

**COMMONWEALTH OF MASSACHUSETTS
CONTRIBUTORY RETIREMENT APPEAL BOARD**

STEPHEN CIAVOLA,

Petitioner-Appellant

v.

LOWELL RETIREMENT BOARD,

Respondent-Appellee

CR-13-380

DECISION

Petitioner Stephen Ciavola appeals from a decision of an administrative magistrate of the Division of Administrative Law Appeals (DALA), affirming the decision of the respondent Lowell Retirement Board (LRB) denying Ciavola's application for accidental disability retirement benefits. The DALA magistrate heard the matter on June 17, 2014 and admitted thirty-two exhibits. The magistrate's decision is dated July 17, 2015. Ciavola filed a timely appeal to us.

After considering all the arguments presented by the parties and after a review of the record, we incorporate the well-reasoned DALA decision by reference and adopt its Findings of Fact 1-53 as our own. We affirm the DALA decision for the reasons set forth in its Conclusion and Order on pages 20-29 with the following remarks.

Due to his Group 4 classification, Ciavola is not barred from basing his accidental disability retirement benefit claim on the life-threatening events of August 14, 2010 while in pursuit of a gang member if the Lowell Police Department timely possessed records of his injury or hazard undergone. G.L. c. 32, § 7(3)(a).¹ Here, the record contains extensive

¹ G.L. c. 32, § 7(3)(a) states in pertinent parts:

Lapse of time or failure to file notice of an injury sustained or a hazard undergone as provided for in subdivision (1) of this section or subdivision (1) of section nine...shall not

reports of Ciavola's diagnosis and treatment of post traumatic stress disorder (PTSD) resulting from the August 14, 2010 events. The correspondences between the City of Lowell and Ciavola's treating therapists and physicians and his July 7, 2011 memorandum to Superintendent Lavallee address his medical condition as it relates to the events of August 14, 2010.² These documents constitute records of Ciavola's injury on file with the Lowell Police Department. There is no bar to Ciavola basing his accidental disability retirement application on the alleged injuries sustained during this event.

Ciavola seeks to pursue a claim for accidental disability retirement benefits based on both the personal injury theory and the hazard undergone theory. When considering his appeal, we give the DALA magistrate's findings of facts "some deference." The magistrate's findings are entitled to "substantial deference" when they are based on determinations of credibility. *Vinal v. Contributory Retirement Appeal Bd.*, 13 Mass. App. Ct., 85, 99-100 (1982). Here, the magistrate determined that Ciavola's testimony regarding the life-threatening events of August 14, 2010 contradicted his own police report. He also concluded that the description recounted in his retirement application contradicted both the police report and his testimony at the hearing. While Ciavola argues that the life-threatening events of August 14, 2010 giving rise to his PTSD had been recounted and documented in the record by treating providers and examiners, the recitation of that event was based on Ciavola's own accounts, of which he gave varying details, and was not corroborated through his own police report or testimonies of fellow officers present at the arrest. Because of the inconsistencies and lack of corroborating evidence, the magistrate gave little weight to Ciavola's allegations. He concluded that Ciavola failed to prove by a preponderance of the evidence that the life-threatening events of August 14, 2010 occurred resulting in his PTSD.³

Rather, the DALA magistrate determined that the evidence showed the reprimand Ciavola received on August 14, 2010 by a superior officer after walking the suspect back to

be a bar to proceedings under either of said sections if...he was classified in Group 2, Group 3, or Group 4 and not subject to the provisions of chapter one hundred and fifty-two, if a record of such injury sustained or hazard undergone is on file in the official records of his department.

² Exhibits 9, 17, 23, 29.

³ Exhibits 5, 10, 15-17, 19-22, 27-31; Findings of Fact 10-11; Transcript pp 91-96; DALA decision p. 25.

the police cruiser gave rise to his anxiety, but not the alleged life-threatening events during the pursuit of the suspect. This was corroborated by almost all of the medical records, as well as Ciavola's testimony. The DALA magistrate concluded that the emotional reaction he experienced after the reprimand by the superior officer was not a personal injury, but a bona fide personnel action. "No mental or emotional disability arising principally out of a bona fide, personnel action including a transfer, promotion, demotion, or termination except such action which is the intentional infliction of emotional harm shall be deemed to be a personal injury within the meaning of this chapter." G.L. c. 152, §1(7A). For conduct to be an intentional infliction of emotional harm, it must be "extreme and outrageous, beyond all possible bounds of decency, and utterly intolerable in a civilized society." *Agis v. Howard Johnson Co.*, 371 Mass. 140, 144-45 (1976). Liability "cannot be predicated upon 'mere insults, indignities, threats, annoyance, petty oppressions, or other trivialities.'" *Foley v. Polaroid Corp.*, 400 Mass. 82, 99 (1987); Restatement (Second) of Torts §46, comment d (1965). The superior officer's actions did not constitute intentional infliction of emotional harm but was criticism of an employee by a supervisor. These actions are deemed bona fide personnel action, so as to allow employers "to regulate competence and integrity at the workplace without risk of worker's compensation liability for emotional consequences of good faith supervision." *Upton's Case*, 84 Mass. App. Ct. 411, 414 (2013).

Ciavola also cited the August 25, 2010 suicide scene in support of his psychological disability. Here too, the magistrate found conflicting information regarding this event, which the magistrate considered in his decision. Ciavola never mentioned this incident in his application for accidental disability retirement benefits. Nevertheless, he claimed that after taking photographs of the suicide scene and being reprimanded by his superior officer, he began experiencing anxiety and chest pain, resulting in him seeking emergency room treatment. Although Ciavola's recollection of the suicide scene was consistent with the police report, there was a discrepancy in the date of when he sought emergency room (ER) treatment and the events leading up to that treatment. The medical report indicated Ciavola was treated at the ER on August 31, 2010, not on the day he witnessed the suicide scene, even though he was insistent that he received treatment that day. The hospital record also noted that Ciavola reported his chest pain occurred suddenly when he received bad news at work while seated

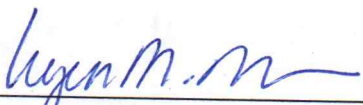
drinking coffee, and not as a result of witnessing a suicide scene.⁴ These inconsistencies were considered and discussed by the magistrate in Ciavola's claim for accidental disability retirement. The magistrate did not find Ciavola's allegation of witnessing the suicide scene resulting in his psychological disability credible.

Ciavola alternatively claimed that his incapacity was a product of a hazard undergone "resulting from the exposure of the claimant by his employment to 'an identifiable condition' which is not common or necessary to all or a great many occupations." *Blanchette v. Contributory Retirement Appeal Bd.*, 20 Mass. App. Ct. 479, 485, 481 N.E.2d 216 (1985). The magistrate acknowledged that mental incapacity may result from working in occupations that involve constant exposure to life-threatening situations or continual traumatic or depressing events. *Id.* at 487. However, Ciavola has not shown by a preponderance of the evidence that his incapacity was caused by an identifiable condition that is unique to his position as a police officer and detective. The evidence shows that the humiliating interaction with his superior officer from the August 14, 2010 arrest of a gang member was the primary cause of his PTSD. Job conflicts with superiors creating feelings of persecution and unfair treatment that cause a psychological disorder do not distinguish Ciavola's occupation from a wide variety of other occupations where employees face similar problems. *Sugrue v. Contributory Retirement Appeal Bd.*, 45 Mass. App. Ct. 1, 694 N.E.2d 391 (1998). Ciavola failed to meet his burden to show that the hazard undergone was an identifiable condition not common or necessary to all or a great many occupations.

The DALA decision is affirmed. Ciavola is not entitled to accidental disability retirement benefits.

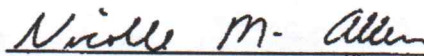
SO ORDERED.

CONTRIBUTORY RETIREMENT APPEAL BOARD



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⁴ Ex. 5, 11, 14; FF 12-14; Transcript 98, 160-161; DALA decision p. 27.



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Date: July 29, 2021