COMMONWEALTH OF MASSACHUSETTS

DIVISION OF ADMINISTRATIVE LAW APPEALS

Middlesex, ss.

Kevin Duffey,
Petitioner, Docket No.: CR-24-0577

v.

Waltham Retirement Board,
Respondent.

Appearances:

For Petitioner: Kevin Duffey, pro se
For Respondent: Christopher Collins, Esq.

Administrative Magistrate:

Eric Tennen

SUMMARY OF DECISION

The Petitioner was a long-time police officer. While still active, he was diagnosed with hypertension that he was able to control and did not prevent him from carrying out his duties. One day, he had a serious aortic incident that sent him to the hospital. Doctors discovered he had a congenital condition called "bicuspid aortic valve." He had emergency surgery. Following that, he was never able to perform his duties again. He applied for accidental disability under the Heart Law presumption. A medical panel agreed he was permanently disabled. But a majority of the panelists said it was on account of his congenital condition, and not his hypertension. Because the doctor's opinions were based on all the pertinent facts and a correct understanding of the law, they control. Thus, the Board's decision to deny his application for accidental disability is affirmed.

INTRODUCTION

Pursuant to G.L. c. 32, § 16(4), the Petitioner timely appeals the Waltham Retirement Board's ("Board") decision denying his application for accidental disability retirement. I held an

in-person hearing on October 22, 2025. The Petitioner was the only witness. I entered exhibits 1-16 into evidence. I held the record open for the Board to locate additional records it may not have included with the exhibits. The Board later notified me in writing that it did not have any additional records. I allowed the Petitioner until November 14, 2025, to file a response, if any; he did not file anything by that date, at which point I closed the administrative record.

FINDINGS OF FACT

1. The Petitioner was a long-time police officer for the Waltham Police Department. (Exs. 3 & 4; testimony).
2. Prior to joining the police department, he passed a pre-employment physical thath did not uncover any evidence of heart disease or hypertension. (Ex. 7.)
3. In 2013, he went to the hospital for heart palpitations, shortness of breath, and tightness in his left chest region. He was having atrial fibrillation ("AFib") and underwent treatment. The records noted a diagnosis of hypertension. (Ex. 15, pgs. 2-4; testimony.)
4. He was out of work for a few days. When he returned, he was able to resume all his normal duties. Moving forward, he was able to treat his hypertension with medication. (Testimony.)
5. From that point until he stopped working in April 2021, he performed his job duties without any restrictions. However, in April 2021, he stopped working because of another medical issue. (Ex. 5; testimony.)
6. While at work, he had an episode in which he experienced shortness of breath, heart palpitations, and leg swelling; he had been feeling unwell for the previous month. He went to the hospital. (Ex. 15, pg. 32; testimony.)

7. Testing ultimately showed he had a bicuspid aortic valve and a severely thickened aortic valve. A bicuspid aortic valve refers to an "anatomically abnormal valve [that has] only 2 leaflets as opposed to 3 leaflets (normal aortic valve is trileaflet)." This is found in 2% of the population and commonly leads to a narrowing of that valve. (Exs. 13 & 14.)

8. He was admitted to the hospital and had surgery to replace the aortic valve. (Ex. 15, pg. 100; testimony.)

9. He had some post-surgery complications and was back in the hospital about a month later for more procedures. (Ex. 15, pgs. 124-25.)

10. Following those procedures, his condition was fairly under control. That said, he did experience AFib regularly. The episodes were maybe once a week for a few minutes. (Ex. 15, pgs. 325-331; testimony.)

11. He routinely followed up with his doctor. Because of the repeated AFib episodes, he required an ablation in September 2023. There is no express explanation of this procedure in evidence. But it is clear from the testimony and the medical panelists' reports that it is a procedure intended to treat repeated AFib episodes. (Exs. 8-10; testimony.)[1]

12. The procedure was successful and, after that, his AFib episodes did not recur. (Exs. 8-10; testimony.)

13. Despite getting his AFib episodes under control, he still was physically much more

[1] The medical records in evidence pre-dated this procedure. That is why I allowed the Board time to see if it could locate them. It turns out the Board did not have them because the procedure took place after the Board had already gathered the medical records to forward to the medical panel.

limited than before 2021. It was apparent that he would not be able to resume his duties because his symptoms would exacerbate if he had too much physical stimulation. (Testimony.)

14. Accordingly, the Petitioner retired for superannuation in February 2023. In May 2023, he applied for accidental disability retirement under the Heart Law presumption. (Exs. 3 & 4; testimony.)

15. His primary physician filled out the medical form indicating his incapacity was on account of his hypertension. (Ex. 3.)

16. The matter was sent to a medical panel consisting of two cardiologists, Drs. Michael Johnstone and Eric Ewald, and one doctor specializing in internal medicine, Dr. Seth Schonwald. (Exs. 8-10.)

17. Each doctor independently examined the Petitioner. The two cardiologists both agreed the Petitioner was permanently incapacitated. They also both agreed that the Petitioner had a congenital heart condition (bicuspid aortic valve) that rebutted the presumption that his incapacity was suffered in the line of duty. (Exs. 8 & 9.)

18. As Dr. Ewald explained, this condition was unknown to the Petitioner and "over the years likely resulted in subclinical aortic stenosis. As his aortic stenosis progressed he developed severe [left ventricular] dysfunction and possibly severe [tricuspid valve regurgitation] . . . his cardiac issues, past and present, are well documented, but have no causal relation to his occupation as a police officer[.]" (Ex. 9.)

19. Dr. Schonwald also agreed the Petitioner was permanently incapacitated. However, in his opinion, the Heart Law presumption did apply:

> I believe his ongoing hypertension and the stressors afforded a police officer are service connected. While I understand he does have a congenital issue as he has a bicuspid aortic valve, I believe he also has issues with hypertension and now has developed biventricular failure, which is not wholly related to his bicuspid aortic valve and therefore I believe this condition is related to his service as a police officer.

(Ex. 10.)

20. Each doctor also acknowledged the Petitioner's successful ablation procedure in September 2023. (Exs. 8-10.)

21. Upon receiving these opinions, the Board sent clarifying letters to Drs. Johnstone and Ewald. The Board asked them to explain, among other things, if they believed the Petitioner suffered from permanently incapacitating hypertension and, if so, was there any evidence to rebut it. If not, the Board asked if the doctors thought it was "medically possible that the 35 years of performing a police officer's physically and emotionally demanding duties caused his aortic stenosis . . . rather than the bicuspid valve?" (Exs. 11 & 12.)

22. Both doctors agreed that the Petitioner's hypertension was *not* debilitating or incapacitating. They both explained his hypertension was controlled with medications. They added that many people carry this diagnosis and remain capable of performing their duties without restrictions. (Exs. 13 & 14.)

23. Indeed, the Petitioner had carried this diagnosis for much of his career and was able to perform all his duties without restriction until his April 2021 episode. (Testimony.)

24. Both doctors also agreed that the diagnosis of hypertension is independent from the diagnosis of a bicuspid valve. The bicuspid valve is the congenital condition that led to his various complications. But those complications, such as a buildup in calcium leading

to valve narrowing, is not something caused by the physical and emotional demands on a police officer. (Exs. 13 & 14.)

25. Following these clarifying reports, the Board denied the Petitioner's application in a lengthy letter that accurately summarized the various doctor reports. (Ex. 1.)

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 (Div. Admin. Law App. Dec. 23, 2022). Here, he must prove five things to receive benefits under the Heart Law presumption:

> (1) the applicant must be [a uniformed member of a police department]; (2) the applicant has an impairment of health caused by heart disease disabling the individual partially or totally; (3) the applicant passed a physical examination on entry to service to becoming, in this case, a [police officer] (4) the physical examination failed to reveal any evidence of hypertension or heart disease; and (5) the presumption that hypertension or heart disease was suffered in the line of duty is not overcome by competent evidence.

Mireault v. State Bd. of Ret., CR-17-168, 2025 WL 1675985 (Contributory Ret. App. Bd. Apr. 28, 2025); G.L. c. 32, § 94. The only element at issue is the last one: whether there is competent evidence to rebut the presumption. I find there is.

Here, a majority of the medical panelists explained the Petitioner's condition was congenital, not acquired—and specifically not acquired by his work as a police officer. That means there is competent evidence that he did not develop his incapacity-inducing heart condition in the line of duty. The Petitioner happens to also have a diagnosis of hypertension. And, as the majority panelists observed, hypertension is something that can develop because of the physical and emotional stress of one's job. But hypertension is not the diagnosis the doctors

say caused his incapacity; rather, it is his bicuspid aortic valve. He was born with a bicuspid aortic valve and nothing about his job duties changed how it later impacted his physical health.

Indeed, he carried a diagnosis of hypertension while an active member of the police force and was always able to perform his duties. After an AFib episode in 2013, he returned to work without restrictions a few days later. And from that point until his episode in 2021, he worked without restrictions, fulfilling all his duties. Thus, his hypertension did not limit him professionally in any way, even if it required medication and caused some symptoms over the years.

This case is similar to the *Mireault* case cited above. Mr. Mireault was a correctional officer who cleared his pre-employment physical. While a correction officer, a pre-operative examination revealed a congenital condition. Over the next 20 years, this led to various medical therapies, medications, and procedures, including the implantation of a defibrillator. He later experienced a cardiac episode at work on account of this condition and had to stop working. The State Board denied his application under the Heart Law presumption and CRAB affirmed: the majority panel's opinion that the Petitioner had a congenital condition "serves as competent evidence to demonstrate that the incapacity was not the result of" the Petitioner's employment. *Mireault*, *supra*. "In the absence of evidence that the majority medical panel lacked pertinent facts or applied an erroneous standard, its certification bars [the Petitioner] from receiving accidental disability retirement pursuant to G.L. c. 32, § 94." *Id*.

Here, the Petitioner does not dispute the panel's integrity. Instead, he argues the two doctors are simply mistaken about his condition and that Dr. Schonwald (and his treating doctor) have the better explanation. But at this stage, it is not enough to disagree with the

doctors and argue they may be wrong. He needs to show some mistake in the process or some fact which the doctors missed. *Mireault*, *supra*. He has not met that burden here.

Other than disagreeing with the doctors' conclusion, the only other argument the Petitioner makes is that the Board did not have his medical records regarding his ablation procedure from September 2023. But even if the Board had these records, it would not have made a difference. What matters is whether the medical panelists were aware of this procedure. They were. All three doctors noted the procedure in their reports and incorporated it into their analysis. Moreover, it is not clear how this procedure helps the Petitioner's argument. No doctor disputes he is permanently disabled, so the procedure does not change that analysis. And the procedure treated his repeated AFib, which is not the condition the majority panelists said was disabling anyway.

CONCLUSION

The Board's decision denying the Petitioner's application for accidental disability retirement is **affirmed**.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Date: November 21, 2025

Eric Tennen

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Eric Tennen
Administrative Magistrate