

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Boston Public Health Commission
(Gretchen Fox),
Petitioner

v.

Docket No.: CR-22-0357
Date issued: December 12, 2025

Boston Retirement System,
Respondent

Appearance for Petitioner:

Andrea M. Milyko, Esq.

Appearance for Respondent:

Edward H. McKenna, Esq.

Administrative Magistrate:

James P. Rooney
First Administrative Magistrate

SUMMARY OF DECISION

A lieutenant for Boston Emergency Medical Services who was injured while working in the field and could no longer perform the heavy lifting required of a field EMT was granted accidental disability retirement by the Boston Retirement Board because the ability to perform heavy lifting was essential to her position in the field. The appeal of her employer, the Boston Public Health Commission, is denied because the position the member was offered – as a lieutenant in the dispatch division -- after her injury was not similar in responsibility or purpose to her position as a lieutenant in the field.

DECISION

Gretchen Fox worked as an emergency medical technician (EMT) and then a lieutenant for Boston Emergency Medical Services (EMS), which is a bureau of the Boston Public Health

Commission. She suffered a right shoulder injury while working in the field as a lieutenant and, in 2022, the Boston Retirement System approved her application for accidental disability retirement. The Boston Public Health Commission timely appealed the Retirement System's action.

I held a hearing on March 19, 2024 at the Division of Administrative Law Appeals (DALA), 14 Summer Street, 4th Floor, Malden, Massachusetts. I marked the parties' joint prehearing memorandum, which contained a statement of agreed facts, as Pleading A. I admitted the 179 exhibits. The witnesses at the hearing were: Ms. Fox and John Gill, the Superintendent-in-Chief of Boston EMS. The administrative record closed on October 17, 2024 when DALA received the parties' post-hearing briefs.

Findings of Fact

Based on the testimony, the exhibits presented by the parties and the statement of agreed facts, I make the following findings of fact:

1. Gretchen Fox was hired in April 1995 by what became Boston EMS. She received six months of training and was assigned briefly to the field. After less than one year in the field, she was reassigned to dispatch.¹ Although, over the years, she made many requests to be returned to the field, she remained in dispatch until 2016. In 2010, she was promoted to lieutenant and served the next six years as a lieutenant in dispatch. Occasionally she was asked to fill in for a field lieutenant. In 2016, she was reassigned as a lieutenant in the field. (Fox and Gill testimony; Ex. 178.)

¹ The collective bargaining agreement gives Boston EMS management the right to transfer employees to another division. (Ex. 179, Article 5.)

2. The two divisions most relevant to this matter are field operations and dispatch.

EMTs assigned to field operations are “generally assigned to ambulances and deliver Boston EMS’s on-scene medical responses to patients. They are responsible for treating, stabilizing, and transporting patients to hospitals.” (Agreed Fact 3.) The minimum qualifications for this position include the ability to (1) “carry more than 20 lbs. of equipment while walking, climbing and descending stairs or over difficult terrain;” (2) “carry an adult patient, with a partner up or down stairs;” (3) “stoop, kneel, crouch or crawl to access a patient;” (4) “perform cardiopulmonary resuscitation for extended periods of time;” and (5) “lift an adult patient . . . into an ambulance, with a partner.” (Ex. 159.)

3. EMTs assigned to dispatch, sometimes referred to as EMT Telecommunicators:

receive calls made to “911,” obtain relevant information about the medical emergency from the caller, provide initial medical instructions to callers, assess the emergency and determine what resources should be deployed in the emergency, deploy those resources to the call, provide any additional instruction to the caller before EMTs arrive, and coordinate communication between all pre-hospital providers and receiving hospitals throughout the Boston area. An EMT must undergo additional training and obtain additional certifications to work in Dispatch Operations.

(Agreed Fact 4; Ex. 161.) In practice, dispatchers perform three separate tasks: (1) taking 911 calls, triaging them to determine what response is called for, and walking callers through life-saving measures; (2) dispatching ambulances to the scene of incidents; and (3) C-Med, which involves coordinating communications between ambulances and hospitals. Dispatchers rotate through these three tasks during each shift. (Gill testimony.)

4. The job description for Senior Emergency Medical Technician/Lieutenant – EMS states that a person in this position performs the duties described in the EMT job description and:

Supervises EMS personnel in the performance of EMS procedures in conformance with established BEMS policy. Coordinates EMS operations at the scene of major incidents within the EMS incident Command System as required.

(Ex. 160.)

5. In 2016, Lt. Fox was reassigned to be a lieutenant in the field on the night shift. In this position, she was assigned an ambulance to go into the field. She would check calls to see which one needed a lieutenant, which were typically the more serious calls, such as shootings. She was sometimes the first person to arrive on the scene. As needed, she would perform the duties expected of a line EMT, including CPR. She would sometimes go to the hospital with a patient. (Fox testimony.)

6. On October 21, 2016, she responded to a call from a woman that her boyfriend was abusing her. The lieutenant assessed the woman, who told her that her boyfriend was threatening to jump off the roof of a five-story building. She went to the roof to try to calm the boyfriend down. (Fox testimony; Ex. 5.) As she described it in an injury report:

While negotiating on a roof with a violent EDP [emotionally disturbed person]/Jumper, a sudden door opening caused him to bolt. I grabbed him and restrained him, falling down on the rooftop onto my right side, injuring my right knee and right shoulder.

(Fox testimony; Ex. 4.) Her knee and elbow were bruised and swiftly became swollen. (Ex. 20.) She was treated at the Tufts Medical Center Emergency Department and released. An x-ray of her right knee showed no fracture or dislocation. (Exs. 12 -14.) A subsequent MRI of her right knee showed no evidence of a meniscal tear. An MRI of her right elbow showed right biceps tendon strain. (Exs. 18-19.)

7. On November 21, 2016, Lt. Fox treated with orthopedic surgeon Elizabeth Matzkin, M.D. at Brigham and Women's Hospital. She reported continuing knee pain to the

doctor, who also diagnosed a biceps tendon strain. Dr. Matzkin told her to stay out of work for four to six weeks. (Ex. 20.)

8. On December 1, 2016, Lt. Fox began a four-month, 18-visit physical therapy program. She gradually achieved some pain relief in her right knee and elbow, but she experienced pain in her right shoulder during PT sessions. She could not reach over her head and had pain when holding a phone to her ear. Lt. Fox reported to her therapist that she woke up at night from right shoulder pain and that her shoulder hurt when she walked on a treadmill. (Exs. 43-70.)

9. On December 19, 2016, Robert Nicolatta, M.D., an orthopedic surgeon, performed an independent medical exam of Lt. Fox at the request of the City of Boston's Workers' Compensation Service. He diagnosed her with a right biceps strain and a right shoulder strain with impingement, both related to her fall. He recommended that she continue physical therapy and thought she could work light duty that involved no lifting greater than 15 pounds, no overhead activity, and no bending or squatting. (Ex. 165.)

10. On January 26, 2017, Lt. Fox was seen again by Dr. Matzkin. An MRI of her shoulder showed that the lieutenant had a "small tear as well as biceps tendinosis." (Ex. 23.)

11. On March 2, 2017, Dr. Nicoletta responded to a request that he review an arthrogram of Lt. Fox's shoulder. He reported that the arthrogram showed "a focal articular surface partial tear of the distal anterior fibers of the infraspinatus with tendinopathy." He thought these were soft tissue injuries that would improve with time because there is "no evidence of unstable labral tear, there is no evidence of instability, [and] no evidence of full thickness rotator cuff tear." (Ex. 164.)

12. Lt. Fox made office visits to Dr. Matzkin in March, April, June, and July 2017. The lieutenant continued to report shoulder pain, including pain when going about her daily activities. The doctor gave Lt. Fox a steroid injection in her shoulder in June, which offered some relief, and sent her again to physical therapy. In her March 13, 2017 note, the doctor wrote that Lt. Fox “continue[s] to be off work as there is no light duty option for her.” (Exs. 24-27.)

13. Beginning on July 11, 2017, Lt. Fox began a three-month PT course with 21 sessions. Her right shoulder pain increased while doing any movement and her right shoulder range of motion, strength, pain, and functional mobility worsened throughout physical therapy. (Exs. 71-91.) When PT ended, her therapist concluded that:

At this time, due to no progress toward all goals, continued and even worsening levels of pain as well as impaired functional mobility the patient would benefit from PT being placed on hold pending follow up with MD.

(Ex. 91.)

14. On August 14, 2017, Dr. Matzkin told Lt. Fox that conservative treatment had reached its limit, and she should consider whether to have surgery to repair the tear in her rotator cuff. (Ex. 28.) On May 1, 2018, Dr. Matzkin performed an arthroscopic repair of Lt. Fox’s right rotator cuff and a subacromial decompression. Her operative note reflected that she repaired a complete tear of the rotator cuff. (Ex. 29.)

15. By September 13, 2018, Lt. Fox’s physical therapist noted that the lieutenant had attended 21 sessions of her latest physical therapy. She reported that “the patient continues to demonstrate increase in pain, limited range of motion as well as impaired RUE [right upper extremity] strength and functional mobility.” (Ex. 91.)

16. Dr. Nicoletta reevaluated Lt. Fox on September 17, 2018. He thought that she had “not yet reached a medical end result” and should continue with postoperative rehabilitation. He concluded that:

At the present time, I do not feel that she can be employed in her prior work capacity. However, she could be employed in a full-time, light duty status with normal activities below shoulder level and no lifting greater than 5 pounds at this time. She should avoid overhead activity, cross body activity, and no lifting above shoulder level . . . while she undergoes further treatment.

(Ex. 166.) Dr. Nicoletta’s report did not mention that he reviewed a job description for lieutenant or that he had considered whether Lt. Fox could work in any particular division of Boston EMS.

17. Lt. Fox’s latest course of physical therapy ended on October 31, 2018. The lieutenant’s therapist noted that “[t]he patient appears motivated,” but concluded that:

Based on today’s re-evaluation and updated objective measures the patient appears to have plateaued in all domains including ROM [range of motion], strength as well as limitations in functional mobility. Due to plateau in progress and continued limitations, it is recommended that PT be placed on hold at this time in order to allow for the patient to follow up with her MD.

(Ex. 136.)

18. Lt. Fox saw Dr. Matzkin five days later. The doctor thought her progress in physical therapy was slow and that she was not safe to return to work. (Ex. 34.)

19. On November 16, 2018, Lt. Fox’s employer sent her a letter stating that:

The Boston Public Health Commission is offering you a Lieutenant position in Dispatch Operations. The position will allow you to work within the restrictions outlined in your Independent Medical Exam dated September 17, 2018.

(Ex. 168.) The letter told her to report to work on November 26, 2018.² *Id.*

Superintendent-in-Chief Gill described this letter as a standard return to work letter. (Gill testimony.) The letter did not spell out whether Boston EMS expected Lt. Fox to perform all the duties normally performed by a lieutenant in dispatch or if she would be excused from some of them because of her right shoulder problem. Superintendent-in-Chief Gill agreed that Lt. Fox could not perform all dispatch-related duties following her injury. He did not specify which ones. (Gill testimony.)

20. Lt. Fox saw Dr. Matzkin again on January 3, 2019. The doctor continued to think that the lieutenant was not ready to go back to work as an EMT. She discussed having the lieutenant undergo more physical therapy and then scheduled such therapy at a subsequent visit on February 14, 2019. (Exs. 35 and 36.)

21. Lt. Fox then had 22 additional sessions of physical therapy. (Exs. 137-158.) At the final session on May 21, 2019, the therapist reported that the lieutenant experienced: No change in pain or functional mobility as shown on objective measures. The patient was able to demonstrate improvement in range of motion since the start of care with no change in strength or functional mobility. . . . Objectively, the patient continues to present with pain, limited ROM [range of motion] and impaired RUE [right upper extremity] strength as well as functional limitations including dressing, reaching, sleeping, lifting/carrying and difficulty performing all daily activities.

(Ex. 158.)

2 The record does not reflect how Lt. Fox responded to this letter. Board counsel, in his closing brief, stated that the lieutenant, through counsel, declined the offer.

22. On March 6, 2019, the Boston Public Health Commission sent Lt. Fox another letter offering her a light duty position in dispatch and told her to report to work on March 18, 2019. (Ex. 169.) The lieutenant's attorney responded in a March 15, 2019 letter that:

Unfortunately, at this time. Ms. Fox is not ready to return to work. According to her doctor, she remains totally disabled. As such, she will not be appearing for work on Monday. If and when Ms. Fox is cleared to return to work, we will let you know.

Thank you for your interest in bringing Ms. Fox back to work. She is working hard to try to get better but the process is taking longer than expected given the extent of her injuries and the pain caused by those injuries. We will let you know if her condition changes and her doctor clears her to return to work.

(Ex. 170.) The lieutenant thought and still thinks she would not be able to fulfil the duties expected of as a lieutenant in dispatch. When she was a lieutenant in dispatch, she was assigned to use six computer screens, three or four keyboards, and three phones. She frequently worked with a phone on each shoulder, which she thought would be difficult to do with her injured shoulder. (Fox testimony.)

23. On April 22, 2019, Lt. Fox again followed up with Dr. Matzkin. The doctor reported that the lieutenant's employer was pressuring her to return to work and that she was thinking of retiring because of continuing weakness in her right shoulder. The doctor noted that Lt. Fox "continues to have weakness and discomfort with terminal range of motion." While Dr. Matzkin continued to think that the lieutenant was incapable of returning to EMT duties, she cleared her to return to light duty with no heavy lifting or lifting of over 15 pounds. (Exs. 39 and 171.)

24. On May 10, 2019, the Boston Public Health Commission sent her the same return to work letter, this time asking her to report for duty on May 27, 2019. (Ex. 172.)

25. On May 21, 2109, Dr. Nicoletta examined Lt. Fox once again. This time he thought she had “reached medical end result” as she was “unlikely to get any further benefit with any further orthopaedic intervention or physical therapy.” Still, he thought she could be employed so long as there were permanent restrictions: she should avoid “activities at or greater than shoulder level with the right shoulder,” avoid “repetitive overhead activities,” and lift no more than five pounds. (Ex. 173.)

26. On May 24, 2019, Lt. Fox’s attorney responded to the return-to-work letter. Counsel wrote that:

At this time, Ms. Fox is not ready to return to work, in any capacity. Her treating doctor has not cleared her to return to work. Because of how disappointed she is in her recovery, Ms. Fox is seeking a second opinion from a new doctor. Once she meets with the new doctor, we will update you as to her ability to return to work, if any, and let you know what medical treatment is being recommended, if any.

(Ex. 174.)

27. Lt. Fox sought a second opinion from orthopedic surgeon Michael Ackland M.D. She saw him on June 6, August 2, and September 12, 2019. He diagnosed her with right shoulder impingement syndrome and declared that she was temporarily totally disabled from the labor force. (Exs. 40-42.) In the report on Lt. Fox’s September visit, he stated:

Despite ample amounts of formal physical therapy and 2 cortisone injection[s] under ultrasound guidance to the biceps tendon sheath, the patient continues to have considerable pain in the right shoulder. She reports that she is unable to perform activities of daily living and hygiene related tasks. Activities of leisure are nearly impossible to perform. The patient wakes up frequently secondary to her right shoulder pain. She also reports numbness and tingling into her hands, especially at the index, middle, and thumb of her right hand. She continues to lack considerable strength in the upper right extremity.

(Ex. 42.) Dr. Ackland concluded that Lt. Fox was temporarily totally disabled “for the foreseeable future.” *Id.*

28. Lt. Fox filed for accidental disability retirement with the Boston Retirement Board. The Board received her application on January 7, 2020. She claimed her disability arose from her effort to restrain a suicidal person on October 21, 2016, which led to her injuring her right shoulder, right knee and right elbow. She stated that because of this injury, she was unable to take:

[a]ny action or lift or duty that requires me to use my right arm/shoulder (dominant arm) over 7lbs and/or with normal range of motion and/or with speed of use or with force or impact (i.e. carrying/lifting equipment or patient, extrication, restraint or care of patient or others, etc.)

(Ex. 1.) She also stated that she had difficulty with certain activities of daily living such as bathing and dressing herself, and that those activities she could perform, she relied heavily on her left shoulder. *Id.*

29. Lt. Fox’s application was supported by a physician’s statement from Dr. Ackland. He stated she is disabled by the injury to her right rotator cuff. He thought she was more likely to regress rather than fully recover. He noted that her right shoulder rotator cuff had an unrepairs “focal tear” that could “become a full tear over time.”³ (Ex. 3.)

30. Boston EMS filed an Employer’s Statement; Lt. Fox’s supervisor prepared the response and the Department Head signed off on it. When asked to describe Lt. Fox’s essential duties, her supervisor wrote that:

3 Dr. Ackland also noted that Lt. Fox’s left shoulder suffered from an overuse syndrome that had led to “labral fraying” as Lt. Fox attempted to compensate for the injury to her right shoulder. (Ex. 3.)

Lieutenants perform the same duties as a Boston EMS EMT . . . as well as supervise EMS personnel in the performance of EMS procedures in conformance with well established BEMS policy.

(Ex. 2.) The job description of an EMT and a Lieutenant were attached. *Id.*

31. When asked to describe “the physical or mental requirements” of Lt. Fox’s current position, her supervisor replied:

Applicant must carry more than 20lbs of equipment as well as patients on stretchers, while walking, climbing stairs or traversing difficult terrain. Applicant must also stoop, kneel, crouch and crawl.

(Ex. 2.)

32. The form asked whether Lt. Fox could “perform the essential duties of . . . her current position if . . . she was reasonably accommodated.” Her supervisor responded in an unreadably small typeface that appears to refer to a dispatch position. A few questions later, Lt. Fox’s supervisor noted that the lieutenant had twice been offered a position as lieutenant in dispatch. (Ex. 2.) The employer’s statement did not describe the work requirements of a lieutenant in dispatch or provide a job description.

33. Lt. Fox was examined in telehealth visits by a medical panel composed of three orthopedic surgeons: Samuel Doppelt, M.D.; Laurence D. Cohen, M.D.; and Marc Linson, M.D. Each determined that the lieutenant was disabled, the disability was permanent, and the disability might be the natural and proximate result of her October 21, 2016 job-related injury.

(Exs 5-7.)

34. Dr. Doppelt examined Lt. Fox on March 3, 2021. The lieutenant described to Dr. Doppelt the events on the date of her injury. He note that she had undergone rotator cuff surgery and subacromial decompression. He also was aware that Lt. Fox had been offered a

position in dispatch. He did not know whether this offer was for a permanent or temporary position, and he was not certain why the lieutenant turned it down. He concluded:

Based on the report of limitations and her long physical therapy with only some success, it is with a reasonable degree of medical certainty that I feel the claimant is disabled from her usual occupation working in the field as an emergency medical services person. This is a physically demanding job.

She is now 4 ½ years out from the date of her injury without significant improvement; it is therefore with a reasonable degree of medical certainty that I feel her disability remains permanent.

If she were to return to work, I believe she would be at risk to sustain additional injury to her right shoulder. In addition, coworkers would be potentially at risk, as well, if she could not help to adequately support carrying individuals or doing the other necessary activities as an EMT.

Therefore, based on the examination today, it is my opinion that the member is physically incapable of performing the essential duties of [her] job as described in the current job description and that said incapacity is likely to be permanent.

It is also my opinion that said incapacity is such as might be the natural and proximate result of the personal injury sustained or hazard undergone on account of which retirement is claimed.

(Ex. 5.)

35. Dr. Cohen examined Lt. Fox on March 9, 2021. He noted that the lieutenant is “chronically uncomfortable to the point that she has been unable to return to work.” (Ex. 6.)

He concluded that Lt. Fox:

is disabled from her occupation. She certainly cannot deal with strenuous activity such as that involved in emergency situations where she is required to lift and sometimes even subdue patients who are resisting her help. The likelihood of permanence is excellent considering her continued pain now almost two years after surgery.

With no history of similar pain or impairment prior to the episode as described, it is regarded as a result of her work-related incident, and the risk of reinjury is very good considering that she is far from pain free at the present time and the likelihood that she will aggravate the shoulder with any unexpected vigorous activity is good.

Therefore, based on the examination today, it is my opinion that the member is physically incapable of performing the essential duties of her job as described in the current job description and that said incapacity is likely to be permanent. It is also my opinion said incapacity is such as might be the natural and proximate result of the personal injury sustained or hazard undergone on account of which retirement is claimed.

Id.

36. Dr. Linson examined Lt. Fox on March 18, 2021. He noted that the lieutenant's "shoulder remains with limited range of motion, painful, weak, threatens to pop, and she has numbness in her hand and fingers." (Ex. 7.) He diagnosed her with a right shoulder rotator cuff tear that in his opinion was "causally related to the work injury as described" by the lieutenant. He determined that she was disabled by this injury, that the disability was permanent and that "[i]f she were to resume work, she would be at risk of re-injury and putting herself and others at risk of harm." He listed the Employer's Statement as one of the documents he reviewed and observed that this statement was "consistent with the history she provided me." *Id.*

37. The Boston Retirement System held a hearing on Lt. Fox's application at which Attorney Judith Cohen presided. Hearing Officer Cohen determined that there was no dispute that Lt. Fox was disabled from working as a lieutenant in the field. As for Boston EMS's offer of a position as a lieutenant in dispatch, Hearing Officer Cohen determined that the duties of lieutenant in dispatch were "substantially different in responsibility and purpose from those of the EMT position that the applicant was performing at the time of her injury" and hence "she had the right to decline the job offer and her application for accidental disability retirement benefits should be approved." (Ex. 8.)

38. On August 30, 2022, the Boston Retirement System granted Lt. Fox's application for accidental disability retirement. (Ex. 9.) The Boston Public Health Commission filed a timely appeal. (Ex. 10.)

Discussion

When a retirement board or the Division of Administrative Law Appeals is evaluating an application for accidental disability retirement, the focus is typically on the job the person was performing at the time of the injury. The evaluation determines whether the person is disabled from performing that job, whether the disability is permanent, and whether the injury is work-related. That is because the public employee retirement statute provides that an applicant may receive accidental disability retirement when she can show that, as of her last day as a "member in service," she (1) was "unable to perform the essential duties of h[er] job;" (2) "such inability is likely to be permanent;" and (3) the disability was caused "by reason of a personal injury sustained or a hazard undergone as a result of, and while in the performance of, h[er] duties." M.G.L. c. 32, § 7(1).

The Boston Retirement Board sees this as a straightforward application of the typical approach to accidental disability retirement. Lieutenant Fox was working in the field when she was injured and that injury has left her right shoulder too weak and incapacitated to perform the physical labor required of an EMT lieutenant in the field. The Boston Public Health Commission acknowledges that Lt. Fox is disabled from working as lieutenant in the field. But it asserts that her job was as a lieutenant generally, not a lieutenant in a particular division, and that she is ineligible for accidental disability because she is able to work as a

lieutenant in dispatch, a position she had previously held, and that she had been offered as an accommodation.

I do not accept the Public Health Commission's contention that, because it can transfer lieutenants to different divisions, all lieutenant jobs are the same. The Commission asserts that a lieutenant's role is primarily supervisory and hence moving from supervising field EMTs to supervising EMTs in dispatch is not a significant job change. That is belied by the Commission's admission that Lt. Fox's shoulder injury means that she can no longer work as a lieutenant in the field. The reason for this is obvious. Field lieutenants do not simply supervise EMTs. They can and do take part in the physical tasks that field EMT's perform. Lt. Fox's injury is a prime example of this. She appears to have been the first EMT to arrive at the scene, and she took quick action to try to prevent a suicide, which led her to tackle a potential jumper thereby causing her injury.

Lt. Fox was injured while performing her job, and she went through numerous rounds of physical therapy and a surgery trying to recover from her shoulder injury. Her right shoulder remains weak and cannot tolerate strenuous exertion; it also causes her pain and makes some routine daily activities difficult to perform. All three medical panelists supported her application and there is no contrary medical evidence that suggests she can still perform the physical tasks associated with work as a lieutenant in the field. Thus, there is ample evidence in the record to support the Boston Retirement System's grant of accidental disability retirement to Lt. Fox so long as the relevant question is whether she is disabled from working as a field lieutenant.

The question remains, however, whether Lt. Fox should have been evaluated to determine whether she can still perform the duties of a lieutenant in dispatch. The Commission's position is that the lieutenant in dispatch position was an acceptable accommodation of Lt. Fox's injury and therefore her ability to perform that job should have been evaluated consistent with the approach set forth in *Foresta v. Contributory Retirement Appeal Bd.*, 453 Mass. 669 (2009).

Samuel Foresta, Jr. worked as a safety inspector for the occupational safety department of the Massachusetts Turnpike Authority (MTA). His "job responsibilities included conducting MTA training sessions on cardiopulmonary resuscitation (CPR), first aid, fire extinguisher safety, and other aspects of safety awareness; internal safety audits; and industrial accident investigations." *Foresta*, 453 Mass. at 671. The director of Mr. Foresta's division thought highly of him, saying he was a "superb instructor." *Id.* at 683 n.17. One of his most time-consuming duties was to conduct weekly inspections of fire extinguishers along the Massachusetts Turnpike and MTA tunnels. *Id.* at 671. This was the fifth duty listed in his job description. *Id.* at 673 n.4.

In March 2001, Mr. Foresta "injured his lower back while attempting to lift a fire extinguisher onto an MTA transport van." *Id.* at 671. In June 2002, his "orthopedic surgeon approved his return to work full time, provided that accommodations for certain medical restrictions could be made." The MTA attempted to accommodate him by assigning the fire extinguisher inspections to another employee. *Id.* at 672. Mr. Foresta remained responsible for "classroom instruction, inspections, investigations, data entry, course development, and

report writing.” He was also assigned administrative tasks that had “been piling up.” *Id.* at 683 n. 17.

When Mr. Foresta’s subsequent application for accidental disability was reviewed by a medical panel, the panel at first determined that he was unable to perform the essential duties of his job because he was “unable to perform the prolonged driving and lifting from floor level required of his work.” *Id.* at 673. When told that such tasks were no longer part of Mr. Foresta’s duties, the panel changed course, this time determining that he could perform the essential duties of his job. *Id.* at 674. This led to the rejection of Mr. Foresta’s disability application.

The Supreme Judicial Court ultimately affirmed this conclusion, saying that the public employee retirement statute at M.G.L. c. 32, § 7:

permits an employer to modify an injured employee’s work-related responsibilities in order to accommodate the injury, thereby revising the “essential duties of his job,” and, as a result, limiting the retirement system’s liability for accidental disability benefits. . . . [I]n this case, the essential duties of the job as modified are similar in responsibility and purpose to those performed by the employee at the time of injury, and result in no loss of pay or other benefits.

Id. at 671. However, the Court cautioned that:

there are limits to the extent to which a department head may alter a job description in order to compel an unwilling employee to continue working at a revised job rather than receive disability retirement benefits to which he otherwise would be entitled. The essential duties of the job as modified must be similar in responsibility and purpose to those performed by the employee at the time of injury, and must result in no loss of pay or other benefits. We draw no bright line to be followed in every case, nor can we, for the determination whether a job is similar in responsibility and purpose necessarily depends on the particular factual circumstances of the employment.

Id. at 680.

The net result of *Foresta* is that if an employer has modified an employee's job duties post-injury so that they are similar in responsibility and purpose to those performed by the employee at the time of injury, then the employee's eligibility for accidental disability retirement should focus on whether he can perform the duties of the job as modified. *Id.* at 684. That must also mean that if a modified job is not similar in responsibility or purpose to those performed by the employee at the time of injury or would cause a loss of pay or other benefits, then the analysis should focus on the job the employee held when injured.

The actual duties of a field lieutenant and a lieutenant in dispatch are dissimilar, as demonstrated by the very different descriptions offered by the Commission of the duties of each position. The field lieutenant must be able to perform the physical duties of an EMT, including carrying 20 pounds of equipment, carrying an adult patient up or down stairs or over difficult terrain and then lifting the patient into an ambulance, and performing CPR for an extended period. (Finding 2.) No such physical activities apply to a lieutenant in dispatch. Lieutenants in dispatch supervise other dispatchers and must be able to perform the basic activities in dispatch: taking 911 calls, figuring out which ones present an emergency, giving initial medical instructions to callers, dispatching ambulances, and coordinating communication between ambulances and hospitals. (Finding 3.) Field lieutenants do not perform these tasks.

Not only are the day-to-day job responsibilities of field lieutenants and dispatch lieutenants fundamentally different, but the overarching purposes of these two jobs are different as well. The Public Health Commission contends that both positions participate in the overall goal of Boston EMS to provide emergency medical care to those in need. That is

true, but unhelpful. To take such a broad view would be to say that everyone who works for an organization works to serve the organization's overall goal and hence every job in the organization has a similar purpose. For example, a shortstop and a person selling hot dogs in the stands both serve a baseball team's purpose of providing entertainment to the fans who attend a ballgame. But the purpose of one of them is to play baseball and the other to sell food.

The court in *Foresta* must have meant the purpose of the particular job, not the purpose of the agency as a whole. Here the purpose of a lieutenant in dispatch is to make sure that the appropriate response is provided to those who make a 911 call and help is dispatched. The purpose of a lieutenant in the field is to ensure medical help is provided to a patient, including providing that care themselves. These jobs thus have different purposes.

And importantly, in *Foresta* the MTA could separate Mr. Foresta's training duties – which he retained – from his fire-extinguisher inspection duties, which were reassigned because they were distinct. That kind of separation is not possible here. It would not have been possible to keep Lt. Fox as a field lieutenant but relieve her of the physical aspects of the job of a field EMT because field lieutenants must be able to perform the physical duties of a field EMT. To say that reassigning her to serve as a lieutenant in dispatch would be an adequate accommodation – because she would still hold a supervisory role – overlooks the fundamental differences between lieutenants in dispatch and lieutenants in the field. There is also the unexplored assumption that Lt. Fox could perform the duties of a lieutenant in dispatch. In *Foresta*, the medical panel looked at both whether Mr. Foresta could perform his original job and whether he could perform the revised job offered him. Although it would

have been useful if the medical panel had commented on whether Lt. Fox was capable of working as a lieutenant in dispatch, that did not happen here. I put the absence of analysis of the lieutenants in dispatch position down to the fact that it does not appear that the panelists were explicitly asked to opine on whether Lt. Fox was disabled from working in dispatch and to the absence of evidence on which the panelists could have formed an opinion. The Boston Public Health Commission submitted job descriptions for EMTs and for lieutenants with its Employer's Statement, but no job description for dispatch – let alone for a lieutenant in dispatch. In future, if a job is offered to an injured member and there is some dispute as to whether it is an accommodation that fits the standard set forth in *Foresta*, it would be useful if a medical panel were told to opine on whether the member was disabled from performing the revised job and provided with enough information about the duties of the revised job to make such a determination.⁴

Conclusion

Ultimately, I conclude that the lieutenant position offered to Lt. Fox in dispatch was not an accommodation that met the standard set forth in *Foresta*. Therefore, all that needed to be considered was whether Lt. Fox was disabled from her position as a lieutenant in the field, a

⁴ Dr. Nicoletta's opinion that Lt. Fox could work a light duty job does not by itself answer whether she could have performed as a lieutenant in dispatch following her injury and her rehabilitation efforts. His reports do not show that he was provided with a description of the job duties of a lieutenant in dispatch and it is not clear from the Commission's offer of a lieutenant position in dispatch whether it would have modified any duties to account for her right shoulder injury. (Findings 21, 24 and 26.) The evidence suggests that she might have had difficulty performing that job in the way that she had done before she was injured. For example, she described working as a lieutenant in dispatch with a phone on both her left and right shoulders. (Finding 24.) She told her physical therapist that following her injury she had difficulty holding one phone to her ear. (Finding 10.)

job that required she be able to perform the work of a field EMT. The evidence establishes that she is disabled from that job, her disability is permanent, and it was caused by the injury she suffered on October 21, 2016 while she was performing her job. I therefore affirm the decision of the Boston Retirement System to award her accident disability retirement.

DIVISION OF ADMINISTRATIVE LAW APPEALS

James P. Rooney

James P. Rooney
First Administrative Magistrate

Dated: December 12, 2025