COMMONWEALTH OF MASSACHUSETTS
Division of Administrative Law Appeals

ROBERT COPPAGE *Petitioner*	:	Docket No. CR-22-0081
v.	:	Date: September 29, 2023
STATE RETIREMENT BOARD *Respondent*	:	

Appearance for Petitioner:

Karen Hambleton, *Esq*.

Appearance for Respondent:

Yande Lambe, *Esq*.
State Board of Retirement

Administrative Magistrate:

Eric Tennen

SUMMARY OF DECISION

The State Retirement Board denied the Petitioner's application for accidental disability after a majority of the medical panel opined his disability was *not* caused by a workplace accident. The Board did not lack pertinent facts; they were aware of the Petitioner's duties and the physical requirements of his job. Additionally, the Board's clarification letter did not misstate the law nor mislead the panel. Accordingly, the Board's decision is affirmed.

DECISION

Pursuant to G.L. c. 32, § 16(4), the Petitioner, Robert Coppage, timely appeals the State Board of Retirement's ("SBR" or "Board") vote to deny his application for accidental disability. The Petitioner was a long-time Campus Police Officer at Massasoit Community College ("MCC"). On February 6, 2018, he suffered a myocardial infarction ("MI" or "heart attack") while at work. The SBR denied his application, based on a negative medical panel.

I held an in-person hearing on May 22, 2023 at the Division of Administrative Law Appeals. Mr. Coppage testified on his behalf; the Board offered no witnesses. I admitted Exhibits A1-A14 and B1-B15 at the hearing. The parties submitted closing briefs on September 5, 2023, whereupon the administrative record was closed.

FINDINGS OF FACT

Based on the Petitioner's testimony and the exhibits submitted into evidence, I make the following findings of fact:

Introduction

1. The Petitioner is 58 years old. He worked as a Campus Police Officer II at MCC for almost 19 years. (Ex. A-1.)
2. His duties included typical police work, such as patrolling the campus, investigating incidents, and making arrests. (Ex. A-3.)
3. Working conditions exposed him to potential injury from "dangerous weapons, physical and verbal abuse and adverse weather conditions . . .physical and/or emotional stress . . . lift[ing] and carry[ing] heavy objects or people." (Ex. A-3.)
4. The Petitioner had to be fit, as he was very active during shifts. He estimated he walked between 25,000 to 30,000 steps a shift (as measured by his Fitbit). Additionally, he exerted himself physically in other ways, such as running after a suspect or climbing many stairs. (Petitioner testimony.)
5. Whenever he worked, he had to carry numerous items. A detailed list submitted by his department estimated all the items weighed around 17 lbs. (Ex A-10.)[1]

[1] The Petitioner estimated he carried about 100 pounds of equipment. (Petitioner testimony.) He told the medical panel and the Board the same thing. Although I do not believe it makes a difference in the outcome of the case, I do not find the Petitioner's testimony on this

6. However, the Petitioner explained the list did not include a few additional items, such as a radio, his badge, notepads, and keys. (Petitioner testimony.)

Injury

7. On February 6. 2018, while on a routine patrol of campus, the Petitioner suffered a heart attack. (Petitioner testimony; Ex A-1.)

8. He was in the middle of a typical day. He had completed several duties, including patrolling the campus and going to court. (Petitioner testimony.)

9. Suddenly, he felt a sharp pain in his chest. (Petitioner testimony.)

10. He was taken to the hospital where, eventually, doctors inserted three stents for a blocked artery; he later received a fourth stent. (Ex. B-4; Petitioner testimony.)

11. He did not return to work. He was placed on medical leave. Because no accommodation could be made, he was terminated on November 13, 2018. (Ex. A-2).

Accidental Disability Application

12. The Petitioner applied for accidental disability benefits on October 22, 2019. (Ex. A-1.)

13. The application included a detailed job description. (Ex. A-3.)

14. He submitted a Treating Physician's Statement from his cardiologist, Dr. Robert Scarlatelli. (Ex. B-1.)

15. Dr. Scarlatelli "suspect[ed] job stress contributed to [Petitioner's] MI." (Ex. B-1.)

16. Dr. Scarlatelli filled out the sections for both regular accidental disability and accidental

point to be credible. I find the department's letter is more accurate. (Ex. A-10). Additionally, I find the statement unbelievable—that is, I simply do not believe he would be required to carry 100 lbs. of equipment all day, every day while walking around 12 miles during each shift.

disability under a presumption.[2] (Ex. B-1.)

17. On December 2, 2020, the Board advised the Petitioner that it would not process his application under the "heart presumption" because the retirement statute did not allow campus police officers to rely on the presumption because Campus Police Officer was not listed in the heart law provision. Instead, it would process his application under G.L. c. 32, § 7.[3] (Ex. A-5.)

18. The Petitioner was ultimately evaluated, individually, by three doctors who made up his medical panel: Drs. Edward Hoffer, Steven McCloy, and Michael Johnstone. (Exs. B-11-13.)

19. Drs. Johnstone and Hoffer's specialty is cardiology; Dr. McCloy's is occupational medicine. (Exs. B-11-13.)

20. The doctors had a list of the Petitioner's duties. Additionally, he explained to them his activities on February 6, 2018, the weather conditions, and the equipment he regularly carried. (Petitioner testimony.)

21. Drs. McCloy and Hoffer reported that the Petitioner told them he had to carry 100 pounds of gear. (Exs. B-11 & B-12.)[4]

22. All three doctors agreed the Petitioner was permanently incapacitated.

23. As to causation, Dr. Hoffer opined that, "[g]iven the Massachusetts statute, his coronary

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[2] This is a reference to the "heart law" presumption that presumes disabling heart conditions are job-related if an applicant worked in specific jobs. *See* G.L. c. 32, § 94.

[3] The Board letter cited *Ross v. State Bd. of Ret.*, CR-12-594 (DALA Jan. 29, 2016) as the basis for refusing to consider the application under the heart law. Although the Petitioner objected, he does not claim this as an issue on appeal. That said, there was some confusion by the medical panel as to whether this was a "presumption" case, as explained more fully below.

[4] Dr. Johnstone made no mention of whether the Petitioner described the weight of his equipment.

artery disease by definition is work related." (Ex. B-11.)

24. Dr. McCloy's explanation was a little longer:

> Given the contradictions in the medical history, there are potentially ". . . other event(s) or condition(s) . . . that might have contributed to or resulted in the disability." The medical record states there is a family history of hypercholesterolemia and coronary artery disease. The examinee says the contrary. The medical record states he was a cigarette smoker. He states that he was not. He greatly exaggerates his claim that as a police officer he wears "over 100 pounds" of additional equipment including his duty belt and his armor. Standard police armor weighs about six pounds. The duty belt may weigh up to 20 pounds or slightly higher, but nothing close to 100 pounds. There is no other evident strongly causal factor in the data that I am considering. I, therefore, conclude that his heart attack is attributed to his employment.

(Ex. B-12.)

25. On the contrary, in Dr. Johnstone's opinion, the Petitioner's "current condition is due to a combination of genetic and lifestyle factors. There is no evidence that his coronary artery disease is attributable to his work." (Ex. B-13.)

26. After the doctors submitted their opinions, the Board wrote almost identical letters to Drs. Hoffer and McCloy asking for clarification. It explained to the doctors that the "heart presumption" did not apply in this case. (Ex. A-6.)

27. Considering that, the Board asked the doctors to:

> Kindly clarify whether and why you were able to determine that Mr. Coppage's condition is causally related to his work as a Campus Police Officer. Specifically the Board needs to know if Mr. Coppage's work caused or aggravated the cardiac condition which led to his myocardial infarction or if the cardiac condition and myocardial infarction would have occurred regardless of the duties and requirements of the position that Mr. Coppage held.
>
> Mr. Coppage's application is proceeding under G.L. c. 32, § 7 and I would ask that you expressly state whether Mr. Coppage's current medical conditions is such as might be the natural and proximate result of the event on February 6, 2018? If so, please state why that is the case and how you arrived at that determination.

(Ex. A-6.)

28. Drs. Hoffer and McCloy responded to the Board's letter. They both acknowledged having analyzed this as a "heart presumption" case. (Exs. B-14 and B-15.)

29. Dr. Hoffer clarified his prior opinion on causation was based *only* on the heart presumption. Otherwise, "there is no evidence that his disability was work-related. In my opinion his myocardial infarction would have occurred regardless of the duties and requirements of the position that Mr. Coppage held." (Ex. B-14.)

30. Similarly, Dr. McCloy "did not find any evidence in my visit with Mr. Coppage or in the history he provided that the work caused or aggravated his cardiac condition. Assuming the correctness of the medical history, he has a number of risk factors that are likely contributors and that are not related to his work." (Ex. B-15.)

31. After receiving the amended opinions, the Board tabled consideration of the application in search of more information. (Ex. A-8.)

32. The Board wrote to the Chief of Police asking for clarification about the gear the Petitioner had to carry on a regular basis. (Ex. A-9; B-12.)

33. The Chief responded with the detailed letter, mentioned above, explaining the equipment was estimated to weigh "around 17 lbs." (Ex. A-10.)

34. The Board then corresponded with PERAC. It noted that, at its meeting, the Petitioner stated the "panel members had misunderstood the physical requirements of his position and stated in part that he was required to carry gear which weighed approximately 100 pounds." The Board then received the department's letter explaining that the gear weighed approximately 17 pounds. Accordingly, "[i]n light of Mr. Coppage's representations and the information obtained from MCC, the Board respectfully requests that PERAC either appoint a new panel to examine him or that PERAC forward the

enclosed requests for clarification to the Panel[.]" (Ex. A-11.)

35. PERAC denied these requests:

> None of the doctors utilized an inappropriate standard and, to the extent that the medical panelists may not have reviewed pertinent facts, the fact that MCC confirmed that the gear carried by Mr. Coppage weighed only 17 pounds and that lifting heavy objects was not a typical duty serves only to support the findings of the medical panelists.

(Ex. A-12.)

DISCUSSION

The Petitioner has the burden of proving every element of his disability claim. *Lisbon v. Contributory Ret. App. Bd*., 41 Mass. App. Ct. 246, 255 (1996); *Frakes v. State Bd. of Ret.*, CR-21-0261, 2022 WL 18398908 (DALA Dec 23, 2022). "G.L. c. 32, § 7(I) provides for accidental disability retirement benefits if a member (1) 'is unable to perform the essential duties of his job' and (2) 'such inability is likely to be permanent before attaining the maximum age for his group,' (3) 'by reason of a personal injury sustained or a hazard undergone as a result of, and while in the performance of, his duties,' (4) 'without serious and willful misconduct on his part.'" *Brady v. Weymouth Ret. Bd.*, CR-20-0201, *9 (DALA Jul. 15, 2022). "A condition precedent for awarding accidental disability" is that "[a] majority of the panel must conclude the applicant is permanently unable to perform his essential job duties and that there is a medical possibility of a causal relationship between the disability and a personal injury or hazard undergone while performing his duties." *Id.* at *10, *citing Lisbon, supra*. If a majority of the panel does not so conclude, it is commonly known as a "negative panel."

> A negative panel report generally precludes an applicant from receiving accidental or involuntary disability retirement benefits.
>
> The general rule that a negative panel ends an application for accidental or involuntary disability retirement benefits has a few exceptions: if the medical panel did not "conform[] to the required procedure of physical examination"; it lacked "all the

> pertinent facts"; it used an erroneous legal standard; or the medical certificate was "plainly wrong."

Beauregard v. Fall River Ret. Bd., CR-18-0498, *2-3, 2022 WL 16921428, (DALA., Mar. 11, 2022), *citing Kelley v. Contributory Ret. App. Bd.*, 341 Mass. 611, 617 (1961).

The Petitioner makes two claims, either of which, he argues, should result in review by a new medical panel. First, he argues the panel lacked pertinent facts. Second, he argues the Board's letter misstated the correct legal standard and misled the panel. Neither argument has merit.

1. The Panel did not lack pertinent facts.

The Petitioner insists the medical panel should have been given more detailed information about his duties and, specifically, the gear he was required to carry. It is true that while the panel was provided with a detailed job description, it was not provided with a list of gear, or its weight, that the Petitioner carried while on duty. However, the Petitioner told the panel about his equipment; at least two doctors recorded his claim that his equipment weighed 100 pounds. It is not clear what difference more documentation would have made to the panel other than to undercut the Petitioner's statement that his gear weighed 100 pounds. Recall, the Chief's letter estimated it weighed only 17 pounds. In any event, there is nothing "pertinent" about these facts. The Petitioner has not put forth any argument that these facts would have impacted the live issue in this case: whether there was causal relationship between the disability and a personal injury.

Although I find the Petitioner's equipment weight to be only approximately 17 pounds, even if that were not the case, and the equipment did weigh closer to 100 pounds, that would not have made a difference. In this case, the equipment's weight would only have been relevant to the medical panel if there was a dispute about whether the Petitioner was permanently

incapacitated. *See Brocato v. Taunton Ret. Bd.*, CR-19-319, *4, n.1 (DALA Jan. 25, 2021) ("Mr. Brocado states also that the majority physicians 'did not understand or appreciate the heavy physical duties of [Mr. Brocato's] job.' This unsupported assertion is both mooted and refuted by the panel's unanimous agreement that Mr. Brocato is permanently unable to perform his job duties."). In determining permanent incapacitation, a doctor might need to know what the Petitioner's duties were, which would include information about equipment weight. But here the doctors unanimously agreed the Petitioner could not perform his essential job duties. Therefore, that the equipment may have weighed more was irrelevant.

2. The Board's questions did not misstate the law nor mislead the medical panel.

After the medical panel issued its first round of opinions, the Board suspected two panelists incorrectly relied on the "heart presumption." The Board issued a clarifying letter informing the panel the "heart presumption" was inapplicable. The Board's suspicion turned out to be right, as the two doctors affirmed their opinions were based entirely on the "heart presumption" law. Absent the presumption, neither doctor believed the Petitioner's work caused his heart attack. The Petitioner complains that the Board's letter misled the panel when it asked if "the cardiac condition and myocardial infarction would have occurred regardless of the duties and requirements of the position that Mr. Coppage held." The Petitioner does not take issue with the rest of the clarification question, conceding it properly states the legal standard.

Post-assessment requests are governed by 840 Code Mass. Regs. § 10.11(2). PERAC's transmittal to the panel is not discretionary. *See Rowley v. Everett Ret. Bd.*, CR-19-0579, *8, n.6 2022 WL 16921467, (DALA May 6, 2022). It is *possible* a board's questions could be misleading or confusing and interfere with the panel's independence. *See id.*; *Cf. See Chaves v.*

Taunton Ret. Bd., CR-18-0204 (DALA Dec. 3, 2021) (Board's *pre*-assessment letter improperly influenced the panel). Even so, I do not find that occurred here.

The objected to phrase—whether the MI would have occurred regardless of his duties—was merely another way of stating the prevailing legal standard. *See e.g. Dufresne v. State Bd. of Ret.*, CR-02-1036, *5 (DALA Oct. 1, 2004) (medical panel used similar phrasing). Moreover, the doctors' reports reflect that they were familiar with, and well-versed in, the proper standards of causation, further demonstrating they were not misled by the Board's questions. PERAC agreed when it denied the Board's request to convene a new medical panel.

CONCLUSION AND ORDER

The Petitioner was a long-time, dedicated officer at Massasoit Community College. However, more is necessary to collect accidental disability. Because the Board was bound to respect the negative panel opinion and the Petitioner did not show the type of error needed to overcome this reliance, its decision is **affirmed**.

SO ORDERED

DIVISION OF ADMINISTRATIVE LAW APPEALS

Eric Tennen

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Eric Tennen
Administrative Magistrate