COMMONWEALTH OF MASSACHUSETTS

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

Brian Fitzgerald,
Petitioner

v. Docket No. CR-22-0438

Leominster Retirement Board,
Respondent

Appearance for Petitioner:

Casey E. Berkowitz, Esq.

Appearance for Respondent:

Linda Champion, Esq.
Charles S. McLaughlin, Jr., Esq.

Administrative Magistrate:

James P. Rooney

Summary of Decision

Denial of accidental disability retirement application based on a negative medical panel is reversed. One doctor relied on an erroneous standard by failing to address directly whether the applicant's back pain could possibly have been caused by his 2017 back injury. Another doctor's opinion was plainly wrong because he based his opinion on an inaccurate reading of the facts. Each of these doctors also improperly speculated about other possible injuries for which there was no basis in the medical record. The matter is therefore remanded for a new medical panel.

DECISION

Brian Fitzgerald appeals the October 17, 2022 decision of the Leominster Retirement Board denying his application for accidental disability retirement but granting him ordinary disability retirement for back pain and a foot drop that disabled him from working as a police officer. Magistrate Melinda Troy held a hearing on April 11, 2025 at the Division of

Administrative Law Appeals. She admitted 26 exhibits that were filed by the parties along with their joint prehearing memorandum and a stipulation of facts.[1] Officer Fitzgerald was the only witness.

After the record closed, Magistrate Troy was appointed to be the chair of the Contributory Retirement Appeal Board. The parties agreed to have this matter decided on the existing record following a ruling on the Board's request to submit additional exhibits. On April 14, 2026, I granted the Board's request to add four additional exhibits. They are payroll records (Exhibit 28), an arrest report from November 6, 2017 (the date on which Officer Fitzgerald claims he suffered a disabling injury) (Exhibit 29), a duty roster (Exhibit 30), and a Leominster patrol officer duty description (Exhibit 31). I now add the Board's decision as Exhibit 32 and Officer Fitzgerald's appeal as Exhibit 33. Officer Fitzgerald filed a closing brief on May 29, 2026. I gave the Board additional time, but on July 7, 2026, the Board informed me that it did not believe a final brief was necessary. This closed the record.

Findings of Fact

Based on the testimony and exhibits presented at the hearing, the stipulation of facts, and reasonable inferences from them, I make the following findings of fact:

1. Brian Fitzgerald became a police officer in Leominster on March 6, 2000. He had previously served in the Marine Corps. (Stipulations 1-3.)

[1] The joint memorandum listed a 27th exhibit, but the parties agreed that this exhibit, which included proposed questions to the medical panelists, does not exist.

2. Officer Fitzgerald suffered repeated job-related back injuries while serving as a police officer.[2] On April 28, 2010, he suffered a lower back injury when reaching into an overturned car to aid the driver. On November 30, 2011, he injured his lower back on the left side while picking up a bag on the floor. On April 30, 2013, he injured his lower back on the right side when a suspect he was arresting threw himself on the ground while pulling on Officer Fitzgerald's left wrist, which strained his back. On October 13, 2013, he injured his lower back while going upstairs, presumably in the police station, when he tried to catch a "falling bag." He filed notices of injury for each of these events. (Stipulations 6, 9, 12, and 13; Exs. 8, 11, 12, and 13.)

3. By January 2013, Officer Fitzgerald began experiencing lower back pain that did not resolve as it had previously. He tried physical therapy and injections without obtaining relief. After his October 2013 injury, he again tried physical therapy and visited a chiropractor. After these attempts at conservative treatment failed to offer him relief, his doctor ordered an MRI. The MRI revealed that he had "posterior decompression at L4-5 and L5-S1. There is moderate to large right posterolateral disc protrusion at L4-5 with compromise of the right lateral recess and mass effect upon the right L5." (Stipulations 10, 11, 15, and 16; Exs. 24(c), (e) and (f).)

[2] He also suffered other work-related injuries to his head, neck, and ribs in November 2004, his right knee in 2007 and 2010, his left shoulder in 2011, and his ankle and left knee in 2014. (Stipulations 4, 5, 7, 8, and 17; Exs. 6, 7, 9, 10, and 14.) None of these injuries are relevant to the present appeal.

4. Officer Fitzgerald's doctor referred him to a spine specialist, Brian Nahed, M.D., who ordered another MRI. This MRI showed spinal stenosis and disc herniation. (Stipulation 20.)

5. Officer Fitzgerald underwent a decompression and laminectomy on March 9, 2015. After he recovered, he underwent physical therapy and went back to work. He still had pain, sometimes lasting up to two weeks, but the pain would resolve itself. (Stipulations 20-22.)

6. On November 6, 2017, Officer Fitzgerald was involved in a search for an individual who had been breaking and entering into cars at a trailer park. The suspect resisted arrest when he was captured and was placed in handcuffs. One of the residents agreed to see if she could identify the suspect in a show up. As later described by Officer Hastat in a police report:

> Officer Fitzgerald brought [the suspect] back to the scene approximately 30 yards from the residence. Officer Fitzgerald removed the [the suspect] from the rear passenger compartment of the cruiser and activ[ated] his left alley lights in an attempt to illuminate him. [The suspect's] body became limp and he refused to stand up and cooperate. [The witness identified the suspect.] At this time, [the suspect] had to be physically placed into the rear passenger compartment . . . and transported to the station.

(Ex. 29.)

7. Officer Fitzerald had to lift and carry the suspect multiple times during this encounter. One-half hour later he experienced a "jolt of pain" that was "moderate to severe." He filed a notice of injury the following day in which he stated he had injured his lower back and right knee from lifting a noncompliant suspect. (Stipulation 12; Ex. 15.)

8. Officer Fitzgerald continued to work after this injury, but he was in pain and could not stand up straight. He switched shifts with co-workers to minimize his physical responsibilities,

often by swapping with desk officers. At home, he performed exercises he had learned from physical therapy. He took sick time because of back pain on March 6 and 7 and April 5 and 6, 2018. (Fitzgerald testimony; Ex. 16.)

9. Officer Fitzgerald's wife told him to see a doctor because he was moaning in pain while he slept. He made an appointment to see his primary care physician, William Brodkin, M.D. At an April 6, 2018 visit, he told the doctor that the pain had gradually been getting worse and was now interfering with his work. He reported that the "symptoms are very much the same as the original pain. Sometimes gets a feeling of 'an electric shock' in the same area." (Fitzgerald testimony; Ex. 24(b), p. 48.)

10. An MRI of Officer Fitzgerald's back on April 10, 2018 showed "a moderate to large posterolateral disc protrusion at L4-5 with compromise of the right lateral recess and mass effect upon the right L5." (Stipulation 29; Ex. 24(f).)

11. Officer Fitzgerald returned to Dr. Brodkin on April 20, 2018. He complained that his pain had been getting worse since November 2017. The doctor discussed referring him to a spine specialist, but decided to have him try more physical therapy first. Officer Fitzerald underwent another round of physical therapy and received an L4-L5 injection. Neither provided him with long term pain relief. (Stipulations 30, 32, and 33; Exs. 24(b), (d), and [e].)

12. An x-ray of Officer Fitzgerald's back on May 17, 2018 showed "a 2 mm retrolisthesis of L5 on L4, without evidence of translation" and "mild degenerative changes of the lower lumbar spine, with mild retrolisthesis of L5 on S1." (Stipulation 34; Ex. 24(e).)

13. Another MRI from September 4, 2018 showed "unchanged minimal retrolisthesis[3] of L4 on L5 and L5 on S1" and "[m]ultilevel degenerative changes of the lumbar spine . . . with interval progression of the L4-L5 right paracentral disc extrusion impinging the descending right L5 nerve roots and similar appearance of degenerative changes." (Stipulation 35; Ex. 24(e).)

14. Officer Fitzgerald consulted in September 2018 with neurosurgeon Ganesh Shankar, M.D., who thought that because of "recurrent right L5 radiculopathy," Officer Fitzgerald should have a "repeat L4-L6 decompression with excision of the herniated disc fragment." The doctor performed this surgery on September 25, 2018. The officer developed a postsurgical complication that resulted in nerve damage and a consequent foot drop. (Stipulations 36-38; Ex. 24(e).)

15. Officer Fitzgerald was out of work from September 10, 2018 through January 31, 2019 because of his second surgery. He returned to work for two days in February 2019. He was assigned to work as a detective on his return. (Stipulations 41 and 42; Fitzgerald testimony.)

16. Officer Fitzgerald was ordered to undergo a fitness-for-duty exam after he was seen limping. Neurosurgeon Francis K. Rockett, M.D., performed the examination on March 1, 2019. He thought that the officer could not then return to full duty because of his foot drop, but he could be assigned temporary light restricted duty. The doctor opined that the foot drop should have healed by five months after surgery but, because it had not, Officer Fitzgerald

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[3] "Lumbar retrolisthesis is when parts of your spine, known as vertebrae, slip backward on one another. This puts a lot of pressure on the vertebrae and various parts of the spine, causing back and sometimes leg pain." Definition of lumbar retrolisthesis (last visited July 9, 2026).

should be examined again in six months to see if he was capable of returning to full duty. (Ex. 18; Stipulations 43 and 44.)

17. On October 1, 2019, Dr. Shankar informed the Leominster Police Department that Officer Fitzgerald was fully capable of performing desk or sedentary duties but that whether he was capable of the physical requirements of full duty was something that was outside the scope of his practice. (Ex. 26.)

18. Dr. Rockett reevaluated Officer Fitzgerald on October 21, 2019. His opinion was that:

> Officer Fitzgerald is partially disabled from . . . safely, regularly, and reliably perform[ing] the full duties of his job as a police officer. His foot drop persists and total[] recovery is a remote possibility. His persistent foot drop limits his stamina and movement. He should be limited to light duty and mostly sedentary duty.[4]

(Ex. 19.)

19. In November 2019, Officer Fitzgerald was involuntarily retired on a superannuation retirement. (Stipulation 47.)

20. On July 19, 2021, Officer Fitzgerald filed an application for accidental disability retirement. He stated that he was disabled by "low back pain with lumbar radiculopathy" and by right foot drop following surgery, and still has a limp. (Ex. 1.) Dr. Brodkin provided a physician's statement, in which he opined that Officer Fitzgerald's "present symptoms are directly related to his work and listed injuries." (Ex. 2.)

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[4] Dr. Rockett recommended that Officer Fitzgerald order an AFO brace. (Ex. 19.) "AFO braces support the ankle, keeping the toes aligned with the rest of the foot, rather than allowing them to drag." Description of AFO braces (last visited July 14, 2026).

21. Officer Fitzgerald was examined separately by three orthopedic surgeons, Marc A. Linson, M.D., Thomas Goss, M.D., and Douglas G. Bentley, M.D. (Exs. 21-23.) The instructions given to the medical panelists regarding their opinions on causation included the following:

> Is there any other event or condition in the member/applicant's medical history, or any other evidence provided to the panel, other than the personal injury sustained or hazard undergone upon which the disability is claimed, that might have contributed to or resulted in the disability claimed?
>
> [and]
>
> When constructing your response to the question of causality . . . in accidental disability narrative reports, your opinion must be stated in terms of medical possibility and not in terms of medical certainty.

Id.

22. Dr. Linson asked Officer Fitzgerald why he waited four months after his November 2017 injury to seek medical treatment. The officer replied that it was because "his condition was worsening during that time." He denied having any new injuries during that period. Dr. Linson concluded that:

> it is my medical opinion with a reasonable degree of medical certainty that Officer Fitzgerald is permanently disabled from the duties of a police officer. I do not find, however, that this is due to the work injury of 11/6/17 nor other injuries but rather to the inherent nature of his back condition. I base this on the fact that from 11/6/17 he did not seek medical care for months and a history of continued troubles in the interval between 2015 and 2017. Therefore, it is my opinion that he is unable to resume the full and normal duties of his job on a permanent basis, but I am not of the opinion, to a reasonable degree of medical certainty, that this is due to a work incident or any accident as described as opposed to the inherent nature of this back and any nondisclosed intercurrent injuries.

(Ex.21.)

23. Dr. Goss wrote two reports. In the first, he complained that he was missing medical records between the time of Officer Fitzgerald's injury in November 2017 and his visit with Dr. Shankar in September of the following year.[5] Still, he opined that:

> [a]ssuming that a causal relationship and continuity of care was established between the occupational event of 11/06/2017 and Mr. Fitzgerald's subsequent lumbosacral difficulties, it would be my opinion that he is incapable of performing the significant physical requirements of his job due primarily to the injury sustained on 11/06/2017, which seems to have directly resulted in the surgery performed on 09/25/2018 (including a right-sided L4, 5 diskectomy and decompression), a right lower extremity foot drop and the subsequent presumed L4, 5 and L5, S1 fusion performed on 04/01/2022. Again, one must bear in mind that despite Mr. Fitzgerald having undergone the aforementioned lumbosacral surgery in 2015 and the presence of multilevel degenerative disease noted on MRI studies after 11/06/2017 he was able to perform all of the duties of a police officer on a fulltime, full duty basis prior to the 11/06/2017 event.
>
> Therefore, pending reviews of the aforementioned medical information, my opinion will most likely be that Mr. Fitzgerald is physically incapable of performing the essential duties of his job as a police officer for the City of Leominster, Massachusetts as described in his current job description and that incapacity is likely to be permanent. It would also be my opinion that his incapacity is such as might be the natural and proximate result of the personal injury sustained or hazard undergone on account of which retirement is claimed.

(Ex. 22.)

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[5] He seems to have thought he had some medical records from that period because he referred to a visit with a nurse practitioner on December 1, 2017 at which the nurse practitioner diagnosed Officer Fitzgerald with "low back strain with left SI." (Ex. 22.) But he may simply have misread the date the nurse practitioner examined Officer Fitzgerald. See footnote 6.

24. After Dr. Goss received additional information, including documents from the Leominster Police Department reflecting its refusal to consider Officer Fitzgerld's condition as work-related because he hadn't submitted "sufficient medical or factual documentation," he changed his mind. The documents newly available to him showed a significant gap in medical treatment between December 1, 2017, when Officer Fitzgerald saw a nurse practitioner, and September 6, 2018, when the officer first visited Dr. Shanker.[6] He thought this demonstrated a lack of "continuity of care." He also observed that Officer Fitzgerald had regularly worked details and overtime after his November 2017 injury and that the police department had noted that the officer "processed [medical] bills through group health insurance rather than claiming a Workman's Compensation event." Consequently, he concluded that:

> due to the lack of continuity of care after the documented work-related injury Mr. Fitzgerald sustained to his lower back on 11/06/2017, I must conclude that that injury was minor and soft tissue in nature in the face of pre-existing pathology involving the area as evidenced by 1) Mr. Fitzgerald's having undergone a prior L4, 5 decompression/diskectomy by Dr. Shankar in 2015[7] and 2) MRI evidence on 05/17/2018 of pre-existing multilevel (L2-3 through L5-S1) degenerative disease involving the area with a full functional recovery with routine nonoperative therapeutic modalities and no lasting ill effects expected approximately 4 – 6 weeks thereafter, i.e., by late December in Mr. Fitzgerald's case. It is my opinion that all of his subsequent lumbosacral difficulties including the surgery performed by Dr. Shankar on 09/25/2018 were due to subsequent events.

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[6] The parties have not stipulated that Officer Fitzgerald saw a nurse practitioner on December 1, 2017. Dr. Linson referred to a note by this nurse practitioner made on December 1, 2011. (Ex. 21.) It may be that Dr. Goss misread the date.

[7] Dr. Bentley listed the doctor who performed the 2015 surgery as Brian Nahed, M.D. (Ex. 23.)

(Ex. 22.)

25. Dr. Bentley diagnosed Officer Fitzgerald with multiple lumbar strains, herniated lumbar discs, and status post three lumbar disc surgeries, chronic pain syndrome and neurological defects related to the dropped right foot.[8] He concluded that Officer Fitzgerald:

> has sustained the above-referenced diagnoses as a direct result of his injuries to his lumbar spine sustained while at work for the Leominster Police Department. His above-mentioned diagnoses are also the result of his 3 surgeries to mitigate those injuries to his lumbar spine.[9]
>
> It is my further opinion that his medical and surgical treatment has been reasonable, medically necessary, and causally related to his multiple on-the-job injuries sustained while working for the Leominster Police Department. Mr. Brian Fitzgerald is now disabled from his normal occupation as a Police Detective, and this disability is in all probability permanent. This disability is the direct and proximate result of the aforementioned injuries and surgical interventions trying to deal with those injuries over the course of several years. The final injury sustained on 11/6/17 caused the ultimate disability, as well as an aggravation of his pre-existing issues in the lumbar spine.

(Ex. 23.)

26. The Leominster Retirement Board voted to grant Officer Fitzgerald ordinary disability retirement, but deny him accidental disability retirement. (Ex. 32.) Officer Fitzgerald filed a timely appeal. (Ex. 33.)

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[8] Dr. Bentley understood that Officer Fitzgerald stopped working altogether after his November 2017 injury. This is incorrect. *See* Finding 8.

[9] The third surgery to which the doctor referred was in April 2022 by Dr. Shankar, who performed a "translumbar interbody fusion at L4-5 to help with [Officer Fitzgerald's] pain." (Ex. 23.)

Discussion

Ordinary disability retirement can be granted by a retirement board if the applicant is disabled from performing his job and that disability is likely to be permanent. M.G.L. c. 32, § 6. An applicant for accidental disability retirement must prove disability and permanence and also prove that the disability arose "by reason of a personal injury or violent act injury sustained or a hazard undergone as a result of, and while in the performance of, the member's duties at some definite place." M.G.L. c . 32, § 7. Because the Leominster Retirement Board granted Officer Fitzgerald ordinary disability retirement, the only issue in the present appeal is whether the officer's disability was caused by a work-related injury or hazard undergone.

No application for accidental disability retirement may be approved until the applicant has been examined by a medical panel composed of three doctors with the relevant medical expertise whose function is to determine medical questions that are beyond the common knowledge and experience of a local retirement board. *Malden Retirement Bd. v. Contributory Retirement App. Bd.*, 1 Mass. App. Ct. 420, 423 (1973). If a majority of a medical panel answers "no" on the questions of disability, permanence, or causation, the retirement board must deny the application. *Quincy Retirement Bd. v Contributory Retirement App. Bd*., 340 Mass. 56, 60 (1959). To overcome on appeal a negative finding by a medical panel, an applicant must show that the medical panel applied an erroneous standard or failed to follow the proper procedures, or that the medical panel certificate was "plainly wrong." *Malden*

Retirement Bd., 1 Mass. App. Ct. at 424; *Kelley v. Contributory Retirement App. Bd*., 341 Mass. 611, 617 (1961).

Here, the opinions of two of the medical panelists were negative. Dr. Linson stated "I do not find" that Officer Fitzgerald's disability "is due to the work injury on 11/6/17 nor other injuries but rather the inherent nature of his back condition." Finding 22. While this phrasing is problematical for reasons I will discuss, it appears to be a negative opinion on causation. Dr. Goss did not reach the issue of causation because he ultimately concluded that Officer Fitzgerald is not disabled. A person who is not disabled cannot be said to have a disability caused by a work-related injury of hazard. Thus, Dr. Goss's opinion is inherently negative on causation. Officer Fitzgerald must then overcome these two negative panel opinions based on the types of error described above.

Dr. Linson's report

Regarding Dr. Linson, Officer Fitzgerald asserts that the doctor failed to state his opinion in terms of medical possibility as the instructions told him to do. The instructions in turn are based on the decision in which the Appeals Court held that a medical panel:

> has no statutory authority to express an unqualified negative opinion as to causation, and such an opinion, if expressed, is a nullity. This is because the local board is entitled to know whether, in the opinion of the panel, there is a medical possibility that the causal relation exists.

Noone v. Contributory Retirement Appeal Bd., 34 Mass. App. Ct. 756, 762 (1993).

Whether a medical panel correctly followed the approach described in *Noone* often turns on a close reading of medical panel reports. As I explained in an earlier decision:

> neither the public employee retirement statute "nor the case law require a regional medical panel or its individual members to use the precise words set out in the statute or the case law in composing the narrative. The failure to use the words 'medical possibility' or 'might' in connection with causation does not constitute error." *Gablaski v. Contributory Retirement Appeal Bd.*, 53 Mass. App. Ct. 1118, 762 N.E.2d 920 (2002) (Rule 1:28 opinion). What is important is the panel's explanation of its conclusion. So long as the panel's "narrative. . . adequately explained its opinion that there is no medical possibility that the employee's incapacity is work related," then its opinion is in proper form. *Id*. And, pertinent to the present case, if "the panel reached [its conclusion that causation was not possible] in part by concluding that the disability was in fact caused by something else (i.e., a degenerative condition) [this] supports, rather than vitiates, the finding that no causal nexus was possible." *Frongillo v. Contributory Retirement Appeal Bd*., 61 Mass. App. Ct. 1124, 814 N.E.2d 763 (2004) (Rule 1:28 opinion).

Parker v. Bristol County Retirement Sys., CR-16-364, at *13 (Div. Admin. L. App. April 12, 2019).

Dr. Linson did not state an unqualified opinion as to what he thinks caused Officer Fitzgerald's back pain. Rather, he stated in the negative that the evidence before him did not prove to a medical certainty that the officer's back problems are work-injury related. However, even if the doctor could not reach that conclusion with certainty, there might still be the possibility that Officer Fitzgerald's continuing back problems are related to his 2017 injury or to his earlier back injuries that were aggravated by his 2017 injury, and this is what he should have addressed.

Dr. Linson identifies what he thinks is the likely source of Officer Fitzgerald's back problems as the "inherent nature of his back condition." I assume by this that he meant that

the officer's back problems arise from age-related degeneration, not from injuries to his back. There is certainly evidence in the medical record that Officer Fitzgerald has some degenerative conditions in his back, but there is equally evidence that the officer has suffered multiple back injuries that led to two back operations prior to his filing for disability retirement.

Is the doctor's opinion on degenerative causes of Officer Fitzgerald's back problems sufficient to say that the doctor thereby meant to say the evidence is so strong that it precludes the medical possibility of the injury-related cause? I think not. The doctor offered only two rationales. The reasons Dr. Linson cites as proof that the likely cause of Officer Fitzerald's back pain is degenerative back problems were the failure of his 2015 surgery to relieve him entirely from pain and the four months it took him to see a doctor after his 2017 back injury. The 2015 surgery worked well enough that it allowed Officer Fitzgerald to go back to work for two more years, but the doctor cites no evidence that the surgery actually succeeded in relieving all the officer's injury-related back pain. All we have then is the doctor's unsupported assumption that it did. As for the doctor's emphasis on the officer's four-month delay in seeking treatment after his November 2017 injury, it appears to be based on the officer's statement to him that he delayed treatment until his pain became worse. It seems that the doctor thinks that a post-injury increase in pain must be related to further degenerative processes and nothing else. He mentions no source for the belief that an injured person can never experience increased pain over time after the injury unless some degenerative process is at

work. This looks like another assumption by the doctor, not one based on the evidence presented to him.

The doctor also refers to "nondisclosed intercurrent injuries." There is no evidence in the record of any undisclosed injury in between when Officer Fitzgerald was injured in November 2017 and when he went to his doctor in April 2018. The instructions told Dr. Linson to rely on evidence in the medical record. There is no such evidence in the medical record. Furthermore, the notion that Officer Fitzgerald's pain increased because of an undisclosed injury is inconsistent with the doctor's opinion that the pain increase was caused by further degenerative processes not by a new injury, which suggests that the doctor is not completely convinced by his own degenerative process theory.

Thus, Dr. Linson's report is based on an erroneous standard because it does not address whether there is a medical possibility that Officer Fitzgerald's November 2017 injury caused his disability, and his opinion that degenerative processes caused the officer disabling back pain is not strong enough, particularly because it relies on assumptions and speculation, to show that it excludes the medical possibility that the officer's 2017 injury caused his disability.

Dr. Goss's Report

Dr. Goss's opinion is similarly flawed. The divergence in his two opinions is striking and the basis for his second and final opinion is fundamentally flawed. It is hard to see how he first thought that Officer Fitzgerald medically qualified for accidental disability retirement and then, when he received a few more records, determined that he was not even disabled.

Although the other two doctors did not complain about missing medical records, Dr. Goss seems to have lacked medical records for most of the year after Officer Fitzgerald's November 2017 injury except for MRI reports and reports from Dr. Shankar in September 2018. All he received thereafter were the medical records from the Leominster Police Department, which was unconvinced that the officer had suffered an on-the-job injury even though he filed an injury report after his November 2017 injury. He did not receive reports from Dr. Brodkin.

It is not at all clear that Dr. Goss asked Officer Fitzgerald how long it took him after the 2017 injury to see a doctor and why he waited to do so. Had he asked, he would have learned that the officer, because he had suffered from previous lower back problems, decided to address this latest one by doing the exercises he had learned in prior physical therapy sessions for his back and that while he continued to work, he sought to take duties that would not cause him to further strain his back. The doctor would also have learned that the officer saw Dr. Brodkin in April 2018. But not knowing what Officer Fitzgerald was doing to address his latest back problem or knowing that he saw his doctor four months after his injury led Dr. Goss to think the officer hadn't seen a doctor between November or December 2017 and September 2018.[10] This "lack of continuity of care," as the doctor described it, led him to believe that the 2017 injury was just a back strain for which Officer Fitzgerald had surely recovered, and thus

[10] As noted earlier, Dr. Goss thought Officer Fitzgerald saw a nurse practitioner on December 1, 2017, but this was unlikely to have happened.

the reason he saw Dr. Shankar, the orthopedic surgeon, must have been for some other back injury.

Dr. Goss's opinion suffers from multiple flaws. His opinion that Officer Fitzgerald suffered only a back strain is not based on his examination of the officer or the medical records, but on his unwarranted assumptions as to the work activities the officer engaged in after his injury and his failure to seek medical help for almost nine months. To the extent it can be called a medical opinion, it is not based on the known facts of the officer's post-injury work and the doctor visits he actually had by April 2018. As for his belief that the officer must have suffered another back injury before he consulted with Dr. Shankar, that is just speculation and, as with Dr. Linson's similar speculation, is not based on medical evidence in the record. His report is thus just plainly wrong.

Conclusion

Because Officer Fitzgerald has presented adequate reasons to reject the negative reports of two of the medical panelists, I reverse the Leominster Retirement Board's denial of his application for accidental disability retirement and remand for a new medical panel.

I note that an analysis of Officer Fitzgerald's medical problems presents some difficulties. It starts off with a recuring situation: is his continuing back pain injury-related or caused by degenerative conditions? He has had multiple surgeries that appear to have offered him some relief. Did the operations relieve the source or sources of his injury-related pain? Is the post-operative pain injury-related or related to his degenerative back conditions?

His foot drop represents a somewhat different issue. If the surgery he had in 2018 was meant to relieve his injury-related back pain, then whether or not it relieved back pain, the foot drop would be related to a reasonable surgery for injury-related pain and would itself be a potential basis for accidental disability retirement.

The new panel should thus separately consider Officer Fitzgerald's back pain and his foot drop.

DIVISION OF ADMINISTRATIVE LAW APPEALS

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Dated: July 17, 2026