

**COMMONWEALTH OF MASSACHUSETTS
CONTRIBUTORY RETIREMENT APPEAL BOARD**

ANTHONY BELLIVEAU

Petitioner-Appellee

v.

WORCESTER REGIONAL RETIREMENT SYSTEM

Respondents-Appellant.

CR-17-212

DECISION

Respondent Worcester Regional Retirement System (WRRS) appeals from a decision of an administrative magistrate of the Division of Administrative Law Appeals (DALA), remanding this matter back to convene a regional medical panel evaluation in connection with petitioner Anthony Belliveau's application for accidental disability retirement. The DALA magistrate heard the matter on September 22, 2019. The magistrate's decision is dated March 19, 2021. WRRS filed a timely appeal to us.

After considering all the arguments presented by the parties and after a review of the record, we incorporate the DALA decision by reference and adopt the DALA magistrate's Findings of Fact 1- 107 as our own. Mr. Belliveau provided sufficient evidence that he is entitled to a medical panel evaluation in connection with his application for accidental disability retirement. We, therefore, affirm the DALA decision adding the following comments.

The only issue on appeal is whether Mr. Belliveau met the burden of establishing that he is entitled to an examination by a medical panel. The appropriate standard for the determination of whether an applicant seeking accidental disability retirement benefits is entitled to a medical panel examination is whether the applicant has made out a prima facie case. *DeFelice v. Norfolk Cty. Ret. Bd.*, CR-08-200 (DALA 2012); *Lowell v. Worcester Reg. Ret. Bd.*, CR-06-296 (DALA 2009). That is, the applicant "must have presented sufficient evidence, that if unrebutted and believed, would allow a factfinder to conclude that [he] is entitled to accidental disability retirement benefits." *Lowell*, CR-06-296. The applicant must have competent evidence

establishing that the disability is permanent and results from injuries sustained by the applicant as a result of and while in the performance of their duties. In the case of an emotional disability, the emotional injury must not have been the result of a bona fide personnel action, unless it was an intentional infliction of emotional harm. *James Holland v. Malden Retirement Board*, CR-13-538 (CRAB July 2018) (prima facie case must be made for referral to a medical panel); *Steven Vallee v. Brockton Retirement Board*, CR-10-237 (CRAB Dec. 2017) (referral to a medical panel examination requires a prima facie case that petitioner is disabled from performing essential job duties); *Robert Happy v. Worcester Regional Retirement Board*, CR-13-281 (DALA 2014) (“to reach the medical panel stage, an applicant for accidental disability retirement must make out a prima facie case”); *David Church v. Marblehead Retirement Board*, CR-10-38 (DALA 2013) (an applicant must make “a threshold showing that he is entitled to a medical panel to examine him”); *Lowell v. Worcester Regional Retirement Board*, CR-06-296 (DALA 2009) (“the statute does not make a medical panel’s certification a prerequisite to denying accidental disability retirement benefits”). Consequently, if one or more of the *prima facie* requirements are not met, the reviewing retirement board may properly deny an application for accidental disability retirement without convening a medical panel.

For Mr. Belliveau to establish a *prima facie* case for accidental disability retirement benefits, he must show that (1) he is physically or mentally incapable of performing the essential duties of his job, (2) his disability is likely to be permanent, and (3) he sustained a personal injury or hazard undergone that was the proximate cause of his disability. G.L. c. 32, §7(1). To establish causation, he must show that this personal injury either stemmed from a single work-related event, or by gradual deterioration as a result of exposure to “an identifiable condition that is not common or necessary to all or a great many occupations.” *Adams v. Contributory Retirement Appeal Board*, 414 Mass. 360, 365 (1993); *Kelley’s Case*, 394 Mass. 684, 688 (1985); *Zerofski’s Case*, 385 Mass. 590, 595 (1982). Either theory must satisfy “the strict causation standard[.]” *Blanchette v. Contributory Retirement Appeal Bd.*, 20 Mass. App. Ct. 479, 485 (1985).

We agree with the magistrate that Mr. Belliveau met his burden that he is entitled to a medical panel examination. In his application dated February 7, 2017, he based his claim on a psychological disability resulting from events that spanned his 20-year career and a criminal

investigation on December 21, 2015.¹ He provided incident reports for events occurring in 1997, 1998, 2000, 2001, 2002, 2004, 2009, and 2015 to support his disability claim.² A Physician's Statement completed by his former therapist, Robin Caron, D.O., answered all three certificate questions in the affirmative. Dr. Caron diagnosed him with PTSD, major depressive disorder and anxiety disorder with panic attacks. She reported that he had no reported history of mental health concerns before December 15, 2015 and therefore, concluded that there were no other events other than the events reported that could have caused his disability.³

General Laws c. 32, § 7(1) includes the following limitation relating to accidental disability retirement benefits:

Except as provided for in subdivision (3) of this section,⁴ no such retirement shall be allowed unless such injury was sustained or such hazard was undergone within two years prior to the filing of such application or, if occurring earlier, unless written notice thereof was filed with the board by such member or in his behalf within ninety days after its occurrence.

Mr. Belliveau filed his application on February 7, 2017. He did not receive workers' compensation benefits or Section 111F benefits,⁵ and the record does not contain any notices of injury for the events Mr. Belliveau lists in his application. Where workers' compensation or Section 111F benefits were not received and in the absence of any notices of injury, the earliest date on which an injury may be considered as supporting his application is February 7, 2015. The incidents claimed by Mr. Belliveau as causing or significantly aggravating his PTSD that fell within the permissible two-year period are the events relating to the disciplinary action surrounding a charge of conduct unbecoming of an officer and its publicity and the identification of the deceased from a fire on October 24, 2015.⁶ The events surrounding the charge of conduct unbecoming an officer, however, is not a "personal injury" for purposes of an accidental

¹ Exhibit 3; Findings of Fact 91-94.

² Ex. 8; FF 93.

³ Ex. 4; FF 96-101.

⁴ Subdivision (3) excepts injuries for which workers compensation payment was received or, in the case of an employee in groups 2, 3, or 4 (including police officers) to whom workers compensation does not apply, injuries for which an official report is on file in his department.

⁵ Mr. Belliveau's application reflects that he was grieving the denial of his request for Section 111F benefits.

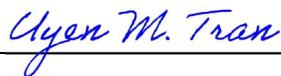
⁶ Ex. 3, 8, 20-26, 29; FF 12-42.

disability retirement application under G.L. c. 32, § 7 because they are either bona fide personnel actions that are not intentional infliction of emotional harm or they are work conditions that are “common or necessary to all or a great many occupations.”⁷ If, as the magistrate explained, Mr. Belliveau was claiming that the public announcement of possible criminal charges put him in fear for his safety exacerbated his post traumatic stress - that is, the publicity and repercussions, including a former arrestee that “welcomed him to the other side” worsened his anxiety and emotional condition – this would be a matter for the medical panel. It is the medical panel that determines whether Mr. Belliveau’s disability is the result of his emotional condition or an on-the-job injury. Similarly, the fire event of October 2015 would also be part of the medical panel’s evaluation of Mr. Belliveau’s application for accidental disability retirement. Based on the record evidence, Mr. Belliveau has presented “sufficient evidence, that if unrebutted and believed, would allow a factfinder to conclude that [he] is entitled to accidental disability retirement benefits.” *Lowell*, CR-06-296. We conclude that Mr. Belliveau has made a threshold showing that he is entitled to a medical panel examination.

Conclusion. The DALA decision is affirmed. Mr. Belliveau met his burden that he is entitled to a medical panel examination. This matter is remanded for a medical panel examination to consider the two events within the permissible two-year period discussed above. G.L. c. 32, § 7. *Affirm.*

SO ORDERED.

CONTRIBUTORY RETIREMENT APPEAL BOARD



Uyen M. Tran
Assistant Attorney General
Chair
Attorney General’s Appointee



Nicolle M. Allen, Esq.
Governor’s Appointee

⁷ *Sugrue v. Contributory Retirement Appeal Bd.*, 45 Mass. App. Ct. 1, 5 (1998).

actions that are not intentional infliction of emotional harm or they are work conditions that are “common or necessary to all or a great many occupations.”⁷ If, as the magistrate explained, Mr. Belliveau was claiming that the public announcement of possible criminal charges put him in fear for his safety exacerbated his post traumatic stress - that is, the publicity and repercussions, including a former arrestee that “welcomed him to the other side” worsened his anxiety and emotional condition – this would be a matter for the medical panel. It is the medical panel that determines whether Mr. Belliveau’s disability is the result of his emotional condition or an on-the-job injury. Similarly, the fire event of October 2015 would also be part of the medical panel’s evaluation of Mr. Belliveau’s application for accidental disability retirement. Based on the record evidence, Mr. Belliveau has presented “sufficient evidence, that if unrebutted and believed, would allow a factfinder to conclude that [he] is entitled to accidental disability retirement benefits.” *Lowell*, CR-06-296. We conclude that Mr. Belliveau has made a threshold showing that he is entitled to a medical panel examination.

Conclusion. The DALA decision is affirmed. Mr. Belliveau met his burden that he is entitled to a medical panel examination. This matter is remanded for a medical panel examination to consider the two events within the permissible two-year period discussed above. G.L. c. 32, § 7. *Affirm.*

SO ORDERED.

CONTRIBUTORY RETIREMENT APPEAL BOARD

Uyen M. Tran
Assistant Attorney General
Chair
Attorney General’s Appointee

Nicolle M. Allen, Esq.
Governor’s Appointee



Thinh Q. Nguyen, M.S., PA-C
Commissioner of Department of Public Health Appointee

⁷ *Sugrue v. Contributory Retirement Appeal Bd.*, 45 Mass. App. Ct. 1, 5 (1998).

Thinh Q. Nguyen, M.S., PA-C
Commissioner of Department of Public Health Appointee

Date: February 5, 2025