COMMONWEALTH OF MASSACHUSETTS

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

**Marion Fletcher (Harold J. Collins)**,

Petitioner,

v. Docket No. CR-14-246

**State Board of Retirement**,

Respondent.

**Appearance for Petitioner:**

 Peter Paulousky, Esq.

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& Cannon, P.C.

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**Appearance for Respondent:**

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 State Board of Retirement

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**Administrative Magistrate:**

 **James P. Rooney**

**Summary of Decision**

The State Board of Retirement’s denial of Marion Fletcher’s application for a killed in the line of duty benefit following the death of her father, Harold Collins, from complications due to polio is reversed. His death was directly and proximately caused, if belatedly, by an incident in the performance of his duties as a police officer. *See* M.G.L. c. 32, § 100A.

**DECISION**

Petitioner Marion Fletcher, on behalf of her mother, timely appeals, under M.G.L. c. 32, § 16(4), the decision of the State Board of Retirement denying her application for a “killed in the line of duty” benefit for her father, police officer Harold Collins.

I held a hearing on February 20, 2018, which I recorded digitally. I admitted five exhibits into evidence. I marked the Petitioner’s pre-hearing memorandum “A” for identification. I marked the Respondent’s pre-hearing memorandum “B” for identification. Ms. Fletcher testified on behalf of Harold Collins. The Board called no witnesses. After the hearing, I marked the Board’s denial letter as Exhibit 6, Ms. Fletcher’s letter of appeal as Exhibit 7, Officer Collins’s application for accidental disability retirement as Exhibit 8, Ms. Fletcher’s application for accidental death benefits as Exhibit 9, Ms. Fletcher’s application for a Line of Duty Death Benefit as Exhibit 10, and a copy of Acts 1994, c. 69, § 1 as Exhibit 11. Both parties filed post-hearing briefs. The administrative record closed on March 23, 2018.

**Findings of Fact**

Based on the documents admitted into evidence and the testimony presented at the hearing, I make the following findings of fact:

1. Harold Collins worked as a police officer for the Metropolitan District Commission Police Department (MDC). He entered service on December 30, 1949. (Ex. 8)
2. On November 7, 1955, while on duty, Officer Collins responded to a call reporting a girl drowning. He reported to the scene and found a 7 year-old girl non-responsive in the Lee Pool/Charles River area. Officer Collins revived her with mouth-to-mouth resuscitation. The girl had all three strains of paralytic poliomyelitis: spinal polio, bulbar polio, and bulbospinal polio. (Exs. 2, 9; Fletcher Test.; Pet.’s post-hearing memorandum.)
3. A week after the incident, Officer Collins was also diagnosed with all three strains of polio.[[1]](#footnote-1) (Exs. 2, 9; Fletcher Test.)
4. Polio, particularly the bulbar strain, is a paralytic disease that affects the larynx and the ability to swallow. (Exs. 2, 8, 10; Fletcher Test.; Pet.’s post-hearing memorandum.)
5. On February 15, 1960, the Massachusetts House of Representatives passed a resolve in favor of Officer Collins in order for him to receive remuneration for sick leave taken in 1956. It declared, in relevant part:

[t]hat, notwithstanding the provisions of any general or special law to the contrary, and for the purpose of discharging a moral obligation of the commonwealth, there shall be allowed to Harold Collins of Somerville sick leave with pay for the period from January fifteenth, nineteen hundred and fifty-six, through October seventh nineteen hundred and fifty-six, who, in the performance of his duties on November seventh, nineteen hundred and fifty-five, as a member of the metropolitan district commission police, contracted poliomyelitis.

(Ex. 3.)

1. After his initial diagnosis, Officer Collins worked at MDC intermittently. He had choking spells at dinner caused by paralysis of the throat. He would take sick time often when he had difficulty speaking. Officer Collins left work on February 13, 1979 due to worsening complications from polio. (Ex. 8; Fletcher Test.)
2. Subsequently, Officer Collins applied for accidental disability retirement for his 1955 injury. On February 14, 1979, he was examined by a medical panel. The medical panel determined that Officer Collins was eligible for accidental disability retirement:

It was the unanimous opinion of the Board in view of the resolution passed by the House of Representatives several years ago, February 8, 1960, that Mr. Collins in the performance of his duties on November 7th 1955, as a member of the Metropolitan District Commission Police [contracted] Polio and his present disability which prevents him from fulfilling the function of a Sergeant in the M.D.C. is a result of this Infection.

(Exs. 5, 8.)

1. The State Board of Retirement approved Officer Collins’s application for accidental disability retirement on March 29, 1979. (Exs. 4, 5.)
2. A July 1994 amendment to the public employee retirement statute, enacted by Acts 1994, c. 69, § 1, provided for a “killed in the line of duty” death benefit, which was payable to the family of “certain public safety employees killed in the line of duty [. . .] who while in the performance of his duties and as a result of incident, accident or violence, is killed or *sustains injuries* which are the direct and proximate cause of his death.” (Ex. 11) (emphasis added) (codified as M.G.L. c. 32, § 100A.)
3. In November 2004, Officer Collins was stricken with post-polio syndrome, which significantly worsened his condition. From 2005 to 2012, he was admitted to a hospital’s intensive care unit several times for aspiration pneumonia. Eventually, he was put on a feeding tube. For the last ten years of his life, his daughter, Ms. Fletcher cared for her father, performing deep suctioning several times a day. (Exs. 2, 9; Fletcher Test.)
4. On May 31, 2012, Officer Collins died from cardiac arrest due to aspiration at the age of 92. This was a result of his post-polio syndrome. (Ex. 1.)
5. On June 25, 2012, Officer Collins’s wife, Mary Collins, applied for accidental death benefits, under M.G.L. c. 32, § 9. The Board granted these benefits. (Ex. 9; Resp.’s post-hearing memorandum.)
6. In a letter dated August 30, 2012, Sucharita Kher, M.D., a physician caring for Officer Collins at New England Sinai Hospital when he died, stated, “On 5/31/12, Mr. Collins had a cardiac arrest that was suspected to be a result of aspiration given the background of post-polio syndrome.” (Ex. 9.)
7. On March 20, 2014, Marion Fletcher, Officer Collins’s daughter, applied for Line of Duty Death Benefits on behalf of her mother, Officer Collins’s beneficiary, under M.G.L. c. 32, § 100A. (Ex. 10.)
8. On April 28, 2014, the Board advised Ms. Fletcher that it had denied her application for Line of Duty Benefits. (Ex. 6.)
9. On May 7, 2014, Ms. Fletcher timely appealed the Board’s decision. (Ex. 7.)
10. In a letter dated December 19, 2017, Paul Duncan, M.D., Officer Collins’s treating physician from December 2005 until his death in May 2012, wrote,

It is my opinion to a reasonable degree of medical certainty that the substantial contributory cause of Harold Collins’ death was poliomyelitis which was contracted on 11/7/1955 in the performance of his duty as a Metropolitan Police Officer. The polio led him to develop aspiration pneumonia which caused him difficulties throughout his life and eventually led to his death.

(Ex. 2.)

**Discussion**

The Board’s denial of Ms. Fletcher’s application for a Line of Duty Death Benefit is reversed. The record shows sufficiently that her father’s poliomyelitis, contracted on duty while reviving a victim, was the direct and proximate cause of his death. *See* M.G.L. c. 32, § 100A.

M.G.L. c. 32, §100A provides for a one-time award of $150,000[[2]](#footnote-2) payable to the family of a deceased public safety employee “who, while in the performance of his duties and as a result of incident, accident or violence, was killed or *sustained injuries* which were the *direct and proximate cause* of his death.” (Emphasis added.)

The statute is not limited to situations in which a public safety official dies immediately from something that occurred while he was on duty. If death occurs later on, eligible family members must prove that the public safety official was injured on duty, the injury was caused by an “incident, accident, or violence,” and the injury was the direct and proximate cause of his death. There is no question that Officer Collins was injured in the line of duty. Neither party disputes that Officer Collins was, in 1955, a public safety employee within the meaning of the statute when he contracted polio. The only evidence concerning the manner in which he came down with polio is that, while on duty, he gave mouth-to-mouth resuscitation to a young girl who had the same three strains of polio he ultimately acquired. While no medical records from the time were introduced, the 1960 resolve by the House of Representatives establishes conclusively that he contracted polio while in the line of duty. There is no evidence in the record to the contrary.

The Board argues that Ms. Fletcher has failed to establish that his death was caused by “incident, accident, or violence” while on duty, as required by M.G.L. c. 32, § 100A. It notes that although the special legislation passed in 1960 declared that Officer Collins contracted polio while in the performance of his duties, it did not mention a particular incident.[[3]](#footnote-3) The question then is whether Officer Collins contracted polio as the result of an incident. The legislature did not supply a narrow definition of “incident” in Section 100A. Indeed, Section 100A does not define “incident” at all. I therefore look to its ordinary meaning, which is simply an “occurrence or event.” *The Random House Dictionary of the English Language* 719 (Random House 1966). There is no dispute that Officer Collins contracted polio while performing mouth-to-mouth resuscitation on a 7 year-old girl after responding to the scene of a possible drowning. Given the breadth of the definition of incident, I conclude Officer Collins’s response to a drowning girl and the action he took to save her meets the ordinary meaning of “incident.” This was certainly an occurrence or event that happened to him at work. I note further, that Officer Collins later received accidental disability retirement for his polio, which the Board determined was the natural and proximate result of an “accident or hazard undergone” at work, a much narrower standard than an “incident” while on duty. It can hardly be that Officer Collins could be found to have suffered an injury in the line of duty without that injury having been the result of an incident at work. Therefore, I find that Officer Collins contracted polio as a result of an incident in the line of duty.

Proximate cause is the central issue here. This case is unusual in that Officer Collins died at the age of 92, approximately 57 years after he was first diagnosed with polio and approximately 33 years after his retirement for accidental disability. Proximate cause is "that which in a continuous sequence, unbroken by any new cause, produces an event and without which the event would not have occurred." *Reed v. Teachers’ Ret. Bd*., CR-94-010, at \*14 (Div. of Admin. Law App., Dec. 31, 1997) (citing *Wallace v. Ludwig*, 292 Mass. 251, 198 N.E.2d 159, 161 (1935)); *see* *Araujo v. Bristol County Retirement Bd.*, CR-00-785 (Div. of Admin. Law App., May 10, 2002); *see also Lynn Gas and Electric Company v. Meriden Fire Insurance Co.*, 158 Mass. 570, 575 (1893) (“The active efficient cause that sets in motion a train of events which brings about a result without the intervention of any force started and working actively from a new and independent source is the direct and proximate cause [. . .].”) In the present case, Officer Collins contracted polio while performing his duties in 1955. He left work in 1979 due to complications from the strain of polio that affected his swallowing and developed post-polio syndrome in 2004, which led to frequent bouts of aspiration pneumonia, eventually leading to his death. Officer Collins’s particular strains of polio affected his swallowing and aspiration. Although the immediate cause of his death was cardiac arrest, the death certificate noted that the cardiac arrest was due to aspiration, with an underlying cause of post-polio syndrome. There is no evidence of a new or intervening cause of Officer Collins’s death.

The Board questions whether Officer Collins’s death was, indeed, caused by polio. It argues that because Dr. Duncan opined in December 2017 that Officer Collins’s polio was only the “substantial contributory cause” of his death, the Petitioner did not sufficiently show that it was the “direct and proximate cause” of his death. However, Officer Collins’s death certificate lists only his post-polio syndrome as the underlying cause of his death. No other medical evidence in the record shows a different or intervening cause of death.

The Board maintains that because Officer Collins’s death occurred almost sixty years after he first contracted the illness, even if he became infected while on duty, there is too attenuated a connection to fulfill the requirement of Section 100A. In *Ziemlack v. State Board of Retirement*, CR-00-905 (DALA, Feb. 22, 2002), a correction officer’s heart disease that eventually led to his death forty-eight hours later was triggered by a stressful incident at work. The administrative magistrate determined that the record indicated “no intervening incident or trauma” between the time the decedent left work after the incident and his collapse at home. Similarly, in the present case, although much more time had passed, there was no intervening incident between the time he contracted the polio and his death.[[4]](#footnote-4) The record shows sufficiently that Officer Collins’s death was caused by complications from the same illness he contracted during an incident on duty.

Although the Board contends that I should give little weight to Ms. Fletcher’s testimony, as she is not a medical expert, nor was she present when Officer Collins was first diagnosed with polio, I give it weight because she witnessed the progression of Officer Collins’s disease. The Petitioner also submitted letters from two doctors—Dr. Duncan and Dr. Kher—stating that Officer Collins’s death was likely caused by his polio. The Board did not submit contradicting medical evidence or witness testimony. *See Narducci v. Contributory Retirement Appeal Bd.*, 68 Mass. App. Ct. 127, 137, 860 N.E.2d 943, 951 (2007) (“[I]n an adjudicatory hearing, where uncontradicted expert opinion evidence is produced on a subject beyond the common knowledge of the fact finder, there must be a basis in the record for rejecting such evidence or for remaining unpersuaded.”) (citing *Robinson v. Contributory Retirement Appeal Bd.*, 20 Mass. App. Ct. 634, 639, 482 N.E.2d 514 (1985)). I therefore conclude that Officer Collins’s death was due to complications from polio.

One further point is worth noting here. Despite the intervention of decades between Officer Collins’ contraction of polio and his death from its sequellae, the elapsed time is consistent with the characteristics of this disease. As known better by generations exposed to this disease when no vaccination was available to confer immunity, the disease had permanent consequences, often paralysis, either immediately or over time, but when it occurred the paralysis was inevitably fatal. Officer Collins’ long term progression to this outcome was consistent with polio’s course. It is also consistent with the reported histories of post-polio syndrome, which typically occurs fifteen or more years after the initial polio episode.[[5]](#footnote-5)

**CONCLUSION**

The evidence shows that the November 1955 incident in the performance of Officer Collins’s duties – resuscitating a drowning girl after responding to a call -- was the direct and proximate cause of his death. This is a rare situation in which, although his death occurred almost sixty years after the incident and decades after Officer Collins received accidental disability retirement, there is little doubt that the polio he contracted on duty was the direct cause of his post-polio syndrome and eventual death.

The Board’s decision is reversed, and Officer Collins’s wife is awarded the M.G.L. c. 32, § 100A Line of Duty Death Benefit.

DIVISION OF ADMINISTRATIVE LAW APPEALS

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 James P. Rooney

 First Administrative Magistrate

Dated: June 1, 2018

1. Although not relevant to the decision, Officer Collins action in saving the life of the 7 year old girl played a role in the development of an effective polio vaccine. Few people are infected with all three strains of polio. Ms. Fletcher recalled, after the hearing, that the girl and another person also infected with all three strains helped scientists develop a full spectrum vaccine. [↑](#footnote-ref-1)
2. The legislature recently amended this provision to increase the benefit to $300,000. *See* Acts 2017, c. 5, § 9. [↑](#footnote-ref-2)
3. The fact that the special legislation did not use the word incident to describe the circumstances in which Officer Collins contracted polio is without legal consequence here. The 1960 resolve refers to his contracting polio on November 7, 1955 while in the performance of his duties as an MDC officer. (Finding 5.) This was sufficient for the legislature’s purpose, which was to provide a reason why the officer should be awarded sick leave for the time he did not work because of the polio he had contracted. It is unsurprising that the legislature did not decide whether Officer Collins came down with polio as the result of an incident because Section 100A, which uses the word incident, was not passed until 1994 – and the officer was very much alive at the time and thus there could have been no occasion then to consider whether he had been killed in the line of duty. [↑](#footnote-ref-3)
4. Section 100A, by not including a time limit, shows that the legislature recognized that someone killed in the line of duty might have not died right away. Even in the case of officers shot in the line of duty who died from their wounds, death sometimes occurs years later. For example, Westminster Patrolman Lawrence Michael Jupin was shot in 1999, slipped into a coma, and died in 2002. <https://www.odmp.org/officer/16469-patrolman-lawrence-michael-jupin>. Metropolitan Police Department Detective Joseph Elmer McCain died in 2001 from gunshot wounds he suffered 13 years earlier. https://www.odmp.org/officer/16578-detective-joseph-elmer-mccain. [↑](#footnote-ref-4)
5. *See* Queensland (Australia) Health, *The Late Effects of Polio: Information for General Practitioners* at 9 (Mar. 2001) (available at [https://web.archive.org/web/20080625212726/http:/www.health.qld.gov.au](https://web.archive.org/web/20080625212726/http%3A/www.health.qld.gov.au/)polio/gp/GP\_Manual.pdf.) [↑](#footnote-ref-5)