

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Jeannine Briley,
Petitioner

Docket No. CR-20-0244

Date: June 2, 2023

v.

**Public Employee Retirement
Administration Commission,**
Respondent

Appearance for the Petitioner:

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Appearance for the Respondent:

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SUMMARY OF DECISION

Petitioner is the widow of Glen Briley who, until his death, was a police officer with the Everett Police Department. Petitioner receives a pension because of her husband's service as a police officer. She seeks to increase the amount of that pension under the provisions of M.G.L. c. 32, § 100. Because there is no evidence that Officer Briley died as a result of an assault or an accident involving a police department vehicle, or that he was killed while present at the scene of an emergency, Petitioner's appeal is denied.

DECISION

Petitioner Jeanine Briley timely appealed a decision of the Public Employee Retirement Administration Commission (PERAC) to the Division of Administrative Law Appeals (DALA). PERAC's decision disapproved the Everett Retirement Board's authorization of Killed-in-the-Performance-of-Duty benefits for Ms. Briley under M.G.L. c. 32, § 100 and remanded the case

to the Everett Board for further proceedings. Following the remand, the Everett Board took no further action on Petitioner's application.

On January 22, 2021, Petitioner and PERAC submitted a joint prehearing memorandum, agreed-to exhibits, and one disputed exhibit. I marked the joint memorandum "A" and the agreed-to exhibits 1, 1A through 1P, and 2 through 18. I marked the disputed exhibit 19. I marked Petitioner's appeal to DALA and the accompanying post-marked envelope, which were already in the administrative record, as exhibits 20 and 21.

On May 2, 2022, counsel for Petitioner notified Chief Administrative Magistrate Edward McGrath – who was then assigned to hear this matter – that for unspecified reasons none of Petitioner's witnesses would be available to testify at the hearing. Consequently, the parties agreed to submit the matter for decision on the record under 801 CMR § 1.01(10)(c) following the filing of additional memoranda. On September 19, 2022, Petitioner filed her memorandum; PERAC filed its memorandum on October 17, 2022.

I admit the following exhibits into evidence:

Exhibit 1: Application for Section 100 Benefits dated June 21, 2018

Exhibit 1A: Everett Retirement Board award of M.G.L. c. 32, § 9 benefits

Exhibit 1B: State Retirement Board award of M.G.L. c. 32, § 100A benefits

Exhibit 1C: Award of death benefits from the Public Safety Officer's Benefits Office (US Department of Justice)

Exhibit 1D: Public Safety Officer's Benefits Office Claim Determination and Report of Public Safety Officer's Death (US Department of Justice)

Exhibit 1E: Death Certificate of Glen Briley

Exhibit 1F: Autopsy and Toxicology reports for Glen Briley

Exhibit 1G: Marriage Certificate of Glen Briley and Jeannine Sims (Briley)

Exhibit 1H: Birth Certificate, Erin Briley

Exhibit 1I: Birth Certificate, Ryan Briley

Exhibit 1J: Investigative Report of Officer Briley's death dated December 9, 2015

Exhibit 1K: Timeline of Work-Related Events for Officer Briley, dated June 2, 2016

Exhibit 1L: Attendance Records for 2015 Defensive Tactics and Health/Wellness

Training sessions

Exhibit 1M: Defensive Tactics Lesson Plan

Exhibit 1N: Glen Briley's 2013-2015 medical records from Primary Care Provider John F. Yee, M.D.

Exhibit 1O: Report of Charles L. Schulman, M.D. dated May 29, 2018

Exhibit 1P: Petitioner's proposed findings of fact and proposed decision to the Everett

Retirement Board

Exhibit 2: Letter from Everett Retirement Board to PERAC dated September 26, 2018

Exhibit 3: Letter from PERAC to Everett Retirement Board dated November 16, 2018

Exhibit 4: Letter from Everett Retirement Board to PERAC dated December 3, 2018

Exhibit 5: Letters from PERAC to Everett Retirement Board and Petitioner notifying of the appointment of a medical panel to conduct a record review

Exhibit 6: Request for additional information from PERAC on behalf of the medical panel to Everett Retirement Board, January 11, 2019

Exhibit 7: Additional information provided by the Everett Retirement Board to the medical panel

Exhibit 8: Reports of Madhu P. Thakur, M.D. (medical panel) to PERAC concerning Glen Briley, dated April 21, 2016 and January 30, 2019

Exhibit 9: Memorandum from Petitioner to Everett Retirement Board dated March 13, 2019

Exhibit 10: Letter from Everett Retirement Board to PERAC requesting the appointment of a new medical panel dated May 29, 2019

Exhibit 11: Letter from PERAC to Everett Retirement Board denying request for new medical panel dated September 11, 2019

Exhibit 12: Letter from Everett Retirement Board to PERAC requesting clarification from Dr. Thakur dated September 27, 2019

Exhibit 13: Letter from PERAC to Dr. Thakur dated January 22, 2020

Exhibit 14: Letter from Dr. Thakur to PERAC dated February 11, 2020

Exhibit 15: Decision of Everett Retirement Board

Exhibit 16: Letter from PERAC to Everett Retirement Board, reversing and remanding the Board's decision, May 12, 2020

Exhibit 17: Petitioner's appeal of PERAC's decision to DALA, May 22, 2020.

Exhibit 18: Use of Force Instructor Update, 2013

Exhibit 20: Petitioner's appeal to DALA

Exhibit 21: Envelope that contained Petitioner's appeal to DALA postmarked May 22, 2020

Ruling on Disputed Exhibit 19

Petitioner seeks to introduce a seventeen-minute video in which two officers from the Everett Police Department describe and loosely demonstrate the Defensive Tactics training that

is provided to Everett Police Officers. PERAC objects to the exhibit because it does not depict the actual training session that Mr. Briley attended, because it is presented by Mr. Briley's former colleagues (who PERAC suggests are interested in assisting in his widow's appeal) and because one officer comments on the other officer's elevated heart rate. The proffered exhibit has minimal probative value because it is not an actual representation of the training that Mr. Briley experienced and because it provides no evidence of the effect of the training on Mr. Briley. Even assuming, arguendo, that one officer's response to the training is indicative of Mr. Briley's response, it is impossible to ascertain from the video the level of physical stress experienced by the officer demonstrating the training: there was no objective measurement of his heart rate or respiration. The passing comment of one officer on his fellow's heartrate – made from a distance and without making physical contact with his colleague – is entitled to no weight. Further, the demonstrating officer's heavy breathing after short bursts of moderate physical activity for less than ten minutes appeared of dubious authenticity. The video is, nonetheless, somewhat useful in promoting a general understanding of the events of the afternoon that preceded the night of Mr. Briley's death, and it is for this limited purpose that I am admitting it into the record.

Findings of Fact

1. Petitioner is the widow of Glen G. Briley. (Exhibit 1G.)
2. Glen G. Briley was a police officer with the Everett Police Department and was a member of the Everett Contributory Retirement System. (Exhibits 1A, 1B, 1P.)
3. Officer Briley attended Taser certification training from 4:30 p.m. to 9 p.m. on December 7, 2015. He attended Health and Wellness training and Defensive Tactics training on December 8, 2015 from 4:30 p.m. to 9 p.m. (Exhibit 1L.)

4. Officer Briley reported for duty for his shift on December 8, 2015 at 9 p.m. (Exhibits 1K, 1L.)

5. Officer Briley was found dead at approximately 7 a.m. on December 9, 2015. He was discovered sitting upright in the driver's seat of his police vehicle that was parked in the rear of the Everett Police Station parking lot. Officer Briley was last seen alive at approximately 1:30 a.m. on December 9, 2015. At the time Officer Briley was discovered, the vehicle was running, and the front windows were open. Officer Briley received no calls during his shift. (Exhibits 1J, 1K.)

6. At the time of his death, Officer Briley was 44 years old. He suffered from hypertension (for which he took medication), hyperlipidemia, and obesity. (Exhibits 1E, 1N.)

7. An autopsy and toxicology screen were performed on Officer Briley's body. The toxicology report concluded that there was no evidence of alcohol or drug use or of carbon monoxide poisoning. The autopsy revealed that Officer Briley suffered from severe atherosclerosis in the coronary arteries. The autopsy attributed death to Atherosclerotic and Hypertensive Cardiovascular Disease. Officer Briley's death certificate identifies Atherosclerotic and Hypertensive Cardiovascular Disease as the cause of death. (Exhibit 1E, 1F.)

8. The Health and Wellness training attended by Officer Briley on December 8, 2015 consisted of a lecture and a video. There was no physical activity required at this training. (Exhibit 1L.)

9. The Defensive Tactics training, which followed the Health and Wellness training, encompassed a lecture and hands-on practice in baton deployment, handcuffing, and arm bar takedowns. The hands-on component incorporated light to moderate physical activity. (Exhibits 1L, 19.)

10. There is no evidence in the record that Officer Briley experienced any medical events during the training sessions he attended on December 7 or 8, 2015.

11. There is no evidence in the record that Officer Briley experienced any assault or car accident involving his police vehicle during his overnight shift from December 8 to December 9, 2015. (Exhibits 1J, 1K.)

12. Officer Briley was not present at the scene of an emergency at the time of his death. (Exhibits 1J, 1K.)

13. Following Officer Briley's death, Petitioner applied for benefits under M.G.L. c. 32, § 9 (Accidental Death) and M.G.L. c. 32, § 100A (Killed-in-Line-of-Duty). The Everett Contributory Retirement System approved the accidental death benefit application on or about July 28, 2016. The State Board of Retirement approved the Line-of-Duty death benefit on August 31, 2017. (Exhibits 1A, 1B.)

14. Petitioner also claimed, and was approved for, federal Public Safety Officer benefits connected with Officer Briley's death. (Exhibit 1C.)

15. On May 29, 2018, Charles L. Schulman, M.D. supplied a report to Petitioner's attorney regarding Officer Briley's death. Dr. Schulman stated that he reviewed the following materials related to Officer Briley's health and death: an investigative report and a timeline provided by the City of Everett, a report from the Department of Justice, an autopsy report, a death certificate, and medical records from Officer Briley's primary care physician, John F. Yee, M.D. Dr. Schulman noted that he was provided with a detailed description of Officer Briley's activities on December 8, 2015 and stated that he understood that the defensive tactics training involved "moderate physical activity." Dr. Schulman concurred with the cause of death stated in the autopsy report, and further opined that he believed that Officer Briley had died either from

acute pulmonary edema or a ventricular arrhythmia in the presence of acute pulmonary edema.

Dr. Schulman concluded that Officer Briley's death was work-related because his cardiac disease was a pre-existing condition and "the exertion which Mr. Briley performed and the physical and emotional stress that he experienced as part of [the] training class ... aggravated this preexisting condition and precipitated heart failure and a likely fatal ventricular arrhythmia." (Exhibit 10.)

16. On June 21, 2018, Petitioner applied to the Everett Board for Killed-in-the-Performance-of-Duties benefits under M.G.L. c. 32, § 100. (Exhibit 1.)

17. On December 3, 2018, the Board asked PERAC to convene a medical records review. The Board requested a medical opinion as to whether the exertions of the defensive tactics training – which the Board characterized as involving moderate to strenuous physical activity with overt acts and threatening words designed to be "as close to real life situations as possible" – caused Officer Briley's death. (Exhibit 4.)

18. PERAC appointed Madhu Thakur, M.D., a cardiology panel specialist, to conduct the requested record review. Dr. Thakur had previously been appointed to a medical panel to consider Petitioner's application for accidental death benefits under M.G.L. c. 32, § 9. (Exhibits 5, 8.)

19. Following his appointment, Dr. Thakur asked the Board to provide him with a record of all of Officer Briley's activities from 9 p.m. on December 8, 2015 until the next morning when Officer Briley's body was discovered. The Board furnished Dr. Thakur with a timeline of Officer Briley's known work-related activities from December 5, 2015 through December 9, 2015. (Exhibits 6, 7.)

20. Dr. Thakur had previously reviewed Officer Briley's medical records in connection with Petitioner's accidental death benefit claim. He now additionally considered the

Board's December 3, 2018 request for a medical opinion (which contained the Board's description of the defensive tactics training), an investigative report of Officer Briley's death written by Lieutenant Richard Gamby of the Everett Police Department, and the text of M.G.L. c. 32, § 100. Dr. Thakur opined that he did not believe that Officer Briley's death was caused by any exertion experienced during the Defensive Tactics training. He noted that there was no report of any medical emergency either during or upon completion of the training. Dr. Thakur stated that Officer Briley died because of his existing heart disease, and that he experienced sudden cardiac death, "most likely due to ventricular tachycardia/ventricular fibrillation..." Dr. Thakur also noted that § 100 requires that death occur as a result of an assault or an accident involving a police vehicle, and he found no evidence that Officer Briley had been assaulted and no report of any accident. Dr. Thakur appended to his opinion his report from 2016 in which he concluded that Petitioner was entitled to accidental death benefits under M.G.L. 32, § 9 because Officer Briley's sudden death was the "natural progression of hypertensive heart disease due to hypertension" and "sudden cardiac death is a well-recognized complication in a patient with left ventricular hypertrophy," a condition that was documented in the Officer Briley's autopsy report.¹ (Exhibit 8.)

21. On May 29, 2019, the Board informed PERAC that the Board was dissatisfied with Dr. Thakur's report and asked PERAC to appoint a different physician to review the case. The Board criticized Dr. Thakur for failing to address Dr. Schulman's contrary opinion, omitting any discussion of the effects of emotional stress that Officer Briley may have suffered from the training exercise, and concluding that a delayed response to the training did not factor in Officer

¹ Petitioner's application for the accidental death benefit under section 9 was apparently granted with reference to M.G.L. c. 32, § 94 which provides that police officers who develop hypertension or heart disease are presumed to have developed these conditions as a result of their work.

Briley's death. The Board also argued that Dr. Thakur had offered a legal opinion when he stated that Officer Briley was not assaulted. (Exhibit 10.)

22. PERAC declined to appoint a new physician but offered the Board the opportunity to submit any additional evidence it had to Dr. Thakur regarding any emotional stress Officer Briley experienced during the December 8, 2015 training exercise. PERAC also told the Board that it could ask Dr. Thakur to clarify what evidence he considered, to explain the basis for his opinion that no assault had occurred, and to consider whether Officer Briley's death could have been caused by a delayed response to his participation in the December 8, 2015 training. (Exhibit 11.)

23. On November 27, 2019, the Board requested that Dr. Thakur specify the evidence he relied upon, discuss the impact of possible emotional stress from the December 8, 2015 training on Officer Briley, and consider whether Officer Briley's death could have been caused by a delayed response to the training. The Board included with its request a video presentation (Exhibit 19) made by two Everett police officers to the Board describing the Defensive Tactics training. PERAC forwarded the Board's requests and the video to Dr. Thakur on January 22, 2020. (Exhibits 12, 13.)

24. In response, Dr. Thakur sent an addendum to PERAC on February 11, 2020. He listed the information he considered, which now included the video presentation provided by the Board. Dr. Thakur stated that there was no medical information provided to him that commented on the emotional impact of the training on Officer Briley, and that he himself had no personal knowledge to offer as he had never met Officer Briley. Dr. Thakur stood by his previous conclusion that Officer Briley's death was not caused by exertion but rather by pre-existing heart disease, and that he could not conclude, based on his review of the documentation, that Officer

Briley's death was caused by a delayed response to his attendance at the December 8, 2015 training. Finally, he noted that the video sent by the Board provided him with no additional information. (Exhibit 14.)

25. On April 12, 2020, the Board voted to award benefits to Petitioner under M.G.L. c. 32, § 100. The Board acknowledged that it could not conclude that Officer Briley was assaulted as section 100 requires but determined that it could substitute the word "incident" as used in M.G.L. c. 32, § 100A for the word "assault" as used in M.G.L. c. 32, § 100. The Board concluded that the December 8, 2015 training was an "incident," and that the training was the proximate cause of Officer Briley's death. The Board determined that would not defer to Dr. Thakur's contrary opinion because section 100 does not require a medical panel opinion, and it was thus the Board's responsibility to "make this determination." (Exhibit 15.)

26. PERAC determined on May 12, 2020 that the Board's decision was not supported by substantial evidence and remanded the case for further proceedings. (Exhibit 16.)

27. On May 22, 2020, Petitioner timely appealed PERAC's decision to DALA. (Exhibits 20, 21.)

28. The Board declined to take further action following the remand from PERAC. (Memorandum A, Statement of Agreed Facts, para 24.)

Discussion

A. Burden of Proof

Petitioner initially intended to proceed to hearing on this case but later notified DALA that none of her witnesses would be available to testify and that she wished to proceed through written submissions. 801 CMR § 1.01(10)(c) provides that a party may choose to waive a hearing and submit a case for decision on the record. Submission of the case in this manner does

not relieve the parties from proving the facts that are required to substantiate the allegations on which they have the burden of proof. *Id.* Petitioner has the burden of proving by a preponderance of the evidence every element necessary to establish eligibility for a benefit under M.G.L. c 32. *Pomeroy v. Plymouth Retirement Bd.*, Docket No. CR-15-258, Decision at *11 (CRAB, Sept. 27, 2019.)

B. Killed-in-the-Line-of-Duty and Performance-of-Duty Benefits under M.G.L. c. 32

M.G.L. c. 32 provides two different benefits for eligible survivors of police officers who are killed while on duty. Section 100A (Killed-in-the-Line-of Duty benefit) authorizes a one-time payment of \$300,000 to the family of a public safety employee (including a police officer) who was killed or who sustained injuries that caused death because of any “incident, accident, or violence.” M.G.L. c. 32, § 100A.² Section 100 (Killed-in-the-Performance-of-Duty benefit) increases the pension payable to the surviving spouse to an amount equal to the maximum amount set for the position -- whether or not the deceased officer had attained that salary -- if a police officer dies during the performance of his duties from an assault or an accident involving a police department vehicle or is killed while at the scene of an emergency. M.G.L. c. 32, § 100.³

Petitioner applied for and received benefits under M.G.L. c. 32, § 100A.⁴ She now seeks benefits under section 100 and has argued that she should receive them because the eligibility requirements for the two sections are the same. The Board accepted her contention that an

² M.G.L. c. 32, § 100A provides the one-time death benefit if a public safety officer “while in the performance of his duties and *as a result of incident*, accident or violence, was killed or sustained injuries which were the direct and proximate cause of his death.” [Emphasis supplied.]

³ M.G.L. c. 32, § 100 provides increased pension benefits “if a police officer while in the performance of his duties and *as the result of an assault* on his person or as a result of an accident involving a police department vehicle which he is operating or in which he is riding in the performance of his duties as a police officer is killed or sustains injuries which result in his death....” [Emphasis supplied.]

⁴ A letter notifying Petitioner of the Board’s decision to award her the § 100A benefit is found at Exhibit 1B, but the underlying decision of the Board to grant the §100A benefit is not in the record.

“assault,” as that word appears in section 100, is equivalent to an “incident,” as that word is used in section 100A. (FF #25.) I do not find this argument persuasive.

The language of section 100 requires that death be caused by an on-the-job assault or an accident involving a police department vehicle, or that death occurred while present at the scene of an emergency. This language is clear and unambiguous: the word “incident” does not appear. An assault and an incident are not synonymous. Merriam-Webster’s on-line dictionary defines an incident as “an occurrence of an action or situation that is a separate unit of experience” and an assault as “a violent physical or verbal attack.” <https://www.merriam-webster.com/>. Had the legislature intended to grant benefits under section 100 following an “incident” that caused death, it knew how to say so, as it did in section 100A. The clear language of a statute is conclusive as to its meaning. *Pyle v. School Committee of South Hadley*, 423 Mass. 283, 285, 667 N.E.2d 869, 871 (1996).

Petitioner’s citation to the DALA decision *Smith v. Gloucester Retirement Board*, Docket No. CR-13-249 (DALA, Oct. 24, 2018), is inapposite. In that case, the Administrative Magistrate concluded that both Section 100 and Section 100A require a showing that death was brought about by the workplace occurrence without any intervening cause. The magistrate did not decide that the two sections have identical eligibility requirements. *See* Decision at *40.⁵ Based on the plain wording of M.G.L. c. 32, § 100, I cannot conclude that Petitioner need show only that an “incident” occurred that caused Officer Briley’s death. The statute requires that Petitioner establish that death occurred while in the performance of Officer Briley’s duties and as a result

⁵ *Collins v. State Board of Retirement*, Docket No. CR-14-246 (CRAB, November 18, 2021) is an example of a decision finding eligibility under § 100A following an incident (as opposed to an assault). In that case, a police officer responded to a call and administered mouth-to-mouth resuscitation to a child. The child was infected with polio. The officer contracted the disease from the child and eventually died of complications connected with the illness. The magistrate held that the officer had experienced an “incident” on the job that qualified his survivors for benefits under § 100A.

of an assault, a motor vehicle accident involving a police vehicle, or while at the scene of an emergency.

C. Was the Defensive Tactics Training an Assault?

Petitioner next argues that Officer Briley suffered an assault during the Defensive Tactics Training because the training was designed to be realistic, physical contact between participants occurred, and officers yelled compliance commands at their fellow trainees who were pretending to be criminal suspects.

M.G.L. c. 32, § 100 provides no definition of assault. The word is typically defined in law as “an intentional act that puts another person in reasonable apprehension of imminent harmful or offensive contact.” Legal Information Institute, Cornell Law School, <https://www.law.cornell.edu/wex/assault>. Physical contact is not required, but the actor must have intended to cause harmful or offensive contact, and the recipient must have experienced reasonable fear of the contact taking place. *Id.*

Although the training in which Officer Briley participated was designed to imitate real world situations, it was, nonetheless, a simulation in which he voluntarily participated. The record is devoid of any information of what transpired at the December 8, 2015 training session that is specific to Officer Briley. There is nothing to suggest that Officer Briley suffered any injury. There is no evidence that Officer Briley was placed in “reasonable apprehension of imminent harmful or offensive contact.” The video in which two officers demonstrated the sorts of exercises that are offered at the Defensive Tactics training session (Exhibit 19), reveals only that the participants are instructed to pair off and practice various skills. It does not provide evidence of what Officer Briley experienced on December 8, 2015 or what effect the training had on him. In the absence of any evidence that Officer Briley suffered harmful or offensive contact

or experienced a reasonable fear of such contact, I conclude that no assault of him took place at the Defensive Tactics training on December 8, 2015. *Accord, Sparuk v. State Board of Retirement*, Docket No. CR-11-268, -371 (DALA, December 9, 2011) (State Trooper who participated in a job-mandated fitness test and who died in his sleep that night of atherosclerotic and hypertensive cardiovascular disease had not suffered an assault that would qualify his widow for benefits under M.G.L. c. 30A, § 100.)

D. Evidence of Causation

Even if the consensual training in which Officer Briley participated could be considered an assault, Petitioner has failed to carry her burden of establishing that the activities of December 8, 2015 caused Officer Briley's death on December 9, 2015. The opinion of Charles Schulman, M.D. provides some evidence in support of her claim: Dr. Schulman concluded that the physical exertion and emotional stress associated with the Defensive Tactics training on December 8, 2015 aggravated Officer Briley's pre-existing heart condition and precipitated heart failure. There are flaws in this evidence. First, there is no information in the record concerning Dr. Schulman's qualifications in cardiology and thus his expertise to offer this opinion. Second, Dr. Schulman assumes that Officer Briley experienced physical and emotional stress from the Defensive Tactic training exercises, but Dr. Schulman cites no evidence on which this assumption is based. Third, even assuming that Officer Briley did experience stress, Dr. Schulman does not explain how heart failure occurring a minimum of four and a half hours after the training – when no adverse events were reported during the training – could be connected to the earlier events of the day.

Contravening Dr. Schulman's evidence are the reports of Madhu Thakur, M.D. Dr. Thakur's PERAC medical panel specialty is cardiology. (Exhibit 5.) After reviewing Officer

Briley's medical records, Dr. Thakur requested information concerning Officer Briley's activities during his last shift and learned that the officer received no calls. Dr. Thakur was aware that Officer Briley participated in a training exercise prior to his shift that was described as involving moderate to strenuous activity.⁶ Dr. Thakur specifically considered the question of whether Officer Briley's death could have been caused by the training exercise that occurred hours earlier. He concluded that the lack of any evidence that medical complications occurred contemporaneous with the training indicated no causative connection, and that Officer Briley experienced sudden cardiac death, which "is a well-recognized complication in a patient with left ventricular hypertrophy," a condition that was established by Officer Briley's autopsy.

It was Petitioner's burden to prove by a preponderance of the evidence that Officer Briley's death was causally connected to the events that occurred at the Defensive Tactics training. There are two medical opinions in the record that rest in opposition to each other. I am inclined to give more weight to Dr. Thakur's opinion because it is more detailed and explains the basis for his conclusion that Officer Briley's death was not caused by the training exercise of the previous day. But even if I found the opinions to rest in equipoise, Petitioner could not prevail. At best, she has provided, through Dr. Schulman's report, evidence that balances Dr. Thakur's opinion.⁷ As such, she has failed to carry her burden.

Conclusion

M.G.L. c. 32, § 100 requires that Petitioner prove that Officer Briley suffered an assault while on duty to qualify for benefits. The training exercise that Officer Briley participated in

⁶ Evidence in the administrative record characterizes the training as involving light to moderate physical activity. *See* FF #9.

⁷ I decline to follow the Board's novel reasoning that I need not consider the medical opinions in the record because the statute does not mandate that a medical panel be appointed. It is the responsibility of the trier of fact to consider *all* the evidence in the record, sift and weigh it, and determine an outcome based on that evidence. In any event, it is difficult to see how a decision could be reached on whether the officer's death was connected to the performance of his duties without the benefit of an expert medical opinion.

was not an assault. Further, even if the training could be characterized in this fashion, there is insufficient evidence to establish that Officer Briley's death, which occurred a minimum of four and a half hours after the conclusion of the training exercise, was causally connected to the training exercise. PERAC's reversal of the Board's grant of benefits to Petitioner is affirmed.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Kristin M. Palace
Administrative Magistrate