

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Kathy Favazza,¹
Petitioner,

No. CR-21-150

Dated: January 12, 2024

v.

**Massachusetts Teachers' Retirement
System,**
Respondent.

Appearance for Petitioner:
Judson L. Pierce, Esq.

Appearance for Respondent:
Salvatore Coco, Esq.

Administrative Magistrate:
Yakov Malkiel

SUMMARY OF DECISION

The petitioner, a teacher, applied to retire for accidental disability. She suffers from disabling mental-health issues. Supported by a positive medical panel, the petitioner maintains that her condition was caused by verbal attacks on her from unhappy parents. But any specific incidents that may have caused the petitioner's disability are time-barred. And the petitioner did not establish that her "uncommon" workplace experiences were frequent enough to be seen collectively as a "constant" or "continual" hazard of her job.

DECISION

Petitioner Kathy Favazza appeals from a decision of the Massachusetts Teachers' Retirement System denying her application to retire for accidental disability. At an evidentiary hearing on October 26, 2023, Ms. Favazza was the only witness. I admitted into evidence exhibits marked 1-28. The record closed with the submission of hearing briefs.

¹ The petitioner through counsel expressed a preference for her name not to be replaced by a pseudonym in this decision. *See* G.L. c. 4, § 7, 26th para., (c).

Findings of Fact

I find the following facts.

1. Ms. Favazza became a teacher in the Reading Public School District in approximately 2004. She taught middle-school math. She was a motivated, capable, well-regarded teacher. At some point, she also began to teach graduate courses at Gordon College. (Testimony.)

2. In approximately 2011, Massachusetts adopted new “Common Core” math standards. Ms. Favazza was a member of a committee whose job it was to support the implementation of the new standards. (Testimony; Exhibit 7.)

3. Ms. Favazza was asked by her supervisors to attend one or more open school committee meetings at which the new math standards were scheduled to be discussed. At a meeting in in September 2012, information about the new standards was presented by Assistant Superintendent Patty de Garavilla. The minutes of the meeting describe Ms. Favazza as being “excited about the wealth of information available to the teachers because of the large number of states that have adopted the Common Core.” (Testimony; Exhibit 7.)

4. The new math standards were not on the agenda for a July 2013 school committee meeting, and the committee resisted a parent’s request to take up that topic. Several persistent parents nonetheless presented concerns about their children’s math-class “placements.” Committee members stated by way of response that placement decisions were made “at the district level, with Principal input,” and that placement-related questions could be directed to the “building administrator.” There is no record of Ms. Favazza attending that meeting or being mentioned there. (Exhibit 7.)

5. Ms. Favazza attended a March 2014 school committee meeting, where she was praised for her efforts to import a program of “student-led conferences” into Reading’s schools. The math standards were not apparently discussed. (Exhibit 7.)

6. Ms. Favazza’s job responsibilities required her to meet with her students’ parents. During some such meetings, parents complained that the new math standards were unfair. Some number of those parents spoke rudely or loudly. Ms. Favazza recalled one parent protesting that Ms. Favazza was “killing [the parent’s] son’s dream of attending MIT.” (Testimony.)

7. Ms. Favazza also fielded grievances by telephone and by email. And on some number of occasions, unhappy parents voiced their displeasure to Ms. Favazza in public settings. Ms. Favazza recalled one woman accosting her at a grocery store so insistently that the woman’s husband interceded. (Testimony.)

8. Ms. Favazza’s unpleasant encounters with parents did not prompt her to file incident reports with her school. She did not complain to the police or to her labor union. She spoke to her superintendent at some point but did not say that she was being bullied or verbally attacked. At the time, it seemed to Ms. Favazza that her unpleasant interactions with parents were “part of the job.” (Testimony.)

9. Reading’s new math standards drew some public interest. The record includes discussions about this topic on WBUR, Facebook, and the local news site Patch.com. The pieces appearing in the record are politely written. Most or all of them were published during June-July 2013. They focus on the concerns of a small number of parents. They do not mention Ms. Favazza. (Exhibit 6.)

10. Ms. Favazza felt that she was the target of disproportionate personal disparagement. She believed that her students’ parents’ sentiments were adversely affecting the

atmospheres of her classrooms. At some point, Ms. Favazza began to have dreams about being criticized or attacked by parents. She began to suffer from anxiety and feelings of panic.

(Testimony.)

11. Early 2014 was a stressful time in Ms. Favazza's personal life. She was the sole caretaker of her elderly parents. Her mother suffered from deteriorating dementia. In March 2014, Ms. Favazza's mother was hospitalized. In April 2014, Ms. Favazza's daughter was diagnosed with multiple sclerosis. When Ms. Favazza saw primary care doctors around this period, she reported that she was under "a lot of stress," identifying her specific stressors as the medical conditions of her parents and daughter. (Testimony; Exhibits 22, 27.)

12. Ms. Favazza's last day at work was Friday, May 2, 2014. On the following day, she was hospitalized with chest pains. Her cardiac testing was normal. Ms. Favazza's doctors concluded that she had suffered an anxiety attack. They diagnosed her with anxiety and hypertension. (Testimony; Exhibit 23.)

13. After her release from the hospital, Ms. Favazza started treatment on antidepressants and anti-anxiety medications. She began to see a therapist on a weekly basis. During medical appointments and psychotherapy sessions in May-September 2014, Ms. Favazza's complaints about the stressors in her life focused primarily on her family members' medical issues. (Exhibits 17, 25, 27.)

14. Over the following months, Ms. Favazza continued to seek psychiatric and psychotherapeutic treatment. In December 2014, she was diagnosed with major depression and PTSD. She spoke to her medical providers about stressors relating to both her family members and her "work environment." She was specifically anxious about her responsibilities at Gordon

College. The first apparent reference in Ms. Favazza's medical records to parents "verbally attacking" her appears in a September 2015 note. (Exhibits 19, 21, 23, 25, 26.)

15. Over time, Ms. Favazza's condition improved somewhat. In theory, she would have liked to return to teaching. But she felt unable to do so given the atmosphere prevailing in Reading's schools. (Testimony; Exhibits 20, 21, 25, 26.)

16. On April 28, 2016, Ms. Favazza applied to retire for accidental disability. She described her diagnosis as "depression and anxiety disorder." She checked a box to attribute her disability to a "personal injury sustained" rather than a "hazard or exposure undergone." She identified the dates of her injury as "August 2009-May 2014." (Exhibit 9.)

17. Ms. Favazza provided additional color about the basis for her application in an accompanying narrative. The narrative did not specify the dates, locations, or estimated frequencies of pertinent incidents. It stated, in part:

From 2009 on I was under unusual and extreme stress With the implementation of the new [math standards] parents were very unhappy and focused their anger toward me. . . . They attacked me publicly (at televised school committee meetings, school based meetings, at presentations I gave and even the grocery store) and privately (screaming at me in meetings, over the phone, to my principal). The worst part was how their talk affected their children, my students. . . . The constant negative focus I received was much more than is expected as a teacher.

(Exhibit 9.)

18. A panel of psychiatrists convened to consider Ms. Favazza's application. They conducted separate examinations during May 2019. The panelists then certified that Ms. Favazza is incapacitated, that the incapacity is permanent, and that it is such as might be the natural and proximate result of her claimed workplace injuries. (Exhibit 1.)

19. Dr. Robert W. Ferrell diagnosed Ms. Favazza with "panic attack," chronic anxiety disorder, and major depression. He described the reported background to Ms. Favazza's

condition as follows: “As a result of a change in the math curriculum, she began to experience increased stress at her work in 2011. . . . [T]he public outcry became significant There were frequent televised PTA meetings at which she was harassed. She found that she could not go to the store without having parents approach her and heckle her. Over a three-year period, she . . . was frequently confronted with parental calls at her home screaming at her and demanding that she leave” Dr. Ferrell noted that, according to Ms. Favazza’s medical records, she also endured “considerable stress due to financial matters, family conflicts, a daughter’s illness involving MS, and the death of her mother.” Nonetheless, with respect to causation, Dr. Farrell’s analysis was: “Ms. Favazza’s psychiatric illness is the result of the work trauma, and such disorder resulted from incidents and occasions related to the work environment.” (Exhibit 1.)

20. Dr. Russell Vasile’s diagnosis was “prolonged adjustment disorder, severe, with marked features of anxiety and panic and chronic low-grade depression [or] dysthymia.” He relayed the following background: “She had been a math teacher . . . and in 2011 began implementing a program based on new standards She reported that these new initiatives were met with very significant hostility by many of the parents in the school district. She reported that she was ‘stopped everywhere by parents who called me out, screaming at me.’ . . . She describes being shouted down at public meetings . . . and . . . 2 years of experiencing this degree of pressure” Dr. Vasile was concise on the matter of causation, reciting only the standard formula that Ms. Favazza’s incapacity “is such as might be the natural and proximate result of the personal injury sustained or hazard undergone” (Exhibit 1.)

21. Dr. Michael Rater identified Ms. Favazza’s diagnoses as “adjustment disorder, major depressive disorder, and dysthymic disorder.” He wrote: “She stated that her problems

started around 2011 when the new standards for math education in the Commonwealth came out. . . . [S]he became the scapegoat for the city She stated that people would stop her in the stores and yell at her accusing her of ruining children. This would occur at meetings. This would occur via emails. This would occur in public. She said it became worse and worse for 2½ years.” As to causation, Dr. Rater wrote: “At the time of her initially going out of work, multiple factors were causing a situation in which she had panic attacks and . . . was down and depressed The record is very clear that issues related to her family were very significant factors, that issues related to her school environment were significant factors as well. . . . There are other events in her family that have contributed to the disability claimed. Those are well documented in the records regarding her daughter’s condition and her mother’s condition. Despite that . . . [t]he condition at school was an acceleration of her preexisting condition or injury Her condition was clearly significantly aggravated by the injury sustained and hazards undergone.” (Exhibit 1.)

22. In April 2021, MTRS denied Ms. Favazza’s application.² She timely appealed. She is currently retired for superannuation. (Exhibit 8; administrative record.)

Analysis

A public employee seeking to retire for accidental disability must prove that she is disabled from performing her job duties, that the disability is permanent, and that it was caused by a “personal injury sustained or hazard undergone as a result of, and while in the performance of, [her] duties.” G.L. c. 32, § 7(1). Generally, the application must be predicated on incidents that occurred “within two years prior to the filing of [the] application.” *Id.*

² At the hearing, MTRS’s counsel expressed uncertainty as to why Ms. Favazza’s application took three years to reach a medical panel and another two years to be decided.

The parties agree that Ms. Favazza is permanently incapacitated. The dispute focuses on § 7(1)'s other requirements.

In the statute's words, the two scenarios that may lead to retirement for accidental disability are "a personal injury sustained" or "a hazard undergone." § 7(1). In turn, the appellate case law has described two "hypotheses" that an applicant may advance: "that [the] disability stemmed from a single work-related event or series of events," or, "if the disability was the product of gradual deterioration, that the employment . . . exposed [the member] to an identifiable condition . . . that is not common and necessary to all or a great many occupations." *Blanchette v. Contributory Ret. Appeal Bd.*, 20 Mass. App. Ct. 479, 485 (1985). The administrative decisions have drawn a parallel between these two distinctions, associating the term "injury" with the single-event-or-series-of-events hypothesis and the term "hazard" with the gradual-deterioration-resulting-from-uncommon-condition hypothesis. *See, e.g., Budris v. Dukes Cty. Contributory Ret. Bd.*, No. CR-16-354, at *8-11 (DALA Oct. 8, 2021); *Benoit v. MTRS*, No. CR-15-347, at *11-14 (DALA Dec. 7, 2018); *Pereira v. New Bedford Ret. Bd.*, No. CR-16-450, at *8 (Apr. 20, 2018).³

Consistent with her application form, Ms. Favazza asserts as her primary theory that her disability was caused by an "injury," i.e., specific workplace events. But this theory is defeated by § 7(1)'s two-year limitations period. Ms. Favazza filed her retirement application during the final days of April 2016. Specific incidents supporting the application were required to have

³ *See also Gale v. State Bd. of Ret.*, No. 13-205, at *5 (CRAB Oct. 19, 2023); *Morse v. State Bd. of Ret.*, No. CR-13-491, at *4-5 (CRAB Aug. 1, 2016), *aff'd*, 96 Mass. App. Ct. 1114 (2019) (unpublished memorandum decision). The terminology of the administrative decisions draws support from *Narducci v. Contributory Ret. Appeal Bd.*, 68 Mass. App. Ct. 127, 128-29 (2007). It is without practical importance here that *Blanchette* itself apparently viewed both "hypotheses" as methods of establishing an "injury." 20 Mass. App. Ct. at 482 n.1.

occurred during or after the final days of April 2014—i.e., during or after Ms. Favazza’s last few days at her workplace. The record offers no specifics about the timing and frequency of Ms. Favazza’s unpleasant interactions with her students’ parents. She does not assert that any such incidents occurred during her final few workdays. And the medical panel’s reports do not suggest that any events on those particular days are causally responsible for Ms. Favazza’s disability. *See generally Narducci*, 68 Mass. App. Ct. at 134-35 (an affirmative panel certificate is not decisive of causation).⁴

The narrative portion of Ms. Favazza’s application form may be read as attributing her disability to a “hazard,” i.e., an uncommon, gradual-deterioration-causing workplace condition.⁵ A hazard theory may be advantageous with respect to § 7(1)’s two-year limitation, because that limitation is satisfied by a hazard that persists into the two-year period immediately preceding the application date. *See Sibley v. Franklin Reg’l Ret. Bd.*, No. CR-15-54, at *5-6 (CRAB May 26, 2023). *See also Sugrue v. Contributory Ret. Appeal Bd.*, 45 Mass. App. Ct. 1, 4-5 (1998).

“Cases involving psychological injuries sustained over a period of years have been analyzed both under the personal injury and job hazard standards.” *B.G. v. State Bd. of Ret.*, No. CR-20-207, 2021 WL 9583594, at *15 n.8 (DALA Oct. 8, 2021). But the legal consequences of the hazard rule cannot extend to every case in which an applicant finds “tactical reasons . . . to reimagine a series of events as a hazard.” *Jessica J. v. MTRS*, CR-20-0288, 2022 WL 18673981, at *4 (DALA Jun 3, 2022). The question is instead one of factual substance. For serial traumatic

⁴ A settlement that Ms. Favazza received in workers’ compensation proceedings is not identifiable as being “on account of” any specific injury. G.L. c. 32, § 7(3). *See Doe v. MTRS*, No. CR-19-547, at *17 (DALA Dec. 10, 2021).

⁵ MTRS does not contend that Ms. Favazza’s “injury” checkbox necessarily limits her to that theory. *See Budris, supra*, at 8 n.1; *Wayne W. v. Middlesex Cty. Ret. Syst.*, No. CR-21-359, 2023 WL 5774616, at *7 (DALA Sept. 1, 2023).

events to qualify as a hazard, they are required to have been frequent enough to have formed a “constant” or “continual” condition of the member’s job. *See Blanchette*, 20 Mass. App. Ct. at 487 n.7; *Morse, supra*, at *8 n.22. *See also Reid R. v. Pittsfield Ret. Bd.*, No. CR-21-302, 2023 WL 5170543, at *3 n.5 (DALA Aug. 4, 2023); *Scipione v. Barnstable Cty. Ret. Bd.*, No. CR-12-196, at *25 (DALA Sept. 4, 2015).

It is reasonable to infer from the record that, for a sustained period of time, complaints and criticisms were a regular feature of Ms. Favazza’s working life. A segment of the Reading parent population was displeased with the district’s new math standards. Ms. Favazza’s duties called on her to deal with unhappy parents and students in person, by telephone, and by email. Such interactions were probably frequent enough to be viewed as constant or continual. *Blanchette*, 20 Mass. App. Ct. at 487 n.7. But interpersonal conflict, discourteousness, and uncooperative constituents are conditions “common and necessary to . . . a great many occupations.” *Id.* at 485. *See Sugrue*, 45 Mass. App. Ct. at 5-6; *Fender v. Contributory Ret. Appeal Bd.*, 72 Mass. App. Ct. 755, 761-62 (2008); *Susan S. v. Local Ret. Bd.*, No. CR-18-511, 2022 WL 18671534, at *3 (DALA June 17, 2022). Such working conditions are not the type of problem that accidental disability retirement is meant to address. When they produce adverse medical consequences, the resulting financial burdens are “more properly . . . covered by personal health insurance.” *Adams v. Contributory Ret. Appeal Bd.*, 414 Mass. 360, 366 (1993).

It is reasonably likely that Ms. Favazza also underwent some number of confrontations that, in their degree of stressfulness, exceeded common workplace conditions. *Cf. Green v. MTRS*, No. CR-10-536, at *25-26 (DALA Apr. 29, 2011). But at this point of the analysis, the indistinctness of Ms. Favazza’s evidence becomes insurmountable. Her testimony did not effectively convey how often she endured uncommonly hostile or aggressive incidents at the

workplace.⁶ The traumatic impact of the pertinent years now overwhelms Ms. Favazza’s ability to describe those years with objective clarity. She called no witnesses to provide additional detail. And no incidents exceeding the realm of the ordinary are memorialized in contemporaneous records.⁷ In the end, it is not possible to draw the conclusion that the uncommon incidents of Ms. Favazza’s work life were sufficiently constant or continual to be viewed as an overall hazard of her job. *See Jessica J.*, 2022 WL 18673981, at *4; *Iacozza v. MTRS*, No. CR-10-129, at *15 (DALA Jan. 24, 2014).⁸

Conclusion and Order

For the foregoing reasons, MTRS’s decision is AFFIRMED.

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate

⁶ Ms. Favazza’s confrontations with parents in non-school-related settings may or may not count as having occurred “while [she was] in the performance of [her] duties.” G.L. c. 32, § 7(1). *See Murphy v. Contributory Ret. Appeal Bd.*, 463 Mass. 333, 352 (2012).

⁷ Ms. Favazza testified that she attempted unsuccessfully to collect certain documents in support of her appeal. But the record does not indicate that she (or her attorney) attempted to issue any subpoenas. *See* G.L. c. 30A, § 12; 801 C.M.R. § 1.01(10)(g).

⁸ It is difficult to identify with confidence the precise rule that governs causation in cases such as this. Opinions of the Appeals Court indicate that, with respect to causation, § 7(1) is stricter than the workers’ compensation statute. *See Blanchette*, 20 Mass. App. Ct. at 487; *Campbell v. Contributory Ret. Appeal Bd.*, 17 Mass. App. Ct. 1018 (1984); *Buchanan v. Contributory Ret. Appeal Bd.*, 62 Mass. App. Ct. 1105 (2004) (unpublished memorandum opinion). *See also Damiano v. Contributory Ret. Appeal Bd.*, 72 Mass. App. Ct. 259, 264 (2008). On the other hand, CRAB has stated persistently that § 7(1) is satisfied where the pertinent injury or hazard was “a significant contributing cause” of the member’s disability. *See, e.g., Williams v. Pittsfield Ret. Bd.*, No. CR-15-461, at *3 (CRAB Apr. 21, 2023). That particular standard is drawn from workers’ compensation cases under a defunct statute. *See Barnaby v. Pittsfield Ret. Syst.*, No. CR-21-273, 2023 WL 6195153, at * 11 n.10 (DALA Sept. 15, 2023). In light of the analysis presented in the main text, the current case does not call for a deeper dive into this conundrum.