COMMONWEALTH OF MASSACHUSETTS

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

William Benevelli,
Petitioner

v.

Boston Retirement System,
Respondent

Docket No. CR-23-0597

Appearances:
For Petitioner: Kathleen Kiely-Becchetti, Esq.
For Respondent: Natacha Thomas, Esq.

Administrative Magistrate:
Judi Goldberg

SUMMARY OF DECISION

Petitioner applied for accidental disability retirement based on highly symptomatic premature ventricular contraction. The denial of his application based on a negative medical panel is reversed and accidental disability retirement benefits shall be awarded. One doctor failed to properly assess the risk of harm to the petitioner if he were to return to work. Another doctor based a supplemental opinion on his rejection of the heart law's presumption solely on risk factors.

DECISION

Petitioner William Benevelli timely appealed the denial by Respondent Boston Retirement System (BRS) of his application to retire with accidental disability benefits. After the parties submitted a Joint Pre-Hearing Memorandum with 12 exhibits, Mr. Benevelli moved to have his appeal resolved without a hearing; the BRS did not object. I requested that the parties provide an additional exhibit, marked as exhibit 13, and now enter all 13 exhibits into the record.

Findings of Fact

Based on the evidence in the record and reasonable inferences drawn from it, I make the following findings of fact:

1. William Benevelli, a veteran of the United States Army, began working as a fire fighter in February 1991. He had a pre-employment physical examination that did not reveal any abnormalities or cardiac issues. (Ex. 1; Agreed-upon fact 2.)

2. For the first 21 years of his career, Mr. Benevelli worked for the Boston Fire Department (BFD) with Rescue 2 in Roxbury. He then moved to the marine unit in the North End where his duties included Boston Harbor protection, scuba diving for rescue and recovery, and first aid for the islands. He also worked at various fire stations on an irregular basis. (Ex. 1.)

3. Sometime during 2009, Mr. Benevelli was diagnosed with high blood pressure for which he takes hydrochlorothiazide and lisinopril. (Agreed-upon fact 6; Ex. 1.)

4. In 2019, Mr. Benevelli was diagnosed with high cholesterol for which he takes Lipitor. (Agreed-upon fact 6; Ex. 1.)

5. On January 14, 2021, Mr. Benevelli was working at Engine 4 on Cambridge Street performing traditional firefighter duties. Two days later, he developed heart palpitations and irregular heartbeats. He was admitted to the hospital where doctors diagnosed him with low potassium. During an overnight stay, Mr. Benevelli's potassium was repleted and he was discharged with a 24-hour heart monitor. The heart monitor showed premature ventricular contractions (PVCs) at 5.8%. PVCs are a type of irregular heartbeat that occurs when an extra heartbeat disrupts the normal rhythm of the heart. Mr. Benevelli described feeling as though his heart would skip every fourth or sixth beat. (Agreed-upon fact 3; Ex. 1.)

6. Also in January 2021, Mr. Benevelli underwent a stress test that showed a normal exercise capacity for his age, normal heart rate and blood pressure response, and no evidence of angina or significant arrhythmia induction. An electrocardiogram was negative for ischemia. (Ex. 1.)

7. In February 2021, an echocardiogram showed preserved left ventricular function with diastolic noncompliance and elevated left premature ventricular complexes. He told his doctor, a cardiac electrophysiologist, that he still had the feeling of his heart skipping every fourth or sixth beat. (Ex. 1.)

8. His doctor started him on flecainide therapy to help control the symptoms related to his PVCs. Since he began this medication, Mr. Benevelli has experienced the PVCs very infrequently. (Ex. 1.)

9. Mr. Benevelli did not return to work after January 16, 2021. The BFD placed him on leave with injury-on-duty benefits pursuant to G.L. c. 41, § 111F. (Agreed-upon facts 4, 5.)

10. On June 23, 2021, Mr. Benevelli filed an application for accidental disability retirement (ADR) under the heart law presumption listing premature ventricular contraction as the disabling condition. (Agreed-upon fact 7.)

11. Dr. Potter-Kabolotsky completed the physician statement that Mr. Benevelli submitted with his application. She diagnosed Mr. Benevelli with highly symptomatic premature ventricular contraction, inferior left ventricular, interior mitral valve exit. Included among the tests that confirmed his diagnoses, she noted that an event monitor showed a 7% PCV burden. She opined that Mr. Benevelli was permanently disabled and that the heart law presumption was applicable. (Agreed-upon fact 8; Ex. 3.)

12. The Boston Fire Department filed a statement pertaining to his application for ADR under the heart law presumption. (Agreed-upon fact 9; Ex. 4.)

13. In October 2021, Mr. Benevelli retired at age 65. (Agreed-upon fact 10.)

14. In connection with his application for ADR, three members of a regional medical panel separately examined Mr. Benevelli. (Agreed-upon fact 11.)

15. Cardiologist Dr. Christopher Clyne examined Mr. Benevelli. He found Mr. Benevelli to be permanently disabled and opined that the heart law presumption should apply. He reported that Mr. Benevelli "has hypertension, hyperlipidemia, pre diabetes, infrequent difficult-to-control premature ventricular complexes, and documented non-sustained ventricular tachycardia requiring lifelong medications." Dr. Clyne also noted that "[h]ypertension is [an] unpredictable condition that can become severe at any time, especially in situations of stress . . . . The same can be said of heavy burden of PVCs and non-sustained ventricular tachycardia." He stated that Mr. Benevelli's conditions are chronic and not curable, and that they "present potentially hazardous conditions for Mr. Benevelli under stressful job conditions." He concluded that Mr. Benevelli's incapacity "is related both to the frequent PVCs, non-sustained ventricular tachycardia, and hypertension[.]" (Ex. 5.)

16. Next, cardiologist Dr. Michael Johnstone examined Mr. Benevelli. He found that Mr. Benevelli is not disabled and not incapable of performing the essential duties of his job. He reported that Mr. Benevelli has "mild hypertension and PVCs that are certainly not significant. They are annoying, but they are not life-threatening nor should they impair his work. The PVCs may in part be brought on by his alcohol and caffeine intake." (Ex. 7.)

17. Finally, occupational medicine physician Dr. Steven McCloy examined Mr. Benevelli in connection with his ADR application. He found that Mr. Benevelli is permanently disabled, that his condition is progressive, and that the heart law presumption should apply. He reported that Mr. Benevelli's diagnosis is "cardiac dysrhythmia including symptomatic PVCs." He opined that Mr. Benevelli's "cardiac condition would prevent the safe performance of his work." In concluding that the heart law presumption applies, he stated that Mr. Benevelli's incapacity is work related and that there was no history or "evidence of non-service-connected accidents or hazards which might have contributed to or resulted in [his] incapacity . . . ." (Ex. 6.)

18. The BRS held a hearing on Mr. Benevelli's application on May 17, 2022, after which the hearing officer issued a recommended decision to the BRS suggesting that it seek clarification from Drs. McCloy and Clyne. The hearing officer was concerned about whether Mr. Benevelli's "non-service-related risk factors were properly considered and analyzed by the majority of doctors on the medical panel." She noted that the "disparity in opinion regarding the role, if any, that non-service-related risk factors may have contributed to [Mr. Benevelli's] disability makes a determination as to whether the presumption has been rebutted by competent evidence premature." (Ex. 1.)

19. Specifically, the hearing officer recommended that Dr. McCloy clarify why he did not consider Mr. Benevelli's father's cardiac aneurysm at age 54 to be relevant and whether he considered Mr. Benevelli's history of hypertension and hyperlipidemia to be risk factors for coronary disease. (Ex. 1.)

20. In response to the hearing officer's recommendation, the BRS asked Dr. McCloy to clarify why Mr. Benevelli's father's cardiac aneurysm at age 54 does not "rise to the level of

relevant family history" and if not, whether that is because his father was reported to be a heavy smoker. The BRS also asked whether Mr. Benevelli's history of hypertension and hyperlipidemia creates a risk factor for coronary disease. (Ex. 8.)

21. Dr. McCloy responded to the BRS, stating first that Mr. Benevelli's father's cardiac aneurysm is not relevant family history because Mr. Benevelli's cardiac issues "were electrical in nature and not degenerative in nature as would be the case in a cardiac aneurysm." Dr. McCloy also wrote that "after performing examinations for PERAC for many years, I have grown fatigued by the blowback when I have mentioned other risk factors and demurred to invoke the Presumption Law. In this case, I should have raised the issue of other risk factors. Clearly, Mr. Benevelli has other significant risk factors. Unfortunately, under the rubric of this non-scientific Presumption Law, hypertension also has included [sic] as a work-related factor." Dr. McCloy concluded his response to the BRS's second question by stating that Mr. Benevelli "carries three of five risk factors for coronary artery disease: male gender, hypertension and hyperlipidemia." He concluded that these risk factors overcome the heart law presumption. (Ex. 10.)

22. The hearing officer also recommended that the BRS seek clarification from Dr. Clyne as to whether Mr. Benevelli's hypertension contributed to his disability in the same proportions as the other facts that he had referenced in his report. (Ex. 1.)

23. In response, the BRS asked Dr. Clyne to clarify whether Mr. Benevelli's hypertension "contributed to his disability in the same amounts as the other factors addressed in your narrative report[.]" (Ex. 9.)

24. Dr. Clyne repeated his conclusion that Mr. Benevelli remained eligible for the presumption because his pre-employment physical did not reveal signs of hypertension or

ventricular ectopy. He stated that he was more than 51% certain that Mr. Benevelli's hypertension was the "predominant cause" of his condition and that "hypertension is the primary source for the symptomatic arrhythmias." (Ex. 13.)

25. On November 15, 2023, the BRS voted to deny Mr. Benevelli's application for ADR. The BRS stated that Mr. Benevelli had "a majority negative medical panel certificate and medical report." (Ex. 11.)

26. Mr. Benevelli timely appealed from the BRS decision. (Ex. 12.)

Analysis

A public employee seeking to retire for accidental disability must establish three elements: that they are disabled, that the disability is permanent, and that the disability was caused by "a personal injury or violent act injury sustained or a hazard undergone as a result of . . . [their] duties at some definite place and at some definite time[.]" G.L. c. 32, § 7(1). With respect to the third element of causation, certain public-safety employees with cardiovascular conditions may use the "heart law" presumption:

> [A]ny condition of impairment of health caused by hypertension or heart disease resulting in total or partial disability or death to a uniformed member of a paid fire department . . . shall, if [they] successfully passed a physical examination on entry into such service, or subsequently successfully passed a physical examination, which examination failed to reveal any evidence of such condition, be presumed to have been suffered in the line of duty, unless the contrary be shown by competent evidence.

G.L. c. 32, § 94. Thus, when an employee satisfies the heart law's conditions, there is a rebuttable presumption that a work-related injury or hazard caused the employee's cardiovascular disease. *See Williams v. Norfolk Cnty. Ret. Bd.*, No. CR-03-556, at *3 (Contributory Ret. App. Bd. Dec. 23, 2004).

As required by statute, three physicians examined Mr. Benevelli. G.L. c. 32, § 6(3)(a) (regional medical panel is comprised of three physicians who "so far as practicable, [are] skilled in the particular branch of medicine or surgery involved in the case"). The regional medical panel addresses medical questions that are "beyond the [board's] common knowledge and experience." *Malden Ret. Bd. v. Contributory Ret. App. Bd.*, 1 Mass. App. Ct. 420, 423 (1973). An employee cannot retire for accidental disability unless the panel has certified that the three elements of the heart law are present. *Kelly v. Contributory Ret. App. Bd.*, 341 Mass. 611, 615 (1961). If a majority of the panel declines to certify all three elements, the local retirement board must deny the application unless if the panel used an erroneous standard, failed to follow proper procedure, or its decision is "plainly wrong[.]" *Id*. at 617; *Wentworth v. Taunton Ret. Bd.*, CR-24-0672, 2025 WL 3617520, at *3 (Div. Admin. L. App. Dec. 5, 2025) (including failure to review all pertinent facts as reason to disregard panel opinion).

One member of Mr. Benevelli's panel, Dr. Clyne, answered all three questions in the affirmative. He found that Mr. Benevelli's "chronic conditions . . . are not curable and require long-term treatment and management [and] present potentially hazardous conditions for Mr. Benevelli under stressful job conditions." He opined that his incapacity "is related both to the frequent PVCs, non-sustained ventricular tachycardia, and hypertension" and that Mr. Benevelli's incapacity is likely to be permanent. The BRS asked whether Mr. Benevelli's hypertension "contributed to his disability in the same amounts as the other factors addressed in your narrative report." In response, Dr. Clyne stated that he is "more than 51% certain that hypertension was the predominant cause of his condition of multiple frequent premature ventricular complexes and nonsustained ventricular tachycardia." He concluded that Mr.

Benevelli "did not have known hypertension or ventricular ectopy prior to his employ and therefore fulfills the presumption." Thus, Dr. Clyne answered all three questions affirmatively and provided a positive panel result.

The second panel member, Dr. Johnstone, did not believe that Mr. Benevelli is disabled by his "mild hypertension and PVCs." As part of his analysis of incapacity, the Public Employee Retirement Administration Commission's form required Dr. Johnstone to assess whether "a return to work would pose an unreasonable risk of serious harm to the member or third parties. The risk of re-injury has to be reasonably expected to involve substantial harm." Dr. Johnstone stated that Mr. Benevelli's conditions "are annoying, but they are not life-threatening nor should they impair his work[.]"

Dr. Johnstone did not use the proper standard to assess Mr. Benevelli's ability to perform the essential duties of his position. "[T]he proper standard to be applied in evaluating the risk of re-injury or harm to third parties for determining disability under Chapter 32 is whether the member is able to perform the essential duties of his or her position without a reasonable probability of substantial harm to himself or third parties." *Filipek v. Bristol Cnty. Ret. Bd.*, CR-03-672, at *7 (Contributory Ret. App. Bd. Dec. 23, 2004). To make this determination, "the fact finder, including the medical panel, shall take into account (a) the likelihood of re-injury or harm to the member or third parties posed by the member's return to work; and (b) the seriousness of the consequences to the member or third party of the injury to be risked." *Id*. at *7-8.

Dr. Johnstone's cursory statement that Mr. Benevelli's PVCs are "annoying" but "not life-threatening" fails to assess the probability of substantial harm (short of death) to Mr. Benevelli if he were to return to work. The issue with Dr. Johnstone's statement is not, as the BRS argues,

simply a failure to use specific terminology. *See Malden Ret. Bd., supra* at 425-26 (using word "accident" instead of "personal injury . . . did not create a misconception of [person's] physical or mental condition"). Rather, he assessed whether a return to work would be fatal rather than whether it could cause substantial harm; stated differently, just because a return to work might not be life-threatening does not mean that it might not result in substantial harm. Thus, Dr. Johnstone's conclusion about Mr. Benevelli's incapacity is based on an erroneous standard and must be set aside.

That leaves the final member of the panel, Dr. McCloy, who initially answered all three questions in the affirmative: he found that Mr. Benevelli's "cardiac condition would prevent safe performance of his work," that his condition is "likely to be permanent and progressive," that his condition is "work related[,]" and that "[t]he history does not provide any evidence of non-service connected accidents or hazards which might have contributed to or resulted" in his incapacity. In response to the BRS's request for clarification of this last point, he stated that Mr. Benevelli's father's cardiac history was not relevant but that Mr. Benevelli's gender and history of hypertension and hyperlipidemia were "contributory risk factors" for coronary artery disease. He therefore concluded that the presence of these risk factors "overcomes the Presumption Law." Thus, with the clarification, Dr. McCloy ultimately provided a negative opinion.

Although it is true that the "presumption is not conclusive and is lost when it is 'shown by competent evidence' that the disabling heart condition was not 'suffered in line of duty'[,]" *Hayes v. City of Revere*, 24 Mass. App. Ct. 671, 679 (1987), a physician's general statement about "contributory risk factors" is not enough to overcome the statutory presumption. *Noone v.*

Contributory Ret. App. Bd., 34 Mass. App. Ct. 756, 762-63 (1993) (finding that panel's reliance on risk factors did "not explain or justify its negative answer on causation").

For example, when a firefighter seeking to retire using the heart law presumption had elevated blood total cholesterol, cigarette smoking, and low HDL cholesterol as risk factors, they were not "in and of themselves etiological agents of heart disease, but rather markers to alert physicians to individual cases where there is possible increased risk of development of coronary artery heart disease." *Milton Ret. Bd. v. Pub. Emp. Ret. Admin.*, CR-96-729, at *7 (Div. Admin. L. App. May 16, 1997) ("Substantial competent contrary evidence sufficient to rebut the use of the Heart Law presumption was not shown."). Moreover, "[m]ere recitation of risk factors is insufficient to show that the Appellant's heart disease is not service connected[]" and therefore does not constitute competent evidence to rebut the heart law presumption. *Vosburgh v. West Springfield Ret. Bd.*, CR-91-962, at *4 (Div. Admin. L. App. Nov. 16, 1992) (listing history of triple bypass surgery, smoking, high cholesterol, and family history of heart disease as risk factors). *Cf*. *D'Amato v. Costine*, 2016 WL 5637178, at *9 (Mass. Super. Ct. Aug. 25, 2016) (finding insufficient competent evidence to overcome the heart law presumption even when physician opined that member's history of long-term alcohol use was a "causative factor" of member's cardiac condition).

Other cases reveal that the statutory presumptions are not automatically defeated whenever the member's disability is attributable in part to non-service-related causes or factors. *See Webber, supra* at *8-10 (presumption not rebutted by member's HIV status); *Setterlund v. Lexington Ret. Bd.*, No. CR-96-1234, at *8-9 (Div. Admin. L. App. Nov. 25, 1997) (presumption not rebutted by member's history of smoking cigarettes). Indeed, "[m]erely because something is a

'causative factor' does not show that it was *the* cause or even the *predominant* cause. . . . There frequently are multiple 'causative factors' for a particular medical condition." *D'Amato, supra* at 561-62 (emphasis added).

Applying these cases to Dr. McCloy's revised opinion results in the conclusion that his statement that Mr. Benevelli's "contributory risk factors" for coronary artery disease were enough to overcome the heart law presumption was erroneous. He found Mr. Benevelli's history of hypertension and hyperlipidemia along with his gender to be "contributory risk factors" and that Mr. Benevelli has "significant" risk factors. He did not opine as to whether these factors, one of which is also presumptively service connected, are "the" cause or a "predominant" cause for Mr. Benevelli's disabling condition. Dr. McCoy's application of an erroneous standard to assess the applicability of the presumption means that his clarification must be set aside. As a result, his original positive result stands.

Conclusion and Order

For the reasons set forth above, there are sufficient reasons to reject Dr. Johnstone's negative report and Dr. McCloy's clarification, which leaves two positive medical panel results. Mr. Benevelli is entitled to receive ADR benefits because he has shown that he has a permanent disability and has satisfied the requirements of the heart law presumption. The BRS's denial of his application for accidental disability retirement is reversed and accidental disability retirement benefits shall be awarded to him.

Dated: August 7, 2026

/s/ Judi Goldberg
Judi Goldberg
Administrative Magistrate
DIVISION OF ADMINISTRATIVE LAW APPEALS