

## COMMONWEALTH OF MASSACHUSETTS

**Middlesex, ss.**

**Division of Administrative Law Appeals**

**Jennifer Connolly,**  
Petitioner,

No. CR-24-0075

Dated: February 21, 2025

v.

**State Board of Retirement,**  
Respondent.

### **Appearances:**

For Petitioner: Steven M. Ballin, Esq., Paul R. Johnson, Esq.

For Respondent: Alison K. Eggers, Esq.

### **Administrative Magistrate:**

Yakov Malkiel

## SUMMARY OF DECISION

The petitioner is the widow of a police officer who committed suicide eleven years after he sustained debilitating injuries in a line-of-duty car crash. Expert medical opinions establish by a preponderance of the evidence that the officer's suicide was proximately caused by his line-of-duty injuries. The petitioner is entitled to the special survivor's benefit prescribed by G.L. c. 32, § 100A.

## DECISION

Petitioner Jennifer Connolly is the widow of police officer Sean Connolly. She appeals from a decision of the state board of retirement (state board) denying her application for a benefit under G.L. c. 32, § 100A, in connection with Officer Connolly's death. On the parties' joint motion, the appeal was submitted on the papers. I admit into evidence stipulations numbered 1-38 and exhibits marked 1-31 and B-C.<sup>1</sup>

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<sup>1</sup> The parties jointly marked and proposed exhibits 1-30. A disputed exhibit originally marked 1 is a competent medical opinion, which I admit as exhibit 31. A disputed exhibit marked 2 is an opinion from Officer Connolly's supervisor in support of the petitioner's case. I exclude that document as founded on inadequate knowledge and expertise. Exhibits B-C were submitted by the petitioner along with her February 2025 supplemental memorandum.

### **Findings of Fact**

I find the following facts.

1. Officer Connolly joined the Beverly police department in 1995. In October 2009, while Officer Connolly was on duty, a heavy truck crashed twice into his vehicle. He sustained a severe concussion. His resulting symptoms included headaches, dizziness, photosensitivity, insomnia, memory deficits, attention deficits, and irritability. (Exhibits 4-8, 23; stipulations 2-5.)

2. Officer Connolly wanted to return to police work, but his symptoms proved persistent. In November 2011, the police department initiated proceedings to retire him involuntarily. A regional medical panel examined Officer Connolly and executed a certificate supportive of the retirement application, which was approved effective in July 2012. (Exhibits 6-8, 23; stipulation 11.)

3. Officer Connolly had no pre-accident history of depression. After the accident, he became severely depressed. Officer Connolly also endured difficult personal developments during the next few months. In December 2011 or January 2012, his elderly uncle died. In April or May 2012, his father died unexpectedly. Officer Connolly and his siblings fought bitterly over their father's end-of-life care. (Exhibit 27; stipulations 7-10.)

4. In September 2012, Officer Connolly attempted suicide. He was taking his medication erratically and experiencing feelings of worthlessness. He was hospitalized at McLean hospital. After an array of tests in November 2012, a reporting physician wrote: "The axonal injury in [Officer Connolly's] case . . . results in a widely disconnected brain and functionally disconnected hemispheres. . . . The predominance of frontal and temporal lobe involvement further impacts executive control and emotional regulation." (Exhibits 5, 9, 10, 28; stipulations 12-14.)

5. Officer Connolly's mental health appeared to stabilize during the next few years. In 2015, his primary care doctor thought he was "doing well." In 2016, the doctor described Officer Connolly's mood, behavior, and judgment as "normal." In 2017, Officer Connolly began to take a new medication for migraines; as of 2018, he was "doing well on his dose." No concerns were noted during visits in 2019. In June 2020, Officer Connolly was more troubled by attention issues, but denied depression. His mood and anxiety were better in September of that year. (Exhibit 29; stipulations 15-23.)

6. On October 29, 2020, police officers found Officer Connolly seated in a parked car, holding a handgun. He told the officers that he was being followed by "UFOs." Efforts to dissuade Officer Connolly from harming himself were unsuccessful. He shot himself and died of a head wound. (Exhibits 13-18; stipulations 24-25.)

7. In June 2021, the petitioner presented the Beverly Retirement Board (Beverly board) with an application for accidental death benefits, which the Beverly board construed as arising under G.L. c. 32, § 100. Among the materials assembled by the petitioner in support of the application was a sworn letter from Dr. Howard Noe, Officer Connolly's psychotherapist from 2010 to 2017. Dr. Noe wrote as follows:

The [2009] injury devastated [Officer Connolly] in a number of different ways. Cognitively, he suffered deficits in concentration, memory, processing speed, and mental flexibility. As well, he sustained deficits in his executive functioning, which caused him difficulty with decision making, self-regulation, emotional control, inhibiting his emotional impulses, and, at times, being able to differentiate states of reality . . . . [A]ll of these deficits then were subject to significant levels of further deterioration as a function of overstimulation, stress, sleep difficulty, and various overload states . . . .

Emotionally, he was devastated by his injury. [Officer Connolly] was a very active, gregarious, and proud man. Highly functional, well respected, dedicated to his job and his family, and deeply identified with being a police officer, he felt painfully ashamed over his loss of career and his functional limitations. . . . Over and over, everyday basic functional tasks

were often beyond him, and his level of resulting emotional dysregulation made it all worse as he was then swamped with sadness, loss, humiliation, loss of confidence, irritability, and periods of significant agitated depression. He never accepted being unable to return to being a cop, and he carried a heavy load of shame and guilt . . . .

Under the sway of his functional deficits, loss of career, and state of depressive despair, [Officer Connolly] made a serious suicide attempt in September 2012. [H]is cognitive deficits combined with the emotional load of it all, impairing his judgment and his capacity to control his impulses. He was lucky to survive . . . . [W]e were able over a number of years to continue the work of helping him to adjust to his disability, moderate his depression, and reorganize his life at a diminished but workable level. Never was this entirely acceptable to him, but he improved sufficiently for us to end the treatment in June 2017, with a clear understanding that further treatment might be required in the future if he slipped back into depression. . . .

[I]t is absolutely clear to me that [Officer Connolly's] shame, his sense of loss, and his feelings of being defective and a burden kept him from seeking help and overwhelmed him in a repeated episode of brain-injury-mitigated loss of judgment and lethal impulsivity. . . . [I]t is my firm opinion that his suicide [in 2020] was a direct and proximate result of the traumatic brain injury he suffered while working as a Beverly police officer [in 2009]. My opinions . . . are within a reasonable degree of professional certainty.

(Exhibits 20, 31; stipulation 26.)

8. The Beverly board arranged for neurologist Dr. Julian Fisher to evaluate the petitioner's application under § 100. Dr. Fisher submitted a report stating:

Traumatic brain injuries can lead to multiple cognitive deficits. In [Officer Connolly's] case, it is clear that his concentration, memory, processing speed, and mental flexibility were affected. As well, his executive functioning was adversely affected. . . .

The multiple post-concussive findings that Dr. Noe reported . . . adversely affected [Officer Connolly] to the point of profound depression leading to suicide. . . . [T]he multiple consequences of the traumatic brain injury and subsequent post-concussive injury combined to produce a sufficiently profound depression leading to initially a failed suicide attempt and subsequently a successful suicide attempt.

To the best of my medical judgment and given the medical records provided, the work-related accident led to and caused the ultimate and unfortunate suicide event . . . .

The Beverly board granted the § 100 application, and its decision was approved by the Public Employee Retirement Administration Commission (PERAC).<sup>2</sup> (Exhibits 19-21; stipulations 27-30.)

9. In April 2022, the petitioner completed an application for benefits under G.L. c. 32, § 100A. As required by that statute, the application was filed with the state board. Psychiatrist Jeffrey Goldbarg was engaged to analyze the case. His report canvassed Officer Connolly’s medical history, noting evidence of Officer Connolly’s post-accident cognitive deficits, confusion, frustration, anger, shame, self-criticism, and self-doubt. One treatment note dated in 2011 reported: “[Officer Connolly’s] sister was present and commented on how different Officer Connolly had become. He used to be engaged, active and capable and now is easily confused, less focused and uncertain.” Dr. Goldbarg stated the following opinion:

Officer Connolly’s self-esteem was based upon his profession as a police officer. That also entailed being a provider for his family. . . . [T]his defined his identity, his sense of self. This was so essential to his existence that it was more and more difficult for him to accept numerous symptoms of his post-concussive syndrome. As denial of these symptoms became more and more difficult, a severe depression set in with suicidal thoughts which evolved into plans. One plan was unsuccessful, and another ended his life. It is my professional opinion that his death was directly related to the 2009 accident.

(Exhibits 22-23.)

10. The state board asked Dr. Goldbarg for a supplemental report on the significance of Officer Connolly’s more encouraging medical records between 2012 and 2020. In response, Dr. Goldbarg identified three potential reasons for “some temporary improvement in Officer

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<sup>2</sup> PERAC declined an invitation to file a brief in this appeal.

Connolly's mental state." Treatment with Adderall might have lessened his issues with concentration and fatigue. Officer Connolly may have presented better during some visits than others because his deficits were "not necessarily static." Dr. Goldberg also thought that transitory improvements in Officer Connolly's symptoms would have temporarily fueled his "significant amount of hope that he would return to his premorbid state." Dr. Goldberg's further consideration of these matters did not lead him to revise his original conclusions. (Exhibit 24; stipulation 36.)

11. In February 2024, the state board denied the petitioner's application for § 100A benefits. She timely appealed. (Exhibits 25-26; stipulations 37-38.)

### **Analysis**

Three sections of the retirement law, G.L. c. 32, determine the benefits payable to the survivors of a public employee whose work caused his or her death. Section 9 provides for a baseline allowance equaling 72% of the deceased employee's pay rate. Section 100 increases the rate to 100% in the case of police officers, firefighters, and correction officers killed "in the performance of [their] duties." Section 100A adds a one-time benefit of \$300,000 to the survivors of certain "public safety" employees killed "in the line of duty."

The dispute here concentrates on § 100A. It may be useful to begin the analysis with the relationship between that section and § 100.

Section 100 is administered by the decedent's usual retirement board. Benefits under § 100 are payable in multiple alternative scenarios, all defined by four essential elements: (a) a firefighter, police officer, or correction officer, (b) while in the performance of his duties, (c) because of, or at the scene of, specified types of incidents, (d) "is killed or sustains injuries

which result in his death.”<sup>3</sup> The Beverly board determined implicitly that Officer Connolly, while performing his police duties in 2009, in “an accident involving a police department vehicle,” § 100, suffered the injuries that later caused his death.

Section 100A is administered by the state board no matter where the decedent served. The employees covered by § 100A are § 100’s three professions, plus prosecutors and emergency medical technicians. Benefits under § 100A are available roughly when § 100’s four elements are present, i.e., when “a deceased public safety employee . . . 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.” The demand for “direct and proximate” causation under § 100A triggers the familiar analysis of proximate cause undertaken in cases of accidental death under § 9 and disability under § 7. *See Collins v. State Bd. of Ret.*, No. CR-14-246, 2021 WL 12297894, at \*4 (Contributory Ret. App. Bd. Nov. 18, 2021).<sup>4</sup>

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<sup>3</sup> The full enumeration of § 100’s scenarios runs as follows: “[I]f a firefighter while in the performance of his duties and as the result of an accident while responding to or returning from an alarm of fire or any emergency, or as the result of an accident involving a fire department vehicle, which the firefighter is operating or in which he is riding, or while at the scene of a fire or any emergency is killed or sustains injuries which result in his death, or 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, or if a police officer while at the scene of an emergency in the performance of the police officer’s duties is killed or sustains injuries which result in the police officer’s death, or if a corrections officer while in the performance of his duties and as the result of an assault on his person is killed or sustains injuries which result in his death . . . .”

<sup>4</sup> At least one earlier DALA decision suggested that “direct and proximate” causation is meaningfully stricter than the usual “natural and proximate” version. *See Pareé-Doherty v. State Bd. of Ret.*, No. CR-17-829, 2018 WL 4334765, at \*3 (Div. Admin. Law App. May 25, 2018). That view was not adopted by *Collins*, 2021 WL 12297894, at \*4. *See also Smith v. Gloucester Ret. Bd.*, No. CR-19-493, 2022 WL 16921470, at \*3 (Div. Admin. Law App. Apr. 22, 2022).

Section 100A describes the benefit it offers as available “in addition to amounts payable under section 100.” That language and the relationship between the two sections’ requirements tend to suggest that the Legislature may have expected § 100 recipients to also qualify for the § 100A benefit (though not necessarily vice versa). Regardless, it is not necessary to determine here whether and when a local board’s allowance of § 100 benefits to a survivor may obviate a separate analysis of the survivor’s rights under § 100A.

It is sufficient instead to focus on whether Officer Connolly is “a deceased public safety employee who, 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.” § 100A. The state board offers several theories in support of its negative answer.

The state board first emphasizes the statute’s words, “while in the performance of his duties,” and its title, “Killed-in-the-line-of-duty benefits.” Against these phrases, the state board juxtaposes the fact that Officer Connolly died eleven years after retiring. But § 100A makes clear that what needs to occur “in the line of duty” is the pertinent incident or accident. *See Collins*, 2021 WL 12297894, at \*3. At that event, the member is required to have suffered either death itself or fatal injuries. *Id.* at \*3-4. The statute is satisfiable even where the member survived for many years after the line-of-duty incident, as long as the injuries sustained there eventually caused his or her death. *Id.*

The state board’s remaining theories take on the pivotal issue, i.e., whether Officer Connolly’s line-of-duty injuries in 2009 proximately caused his eventual death. A traditional formula describes proximate cause as “that which in a continuous sequence, unbroken by any new cause, produces an event and without which the event would not have occurred.” *Collins*, 2021 WL 12297894, at \*4 (quoting *Wallace v. Ludwig*, 292 Mass. 251, 254 (1935)). The state



board's first argument within this framework is that an act of suicide necessarily counts as a "new" or "intervening" cause, such that no death by suicide can be viewed as having been proximately caused by a pre-suicide event.

So described, the state board's theory goes insupportably far. But a more moderate version of the theory finds a basis in the line of cases descended from *Daniels v. New York, N.H. & H.R. Co.*, 183 Mass. 393 (1903). Those cases involved tort claims against defendants who allegedly were responsible for the physical injuries that later led to the injured persons' suicides. The essential holding of the *Daniels* cases is that defendants in such suits are liable only where "death results from an uncontrollable impulse, or is accomplished in delirium or frenzy." *Dzung Duy Nguyen v. Massachusetts Inst. of Tech.*, 479 Mass. 436, 449 n.12 (2018). This test is not satisfied where the decedent acted with "conscious volition to produce death," *Freyermuth v. Lutfy*, 376 Mass. 612, 620 n.6 (1978), or with "a moderately intelligent power of choice," *Daniels*, 183 Mass. at 400.

On the record presented here, the petitioner probably would not satisfy the *Daniels* test. The opinions favorable to her describe Officer Connolly as overwhelmed by depression and loss of judgment. But they do not necessarily go so far as to say that he acted on an uncontrollable impulse, in a delirium, in a frenzy, without conscious volition to produce his own death, or without a moderately intelligent power of choice. No other record evidence sheds additional light on these matters.

On the other hand, two powerful reasons counsel against the application of the *Daniels* test here. One is that, in some respects, the public retirement law draws its inspiration from the workers' compensation act more than from traditional tort law. See *Adams v. Contributory Ret. Appeal Bd.*, 26 Mass. App. Ct. 1032, 1035 n.1 (1989); *Sugrue v. Contributory Ret. Appeal Bd.*,

45 Mass. App. Ct. 1, 5 n.4 (1998). In the context of workers' compensation, a claim arising from a member's suicide does not trigger an analysis of "new" or "intervening" causes. Such a claim is instead meritorious whenever "the employee's work-related physical injury was a simple 'but for' cause of his suicide, even if another independent . . . event intervened." *Dube's Case*, 70 Mass. App. Ct. 121, 125 (2007). *See Chaput's Case*, 85 Mass. App. Ct. 1113 (2014) (unpublished memorandum opinion).<sup>5</sup>

The other reason to refrain from applying *Daniels* in the current setting is the weight of previous administrative decisions. Those decisions have reached mixed results in cases of suicides under sections 9, 100, and 100A. But they have consistently applied the traditional proximate cause formula, without modifications specific to suicide. Their essential inquiry has been whether the member's suicidal act was proximately caused by his or her on-the-job injuries. *See Pareé-Doherty*, 2018 WL 4334765, at \*4; *McCarthy v. State Bd. of Ret.*, No. CR-09-1041 (Div. Admin. Law App. Mar. 11, 2011); *Morin v. Falmouth Ret. Bd.*, No. CR-04-169 (Div. Admin. Law App. Apr. 13, 2005); *McLaughlin v. Hingham Ret. Bd.*, No. CR-03-9 (Div. Admin. Law App. Mar. 29, 2004); *Borstel v. Malden Ret. Bd.*, No. CR-90-967 (Div. Admin. Law App. Aug. 15, 1994).

Even non-binding precedents tend to influence conduct and to generate expectations. This is especially true of a sustained and consistent body of decisions. Only a persuasive showing would justify a rejection of their shared rule. *See Rome v. Middlesex Cty. Ret. Bd.*, No. CR-13-1286, 2019 WL 13536565, at \*4 (Contributory Ret. App. Bd. May 20, 2019); *Gouck v.*

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<sup>5</sup> To be clear, the proximate cause element of G.L. c. 32, §§ 9, 100, and 100A demands more than the "but for" requirement applicable in corresponding workers' compensation cases. The significance of those cases here is their implication that traditional tort law rules may be more restrictive than those that the Legislature had in mind for retirement cases.

*State Bd. of Ret.*, No. CR-19-311, 2023 WL 2455521, at \*5 (Div. Admin. Law App. Mar. 3, 2023). It is not reasonably clear here that the pertinent prior decisions are erroneous. They may well strike an appropriate middle ground between the conflicting approaches of *Daniels* and *Dube's Case*. A departure from the prevailing administrative approach is not warranted.

The final question is therefore whether a preponderance of the evidence establishes that Officer Connolly's suicidal act was proximately caused by the injuries he sustained in his on-duty accident of 2009. Efforts to pin down the decisional processes of a suicidal person are necessarily fraught. *See Routhier v. Keenan*, 25 Mass. L. Rptr. 50, 52 (Super. Ct. 2008). The courts have viewed the existence or absence of a causal connection between injuries and a subsequent suicide as matters "not within the common knowledge or experience of a layperson." *McCarthy's Case*, 28 Mass. App. Ct. 213, 214 (1990). The issue is thus one that calls for "expert medical testimony." *Oberlander's Case*, 348 Mass. 1, 5 (1964). *See generally Robinson v. Contributory Ret. Appeal Bd.*, 20 Mass. App. Ct. 634, 639 (1985).

The cause or causes of Officer Connolly's death have been analyzed by three medical experts. One of them drew on his personal knowledge of Officer Connolly's mental state during the years after his accident. The other two were disinterested specialists engaged by the retirement boards. All three experts were in agreement. They all concluded that Officer Connolly's on-duty accident in 2009 produced his ensuing cognitive difficulties, impaired decision making, and overwhelming depression. They all viewed these symptoms as the causes of Officer Connolly's suicide in 2020. None of the experts believed that the suicide was related to any pre-accident conditions, to the deaths and discord in Officer Connolly's family during 2011-2012, or to any subsequent events. None of them perceived Officer Connolly's improved

presentation during the years leading up to his death as undermining the causal connection between his line-of-duty injuries and his suicide. The state board's more skeptical view of the petitioner's case is not founded on contrary expert analysis. It does not draw on facts unknown to the experts whose opinions are in the record. *See Collins*, 2021 WL 12297894, at \*4. *See also Hollup v. Worcester Ret. Bd.*, 103 Mass. App. Ct. 157, 161-64 (2023). A preponderance of the evidence thus proves the requisite direct and proximate causal connection between Officer Connolly's line-of-duty injuries in 2009 and his death by suicide in 2020.

### **Conclusion and Order**

The petitioner is entitled to the benefit prescribed by G.L. c. 32, § 100A. The state board's contrary decision is REVERSED.

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate