COMMONWEALTH OF MASSACHUSETTS

**Division of Administrative Law Appeals**

**1 Congress Street, 11th Floor**

**Boston, MA 02114**

**www.mass.gov/dala**

**Richard Benoit**,

Petitioner

v. Docket No. CR-16-426

**Boston Retirement Board and**

**Boston Public Health Commission**

Respondents

**Appearance for Petitioner**:

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**Appearance for Respondents**:

Edward McKenna, Esq.

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Boston Public Health Commission

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**Administrative Magistrate**:

Kenneth Bresler

**SUMMARY OF DECISION**

An EMT who worked as a dispatcher was on his way to work and not yet on duty when he stopped at a motor vehicle accident to help. Although the EMT was performing an EMT function, he was not performing his duty. In addition, he did not prove that he was injured or disabled. Denial of accidental disability retirement benefits is affirmed.

**DECISION**

 The petitioner, Richard Benoit, appeals the denial by the Boston Retirement System (BRS) of his application for accidental disability retirement benefits. The Boston Public Health Commission (PBHC), Mr. Benoit’s employer, moved to intervene and was added as a respondent.

 I held a hearing on October 4, 2017, which was transcribed. References to the transcript are “Tr. \_\_.” Mr. Benoit testified, and called as a witness James Orsino, who is both an EMT with the Boston Public Health Commission and a union official. The Boston Public Health Commission called Joseph O’Hare, Superintendent of Operations at Boston EMS. (Although the exact relationship between PBHC and Boston EMS went unexplained – such as whether Boston EMS is part of PBHC – I use PBHC and Boston EMS interchangeably.)

 At the hearing, I admitted 46 exhibits. After the hearing, I admit Exhibit 47, a recommended decision by a BRS hearing officer, *summarizing* Mr. O’Hare’s testimony at an unrelated hearing. For reasons I explained at the beginning of the hearing (Tr. 21), I give Exhibit 47 little, if any, weight.

 When the Boston Public Health Commission’s brief arrived on January 10, 2018, it included a partial transcript of the hearing. On March 22, 2018, I requested the entire transcript, which arrived on April 4, 2018.

 On June 11, 2018, I issued an order reading:

This is petitioner’s case to make. *Bagley v. Contributory Retirement Appeal Board*, [397 Mass. 255](http://sll.gvpi.net/document.php?id=sjcapp:397_mass_255), 258 (1986). Yet the petitioner is making it hard for me to assess [his] appeal.

 The petitioner let an incomplete transcript be submitted to me, requiring me to ask the Boston Public Health Commission for a complete transcript. The transcript has no index – yet the petitioner has submitted a post-hearing brief that contains few if any citations to the transcript.

 By July 9, 2018, the petitioner will submit a post-hearing brief with full citations to the transcript. If the petitioner alleges any fact without citing to the evidence, I will not search the evidence to find the alleged fact, but will discount it.

 On June 14, 2018, Mr. Benoit, in a letter, “respectfully object[ed] to the notion that the Magistrate could ‘discount’ duly admitted evidence in this matter absent a citation to a written transcript.” (I stated that I would discount, not facts, but the petitioner’s uncited factual allegations.) On July 6, 2018, Mr. Benoit resubmitted his brief, with additional transcript citations – but not complete ones. *See e.g.*, Pet Br. 9 n.1 (reference to testimony but no transcript page), 9-11 (devoid of transcript citations), 12 (one transcript citation for entire page). I am not obligated to search the evidence and find the evidence that fits Mr. Benoit’s argument in the absence of citations. (*See* *e.g.*, Pet Br. 8 (referring to “a clear and ambiguous provision” *without specifying or citing it*).) I am not obligated to do Mr. Benoit’s work for him, especially considering my requests that he do the work for me. *See In re Sorci*, 315 B.R. 723, 728 (Bankr. N.D. Ill. 2004)(citation omitted)(“it is not the responsibility of the court to scour the record to make a party’s case for it”).

 All three parties submitted post-hearing briefs. The usefulness and reliability of Mr. Benoit’s brief was diminished by missing citations to the record, especially uncited factual assertions that were not supported by the evidence, and by overbroad factual assertions and at least one exaggeration that were not supported by his citations to the evidence. (*E.g.*, Pet. Br. 2 ¶12; 7 ¶46; 10, 11 n.3;12.) The usefulness of BRS’s brief was diminished by a citation format that was not explained or intuitive, and that lacked page numbers. The usefulness of BPHC’s brief was diminished by overbroad factual assertions that were not supported by its citations to the record. (*E.g.*, BPHC Br. at 6 & n.6.)

On August 2, 2018, I ordered the parties to submit more documents. On August 29, 2018, I admitted a State Police report as Exhibit 48, Mr. Benoit’s application for workers’ compensation as Exhibit 49, and the transcript of his hearing before the Department of Industrial Accidents (DIA) as Exhibit 50. Although I asked for and did not receive a recording of Mr. Benoit’s hearing before BRS, I doubt that the recording will resolve the factual discrepancies I note below. It is time to issue this decision.

**Findings of Fact**

 1. In the City of Boston, emergency medical technicians] (EMTs) have different levels, such as EMT-Basic, EMT-Paramedic, EMT-Telecommunicator, EMT-Lieutenant, and EMT-Captain. (Orsino testimony, Tr. 94; Ex. 9.)

 2. An EMT-Basic works in and from an ambulance. (Benoit testimony, Tr. 43, 44.)

3. An EMT-Telecommunicator takes 911 calls and dispatches ambulances. (Benoit testimony, Tr. 47-48.)

4. The Boston Emergency Medical Services Policy and Procedure Manual’s description of an EMT-Telecommunicator’s duties reads:

The EMT-Telecommunicator, under the direction of the Dispatch Operations Supervisor, shall control and coordinate communications on designated EMS channels. *In addition to responding to emergencies and providing care*, the Telecommunicator’s duties and responsibilities include:

* Carries out the orders of the Dispatch Operations Supervisor and the Command Staff;
* Receives, screens, and evaluates requests for service and determines the response requirements per protocol; dispatches, directs, and monitors the movement of all EMS response units; reassigns units to temporary satellite locations;
* Operates radio, telephone, and computer systems, and performs related duties as required; records and relays radio or telephone traffic according to established policy;
* Notifies public safety agencies such as Police, Fire, Marine, and Air Rescue services when the response of such agencies is required; coordinates the response and radio advisories as required;
* Assigns radio channels to be used for medical direction, medical control, consultation, and notification; relays medical traffic and point of entry data as required;
* Directs ambulances, aircraft, and marine units entering the region with critical patients to proper routes, airports, docks, and hospitals;
* Notifies the Dispatch Operations Supervisor or other supervisory staff when administrative or technical problems arise;
* Develops and maintains a thorough knowledge of standard operating procedures including dispatch procedures, call-screening protocols, response areas, and city geography; works as C-MED[[1]](#footnote-1) operator as requires;
* Performs related duties as required.

(Ex. 9)(emphasis added). Thus, the job description details the dispatch duties of the position and mentions in passing “responding to emergencies and providing care.”

 5. A 1998 posting for the EMT-Telecommunicator’s position read:

Under immediate supervision, works in the Boston Emergency Dispatch Operations Center processing both emergency and administrative calls, dispatches EMS resources and interfaces with public safety agencies using an integrated computer aide[d] dispatch system, coordinates local and regional ambulance to hospital radio communications in the metropolitan area and uses Emergency Medical Service radio/communications system.

Properly utilizes Enhanced 911 and Computer Aided Dispatch Systems to quickly and accurately receive and process requests for EMS assistance from a variety of sources including the 911 system and other public safety agencies.

Follows departmental policies and procedures regarding telephone triage and pre-arrival instructions.

Dispatches and coordinates EMS resources.

Maintains all certifications required of Boston EMS EMT (including but not limited to EMT, SAED,[[2]](#footnote-2) subcutaneous epinephrine injections, Hazardous Material awareness level training, BTLS certification and Albuterol.)

 Maintains all certifications requires of Boston EMS EMT-T (including but not limited to Computer Aided Dispatch trainings, APCO certification and Commonwealth of Mass, E-9-1-1 certification.)

Complies with Department policies, procedures and protocols.

Performs other related duties as required.

(Ex. 42.)

6. The job posting’s description of an EMT-Telecommunicator’s duties is still accurate. (O’Hare testimony, Tr. 139.)

 7. The job posting’s description of an EMT-Telecommunicator’s duties does not include providing emergency medical care. (Ex. 42.)[[3]](#footnote-3)

 8. Despite the policy and procedure manual’s reference to “responding to emergencies and providing care,” an EMT-Telecommunicator is not required to provide emergency medical care, not when he or she comes across an emergency that calls for on-siting (which is discussed later), and not while working at the EMT Telecommunications Dispatch Center. (O’Hare testimony, Tr. 117-18, 122, 128-29; Exs. 10, 42.)

 9. An EMT-Telecommunicator generally does not work on an ambulance. (O’Hare testimony, Tr. 116.)

10. An EMT-Telecommunicator works at the EMT Telecommunications Dispatch Center, known colloquially as “the Turret.” (Benoit testimony, Tr. 47.)

 11. The Turret has medical supplies, roughly what an ambulance has. (Benoit testimony, Tr. 48-50.)

 12. EMT-Telecommunicators occasionally give emergency medical care, such as when a person with stab wounds walked into the lobby, a taxi pulled up with a woman who was experiencing a drug overdose, and an employee passed out. (Benoit testimony, Tr. 48-49.)

 13. When an off-duty member of Boston EMS stops at an emergency to give or to help with medical care, it is called “on-siting.”[[4]](#footnote-4) (O’Hare testimony, Tr. 136.) Without using the term, the practice is described in the General Dispatch Procedures:

6. Whenever an off duty member [of the department] notifies Dispatch Operations that they have stopped at an incident to assist or render care, that member shall be logged onto CAD[[5]](#footnote-5) with their ID (EMT###). An incident shall be generated (if not already entered) and that member assigned to the incident.

(Ex. 10.)

 14. The on-siting procedure does not provide for payment, including overtime. (Ex. 10; O’Hare testimony, Tr. 128.)[[6]](#footnote-6)

 15. Off-duty Boston EMTs who do not stop and on-site at accidents and for emergencies are not disciplined. (O’Hare testimony, Tr. 129.)

 16. EMTs in Boston need to be recertified every two years. The test for recertification has a physical component, including carrying a 150-pound mannequin up and down four or five flights of stairs. (Benoit testimony, Tr. 43.)

 17. EMT-Telecommunicators on modified duty are not required to provide emergency medical care. (O’Hare testimony, Tr. 117-18.)

 18. One EMT-Telecommunicator uses a wheelchair on the job. A second one occasionally uses a cane on the job. A former EMT-Telecommunicator used a walker occasionally on the job. (Benoit testimony, Tr. 78; O’Hare testimony, Tr. 124, 126.)

 19. If an emergency arose and an EMT-Telecommunicator using a wheelchair, cane, or walker declined to provide medical care, he or she would not be disciplined. (O’Hare testimony, Tr. 124.)

 20. Some time after January 2000, Mr. Benoit began working for the City of Boston as an EMT- Basic. (Benoit testimony, Tr. 42.)

 21. In April 2003, while working as an EMT, Mr. Benoit injured his right knee. (Ex. 11, p. 102B; Tr. 44-45.) This injury is not directly related to this appeal.

 22. In July 25, 2006, while working as an EMT, Mr. Benoit injured his right knee. (Ex. 11, p. 102A; Tr. 46-47.) As with the previous injury, this one is not directly related to this appeal.

 23. In August 2008, because of medical problems (unexplained in the evidence but unrelated to this appeal), Mr. Benoit asked to become and became an EMT-Telecommunicator. (Benoit testimony, Tr. 72, 75; Ex. 11, p. 101A.)

 24. During the five years that he worked in Dispatch Operations, Mr. Benoit did not work in an ambulance, except for “a couple of sport details.” (Benoit testimony, Tr. 72.) [[7]](#footnote-7)

 25. During the five years that he worked in Dispatch Operations, Mr. Benoit responded to emergency calls inside or directly outside the building eight or ten times. (Benoit testimony, Tr. 74.)

 26. On June 9, 2013, Mr. Benoit was scheduled to work the 11:30 p.m. to 7:00 a.m. shift. (Benoit testimony, Tr. 50.)

 27. Around 10:50 p.m., Mr. Benoit was driving a car, presumably his private car, in Boston to work. He was dressed in his uniform. He saw another car flip a few times on Route 93 northbound. (Benoit testimony, Tr. 50-52, 57.)

 28. Mr. Benoit stopped his car, took his work-issued trauma bag and radio, and ran to the overturned car, which was lying on its passenger side. (Benoit testimony, Tr. 52, 53, 55.)

 29. To extricate the occupant from the car, Mr. Benoit opened the driver’s side and entered the vehicle. (Benoit testimony, Tr. 53, 55.)

 30. Mr. Benoit helped extricate the woman. (Benoit testimony, Tr. 56.)

31. Later, fellow EMTs treated Mr. Benoit at the scene and reported “very minor cuts” to his right elbow. (Ex. 43, p. 230.) Under “Complaint,” the space in the form to record a patient’s complaint, Boston EMS did not mention Mr. Benoit’s knee, indicating that he did not complain about it. (His knee is the subject of this appeal.)

32. Then Mr. Benoit drove to work. (Benoit testimony, Tr. 57.)

 33. Mr. Benoit did not get compensated for the extra 40 or so minutes that he worked. (Benoit testimony, Tr. 77.)

34. After leaving work that day, June 9, 2013, Mr. Benoit did not return to work. (Benoit testimony, Tr. 63, 67.)

 35. On June 10, 2013, Mr. Benoit filled in and signed a Worker’s Compensation Services Report of Occupational Injury or Accident. He wrote:

[C]ar was on side, smoking....climbed down inside....kicked through windshield due to car smoking – trooper assist[[8]](#footnote-8) - ....

(Ex. 16, 121.)

 36. In two places on the form, Mr. Benoit wrote that he had lacerations to his arm and back and had injured his right knee. (Ex. 16, pp. 121, 122.)

 37. The form asked for the cause of injury and provided these options: Lifting, Pushing, Pulling, Bending, Fall, MVC,[[9]](#footnote-9) Assault, Exposure, and Other. Mr. Benoit circled “Bending” and “Other.” He did not explain what he meant by “Other”; instead, he described his injuries. (Ex. 16, p. 121.)

38. On the same date and in the same report, Mr. Benoit’s supervisor wrote comments. They were barely legible, because of the handwriting and because the exhibit is a photocopy of a fax. The comments appear to read:

EMT Benoit sustained minor [word] while assisting at a rollover that were cleaned up and bandaged by EMT [unknown word(s), possibly EMTs’ names] if the [word] wanted to file [word] for [word] up to date on vaccinations – c 82

(Ex. 16, p. 123.)

 39. On August 14, 2013, Mr. Benoit had an appointment with his doctor, Dr. Anthony Schepsis. (Ex. 20, p. 146.)

 40. In his medical note, Dr. Schepsis stated that Mr. Benoit had already been treated by

occupational health and Doctor Arnold…He took Aleve for a period of time, which helped him and then also was prescribed physical therapy. An MRI indicated osteoarthritic changes.

(Ex. 20, p. 146.)[[10]](#footnote-10)

 41. Dr. Schepsis also wrote, “He jumped down from an SUV [and] twisted his knee and felt a ‘pop.’” (Ex. 20, p. 146.)

 42. On September 17, 2013, Mr. Benoit had another appointment with Dr. Schepsis, who stated in his medical note:

On June 9, 2013, he injured his right knee....He twisted the knee, he felt a pop as he jumped down from the SUV.

 (Ex. 21, p. 150.)

 43. On February 3, 2014, an independent medical examiner, Dr. Steven Sewall, evaluated Mr. Benoit’s claim for workers’ compensation and concluded that Mr. Benoit

is able to do full-time, light-duty work, where he does not have to lift greater than 50 pounds, or do work that requires squatting, kneeling or lifting. At this point, he remains partially disabled.

(Ex. 14, p. 115.)

 44. In his medical note, Dr. Sewall wrote that

apparently he had to jump down to rescue a female victim in the car, and also kicked with his right leg to break the windshield....He had increased pain and locking in his right knee, and felt a pop.

 (Ex. 14, p. 114.)

45. On March 23, 2014, Mr. Benoit applied for workers’ compensation through his lawyer. A printout of his online application reads:

While driving to work[,] witnessed a rollover[.] Climbed into car to as[s]ist trooper[.] Inside was a female occupant[.] I kicked through windshield due to car smoking[,] injuring right knee[.]

(Ex. 49)(all capital letters reduced to lower case and initial capitals).

 46. On May 18(?),[[11]](#footnote-11) 2014, in his Treating Physician’s Statement, Dr. Schepsis was asked to describe the event that in his opinion led to Mr. Benoit’s disability. He wrote, “Jumping into a rolled over car....” (Ex. 2, p. 23.)

47. On May 20, 2014, Mr. Benoit received a total knee replacement. (Benoit testimony, Tr. 63.)

48. In 2016, Mr. Benoit received a total knee revision. (Benoit testimony, Tr. 66-67.)

49. After sitting for 10 to 15 minutes, Mr. Benoit’s knee starts to get numb and to hurt, and Mr. Benoit needs to straighten and stretch it. (Benoit testimony, Tr. 68.)

50. On March 30, 2017, Mr. Benoit renewed his EMT certification. (Benoit testimony, Tr. 76-77; Ex. 46.)

 51. On June 11, 2014, Mr. Benoit applied for accidental or ordinary disability retirement benefits. (Ex. 1, p. 2.)[[12]](#footnote-12)

 52. When asked the medical reason for his application, Mr. Benoit answered: “Right knee trauma resulting in total knee replacement.” (Ex. 1, p. 3.)

 53. When asked the duties that he is unable to perform because of his disability, Mr. Benoit answered: “Lifting, Carrying, Squatting, Kneeling, Climbing, pivoting, walking, Sitting.” (Ex. 1, p. 3.)[[13]](#footnote-13)

 54. Mr. Benoit stated that he was last able to perform all the essential duties of his position on June 9, 2013. (Ex. 1, p. 3.)

 55. When asked to describe the incident, Mr. Benoit wrote:

While driving to work[,] observed a Rollover MV accident trauma and pulled up to assist uncons[c]io[u]s female occupant. Car was up on its side[,] smoking after rolling over few times. I climbed on top of MV, climbed down inside to get under uncons female due to car up on it’s side. I got seatbelt off, assumed C-spine and then had to kick through windshield to get the PT and myself out due to smoke. I was activated on scene by supervisor.

(Ex. 1, p. 6.)

 When asked to describe the job duties he was performing before and when he sustained the injury, Mr. Benoit wrote:

Accident happened on my way to work, activated by Supervisor. Provided Basic Life Support to uncons[c]ious and Injured MV occupant.

(Ex. 1, p. 7.)

 56. On March 21, 2014, Dr. Hugh Oflynn examined Mr. Benoit. He wrote that Mr. Benoit had “jumped into a rolled over vehicle and more severely injured an already significantly injured knee.” (Ex. 27, p. 172.)

 57. On September 16, 2014, the Employer Statement to accompany Mr. Benoit’s application for accidental disability retirement benefits was signed. It stated: “Mr. Benoit climbed into the rolled over SUV and kicked in the windshield causing injury to his right knee.” (Ex. 11, p. 102.)

 58. The Employer’s Statement also stated that Mr. Benoit

has been working as a Telecommunicator in dispatch operations since August 28, 2008. Telecommunicators are responsible for receiving 911 calls. They enter the call into the CAD system, dispatch ambulances to emergency scenes and coordinate ambulances to receiving hospitals. The telecommunicator position is a sedentary job that requires no heavy lifting. In addition[,] our Dispatch Center is a state of the art ergonomic facility featuring comfortable chairs, consoles that lower and rise to the height of the specific dispatcher. Telecommunicators are able to sit and stand at their own leisure.

(Ex. 11, p. 100A.) The Employer Statement continued, “The Telecommunicator position does not require any lifting or bending.” (Ex. 11, p. 100A.)

 59. When asked if Mr. Benoit could not perform any of the physical requirements of the position because of his claimed disability, the Employer Statement answered:

No[,] there are no physical requirements for this position other than receiving and dispatching 911 calls.....

(Ex. 11, p. 100A.)

 60. When asked if Mr. Benoit could perform the essential duties of his position if he were reasonably accommodated, the Employer Statement answered:

Yes[,]Mr. Benoit is able to perform the essential duties of his job because he has been reasonably accommodated since 2008 as a result of a prior unrelated health issue.

(Ex. 11, p. 100A.)

 61. The Employer Statement continued: “The applicant was working a modified duty assignment in Dispatch Operations as a Telecommunicator.” (Ex. 11, p. 101.)

 62. The Employer Statement further stated: “[T]he applicant could return to his previous held position as a Telecommunicator in Dispatch Operations.” (Ex. 11, p. 100A.)

 63. Boston EMS will still let Mr. Benoit return to work as an EMT-Telecommunicator. (O’Hare testimony, Tr. 130.)

 64. The two people who signed the Employer Statement on September 16, 2014 included Mr. O’Hare. (Ex. 11, p. 104.)

 65. On August 11, 2014, Dr. Steven Sewall examined Mr. Benoit. In his medical note, Dr. Sewall stated:

Mr. Benoit had to kick out the windshield to assist the driver, and also had to jump down, reinjuring his right knee.

 (Ex. 44, p. 233.)

 66. The Employer Statement was transmitted to the three medical panelists. (Ex. 12.)

 67. Although the transmittal cover sheet states that the transmittal includes “a copy of the member’s official job description with essential duties noted” (Ex. 12, p. 106), the record does not indicate whether the policy and procedure manual’s description of an EMT-Telecommunicator’s duties (Ex. 9), the 1998 posting for the EMT-Telecommunicator’s position (Ex. 42), or another job description was transmitted, or whether the Employer’s Statement’s description of the position sufficed.

 68. Each of the three medical panelists stated that he had “reviewed the member’s job description.” (Ex. 3, p. 31; Ex. 5, p. 53.)

 69. When the three medical panelists issued their separate opinions, each opinion included a sheet titled “Applicant Information,” which listed Mr. Benoit’s occupation as “Administrator.” (Ex. 3, p. 33; Ex. 4, p. 42; Ex. 5, p. 47.) On the Applicant Information sheet accompanying Dr. McCloy’s opinion, “Administrator” is crossed out and replaced by a handwritten notation, “EMT City of Boston.” (Ex. 4, p. 42.) It is unknown who changed the occupation and why.

 70. On January 3, 2015, Dr. Robert J. Nicoletta, an orthopedist and medical panelist, examined Mr. Benoit. (Ex. 5.)

 71. Dr. Nicoletta opined that Mr. Benoit was physically incapable of performing the essential duties of his job; his incapacity was likely to be permanent; and his incapacity might be the natural and proximate result of his personal injury. (Ex. 5, pp. 48-49.)

 72. In his narrative, Dr. Nicoletta wrote:

Diagnosis. Multiple injuries to the right knee, meniscus tears, chondral injury, status post arthroscopy, partial meniscectomy, chondroplasty, debridement, microfracture with progressive osteoarthritis from multiple injuries as described [earlier in narrative] dating back to 2003[,] now status post total new arthroplasty.

Assessment. There does appear to be a causal relationship established by the history….He has not had a medical end result….[H]e may require revision total knee arthroplasty in regards to the right knee. It does not appear that he can return to his prior work capacity at Boston EMT due to the multiple injuries that he sustained, multiple surgeries, and the fact that he has had total knee arthroplasty in May 2014. It does not appear that he can return to his prior work capacity as previously stated both now and in the future *as an EMT*.

(Ex. 5, pp. 52-53)(emphasis added.)[[14]](#footnote-14)

 73. On January 22, 2015, Dr. John H. Chaglassian, an orthopedist and medical panelist, examined Mr. Benoit. (Ex. 3.)

 74. Dr. Chaglassian stated that he had “reviewed the member’s job description.” (Ex. 3, p. 31.)

75. Dr. Chaglassian opined that Mr. Benoit was physically incapable of performing the essential duties of his job; his incapacity was likely to be permanent; and his incapacity might be the natural and proximate result of his personal injury. (Ex. 3, pp. 33A-34.)

In his narrative, Dr. Chaglassian wrote:

In view of the fact that he has such limitation of motion of his knee, which would make him uncomfortable even in a sitting position, and where his knee is unstable when he walks, I believe that this examinee is completely disabled from performing any job….

(Ex. 3, p. 31.)

 76. On March 3, 2015, Dr. Steve G. McCloy, an occupational medicine doctor and medical panelist, examined Mr. Benoit. He opined that Mr. Benoit was not physically incapable of performing the essential duties of his job. (Ex. 4, p. 43.)

 77. In his narrative, Dr. McCloy wrote:

Mr. Benoit presented his job as being with full essential functions of an emergency medical technician. That is misleading. The job description from the employer is that of a sedentary administrative job working in an ergonomically designed work space dispatching calls. He is fully capable of that job.

(Ex. 4, p. 40.)

 78. Dr. McCloy also wrote:

There were fumes in the cab....He opened the door....He was going to try to get her out because of the fumes. He lowered himself down into the vehicle. In doing this, he again[[15]](#footnote-15) felt a pop in his knee. He and the trooper together broke out the windshield....

(Ex. 4, p. 37.)

79. Dr. McCloy dictated this narrative in Mr. Benoit’s presence. (Ex. 4, p. 38.) If Mr. Benoit tried to correct this information, it is not in the record.

 80. On January 14, 2015, Dr. James V. Bono examined Mr. Benoit. Dr. Bono was an independent medical examiner, apparently during the workers’ compensation case. Dr. Bono wrote: “[H]e used his right leg to kick out a windshield to save someone’s life....” (Ex. 45, p. 239.)

 81. On February 5, 2016, Mr. Benoit testified before DIA about his workers’ compensation claim as follows:

…I had to jump down….[W]hen I first jumped down…I landed and felt a pop.

….

[The state trooper] ran around to the front of the truck and he started trying to smash the windshield.

 But in the meantime, I turned my body and I started kicking it like sideways, backwards almost….

 The trooper started smashing the windshield with his, the device he had. So I took my jacket off and put it over the women’s face, because the glass was starting to come in. And I put my back sideways and he started to peel the windshield up….[T]he windshield came up….

(Ex. 50, pp. 17-18.)

 82. On July 17, 2016, a hearing officer of the Boston Retirement System, after having conducted a hearing, ruled against Mr. Benoit. The reason was that Mr. Benoit could perform the duties of a sedentary EMT-Telecommunicator. (Ex. 6, p. 79.)

 83. On September 1, 2016, BRS notified Mr. Benoit that it had denied his application for accidental disability retirement benefits. It did so for the reasons in the hearing officer’s decision. (Ex. 7, p. 81.)

 84. On September 9, 2016, Mr. Benoit timely appealed. (Ex. 13.)

**Discussion**

 My instruction about cross-examination

 At the beginning of the hearing, I told the lawyers:

I’m not going to allow you to impeach a witness by showing a document that another person prepared, recording that witness’s words.

 You can ask the witness whether he or she said that, but you can’t ask him or her why someone recorded the words that he did, in fact, [say].

(Tr. 21.) That is, I instructed the lawyers that they could not assume that because a person, such as a doctor, purported to record a witness’s words, the witness “did, in fact” say those words. In effect, I instructed the lawyers that they could not ask a witness, “If you didn’t say those words, then why did the other person write them down?”

 At least one lawyer did not understand my instruction and later said:

…I believe you told me that I could not confront someone with previous testimony….

 I have Mr. Benoit’s testimony here. I could not use that for him….

(Tr. 141.)

 I responded: “You can’t confront a witness with ‘Why did someone else put this in the report that you supposedly said?’” (Tr. 142.) The lawyer continued: “So I then would have been able to put Mr. Benoit’s testimony in front of him?” I answered, “Yes.” (Tr. 142.) I added:

[N]ow that we’ve clarified what I said and what you understood, Mr. Benoit is still here. If you want to re-open cross-examination, I will allow you to do that.

 The lawyer responded: “No, I’m okay, Your Honor.” (Tr. 143.)

The significance of different accounts of Mr. Benoit’s supposed injury

 If a witness testifies that he jumped down into a vehicle, and a doctor records the witness telling him that he climbed down into the vehicle, a single apparent discrepancy might not be significant – especially if the witness testifies that he told the doctor that he jumped down into the vehicle. But when apparent discrepancies between a witness’s account and other people’s recording of his account recur and pile up, their significance becomes inescapable.

 In *Howard Poulten v. Boston Retirement Board*, CR-11-88, CR-12-547 (DALA 2014), the discrepancies were so numerous and multifaceted that I could not credit the petitioner’s account of his injuries. I wrote:

It is true that the discrepancies in Mr. Poulten’s accounts were mainly recorded by someone else, namely doctors. Yet the details were important for treatment; *e.g.*, knowing how many stairs Mr. Poulten fell down was important to treating his knees, knowing the nature of any threats against him was important in treating him psychologically. Therefore, I cannot easily ascribe the inconsistencies in Mr. Poulten’s accounts to doctor after doctor misrecording his consistent narrative. There are so many discrepancies and inconsistencies that I ascribe them to Mr. Poulten.

 So too here. Mr. Benoit, an EMT, should know that reporting the cause of an injury is important in getting it treated. He should know better than most petitioners that precision in reporting the cause of an injury is important. Yet the accounts of his injury differ.

 Did Mr. Benoit jump down into the vehicle or climb down?

He climbed down, according to the following accounts: Worker’s Compensation Services Report of Occupational Injury or Accident, June 10, 2013 (signed by and in Mr. Benoit’s handwriting), Ex. 16, 121; worker’s compensation application, March 23, 2014, Ex. 49; application for accidental disability retirement benefits (signed by and in Mr. Benoit’s handwriting), June 11, 2014, Ex. 1, p. 6; Employer Statement, Sept. 16, 2014, Ex. 11, p. 102.

He lowered himself, according to Dr. McCloy’s narrative (dictated in Mr. Benoit’s presence), March 3, 2015, Ex. 4, p. 37.

 He jumped down, according to the following accounts: Dr. Schepsis’s medical note, Aug. 14, 2013, Ex. 20, p. 146; Dr. Schepsis’s medical note, Sept. 17, 2013, Ex. 21, p. 150; Dr. Sewall’s medical note, Feb. 3, 2014, Ex. 14, p. 114; Treating Physician’s Statement, May 18(?), 2014, Ex. 2, p. 23; Dr. Oflynn’s medical note, March 21, 2014, Ex. 27, p. 172; Dr. Sewall’s letter, Aug. 11, 2014, Ex. 44, p. 233; Mr. Benoit’s DIA hearing testimony, Feb. 5, 2016; Mr. Benoit’s DALA hearing testimony, Oct. 4, 2017, Tr. 53.

 Did Mr. Benoit injure his knee by entering the vehicle or kicking the windshield?

By entering the vehicle, whether he climbed down or jumped down, according to the following accounts: Dr. Schepsis’s medical note (no mention of windshield), Aug. 14, 2013, Ex. 20, p. 146; Dr. Schepsis’s medical note (no mention of windshield), Sept. 17, 2013, Ex. 21, p. 150; Dr. Oflynn’s medical note (no mention of windshield), March 21, 2014, Ex. 27, p. 172; Treating Physician’s Statement (no mention of windshield), May 18(?), 2014, Ex. 2, p. 23; Dr. McCloy’s narrative (dictated in Mr. Benoit’s presence; reporting a pop in the knee, which implies injury), March 3, 2015, Ex. 4, p. 37; Mr. Benoit’s DIA hearing testimony, Feb. 5, 2016; Mr. Benoit’s DALA hearing testimony (reporting a pop in the knee, which implies injury), Oct. 4, 2017, Tr. 53.

 By kicking the windshield, according to the following accounts: Worker’s compensation application, March 23, 2014, Ex. 49; Employer Statement, Sept. 16, 2014, Ex. 11, p. 102 (implies injury by kicking windshield); Dr. Bono’s letter (no mention of entering vehicle), Jan. 14, 2015, Ex. 45, p. 239.

 Mr. Benoit’s brief does not clearly take a position on what caused his supposed injury, entering the vehicle or kicking the windshield.

 Did Mr. Benoit feel a pop in his knee, and if so, when?

 His knee popped upon entering the vehicle, whether he climbed down or jumped down, according to the following accounts: Dr. Schepsis’s medical note, Aug. 14, 2013, Ex. 20, p. 146; Dr. Schepsis’s medical note, Sept. 17, 2013, Ex. 21, p. 150; Dr. McCloy’s narrative (dictated in Mr. Benoit’s presence), March 3, 2015, Ex. 4, p. 37; Mr. Benoit’s DIA hearing testimony, Feb. 5, 2016; Mr. Benoit’s DALA hearing testimony, Oct. 4, 2017, Tr. 53.

 His knee popped, but the timing is unclear, according to Dr. Sewall’s medical note, Feb. 3, 2014, Ex. 14, p. 114.

 The following accounts do not mention Mr. Benoit’s knee popping: Worker’s Compensation Services Report of Occupational Injury or Accident (signed by and in Mr. Benoit’s handwriting), June 10, 2013, Ex. 16, p. 121; Dr. Oflynn’s medical note, March 21, 2014, Ex. 27, p. 172; worker’s compensation application, March 23, 2014, Ex. 49; Treating Physician’s Statement (even though Dr. Schepsis mentioned it in his two medical notes), May 18(?), 2014, Ex. 2, p. 23; application for accidental disability retirement benefits (signed by and in Mr. Benoit’s handwriting), June 11, 2014, Ex. 1, p. 6; Employer Statement, Sept. 16, 2014, Ex. 11, p. 102; Dr. Sewall’s letter (even though Dr. Sewall mentioned it in his medical note), Aug. 11, 2014, Ex. 44, p. 233; Dr. Bono’s letter, Jan. 14, 2015, Ex. 45, p. 239.

 It is unclear why, if Mr. Benoit felt a pop, he did not mention it to the EMTs who treated his cuts. (Ex. 43, p. 230.)

 Did Mr. Benoit kick through the windshield?

 Many accounts refer to Mr. Benoit’s having kicked through the windshield. (Worker’s Compensation Services Report of Occupational Injury or Accident (signed by and in Mr. Benoit’s handwriting), June 10, 2013, Ex. 16, 121; Dr. Sewall’s medical note (referring to “break the windshield”), Feb. 3, 2014, Ex. 14, p. 114; application for accidental disability retirement benefits (signed by and in Mr. Benoit’s handwriting), June 11, 2014, Ex. 1, p. 6; Employer Statement, Sept. 16, 2014, Ex. 11, p. 102; Dr. Sewall’s letter, Aug. 11, 2014, Ex. 44, p. 233; Dr. Bono’s letter, Jan. 14, 2015, Ex. 45, p. 239.)

 One account refers to Mr. Benoit and the state trooper breaking the windshield together. (Dr. McCloy’s narrative, March 3, 2015, dictated in Mr. Benoit’s presence, Ex. 4, p. 37.)

 Mr. Benoit’s testimony before DALA is more ambiguous. He testified:

…I started kicking the windshield…and the state trooper started smashing the windshield. I don’t know if it was a Maglite or one of those things they use to get the windshield up,[[16]](#footnote-16) but glass was starting to come in, so I draped my jacket over her while I was holding her c-spine – holding her neck.

 And the windshield started to peel up – all that the windshield had to do was peel up about halfway, and I started to pull her out…

(Tr. 55-56.) Mr. Benoit’s account contains multiple indications that he did not kick through the windshield. He testified that he “*started* kicking the windshield” – and did not testify that he kicked through it. When glass *started* entering the vehicle – in other words, before the windshield was fully broken – Mr. Benoit draped his jacket over the patient and held her spine – presumably using both of his hands. That made it less likely that he continued to kick the windshield with his foot or feet – especially because the vehicle was on its side and it is unclear which part of the windshield Mr. Benoit kicked and which part of the vehicle he used to stabilize himself with. And his testimony that “all that the windshield *had to do* was peel up about halfway” – not “all I had to do was peel up the windshield” – signals that the windshield was not within his control.

 Mr. Benoit’s testimony before DIA makes it clearer that the state trooper broke through the windshield, not Mr. Benoit:

[The state trooper] ran around to the front of the truck and he started trying to smash the windshield.

 But in the meantime, I turned my body and I started kicking it like sideways, backwards almost….

 The trooper started smashing the windshield with his, the device he had. So I took my jacket off and put it over the women’s face, because the glass was starting to come in. And I put my back sideways and he started to peel the windshield up….[T]he windshield came up….

(Ex. 50.)

 If Mr. Benoit did kick the windshield, it is unclear why he would have used his right leg to do so – after having surgery twice on his right knee, in 2004 and 2006 (Ex. 1, p. 12), and supposedly feeling a pop in his knee. (Tr. 53.) I can guess what his response would be, but it would only be a guess, and this appeal was Mr. Benoit’s to make. *Bagley v. Contributory Retirement Appeal Board*, 397 Mass. 255, 258 (1986).

 Mr. Benoit may or may not have kicked the windshield, but he did not kick through it.

 In sum

 The discrepancies among and unanswered questions arising from Mr. Benoit’s multiple accounts of his supposed injury lead me to doubt that he injured his knee on July 9, 2013. (Not all of Mr. Benoit’s medical records were in evidence. *See* note 10. I doubt that more medical records would have resolved the discrepancies and answered questions, as opposed to raising more discrepancies and questions.)

 To receive accidental disability retirement benefits, a retirement system member must sustain a disabling injury. G.L. c. 32, § 7. “The Petitioner has the burden of proof on each element necessary to establish entitlement to a benefit under Chapter 32,” *Deborah Herst Hill v. State Board of Retirement*, CR-07-605 (DALA 2009) – including that he was actually injured. Mr. Benoit has not so proved.

 Whether an EMT-Telecommunicator’s duties include providing medical care

The Boston Emergency Medical Services Policy and Procedure Manual’s description of an EMT-Telecommunicator’s duties includes “responding to emergencies and providing care.” (Ex. 9)(emphasis added). In addition, the fact that Boston EMS issues to EMT-Telecommunicators radios and trauma bags (Tr. 51) demonstrates that Boston EMS anticipates that EMT-Telecommunicators might need them to provide emergency medical care and that doing so is one of their functions.

 However, EMT-Telecommunicators who are physically unable to provide emergency medical care are not required to do so. (O’Hare testimony, Tr. 117-18,124.)

Whether Mr. Benoit is disabled from his position

Mr. Benoit was not disabled from his position as an EMT-Telecommunicator position – which is sedentary. (Ex. 11, p. 100A.) That’s one reason why one medical panelist opined that Mr. Benoit was not physically incapable of performing the essential duties of his job. (Ex. 4, p. 40, 43.)

If EMT-Telecommunicators can and have used a wheelchair, a cane, and a walker on the job (Benoit testimony, Tr. 78; O’Hare testimony, Tr. 124, 126), then Mr. Benoit, who uses none of those devices, can perform the duties of the position. He has not proved by a preponderance of the evidence that he cannot perform the position’s duties.

Although Mr. Benoit testified that after sitting for 10 to 15 minutes, his knee starts to get numb and to hurt, and he needs to straighten and stretch it (Tr. 68), that does not mean that he is disabled. Nor is “sitting for extended periods of time impossible,” as Mr. Benoit argued, citing Dr. Chaglassian. (Pet. Br. 13.) That medical panelist actually stated that Mr. Benoit would be “uncomfortable even in a sitting position” (Ex. 3, p. 31), language that Mr. Benoit quotes early in his brief. (Pet. Br. 7.) To call it impossible for Mr. Benoit to sit for long periods and attribute it to Dr. Chaglassian goes beyond advocacy and enters the realm of exaggeration.

Mr. Benoit’s position as an EMT-Telecommunicator is still open to him. (Ex. 11, p. 100A; O’Hare testimony, Tr. 130.) However, Mr. Benoit has chosen not to return.

One argument why he cannot return, Mr. Benoit asserts, is that

 [t]he provision of emergency medical care was an essential duty of his position as EMT-Telecommunicator and…Mr. Benoit is incapable of performing it.

 The position of EMT-Telecommunicator is a full-duty position which requires Mr. Benoit to be capable of providing emergency medical care.

(Pet. Br. 11.)

 [T]here is no position at Boston EMS for Mr. Benoit that does not require him to be able to provide emergency medical care.

(Pet. Br. 13.) This argument is incorrect for two reasons. One, the EMT-Telecommunicators who have used a wheelchair, a cane, and a walker on the job were not expected to provide emergency medical care. If an emergency arose and an EMT-Telecommunicator using a wheelchair, cane, or walker declined to provide medical care, he or she would not be disciplined. (O’Hare testimony, Tr. 124.)

 The second reason why Mr. Benoit’s argument that he cannot provide emergency medical care is incorrect has to do with his recertification as an EMT. When Mr. Benoit testified in detail and early in his direct examination about the need to be recertified as an EMT every two years and the physical component of the recertification process (Tr. 42-43), I anticipated that the point of his testimony was that he was not physically able to become recertified. *Yet Mr. Benoit was recertified on March 30, 2017*, almost four years after his supposed disabling injury. (Ex. 46.) It is puzzling how Mr. Benoit can argue that he cannot perform the physical duties of an EMT when he was recertified. Recertification is strong evidence that Mr. Benoit can perform the physical requirements of an EMT.

 Thus, Mr. Benoit *is capable of providing emergency medical care* and *he is not required to provide it*.

 Mr. Benoit’s backup argument is that he can’t perform the non-emergency component of an EMT-Telecommunicator. (Pet. Br. 13.) I’ve already discussed that he is not disabled from the sedentary duties of an EMT-Telecommunicator.

 The contention over whether light duty (permanent and temporary) and modified duty exist for EMT-Telecommunicators and whether Mr. Benoit was ever offered it (Tr. 49, 71, 96, 108-09, 118, 131-32, 139) amount to a digression from the heart of the matter and a wrangling over words. The heart of the matter is that Mr. Benoit is not physically disabled from working as an EMT-Telecommunicator.

 The case of *Foresta v. Contributory Retirement Appeal Board*, 453 Mass. 669 (2009) is relevant, but might not govern this case. The fact that

🞄Boston EMS does not require EMT-Telecommunicators to provide emergency medical care if they are physically incapable of it;

🞄 EMTs at any level are not required to on-site; and

🞄 Mr. Benoit is able to perform emergency medical care

means that Mr. Benoit can perform the essential duties of an EMT-Telecommunicator *without* accommodation. However, if Boston EMS’s not requiring Mr. Benoit to provide emergency medical care means that Boston EMS has accommodated Mr. Benoit, then *Foresta* governs. Whether or not *Foresta* governs, Mr. Benoit’s application for accidental disability retirement benefits fails.

 Was Mr. Benoit performing his duties on June 9, 2013?

 On-siting procedure

 According to General Dispatch Procedures,

6. Whenever an off duty member [of the department] notifies Dispatch Operations that they have stopped at an incident to assist or render care, that member shall be logged onto CAD[[17]](#footnote-17) with their ID (EMT###). An incident shall be generated (if not already entered) and that member assigned to the incident.

(Ex. 10.) This procedure describes on-siting. (O’Hare testimony, Tr. 136.) The procedure applies to “*an off duty member*,” or at least a Boston EMS member who is initially off duty. The procedure does not state that the off-duty member is placed on duty. The following went unexplained in the appeal: what it means for a member to be logged in, for an incident to be generated, and to assign a member to the incident.

 Mr. O’Hare, who had a role in writing the General Dispatch Procedures, testified:

[T]here are occasions where members of the Department are transiting either *from home to work or work to home*…and may stop at the scene of a medical emergency.

(Tr. 128)(emphasis added.)

The general intent of this policy was to assure the safety of our folks in getting them the resources that they may need at the scene of a medical emergency, knowing that…they’re *not on duty* and may not have any equipment with them.

(Tr. 135)(emphasis added.)

 Overtime

 The record is ambiguous about whether an on-siting EMT is eligible for overtime pay.

 Mr. O’Hare might have testified that EMTs are not paid overtime for on-siting, but he might have simply been testifying that paragraph 6 of the General Dispatch Procedures did not provide for such overtime pay. (Tr. 128.) That is, EMTs *might* receive overtime pay for on-siting, but not under paragraph 6.

 Mr. Benoit testified that he could and did work overtime, and he put in for overtime for being on-sited on June 9, 2013, but that he did not receive it. He could not remember if he contested not receiving it. (Tr. 50, 82.)

 The record is silent about the procedure for applying and being approved for overtime.

 Whether Mr. Benoit called Boston EMS to on-site

 Some weak evidence exists that BPHC does not have a record of Mr. Benoit calling on June 9, 2013 to on-site. BPHC’s post-hearing brief cited Exhibit 6, the recommended decision of the Boston Retirement System. Exhibit 6, in turn, stated:

The member testified that he called in to inform EMS that he was on-scene, [but] there is no evidence that EMS was aware of the call or that the member was “activated” by EMS. The BPHC denies that the member was activated.[[18]](#footnote-18)

(Ex. 6, p. 8.) Exhibit 6 also stated:

The BPHC denies that the member was activated, and no other evidence exists to show the member was activated except for his testimony that he called in.

(Ex. 6, p. 10.)

 BPHC does not pursue this point vigorously. It twice cited Exhibit 6 in its brief, once only in a footnote. (BPHC Br. 6 n.4, 19.) BPHC did not cite Mr. Benoit’s actual testimony before the BRS, not a transcript and not a recording. It did not ask a witness to testify to what it asserted in the footnote:

The telephone lines at Boston EMS are recorded and there would be a record of any call that Mr. Benoit made from the scene of the accident on June 9, 2013.

(BPHC Br. 6 n.4.) And Mr. O’Hare testified at the DALA hearing that Mr. Benoit *was* on-sited. (O’Hare testimony, Tr. 136.)

 The fact that other EMTs responded to the accident scene does not indicate or prove that Boston EMS received Mr. Benoit’s call, despite Mr. Benoit’s conclusory argument about other EMTs responding. (Pet. Br. 10 n.2, 11 n.3.)

I’m not sure what to make of the half-hearted arguments, barely based on evidence, by Mr. Benoit and BPHC. It seems that both parties could have clarified the facts by introducing a call log or its equivalent and/or asking Mr. O’Hare what a call log showed.

Duties vs. functions

 G.L. c. 32, § 7 requires a retirement system member to have been “in the performance of, his duties” to receive accidental disability retirement benefits.

 A duty is an obligation; a person is required to perform it. *Black’s Law Dictionary* 615 (10th ed. 2014)(defining “duty” as a “legal obligation…”); [https://merriam-webster.com/ dictionary](https://merriam-webster.com/%20dictionary) (defining “duty” in part as “[obligatory](https://www.merriam-webster.com/dictionary/obligatory) tasks, conduct, service, or functions that arise from one’s position…”). Mr. Benoit, as an EMT-Telecommunicator, was not required to provide emergency medical care when he came across an emergency that might call for on-siting. (O’Hare testimony, Tr. 128-29; Exs. 10, 42.) Mr. Benoit performed an EMT function on June 9, 2013, but he was not performing his duty.

 In sum

 Mr. Benoit was probably on-sited, although he may not have been. Mr. Benoit may or may not have been on duty. (I’m using “on duty” in the sense of “working.”) Mr. Benoit may or may not have been eligible for overtime pay if he had been on-sited. Mr. Benoit was not performing a duty when he stopped at the accident.

**Conclusion and Order**

 BRS’s denial of accidental disability retirement benefits is affirmed because Mr. Benoit was not performing his duty on June 9, 2013 and has not proved that he was injured on that date or that any such injury has disabled him.

 DIVISION OF ADMINISTRATIVE LAW APPEALS

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 Kenneth Bresler

 Administrative Magistrate

Dated: October 5, 2018

1. The record does not reveal what this stands for. Presumably, it is a radio. (Tr. 48.) [↑](#footnote-ref-1)
2. The record does not reveal what this and other acronyms stand for. [↑](#footnote-ref-2)
3. At the hearing, the parties disputed the significance of this job description. Mr. Benoit elicited testimony that no one was hired under it. He also elicited testimony that implied that because it dated from 1998, it was outdated. (Orsino testimony, Tr. 93, 96.) BPHC objected to Exhibit 42’s introduction because it dated to 1998. (Tr. 95-96.) On cross-examination of Mr. Orsino, BPHC tried to establish that the union was involved in creating the job description – without explaining during or after the hearing why that matters. (Orsino testimony, Tr. 102.) Countering Mr. Benoit, BPHC elicited testimony that EMT-Telecommunicators *were* hired under this job description and that it is still a relevant description. (O’Hare testimony, Tr. 121-22, 139.) Despite all the maneuvering, which continued in Mr. Benoit’s brief (Pet. Br. 13), what is significant is that the job description did not explicitly require an EMT-Telecommunicator to perform emergency medical services. (*See also* O’Hare testimony, Tr. 122.) The references to “related duties” probably mean “related” to the administrative duties, not something farther afield, such as providing hands-on medical care. [↑](#footnote-ref-3)
4. Other terms and their variants appeared throughout the appeal: “on-scene” (*e.g.*, Ex. 1, p. 6; ex. 6, p. 8.), “activation” (*e.g.*, Ex. 1, p. 7; Pet. Br. 9, 10), and “self-activation.” (*E.g.*, Tr. 127.) Because Mr. O’Hare, Superintendent of Operations at Boston EMS, testified that the usual term is “on-siting” and that he was not familiar with “activating” (O’Hare testimony, Tr. 135-36), I use “on-siting.” If differences exist and *matter* among the terms, the parties have not so explained. *See* Tr. 88 (Orsino testimony that “activation can mean two things”). [↑](#footnote-ref-4)
5. Presumably, Computer Aided Dispatch. (Ex. 42.) [↑](#footnote-ref-5)
6. It is unclear whether O’Hare was testifying only about the written policy – which on its face contains no provision for payment, including overtime – or whether he was testifying that EMTs who on-site do not get paid for doing so. [↑](#footnote-ref-6)
7. Presumably, overtime details at sporting events. [↑](#footnote-ref-7)
8. Presumably, Mr. Benoit means that he assisted the State Trooper, although he could have meant vice versa. [↑](#footnote-ref-8)
9. This acronym went unexplained. [↑](#footnote-ref-9)
10. The medical notes from this doctor or the doctors who prescribed physical therapy and the MRI are not in evidence. Nor are the medical notes from Mr. Benoit’s visit to Tufts-New England Medical Center on June 10, 2013. (Benoit testimony; Tr. 59.) [↑](#footnote-ref-10)
11. The date is unclear. [↑](#footnote-ref-11)
12. Page numbers are Bates numbers. [↑](#footnote-ref-12)
13. Despite the question, Mr. Benoit did not list duties that he could not perform; he listed activities. Except for sitting, Mr. Benoit did not need to perform these activities as an EMT-Telecommunicator. [↑](#footnote-ref-13)
14. It is unclear whether Dr. Nicoletta realized that Mr. Benoit was an EMT-*Telecommunicator*, not an EMT working in an ambulance. Presumably, Mr. Benoit told Dr. Nicoletta that he, Mr. Benoit, was required to perform emergency services, as he told Dr. McCloy. (Ex. 4, pp. 38, 40.) Dr. Nicoletta did assert that he had “reviewed the member’s job description.” (Ex. 5, p. 53.) [↑](#footnote-ref-14)
15. Dr. McCloy earlier recounted Mr. Benoit’s 2003 injury, when he “felt a pop in his knee.” (Ex. 4, p. 37.) [↑](#footnote-ref-15)
16. That is, Mr. Benoit was not sure whether the State Trooper was using a flashlight or device to smash the windshield. [↑](#footnote-ref-16)
17. Presumably, Computer Aided Dispatch. (Ex. 42.) [↑](#footnote-ref-17)
18. I’m not sure what to make of BPHC’s reported denial, which is hearsay. At the DALA hearing, Mr. O’Hare testified that Mr. Benoit *was* on-sited on June 9, 2013, as I note elsewhere. (Tr. 136.) [↑](#footnote-ref-18)