

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

**Division of Administrative Law Appeals**

**Derek Beckwith,**  
Petitioner

v.

Docket No. CR-23-0476  
Date Issued: February 27, 2026

**Haverhill Retirement Board,**  
Respondent

**Appearance for Petitioner:**

Morgan J. Gray, Esq.

**Appearance for Respondent:**

Michael Sacco, Esq.

**Administrative Magistrate:**

James Rooney

**SUMMARY**

The Petitioner, a Haverhill Wastewater Department employee, was struck by a car as he completed cleaning out a sewer line and has suffered from headaches ever since. The Haverhill Retirement Board declined to grant him accidental disability retirement because it was not convinced that his injury left him permanently disabled. The preponderance of the evidence, however, demonstrates that he suffered a work-related injury that left him with headaches severe enough to permanently disable him. Therefore, he is granted accidental disability retirement.

**DECISION**

On September 22, 2023, Petitioner Derek Beckwith timely appealed under G.L. c. 32, § 16(4) the September 12, 2023 decision of the Haverhill Retirement Board denying his application for accidental disability retirement.

The parties filed a joint pre-hearing memorandum in August 2024 that included a statement of agreed facts. I marked it as Pleading A. I held a hearing on January 29, 2025 that was conducted at the Division of Administrative Law Appeals (DALA) in Malden, Massachusetts. I admitted into evidence 18 joint exhibits submitted by the parties. Mr. Beckwith was the sole witness. The parties submitted post-hearing briefs in June 2025, thereby closing the administrative record.

### **Findings of Fact**

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

1. Derek Beckwith is 47 years old and resides in Haverhill, Massachusetts. He has three children from a prior marriage. (Agreed Fact 1.)
2. Mr. Beckwith completed education related to water distribution and water treatment licensing. He began working for the City of Haverhill Wastewater Department on March 20, 2012, as a Collection System Operator. (Beckwith Testimony and Pleading A.)
3. As a Collection System Operator, Mr. Beckwith's job responsibilities and duties included: cleaning sewer lines using a variety of methods and equipment, such as jet machines and rodding machines, cleaning and flushing catch basins with a catch basin cleaner truck, and performing a variety of skilled and unskilled manual duties in

the maintenance and care of the collection system. (Ex. 7.)

4. Mr. Beckwith's job required the operation of heavy machinery, including excavators and cranes. At the time of his injury, Mr. Beckwith held a commercial drivers (CDL) license, obtained in 2014, and had additional certifications in hydraulics, water treatment and distribution, sewer systems, and collection system operations. He had to maintain the licenses needed to operate such equipment. (Beckwith Testimony.)

5. Before the accident that is the subject of this appeal, Mr. Beckwith would typically visit a doctor only for routine physicals. Mr. Beckwith was taking medications for acid reflux and anxiety. He had a history of tension headaches prior to the injury. These headaches occurred a few times a month and were usually located in the frontal lobe. As a child, he sustained a head injury after being hit by a knotted rope. He did not receive medical treatment at the time. An MRI conducted many years later revealed changes potentially tied to this earlier incident. He attributed the headaches he had as an adult to stress related to working overtime, marital issues, and financial burdens such as a new house and car. He typically took Tylenol for relief. He did not have an ongoing relationship with any specialist for headaches or neurological conditions. (Beckwith Testimony.)

6. Mr. Beckwith experienced an increased number of headaches during the COVID-19 pandemic and his divorce. On June 2, 2020, he saw Nurse Practitioner (NP) Yohanna Garcia-Hernandez for dyspnea, fatigue, and a headache rated 7/10, likely due to tension. These headaches had been resolved by June 8, 2020. On April 13, 2021, he reported waking with headaches he attributed to allergies. (Ex. 14, pp. 27-32 and 67.)

7. In the early morning hours of December 19, 2021, Mr. Beckwith responded to a report of a sewer manhole overflowing on Lowell Avenue, which is a two-way street in Haverhill. The manhole was in the middle of the street. Mr. Beckwith parked the vacuum truck he was operating in the middle of the street with the front of the truck near the manhole. His co-worker, Justin Mazzotta, parked his pickup truck opposite the vacuum truck also near the manhole. The men placed yellow cones around the two trucks to warn drivers to stay clear. The men took the manhole cover off and flushed out the manhole. As the work was completed, Mr. Beckwith climbed out of the manhole and while standing up was using his right foot to move the manhole cover back on top of the manhole. He remembers seeing car lights approach the two men and Mr. Mazzotta telling him to watch out. The next thing he remembers is finding himself eight feet away from where he had been and on his back under the front of the vacuum truck. He did not know how he got there. He recalls pain in his ankle and the rear of his head where there was a bump. Mr. Mazzotta told him a car had struck both of them and had knocked Mr. Beckwith into the position where he found himself. The boot he had been using to move the manhole cover remained stuck under the manhole cover. (Beckwith Testimony.)

8. This was the last day Mr. Beckwith worked for the Water Department.  
(Ex. 3.)

9. The EMTs who responded to the scene listed Mr. Beckwith's chief complaints as right foot and leg pain. They placed him in a cervical collar and took him to Lawrence General Hospital. Mr. Beckwith told the emergency room doctor that he

had a headache. He said he was “not sure if he had a head strike but denied LOC (loss of consciousness).” A CT scan of the head showed no broken bones, serious internal injuries or internal bleeding. (Ex. 14, pp. 73-74.)

10. Mr. Beckwith was discharged to his home and slept for some time. He returned to the emergency room that afternoon complaining of a severe headache. The hospital suspected a “shearing injury” and had Mr. Beckwith undergo an MRI.<sup>1</sup> The MRI showed “white matter changes” but not a shearing injury. The discharge note stated that Mr. Beckwith was told that “[t]he MRI of your brain showed some changes which could be associated with multiple things – it does not appear to be related to the trauma, but more likely related to the headaches you have, which sound like chronic migraines.” He was referred to a neurologist for a consultation. (Ex. 14, pp. 1016-111.)

11. On December 23, 2021, Mr. Beckwith saw NP Yohanna Garcia-Hernandez and reported persistent headaches since the accident with a pain level of 6–7/10, as well as neck, ankle and thigh pain. His headache pain decreased in a dark room. (Ex. 14, pp. 118-122.)

12. On December 23, 2021 and January 12, 2022, Mr. Beckwith followed up with neurologist Lanny Xue, M.D., for headache and neck pain. At the first visit, the doctor thought the recent MRI findings might be related to Lyme disease Mr. Beckwith had when he was 30 years old or related to prior headaches or head injuries. At the

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<sup>1</sup> A shearing injury to the brain involves the tearing “of the brain’s long connecting nerve fibers (axons) that happens when the brain is injured as it shifts and rotates inside the bony skull.” See [John Hopkins medicine](#).

second visit, the doctor prescribed Neurontin<sup>2</sup> for persistent head and neck pain. The dosage was 300 mg., one capsule twice per day. He told Mr. Beckwith that the “side effects of the medication included drowsiness” and discussed safety precautions with him. (Ex. 14, pp. 128 - 132.)

13. In a follow-up visit with Dr. Xue on January 31, 2022, Mr. Beckwith reported some pain reduction after taking Neurontin. He also reported that his primary care physician had prescribed him Topamax.<sup>3</sup> The doctor increased his dosage of Neurontin to two capsules twice per day. Still, on February 3, 2022, he told NP Yohanna Garcia-Hernandez that his pain level was 7/10. By February 14, 2022, Mr. Beckwith again reported that Neurontin reduced the intensity of his headaches and the doctor again increased his dosage of Neurontin to three capsules. During a March 1, 2022 visit, Mr. Beckwith reported significant improvement in his pain level. (Ex. 14, pp. 142-144, 151-153, and 164-166.) On March 3, 2022, he told NP Yohanna Garcia-Hernandez that his pain level was 3-4/10. (Ex. 14, p. 271.)

14. On March 10, 2022, Mr. Beckwith reported a recurrence of similar headaches. Dr. Xue increased his dosage of Neurontin to four tablets twice per day. By March 23, 2022, the doctor had increased the Neurontin dosage to nine capsules per

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<sup>2</sup> “Gabapentin (Neurontin, Gralise, Horizant) is a medicine originally designed to manage some types of epileptic seizures. It's also used to relieve pain for some conditions, such as shingles.” See [The Mayo Clinic](#).

<sup>3</sup> “Topamax is . . . used to prevent migraine headaches in adults and teenagers who are at least 12 years old. This medicine will only prevent migraine headaches or reduce the number of attacks. It will not treat a headache that has already begun.” See [Topamax homepage](#).

day and also prescribed Amitriptyline, an antidepressant. By April 5, 2022, Mr. Beckwith reported improvement with 20 mg/day of amitriptyline. (Ex. 14, pp. 176-178, 184-188, and 201-205.)

15. On February 22, 2022, Mr. Beckwith was treated by Peter E. Seymour, M.D., for tinnitus, which is a sensation of noise in the ear. Mr. Beckwith told the doctor that he had been experiencing a buzzing noise in his ears for two months, and that the medications he was taking for headaches made the buzzing somewhat less intense. Dr. Seymour noted that there are a variety of possible causes for tinnitus, and that Mr. Beckwith's symptoms "could be related to a noise/trauma v. noise exposure given his work in construction." He added that his "headaches appear secondary to migraines which may be resultant of his head injury/trauma." (EX. 14, pp. 156-158.)

16. In follow-ups with Dr. Xue from May to July 2022, the Petitioner noted significant headache relief with amitriptyline and Neurontin but with a side effect of drowsiness. He experienced a recurrence of headaches on May 16, 2022, prompting an increase in dosage of amitriptyline. In July, he also reported three months of right leg numbness, though an EMG was unremarkable. (Ex. 14, pp. 230-233, 240-243, 252-255, 286-289, 303-307, and 314-318.) On June 16, 2022, Mr. Beckwith told NP Yohanna Garcia-Hernandez that his pain level was 1/10. (Ex. 14, p. 271.)

17. On June 21, 2022, Mr. Beckwith sought a second opinion. He had a telehealth visit with Daniel Vardeh, M.D., who specialized in interventional pain management. He told the doctor that his headaches occurred on both sides of the back of his head and occurred daily, often lasting for hours. He said his symptoms were

getting worse and were triggered by bright lights. He also experienced floaters and tinnitus. The doctor thought that most likely his headaches were “cervicogenic headaches and/or posttraumatic headache as a result of a whiplash injury.” He recommended tapering off Topamax, which he thought contributed to Mr. Beckwith’s hand tingling, tapering down amitriptyline because of its sedating effects, switching to nortriptyline (another antidepressant), and scheduling a bilateral occipital nerve block. (Beckwith testimony; Ex. 14, pp. 278-281.)

18. On August 8, 2022, Mr. Beckwith underwent a bilateral occipital nerve block. He underwent subsequent nerve blocks on September 29 and November 10, 2022. Dr. Vardeh also switched Mr. Beckwith back to amitriptyline and started him on Aimovig<sup>4</sup> for migraine prevention. (Ex. 14, pp. 334-335, 366–367, and 416–417.) At some point, Mr. Beckwith also received Botox injections to address his headaches. (Beckwith testimony.)

19. On August 12, 2022, an MRI ordered by Dr. Xue showed no changes from the initial December 2021 MRI. Subsequent follow-ups in August and October reflected no major clinical changes, although he reported increased headaches on October 13 and November 9, 2022, which led Dr. Xue to increase the dose of amitriptyline. On December 8, 2022, Mr. Beckwith reported that the medication regime was providing him with reasonable control of his headaches, but by January 5, 2023, he reported that

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<sup>4</sup> “Aimovig . . . is a once-monthly, self-administered injection used to prevent migraines in adults.” See [Aimovig webpage](#).

his headaches had resumed at night. (Ex. 14, pp. 337-338, 349-353, 361-365, 381-385, 407-412, 426-430, and 439-443.)

20. In an October 4, 2022 visit with NP Garcia-Hernandez, Mr. Beckwith complained of floaters in his visual field. She referred him to an ophthalmologist. On January 13, 2023, he was examined by Aileen Maria, OD (Doctor of Optometry). She performed an eye exam and determined that in both his eyes he had floaters, astigmatism and photophobia. She described him as “extremely light sensitive.” (Ex. 14, pp. 444–446.) This is the first mention in the medical records that the parties have pointed out to me in which Mr. Beckwith mentioned to his doctors that he was having eye problems post-injury. He had not had photophobia prior to the accident. Because of his light sensitivity, Mr. Beckwith wears sunglasses all the time. (Beckwith Testimony.)

21. On November 8, 2022, Mr. Beckwith filed an accidental disability retirement application claiming the car accident on December 19, 2021 left him permanently unable to perform the essential duties of his job due to a “head injury, neck, [A]chilles tendinitis (right) displacement of T [thoracic] spine and L [lumbar] spine, C [cervical] spine, ringing in ears, [and] sensitivity to light.” He noted that he had not worked since the accident and that he “sleep[s] a lot due to all my medications.” (Ex. 3.)

22. NP Yohanna Garcia-Hernandez completed the physician’s statement in support of the application. She stated that Mr. Beckwith was disabled by a head injury, a neck sprain and Achilles tendinitis. She referenced his persistent headaches since the

car accident.<sup>5</sup> (Ex. 4.) The City of Haverhill’s employer’s statement noted that Mr. Beckwith was receiving workers’ compensation benefits because of his injury. (Ex. 5.)

23. The Haverhill Retirement Board held a hearing on April 11, 2023, and subsequently requested that PERAC convene two separate medical panels: one for an orthopedic and another for a neurological assessment. (Pleading A.)

24. The orthopedic panel consisted of Louis Bley, M.D., Wojciech Bulczynski, M.D., and B. Eugene Brady, M.D., who examined Mr. Beckwith separately in July and August 2023. All three concluded Petitioner did not suffer a permanent disability related to his right foot and ankle injuries.<sup>6</sup> (Pleading A.) Mr. Beckwith told Dr. Bley that the boot he had been wearing and the extensive physical therapy he received had made his ankle feel dramatically better and that what currently disabled him were “chronic headaches and post-concussive syndrome.” The doctor noted that Mr. Beckwith had some residual pain consistent with tendinitis but that “his gait has returned to essentially normal.” He noted that Mr. Beckwith had “a neck strain coupled with neurological symptoms consistent with a post-concussive head injury.” (Ex. 11.)

Similarly, Mr. Beckwith told Dr. Bulczynski that his headaches and blurred vision are the primary reason he cannot return to work. The doctor diagnosed Mr. Beckwith with

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<sup>5</sup> 840 CMR 10.06(1)(b) provides that a physician’s statement must be from “a licensed medical doctor.” According to Mr. Beckwith, the Retirement Board pointed this out to him, and he had his primary care physician sign it. (Beckwith testimony.) There is no dispute over this issue. The version signed by the doctor is not in the record.

<sup>6</sup> Because the orthopedic panel report was negative, the Haverhill Retirement Board denied his application for accidental disability retirement based on Mr. Beckwith’s foot and ankle injury. He did not appeal. (Beckwith testimony.)

chronic right Achilles tendinitis but concluded it was not disabling. (Ex. 12.) Mr. Beckwith told Dr. Brady that his primarily disabling complaints were headaches, blurred vision, and fatigue. Dr. Brady examined Mr. Beckwith's spine and found "no significant structural injury." (Ex. 13.) He told Drs. Bulczynski and Brady that he lost his CDL license because of his headaches and the medication he takes for them. (Exs. 12 and 13.)

25. The neurological panel included Julian Fisher, M.D., Diana Apetauerova, M.D., and Seth Schonwald, M.D. Drs. Fisher and Apetauerova are neurologists; Dr. Schonwald specializes in internal medicine. Each of the doctors was aware that Mr. Beckwith had not initially reported a loss of consciousness. Drs. Fisher and Schonwald found Petitioner permanently neurologically disabled and unable to perform his job duties because of his work-related injury. Dr. Apetauerova dissented, finding no incapacitation from a neurological perspective. (Pleading A; Exs. 8 – 10.)

26. Dr. Fisher examined Mr. Beckwith on May 23, 2023, he opined:

Mr. Beckwith suffered a concussion at the time of the motor vehicle accident with, as a result associated with the post-concussion syndrome,<sup>7</sup> persisting

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<sup>7</sup> The parties agree that the definition of post-concussive syndrome can be found at the [Cleveland Clinic's website](#). It states:

Post-concussion syndrome (PCS) is when you have concussion symptoms that last months or even a year or more after your initial injury. The symptoms can affect you in many ways, including how your body and brain function, as well as how you experience emotions.

Usually, concussion symptoms go away within two to six weeks after you experience an injury. People receive a PCS diagnosis when their concussion symptoms continue (persist) for much longer.

Symptoms associated with post-concussive syndrome can include headaches, fatigue, light sensitivity, dizziness. About 15% of people who have concussions go on to

moderate-to-severe headaches, with light sensitivity, constant tinnitus, and occasional dizzy spells.

These symptoms are a direct consequence of the motor vehicle accident and part of a post-concussion syndrome. They are not an aggravation of preexisting disease, but are new findings and directly related to the motor vehicle accident . . . It is commonly seen in concussions and cervical strain/sprain that there are no findings on imaging. The absence of diagnostic studies carries no implications whatsoever. The fact that his symptoms, as recorded in this note occurred subsequent to the motor vehicle accident and are distinctly related to the accident indicates that his pre-injury headache history is not relevant to this discussion. It is more likely than not that Mr. Beckwith's at this point permanently disabling headaches are a direct result of the motor vehicle accident and unrelated to any underlying condition.

Dr. Fisher thought that, given Mr. Beckwith's inability to manage these headaches and his use of highly sedating medication, he must be "considered permanently medically disabled at the present time." The doctor made no mention of Mr. Beckwith wearing sunglasses. (Ex. 8.)

27. Dr. Apetaurova examined Mr. Beckwith on June 7, 2023. She certified in the negative as to incapacity. In her review, she noted a lack of contemporaneous documentation regarding loss of consciousness or head injury in the initial hospital notes. She thought this was inconsistent with Mr. Beckwith telling her he may have lost consciousness because he could not remember the accident. In a lengthy description of the medical records, she highlighted that Mr. Beckwith had a history of headaches prior to the accident, and that Dr. Vardeh had thought his post-accident headaches might be caused by whiplash. (See Finding 16.) When she examined him, he initially appeared photophobic, but "during the examination and distraction, he had absolutely no signs of \_\_\_\_\_  
experience post-concussion syndrome.

photophobia.”<sup>8</sup> She concluded:

I do not believe there was a head injury as the documentation clearly does not state any head injuries or loss of consciousness. As I also mentioned above, there is a history of headaches prior to the work-related injury and therefore I believe that his current worsening of headaches is an aggravation of his pre-existing condition. He received extensive treatment including medications and injections in the cervical and occipital regions without much benefit. His imaging showed extensive white matter changes with a broad differential diagnosis. Related changes on the MRI would not be caused by his work-related injury and are likely incidental findings. One of the differential diagnoses is history of migraine headaches or microangiopathic<sup>9</sup> changes, which are the most likely etiology. It is possible that his pre-existing condition of headaches aggravated the frequency of the headaches initially. However, the natural progression of whiplash injury<sup>10</sup> is usually a presence of symptoms for about 6 to 12 weeks and

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<sup>8</sup> Photophobia is sensitivity to light, especially bright light. See [Cleveland Clinic’s website](#). Dr. Apetauerova did not say exactly what led her to reach the conclusion that Mr. Beckwith did not have photophobia. She did not mention performing an eye exam. (Ex. 9.)

<sup>9</sup> Microangiopathy is “a disease of very fine blood vessels.” See [Microangiopathy: Merriam Webster](#).

<sup>10</sup> The parties agree that the definition of whiplash can be found at [the Mayo Clinic’s website](#). It states that:

Whiplash is a neck injury due to forceful, rapid back-and-forth movement of the neck, like the cracking of a whip.

Whiplash is commonly caused by rear-end car crashes. But whiplash also can result from sports accidents, physical abuse and other types of traumas, such as a fall. Whiplash may be called a neck sprain or strain, but these terms also include other types of neck injuries.

Most people with whiplash get better within a few weeks by following a treatment plan that includes pain medicine and exercise. However, some people have long-lasting neck pain and other complications.

Whiplash symptoms can include neck pain and stiffness, headaches most often starting at the base of the skull, tinnitus, and dizziness.

I note that the [Cleveland Clinic’s website](#) when discussing post-concussion

therefore he is long past due after the expected maximal medical improvement. For that reason, I do not believe that Mr. Beckwith has a permanent incapacitation.

(Ex. 9.)

28. Dr. Schonwald examined Mr. Beckwith on August 16, 2023. He noted that Mr. Beckwith had been “forced to give up his CDL license.” Mr. Beckwith told the doctor that he hit his head as a result of the accident. The doctor commented that although “there appear to be alternative descriptions of this event in the record, it is plainly feasible that he strained his neck significantly during the fall.” He concluded that:

Since the fall, [Mr. Beckwith] has had numerous symptoms which have left him unable to perform his duties. . . . While Mr. Beckwith appears to have had headaches before his accident, it is evident that the type of headaches he has had, their frequency, and his requirement for numerous medications, has developed in relation to the accident and is not an aggravation of his underlying migraines, which were intermittent and not incapacitating.

(Ex. 10.)

29. On September 12, 2023, the Haverhill Retirement Board voted 3–2 to deny the disability retirement application, citing the minority opinion of the neurological panel as supporting its conclusion that Mr. Beckwith “did not suffer from a permanently

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syndrome also mentions whiplash. It states:

It’s important to note that any loss of consciousness (being “knocked out”) — no matter how brief — after an impact to the head or after a body impact that causes whipping of the head (whiplash) means you probably have a concussion. If you’re with someone who becomes unconscious after a head impact or whiplash event, they need medical attention — even if they regain consciousness quickly.

incapacitating neurological condition.” Notification of the decision was sent to Mr. Beckwith and his counsel on September 13, 2023. (Ex. 1.)

30. On September 22, 2023, Mr. Beckwith filed an appeal with the Division of Administrative Law Appeals (DALA), seeking to overturn the Board’s denial. (Ex. 2.)

### **Discussion**

To prevail on a claim for accidental disability retirement, an applicant must establish: (1) that he is incapacitated from performing his essential duties, (2) that the incapacity is permanent, and (3) that the incapacity is proximately caused by a workplace injury or hazard. M.G.L. c. 32, § 7(1). The application may be approved only if a majority of the medical panel determined that the applicant is unable to perform his essential job duties, that the incapacity is permanent, and that the incapacity could reasonably result from the person’s injury or hazard encountered during employment. *See Malden Ret. Bd. v. Contributory Ret. App. Bd.*, 1 Mass. App. Ct. 420, 423 (1973); *Quincy Ret. Bd. v. Contributory Ret. App. Bd.*, 340 Mass. 56, 60 (1959).

The medical panel’s role is to “determine medical questions which are beyond the common knowledge and experience of the local board.” *Malden Ret. Bd. v. Contributory Ret. App. Bd.*, 1 Mass. App. Ct. 420 (1973). Here, the panel split with two doctors opining that Mr. Beckwith was permanently disabled by a work-related injury, while a third thought he was not disabled.

There is no dispute that Mr. Beckwith suffered a work-related injury when he was struck by a car on December 19, 2021 or that he was out of work for a time. The

central issue is whether Mr. Beckwith has sufficiently established that he has long-term disabling consequences from that car accident.

The resolution of this issue turns on an evaluation of the medical evidence. It is particularly difficult because, as Board counsel points out, there is no objective evidence of incapacity, as is often the case with closed head injuries (as Dr. Fisher noted). The parties each focus their arguments on the two neurologists on the medical panel. Each says the neurologist's report they favor was detailed and persuasive and the other one was skimpy and insufficiently explained.

None of the medical reports are as thoroughly explained as might be desired. As is often the case, the reports reach medical conclusions without much explanation as to how or why the doctor reached a particular conclusion. Drs. Fisher and Schonwald confidently assert that the headaches Mr. Beckwith experienced after the accident were caused by the accident itself and not by aggravation of the prior headaches he experienced. Dr. Apetauerova just as confidently asserted that his post-accident headaches represented an aggravation of his earlier tension headaches.<sup>11</sup> None of the doctors describe the processes that led them to these conclusions.

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<sup>11</sup> The medical records are not entirely clear as to whether those earlier headaches were tension headaches or migraines.

In any event, if Mr. Beckwith's post-accident headaches were an aggravation of his prior headaches that would not preclude him from eligibility for accidental disability retirement because recovery is allowed if an injury aggravates a pre-existing condition to the point of disability. *Baruffaldi v. Contributory Ret. App. Bd.*, 337 Mass. App. Ct. 495, 501 (1958).

Because Mr. Beckwith met with each doctor separately, they each wrote separate reports without knowing what the other doctors' opinions on the medical panel were. Had all three doctors met with Mr. Beckwith at the same time, they would have realized there was a difference of opinion among them and thus it would have been more likely that their competing reports provided justification for their opinions and responses to the opinions that differed. A split in the panel like this might have led the Retirement Board to ask questions of the panelists to further flesh out their opinions and comment on the alternative possibilities raised. The Board was evidently satisfied with the panel reports as it acted on Mr. Beckwith's application without seeking further clarification.

Before evaluating the medical panel reports, I note that the Board questions Mr. Beckwith's credibility, which is most certainly an issue because, if medical tests were unlikely to verify his claims of a long-lasting head injury, then whether he is credibly reporting his symptoms becomes particularly significant. The Board points out that the medical panelists on the orthopedic panel each concluded that Mr. Beckwith was not suffering from a disabling Achilles injury. If Mr. Beckwith was not telling the truth about the severity of his ankle injury it would call into question whether he was accurately reporting the severity of his head injury.

I am not convinced that Mr. Beckwith has been untruthful. He filed his accidental disability application on his own and, instead of basing the application on just those symptoms that were disabling, he listed all the injuries he had initially following the accident. By the time he was examined by the orthopedic medical panelists, eight

or nine months after he filed his application, he forthrightly told the panelists that his disability claim was mostly focused on his head injury. He still had some ankle pain, which the panelists variously described as Achilles tendinitis or Achilles strain. The panelists did not reject his ankle injury claim because they disbelieved him, but because they thought his residual Achilles problems were not disabling.

The medical records also appear inconsistent with Mr. Beckwith fabricating injury symptoms. In 2021 and 2022, he made numerous doctor office visits, tried various medications to relieve his headaches and tried other options such as nerve blocks. He followed up routinely with one neurologist and, when he was not making sufficient progress, tried another neurologist to see if he could achieve a better result. His actions are more those of someone seeking to return to good health, not someone trying to create a false tale of serious injury.

Still, the question remains as to whether the injuries he reports are actually disabling. The Board focuses on his claim that he suffers from photophobia. It points out that Mr. Beckwith wore sunglasses to the medical panel exams, but only Dr. Apetaurova tried to figure out whether he actually suffered from photophobia and found no signs that he did. I have no reason to doubt that the doctor had a basis for this conclusion, but she did not explain how she made this determination. Furthermore, it is inconsistent with the findings of an ophthalmologist who had given Mr. Beckwith an eye exam eight months earlier and determined that he had photophobia in each eye. I do not put weight on the question of whether Mr. Beckwith has photophobia, a symptom

he appears not to have thought significant enough to mention to his doctors until more than a year after the accident.

The headaches he testified to and reported consistently to medical professionals since his injury are what he claims disables him.<sup>12</sup> The medical panelists disagree on whether his headaches are from post-concussion syndrome or from whiplash. Drs. Fisher and Schonwald favor the former diagnosis, while Dr. Apetauerova the latter. A comparison of the definitions of the two conditions on which the parties agree shows

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<sup>12</sup> Mr. Beckwith also asserts that the medications he has been prescribed to treat his headache pain are sedating, which would interfere with his ability to perform his job. That is a potentially relevant consideration when determining whether he is disabled.

Along this same line, Mr. Beckwith maintains that he can no longer obtain a commercial driver license that his job requires because of the sedating medication he takes. In a prior accidental disability retirement decision, DALA let in as evidence a medical report that the bus driver applicant was medically unfit to obtain a bus driver's license again. *Goodall v Worcester Retirement Bd.*, CR-07-3974 (Div. Admin. Law App., July 24, 2009). A few years later, Magistrate Kenneth Bresler accepted a retirement board's argument that a medical panel properly declined to consider the legal question of whether a public works foreman who needed a CDL license to qualify for his job could no longer obtain such a license because he suffered from occasional seizures after he was injured. He accepted the board's argument that the panel's role was simply to determine whether the applicant was medically capable of performing his job, which is what the medical panel found. Magistrate Bresler also concluded that the foreman had failed to put in evidence that he was medically disqualified from obtaining a CDL license. *Chiasson v. Worcester Retirement Bd.*, CR-17-867 (Div. Admin. L. App., Dec. 10, 2021).

I am inclined to think that the medical issues relating to eligibility to obtain a CDL license can properly be presented to a medical panel. If a person needs a CDL license to perform a job, and that person must meet certain medical standards to obtain that license, then the person is not medically qualified to perform that job unless they are medically qualified to obtain a CDL license. A medical panel can be presented with the appropriate medical standard to obtain a CDL license and can opine on whether that person meets that standard. Here, it is not clear that the panel was asked whether Mr. Beckwith medically qualified for a CDL license or was told what medical standards he needed to meet. The only doctor on the neurological panel who referred to Mr. Beckwith having to give up his CDL license was Dr. Schonwald. (See Finding 28.)

that the symptoms of post-concussive syndrome and whiplash are remarkably similar. Thus, the disagreement about the diagnosis is not altogether surprising. The other doctors who examined Mr. Beckwith also reached varying conclusions. Dr. Vardeh thought he had whiplash. Dr. Xue was neutral, diagnosing Mr. Beckwith with headache, unspecified.<sup>13</sup> Importantly, neither of these two treating physicians questioned whether Mr. Beckwith was genuinely experiencing the symptoms he reported or questioned how long these symptoms were lasting.

Much was made at the hearing about whether Mr. Beckwith hit his head after being struck by the car and lost consciousness. The evident rationale for focusing on this question is the idea that someone who had a concussion necessarily lost consciousness. Dr. Apetauerova thought Mr. Beckwith hadn't lost consciousness because the initial medical records do not say that he did. The trouble with relying on those records to make this determination is that the records rely on Mr. Beckwith's self-report soon after his injury. That he told one doctor that he didn't remember losing consciousness is not all that useful because if he lost consciousness, he wouldn't necessarily remember that he had been unconscious.

Mr. Beckwith's description of how his injury occurred is entirely plausible. One minute he was climbing out of a manhole and the next thing he knew he was lying on his back under the vacuum truck. It is more likely than not that he struck the rear of his head when the car tossed him eight feet backwards, landing him on his back. The head

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<sup>13</sup> Dr. Bley of the orthopedic panel thought Mr. Beckwith was suffering from post-concussive syndrome. (See Finding 24.)

strike is likely why he doesn't remember anything between when he was getting out of the manhole and when he found himself lying on the ground with a bump on the back of his head. This strongly suggests that he lost consciousness and had a head injury.

In any event, the websites the parties asked me to rely on for the definitions of post-concussive syndrome and whiplash do not treat the distinction between the two as dependent on whether the person affected lost consciousness. The Cleveland Clinic in its definition of post-concussion syndrome implies that concussions involve some loss of consciousness and whiplash injuries likely do too because "a body impact that causes whipping of the head (whiplash) means you probably have a concussion." (Finding 27, n.10.)

Thus, whether Mr. Beckwith's head injury was a concussion or whiplash, either way he likely lost consciousness. Dr. Apetauerova thought that diagnosing Mr. Beckwith still mattered because most people recover from whiplash injuries in 6 to 12 weeks. The websites defining whiplash and post-concussive syndrome on which the parties rely not only agree that most people recover from whiplash in a short period of time but say the same thing about concussions. But the websites also agree that some people have long term symptoms from either a concussion or whiplash. Dr. Vardeh, the second neurologist with whom Mr. Beckwith consulted, diagnosed his headaches as caused by whiplash even though he did not begin to treat Mr. Beckwith until long after 6 to 12 weeks had passed since the accident. Thus, if Mr. Beckwith suffered a whiplash injury in the accident, having long-term symptoms is not inconsistent with that diagnosis. That

means that the headaches Dr. Apetaurova acknowledges Mr. Beckwith experienced after need not necessarily have abated after 6-12 weeks.

The medical records show that Mr. Beckwith experienced headaches and other long-term symptoms indicative of a head and neck injury after his December 19, 2021 injury. None of the doctors who treated him thought he was exaggerating his headache symptoms and persistently sought to find medications and other approaches that would relieve his symptoms, some of which worked for a time. But those symptoms have not been alleviated long term. Drs. Fisher and Schonwald independently concluded that these long-term symptoms were permanently disabling and, given the type of symptoms experienced, were caused by a head and neck injury suffered from the car accident in 2021 while Mr. Beckwith was performing his job. While Dr. Apetaurova is no doubt correct that such symptoms might have been typically expected to resolve after few months, it is not unusual that they did not. Thus, I conclude that the evidence shows that Mr. Beckwith suffered a permanently disabling injury from an injury in 2021 while he was in the performance of his duties. I conclude therefore that Mr. Beckwith has demonstrated that he is eligible to receive accidental disability retirement.

DIVISION OF ADMINISTRATIVE LAW APPEALS

***James P. Rooney***

James P. Rooney  
Administrative Magistrate

DATED: February 27, 2026