COMMONWEALTH OF MASSACHUSETTS

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

Nathan G. Fletcher,
Petitioner

v.

Norfolk County Retirement System,
Respondent

Docket No. CR-16-491

April 11, 2025

Appearances:

For Petitioner: Leigh A. Panettiere, Esq. (Law Offices of Leigh Panettiere, P.C.), Boston

For Respondent: Brian P. Fox, Esq. (Murphy, Hesse, Toomey & Lehane, LLP), Boston

Administrative Magistrate:

Mark L. Silverstein

SUMMARY OF DECISION

Accidental Disability Retirement (ADR) - Emotional or psychiatric disability - Disabling Post-Traumatic Stress Disorder (PTSD) - Police Officer/Detective - ADR denial - Absence of majority affirmative medical panel opinion as to disability's likely permanence - Failure to review pertinent facts regarding ability to resume specific police duties - Remand for evaluation by new medical panel.

A municipal police detective filed an ADR application based upon PTSD that left him unable to continue working after late June, 2015. He claimed that the cause of this condition was responding to on-duty calls involving dead children, including one that occurred on March 20, 2015. A psychiatric medical panel majority opined in the affirmative as to disability and possible work-related causation, but the two members of that panel majority split as to whether the detective's disability was likely permanent, leaving the detective without at least a majority affirmative opinion as to all three issues referred to the panel. The panel member who opined in the negative as to the disability's permanence thought the detective had not been treated with sufficiently aggressive dosages of antidepressants that might alleviate his PTSD symptoms. However, he did not assess whether such treatment would allow the detective to perform specific police duties including responding to stressful, potentially life-threatening situations, and carrying

and using a firearm, or whether resuming those duties could cause his disabling PTSD symptoms to return. Those facts should have been considered in assessing whether the claimed disability was likely permanent. The Retirement System's ADR denial is therefore reversed, and the matter is remanded for a new medical panel evaluation.

DECISION

Background

Petitioner Nathan G. Fletcher, a former Norfolk, Massachusetts police officer and detective, appealed, pursuant to M.G.L. c. 32, § 16(4), the October 26, 2016 decision of respondent Norfolk County Retirement System denying his application for accidental disability retirement (ADR) benefits, pursuant to M.G.L. c. 32, §§ 6 and 7, based upon psychological or emotional injury—post-traumatic stress disorder (PTSD) he claimed to have sustained on duty as the result of responding to incidents involving the deaths of children, including one that occurred on March 20, 2015. The detective stopped working as a Norfolk police officer in late June 2015.

After Detective Fletcher filed his ADR application, he was examined by a regional medical panel comprising three psychiatrists. A panel majority issued affirmative opinions as to the detective's disability and its possible work-related causation. However, one of the two panel members who opined affirmatively as to these two issues opined in the negative as to the disability's likely permanence; in his view, the detective had not received sufficiently aggressive psychopharmacological treatment of his PTSD symptoms. Because the detective did not obtain a majority affirmative medical panel opinion as to his disability's likely permanence, the Retirement System denied Detective Fletcher's ADR application.

Claiming that this outcome was the result of medical panel error, Detective Fletcher timely appealed the Board's ADR denial on October 27, 2016. He sought either the approval of

his ADR application or reevaluation by a new medical panel. The detective filed a prehearing memorandum on May 12, 2017, together with 15 numbered, proposed hearing exhibits (Exhs. 1-11, 12A-C, and 13). On June 16, 2017, The Retirement System filed a prehearing memorandum and two proposed hearing exhibits (Exhs. 14 and 15.). I marked all of these 17 proposed exhibits in evidence, without objection.

I held a hearing at the Division of Administrative Law Appeals in Boston on October 5 and November 13, 2017. Both parties made opening statements before the witnesses testified. Psychologist Leo F. Polizoti, Ph.D., testified on Detective Fletcher's behalf during the first hearing session. Among other things, Dr. Polizoti testified that after performing a fitness-for-duty examination in early September 2015, he diagnosed the detective's condition as likely-permanent PTSD and recommended that he be retired. Detective Fletcher and his wife, Megan Fletcher, testified during the November 13, 2017 hearing session. The Retirement System presented no witnesses.

During the hearing I admitted four additional exhibits that I marked in evidence as Exhibits 16-19. As a result, there are 21 exhibits in evidence. Both hearing sessions were recorded digitally, and were transcribed from the recordings at the petitioner's request and expense, with the Board paying for its copy of the transcript.[1] Neither party made a closing statement when witness testimony ended. Each party filed a post-hearing brief on April 6, 2018.

Findings of Fact

[1]/ I refer to the transcript of the first hearing session on October 5 as "Tr. I," and to the transcript of the second hearing session on November 13, 2017 as "Tr. II."

Based upon the testimony, hearing exhibits and other evidence in the record, and the reasonable inferences drawn from them, I make the following findings of fact:

Officer Fletcher's Work History and Job Duties

1. Petitioner Nathan G. Fletcher began work as a full-time police officer with the Norfolk (Massachusetts) Police Department on January 11, 2005. He worked previously as a part-time police officer with the Hull (Massachusetts) Police Department from June 2002 to September 2002, and as a Norfolk Police/Fire Dispatcher from September 1999 to January 2005. Officer Fletcher was promoted to Detective by the Norfolk Police Department in 2007, a position he held until he stopped working in late June 2015. (Exh. 3: Accidental Disability Retirement Application at 3.)

2. The official job duties of a Norfolk Police Department Police Officer during the time period 2005-15 included the following:

(a) Patrol and Incident Response-Related Duties:

> In responding to a report of child abuse, observe and evaluate the physical or mental condition of the child, notify the appropriate agencies, and/or place the child in protective custody to protect the child from physical or mental harm.
>
> Respond to a crime in progress and secure the area to effect an arrest.
>
> When confronted with victim(s), conduct patient assessment and administer immediate care to prevent further injury, trauma or death.
>
> Operate a Department vehicle at a high rate of speed, using emergency lights and sirens and maintaining public safety, to respond to emergency calls for service.
>
> Participate in a large scale coordinated search for one or more persons (*e.g.*, escapees, mental patients, lost people, etc.) to locate or apprehend the person(s).
>
> Separate individuals in a fight or disturbance (not a domestic dispute) to restore order and minimize injury to those individuals or property.

Identify a person as disturbed (e.g., mentally, emotionally) or incapacitated (*e.g.*, drunk, epileptic) and detain that person in order to provide for placement.

Serve on special details to help maintain peace (*e.g.*, abortion demonstrations, animal rights).

(b) Investigation-Related Duties:

Identify and collect evidence at a crime scene to preserve that evidence for use in an investigation.

Document the elements of a crime and identify potential witnesses and suspects to produce a prosecutable case.
Canvass the neighborhood, asking questions of persons in order to locate and identify one or more witnesses, victims, or suspects of a crime.

Determine the probable facts of the incident from examination and comparison of statements and other evidence.

Interview and take written statements from the general public, witnesses, victims, or suspects to obtain and record information pertinent to the enforcement, regulatory, and service functions of the Department.

(c) Arrest-Related Duties:

Display or discharge a Departmentally approved firearm to protect self and/or the public.

Physically restrain or subdue a violent or resisting individual or arrestee to protect self, the person being restrained, and the public, or to effect custody of an arrestee.

Operate a Department vehicle at a high rate of speed, maintaining public safety and in compliance with Department pursuit policy, to pursue and apprehend one or more violators.

(d) Community Relations-related duties:

Contact the immediate family of an individual (in person) or notify uniformed personnel to provide information to the family concerning that person's injury or death.

(Exh. 3: Attachments to Detective Fletcher's ADR application; undated Commonwealth of Massachusetts Police Officer Task List.)

Incidents Material to the Claimed Disability

October 18, 2008

3. At approximately 5:57 p.m. on Saturday, October 18, 2008, Detective Fletcher was one of several Norfolk police officers who responded to a dispatch call concerning a missing 17-year-old girl.

(a) During the afternoon and evening of October 17, 2008, the girl had been at a drinking party involving several persons under 21 years of age in woods abutting a runway at an abandoned airport.

(b) Some of these persons told the police officers that the girl was extremely intoxicated, and had wandered away from the party after 11 p.m.

(c) Police and firefighter units, including K-9, boat, ground and dive teams, searched the woods and an adjacent river and swampy areas near the airport during the next two days.

(d) On October 20, 2008, a ground team of firefighters from the towns of Walpole and Millis that was searching a swampy area off Miller Street found the girl's body. Detective Fletcher was one of three Norfolk police officers who were taken by State Police boat to view the body, which was face down in 24-36 inches of water and mud. The dead girl had no shoes, and no cell phone was found.

(e) The girl's body was removed from the swamp and transferred to the county medical examiner for an autopsy to determine the cause of death. Officer Fletcher observed the autopsy on October 22, 2008, which found no obvious signs of trauma. With

> no contradictory information from the toxicology report, the girl's cause of death was determined to have been drowning.
>
> (f) Several persons who were present at the party in the woods told Detective Fletcher and another police detective that the young girl had been intentionally pointed in the wrong direction when she left the party. Those assertions could not be confirmed. Several persons present at the party were charged with obstruction of justice (on grounds including intentionally misleading and/or lying to the investigating officers) and/or furnishing alcohol to persons under 21 years of age. One of them had a counterfeit Maine driver's license that he had used to illegally purchase alcohol for his own consumption and for furnishing to other underage persons, in violation of M.G.L. c. 138, § 34B.

(Exh. 3: ADR Application, Jan. 4, 2016, at 5 (description of Detective Fletcher's personal injury sustained or hazard to which he was exposed); and attached Addendum describing the 2008, 2012 and 2015 incidents in question; and Attachments: Norfolk Police Department incident reports dated Nov. 16 and 17, 2008.)

4. Finding the deceased young girl on October 20, 2008 disturbed Detective Fletcher. He had "small breakdowns" at the time and cried himself to sleep, and then "buried" what he experienced "pretty deep" and "moved on or whatever people usually do," although the memories came back later, sometimes "flooding" his mind and causing him to feel sick and have nightmares. (Fletcher direct testimony, Tr. II at 27-28; Exh. 3: ADR Application dated Jan. 4, 2016 at 5 (description of incidents in question). Detective Fletcher did not file a personal injury report regarding this incident with the Norfolk Police Department.

May 18, 2012

5. At approximately 11:35 p.m. on May 18, 2012, Detective Fletcher and another Norfolk Police officer responded to a call regarding a 13-year-old girl who had collapsed at home and might have stopped breathing. Upon arriving at the girl's home, Detective Fletcher performed CPR on the girl, and rode in the ambulance transporting her to a local hospital, but the girl died en route despite efforts to revive her. (Exh. 3: ADR: Norfolk Police Department Incident Report dated May 18, 2012.)

6. The May 18, 2012 incident disturbed Detective Fletcher and, as he had done following the October 20, 2008 incident, he attempted to suppress his feelings and kept working. Nonetheless, the memories of both incidents came "flooding back" and caused the detective to feel ill and have nightmares. (*See* Fletcher direct testimony, Tr. II at 27-28.) He did not file a personal injury report regarding this incident with the Norfolk Police Department.

March 20, 2015

7. On March 20, 2015, between 7 and 7:30 a.m., the Norfolk Police Department received a 911 call from the mother of a 2½ year old boy reporting that he was unresponsive and not breathing.

(a) The dispatcher who took the call advised police and fire units to respond and gave emergency medical directions and CPR instructions to the mother on the phone. Two Norfolk police officers (not including Detective Fletcher) and the Norfolk Fire Chief arrived at the family home in Norfolk simultaneously and were directed to the second floor of the house, where they found the boy supine on the floor with the mother administering CPR. The police officers found no respiration or heartbeat. They continued CPR and then one of he officers set up a semi-automatic defibrillator. Norfolk paramedics

arrived, placed the boy on a medical cot, transferred him from the house to the back of a fire rescue vehicle, and continued lifesaving measures during transport to a local hospital. Another Norfolk Police Officer interviewed the visibly distraught mother, who stated that the child was under a doctor's care for an enlarged aorta. The mother also stated that the boy was coughing and sounded congested during the night, and that she found him on the morning on March 20, 2015 with his face "into his pillow" and most of his blankets off at the end of his bed, which she described as "not unusual." While one of the police officers took the mother to the hospital, a neighbor assisted with the mother's other children at the house.

(b) Detective Fletcher was notified and went to the hospital to perform a follow-up investigation, as did a trooper from the Massachusetts State Police Division of Investigative Services.

(Exh. 3: ADR Application, Jan 4, 2016, at 5 (description of personal injury sustained or hazard to which exposed; and attached Addendum describing the incidents of Oct. 18 (sic) 2008, May 18, 2012, and Mar. 20, 2015; and Attachments: Norfolk Police Department Incident Report by Sgt. Timothy Heinz, dated Mar. 20, 2015.)

8. The young boy died before Detective Fletcher arrived at the hospital. The detective spent 45 minutes with the parents, while the mother continued to hold and rock the boy before they said goodbye to him. The detective then drove the parents to their home and, per Norfolk Police Department protocol, he removed the sheets from the boy's bed so he could take them to the Department for safekeeping as potential evidence. While he was doing that, Detective Fletcher heard the boy's two siblings scream when the parents told them of their brother's death.

(Fletcher direct testimony, Tr. II at 12-15; Exh. 3: ADR Application, Jan 4, 2016, at 5 and attached Addendum.)

9. After leaving the home, Detective Fletcher was distraught, almost to the point of being unable to drive. This was counter to his personality; he was "not a crier" and had been easygoing. He then went to a bar and drank excessively. At some point he went home and found himself unable to look at his own children. (Fletcher direct testimony, Tr. II at 15-16..)

10. Detective Fletcher took the following weekend off and then returned to work. He performed his duties for approximately two months, but during this time he experienced depression, anxiety, nightmares, and a racing heart and difficulty sleeping; he began having nightmares; he also felt "disconnected" from his work and "unable to function," and found himself "making really bad decisions," including walking up to a car he had stopped without calling for backup or asking the driver and passengers for identification. At home, he started yelling at his children and his wife. Mrs. Fletcher noticed he went quickly from being easy-going to becoming very irritable, and he seemed to have become a "different person." This change persisted into 2016 and 2017. When the Fletchers returned to Norfolk, whether to visit family or to appear at the DALA hearing in this appeal, they drove "out of the way" to avoid areas of Norfolk that reminded the detective of the incidents involving dead children. Detective Fletcher could suddenly become uncharacteristically angry and remained irritable almost all the time and appeared to be always at a breaking point. On one occasion, he told his wife that "you guys don't deserve me," and stated that he wanted to leave so that his wife and children could get on with their lives. (Fletcher direct testimony, Tr. II at 16-20; Megan Fletcher direct testimony, Tr. II at 100-05.)

Last Day of Work, Subsequent Treatment, and Injured-on-Duty Leave

11. By June 2015, Detective Fletcher felt he could no longer perform his job duties. Later that month, his treating psychologist, Timothy Ridge, Ph.D., recommended that Detective Fletcher "not work professionally as a policeman for at least 3 months." (Exh. 1: "To Whom it May Concern" letter from Timothy Ridge, Psy.D., dated Jul. 26, 2015.)

12. Detective Fletcher last worked as a Norfolk police officer on June 26, 2015. (Exh. 4: Employer's Statement pertaining to Detective Fletcher's ADR application, dated Jan. 20, 2016, at 2.)

13. Detective Fletcher began treatment with Dr. Ridge on June 9, 2015. He told Dr. Ridge of his "trauma exposure" during the three incidents involving a deceased child and described symptoms that included feeling disconnected from his family, despite a prior strong connection and shared understanding with his wife, and sadness at the disconnection. He attended therapy sessions with Dr. Ridge through May 2016 and then spoke with Dr. Ridge on the telephone and/or via Skype on several occasions through July 2016. (*See* Exh. 12(C); medical records of Dr. Ridge dated Jun. 15, 2016 through Dec.18, 2016.) By that time, Detective Fletcher was living in the Virgin Islands and could not afford to travel back to Massachusetts to treat with Dr. Ridge. However, after moving back to Massachusetts temporarily in 2017, following a destructive hurricane in the Virgin Islands, Detective Fletcher resumed therapy sessions with Dr. Ridge. (Fletcher cross-examination, Tr. II at 63-68.)

(a) Dr. Ridge's notes for a treatment session on June 18, 2015 recorded his first impression that Detective Fletcher was dealing with PTSD symptoms and reliving "three trauma incidents that influenced him." (Exh. 12(C): Medical records of Dr. Ridge; note dated Jun. 18, 2015.)

(b) On June 24, 2015, Dr. Ridge discussed Eye Movement Desensitization and Reprocessing (EMDR) therapy with Detective Fletcher in view of his lack of sleep and ongoing feelings of stress and tension. Dr. Ridge noted an initial EMDR session with good response. (*Id.*; Dr. Ridge's notes dated Jun. 24, 2015 and July 24, 2015.)

(c) With EMDR therapy ongoing, Dr. Ridge began exploring with Detective Fletcher, on July 27, 2015, the first of the juvenile deaths in question (the 2008 discovery of the girl's body). In subsequent therapy sessions, the detective identified as particularly disturbing, in addition to discovering the girl's body, the mother's request that a light be placed in the girl's body bag, and the behavior of the girls' friends, who had allowed the girl to walk into an area of woods near a river area where her body was found. (*Id.*; Dr. Ridge notes dated Aug. 4 and 17, 2015.)

(d) Dr. Ridge noted that the EMDR treatments had helped lessen the intensity of Detective Fletcher's thoughts, feelings and panic attacks. (Exh. 12(A): Dr. Ridge's "to whom it may concern" statement dated Feb. 28, 2017, at 1.) However, his therapy session note for October 21, 2015 stated that EMDR had become "tiring" for the detective, although it had helped relieve his stress. His notes through December 2015 stated that the detective remained upset and stressed about the three juvenile deaths, which Dr. Ridge had been exploring with him, particularly the screaming of the dead two-year-old boy's two siblings that the detective had heard while at the family's home on March 20, 2015, and his sadness about the death of the young girl in 2012. (Exh. 12(C): Dr. Ridge's notes dated Oct. 21, 2015 through Dec. 18, 2015.) Dr. Ridge also discussed with Detective Fletcher his disappointment over his perceived lack of support from his fellow officers and the police chief (*id.*; note dated Dec. 3, 2015), feelings of separation from "emotional aspects"

of his life (*id*.; note dated Dec. 14, 2015); and frustration over not being able to work professionally and missing feelings of professional pride and being invested in his work. (*Id*.; Dr. Ridge's note dated Dec. 18, 2015.)

(e) As of February 2016, Detective Fletcher was telling Dr. Ridge that he planned on "moving forward" with his life and "being in very different work." (Exh. 12(B); Dr. Ridge's note dated Feb. 5, 2016). Dr. Ridge was using EMDR therapy with Detective Fletcher regarding another case in which he had to tell a young girl that her father was a child molester and had committed suicide. (*Id*.; Dr. Ridge notes dated Feb. 11, Mar. 30, Apr. 21, Apr. 26, May 3 and May 12, 2016.) Dr. Ridge's last psychotherapy note, dated May 17, 2016, stated that Detective Fletcher reported "a 'film' between himself and the emotional traumas," and that while the more recent trauma (regarding the girl's father's child abuse and suicide) needed "more work," the detective reported that the "first 3 are resolved," apparently referring to the 2008, 2012 and 2015 juvenile deaths. (Exh. 12(B); Dr. Ridge's note dated May 17, 2016.)

(f) In his February 28, 2017 report, Dr. Ridge stated that Detective Fletcher's symptoms when he first presented for psychotherapy in June 2015 "fully met" the criteria for PTSD and that EMDR therapy "helped lessen the intensity of the thoughts, feelings and panic attacks Mr. Fletcher regularly experienced," although "[a]t times, some of these symptoms have resurfaced and have been distressing and difficult." (Exh. 12(A) at 1.) Dr. Ridge also stated, in his 2017 report, that during "coaching sessions" by telephone with Detective Fletcher after the closing psychotherapy session (on May 17, 2016), the detective reported planning a move to the Virgin Islands so he could re-start his life "in an area that did not hold traumatizing experiences" as did the area where he had performed

his police duties. Those reminders brought back memories of the incidents involving dead children, and this was holding him back from moving forward emotionally. The detective felt that his PTSD symptoms and the distress they caused him and his family would likely return if he resumed his detective work. (Exh. 12(A) at 1-2.)

14. Detective Fletcher continued to experience these symptoms and related distress in 2017, two years after he had stopped working as a police officer, when he returned to visit family in Norfolk, including depression, anxiety, nightmares, a racing heart, difficulty sleeping, panic attacks and severe avoidance. He could not drive through Norfolk when he returned for a visit without having a severe panic attack. In February 2017, he vomited when he drove past the swamp where he had found the young girl's body in 2008. In October 2017, he suffered a panic attack and flashbacks when he went to Norwood Hospital (where he had been with the dead boy and his parents in 2015), which caused him to run out of the hospital. (Fletcher direct testimony, TR. II at 19, 20-21, 22-24, 27-28, and 39-42.)

15. In August 2015, the Norfolk Police Chief placed Detective Fletcher on injured-on-duty leave, effective as of the date on which he stopped working in June 2015. (Undisputed; *see* Retirement System's Pre-Hearing Memorandum (Jun. 16, 2017) at 4-5, para. 13.)

Dr. Polizoti's Fitness-for-Duty Examination

16. In early September 2015, Dr. Leo F. Polizoti, Ph.D., a licensed psychologist, evaluated Detective Fletcher's fitness for duty at the request of the Norfolk Police Department. After examining Detective Fletcher, he prepared a report recommending that the detective be retired based upon unresolving and disabling PTSD brought on by responding to incidents involving dead or dying children in the course of performing his police duties. (Exh. 3: Dr. Polizoti's Report dated Sept. 6, 2015.)

(a) As of 2015, Dr. Polizoti had provided therapy in private practice for police officers for 40 years and had performed approximately 200 to 300 fitness-for-duty evaluations, in addition to performing pre-employment psychological screening for police officers and police chiefs. He used the Minnesota Multiphasic Personality Inventory (MMPI-2) to evaluate police work-related PTSD in approximately 300 cases, and he did so in evaluating Detective Fletcher. Dr. Polizoti's evaluation of the detective's fitness to resume working for the Norfolk Police Department was that of an independent medical examiner; he had never examined Detective Fletcher previously, and did not examine him subsequently. (Exh. 3: Polizoti Report dated Sept. 6, 2015; Tr. I: Polizoti direct testimony, Tr. I at 37-38, 41-44; Polizoti cross-examination, Tr. I at 122-24.)

(b) Dr. Polizoti was asked to evaluate Detective Fletcher's fitness to return to duty at the Norfolk Police Department because the detective's emotional stability had "come into question." (Exh. 3: Polizoti Report at 1.) He reviewed treatment information from Dr. Timothy Ridge, Detective Fletcher's treating psychologist, and information supplied by the Norfolk police chief, including the detective's job duties. (Exh. 3: Polizoti Report at 2.) In examining Detective Fletcher, Dr. Polizoti assessed Detective Fletcher's personality traits and psychopathology, and his PTSD, using both the MMPI-2 and the "Impact of Events Scale" (IES). He considered them to be effective tools, used generally within his profession, for the type of assessment he performed in Detective Fletcher's case. (Exh. 3: Polizoti Report at 2; Polizoti direct testimony, Tr. I at 37-38, 51-53.)

(c) Detective Fletcher told Dr. Polizoti that he had a good work history at the Norfolk Police Department during his ten years of work as a police officer. He explained that he became unable to work following the death of the young boy on March 20, 2015

and his interaction with the family while driving them back home from the hospital where the boy died and then hearing the boy's two siblings scream when the parents told them of their brother's death. That had triggered feelings the detective had experienced previously, in 2008 when he recovered a dead teen girl in a swamp, and in 2012 when a young boy he accompanied to a hospital died despite the detective's efforts to revive him by performing CPR. Detective Fletcher also told Dr. Polizoti that he had two children of his own. (Exh. 3: Polizoti Report at 2.)

(d) Dr. Polizoti noted that Detective Fletcher had been seeing Dr. Ridge for therapy twice a week for three months "with little progress" and no amelioration of his symptoms, and that his treating physician (Dr. Robert P. Tufo; *see* Finding 18) had prescribed anti-anxiety medication in an attempt to calm the detective's symptoms and help him sleep. (*Id*.) Dr. Polizoti found the detective's psychological functioning to be "within normal limits except for his apparent anxiety," noting that he cried during the interview when discussing the child who had died at the hospital. (*Id*.)

(e) Dr. Polizoti noted that Detective Fletcher's physical complaints, sleep problems, depression and anxiety, "indicate[d] a great deal of turmoil, agitation and tension." The results of the MMPI-2 testing confirmed, for Dr. Polizoti, that a PTSD diagnosis was "indicated given the history and symptoms." (*Id*.). He found support for this opinion when he "integrated" the IES test results into his clinical observations of the detective, "to control for the possibility of invalid reporting." The result was "a high score indicating PTSD." (*Id*.)

(f) Dr. Polizoti also noted that Detective Fletcher had made little progress despite five months of treatment with a therapist and taking anti-anxiety medication prescribed by

the primary care physician. He continued to experience post-trauma issues related to "critical incidents on the job" culminating with the young boy's death on March 20, 2015 that triggered feelings about the 2008 and 2012 juvenile deaths, and the continuing panic attacks. (Exh. 3: Polizoti Report at 3.) Dr. Polizoti described this as "pretty typical of the cause and course of PTSD," which, in his opinion, "never . . . totally resolved" once it developed. (Polizoti direct testimony, Tr. I at 60.)

(g) In view of Detective Fletcher's reported trauma and lack of improvement in his mental status after months of treatment, Dr. Polizoti opined that the detective's disabling PTSD was "permanent for the foreseeable future," and that he "need[ed] to retire with a work-related disability." (Exh. 3: Polizoti Report at 3.)

Detective Fletcher's ADR Application

17. On January 4, 2016, Detective Fletcher filed an accidental retirement application with the Norfolk County Retirement System. (Exh. 3.)

(a) In his ADR application, Detective Fletcher claimed to be disabled by work-related PTSD that left him unable to perform any of his duties as a police officer, and that he ceased being able to perform the essential duties of his position on March 20, 2015. (Exh. 3. at 2.)

(b) The detective also claimed that his disability was the result of both a personal injury and a hazard to which he was exposed, which he described as "[s]tressful incidents throughout his career, including 10/18/08, 05/18/12, 03/20/15," and gave the locations at which the injury and hazard exposure occurred as Norfolk Airport Field (where he found the girl's body on October 18, 2008), the residence where he responded on May 18, 2012

to a report of a girl not breathing, and the residence to which he brought the parents of the dead two year old boy back from the hospital on March 20, 2015. (*Id*. at 5.)

(c) Detective Fletcher described the duty he was performing immediately prior to, and at the time of, his personal injury and exposure as "[r]esponding to calls regarding missing or injured/ill/deceased children." (*Id*. at 6.)

(d) He identified the primary treatment physician who was treating him for his claimed disability as Dr. Timothy Ridge. (*Id*. at 11.)

Dr. Tufo's Physician's Statement Pertaining to the ADR Application

18. Detective Fletcher's ADR application included a supporting physician's statement by his treating psychiatrist, Dr. Robert P. Tufo, on a form prescribed by the Massachusetts Public Employee Retirement Administration Commission (PERAC). (Exh. 3: Physician's Statement Pertaining to Member's Application for Disability Retirement by Dr. Robert P. Tufo, dated Feb. 28, 2015.)

(a) Dr. Tufo stated that the detective was last able to perform his police officer duties on March 20, 2015 (the date of the young boy's death). (*Id*. at 1.)

(b) Dr. Tufo identified Detective Fletcher's medical diagnosis as PTSD, and checked the "yes" box on the Physician's Statement form next to the question "[i]s the condition for which the applicant seeks disability retirement likely to be permanent?" (*Id*. at 2.)

(c) Dr. Tufo answered "no" as to whether this condition had changed in the preceding three months or year. He stated that anti-anxiety medication had a "calming effect" and that treatment with psychotherapist Dr. Ridge had "partially helped control symptoms." (*Id*.)

(d) Dr. Tufo stated that Detective Fletcher "developed post-traumatic stress disorder as a result of investigating and/or responding to calls involving the deaths of children." (*Id*. at 3.)

(e) The Physician's Statement form requested the treating physician's "anticipated natural course of the diagnoses," with boxes to be checked, as applicable, next to "stable or plateau," "likely to regress," and "likely to resolve." Dr. Tufo checked "likely to resolve." He also checked "no" in response to the question "[h]as Maximum Medical Improvement (MMI) been reached?" with the following explanation: "Detective Fletcher is permanently disabled from the job of police officer because of Post Traumatic Stress Disorder. However in time his condition may improve to the point where he could work in a different job." (*Id*.)

(f) Dr. Tufo stated that Detective Fletcher's disability "was caused by the job-related personal injury" (*id.* at 3(3A)) and answered "yes" as to whether "there was no evidence of a uniquely predominant non-service related influence on [Detective Fletcher's] mental or physical condition, and/or a non-service connected accident or hazard which caused his/her incapacity." (*Id*. at 4.)

Medical Panel Opinions and Reports

19. PERAC convened a medical panel comprising three psychiatrists—Drs. Robert Weiner, Michael Rater and Jean Dalpe—to examine Detective Fletcher and issue a certificate answering the following questions: (1) whether the detective was "mentally or physically incapable of performing the essential duties of his or her job as described in the current job description" and, only if the panel member answered "yes" to this question; (2) "is said incapacity likely to be permanent; and (3) "is said capacity such as might be the natural and proximate result

of the personal injury sustained or hazard undergone on account of which retirement is claimed?" ("the three questions") (*See* Exhs. 5, 6 and 7: Certificate for Accidental Disability sent to medical panel members by PERAC and completed by each of the medical panel members with respect to Detective Fletcher's ADR application.)

20. PERAC sent each of the panel members a copy of Detective Fletcher's ADR application; Dr. Polizoti's treating physician's statement in support of the application; the employer's statement pertaining to the ADR application; descriptions of the detective's job duties as a Norfolk police officer including the Commonwealth's police officer task list); Norfolk Police Department records including reports regarding incidents to which the detective had responded while he worked for the police department; and medical records received from Dr. Polizoti and Dr. Ridge. Each panel member reviewed these materials before expressing an opinion as to the three questions.

21. PERAC also supplied each of the medical panel members with a form "Regional Medical Panel Certificate" for each of them to fill out with respect to each of the three questions, with instructions the panel members were to follow in answering each of them.

(a) As to the disability question, the Certificate's first page instructed the panel member that the information forwarded to him regarding the retirement system member's claimed disability and current job description including the applicant's essential duties was "critical to your assessment of the member's ability to perform the essential duties of his/her job."

(b) If the panel member answered in the affirmative as to whether the member was "mentally or physically incapable of performing the essential duties of his or her job as described in the current job description," the Certificate provided the following definition

and instructions in answering the second question as to whether the member's incapacity was likely to be permanent:

> A disability is permanent if it will continue for an indefinite period of time which is likely never to end even though recovery at some remote, unknown time is possible. If the medical panel is unable to determine when the applicant will no longer be disabled, they must consider the disability to be permanent. However, if the recovery is reasonably certain after a fairly definite time, the disability cannot be classified as permanent. It is imperative that the medical panel make its determination based upon the actual examination of the applicant and other available medical tests or medical records which have been provided. It is *not* the physician's task to look into employment possibilities that may become available to an applicant at some future point in time.

(c) Regarding the third question, the Certificate instructed the panel members that "[w]hen constructing your response to the question of [work related] causality . . . your opinion must be stated in terms of medical possibility and not in terms of medical certainty."

22. The panel members examined Detective Fletcher separately (as he had requested) during the summer of 2016, and each of them issued a separate opinion and explanatory report. Dr. Weiner's opinion was affirmative as to disability, its permanence, and the possibility of its work-related causation. Dr. Rater's opinion was negative as to disability and, having so concluded, he did not express an opinion as to its likely permanence or possible work-related causation. Dr. Dalpe's opinion was affirmative as to disability and possible work-related causation, but negative as to the disability's likely permanence. As a result, a majority of the medical panel members found in the affirmative as to Detective Fletcher's psychological disability and work-related causation, but there was no majority affirmative finding that the disability was permanent.

Dr. Weiner

23. Dr. Weiner examined Detective Fletcher on July 8, 2016. His affirmative opinion as to all three questions, and supporting report, were dated August 3, 2016. (Exh. 6.)

(a) Dr. Weiner's report related the onset of detective's PTSD following the March 20, 2015 incident involving the young boy who had died during the night before he arrived in response to a call and provided support to the parents. The detective told Dr. Weiner that he "could not stop grieving and recalling all of the circumstances of that experience," and noted a change in his behavior and emotions subsequently—he became angry, depressed and tearful, had persistent nightmares about the incident, and began recalling "[o]ther traumatic experiences from his police work that caused further depression and anger." The current symptoms he described were becoming tearful and helpless as he described what he experienced, particularly the three "extreme situations" on October 18, 2008, May 18, 2012, and March 20, 2015. The March 20, 2015 incident left the detective unable to work or have anything to do with the police or police matters. As of July 2016, he was trying to avoid the town of Norfolk. He also described being subject to flashbacks of the incidents and was feeling anxious and depressed. (Exh. 6: Weiner report at 1-2.)

(b) Dr. Weiner diagnosed Detective Fletcher as suffering from sudden-onset PTSD, with symptoms and clinical signs that included re-experiencing a traumatic incident; flashbacks and nightmares of the incident; numbing of emotional responsiveness; anxiety and depression; distancing himself from anything that would remind him of the three incidents; and having difficulty focusing and concentrating on anything else. (*Id*. at 2-3.)

(c) Dr. Weiner noted that Dr. Tufo and Dr. Ridge had been treating Detective Fletcher for his PTSD, the former with antidepressant, tranquilizer and sleep medication; and the latter with EMDR (eye movement desensitization and reprocessing) in twice-weekly sessions. (*Id*.)

(d) Based upon the sudden onset of Detective Fletcher's PTSD and its symptoms, and the treatment the detective had received, Dr. Weiner concluded that Detective Fletcher was unable to perform the essential duties of his job. (*Id*. at 2-3.) He also concluded that this disability was permanent because Detective Fletcher "had been unable to work in any position," his PTSD "had not responded sufficiently to appropriate treatment, and the detective "feels the need to avoid any connection with his prior occupation," and had sold his house and planned "to move to the Virgin Islands to distance himself from his past occupational life and career." (*Id*. at 3.)

(e) Dr. Weiner opined that Detective Fletcher's incapacity was "the direct result of the psychiatric symptoms of Post-Traumatic Stress Disorder brought on by the incident of March 20, 2015." (*Id*.)

(f) Dr. Weiner's certificate was affirmative as to the detective's disability and its likely permanence, and as to whether the incapacity was "such as might be the natural and proximate result of the personal injury sustained or hazard undergone on account of which retirement was claimed." (Exh. 6: Certificate of Dr. Robert Weiner.)

Dr. Rater

24. Dr. Rater examined Detective Fletcher on July 21, 2016. He issued a negative opinion as to disability, and supporting report, on August 22, 2016. (*See* Exh. 5.)

(a) Detective Fletcher related three specific incidents to Dr. Rater (on October 18, 2008, May 18, 2012, and March 20, 2015) involving missing and/or injured, ill or deceased children that he claimed had caused his PTSD and depression. The detective stated that although he had "buried his feelings" and returned to work after the first of these incidents, and had returned to work after the March 20, 2015 incident, by June 2015 he was "too upset to handle the job." Detective Fletcher stated that after the March 20, 2015 incident, he could not concentrate, "became a jerk at home" and "short with his children," and "almost killed the [family] dog," stopped going to work early and had difficulty getting himself to the police station, and also had an incident while on the job in which he "approached a call . . . recklessly." He told Dr. Rater that his panic attacks had "gotten better" but that he still got "all balled up" if he saw a police cruiser. The detective also told Dr. Rater that he was battling anxiety and depression, was very tense and irritable with his wife and children, had a memory that was "shot," had "nightmares that involve screams that he hears," and that if he let his thoughts "get away," it was "like looking down a rabbit hole and seeing dead bodies." (Exh. 5: Dr. Rater's report at 1-3.)

(b) Dr. Rater noted that Detective Fletcher had an unremarkable medical history that included high cholesterol, no ongoing processes or diseases, and surgery for a deviated septum and a soft palate, and uvula and tonsil removal. He had no history of psychiatric hospitalizations, no history of involvement in fires or motor vehicle accidents, and no history of concussion, although Dr. Rater noted a 2006 head injury without concussion. Other than drinking socially, and drinking more than he usually did after the incidents in question, the detective had no history of alcohol, drug or prescription medication abuse, or of treatment or counseling related to such behavior, and no history of

attempted suicide. (*Id*. at 4-5.) He also noted that the detective's regular counseling with Dr. Ridge had decreased from twice to once weekly, and that Dr. Tufo, who he saw on a quarterly basis, had prescribed medications including an antidepressant. (*Id*. at 5.)

(c) Dr. Rater found Detective Fletcher to be alert, oriented, in no apparent distress, and with a memory, concentration, attention and focus within normal limits. He was not agitated or slowed in his thoughts or movement; his speech was normal in rate, rhythm, volume and tone; he exhibited a thought process that was logical and goal-oriented, was responsive to questions, and described his day-to-day emotional life as "ridiculous" and that he "tears up if he hears sirens." (*Id*. at 5.)

(d) Dr. Rater's report noted that during Dr. Polizoti's fitness for duty examination on September 6, 2015, the detective had related that the March 20, 2015 infant death had "triggered feelings related to other children he dealt with who had died," and that he experienced emotional turmoil and psychological problems even after five months of psychological treatment. (*Id*. at 5-7.)

(e) Dr. Rater's report also discussed Dr. Ridge's treatment notes from January 5, 2016 through May 17, 2016, including one stating that Detective Fletcher "described wanting to move and be in very different work," and other records including one from a March 2016 examination (by Dr. Ridge, apparently) reporting the detective's statements that his mood was "okay" and that he "was coping," although he still struggled with anxiety, and that he had purchased a charter boat and was planning to move to St. John in the U.S. Virgin Islands in July of that year. (*Id*. at 7.)

(f) Dr. Rater concluded that Detective Fletcher did not have a psychiatric condition that restricted him from working as a police officer. He based his conclusion upon his

examination of the detective, Dr. Tufo's records, and his criticism of Dr. Polizoti's findings and conclusions.

(i) Although Dr. Polizoti stated that he performed psychological testing that showed "a lot of emotional turmoil," he did not "comment on any validity scores that he may or may not have used in such testing, which is crucial for psychological testing." (*Id*. at 8.)

(ii) Dr. Tufo had noted that the detective was calm and was in a good mood. His panic attacks were very infrequent. In addition, the frequency of the detective's treatment with Dr. Tufo every three months was not consistent with the intensity of treatment that would be expected in the case of a condition so severe that the patient could not return to work. (*Id*.)

(iii) Detective Fletcher's "day-to-day functioning indicated intact cognitive ability. Intact composure is noted by his mental status exam." (*Id*.)

(iv) Detective Fletcher had not had any programming, such as "On-Site Academy" or the "LEADER program," that was more intense in treating PTSD. It was Dr. Rater's opinion that the detective's EMDR (eye movement desensitization and reprocessing) treatments with Dr. Ridge involved "an unproven and experimental treatment for posttraumatic stress disorder" that was "not best practice, and is not the standard of care." (*Id*.)

(g) Dr. Rater opined that the incidents Detective Fletcher described as precipitating his disability "[did] not meet the definition of a trauma that would cause" PTSD. (*Id*. at 7.) For PTSD to occur, Dr. Rater wrote, "people need to experience direct threats to their own lives or integrity, or observe the death or loss of life of another individual."(*Id*.) Although

Detective Fletcher "clearly worked in a stressful environment and dealt with stressful situations with the loss of life of these young individuals and the family pain and suffering that he witnessed," these factors fell short of PTSD as the condition was described by the *Diagnostic and Statistical Manual of Mental Disorders,* 5th ed. (American Psychiatric Association, 2013)("DSM-5"), which Dr. Rater identified as the standard diagnostic textbook for mental health clinicians.[2]

(h) In Dr. Rater's opinion, the proper diagnosis of Detective Fletcher's condition was "adjustment disorder," because the reaction he described was "greater than would be expected, given the reported stress." (*Id*.) He thought that "[t]here appear to be other factors at work, primarily [Detective Fletcher's] wish for an alternative career. He plans to move to St. Johns (sic) in the Virgin Islands and run a charter business." (*Id*.)

(i). Dr. Rater opined in the negative as to whether Detective Fletcher was "mentally or physically incapable of performing the essential duties of [his] job as described in the current job description." Having found no disability, Dr. Rater went no further, per the instructions on the form certificate he filled out, He did not opine, thus, as to whether Detective Fletcher's disability was likely permanent or work-related.

Dr. Dalpe

25. Dr. Dalpe examined Detective Fletcher on August 18, 2016). He issued an opinion on October 7, 2016 that was affirmative as to disability and the possibility of work-related causation, but negative as to the disability's likely permanence. (Exh. 7.)

[2]/ The 2013 edition was the current update of the DSM-5 when Dr. Rater examined the detective in 2016. A revised edition was published in 2022.

(a) Dr. Dalpe noted that Detective Fletcher felt deeply affected by the 2008, 2012 and 2015 incidents, particularly because he had children of his own. The detective emphasized the effect of the March 20, 2015 incident, when he received a call regarding a nonresponsive two-year-old boy who died before the detective arrived at the hospital, and then drove the parents home, had to strip the boy's bed, and heard the boy's two siblings scream when he learned of the boy's death. (Exh. 7: Dr. Dalpe's Report, dated Oct. 7, 2016, at 2-3.)

(b) Dr. Dalpe reviewed the Commonwealth of Massachusetts Police Officer Task List, Dr. Tufo's treating physician's statement in support of the detective's ADR application, and Dr. Ridge's records. He noted the medications Dr. Tufo had prescribed for the detective—clonazepam, used to treat panic disorders, 0.5 mg 4 times daily, and fluoxetine (Prozac), used to treat major depressive disorder and anxiety, 10 mg. daily—and the psychotherapist's treatment using EMDR with partial success in controlling the detective's PTSD-related symptoms. (*Id*. at 2.)

(c) Detective Fletcher told Dr. Dalpe that his mood was "overall better" as of August 2016, by which time he had moved to the Virgin Islands, and that he was "generally happy," with good appetite, energy and motivation. However, he also related isolating himself from people and crying for no reason on a daily basis, having a "racing mind" and being unable to concentrate, having nightmares a few times each month, and experiencing panic attacks lasting 10-30 minutes three or four times weekly before he moved to the Virgin Islands, and much less after the move. He denied having flashback episodes. (*Id*. at 5.) The detective told Dr. Dalpe that he had moved to the Virgin Islands to "get away from everything." (*Id*. at 6.)

(d) Detective Fletcher exhibited normal gait, had no unusual body movement, tics or mannerisms, or psychomotor agitation or retardation, and gave no spontaneous verbal or behavioral expressions of pain. He was pleasant and cooperated with the interview, answered questions readily, spoke at a normal pace and at a normal volume, and was able to smile and laugh appropriately. Dr. Dalpe observed no evidence of any attention, concentration or memory difficulties while he interviewed the detective. He found the detective's thought process to be "goal-directed and organized," as well as "linear, coherent and logical," with no delusions. The detective denied suicidal or homicidal ideation, and was oriented to person, place, time and situation, "with good judgment and insight." (*Id*. at 7.)

(e) Dr. Dalpe's psychiatric diagnosis for Detective Fletcher, per the 2013 edition of the DSM–5, was PTSD in partial remission related to the three traumatic incidents, with many of the symptoms resolved, and current symptoms "mild to moderate." Dr. Dalpe noted that Detective Fletcher had responded "fairly well" to treatment with medication that had not been aggressive. Dr. Tufo had prescribed a "subtherapeutic dose" of an antidepressant (fluoxetine, 10 mg per day) that was discontinued within a month; for medication to be effective in treating depressive symptoms and anxiety, however, an "adequate dose" that Dr. Dalpe identified as 80 mg per day needed to be prescribed and taken for at least four weeks. He added that there were other antidepressants in the same class that would be effective at managing symptoms of anxiety and depression, and that "[a] trial of prazosin" (an antihypertensive medication also used to treat PTSD-related nightmares) "should have been initiated to address the nightmares" Detective Fletcher was having. In sum, Dr, Dalpe wrote, the detective had "responded fairly well to treatment,"

and "[t]he prognosis was very good for complete resolution of symptoms if his pharmacological treatment is maximized," and that "[t]here is every expectation that he will have a good response and good return to his previous functioning as a detective."(*Id*.)

(f) Although Detective Fletcher developed a disabling PTSD "as a result of his employment as a detective for the Norfolk Police Department," the disability was not likely permanent, in Dr. Dalpe's opinion; the detective was "temporarily unable to perform the essential duties of his job, but he "ha[d] not reached maximal medical improvement, because he has not received aggressive treatment for his condition." (*Id*.)

Dr. Polizoti's Response to Medical Panel Opinions of Drs. Rater and Dalpe

26. Dr. Polizoti prepared a report, dated October 24, 2016, in which he explained his disagreement with Dr. Rater's conclusion that the detective was not disabled, and with Dr. Dalpe's opinion that the disability was not likely permanent. (*See* Exh. 8.) During his hearing testimony, Dr. Polizoti reiterated his disagreement with both medical panel members, and his earlier opinion that the detective was not fit to return to duty as a police officer on account of likely-permanent PTSD. (Polizoti direct testimony, Tr. I at 37-116 *passim*; Polizoti cross-examination, Tr. I at 116-128 *passim*.)

(a) Dr. Polizoti opined that Dr. Rater did not evaluate and interpret the results of the MMPI-2 test he administered to Detective Fletcher. He thought that Dr. Rater did not properly evaluate the "critical items" part of the test printout, and did not follow up with Detective Fletcher on the irregularities of the results before forming his final opinion. (Polizoti direct testimony, Tr. I at 68-73)

(b) Dr. Polizoti concluded that Dr. Rater had misapplied the DSM-5 diagnostic criteria for PTSD and disagreed with Dr. Rater's opinion that Dr. Ridge's care did not

meet treatment standards. He also stated that Dr. Dalpe "seem[ed] to not have known about some relatively new research regarding the permanency issue with PTSD." It was Dr. Polizoti's view that PTSD was permanently disabling and that, in Detective Fletcher's case, police work could cause PTSD symptoms to recur. He thought the probability of this occurring was high if the detective returned to performing his police duties, and that this posed a potential risk to the public. Dr. Polizoti stated that more than one-third of individuals diagnosed with PTSD "never get better," and that "[n]ew stress may cause PTSD symptoms to recur." (Exh. 8: Polizoti report at 3; Polizoti direct testimony, Tr. I at 60; Polizoti cross-examination, Tr. I at 121-22.)

(c) Dr. Polizoti disagreed with Dr. Rater's statement, in his medical panel report, that Dr. Ridge's use of EMDR therapy to treat the detective's trauma was substandard care because EMDR was "unproven and experimental treatment for [PTSD]," was not best practice, and was not the standard of care for that condition. Dr. Polizoti explained EMDR's function was to provide treatment to alleviate trauma, not to provide a cure, as PTSD was a permanent condition. Dr. Polizoti described EMDR as a type of intense meditation that results in the affected individual/patient tuning out traumatic memories and/or experiences. It did not eradicate traumatic memories; instead, it helped reduce or, in some cases eliminate, the triggering emotional response to these traumatic memories. (Polizoti testimony in response to questions by the Administrative Magistrate, Tr. I at 131-143.)

(d) Dr. Polizoti also opined that while medication might minimize PTSD symptoms that impair cognitive and emotional function, it would not likely eliminate Detective Fletcher's PTSD or the possibility of flashbacks if he encountered

circumstances similar to those present during the incidents in question, including responding to calls that might place him at or near where those incidents occurred. (Polizoti direct testimony, Tr. I at 104-14.)

Evaluation by Dr. Mufson

27. On February 6, 2017, psychiatrist Dr. Michael Mufson conducted an independent psychiatric evaluation of Detective Fletcher at the Retirement System's request. He interviewed the detective, administered an MMPI-2 test that included several hundred questions requiring mostly yes-or-no answers, and reviewed records supplied by the Town of Norfolk's Human Resources Director, including Detective Fletcher's ADR application and the related Statement of Treating Physician Dr. Tufo, and Employer's Statement; Dr. Polizoti's report of his 2016 fitness-for-duty examination of Detective Fletcher; and the reports of medical panel members Dr. Rater and Dr. Dalpe. Dr. Mufson also reviewed a document he described as "Blue Line Yacht Charters file with pictures of Mr. Fletcher and description of business." Dr. Mufson's list of documents he reviewed did not include the affirmative opinion or report of medical panel member Dr. Weiner. (Exh. 15: Report of Dr. Michael Mufson, dated Feb. 6, 2017, at 8.)

28. Dr. Mufson opined that Detective Fletcher was not disabled and, instead, was exaggerating or fabricating physical or psychological symptoms for the purpose of obtaining personal gain and/or relief from duty or work. (Exh. 15: Mufson report at 8, 10.)) He also opined that "Mr. Fletcher has no evidence of PTSD and no evidence of chronic PTSD that is causing work disability." Rather, the evaluation he performed revealed a man with "severe symptom exaggeration for secondary gain" in the context of a personality disorder. (*Id*.) Dr. Mufson based his opinions upon the following:

(a) Detective Fletcher did not "describe any anxiety when he was out in the water" with the yacht his wife's business used "or helping with the business." (Exh. 15: Mufson report at 4.)

(b) While he was answering the MMPI-2 questions, Detective Fletcher did not display any evidence of inattention or problems concentrating. (*Id*. at 6.)

(c) The detective was not currently receiving psychiatric treatment, and "was not on any psychotropic medication regimen, such as prazosin that would be prescribed for nightmares or serotonin reuptake inhibitors that would be prescribed for anxiety and mood lability." In addition, his psychiatric treatment had included no return-to-work program. (*Id*. at 5.)

(d) Detective Fletcher's current symptoms "were no longer characteristic of PTSD." He reported "no intrusive symptoms, such as flashbacks." His nightmares revolved around both work and non-work-related themes, and there was no consistent theme related to the 2012 incident. The detective had "no emotional numbing and enjoys being with his family and children, going out on the boat and spending time on the beach." He reported an "occasional spontaneous panic attack due to immediate stress in life, but not to the incidents at work." He "did not report any dissociative episodes, and his anxiety is not related to the work event." (*Id*.)

(e) EMDR, the treatment applied by Dr. Ridge and that Detective Fletcher thought had "improved his symptoms," was "controversial" and may have suggested to the detective that the incidents in question "would contribute to his PTSD when, in fact, he had been working without any emotional problems following the 2008 and 2013 incidents." (*Id*. at 6.)

(f) Detective Fletcher's responses to the 567 MMPI-2 true/false questions "revealed a highly elevated F and Fb scale consistent with symptom exaggeration" and no evidence of PTSD (*id*. at 4, 6.) The detective's symptom exaggeration "was so severe that he reported symptoms of psychosis when, in fact, there is no evidence on clinical exam or in any of the prior psychiatric evaluations of psychotic symptoms." (*Id*. at 6-7.)

(g) The detective's response to the MMPI-2 test questions revealed other characteristics consistent with symptom exaggeration: chronic psychological maladjustment evidenced by tenseness; developing somatic complaints that he rigidly maintained even when the complaints were challenged; complaints of confusion and memory problems when there were no neurological abnormalities or objective symptoms of memory impairment; "somewhat immature judgment;" a "meager capacity to experience pleasure in life;" a tendency toward pessimism; viewing his work in a highly negative manner and developing a worst-case scenario to explain events affecting him; worrying to excess and interpreting even neutral events as problematic; and a "tendency to catastrophize." In addition, the detective reported feeling alienated from people and a high level of marital distress. (*Id*. at 7.)

(h) Persons with this test profile "are expressing severe symptom exaggeration in the context of a personality disorder with schizoid features," rather than PTSD. "Such individuals do not respond well to insight-oriented therapy but do better with directive therapy." (*Id*.)

29. Dr. Mufson also found support for his conclusions about Detective Fletcher and his condition as non-permanent in Dr. Rater's report and Dr. Dalpe's report. He disagreed with Dr. Polizoti's negative opinion of the detective's fitness for duty as a police officer.

(a) Although Dr. Polizoti opined that the detective's disability was permanent for the foreseeable future, he stated no clinical basis for this opinion, and "quoted literature about the fact that PTSD can become a permanent disability." (Exh. 15: Mufson report at 5.) Dr. Mufson criticized Dr. Polizoti for referring to objective psychological testing he performed using MMPI-2 that indicated a PTSD diagnosis but not providing the raw data from his MMPI testing for review. (*Id.* at 6, 10.)

(b) Dr. Mufson agreed with Dr. Rater that Detective Fletcher did not have a psychiatric condition that restricted him from working as a police officer, and that "the work incidents of 2008 and 2012 did not meet the degree of trauma that would cause PTSD." (*Id*. at 6.) He noted Dr. Rater's opinion that "other factors were involved in Mr. Fletcher's subjective complaints, such as his desire for an alternative career and his planning to move to the Virgin Islands to run a charter business with his wife." (*Id*.)

(c) Dr. Mufson also noted, with approval, Dr. Dalpe's opinion that Detective Fletcher had a temporary rather than a permanent disability. (*Id*.)

30. Dr. Mufson found "no evidence of a psychiatric disorder causing work disability." (Exh. 15: Mufson report at 8.)

(a) Dr. Mufson viewed the "acute stress reaction" Detective Fletcher had to the 2015 incident as having been treated successfully by Dr. Ridge," so that there was "no longer any evidence of an acute stress reaction related to the work incident." (*Id*.)

(b) Dr. Mufson opined that the detective "can return to work if he were so motivated." (*Id*.) He thought that the detective's report of symptoms "was influenced by psychological factors other than the incidents at work," particularly his "wish for an

alternative career and a move to the Virgin Islands to be involved in a charter business." (*Id*. at 9.)

(c) Dr. Mufson found no current clinical evidence of PTSD or that the detective's "experience at work had caused an ongoing stress-related disorder." He thought that the correct diagnosis was "severe symptom exaggeration in the context of a personality disorder," and that the symptom exaggeration was for the purpose of ""secondary gain . . . such as compensation or the ability to start a new endeavor in the Virgin Islands" rather than as having been brought on by work-related PTSD. (*Id*. at 10.)

(d) Dr, Mufson also opined that Detective Fletcher had "no need for treatment related to any work-related psychiatric problem," and needed, instead, "dialectical behavioral therapy and/or structure directive therapy that would include a return-to-work program and address his symptom exaggeration." (*Id*. at 10-11.)

31. On October 26, 2016, the Norfolk County Retirement System denied Detective Fletcher's ADR application. (Exh. 9.)

32. Detective Fletcher timely appealed the denial of his ADR application to the Contributory Retirement Appeal Board, pursuant to M.G.L. c. 32, § 16(4), on October 26, 2016. (Exh. 10.)

Discussion

1. ADR Eligibility

A public contributory retirement system member may receive accidental disability retirement (ADR) benefits when he is "unable to perform the essential duties of [her] job and that such inability is likely to be permanent . . . by reason of a personal injury sustained or a hazard

undergone as a result of, and while in the performance of, [her] duties at some definite place and at some definite time . . . ." M.G.L. c. 32, § 7(1).[3] An ADR application cannot be approved unless a regional medical panel has examined the applicant and issued a unanimous or majority affirmative opinion that she is unable to perform the essential duties of the job; that this incapacity is likely to be permanent; and that the disability is "such as might be the natural and proximate result of the accident or hazard upon which the retirement application is based." M.G.L. c. 32, §§ 6(3) and 7(1); *see also Fairbairn v. Contributory Retirement App. Bd.*, 54 Mass. App. Ct. 353, 354, 765 N.E.2d 278, 279 (2002); *Malden Retirement Bd. v. Contributory Retirement App. Bd*., 1 Mass. App. Ct. 420, 423, 298 N.E.2d 902, 904 (1973). The medical panel's unanimous or majority certification of affirmative answers to all three questions "is a 'condition precedent' to accidental disability retirement." *Fairbairn*, 54 Mass. App. Ct. at 354, 765 N.E.2d at 279. A medical panel's certificate responses can be overcome only upon proof that the panel lacked pertinent facts or employed an erroneous standard, or if its certificate was "plainly wrong." *Kelley v. Contributory Retirement App. Bd.*, 341 Mass. 611, 171 N.E.2d 277 (1961); *see also Retirement Board of Revere v. Contributory Retirement App. Bd.*, 36 Mass. App. Ct. 99, 105-06, 629 N.E.2d 332, 336-37 (1994); *Malden Retirement Board v. Contributory Retirement App. Bd.*, 1 Mass. App. Ct. 420, 424, 298 N.E.2d 902, 905 (1973). An example of an absence of pertinent facts supporting a medical panel opinion, and/or the panel's application of an erroneous standard, is a panel opinion as to incapacity that does not relate clearly (or at all) to the

[3]/ A work-related emotional or psychiatric injury, such as the PTSD on which Detective Fletcher's ADR application is based, may be a personal injury for purposes of ADR qualification under M.G.L. c. 32, § 7(1) if it meets the definition of "personal injury" recited by the Massachusetts Workers' Compensation Act, M.G.L. c. 152, § 17A. *Fender v. Contributory Retirement App. Bd.*, 72 Mass. App. Ct. 755, 761, 894 N.E.2d 295, 299 (2008); *Plymouth County Retirement Bd. v. Contributory Retirement App. Bd.*, 60 Mass. App. Ct. 114, 118-19, 800 N.E.2d 315, 319 (2003).

ADR applicant's position and job duties. *See Kelley v. Contributory Retirement App. Bd.*, 341 Mass. 611, 617, 171 N.E.2d 277, 281 (1961)(medical panel's opinion as to incapacity relates to "incapacity for the position or work of a similar nature for which the employee is qualified," rather than incapacity "to do other available work"); *Kelly v. State Bd. of Retirement*, Docket No. CR-19-0151, Decision (Mass. Div. of Admin. Law App., Apr. 15, 2022)(denial of correctional officer's ADR application based upon a disabling biceps tendon rupture and surgical repair that, among other things, left him unable to carry and use a weapon, was reversed and remanded for a new medical panel evaluation, because the medical panel opined that the officer was not incapable of performing his job duties without considering whether his condition interfered with his ability to perform the potentially strenuous duties of a correction officer); *see also* PERAC Medical Panel Opinion instruction (appearing on the opinion forms used here by the medical panel members) that the retirement system member's claimed disability and current job description, including his essential duties, was "critical" to the panel member's "assessment of the member's ability to perform the essential duties of his/her job" (Finding 21(a) above).

2. Detective Fletcher's Argument

Detective Fletcher contended, both during the hearing and in his Post-Hearing Brief, that Dr. Rater applied an erroneous standard in opining in the negative as to disability based upon PTSD, particularly in stating that encountering the bodies of dead children was not sufficient to cause PTSD. The detective argued that this opinion contradicted the DSM-5 diagnostic criteria for PTSD, which included:

> A. Exposure to actual or threatened death, serious injury , or sexual violence in one or more of the following ways . . . 4. Experiencing repeated or extreme exposure to aversive details of the traumatic event(s)(*e.g*., first responders, collecting human remains, police officers repeatedly exposed to details of child abuse).

(*See* Exh. 8: Polizoti report, dated Oct. 24, 2016, at 4, and attached copy of DMS-5 diagnostic criteria for PTSD.)

Detective Fletcher also argued that Dr. Dalpe, who opined in the affirmative as to PTSD-based disability, employed an erroneous standard in opining that his disability was not likely permanent. Dr. Dalpe criticized the detective's treatment with low a dosage of fluoxetine rather than with "aggressive psychopharmacological treatment" at a maximum dosage "in order to see the full effect," along with another medication to address the detective's nightmares. The detective argued this was an erroneous standard for evaluating whether his disability was likely permanent because the medication in question only reduced the symptoms of PTSD but the symptoms could be re-triggered at any time, *citing* the Polizoti Report (Exh. 8) at 3. The detective argued that this was indeed the case; his PTSD symptoms were indeed re-triggered in 2017, two years after he stopped working, including "depression, anxiety, nightmares, a racing heart, difficulty sleeping, panic attacks and severe avoidance." He could not drive through Norfolk when he returned for a visit without having a severe panic attack; in February 2017, he vomited when he drove past the swamp where he found the young teenager's body in 2008; and in October 2017, he suffered a panic attack and flashbacks when he went to Norwood Hospital (where he had been with the dead boy and his parents in 2015) and had to run out of the hospital. (*See* Finding 14.)

The Retirement System perceived, in contrast, no error on Dr. Dalpe's or Dr. Rater's part that would entitle Detective Fletcher to evaluation by a new medical panel. It argued, as it had throughout this appeal, that the detective exaggerated his symptoms more because he desired to live and work in the Virgin Islands than because of any psychiatric disorder causing a work-

related disability. (*See* Norfolk County Retirement System's Pre-Hearing Memorandum dated Jun. 16, 2017) at 7-8, and at Additional Proposed Findings of Fact 1-4.)

3. Analysis

Because the medical panel majority (Drs. Weiner and Dalpe) opined in the affirmative as to Detective Fletcher's alleged emotional or psychiatric disability based upon PTSD, a determination that Dr. Rater employed an erroneous standard in reaching his minority opinion that the detective was not disabled would be of no practical consequence in deciding whether the detective is entitled to a new medical panel. The panel opinion as to disability would remain the panel majority affirmative opinion on that issue. For this reason, I do not focus upon Dr. Rater's minority opinion. Of greater consequence was Dr. Dalpe's opinion that the detective's PTSD was not likely permanent because the detective had not received "aggressive psychopharmacological treatment." This opinion left the detective without a majority affirmative opinion as to his disability's likely permanence.

Dr. Dalpe's negative opinion as to the likely permanence of the detective's disabling PTSD indeed reflects an invalidating error, but one that resulted primarily from not reviewing the pertinent facts as to Detective Fletcher's duties as a police officer. Doing so was critical in assessing whether the detective would be able to resume performing these duties even with more aggressive treatment.

Dr. Dalpe expected that with more aggressive psychopharmalogical treatment, Detective Fletcher's PTSD symptoms would be alleviated, and he would have a "good return to his previous functioning as a detective." (*See* Finding 25(e).) However, he did not identify specifically which duties the detective would be able to perform, or whether a higher dosage of fluoxetine, and adding additional medications to control panic or other PTSD symptoms, might still leave him

subject to PTSD symptom triggering that would make returning to some police officer duties problematic. Those duties, which Dr. Dalpe did not address specifically, included displaying or discharging a firearm to protect himself and/or the public; physically restraining or subduing a violent or resisting individual or arrested person to protect himself, the person being restrained, and the public, or to effect custody of an arrested person; and operating a police department vehicle at a high rate of speed, maintaining public safety and in compliance with Department pursuit policy, to pursue and apprehend one or more violators. (*See* Finding 2.) Detective Fletcher's police officer duties also meant handling extremely stressful events and situations that could be potential triggers of PTSD symptoms, including responding to a report of child abuse and protecting the child from physical or mental harm; responding to a crime in progress; separating individuals in a fight or disturbance to restore order and minimize injury to persons or property; and contacting the immediate family of an individual in person to provide information to the family concerning another family member's injury or death. (*Id*.) Dr. Dalpe did not disagree that several of these stressors had triggered the detective's PTSD symptoms to the point of disability in 2015.

Questions as to whether Detective Fletcher can resume performing these specific duties safely and successfully are not answered by a general expectation of better PTSD symptom control and being able to return to some type of work. Returning to duty could expose the detective to traumatic incidents similar to those that precipitated his PTSD symptoms and related disability in the first instance. Returning to duty could also expose the detective to incidents that posed a risk of injury or death, and that would require him to think clearly and assess proper reaction and related risk soundly in these circumstances, including whether it was necessary to use a firearm.

With the detective's ability to perform any of these specific police duties left unassessed the Retirement System, and any forum adjudicating an appeal of its decision on Detective Fletcher's ADR application, does not know if his PTSD-related disability has resolved or can be. It is also uncertain whether the detective, the Norfolk Police Department, or public safety would be well-served by directing him to resume performing his police officer duties if this could result in exposure to PTSD symptom triggers that could prove disabling, and dangerous in stressful circumstances, even if those symptoms appeared to have been ameliorated by treatment. In view of these uncertainties, I am unable to conclude that Dr. Dalpe reviewed all of the pertinent facts in opining negatively as to the likely permanence of Detective Fletcher's PTSD-related disability in the context of his specific police officer duties, as M.G.L. c. 32, §§ 6(3)(a) and (7)(1) require. *See Retirement Bd.* of *Revere*, 36 Mass. App. Ct. at 106, 629 N.E.2d at 337 (a medical panel failed to review the pertinent facts where, in issuing an affirmative opinion as to possible work-related causation of a disabling knee injury, it ignored two falls that occurred after the ADR applicant ceased working, as did the administrative magistrate in deciding the applicant's appeal from the denial of his ADR application).[4]

[4]/ To the extent that the Retirement System relied upon Dr. Mufson's evaluation as well as the absence of a majority affirmative medical panel opinion as to the permanency of Detective Fletcher's incapacity, I note that his report, too, did not assess pertinent facts; it did not specify police officer duties that Detective Fletcher could or should return to performing, even if one accepted Dr. Mufson's rejection of a PTSD diagnosis and accepted, instead, his alternative diagnosis of "severe symptom exaggeration in the context of a personality disorder." (*See* Finding 30(c).) That diagnosis, too, raises safety-related issues regarding the detective's ability to assess potentially stressful and dangerous circumstances clearly and respond appropriately, including by using his firearm.

Conclusion

I am remanding this matter so that Detective Fletcher may be examined by a new medical panel.

The ultimate issue presented by Detective Fletcher's ADR application is whether he is permanently disabled by PTSD from working as a Norfolk Police Department detective. The question for the original medical panel was not whether he was receiving appropriate treatment when he realized he could no longer perform his Norfolk police duties, and his PTSD was diagnosed. Instead, the panel was asked to consider whether the disability was permanent, or whether treatment would restore his ability to perform his police duties, particularly those that were particularly stressful and dangerous and involved exercising sound judgment, including whether to use a firearm. The medical panel appeared to focus more on the detective's symptoms when it examined him rather than on whether his resumption of police duties could cause those symptoms to become symptomatic to the point of disability, even if treatment could ameliorate them to some degree.

The absence of a medical panel majority affirmative opinion regarding the likely permanence of Detective Fletcher's disabling PTSD was, therefore, the result of medical panel failure to review the pertinent facts as to Detective Fletcher's specific duties—particularly those requiring a response to potentially dangerous or traumatic situations, and carrying and using a firearm, and whether he could resume performing these duties safely and effectively even if more aggressive medication and other forms of treatment alleviated his symptoms but did not resolve them. This error invalidated the basis for the Retirement System's denial of the detective's ADR application—that he had not obtained at least a majority affirmative opinion as to all three issues posed to the medical panel.

Although the Retirement System based its ADR denial upon the absence of a majority affirmative medical panel opinion as to disability permanence, it apparently believed the detective to have exaggerated, or even fabricated, his symptoms and the extent of his disability in order to enable his move to the U.S. Virgin Islands and transition to a different line of work. The Retirement System may consider this when Detective Fletcher's ADR application comes before it again following review by a new medical panel. However, the medical panel's focus would be limited to whether, from a medical viewpoint, his disabling PTSD symptoms were supported and, however ameliorated they may appear now, whether they could become symptomatic if the detective resumed his police duties. In that case, a medical panel could opine reasonably that the detective's PTSD-related disability is likely permanent. If the panel reaches this conclusion, and issues affirmative majority opinions as to disability and a work-related injury or exposure as the disability's predominant cause, the detective would appear, from a medical perspective, entitled to ADR absent good cause for the Retirement System to deny it.[5]

Disposition

The denial of Detective Fletcher's ADR application is reversed. The matter is remanded for a new medical panel evaluation.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/ Mark L. Silverstein

Mark L. Silverstein
Administrative Magistrate

Dated: April 11, 2025

[5]/ If the Retirement System approved the ADR application, the detective's income would be subject to applicable excess earnings limitations under M.G.L. c. 32.