COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. **Division of Administrative Law Appeals**

**Joseph Andrade**,

Petitioner

v. Docket No. CR-13-104

 Date: August 4, 2017

**State Board of Retirement**,

Respondent

**Appearance for Petitioner**:

 Ryan Benharris, Esq.

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 Fall River, MA 02720

**Appearance for Respondent**:

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**Administrative Magistrate**:

 James P. Rooney

 First Administrative Magistrate

**Summary of Decision**

 A corrections officer has proven by a preponderance of the evidence that he became permanently disabled as a result of a posttraumatic stress disorder caused by an incident while he was working. He is entitled to accidental disability retirement benefits and, consequently, the State Board of Retirement’s decision denying his application is reversed.

**DECISION**

 Joseph Andrade, who worked for the Massachusetts Department of Corrections as a corrections officer, appeals, under M.G.L. c. 32, § 16(4), from the denial by the State Board of Retirement of his application for accidental disability retirement. I held a hearing on July 21, 2016 at the Division of Administrative Law Appeals, One Congress Street, Boston, Massachusetts, which I digitally recorded. Mr. Andrade was the only witness. I admitted 12 documents into evidence at the hearing.

**Findings of Fact**

 Based on the testimony and exhibits presented at the hearing, and reasonable inferences from them, I make the following findings of fact:

1. Joseph Andrade (born 1964) was employed as a corrections officer at MCI-Cedar Junction beginning on October 31, 1999. The job description for a corrections officer states that all corrections officers must have the “ability to make decisions and act quickly in emergency and dangerous situations.” (Ex. 10.)

2. On July 1, 2002, Mr. Andrade was assaulted by an inmate at approximately 4:45 p.m. while transferring the inmate for medical treatment. The inmate stabbed him with a piece of stainless steel in the mid-back and the lower back. (Andrade Testimony; Exs. 1a, 1i, and 10.)

3. Mr. Andrade did not initially think the wound was serious, but he was ordered to go to the hospital by his sergeant. He went to Caritas Norwood Hospital before being transferred to Beth Israel Hospital. The wound penetrated to his ribs and he was prepped for surgery. Surgery proved unnecessary, but Mr. Andrade was kept overnight at the hospital as a precaution. (Andrade Testimony; Ex. 1i.)

4. After he was released from the hospital, Mr. Andrade’s primary care physician, John Carpenter, M.D., referred him to counseling. He received counseling from licensed social worker Lance McElaney from July 19, 2002 until September 23, 2002 at Brookside Counseling Associates in Hingham. He responded well to this treatment and was capable of returning to work by the middle of October 2002. (Andrade Testimony; Ex. 1i.)

5. Mr. Andrade returned to MCI-Cedar Junction and continued to work there until January 2003, when his Massachusetts National Guard unit was deployed to Kuwait. Although he was never involved in direct combat, his base was under “heavy missile fire” for three weeks. (Andrade Testimony; Ex. 11.)

6. In June of 2003, Mr. Andrade’s wife was seriously injured in a car accident and he was sent home. He was released from active duty in August and returned to work at MCI-Cedar Junction in November of that same year. (Andrade Testimony.)

7. While back at MCI-Cedar Junction, Mr. Andrade began having trouble thinking and was “falling apart.” He attributed this to his wife’s accident and returned to see social worker McElaney in 2004, who diagnosed him with posttraumatic stress disorder (“PTSD”) relating back to the July 1, 2002 stabbing incident. (Andrade Testimony.)

8. In 2004, he transferred from MCI-Cedar Junction to MCI-Norfolk in an attempt to alleviate his PTSD. (Andrade Testimony.)

9. From September 2006 until September 2008, Mr. Andrade received psychiatric treatment from Peg Harvey, Psy.D., of the Brockton Veterans Association. Dr. Harvey noted that Mr. Andrade’s PTSD symptoms increased as the March 25, 2008 trial of the inmate who stabbed him approached; he was expected to testify at this trial as the key witness. (Ex. 1i.)

10. On March 15, 2008, Mr. Andrade told a coworker at MCI-Norfolk “I want to blow my brains out.” He was sent to Caritas Norwood Hospital where he was primarily attended by Mahmood H. Sharfi, M.D., for suicidal thoughts. Dr. Sharfi attributed the thoughts to stress from wanting to leave his wife and the upcoming trial of the inmate who stabbed him. A past history of PTSD, depression, and anxiety was recorded. A letter sent to his employer at MCI-Norfolk stated that he was being treated for PTSD flare-ups related to the July 1, 2002 stabbing. He was discharged on March 25, 2008. (Andrade Testimony; Ex. 1i.)

11. Around the time of the March 2008 incident, Mr. Andrade began discussing a divorce with his wife, and they then separated. After his discharge from the hospital, Mr. Andrade moved in with his parents. He was divorced in 2010. (Andrade Testimony.)

12. In early 2009, Mr. Andrade was promoted to the rank of sergeant and was transferred to Bridgewater State Hospital. (Andrade Testimony.)

13. On April 30, 2009, Mr. Andrade was present when another corrections officer was assaulted by an inmate. He remembers helping his coworker, but the security footage shows that he stood there and did nothing. A medical report dated October 8, 2010 mentions that Mr. Andrade did not act due to dissociation from extreme PTSD. (Andrade Testimony; Ex. 1i.)

14. The Department of Corrections held a disciplinary hearing and, on January 31, 2010, terminated Mr. Andrade for dereliction of his duties. He appealed this decision, but later withdrew the appeal because the Department vacated his termination (due to his history of PTSD) and instructed him to move forward with workers’ compensation and accidental disability retirement claims based on his 2002 stabbing incident. (Andrade Testimony; Ex. 9.)

15. On October 31, 2011, psychiatrist Michael Rater, M.D., provided an independent medical examination of Mr. Andrade for the purpose of deciding workers’ compensation eligibility. Dr. Rater examined Mr. Andrade and his medical records and concluded that Mr. Andrade suffered PTSD from the 2002 stabbing. He was not able to conclude that the PTSD was what prevented Mr. Andrade from taking action during the April 30, 2009 incident. (Ex. 11.)

16. On May 22, 2012, Lloyd Price, M.D., also independently examined Mr. Andrade and concluded that he suffered PTSD from the 2002 incident, that his time in Kuwait “did not cause or contribute to the development of his [PTSD] symptomatology,” and that this was responsible for his actions on April 30, 2009. (Ex. 11.)

17. Mr. Andrade was awarded workers’ compensation benefits and continued to receive them through 2014. (Andrade Testimony.)

18. On October 1, 2012, Mr. Andrade applied for accidental disability retirement. He stated that he could not perform the required care, custody, and control of the inmates after the events on April 30, 2009 due to his PTSD. The listed dates for when he became unable to work were both July 1, 2002 and April 30, 2009. The Department of Corrections, in the employer’s statement attached to the application, concurred that he could not continue to fulfill his duties. (Exs. 1a, 7, and 9.)

19. The treating physician’s statement was provided by Mona K. Samaan, M.D. Dr. Samaan declared that “chronic PTSD” from the 2002 stabbing incident was preventing Mr. Andrade from being able to complete his job obligations. (Exs. 1b and 1i.)

20. On January 11, 2013, Mr. Andrade met with a three-physician panel assembled by the Public Employee Retirement Administration Commission (“PERAC”) to assess whether he was medically eligible for accidental disability retirement. The panel consisted of psychiatrists Michael W. Kahn, M.D., George Dominiak, M.D., and Susannah Sherry, M.D. The panel reviewed all pertinent medical records and examined Mr. Andrade. It concluded that he had no psychiatric history prior to the 2002 stabbing. The panel also answered a question about causation in the affirmative, saying that there is a “connection between the stabbing and [Mr. Andrade’s] behavior change, supported by prior clinicians.” The panel unanimously concluded that Mr. Andrade was injured while engaged in his employment duties and that he was permanently disabled from continuing to work because of this injury and the chronic PTSD that it caused. (Andrade Testimony; Ex. 3.)

21. On February 28, 2013, the State Board of Retirement (“Board”) denied Mr. Andrade’s request for accidental disability retirement for failure to prove job-related causation. (Ex. 4.)

22. Mr. Andrade timely appealed the Board’s decision on March 4, 2013. (Ex. 5.)

23. Presently, Mr. Andrade continues to receive counseling for his PTSD and is receiving prescription medication that has been beneficial. His current symptoms include trouble with daily functions, difficulty making decisions, and flashbacks to the 2002 stabbing. He does not believe that he could return to his old job because he cannot make a “snap decision.” (Andrade Testimony.)

**Discussion**

 Joseph Andrade has demonstrated sufficiently that he is permanently disabled by PTSD caused by a stabbing incident while he was employed as a corrections officer at MCI-Cedar Junction. Consequently, he is eligible to receive accidental disability retirement benefits.

 An employee may qualify for accidental disability retirement if he proves that he is “unable to perform the essential job 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.” M.G.L. c. 32, § 7(1).

 Any member seeking accidental disability retirement must submit to an examination by a three-member medical panel which must affirmatively certify answers to (1) whether the applicant is “mentally or physically incapacitated for further duty,” (2) whether the “incapacity is likely to be permanent,” and (3) whether “the disability is such as might be the natural and proximate result of the accident or hazard undergone.” M.G.L. c. 32, § 6(3)(a). The purpose of this examination 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 board.” *Malden Ret. Bd. v. Contributory Ret. Appeal Bd.*, 1 Mass. App. Ct. 420, 423, 298 N.E.2d 902, 904 (1970). If the panel responds in the affirmative, the final determination of eligibility is made by the retirement board based on all of the available evidence, both medical and non-medical. *See* *Blanchette v. Contributory Ret. Appeal Bd.*, 20 Mass. App. Ct. 479, 483, 481 N.E.2d 216, 219 (1985).

 Dr. Michael Kahn, writing on behalf of the reviewing medical panel, certified that Mr. Andrade was incapable of performing the essential duties of his job as a corrections officer, that his disability was likely to be permanent, and that his inability to work is the natural and proximate result of an injury from his employment. Even with this affirmative medical panel opinion, Mr. Andrade still bears the burden of proving that he is eligible for accidental disability retirement, especially as it pertains to causation. *Lisbon v. Contributory Ret. Appeal Bd.*, 41 Mass. App. Ct. 246, 255, 670 N.E.2d 392, 399 (1996). For the reasons stated below, I find that Mr. Andrade has met this burden.

 *A. Disability*

 The medical evidence shows that Mr. Andrade suffers from chronic and debilitating PTSD. His condition was first diagnosed in 2004 by Mr. McElaney, the social worker who treated Mr. Andrade, and was linked to the 2002 stabbing incident at MCI-Cedar Junction. At the time of this diagnosis, Mr. Andrade was “falling apart” mentally while at work. That same year, Mr. Andrade transferred away from MCI-Cedar Junction to MCI-Norfolk in an effort to alleviate the PTSD that was making accomplishing his duties difficult. In March of 2008, Mr. Andrade was hospitalized for over one week when stressors, in part related to testifying at the trial of the inmate that stabbed him in 2002, caused suicidal thoughts.

 Mr. Andrade’s PTSD also prevented him from taking action to assist his coworker who was assaulted by an inmate in 2009. An October 8, 2010 medical record shows that he suffered dissociation due to his PTSD. This is evidence that it would be impossible for him to complete his job duties, which required him to have the “ability to make decisions and act quickly in emergencies and dangerous situations.” Mr. Andrade believes he cannot return to work because he can no longer make “snap decisions.” This same conclusion was reached by the medical panel when it unanimously decided that he was unable to fulfill his job duties after examining him and reviewing his medical records and job description. The only doctor who did not reach this conclusion was Dr. Michael Rater, who examined him in connection with his workers’ compensation claim and who did not think that he had enough evidence to determine whether or not Mr. Andrade’s PTSD was what prevented him from acting during the 2009 incident. This is not dispositive, however, and the medical evidence, when read in the context of a corrections officer’s job duties, show that Mr. Andrade is not capable of performing the job duties of a prison guard, regardless of the reason he failed to act in 2009.

 Mr. Andrade’s promotion to sergeant does not mean that he is automatically capable of completing his job duties. *See* *Scipione v. Barnstable County Ret. Bd.*, Docket No. CR-12-196 (Mass. Div. of Admin. Law App., Sept. 4, 2015) (finding that a police officer who suffered from PTSD for a number of years was eligible for accidental disability retirement even though he was promoted to detective). Given the nature of Mr. Andrade’s PTSD, he may appear to be capable of completing his routine job duties, but he could not be relied upon to act appropriately in a dangerous situation. For example, perhaps some of his more mundane duties could be completed, but his inability to make a “snap decision” would prevent him from operating as a corrections officer should. Mr. Andrade has properly proven that his PTSD is disabling and that it prevents him from fulfilling his duties as a corrections officer.

 *B. Permanence*

 A disabling injury is permanent if the applicant is not “likely to recover sufficiently in order to be able to perform all of the essential duties of his position.” *Antonellis v. Essex Regional Ret. Bd.*, Docket No. CR-03-392 (Contributory Retirement App. Bd., Feb. 23, 2004). Factors to consider are the time period of the disability, the nature of the disability, whether the disability merely awaits a normal healing period, and the effect of recovery on the member’s ability to return to his essential duties. *Scipione* at 23.

 Mr. Andrade’s PTSD symptoms began immediately after his attack. He first saw Mr. McElaney for counseling immediately after the incident to help him return to his work. He continued to see Mr. McElaney until 2004 when he was first diagnosed with PTSD that Mr. McElaney attributed to the 2002 stabbing incident. Mr. Andrade’s treatment for PTSD has continued up until his testimony in 2016, a time period of fourteen years. He saw multiple doctors throughout this time period, and they each noted that he was still suffering from PTSD symptoms. While Mr. Andrade generally had the ability to function day-to-day, the evidence demonstrates that his PTSD was exacerbated by stress. Life events, such as his wife’s car accident, his pending divorce, or the upcoming trial of the inmate who assault him, activated his PTSD symptoms and led him to have suicidal thoughts that required hospitalization.

 The medical panel also unanimously certified that Mr. Andrade’s condition is likely to be permanent, and this conclusion appears to be correct. Mr. Andrade has suffered chronic PTSD for fourteen years; this extended length of time is evidence of his disability’s permanence. Thus, I find that Mr. Andrade’s PTSD is likely to permanently disable him from being able to work as a corrections officer.

 *C. Causation*

 The final question that must be answered is whether or not Mr. Andrade’s disability is causally related to his position as a corrections officer with the Department of Corrections. *See* M.G.L. c. 32, § 7(1). An applicant for accidental disability retirement must show either that a disability “stemmed from a single work-related event or series of events” or, “if the disability was the product of gradual deterioration, that the employment [had] exposed [the employee] to an identifiable condition…that is not common or necessary to all or a great many occupations.” *Blanchette*, 20 Mass. App. at, 485, 481 N.E.2d at 220 (citations and internal quotations omitted). Mr. Andrade has successfully proven that his disabling PTSD was caused by a work-related incident.

 The key incident cited by Mr. Andrade for his disability was his 2002 stabbing by an inmate that he was transferring for medical treatment at MCI-Cedar Junction.[[1]](#footnote-1) Mr. McElaney diagnosed him with PTSD in 2004; although this was two years after the stabbing, Mr. McElaney was the first person to treat Mr. Andrade in 2002 after the stabbing and he was therefore in the best position to find a causal connection between the 2002 stabbing and the PTSD symptoms two years later. No medical examiner attributed his PTSD to any event before this date. Starting after the stabbing, he began receiving counseling that continued at least up until his testimony in 2016. In 2003, Mr. Andrade experienced several other events that helped exacerbate his PTSD. He was called to active service in Kuwait where his base was subject to “heavy missile fire.” In June of that same year, his then wife was involved in a severe car accident. Although Mr. Andrade’s active PTSD symptoms did not manifest themselves until after this incident, the social worker who had been treating him attributed the symptoms only to the 2002 stabbing. In his examination, Dr. Michael Rater positively identified the near-death incident in 2002 as the cause of the PTSD. Dr. Lloyd Price, in his examination, went as far as specifically ruling out either the time spent in Kuwait or his wife’s accident as being the origin of Mr. Andrade’s PTSD. These conclusions seem logical as Mr. Andrade never experienced any actual combat while in Kuwait, and there is no evidence that a loved one’s car accident occurring halfway around the world could cause PTSD.

 The examining medical panel reached the conclusion, as did Drs. Rater and Price, that the PTSD was caused by the 2002 incident. They acknowledged the other stressors in Mr. Andrade’s life, but did not believe that these were what originally caused the PTSD to manifest itself. After reviewing the medical records, they concluded that the proximate cause of the PTSD was the 2002 incident. Examining the medical records reveals no contrary medical evidence.

 The Board contends that Mr. Andrade cannot show that his disability is what caused him to leave work because he was terminated by the Department of Corrections in 2010 for dereliction of his duties. However, the evidence shows that Mr. Andrade was going to be terminated for the same job-related problem that his PTSD caused: the inability to make quick decisions or to think straight.

 Finally, the Board’s contention that a compensable injury cannot arise from a *bona fide* personnel action is true, but is not relevant here; Mr. Andrade’s PTSD was the result of his 2002 stabbing and not his (eventually vacated) 2010 termination. Mr. Andrade is not claiming that his injury was the result of his termination; he is claiming that he was terminated due to the PTSD caused by another job-related injury.

**Conclusion**

 After examining the medical and non-medical evidence submitted by the parties, I conclude that Mr. Andrade has met his burden of proving that he suffers from permanent and disabling PTSD caused by a work-related injury. Accordingly, Mr. Andrade is eligible for accidental disability retirement under M.G.L. c. 32, § 7 and the decision of the State Board of Retirement denying his application for accidental disability retirement is reversed.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

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James P. Rooney

First Administrative Magistrate

Dated: August 4, 2017

1. M.G.L. c. 32, § 7(1) provides that an application for accidental disability retirement must be filed within two years of the injury that caused the disability. However, an exception is provided by M.G.L. c. 32, § 7(3)(a) exempting members classified in Groups 2, 3, or 4 from this requirement if an official record was created by the department. Mr. Andrade qualifies for this exception because, as a corrections officer, he is a member of Group 4 under M.G.L. c. 32, § 3(2)(g) and because an official report of the incident was filed at the time of the 2002 stabbing incident. [↑](#footnote-ref-1)