

**COMMONWEALTH OF MASSACHUSETTS**

**Middlesex, ss.**

**Division of Administrative Law Appeals**

**James Budness,**  
Petitioner,

No. CR-23-0488

Dated: April 18, 2025

v.

**State Board of Retirement,**  
Respondent.

**Appearances:**

For Petitioner: Morgan J. Gray, Esq.

For Respondent: Yande Lombe, Esq.

**Administrative Magistrate:**

Yakov Malkiel

**SUMMARY OF DECISION**

The petitioner suffered a partial tear of a tendon in his knee during a workplace fall. The tear became complete during a subsequent fall at home. The unanimous opinions of five experts establish a proximate causal connection between the petitioner's current incapacity and his original workplace fall. The petitioner is therefore entitled to retire for accidental disability.

**DECISION**

Petitioner James Budness appeals from a decision of the State Board of Retirement (board) denying his application to retire for accidental disability. I held an evidentiary hearing on March 28, 2025, at which Mr. Budness was the only witness. I admitted into evidence exhibits marked 1-78 and stipulations numbered 1-22.

**Findings of Fact**

I find the following facts.

1. Mr. Budness became an employee of the Department of Conservation and Recreation in 2007. He was assigned to work on a fishing program at the Quabbin Reservation. Mr. Budness was a healthy former college athlete with no history of orthopedic problems. (Stipulation 1; testimony.)

2. Mr. Budness was eventually promoted to a supervisor position. In the warm seasons, he and his supervisees were responsible for maintaining the reservation, its docks, and its boats. Their duties included painting equipment, mowing lawns, trimming hedges, and carrying around heavy equipment. In the winter, they cleared snow and maintained a woodchip-powered furnace that also served a nearby police facility. (Stipulation 2; exhibits 63; testimony.)

3. Mr. Budness reported for work as usual on Christmas Day of 2019. One of his regular duties in the wintertime was to sweep stray woodchips from the floor around the furnace. The floor on that day was wet. Mr. Budness slipped, nearly fell, felt his weight shift awkwardly, and experienced a burning pain in the area of his left knee. He promptly filed an incident report. (Stipulations 3-5; exhibits 64-65; testimony.)

4. Mr. Budness's primary care doctor referred him to an orthopedic clinic. He underwent an x-ray and an MRI and was seen by a nurse practitioner, who diagnosed a partial tear of Mr. Budness's quadriceps tendon. Mr. Budness was presented with the option of "operative" treatment, but the nurse practitioner viewed his preference for a course of physical therapy as "reasonable." By April 2020, Mr. Budness was cleared to return to work. (Stipulations 6-10; exhibits 37, 39; testimony.)

5. Mr. Budness did not make a full recovery from his December 2019 injury. His tendon remained partially torn. His range of motion did not increase as much as his physical therapists had hoped. His pain level during activity improved only from "5/10" to "3/10." Mr. Budness continued to feel weakness in his knee area. Before returning to work, he spoke to an individual involved in his workers' compensation proceedings about the possibility that he might later need to renew his leave and treatment. (Exhibits 23, 40; testimony.)

6. In November 2020, Mr. Budness was descending a staircase at home when his knee buckled and he tumbled down the staircase. Mr. Budness could feel that his knee was no longer functioning properly. He was taken to the emergency room, where he was advised to consult an orthopedist. (Stipulation 11; exhibits 40, 65; testimony.)

7. An updated MRI showed that Mr. Budness's quadriceps tendon was now fully torn. In December 2020, Mr. Budness underwent tendon-repair surgery with Dr. Martin Luber. He then participated in physical therapy and a "work-hardening" program, which ended in February 2022. (Stipulations 12-18; exhibits 24-34, 40-51, 67-68.)

8. Mr. Budness's recovery remained incomplete. His physical therapists described him as continuing to suffer from "left knee weakness," an inability "to achieve terminal knee extension," and a pain level of "4/10" during activity. After the work-hardening program, Mr. Budness still displayed "significant difficulty . . . with ambulation on inclines, stairs, and uneven surfaces." (Exhibits 34, 68.)

9. Mr. Budness wished to return to work. He told his supervisors that he was ready to do so but would need to refrain from carrying heavy items and walking the reservation's boating docks and wooded areas. After considering the matter, the supervisors declined to modify Mr. Budness's responsibilities. (Testimony.)

10. In April 2022, Mr. Budness applied to retire for accidental disability. In a supporting certificate, surgeon Dr. Luber wrote that a "[s]lip and fall at work led to [a] quad tendon tear." In a separate, earlier letter, Dr. Luber had written: "I believe that to a high degree of medical certainty his original injury from [December 2019], i.e., his partial-thickness quadriceps tendon rupture, is a significant cause of his eventual complete quadriceps tendon rupture . . . ." (Exhibits 60, 62, 69.)

11. A regional medical panel consisting of orthopedists Dr. Eugene Brady, Dr. Wojciech Bulczynski, and Dr. John Goldberg convened to evaluate Mr. Budness's application. They conducted separate examinations of Mr. Budness in early 2023. All three panelists then returned certificates supportive of Mr. Budness's application. (Exhibits 57-59, 69.)

12. The panelists described Mr. Budness's disabling symptoms as weakness in the left knee, episodes of the knee "giving way," and an inability to walk safely on uneven terrain. The panelists agreed that these symptoms resulted from Mr. Budness's original workplace fall. Dr. Brady wrote: "The disability is the result of his work injury, as described as occurring [in December 2019]." Dr. Wojciech wrote: "[H]is disability and permanency are causally related to the [December 2019] partial quad tear injury." Dr. Goldberg added: "His disability has arisen as a direct consequence of the work-related injury [in December 2019]." Each of the panelists referred to Mr. Budness's subsequent fall as an "aggravation" of his condition. (Exhibits 57-59.)

13. The records considered by the panelists included an independent evaluation conducted by orthopedist Dr. Ryan Friedberg in Mr. Budness's workers' compensation proceedings. Dr. Friedberg wrote:

The history provided is that of a partial tendon rupture sustained at work [in December 2019]. He was able to return to full duty work with continued discomfort in the left quadriceps tendon area. He reported a distinct sharp pain in his left knee and buckling prior to the subsequent fall at home [in November 2020]. Although he was at home at the time of the November 2020 incident, in my opinion, the etiology . . . was due to the partial tendon rupture sustain at work in December 2019.

(Exhibit 61.)

14. In September 2023, the board denied Mr. Budness's application, stating no specific reasons for its decision. Mr. Budness timely appealed. (Exhibits 75, 76.)

### Analysis

To establish an entitlement to retire for accidental disability, Mr. Budness must prove that he is permanently incapacitated “by reason of a personal injury sustained or a hazard undergone as a result of, and while in the performance of, his duties.” G.L. c. 32, § 7(1). There is no dispute that Mr. Budness is permanently incapacitated.

Turning its sights on Mr. Budness’s eventual fall at home, the board says that he “cannot prove that the November 2020 injury was sustained . . . in the performance of his job duties.” J. Mem. 10. This statement is true but unresponsive to Mr. Budness’s claim. He is not required to prove that a workplace injury disabled him on the spot. *See Hollup v. Worcester Ret. Bd.*, 103 Mass. App. Ct. 157, 164-65 (2023). It is sufficient for Mr. Budness’s current incapacity to be tied by a proximate causal connection to an earlier incident or “act” at work. *See id.*; *Namay v. Contributory Ret. Appeal Bd.*, 19 Mass. App. Ct. 456, 460 (1985).<sup>1</sup> Mr. Budness has consistently identified the pertinent incident or act as his original fall in December 2019. There is no dispute that he was performing his job duties at the time of that earlier fall.

The real question is therefore whether the fall in December 2019 was the proximate cause of Mr. Budness’s current incapacity. Proximate cause means “that which in a continuous sequence, unbroken by any new cause, produces an event . . . .” *Collins v. State Bd. of Ret.*, No. CR-14-246, 2021 WL 12297894, at \*4 (Contributory Ret. App. Bd. Nov. 18, 2021). In the context of an orthopedic condition treated with surgery and imaged with sophisticated technologies, the causation analysis hinges heavily on medical expertise. As a result, while the

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<sup>1</sup> The rule of *Vest v. Contributory Ret. Appeal Bd.*, 41 Mass. App. Ct. 191 (1996), is not implicated here. *See Hollup*, 103 Mass. App. Ct. at 164-65.

regional panel's certificate is not decisive, the factfinding effort must be guided by expert input. *See Robinson v. Contributory Ret. Appeal Bd.*, 20 Mass. App. Ct. 634, 639-41 (1985).

The record includes opinions on causation from five expert orthopedists: the three medical panelists, surgeon Dr. Luber, and independent evaluator Dr. Friedberg. All five experts stated that Mr. Budness's disability was caused by his original fall in December 2019. The panelists' opinions that the original fall was not only a *possible* cause of Mr. Budness's disability but also its *actual* cause went beyond the panelists' statutory assignment but are nonetheless worthy of special consideration. *See Narducci v. Contributory Ret. Appeal Bd.*, 68 Mass. App. Ct. 127, 134-35 (2007).

Certain details of the sequence that led from Mr. Budness's original fall to his current disability remain hazy. The expert reports are not crystal clear about whether Mr. Budness was already incapacitated, i.e., facing an unreasonable risk of reinjury, when he attempted to return to work in April 2020. *See Hollup, supra; Filipek v. Bristol Cty. Ret. Bd.*, No. CR-03-672 (Contributory Ret. App. Bd. Dec. 23, 2004). The reports are also equivocal about whether the full tear of Mr. Budness's tendon precipitated his fall down the stairs or followed from it. *Cf. Mitcherson v. Bechtel Construction Co.*, No. 20716-92 (Dep't Industrial Accidents July 15, 1997); *Boca Banana Boat v. Carter*, 453 So. 2d 138 (Fla. Dist. Ct. App. 1984).

But these distinctions are not determinative. The experts concluded in sum and substance that Mr. Budness's original workplace fall was the dominant cause of his incapacity. With Mr. Budness walking thereafter on an incompletely healed, partially torn tendon, the experts saw his "aggravating" second fall as a predictable postscript to the first. Stated in terms of the proximate cause formula, the experts agreed that Mr. Budness's second fall was not a "new cause" of his

condition. *See Collins, supra*. There is every reason to prefer their unanimous view over the board's nonexpert doubts. *See Robinson, supra*.

**Conclusion and Order**

Mr. Budness is entitled to retire for accidental disability. The board's decision is therefore REVERSED.

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate