

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

**Richard Diaz,**  
Petitioner

v.

Docket No. CR-24-0071

**Boston Retirement System,**  
Respondent

Date: August 8, 2025

**Appearance for Petitioner:**

Bryan Decker, Esq.

**Appearance for Respondent:**

Natacha Thomas, Esq.

**Administrative Magistrate:**

Melinda E. Troy, Esq.

**SUMMARY OF DECISION**

The Respondent's decision to deny the Petitioner's application for accidental disability benefits pursuant to G.L. c. 32, § 7, without convening a Regional Medical Panel to examine him 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. He was injured when he was entering the BPD Bomb Squad building to report to work. Consequently, he was not injured "while in the performance of" his duties as a Bomb Technician as G.L. c. 32, § 7, requires.

**DECISION**

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.

## **PROCEDURAL BACKGROUND**

The Petitioner applied for accidental disability retirement pursuant to G.L. c. 32, § 7. Upon reviewing the application, the BRS determined that it would not forward the application and its accompanying materials to a Panel for review to determine if Mr. Diaz might be eligible for accidental disability retirement. Specifically, the BRS determined that Mr. Diaz had not met the threshold requirement of being injured “as a result of and while in the performance of” his duties as is required for a member to be eligible to retire pursuant to G.L. c. 32, § 7. Consequently, the BRS denied the application as a matter of law. 840 CMR 10.09(2).<sup>1</sup> Counsel for Mr. Diaz filed a timely appeal.

I held an in-person hearing on April 28, 2025 at DALA’s offices in Malden, MA, which I digitally recorded with the parties’ consent. The Petitioner was the sole witness. I admitted into evidence 8 exhibits, which were jointly submitted and agreed to by the parties. I have included an exhibit list as an addendum to this decision. In June 2025, the parties submitted post-hearing memoranda, after which the record closed. I have marked the Petitioner’s closing memorandum for identification as Pleading B and the Respondent’s written closing memorandum as Pleading C.

## **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, Richard Diaz (“the Petitioner” or “Mr. Diaz”), was formerly

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<sup>1</sup> 840 CMR 10.09(2) states, “At any stage of a proceeding of an ordinary or accidental disability retirement application the retirement board may terminate the proceeding and deny the application if it determines that the member cannot be retired as a matter of law.”

employed as a police officer at the Boston Police Department (“BPD”). He began working there on April 3, 2006. (Testimony; Stipulation of the parties.)

2. In February 2013, Mr. Diaz was assigned to the BPD Explosive Ordnance Unit, colloquially known as the “Bomb Squad”, which works out of a building in Dorchester. The BPD Bomb Squad provides services throughout the Boston, not just within an assigned precinct. (Testimony; Exhibit 8.)
3. In his work as a member of the BPD Bomb Squad, Mr. Diaz responded to emergencies within Boston. (Testimony.)
4. In addition to this work with the BPD Bomb Squad, Mr. Diaz underwent extensive additional training and was made a member of the Federal Bureau of Investigation (“FBI”) Stabilization Team (“Stabilization Team”). Much of the training that the Stabilization Team members undergo is confidential, but its essential function is to prevent nuclear and radiological devices from exploding in the event of an act of terrorism or the use of a weapon(s) of mass destruction. (Testimony.)
5. If necessary, the Stabilization Team would have responded to any emergency call that required its specialized training within its coverage area. However, during the time he was assigned to it, Mr. Diaz never responded to any actual emergency that required the Stabilization Team’s services. (Testimony.)
6. At the time of the events described below, Mr. Diaz was assigned to work a shift that began at 11:45 PM and ended at 7:30 AM. He was reporting for a shift as a BPD Bomb Technician, not completing any training as part of the Stabilization Team. (Testimony.)
7. Mr. Diaz generally reported early for a scheduled BPD shift. On March 14, 2021, he

- traveled from his home to the Bomb Squad headquarters but had not yet reported for work when he sustained the injuries described below. (Testimony; Stipulation of the parties.)
8. On March 14, 2021, at approximately 10:38 PM, Mr. Diaz “fell on a staircase at the entrance to the BPD Bomb Squad Headquarters.” (Exhibit 1.)
  9. At the time he was going up the front stairs, Mr. Diaz “had a little bit more pep in the step....with the intention of just breezing right up the stairs.” On the second step, his right foot caught the edge of the stair. He reached out and grabbed the railing. He fell forward, but did not fall on his face, and banged his right knee on the step.  
(Testimony.)
  10. Mr. Diaz injured his right biceps tendon, knee, and lower back when he tripped that evening. (Exhibit 1.)
  11. Mr. Diaz received treatment in a hospital emergency department on the date of injury and never returned to work after the incident on March 14, 2021. (Testimony; Exhibit 3.)
  12. By application dated September 20, 2022, Mr. Diaz applied for accidental disability retirement based on the injuries he sustained on March 14, 2021. (Exhibit 1.)
  13. By correspondence dated February 2, 2024, the BRS declined to process Mr. Diaz’s application, because it determined that Mr. Diaz had not been injured in the performance of his duties as G.L. c. 32, § 7 requires. (Exhibit 4.)
  14. By correspondence dated February 14, 2024, Mr. Diaz filed a timely appeal of the BRS’s determination, and the matter was assigned to DALA for a hearing. (Exhibit 5.)

## DISCUSSION

The BRS denied Mr. Diaz's application as a matter of law because it determined that he 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. For the reasons discussed below, I agree with the BRS. Mr. Diaz cannot meet a threshold requirement to retire pursuant to G.L. c. 32, § 7. Therefore, he is not entitled to accidental disability retirement as a matter of law, and the BRS properly declined to convene a Regional Medical Panel to examine him.

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 commuting to work. *Richard v. Retirement Board of Worcester*, 431 Mass. 163, 165 (2000) (employee injured while traveling from home, where she had no employment obligation, to a workplace designated by the city, prior to the regular start time of her workday was not injured while in the performance of her duties.) However, if an individual can show that he or she 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 v. Contributory Retirement Appeal Board*, 422 Mass. 1004, 1005 (1996). Against this legal framework, Mr. Diaz’s claim that he was injured in the performance of his duties fails.

In fact, the parties do not dispute that Mr. Diaz was injured on his way into the BPD Bomb Squad building to report for duty on March 14, 2021. The dispute instead centers around whether this fact makes him ineligible for accidental disability retirement as a matter of law. Prior cases are clear that police officers injured while reporting for duty cannot establish that they were injured “as a result of and while in the performance of” their job duties as would be required for an award of benefits pursuant to G.L. c. 32, § 7. *Civetti v. Plymouth Retirement Board*, CR-16-411 at \*9 (Div. Admin. Law App. Feb. 22, 2019) (officer who fell on ice in department parking lot had not yet reported for duty and was not in the performance of his duties); *City of Medford v. Medford Retirement Board*, CR-05-1320 (Contributory Ret. App. Bd., Aug. 3, 2006) (officer who injured back while opening police station door when reporting for his shift not injured in the performance of his duties).

In this case, the Petitioner specifically argues that reporting for duty and being on the BPD’s premises is sufficient to show that he was injured “as a result of and while in the performance of” his duties because he was “dressed in his uniform and prepared to respond to

any emergency.”<sup>2</sup> (Petitioner’s Brief at page 8.) Unfortunately for the Petitioner, this argument has been found to be without merit, as the inquiry into whether an employee is injured “as the result of and while in the performance of” his duties is more specific than that. *Murphy v. Contributory Retirement Appeal Board*, 463 Mass. 333, 350 (2012) (“given the scope of a judge’s duties, the inquiry is not about geography (being in the office during work hours), but about employment activities.”) The specific circumstances of Mr. Diaz’s injury demonstrate that he is not entitled to accidental disability retirement as a matter of law.

The case *Morales v. Lawrence Retirement Board & Public Employees Retirement Administration Commission*, No. CR-13-79 (Contributory Ret. App. Bd. Nov. 18, 2021), is instructive. In *Morales*, a police officer injured his shoulder when he fell running up the rain-covered steps of the police department while reporting to work. Ultimately, after a remand from Superior Court<sup>3</sup>, the Contributory Retirement Appeal Board (“CRAB”) determined that Officer Morales had not proven that he was injured as a result of and while in the performance of his duties as G.L. c. 32, § 7, required. CRAB stated, in pertinent part, “Morales did not fall ‘as a result of’ his duties. He fell as the result of the rain that caused the steps to be slippery. There was no aspect of police work that caused his injury.” *Morales*, supra at \*9.

Similarly, here, Mr. Diaz fell because he lost his footing while moving quickly up the steps of the BPD Bomb Squad headquarters to report for his then-upcoming shift on March 14,

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<sup>2</sup> The Petitioner spent considerable time at the hearing explaining that he was in uniform and driving an official vehicle to headquarters on the date of injury. Neither of these facts establishes that he was injured “as the result of and while in the performance of” his duties with the BPD Bomb Squad.

<sup>3</sup> The Petitioner cites to and relies upon some of the reasoning in the *Morales* Superior Court decision in his argument. The rationale of the Superior Court judge, however, was expressly rejected in the CRAB decision on remand cited above. In relevant part, CRAB stated, “[w]ith all due respect to the Superior Court, case law applying G.L. c. 32, § 7 clearly establishes that simply arriving at work is insufficient for accidental disability benefits....” *Id.* at \*7.

2021. He was not performing any work duty at the time or responding to any emergency either as a member of the Stabilization Team or the BPD Bomb Squad. Like the Petitioner in *Morales*, “there was no aspect of police work” that caused Mr. Diaz’s injury.

### 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  
Administrative Magistrate

### EXHIBITS

1. Member’s Application for Disability Retirement, dated September 20, 2022.
2. Physician’s Statement from Shirly Tozzi, M.D. submitted on behalf of the Petitioner, dated November 2, 2022.
3. BPD Incident Reports from the Petitioner regarding his March 14, 2021 injury.
4. Letter from the BRS to the Petitioner dated February 2, 2024 informing him that BRS was denying his retirement application as a matter of law.
5. Petitioner’s letter of appeal dated February 14, 2024.
6. Email from Joseph Keaveney to the BRS regarding the Petitioner.
7. Email from Robert W. Ciccolo, Jr. re: Stabilization Team recall posture.
8. February 12, 2013 Personnel Order assigning Petitioner to the BPD Explosive Ordnance Unit.