COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss. **Division of Administrative Law Appeals**

Alan R. DeNaro,
Petitioner,

v.

Haverhill Retirement Board,
Respondent.

No. CR-22-0495

Dated: June 28, 2024

Appearances:
For Petitioner: James H. Quirk, Jr., Esq.
For Respondent: Michael Sacco, Esq.

Administrative Magistrate:
Yakov Malkiel

SUMMARY OF DECISION

A majority of a medical panel determined that the petitioner, a former police chief, was not incapacitated at the time of his departure from state service. The panel did not apply incorrect standards, overlook pertinent facts, or employ improper procedures. The petitioner is not entitled to retire for accidental disability.

DECISION

Petitioner Alan R. DeNaro appeals from a decision of the Haverhill Retirement Board denying his application to retire for accidental disability. An evidentiary hearing took place on April 9, 2024. Mr. DeNaro was the only witness. I admitted into evidence exhibits marked 1-20 and stipulations marked 1-16.

Findings of Fact

I find the following facts.

1. Mr. DeNaro's career as a police officer spanned more than forty years. He worked in Florida from 1978 to 1999 and in Rhode Island from 1999 to 2002. He belonged to the Haverhill Police Department from 2002 to 2021, ultimately serving as police chief. (Stipulations 2, 4.)

2. As police chief, Mr. DeNaro shouldered a wide array of responsibilities. They ranged from administrative duties to physical work in the field and on the road. Mr. DeNaro needed to be prepared to be called for guidance or assistance at any time of day, on any day of the year. His job entailed a substantial amount of stress. (Exhibits 4, 6; Tr. 15-19.)

3. Approximately in late 2017, Mr. DeNaro began to complain to his medical providers about shortness of breath, especially during periods of exertion. His blood pressure and EKG were then normal. He was referred to a stress test, which also was normal. No additional treatment was recommended. (Exhibits 7, 18; Tr. 22-23.)

4. Mr. DeNaro sought additional medical input in late 2020. He subsequently explained to his cardiologist that he was "nearing retirement so [he] felt he should get [cardiac testing]." The examining physicians found Mr. DeNaro to have an elevated calcium level and aortic thickening, which are signs of heart disease. Even so, Mr. DeNaro's results were normal at a February 2021 EKG and a May 14, 2021 stress test. On the day before the stress test, Mr. DeNaro's cardiologist wrote that he had "no chest pain with exertion," and that his shortness of breath during exertion was "likely due to deconditioning." (Exhibits 7-9, 18; Tr. 30-31.)

5. On May 18, 2021, Mr. DeNaro filed an application to retire for accidental disability. He stopped working approximately at that time. He is retired for superannuation as of June 30, 2021. (Exhibit 6; Stipulations 3, 9.)

6. In February 2022, Mr. DeNaro underwent a cardiac catheterization procedure. The procedure disclosed more serious signs of heart disease. A drug-eluting stent was successfully implanted in Mr. DeNaro's heart. (Exhibits 10, 18.)

7. A regional medical panel was convened to evaluate Mr. DeNaro's accidental disability retirement application. The panel consisted of two cardiologists and one internist. The

panelists examined Mr. DeNaro separately during May 2022. Cardiologists Dr. Michael Johnstone and Dr. Eric Ewald then declined to certify Mr. DeNaro's incapacity. Internist Dr. Ayment Elfiky returned a minority opinion in Mr. DeNaro's favor. All of the panelists certified that they reviewed Mr. DeNaro's medical records and job description before forming their opinions. (Exhibits 16-18; Stipulations 12-15.)

8. Dr. Johnstone allowed that Mr. DeNaro "may have coronary heart disease." But focusing on mid-2021, the endpoint of Mr. DeNaro's time in public service, Dr. Johnstone wrote:

> His chest pain was not incapacitating since it did not exist. There was no evidence that he had any lack of oxygen or blood to the heart muscle or ischemia. This after he performed an exercise stress test that was completely normal. With regards to his hypertension his blood pressure was well controlled at that time.

(Exhibit 16.)

9. During his examination, Dr. Johnstone suggested to Mr. DeNaro that he viewed the chief position as a desk job. He measured Mr. DeNaro's blood pressure as elevated, but considered that reading to be an aberration in light of other measurements appearing in the medical records. In his narrative report, Dr. Johnstone discussed Mr. DeNaro's February 2022 catheterization, but noted that he did not possess the results of that procedure. Dr. Johnstone also described Mr. DeNaro as "totally asymptomatic," adding: "At no time did Mr. DeNaro have any chest pain or shortness of breath." But elsewhere in the report, Dr. Johnstone recognized that, "[i]n 2017, [Mr. DeNaro] began complaining of shortness of breath and palpitations . . . ." (Exhibit 16; Tr. 15-19, 39-40.)

10. Dr. Eric Ewald described Mr. DeNaro's heart disease as "well-established" but not disabling. Dr. Ewald also noted that he did not possess the results of the catheterization procedure; but he added that the "[o]ngoing standard of care . . . would be to continue to remain physically active." Dr. Ewald viewed Mr. DeNaro's blood pressure as well-controlled,

measuring as either normal or "minimally" elevated both at Dr. Ewald's exam and in entries in the medical records. With respect to Mr. DeNaro's condition at the time of his departure from service, Dr. Ewald wrote: "Blood pressure was not significantly elevated, and . . . he had a very reassuring nuclear stress test performed on May 14, 2021 . . . ." At the examination, Dr. Ewald indicated that he was not interested in symptoms and diagnostics postdating Mr. DeNaro's retirement for superannuation. (Exhibit 18; Tr. 24-26, 43.)

11. Internist Dr. Aymen Elfiky expressed a different viewpoint. He opined that, "because of the extent of coronary heart disease . . . less than optimal blood pressure values . . . could trigger a lethal myocardial infarction." Dr. Elfiky saw a "substantial risk of reinjury . . . [if] Mr. DeNaro were to again be in a role with responsibilities known to entail regular and continued stress." Dr. Elfiky apparently viewed these points as having been true as long ago as Mr. DeNaro's doctor visits of late 2020 and mid-2021. (Exhibit 17.)

12. In November 2022, the board denied Mr. DeNaro's application. He timely appealed. (Stipulation 16; Exhibits 1, 2.)

Analysis

A public employee seeking to retire for accidental disability must establish three essential elements: that the employee is incapacitated, that the incapacity is permanent, and that the incapacity was proximately caused by a workplace injury or hazard. G. L. c. 32 § 7. The incapacity is required to have materialized while the employee was still a "member in service." *Hollup v. Worcester Ret. Bd.*, 103 Mass. App. Ct. 157, 164-65 (2023); *Vest v. Contributory Ret. Appeal Bd.*, 41 Mass. App. Ct. 191, 193 (1996). The causation element is generally presumed in cases of police officers disabled by hypertension or heart disease. G.L. c. 32, § 94.

A regional medical panel's affirmative certificate as to disability, permanence, and causation is a condition precedent to accidental disability retirement. *Blanchette v. Contributory*

Ret. Appeal Bd., 20 Mass. App. Ct. 479, 483 (1985). A panel majority's refusal to certify these elements decisively defeats the member's application unless the majority employed an erroneous standard, failed to review pertinent facts, or followed improper procedures. *Kelley v. Contributory Retirement Appeal Board*, 341 Mass. 611 (1961); *Foresta v. Contributory Ret. Appeal Bd.*, 453 Mass. 669, 684 (2009).

Mr. DeNaro contends that the majority panelists failed to review pertinent facts insofar as they had no copies of the results of his February 2022 catheterization procedure. Both majority panelist clearly and reasonably declined to view that record as "pertinent." They recognized that the catheterization and stenting confirmed Mr. DeNaro's heart disease.[1] But the critical point is that they concentrated their attention on Mr. DeNaro's condition upon leaving work, approximately eight months *before* the catheterization. They concluded that at that point in time, Mr. DeNaro's heart disease and hypertension had not been disabling. The majority panelists' focus on the endpoint of Mr. DeNaro's state service was mandated by *Vest* and *Hollop*. They were not required to ascribe importance to Mr. DeNaro's post-retirement catheterization.[2]

Mr. DeNaro also appears to fault the majority panelists for failing to analyze certain other elements of his medical history. But a failure to *discuss* particular records or details is not necessarily a failure to *review* all pertinent facts:

> Panelists are obligated to conduct a careful and expert review of the member's case. It is generally sufficient for them to certify that they have done so. They are not required to undertake the potentially unfeasible task of refuting every record that may appear to challenge their conclusions.

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[1] Though Dr. Johnstone commented that, in his view, it was "questionable at best whether the [catheterization] should have been done." (Exhibit 16.)

[2] This is not to say that post-retirement diagnostics will *never* shed light on the member's medical condition as of his or her last day of service.

Robillard v. State Bd. of Ret., No. CR-18-470, 2022 WL 18283524, at *4 (DALA Dec. 19, 2022). When a panelist's report does not talk about a particular point of fact, that typically means that the panelist did not view the point as key to the medical analysis. *See Kiely v. State Bd. of Ret.*, No. CR-18-496, at *5 (DALA Oct. 15, 2021).

Mr. DeNaro criticizes assorted comments from the majority panelists, both at the examinations and in the narrative reports. These grievances do not amount to material improprieties. For reasons already discussed, Dr. Ewald was correct to redirect Dr. DeNaro's attention from any post-retirement developments to the facts as they stood when he left the police department. Dr. Johnstone should not have indicated that the chief position was a desk job; it was not. But his medical analysis was essentially that, at retirement time, Mr. DeNaro was free of any encumbering cardiovascular symptoms or unmanaged hypertension. The conclusions flowing from that analysis clearly would not have changed if Dr. Johnstone had appreciated the in-the-field aspects of Mr. DeNaro's position.

It was also either ambiguous or imprecise for Dr. Johnstone to write, "At no time did Mr. DeNaro have any chest pain or shortness of breath." Mr. DeNaro's shortness of breath complaints began as early as 2017. But this was a fact that Dr. Johnstone acknowledged elsewhere in his report. A determination that Dr. Johnstone missed or misunderstood material facts is not warranted.

Finally, Mr. DeNaro emphasizes that his application was supported both by the minority panelist and by Mr. DeNaro's own treating physicians. But the fact is that challenging medical cases may generate conflicting medical opinions. The retirement law tackles that challenge by convening panels of neutral physicians and assigning primary importance to their analyses. *Malden Ret. Bd. v. Contributory Ret. Appeal Bd.*, 1 Mass. App. Ct. 420, 423 (1973); *Retirement*

Bd. of Revere v. Contributory Ret. Appeal Bd. (*DiDonato*), 36 Mass. App. Ct. 99, 111 (1994). Contrary opinions from other well-qualified experts do not make the panelists' conclusions erroneous or deficient. *See Robillard*, 2022 WL 18283524, at *4.

Conclusion and Order

For the foregoing reason, the board's decision is AFFIRMED.

Division of Administrative Law Appeals

/s/ Yakov Malkiel
Yakov Malkiel
Administrative Magistrate