

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Elias Cruz,
Petitioner

v.

Docket No. CR-23-0607

Boston Retirement System,
Respondent

Date: August 8, 2025

Appearance for Petitioner:

Bryan Decker, Esq.
Decker & Rubin, PC

Appearance for Respondent:

Natacha Thomas, Esq.
Boston Retirement System

Administrative Magistrate:

Melinda E. Troy, Esq

SUMMARY OF DECISION

The Respondent's decision to deny the Petitioner's application for accidental disability retirement pursuant to G.L. c. 32, § 7, is affirmed. The Petitioner has not proven that he was injured "as a result of and while in the performance of" his duties as a Boston Police Officer. The Petitioner is not entitled to accidental disability retirement.

PROCEDURAL BACKGROUND

This appeal concerns the determination by the Respondent, the Boston Retirement System ("BRS"), that the Petitioner is not entitled to be examined by a Regional Medical Panel ("Panel") for purposes of determining his eligibility for accidental disability retirement. For the reasons set forth below, I am affirming the Respondent's decision.

The parties submitted a joint pre-hearing memorandum in support of their respective positions before the Division of Administrative Law Appeals ("DALA"). I marked that pleading

as Pleading A. The parties also submitted 7 joint exhibits. The Petitioner offered one contested exhibit. I admitted all 8 exhibits into the record, after hearing arguments by the parties as to the admissibility and relevance of Exhibit 8. The BRS argued that Mr. Cruz is ineligible for benefits pursuant to G.L. c. 32, § 7, as a matter of law because he was not injured “as a result of and while in the performance of” his duties as the law requires. G.L. c. 32, § 7.

I held an in-person evidentiary hearing on January 23, 2025, at the DALA offices in Malden, MA. I digitally recorded the hearing with the parties’ consent. The Petitioner was the sole witness. Each party filed a post-hearing memorandum, at which time the record closed. I marked the Petitioner’s post-hearing memorandum as Pleading B and the Respondent’s post-hearing memorandum as Pleading C. I have included an exhibit list as an addendum to this decision.

FINDINGS OF FACT

Based on the evidence presented by the parties and the uncontradicted statements of fact contained in the parties’ written submissions, along with reasonable inferences drawn therefrom, I make the following findings of fact:

1. The Petitioner, Elias Cruz (“the Petitioner” or “Mr. Cruz”), is presently a police officer at the Boston Police Department (“BPD”). He began working there as a clerk in January 2001. In October 2004, he began working as a police officer on patrol. (Testimony.)
2. On May 21, 2021, Mr. Cruz sustained the injury upon which his accidental disability retirement application is based. Prior to that date, he had been working full-time, full-duty. (Testimony.)
3. As of May 21, 2021, Mr. Cruz was assigned to BPD District 13 in Jamaica Plain,

MA. (Testimony.)

4. On that date, Mr. Cruz was assigned to maintain the peace at the funeral of a homicide victim. He returned to the station after the services. (Testimony; Exhibit 8.)
5. Mr. Cruz took a “detour” to the restroom when he returned to the precinct. He intended to use the restroom and then report to the sergeant on duty what had transpired at the funeral. The sergeant’s office was on a different floor. (Testimony.)
6. Mr. Cruz used the restroom and when he was walking down the stairs to report to the sergeant, he fell down approximately 6 to 8 stairs. Mr. Cruz injured his back and neck. (Testimony; Exhibit 1.)
7. Mr. Cruz initially received compensation pursuant to G.L. c. 41, § 111F. He returned to work but has been working light duty, processing evidence at a facility in Hyde Park, MA. (Testimony; Exhibit 4.)
8. By application dated October 28, 2021, Mr. Cruz applied for accidental disability retirement based on the injuries he sustained on May 21, 2021. The stated basis of his application was “disabling back and neck injuries.” (Exhibit 1.)
9. In his disability application, Mr. Cruz described how the incident occurred stating only that “while performing duties, I fell down approximately 6 to 8 stairs and injured my back and neck.” (Exhibit 1.)
10. After reviewing the application, the BRS declined to process Mr. Cruz’s application for accidental disability retirement. The BRS notified him by correspondence dated November 21, 2023. (Exhibit 6.)
11. By correspondence dated December 4, 2023, Mr. Cruz’s counsel filed a timely appeal on his behalf and the matter was referred to DALA for a hearing. (Exhibit 7.)

DISCUSSION

The BRS declined to process Mr. Cruz's application for accidental disability retirement because the BRS determined that it failed as a matter of law. Specifically, the BRS decided that Mr. Cruz cannot show that he was injured "as a result of and while in the performance of" his duties at BPD as G.L. c. 32, § 7, requires and therefore he is not entitled to be examined by a Regional Medical Panel. For the reasons that follow, I agree with the BRS and therefore I affirm its decision.

To be entitled to accidental disability retirement, an applicant must show that he was permanently disabled from performing the essential duties of his job "by reason of a personal injury sustained or a hazard undergone as a result of, and while in the performance of, his duties at some definite place and at some definite time." G.L. c. 32, § 7(1). Benefits awarded under G.L. c. 32, § 7(1) are "only for those who experience a personal injury not merely as a result of the performance of work duties, but during the performance of these duties as well." *Retirement Board of Salem v. Contributory Retirement Appeal Board*, 453 Mass. 286, 291 (2009). The requirements "are conjunctive." *Boston Retirement Board v. Contributory Retirement Appeal Board*, 340 Mass. 109, 111 (1959). These requirements are also strictly construed. *Murphy v. Contributory Retirement Appeal Board*, 463 Mass. 333, 348 (2012). The mere fact that an employee is in his office during regular work hours does not necessarily mean that the employee is engaged in "the actual performance of the duties that the employee has undertaken to perform on behalf of the public." *Damiano v. Contributory Retirement Appeal Board*, 72 Mass. App. Ct. 259, 263 (2008). Whether an employee is so engaged when they are injured is a fact that must be proven by the applicant. *Murphy, supra* at 333.

Generally speaking, an individual cannot be awarded accidental disability retirement if the employee is injured while going to or returning from a break. *Boston Retirement Board, supra* at 111. An employee who is injured while returning to a job duty from a non-job activity is not injured “in the performance of” essential duties, even if the injury occurred on the “employer’s premises while returning from lunch” or falling in the employer’s parking lot on the way to reporting to work. *Namvar v. Contributory Retirement Appeal Board*, 422 Mass. 1004, 1005 (1996); *Civetti v. Plymouth Retirement Board*, CR-16-411 (Div. Admin. Law Appeals Feb. 22, 2019). However, if an individual can show that he sustained an injury while “going from one place at which [he] had an employment obligation to another such place” an award of benefits would be possible. *Namvar, supra* at 1005. Against this legal framework, Mr. Cruz’s claim that he was injured in the performance of his duties fails.

The parties do not dispute that Mr. Cruz took a break and used the restroom in the precinct after he returned from his duty assignment. When he was on his way to brief the sergeant thereafter, he fell down the stairs and was unfortunately injured. In light of these facts, Mr. Cruz’s claim that he sustained a compensable personal injury for purposes of accidental disability retirement is unavailing when one examines the applicable case law.

Injuries sustained while using the restroom are not compensable. *Doucette v. State Board of Retirement*, No. CR-08-239 (Contrib. Ret. App. Bd. Feb. 17, 2011) (injury sustained walking from stall to bathroom sink not compensable); *Dupuis v. Massachusetts Teachers’ Retirement System*, No. CR-10-666 (Div. Admin. Law App. Oct. 4, 2013) (teacher did not sustain compensable injury when injured using the restroom even when duties included bathroom monitoring); *Fortier v. Teachers’ Retirement Board*, No. CR-02-730 (Contrib. Ret. App. Bd. Nov. 13, 2003) (same).

Similarly, injuries sustained while leaving the restroom to return to work are also not compensable because they are not sustained while in the performance of a job duty. *Morales v. Holyoke Retirement Board*, No. CR-06-649 (Div. Admin. Law Appeals Feb. 5, 2008) (thumb injury sustained while opening bathroom door to return to work not compensable). Mr. Cruz used the restroom and then began to walk to the sergeant's office to discuss what transpired when he was assigned to keep the peace at a funeral. He was not "going from one place at which [he] had an employment obligation to another such place" within the meaning of *Namvar*, supra.

CONCLUSION

For all of the foregoing reasons, the Boston Retirement System's decision to deny the Petitioner's application for accidental retirement benefits without convening a Regional Medical Panel to examine him is affirmed.

SO ORDERED,

DIVISION OF ADMINISTRATIVE LAW APPEALS

Melinda E. Troy

Melinda E. Troy
Administrative Magistrate

EXHIBITS

1. Mr. Cruz's Accidental Disability Retirement Application.
2. Physician Statement in support of the application.
3. BPD Incident Report, dated May 21, 2021.
4. BPD Employer Statement.
5. Massachusetts Police Department Police Officer Task Survey Analysis.

6. Letter from the BRS to the Petitioner dated November 21, 2023, declining to process his application.
7. Petitioner's letter of appeal, dated December 4, 2023.
8. "Boston Police Incident History" dated May 21, 2021.