COMMONWEALTH OF MASSACHUSETTS
Division of Administrative Law Appeals

JOHN DANIELE, *Petitioner*	:	Docket No. CR-23-0003
	:	Date: November 1, 2024
v.	:	
WORCESTER REGIONAL RETIREMENT SYSTEM, *Respondent*	:	

Appearances:

For Petitioner: Griffin Hanrahan, *Esq.*
For Respondent: Linda Champion, *Esq.*

Administrative Magistrate:

Eric Tennen

SUMMARY OF DECISION

The Petitioner was an electrician. He hurt his knee while stepping down from a bucket truck. The injury ultimately resulted in his disability because it aggravated a pre-existing condition. The Worcester Regional Retirement System's decision is reversed.

INTRODUCTION

Pursuant to G.L. c. 32, § 16(4), the Petitioner timely appeals the Worcester Regional Retirement System's ("WRRS") vote to deny his application for accidental disability. I conducted an in-person hearing on May 14, 2024. The Petitioner testified on his behalf and the Board offered no witnesses. I entered exhibits 1-13 into evidence. Both parties submitted post-hearing briefs on September 20, 2024, at which point I closed the administrative record.

FINDINGS OF FACT

1. The Petitioner was an electrician for the Town of Westborough's Department of Public

Works. (Stipulated facts.)

2. His duties required physical labor like heavy lifting, walking up and down ladders, and constant bending. (Exs. 4-6; testimony.)

3. He was physically active outside of work. For example, prior to his accident, he loved to ride his bike. (Testimony.)

4. He suffered several injuries over the years while at work to his shoulder and hand. These injuries resulted in some loss of work when they occurred, but he always returned to full duty eventually. (Exs. 4-6; testimony.) These injuries are not at issue in this case.

5. Prior to the incident in this case, because of these work injuries and other issues, the Petitioner had a lengthy medical history.

6. Of note in his medical records is an MRI performed in January 2016 to examine his left knee. The exhibits contain one page with the MRI findings. But they contain nothing else explaining why an MRI was performed nor whether any treatment followed. (Ex. 13, pg. 45.)

7. Also of note is a medical record from April 30, 2019. The Petitioner regularly saw a doctor for a different medical issue not germane to this case. On this date, while at his doctor for this issue, the note adds the following: "Left knee pain is moderate. Worse with activity. Worse with going down stairs." For this issue, the doctor ordered x-rays. But no treatment was recommended. Nor is there any indication the pain was limiting in any way. (Ex. 13, pg. 181.)

8. Indeed, at this time, the Petitioner was working full duty and without restrictions. (Exs.

4, 6, 10[1], & 13, pgs. 299, 310; testimony.)

9. A few days later, on May 6, 2019, he injured his left knee. He had been working on a bucket truck changing street lighting. As he stepped down off the back, he landed awkwardly and twisted his left knee. (Exs. 4-6; testimony.)

10. He tried to return to work after this accident, but he could work only "light duty" and even then, he was in too much pain to do his job. He also recalls falling a lot after the accident, which was not something that used to happen to him before. (Testimony.)

11. He undertook a long course of treatment for this injury. As part of that treatment, he had an MRI in July 2019. The results of that MRI were compared to the MRI from January 2016. (Ex. 13, pg. 188-193.)

12. After conservative treatment failed, he had arthroscopic surgery in October 2019 for a "meniscectomy and a patellar chondroplasty." (Exs 4 & 5; testimony.)

13. That surgery, however, was unsuccessful in fully restoring him and he remained unable to physically perform his work duties. (Exs. 4-6; testimony.)

14. Westborough terminated the Petitioner's employment on August 8, 2020. (Stipulated facts.)

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[1] In a memorandum to the medical panel, the WRRS's prior counsel wrote that the Petitioner had been "working in a full duty capacity since March 11, 2019, and he stopped working due to his May 7, 2019 injury." (Ex. 10.). Counsel specifically indicated that, because he was working without limitations, the doctors were to consider only the May 2019 incident in their evaluation (since the prior workplace accidents where he injured his shoulder and hand were not limiting the Petitioner at that time). Counsel repeated this position at the Board's evidentiary hearing with the Petitioner. (Ex. 11.) Other records support this position. (Ex. 13, pgs. 299, 310.) The Board now argues that Dr. Friedberg "incorrectly" noted that the Petitioner was working full duty prior to his injury. The Board's argument to the contrary is inconsistent with its prior position. Regardless, as noted in my findings above, based on his testimony and assorted exhibits, the Petitioner was working full duty without restrictions when he injured himself in May.

15. Prior to his accident, there was no documentation in the Petitioner's medical records that he had arthritis. However, as a result of his treatment for this injury, it became apparent that he in fact did have arthritis.

16. In October 2020, the Petitioner was evaluated by three doctors for his workers' compensation claim. They all opined his lingering knee pain was likely because of his preexisting arthritis and not on account of the May 2019 accident. (Ex. 13, pgs. 245-259.)

17. In March 2022, he applied for accidental disability retirement. (Ex. 7.) He was seen by a regional medical panel composed of three orthopedic doctors: Drs. Douglas Bentley, Ryan Friedberg, and Marc Linson. (Exs. 4-6.)

18. The doctors were all presumably given the same set of documents to review. As so often happens in these cases, they did not each elaborate as to which documents they individually had or relied on. (Exs. 4-6.)

19. All three doctors had access to the Petitioner's medical records which, as evidenced by exhibit 13, contain multiple evaluations including a January 6, 2020 letter from Dr. Errol Mortimer to the Petitioner's attorney. (Ex. 13, pg. 249.)

20. Among other things, Dr. Mortimer found the Petitioner had "degenerative arthritis of the left knee." (Ex. 6.)

21. The records also contain the results of the 2016 MRI, although no doctor explained its significance, if any, nor compared it to the 2019 MRI. (Ex. 13, pg. 45.)

22. All three doctors were aware that the Petitioner had a pre-existing condition of arthritis in his left knee, (Exs. 4-6.), which Dr. Bentley characterized as "asymptomatic." (Ex. 4.)

23. All three doctors unanimously agreed the Petitioner was permanently disabled. Drs. Bentley and Friedberg also agreed his disability might have been proximately caused by this workplace injury; Dr. Linson disagreed. (Exs. 4-6.)

24. Specifically, Dr. Bentley explained that, in his opinion, the Petitioner "has pre-existing an asymptomatic early osteoarthritis in his left knee which he did not know he had. [The Petitioner] had not been treated until the injury occurred, and the injury aggravated this pre-existing and previously asymptomatic osteoarthritis." He could "find no other proximate causes of his incapacity." (Ex. 4.)

25. Dr. Friedberg provided a similar analysis.

> [A]lthough a major and predominant reason for his ongoing disability of his left knee is due to the pre-existing osteoarthritis of the left knee, it is my opinion that the injury that occurred on May 6, 2019, did aggravate this condition and also either caused a medial meniscal tear or aggravated the medial meniscal tear to the degree that he started developing pain and the need for surgery. Thus, in my opinion, the injury that occurred on May 6, 2019 did play a role, meaning there was a greater than 1% chance that the May 6, 2019 injury proximately caused [the Petitioner's] permanent left knee incapacity.
>
> It is my opinion that, although the member suffered from pre-existing arthritis, he was able to work without any difficulty with regard to the left knee until the injury of May 6, 2019. The injury aggravated and hastened a pre-existing condition to the point where no he is unable to work.

(Ex. 5.)

26. Dr. Linson, on the other hand, disagreed. In his opinion, the surgical treatment for the meniscal tear should have allowed the Petitioner a full recovery and the ability to resume his full duties. "His inability to do so now is due rather to a pre-existing and unrelated to work condition of arthritis and chondromalacia of the patella of the left knee." (Ex. 6.)

27. He emphasized that there was not "even a 1% chance that the 5/6/19 injury caused [the Petitioner's] permanent left knee incapacity[.]" (Ex. 6.)

28. The WRRS ultimately denied the Petitioner's application "because the Medical Panel answered 'No' to the question of causation."[2]

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). "Accidental disability requires three elements: 1) that the applicant was "mentally or physically incapacitated for further duty," 2) that [their] "incapacity is likely to be permanent," and 3) that [their] disability "is such as might be the natural and proximate result of the accident or hazard undergone." *Id. citing* G.L. c. 32, § 6(3)(a).

A Petitioner must show they sustained their injuries from either a specific event or series of events. *Lisbon*, at 255. The event, or events, must be "a significant contributing cause to [the] employee's disability." *Robinson's Case*, 416 Mass. 454, 460 (1993). "If an applicant suffers from an underlying condition that was aggravated by a work-related injury to the point of disability, that injury is compensable." *B.G. v. State Bd. of Ret.*, CR-20-0207, 2021 WL 9583594 (DALA Oct. 8, 2021). In those cases, a Petitioner must still prove their disability was not caused merely "by [the] natural, cumulative, degenerative effects of [their] pre-existing condition." *Lisbon*, at 255.

While a positive medical panel is "some evidence on the question of causation . . . it is not determinative." *Warren v. Boston Ret. Bd.*, CR-13-199, 2022 WL 16921473, *16-17 (DALA Sep. 30, 2022). Rather, "[t]he ultimate finding on causation is left to the retirement board to

[2] At the hearing, Board counsel clarified the Board was referring to Dr. Linson's opinion.

determine, considering all the evidence, both medical and non-medical." *Id*. at *17, *citing Wakefield Contributory Ret. Bd. v. Contributory Ret. App. Bd.*, 352 Mass. 499 (1967).

The Board argues that Dr. Linson's opinion that the Petitioner's incapacity is more than likely caused by his preexisting arthritis, and not the May 2019 accident, better explains the Petitioner's current condition. The Board suggests that the majority opinions are flawed for two reasons: 1) they rely on limited or incorrect information and 2) there are more persuasive opinions in evidence.

If the Board is correct that the majority opinions are based on faulty information, that would certainly be a good reason to disregard them. But the Board's contentions are mistaken. First, the Board argues that Drs. Friedberg and Bentley did not review (or have) certain records even though Dr. Linson did: namely the 2016 MRI report and the January 6, 2020 letter (from Dr. Errol Mortimer to the Petitioner's attorney). All three doctors were presumably provided the same documents to review. That two of them did not specifically mention these items does not mean they did not review them. *Robillard v. State Bd. of Ret.,* No. CR-18-470, 2022 WL 18283524, at *4 (DALA Dec. 19, 2022). In any event, there is nothing particularly relevant about them. No doctor referred to the 2016 MRI as a relevant data point. And the 2019 MRI report that all three doctors referenced incorporated the 2016 findings anyway. As to the January 6, 2020 letter, the Board's characterization of it provides no particularly different insight or new facts not found elsewhere in the record. [3]

Second, the Board argues that Dr. Friedberg incorrectly believed that the Petitioner was working full duty before the accident, pointing to the April 2019 medical record that said the

[3] The reference in Dr. Linson's report to Dr. Mortimer finding that the Petitioner had "degenerative arthritis of the left knee", (Ex. 6.), was not new information. All the panelists acknowledged this presence of arthritis prior to the accident.

Petitioner was having some knee pain. However, I find the Petitioner was working full duty without restriction at this time. The fact that the Petitioner may have been experiencing knee pain does not mean he was incapable of working full duty; he was working without restrictions and doing things like going up in a bucket truck and taking down lights. Moreover, the Board originally took this position—that the Petitioner was working without restrictions—and emphasized this to the medical panelists.

Having determined that the majority opinions were not based on incorrect information, the Board's remaining argument is simply that the other medical opinions are more persuasive. That argument lacks teeth without some reason in the record to meaningfully differentiate between the competing views. It is not unusual to have differing medical opinions, especially between doctors evaluating accidental disability and doctors evaluating workers' compensation claims. These contrary opinions do not mean the medical panelists here were mistaken. They are just another data point to consider in my analysis. *Rosemarie R. v. Amesbury Ret. Bd.*, CR-22-0590, 2024 WL 3101692 (June 14, 2024) ("[I]t was equally proper for the PERAC panelists to disagree with [the workers' compensation evaluations'] and it is their assessment that the retirement law and [*Malden Ret. Bd. v. Contributory Ret. Appeal Bd.*, 1 Mass. App. Ct. 420, 423 (1973)] look to for guidance.").

Thus, the question remains whether the Petitioner met his burden to show that the May 2019 accident caused his disability. The common thread among every evaluator is the understanding that the Petitioner had a preexisting condition: arthritis. Where the doctors part ways is in evaluating how serious it was. Dr. Linson (and the workers' compensation doctors) believed the Petitioner should have been completely healed from his May 2019 injury after his surgery such that the only possible explanation for his continuing incapacity was this preexisting

condition. On the other hand, Drs. Bentley and Friedberg believe the May 2019 accident aggravated the preexisting condition and thus form the basis for accidental disability.

I find the opinions of Drs. Bently and Friedberg more credible. To be sure, this is a close case as evidenced by conflicting medical opinions. That said, the facts as I find them corroborate this interpretation. The most compelling fact is that the Petitioner was working full duty and without limitation when the accident occurred. *Carreiro v. New Bedford Ret. Bd.*, CR-21-0355, 2023 WL 4846320 (DALA Jul. 21, 2023). Moreover, his prior work restrictions were related to his other injuries (to his shoulder and hand) but never due to any knee pain. The fact that he may have had knee pain, and even talked to a doctor about it, is irrelevant given that he was performing the full range of duties required of him. His preexisting arthritis does appear to have been, in Dr. Bentley's assessment, asymptomatic.

Outside of the doctor's opinions, there are no facts that show the Petitioner's arthritis was on a trajectory to cause his incapacity. Certainly, that was not the case in May 2019, when he suffered this injury since he was working without restrictions. And it was not the case after his surgery in October 2019. Yet to credit the contrary opinions, I would have to find the Petitioner's arthritis progressed very quickly and aggressively so that he would have been disabled anyway within half a year of the injury. The record does not support this finding.

To be sure, Drs. Bently and Friedberg are not saying that the May 2019 injury alone caused the Petitioner's disability. They are saying the injury aggravated a pre-existing condition, his arthritis, which they acknowledge he had. Their acknowledgment of his arthritis is not trivial because as orthopedists they have particular expertise in evaluating the impact and effect arthritis might have in this case. I thus credit their opinions that the May 2019 accident caused the Petitioner's disability by aggravating a pre-existing condition.

CONCLUSION

WRRS's decision denying the Petitioner's application for accidental disability benefits is hereby **reversed**.

SO ORDERED

DIVISION OF ADMINISTRATIVE LAW APPEALS

Eric Tennen

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Eric Tennen
Administrative Magistrate