical therapy regimen because of the rising costs of co-payments and because he believed that he had reached a plateau in his recovery. (Exhibits 3 and 9.)
3. On October 3, 2011 the Petitioner underwent a lumbar laminectomy[[3]](#footnote-3) due to L2-L3 progressive stenosis and neurogenic claudication,[[4]](#footnote-4) and stayed in the hospital until October 6, 2011. After the operation, Mr. Aliano never returned to work.[[5]](#footnote-5) (Exhibits 3, 5, 7-9.)
4. On December 12, 2011, Dr. Weinberg wrote a medical report regarding Petitioner’s injuries, stating that:

Mr. Aliano reported to me on May 11, 1998 for problems relating to cervical spine dysfunction secondary to degenerative cervical spondylosis. He was markedly improved following decompressive surgery in June of 1998. He gradually returned . . . to work and many normal activities. His improvement was incomplete but still continuing when he had an industrial accident on October 5, 1999 resulting in a fall that caused direct trauma to his back and neck. This injury was predominantly responsible for the patient’s significant subsequent deterioration and disability with severe cervical myelopathy. The industrial accident on October 5, 1999 is therefore responsible for the patient’s major exacerbation of his pre-existing cervical spine disease. It is more likely than not responsible for the major portion of his current neurologic disability.

(Exhibit 6.)

1. On March 5, 2012, Dr. Weinberg wrote a disability report stating that:

Mr. Aliano has a severe and permanent disability from his cervical spinal cord injury. Because of it, he is unable to return to work as a Department of Public Works supervisor. The industrial accident on October 5, 1999 was the major event responsible for the spinal cord injury and the subsequent permanent disability.

(Exhibit 8.)

1. On March 13, 2012 and July 11, 2012, David Epstein, M.D. wrote letters for Mr. Aliano excusing him from work due to the October 5, 1999 injury and the ensuing inability to work. Dr. Epstein noted that upon a detailed review of Mr. Aliano’s medical records “dating back to 1998, the work injury that occurred in October 1999 is a major cause of his current disability and inability to work.” Mr. Aliano never returned to work. (Exhibit 7.)
2. Dr. Weinberg noted on May 22, 2012, that Mr. Aliano had significant functional impairments persisting from both the cervical myelopathy and in the right L5 nerve root injury, but that “the combination of surgical decompression reducing pain, improvements in the right foot strength and his reduced weight have improved his walking.” Dr. Weinberg encouraged Mr. Aliano to increase his exercise level and lose more weight, but to be careful of excessive activities and “to be particularly careful climbing stairs, crossing curbs or walking on uneven ground. He should not consider stepping onto a stool or ladder or other activities that would put him at risk for falling injuries.” (Exhibit 3.)
3. On June 12, 2012, Stefanos N. Kales, M.D. of Cambridge Health Alliance Division of Occupational and Environmental Medicine (CHA), evaluated Mr. Aliano for a fitness for duty evaluation. Mr. Aliano did not bring his medical records to the examination, and declined to sign a medical release form so that CHA could receive them directly. Mr. Aliano narrated that he was unsteady on uneven ground, and admitted that he had fallen just the day before. Due to the lack of medical records, Dr. Kales was unable to verify Mr. Aliano’s self-reported medical diagnosis and treatment. However, he found that he was morbidly obese and was in no apparent distress. Based on the information provided and the physical exam, Dr. Kales concludes that:

Even with the limited information we were able to obtain during the evaluation, there are several concerns regarding Mr. Aliano’s current fitness to perform all the tasks described in his job description. ...

Certainly based on limited mobility and morbid obesity, he is unable to safely climb ladders and unlikely to be able to safely perform tasks requiring greater than mild exertion. Additionally, based on his physical examination that revealed morbid obesity and increased neck circumference, Mr. Aliano is at high risk of having untreated sleep apnea, which places him at increased risk of a driving accident.

(Exhibit 9.)

1. The City filed an Involuntary Ordinary Disability application[[6]](#footnote-6) on behalf of Mr. Aliano on August 15, 2012, stating, “Mr. Aliano presently cannot be certified to return to work in a functioning capacity. There is no indication if he can return at all.” (Exhibit 10.)
2. Pursuant to G.L. c. 32, § 6(3), PERAC convened a regional medical panel comprised of Mark S. Lebovits, M.D., a pain management specialist; and neurologists Judy Fine-Edelstein, M.D. and Arthur P. Safran, M.D. (Exhibit 13.)
3. The panel physicians reviewed Mr. Aliano’s job description and medical records from St. Elizabeth Medical Center, the Cambridge Health Alliance, clinical summaries and progress notes from Dr. Weinberg and Dr. Novak, previous IMEs, and correspondence from the Board. At the March 5, 2013 examination, Mr. Aliano complained of restriction due to the ongoing pain, and an unsteady gait with a right foot drop that is alleviated by use of a cane. (Exhibit 13.)
4. The panel diagnosed Mr. Aliano with cervical and lumbar stenosis and spondylosis, confirmed by an MRI that showed extensive degenerative change throughout the lumbar spine. The panel found that Mr. Aliano had undergone:

... a series of falls down steps ... one just prior to a cervical laminectomy which was performed in 1999. Following the laminectomy in question, he returned to work, had low back pain which both preceded and followed the surgical procedure, and he fell down the stairs again on October 5, 1999.

(Exhibit 13.)

1. The panel unanimously answered in the affirmative on questions 1 and 2, finding that Mr. Aliano was disabled and thus incapable of performing the essential duties of his job as described in the current job description. (Exhibit 13.)
2. The panel found that there was substantial risk of re-injury, given Mr. Aliano’s unsteadiness. The panel unanimously denied causation by answering in the negative on question 3, finding that said incapacity was not such as might be the natural and proximate result of the personal injury sustained or hazard undergone on account of which retirement is claimed. (Exhibit 13.)
3. The medical panel concluded, with regards to causation, that:

The long duration of low back pain, the absence of definitive neurologic impairment prior to surgery, the known degenerative changes in the lumbar spine prior to the accident in question, and the previous trauma, are all reasonable precipitants of his low back syndrome. While there is no question that there is impairment from this, the trauma of his later fall is not a percipient or cause. He worked for many years after the fall, and continued to have back pain which both preceded and continued after the injury. There is no evidence in the record that the fall worsened the underlying lumbar condition.

(Exhibit 13.)

1. In an April 5, 2013 letter to the Board, Mr. Aliano’s then-counsel requested a new medical panel alleging that the panel physicians failed to adequately review the medical records, leading to a March 5, 2013 report containing numerous errors. Counsel noted that the report erroneously stated that Mr. Aliano suffered a fall before the 1999 cervical laminectomy, and that he had instead fallen after a 1998 cervical laminectomy. Counsel asserted that Mr. Aliano was recovering well from the surgery when the fall worsened his condition. Counsel also noted that the report stated that Mr. Aliano had begun using a cane following his 2011 lumbar surgery. In fact, he had been using a cane for four to five years before the surgery. Counsel also noted that the report did not address Mr. Aliano’s cervical issues. (Exhibit 14.)
2. Mr. Aliano and his then-counsel attended the March 27, 2013 meeting of the Board, requesting a new medical panel on the grounds that the report was inadequate. (Exhibit 14.)
3. On April 25, 2013, the Board denied Mr. Aliano’s application for accidental disability retirement benefits. In a May 8, 2013 Notice of Retirement Board Action, the Board stated, “Medical panel results; approved an ordinary disability; denied accidental.” PERAC approved the award of ordinary disability retirement benefits on June 26, 2013. (Exhibits 15 and 16.)
4. On May 21, 2013, Mr. Aliano filed a timely appeal at DALA. (Exhibit 20.)

*Workers’ Compensation Claim*

1. Mr. Aliano applied for workers’ compensation disability benefits. In her September 13, 2012 Order of Payment, he received G.L. c. 152, §34 payments at the rate of $1,038.00 per week from October 3, 2011. He also received G.L. c. 152, § 35 payments from September 12, 2012 in the amount of $778.50 per week, plus medical benefits under the provisions of G.L. c. 152, § 30. In a May 27, 2014 Settlement Agreement, the City accepted liability limited to Mr. Aliano’s lumbar and cervical strain/sprains. (Exhibits 11 and 18.)

**CONCLUSION AND ORDER**

After reviewing the evidence presented in this case, I affirm the Board’s denial of Mr. Aliano’s claim for accidental disability benefits.

G.L. c. 32, § 7(1) expressly provides that accidental disability benefits may be granted only to an employee 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 hazard undergone as a result of, and while in the performance of, his duties at some definite place and at some definite time.”

A medical panel certificate answering in the affirmative to the questions of incapacity, permanence and causation is a condition precedent to granting an accidental disability retirement. *Quincy Ret. Bd. v. Contributory Ret. App. Bd*., 340 Mass. 56, 60 (1959); *see Campbell v. Contributory Ret. App. Bd.,* 17 Mass. App. Ct. 1018, 1019 (1984).

 The purpose of the medical panel examination and certificate is to “vest in the medical panel the responsibility for determining medical questions which are beyond the common knowledge and experience of the members of the local [retirement] board.” *Malden Ret. Bd*. *v. Contributory Ret. App. Bd.,* 1 Mass. App. Ct. 420 (1973); *Plante v. Lowell Ret. Bd*., Docket No. CR-05-3, Decision (Mass. Div. of Admin. Law App., Jan. 11, 2007). The medical panel, following an examination, must issue a certificate, first and foremost, regarding the applicant’s mental or physical incapacity to perform the essential duties of his job. G.L. c. 32, § 6(3)(a);[[7]](#footnote-7) *Malden Ret. Bd.*, 1 Mass. App. Ct. at 423 (1973). Once the regional medical panel issues a proper certificate, the local retirement board is bound by the panel’s conclusion when a majority of the physicians on the panel responds in the negative to any of the three questions presented. *Id*. at 423 n. 6. Furthermore, CRAB is bound by those findings unless the medical panel employed an erroneous medical standard in reaching its conclusions or lacked pertinent facts when it made its determination. *Id.* at 424.

 Although the medical panel certificate is not conclusive of the ultimate fact of causation, in this case, the medical panel (Drs. Fine-Edelstein, Safran and Lebovits) answered in the affirmative to the question of permanence. All three panel physicians reviewed the medical history of Mr. Aliano and the essential duties of his job description in making their determination whether he would be physically able to continue working.

A medical panel’s certificate responses can be overcome only upon proof that the panel lacked pertinent facts or employed an erroneous standard. *See Retirement Bd. of Revere v. Contributory Ret. App. Bd.*, 36 Mass. App. Ct. 99, 106 (1994). *See also Queenan v. Contributory Ret. App. Bd.*, No. 952109, 2001 WL 292410 (Mass. Sup. Ct., Feb. 21, 2001). The Petitioner does not have an opportunity to have a retrial of the medical facts of the case, where the panel applied proper procedures and correct principles of law. *See Kelley v. Contributory Ret. App. Bd.,* 341 Mass. 611, 617 (1961). The Panel members examined Mr. Aliano, and reviewed all the medical information provided to them. As such, the Panel properly carried out its obligation. *See* G.L. c. 32, §6(3)(a); *Noone v. Contributory Ret. App. Bd.,* 20 Mass. App. Ct. 634, 641 (1985).

Before the October 5, 1999 incident, Mr. Aliano had degenerative and significant cervical myelopathy and untreated lumbar spinal stenosis. A symptom of those diseases is unsteadiness and leg pain. Mr. Aliano continued to work for eleven years, and did not undergo surgery for the lumbar spinal stenosis until an October 3, 2011 lumbar laminectomy.

Although both Drs. Weinberg and Epstein concluded that Mr. Aliano’s cervical injury was a result of the October 5, 1999 incident, the panel concluded that the injury was not a result of the fall. The panel performed a physical evaluation and unanimously concluded that Mr. Aliano’s incapacity was due to a non-work related pre-existing condition. Mr. Aliano had a history of lower back pain, leading to a cervical decompression surgery in 1998, before the fall.

About a month after the fall, the medical records documented that Dr. Weinberg performed an examination and noted that Mr. Aliano presented “with a complicated situation due to his significant cervical spine disease, his postoperative status and his lumbar spinal stenosis that has not been treated and I believe has been predominantly asymptomatic. He is clearly worst following his traumatic injury, but most of the abnormalities are consistent with prior deficits (before surgical decompression).” Dr. Weinberg concluded that the October 1999 fall was “predominantly responsible” for Mr. Aliano’s “significant subsequent deterioration and disability with severe cervical myelopathy.” He opined that the work-related accident was responsible for Mr. Aliano’s major exacerbation of his pre-existing cervical spine disease.

However, the medical records indicate that after the October 5, 1999 fall, Mr. Aliano’s condition continued to improve and that he was performing the essential duties of his job until his lumbar laminectomy on October 3, 2011 – nearly twelve (12) years later. After the operation, Mr. Aliano did not return to work, and the City filed an Involuntary Disability Retirement Application.

Mr. Aliano underwent a fitness for duty evaluation on June 12, 2012. Dr. Kales did not have the complete medical records, but he was able to examine Mr. Aliano and get an oral history. Dr. Kales found that Mr. Aliano’s morbid obesity prevented him from performing the essential duties of his position, such as climbing ladders in order to inspect work, moving furniture, cleaning areas, stocking supplies and operating hand tools. Further, his morbid obesity and increased neck circumference revealed untreated sleep apnea, putting him at great risk of a driving accident. Dr. Kales believed that more information on Mr. Aliano’s diabetes and symptomatic hypoglycemia could increase the risk of sleep apnea even further.

Regardless of the conclusions of Mr. Aliano’s treating or examining physician, “[t]here is no requirement that the panel physicians agree with the opinions or findings of other clinicians.” *Turner v. State Bd. of Ret*., Docket No. CR- 06-27, Decision (Mass. Div. of Admin. Law App., Feb. 16, 2007) (finding that the panel did not employ an erroneous standard and the panel was not obligated to agree with the opinions of other physicians). “[T]he fact that another physician offered a contrary opinion … is not evidence of the use of an erroneous standard by the medical panel.” *Hickney v. State Bd. of Ret*., Docket No. CR-07-511, Decision (Mass. Div. of Admin. Law App., Mar. 19, 2009); s*ee Jenkins v. State Bd. of Ret*., Docket No. CR-06-222, Decision (Mass. Div. of Admin. Law App., May 25, 2007) (noting that “contrary opinions cannot take the place of the medical panel’s properly made assessment.”); *see Queenan, supra*, (“applicable law does not accord the opinions of treating physicians any higher evidentiary value nor are their opinions given presumptive weight in the determination by the panel”). *See also Stokes-de Salvo v. State Bd. of Ret.*, Docket No. CR-12-401, Decision (Mass. Div. of Admin. Law App., Jul. 29, 2016).

In this case, the panel included a reasoned explanation in its report, and did not disregard pertinent information in the materials. The panel report properly discussed Mr. Aliano’s medical issues, treatment and fitness for duty evaluation. The panel’s narrative detailed its physical examination, which resulted in a diagnosis of cervical and lumbar stenosis and spondylosis. The panel properly “considered the relationship between the nature of the disability and the employees’ job.” *See Fairbairn v. Contributory Ret. Appeal Bd*. 54 Mass. App. Ct. 353, 357-62; *Malloy v. Weymouth Ret. Bd.,* Docket No. CR-11-253, Decision (Mass. Div. of Admin. Law App., June 29, 2018).

Accordingly, the Somerville Board of Retirement’s denial of Charles Aliano’s application for accidental disability retirement is affirmed.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

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Angela McConney Scheepers, Esq.

Administrative Magistrate

Dated: July 13, 2018

1. Degeneration or deficient development of a portion of the vertebra, *Stedman’s Medical Dictionary*, (28th ed. 2006.) [↑](#footnote-ref-1)
2. A stricture of any canal or orifice, *Stedman’s Medical Dictionary*, (28th ed. 2006.) [↑](#footnote-ref-2)
3. Excision of a vertebral lamina, *Stedman’s Medical Dictionary*, (28th ed. 2006.) [↑](#footnote-ref-3)
4. Limping or walking with difficulty, usually intermittent, *Stedman’s Medical Dictionary*, (28th ed. 2006.) [↑](#footnote-ref-4)
5. The administrative record does not state Mr. Aliano’s last day of work. The date of the operation, October 3, 2011, was a Monday. It may be presumed that Mr. Aliano’s last day of work was the previous Friday, September 30, 2011. [↑](#footnote-ref-5)
6. Although the parties reference an application for disability retirement in the pleadings, there is no such application in the administrative record. [↑](#footnote-ref-6)
7. G.L. c. 32, § 7(1) and G.L. c. 32, § 6(3) “must be read together as a harmonious whole,” thereby inextricably linking the injury or hazard undergone in the performance of a job duty with the requirement that such injury be the proximate cause of the claimed disability. [↑](#footnote-ref-7)