

COMMONWEALTH OF MASSACHUSETTS

**Division of Administrative Law Appeals  
14 Summer Street, 4th Floor  
Malden, MA 02148  
[www.mass.gov/dala](http://www.mass.gov/dala)**

**Kathleen Fontaine,**  
Petitioner

v.

Docket No. CR-21-0670

**Massachusetts Teachers' Retirement System,**  
Respondent

**Appearance for Petitioner:**

David Maille, Esq.  
Eden Rafferty  
238 Shrewsbury Street  
Worcester, MA 01604

**Appearance for Respondent:**

Ashley Freeman, Esq.  
Senior Legal Counsel  
Massachusetts Teachers' Retirement System  
500 Rutherford Avenue, Suite 210  
Charlestown, MA 02129-1628

**Administrative Magistrate:**

Kenneth Bresler

**SUMMARY OF DECISION**

Petitioner applied for accidental disability retirement benefits, alleging that construction in her classroom caused her respiratory problems. Medical panel was weakly and barely positive. Of two independent medical reviews, one supported her application and one did not. Massachusetts Teachers' Retirement System's denial of application is affirmed.

## **DECISION**

The petitioner, Kathleen Fontaine, appeals the denial by the Massachusetts Teachers' Retirement System of her application for accidental disability retirement benefits.

I held a hearing on July 11, 2023 by Webex, which I recorded and which was transcribed. Mrs. Fontaine testified and was the only witness. I admitted 29 exhibits. MTRS has requested that the transcript be admitted as an exhibit. I have not done so, but it is part of the record.

The exhibits are hard to cite because of the idiosyncratic page numbering. Exhibit 26, for example, has pages marked as 1 to 5, followed by a separate set of pages marked 1 to 5, followed by a page 1.

The parties have stipulated to 37 facts with citations to exhibits, which I do not accept, with one exception, for related reasons. Many of the cited exhibits are multipage and single-spaced medical records, but some stipulations do not cite a page number, making it hard for me to locate the cited information and to confirm the accuracy of the stipulations. Five citations to Exhibit 26 use page numbers that the exhibit does not use. Some citations to exhibits do not seem to support the stipulations. I do not accept statements about Mrs. Fontaine's medical conditions and treatment as facts merely because the parties have stipulated to them. In addition, the parties have not convinced me of the importance of most of the stipulations. Many of them are recitations of medical conditions, appointments, diagnoses, and treatments without apparent significance and whose significance the parties have not argued in their post-hearing briefs. I so state so that it cannot be asserted to a subsequent tribunal that I ignored the stipulations.

Both parties submitted post-hearing briefs in January 2024.

### **Findings of Fact**

1. Mrs. Fontaine was a kindergarten teacher for the Worcester Public Schools. (Ex. 3, p.

10; Tr. 6)

2. For the school year 2016-17, Mrs. Fontaine worked in the Grafton Street School. (Tr. 7, 25)

3. In 2016, windows were replaced and an elevator was installed in the school near Mrs. Fontaine's classroom. (Tr. 8)

4. The window replacement project had begun when Mrs. Fontaine returned to school in August 2016. It finished in December 2016. (Tr. 10, 11)

5. The elevator project began in November 2016. Work was intermittent, but was still going on in June 2017. (Tr. 11)

6. Construction work was done after school. (Tr. 11-12)

7. Construction workers did not clean Mrs. Fontaine's classroom. She was responsible for cleaning dust and debris from students' desks, tables and chairs. Janitors helped. (Tr. 12)

8. Mrs. Fontaine cleaned her classroom at least twice a day. (Tr. 13)

9. The classroom did not have central air conditioning. During construction, the classroom had two temporary windows without screens, so the windows could not be kept open for the entire school day. (Tr. 17)

10. Mrs. Fontaine became sick with upper respiratory symptoms during the break from December 2016 to January 2017. She had not had any upper respiratory illnesses before then, except for colds and a strep throat. (Tr. 19, 24)

11. Mrs. Fontaine was sick again in February, March, and May 2017. In May, she had pneumonia. (Tr. 20)

12. On January 16, 2019, Dr. Jerome Siegel conducted an independent medical review of Mrs. Fontaine's medical records related to her application for workers' compensation. (Ex. 17;

Stipulation)

13. Dr. Siegel wrote:

The causes of her conditions are unknown. These include genetic, environmental, infectious, allergic, immune, autoimmune, and age related acquired causes. There is no information which supports a work related cause for her underlying conditions.

....

There is no information which supports disability from work activities.

....

Ms. Fontaine has a history of allergies and environmental sensitivity but should be able to work in a well ventilated office or classroom setting, and have some control of her work environment such that she would not be exposed to a lot of dust, fumes, odors, chemicals, excess heat or humidity, which would set off her asthma or breathing problems.

(Ex. 17, p. 4)

14. When asked if the cause of Mrs. Fontaine's conditions was an exposure in the Grafton Street and/or Chandler Elementary Schools, Dr. Siegel wrote, "To a reasonable degree of medical certainty, the cause of her respiratory problems is unknown or idiopathic." (Ex. 17, p.

5)

15. Dr. Siegel also wrote:

There is no clustering of similar cases of asthma or sinus problems noted in the school. No information about other teachers, students, or other people similarly exposed having similar conditions or problems.

There is no information from students or their parents complaining about the condition of the affected classroom or school.<sup>1</sup>

There is no industrial hygiene information or independent information from a walk-through of the school or classroom. There are no Department of Labor

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<sup>1</sup> Mrs. Fontaine testified that two students "seemed to have exacerbations" of their "upper respiratory issues." (Tr. 18) This testimony was not detailed ("exacerbations," "issues") and is hedged ("seemed").

Standards citations or complaints or investigations to Department of Labor Standards or public health or town authorities noted.

....

There is no information that supports that the school represented a sick building or was unsafe for students, teachers, or personnel during the construction period.

.....

There is no information that supports that Ms. Fontaine's symptoms worsened over the course of the week, improved over the weekends, vacations, or only occurred while at work.

....

The medical records and notes support that Ms. Fontaine may have had pre-existing problems including allergies and asthma which were present prior to January 2017.

(Ex. 17, pp. 5, 6, 8)

16. On April 17, 2019, Dr. Thomas A. Morris conducted an independent examination of Ms. Fontaine and a review of her medical records. (Ex. 17).

17. Dr. Morris diagnosed Ms. Fontaine's conditions as chronic eosinophilic sinusitis and occupational asthma. (Ex. 17)

18. Dr. Morris wrote:

This individual was entirely well until exposure to the construction demolition debris in the fall of 2016.

....

Her onset of symptoms and development of eosinophilic sinusitis and asthma are temporally related to exposure to the construction demolition debris in the fall of 2016.

(Ex. 13)

19. In a deposition on April 20, 2022, Dr. Morris made observations that were similar to those in his examination report. (Ex. 14, pp. 9, 10, 11, 18)

20. For the 2017-18 school year, Mrs. Fontaine worked in the Chandler Elementary annex building. (Tr. 25)

21. The building did not have central air conditioning. (Tr. 26)

22. Mrs. Fontaine's health "was somewhat under control," as she put it. (Tr. 26)

23. By the end of September 2017, Mrs. Fontaine was starting to have headaches and nasal symptoms. (Tr. 28)

24. At the beginning of November 2017, balloon rhinoplasty was performed on Mrs. Fontaine to open her sinuses. (Tr. 29)

25. After the rhinoplasty, Mrs. Fontaine took off from work for a couple of days. Within seven to ten days, she was experiencing severe sinus symptoms again. (Tr. 29)

26. One of Mrs. Fontaine's doctors told her that she could not return to work. She stopped working after Thanksgiving 2017. (Tr. 30)

27. In January 2018, Mrs. Fontaine underwent sinus surgery. (Tr. 32)

28. In consultation with her doctor, Mrs. Fontaine decided to try returning to work at school for a week before April 2018 vacation, which would allow her to have a week off.

29. In April 2018, Mrs. Fontaine returned to work for two full days, became sick, stopped teaching, and has not returned to teach at the Worcester Public Schools. (Tr. 34)

30. On November 1, 2018, Mrs. Fontaine applied for accidental disability retirement benefits. (Ex. 3)

31. When asked the medical reason for her application, Mrs. Fontaine wrote, "Severe allergic rhinitis and asthma. Related autoimmune issues caused by exposure to construction-related particles." (Ex. 3, p. 4)

32. When asked to describe the essential duties that she was unable to perform because of

her disability, Mrs. Fontaine wrote,

I cannot be exposed to children due to immune concerns. I cannot be in any Worcester public schools due to all schools having poor ventilation.

(Ex. 3, p. 4)

33. In her application, Mrs. Fontaine stated that she sustained the hazard from August 2016 to March 2017. (Ex. 3, p. 10)

34. Mrs. Fontaine described the hazard as follows:

During window replacement and elevator installation in classroom, exposure to gypsum, silica, sawdust, particle board dust, brick and mortar dust, and sheetrock dust as these areas were not properly covered as work was being done.

(Ex. 3, p. 10)

35. On September 10, 2018, Dr. Kristen Newson signed the Physician's Certification.

(Ex. 4, p. 25)

36. Dr. Newson stated that Mrs. Fontaine was physically incapable of performing the essential duties of her job. (Ex. 4, p. 23)

37. Dr. Newson added that Mrs. Fontaine could not perform her essential duties

due to repeated exposure causing exacerbation of respiratory illness, sinus infections and asthma due to underlying immune system compromise.

Unable to be present in classroom with exposure to children and provide appropriate one to one instructions as well as large group teaching for students.

(Ex. 4, p. 23)

38. Dr. Newson stated that Mrs. Fontaine was last able to perform essential duties in November 2017. (Ex. 4, p. 23)

39. In addition to the dust that Mrs. Fontaine mentioned in her application, Dr. Newson mentioned exposure to fumes and strong odors. (Ex. 4, p. 23)

40. Dr. Newson stated that Mrs. Fontaine's condition was likely to be permanent. (Ex. 4,

p. 24)

41. Dr. Newson's diagnosis of her conditions were chronic rhino-sinusitis, immune system deficiency, and allergic asthma. (Ex. 4, p. 24)

42. When asked for an assessment of the anticipated course of the diagnoses, the doctor answered: stable "if she is not exposed to triggers again." (Ex. 4, p. 24) (underline in original)

43. When asked, "If you think the applicant's disability will continue indefinitely, please state why," the doctor wrote,

She is relatively stable now, but only because she is not working. Past attempts to return to work have led to exacerbation of her illnesses.

(Ex. 4, p. 24)

44. Dr. Newson stated that that Mrs. Fontaine's incapacity was such as might be the natural and proximate result of the hazards she had undergone. (Ex. 4, p. 25).

45. When asked for the event(s) or onset of condition(s) that in her opinion led to Dr. Fontaine's disability, Dr. Newson wrote,

She had no...history of respiratory illness prior to Jan. 2017. Following workplace exposures, has had repeat exacerbations of both sinusitis & new-onset asthma/pulmonary symptoms requiring surgeries & use of multiple rounds of systemic steroids.

(Ex. 4, p. 25)

46. When asked what other life event/circumstance/condition in Mrs. Fontaine's medical history may have contributed or resulted in her disability, Dr. Newson left the answer space blank. (Ex.4, p. 25)



47. Mrs. Fontaine was examined separately by three medical panelists. On June 18, 2020, Dr. John Vandemoer, a medical panelist and eye, ear, and nose specialist, examined Mrs. Fontaine. (Ex. 10)

48. Dr. Vandemoer opined that Mrs. Fontaine was physically incapable of performing the essential duties of her job; her incapacity was likely to be permanent; and her incapacity was such as it might be the natural and proximate result of the hazard she underwent. (Ex. 10, pp. 2-3)

49. In his narrative, Dr. Vandemoer wrote, “Skin tests were performed showing sensitivity to trees and weeds but not to dust or mold.” (Ex. 10, p. 4)

50. Dr. Vandemoer wrote that Mrs. Fontaine’s medical records showed that another doctor concluded that she did not have any immune compromise. (Ex. 10, p. 4)

51. Dr. Vandemoer reviewed Mrs. Fontaine’s medical history extensively but did not explain how exposure to construction dust and debris resulted in her medical problems and incapacity. (Ex 10)

52. On March 10, 2020, Dr. Richard Hillel, a medical panelist and eye, ear, and notice specialist, examined Mrs. Fontaine. (Ex. 11)

53. Dr. Hillel opined that Mrs. Fontaine was physically incapable of performing the essential duties of her job; her incapacity was likely to be permanent; and her incapacity was such as it might be the natural and proximate result of the hazard she underwent. (Ex. 11, pp. 2-3)

54. In his narrative, Dr. Hillel wrote:

It is my opinion that Ms. Fontaine’s sinus disease and pulmonary disease was caused by the construction materials at the Grafton Street Elementary School. I say that because she did not have any pulmonary problems prior to that, and even

though she has not worked at that site since then, she has debilitating sinusitis and asthma.

...She may very well have a predisposition to having this problem whereas another individual would be able to be in contact with construction materials or these construction materials and not have issues.

However, despite this likely predisposition, she never had problems despite teaching for 30 years with kindergarten students in other classrooms and it is too much of a coincidence that her problems started when she was exposed to this construction work done in this school and in her classroom.

...I therefore conclude that her work environment in the fall semester of 2016 and the spring semester of 2017 led to an exposure that caused her chronic sinusitis and her asthma.

(Ex. 11, p. 2)

On February 20, 2020, Dr. Barry W. Levine, a medical panelist and pulmonologist, examined Mrs. Fontaine. (Ex. 12, p. 1)

55. Dr. Levine opined that Mrs. Fontaine was not physically incapable of performing the essential duties of her job. (Ex. 12, p. 2)

56. In his narrative, Dr. Levine wrote:

...I am a loss to ascribe her findings as secondary to exposure to construction at the school. The major reason for this is that she has had persistent symptoms.

(Ex. 12)

57. On December 17, 2021, the Massachusetts Teachers' Retirement System denied Mrs. Fontaine's application for accidental disability retirement benefits and informed her of its denial.

(Ex. 1)

58. MTRS denied Mrs. Fontaine's denial because it

determined that you did not sustain your burden of proof pursuant to G.L. c. 32, §7, including but not limited to, that your claimed incapacity was caused by the personal injuries and/or hazard(s) sustained as a result of, and while in the performance of, your duties.

(Ex. 2)

59. Also on December 17, 2021, Mrs. Fontaine timely appealed. (Ex. 1)

### **Discussion**

A so-called negative panel report, *Lynne M Saulnier v. State Board of Retirement*, CR-98-156 (DALA 1999), generally precludes an applicant from receiving accidental or involuntary disability retirement benefits. *Quincy Retirement Board v. Contributory Retirement Appeal Board*, 340 Mass. 56, 60 (1959), However, a positive panel report does not *require* a retirement board to grant disability retirement benefits to an applicant. *Blanchette v. Contributory Retirement Appeal Board*, 20 Mass. App. Ct. 479, 483 (1985).

The medical panel's report on Mrs. Fontaine was weakly and barely positive. Drs. Vandemoer and Hillel both answered all three key questions affirmatively. (Exs. 10 & 11) However, Dr. Vandemoer did not explain his affirmative answers, especially the last one, leaving the answers conclusory.

One independent medical examination supported Mrs. Fontaine's application, the one by Dr. Morris (Ex. 13), while a second independent medical review did not support her application, the one by Dr. Siegel. (Ex. 17)

Based on the evidence before it, MTRS decided to deny Mrs. Fontaine's application. MTRS presumably decided to give Dr. Levine's negative panelist report and explanatory narrative more weight than it gave Dr. Hillel's positive panelist report and explanatory narrative. (Dr. Vandemoer did not explain his positive panelist report in his narrative.) MTRS presumably decided to give Dr. Siegel's independent negative report more weight than it gave Dr. Morris's independent positive report. This, MTRS was allowed to do. It then became Mrs. Fontaine's

burden to prove by a preponderance of the evidence that MTRS incorrectly denied her application. *Id.* She has not done so.

The case of *Narducci v. Contributory Retirement Appeal Board*, 68 Mass. App. Ct. 127 (2007) is illustrative. In that case, a public school teacher complained of headaches, head congestion, and respiratory difficulties, including sinusitis. Her application for accidental disability retirement benefits was denied. The Appeals Court eventually upheld the denial. *Id.* at 127-28.

Narducci's "main evidence on causation was that her respiratory condition deteriorated markedly after she began using" a basement office in her school "but that her condition improved when she was not exposed" to it. *Id.* at 129. She had a personal and family history of respiratory problems. *Id.* at 130. An air quality study that she commissioned was inconclusive. *Id.* at 130. Each of the three medical panelists (one of whom was Dr. Morris, by coincidence) answered all three questions affirmatively. *Id.* at 133. Each panelist's narrative both strengthened Narducci's application and tended to weaken it. *Id.* at 134.

Thus, Narducci's application was similar to and slightly stronger than Mrs. Fontaine's. Narducci's was slightly stronger, most prominently, in that Narducci's symptoms improved when she was not exposed to the allegedly offending environment, demonstrating more clearly that the environment was responsible for her symptoms, whereas Mrs. Fontaine's symptoms did not improve after she stopped working in the classroom affected by construction.

If Narducci's slightly stronger application for accidental disability retirement benefits was properly denied, *id.*, then Mrs. Fontaine's application was properly denied. She has not proved by a preponderance of the evidence that exposure to dust and construction debris at the Grafton School caused the symptoms on which she bases her disability claim.

**Conclusion and Order**

MTRS's denial of Mrs. Fontaine's application for accidental disability retirement benefits is affirmed.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/

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Kenneth Bresler  
Administrative Magistrate

Dated: May 13, 2024