

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Rhoan Crichton,
Petitioner

v.

Docket No. CR-21-0548

State Board of Retirement &
Public Employee Retirement
Administration Commission,
Respondents

Appearance for Petitioner:

Rhoan Crichton, *pro se*
65 Riverview Terrace
Springfield, MA 01108

Appearance for State Board:

Brendan E. McGough, Esq.
State Board of Retirement
One Winter Street, 8th floor
Boston, MA 02108

Appearance for PERAC:

Felicia McGinnis, Esq.
Associate General Counsel
PERAC
5 Middlesex Avenue, Suite 304
Somerville, MA 02145

Administrative Magistrate:

James P. Rooney

Summary of Decision

This application for accidental disability retirement benefits brought under the heart law presumption in M.G.L. c. 32, § 94 is denied because the petitioner's pre-employment

physical examination revealed the presence of hypertension, rendering the presumption inoperative. The Petitioner declined to proceed under M.G.L. c. 32, s. 7(1).

DECISION

Rhoan Crichton is appealing the November 1, 2021 decision of the State Board of Retirement denying his application for accidental disability retirement benefits under the heart law presumption in M.G.L. c. 32, s. 94. The parties agreed to waive a hearing and have the case decided on the documents pursuant to 801 CMR 1.01(10)(c). I entered 15 exhibits into evidence. I marked the Petitioner’s written submission “A,” the State Board’s written submission “B,” and PERAC’s written submission “C.” A list of exhibits appears on the last page of this decision.

Findings of Fact

1. Rhoan Crichton, born in 1976, worked as a Correction Officer in the substance abuse unit of the Hampden County Sheriff’s Department from June 4, 2012 to December 29, 2016. (Exs. 1, 9.)
2. Mr. Crichton had a pre-employment physical examination on May 22, 2012 that revealed the presence of hypertension controlled through “calcium channel blocker Amlodipine.” (Ex. 2.)
3. During 2015 and 2016, Mr. Crichton was under the care of Daniel Landry, D.O. for the treatment of essential hypertension among other maladies. (Ex. 4.)
4. On December 30, 2016, Mr. Crichton presented at the Emergency Department of Baystate Medical Center with “sudden onset of sharp epigastric chest pain that radiated to the back and abdomen ... with diaphoresis” while sitting at work. Scanning revealed a type A aortic dissection from the aortic root extending down to the level of the iliac arteries with extension to his brachiocephalic, celiac, superior mesenteric and left common iliac arteries. (Ex. 5, Admission/History and Physical, 12/30/16; Emergency Medicine Notes, 12/30/16.)

5. On admission, Mr. Crichton's past medical history included hypertension, and his current medications included Hydrochlorothiazide and Labetalol for the treatment of hypertension. (Ex. 5, Admission/History and Physical, 12/30/16; *mayoclinic.org*.)
6. Mr. Crichton was taken emergently to the operating room for replacement of the ascending aorta with a #30 Valsalva graft and repair of the aortic valve with resuspension sutures. After a post-operative course complicated by pericardial effusion, pericarditis and abdominal pain, Mr. Crichton was discharged on January 21, 2017. (Ex. 5, Admission/History & Physical, 12/30/16.)
7. On July 6, 2018, Mr. Crichton filed an application for accidental disability retirement benefits stating that his aortic dissection prevented him from performing his duties of having direct contact with inmates, restraining inmates, supervising inmates and lifting more than 50 pounds. (Ex. 1, p. 4.) There is no official job description in this record.
8. Kelly Armstrong, M.D., an internist, filed a Treating Physician's Statement in support of the application on September 10, 2018, and an amended Statement on January 10, 2019. On the amended Statement, Dr. Armstrong certified that Mr. Crichton is permanently unable to perform the essential duties of his job but did not identify those duties. In answer to whether the disability might be the natural and proximate result of the claimed personal injury, Dr. Armstrong answered no, although Mr. Crichton has not claimed to have suffered a personal injury. Dr. Armstrong certified that it is the aortic dissection that disables Mr. Crichton. In answer to what other circumstances may have contributed or resulted in the disability Dr. Armstrong wrote "HTN," an abbreviation for hypertension. (Ex. 10)
9. A regional medical panel specializing in cardiology and internal medicine convened on March 6, 2019 to evaluate Mr. Crichton. The panel comprised Madhusadan Thakur, M.D.,

Robert T. Eberhardt, M.D., and Eric Awtry, M.D. The panel unanimously certified in the affirmative to the issues of disability, permanence and causation under the heart law presumption of G.L. c. 32, s. 94. (Ex. 11.)

10. The panel noted Mr. Crichton's symptoms of shortness of breath on exertion and occasional chest pain with less strenuous physical activities. Physical examination revealed a blood pressure of 168/100. The panel offered a diagnosis of "hypertension complicated by type A aortic dissection requiring surgical repair." (Ex. 11.)

11. The panel concluded that Mr. Crichton is unable to perform the essential duties of his job because he has ongoing symptoms of exertional shortness of breath with occasional chest discomfort and lightheadedness. He was advised by his physician to restrict his physical activities. (Ex. 11.)

12. The panel concluded that Mr. Crichton is permanently disabled because "the underlying hypertension as well as resulting vascular injury are permanent problems despite his surgical repair. He has significant vascular abnormalities and ongoing vascular weakness that will not resolve even with optimal medical treatment." (Ex. 11.)

13. With respect to causation the panel concluded "while he did have hypertension prior to employment this was controlled with a single agent. This became less well controlled requiring multiple agents and likely contributing to the development of his aortic dissection. He has not been found to have any predisposing conditions, such as Marfan syndrome that would [have] been an alternative risk factor. There are no identifiable risk factors or conditions that so predominate as to obligate this Panel to conclude that for this applicant his heart disease and hypertension is caused by non-job-related factors." (Ex. 11.)

14. By letter of November 29, 2019, acting on behalf of the State Board of Retirement, the Public Employees' Retirement Administration Commission (PERAC) sought clarification from the medical panel with respect to the panel's conclusion that "there are no identifiable risk factors or conditions that so predominate as to oblige this Panel to conclude that for this applicant his heart disease and hypertension is caused by non-job-related factors" in view of the applicant's family history of hypertension, and in view of the applicant's short tenure as a correction officer. (Ex. 12.)

15. By letter of March 19, 2021, the medical panel acknowledged that "a family history of first-degree relatives seems to provide a modest increase in one's risk for hypertension above the baseline risk in the adult population (about 30% in many studies). However, there is limited data to support a family history of essential hypertension, even among first degree relatives, as being related to the development of uncontrolled hypertension (such as in the workplace) or the development of the ensuing hypertensive related complications (such as an aortic dissection)." The panel reiterated its opinion that "there are no identifiable risk factors or conditions, including the family history or hypertensin, that so predominate as to obligate this panel to conclude that for this applicant his heart disease or hypertension (with difficulty controlling and ensuing complications) is caused by non-job-related factors. The Panel again concludes that said incapacity is such as might be the natural and proximate result of the injury sustained or hazard undergone on account of which disability is claimed, and have answered YES to questions 1, 2 and 3." (Ex. 13.)

16. With respect to Mr. Crichton's "relatively short tenure in his position" the panel opined that it "knows of no definitive data to clarify a specific duration of hypertension that is required for the development of such complications." (Ex. 13.)

17. By letter of November 1, 2021, the State Board informed Mr. Crichton that although the Board had voted on May 27, 2021 to approve his request for accidental disability retirement, PERAC remanded the application on June 30, 2021, noting that his pre-employment physical examination indicated that he had hypertension, and further noting that the heart law presumption requires that the applicant pass a pre-employment physical “that failed to reveal any evidence of hypertension” and heart disease for the presumption to be operative. (Ex. 14.)

18. PERAC had informed Mr. Crichton that he could apply for accidental disability retirement benefits under M.G.L. c. 32, § 7(1). He would have to establish that he suffered an injury “as a result of and while in the performance of his duties” at a specific date and time. He would have to file an injury report. Mr. Crichton declined to pursue this option. On November 1, 2021, after PERAC’s objection to its initial vote, the State Board voted to deny Mr. Crichton’s request for accidental disability retirement benefits under M.G.L. c. 32, s. 94. (Ex. 14.)

19. Mr. Crichton appealed. His appeal letter was dated November 10, 2021. (Ex. 15.)

Discussion

The decision of the State Board of Retirement to deny this application for accidental disability retirement benefits under M.G.L. c. 32, § 94 is affirmed because the presumption is not operative in this case because Mr. Crichton’s pre-employment physical examination revealed evidence of hypertension.

M.G.L. c. 32, § 94 states in pertinent part:

[Any] condition of impairment of health caused by hypertension or heart disease resulting in total or partial disability or death to ... any employee in ... a county correctional facility whose regular or incidental duties require the care, supervision, of prisoners ... shall, if he successfully passed a physical examination on entry into such service ... which examination failed to reveal any evidence of such condition, be presumed to have been suffered in the line of duty, unless the contrary be shown by competent evidence.

An aortic dissection is “a serious condition in which a tear occurs in the inner layer of the body’s main artery (aorta). Blood rushes through the tear, causing the inner and middle layers of the aorta to split (dissect). If the blood goes through the outside aortic wall, aortic dissection is often deadly.” <https://www.mayoclinic.org/diseases-conditions/aortic-dissection/symptoms-causes/syc-20369496>. Ongoing high blood pressure is the most important risk factor for developing aortic dissection because hypertension causes direct damage to the layers of aortic tissue, causing loss of elastic fibers, breakdown of the wall structure and increased wall stiffness. <https://my.clevelandclinic.org/health/diseases/16743-aortic-dissection#:~:text=Age%20between%2050%20and%2065,as%20cocaine%20or%20amphetamine%20use>.

Both the Contributory Retirement Appeals Board (CRAB) and the Appeals Court have held that a finding of hypertension on a pre-employment physical examination renders the Section 94 presumption inoperative. *Sacramone v. Cranney*, 61 Mass. App. Ct. 1106 (Rule 1:28, 2004); *Mark Sullivan v. Northampton Retirement Board*, CR-99-530 (CRAB 2001).

When the presumption is not operative or has been rebutted by competent evidence, the burden shifts to the Petitioner to demonstrate that his disabling aortic dissection is the reasonable and proximate result of a personal injury sustained or hazard undergone while in the performance of his duties under M.G.L. c. 32, § 7(1). In order to meet his burden, the Petitioner must prove one of two hypotheses: that his disability was caused by a single or series of work-related events, or that his employment exposed him to an “identifiable condition ... that is not common and necessary to all or a great many occupations” that resulted in disability through gradual deterioration. *Blanchette v. CRAB*, 20 Mass. App. Ct. 479, 485 (1985). The Petitioner has declined to proceed under section 7(1).

Consequently, this application for accidental disability retirement benefits must be denied.

DIVISION OF ADMINISTRATIVE LAW APPEALS

James P. Rooney
Acting Chief Administrative Magistrate

Dated: September 15, 2023

EXHIBITS

1. Member's Application for Disability Retirement, 7/6/2018
2. Pre-Employment Physical Examination, 5/22/2012
3. PERAC remand to State Board of Retirement, 6/30/2021
4. Medical Records – Dr. Daniel Landry, 12/31/14 to 5/9/17
5. Medical Records - Baystate Medical Center, 12/30/16 -1/21/17
6. Medical Records – Trinity Health, Kidney Care and Transplant Service, and Baystate Medical Center (From GenEx.)
7. Medical Records – Mercy Medical Center, 10/24/15 – 10/26/16
8. Medical Records – Mercy Medical Center, 12/1/11 – 12/1/20
9. Employer's Statement, 7/27/18
10. Physician's Statement, 9/10/18 and 1/10/19
11. Joint Regional Medical Panel Report, 3/6/19
12. PERAC request for medical panel clarification and related documentation, 11/29/19
13. Medical Panel clarification – 3/19/21
14. State Board denial of application – 11/1/21
15. Petitioner's Appeal – 11/15/21