

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Chiquita Foster,
Petitioner,

No. CR-24-0032

Dated: July 11, 2025

v.

Boston Retirement System,
Respondent.

Appearances:

For Petitioner: Lauren Van Iderstine, Esq.

For Respondent: Michael Sacco, Esq.

Administrative Magistrate:

Yakov Malkiel

SUMMARY OF DECISION

The petitioner worked for a fire department after earlier developing posttraumatic stress disorder. The opinions of a unanimous medical panel and other record evidence establish that a difficult workplace incident aggravated the petitioner's preexisting condition to the point of disability. The incident was a "personal injury" for purposes of the public retirement statute, which does not require such injuries to be "unusually stressful or traumatic."

DECISION

Petitioner Chiquita Foster appeals from a decision of the Boston Retirement System (board) denying her application to retire for accidental disability. I held an evidentiary hearing on April 17, 2025, at which Ms. Foster was the only witness. At the hearing, I admitted into evidence exhibits marked 1-34. I now also admit stipulations numbered 1-32.

Findings of Fact

I find the following facts.

1. Ms. Foster began her professional life in the Navy, where she served approximately from 1988 to 1990. She was honorably discharged after suffering a sexual assault, the aftermath of which disclosed Ms. Foster's same-sex sexual orientation to her

commanders. The assault and discharge were traumatic to Ms. Foster, who has since struggled to develop sustained personal relationships. (Stipulations 2-3; exhibit 14; testimony.)

2. Approximately in 2008, Ms. Foster began to be treated at a Veterans Affairs (VA) facility. She was suffering from depression and drinking heavily. Ms. Foster was eventually diagnosed with post-traumatic stress disorder (PTSD). Since then, she has taken antidepressants regularly and has participated in twice-weekly group therapy sessions. She originally saw an individual therapist twice per week but with improvement tapered to twice per month. (Stipulation 3; exhibit 14; testimony.)

3. In 2014, Ms. Foster began working as a fire alarm operator with the Boston fire department. She worked shifts of twelve or twenty-four hours. Her roles involved taking calls, dispatching fire crews to incidents, and remaining in radio contact with the crews as events unfolded. (Stipulation 1; exhibits 1, 4; testimony.)

4. In November 2017, Ms. Foster took a call about a house fire on Hancock Street in Boston. She dispatched firefighters to the scene and remained on the line with the caller. As the caller realized the seriousness of the fire, he became agitated and frightened. A baby was crying in the background. At some point, the line went quiet. After approximately thirty seconds of silence, Ms. Foster was able to hear that the caller and baby were safe. (Stipulation 6; testimony.)

5. Ms. Foster was badly shaken. She left her desk and took a break. In the bathroom, she had trouble breathing. She understood that she was having a panic attack. She returned to her shift approximately thirty minutes later. (Stipulation 6; testimony.)

6. During the year or so before and after the Hancock Street fire, Ms. Foster was treated for medical issues unrelated to her job. She missed work in June-September 2017 with

pain and vertigo. Later, an August 2018 examination at the VA found Ms. Foster to be suffering from intrusive thoughts, recurring dreams, avoidant behavior, hypervigilance, sleep disturbances, and suicidal thoughts. The report of the examination depicts all of these symptoms as connected to Ms. Foster's trauma in the military. (Stipulation 5; exhibits 14, 15; testimony.)

7. At work on November 8, 2018, Ms. Foster answered a call from a woman who smelled smoke. The woman's agitated tone of voice reminded Ms. Foster of the Hancock Street fire. Ms. Foster became upset and unfocused. She entered an inaccurate address into the department's system, leading firefighters to be dispatched to the wrong location. The fire chief promptly recognized and corrected the error. Once the incident ended, Ms. Foster felt unable to continue working. Her supervisors allowed her to leave the station mid-shift. She has not returned to work since. (Stipulations 7-9; exhibits 1, 8, 20; testimony.)

8. Ms. Foster sought mental health treatment. She was admitted to McLean Hospital and was described there as being "in crisis." She attended a six-week program at a VA facility in New Jersey. Her doctors viewed her symptoms as "directly related to traumatic events that occurred during her employment at the Boston fire department." They recommended against her returning to her position. The fire department was unwilling or unable to assign Ms. Foster to a different position, and instead it terminated her employment effective February 2021.

(Stipulations 10, 12-18, 20-21, 25-27; exhibits 19, 21-30, 33; testimony.)

9. Meanwhile, in October 2019, Ms. Foster applied to retire for accidental disability. The application was supported by a treating physician's statement from VA psychiatrist Dr. Jayne Trachman. A regional medical panel consisting of Dr. Melvyn Lurie, Dr. Lisa Barreto-D'Silva, and Dr. Michael Braverman convened, conducted separate examinations of Ms. Foster, and returned certificates unanimously supportive of her application. (Exhibits 1-7.)

10. The panelists named Ms. Foster's diagnoses as PTSD, major depressive disorder, and anxiety disorder. They described her presentation as dysphoric, withdrawn, uneasy, and fatigued. They reported that Ms. Foster suffers from nightmares, flashbacks, and avoidance of other people. Dr. Lurie listed Ms. Foster's symptoms as including diminished appetite, sleep, self-esteem, energy, and concentration, and feelings of guilt, worthlessness, and hopelessness. Dr. Barreto-D'Silva wrote that Ms. Foster struggles to manage stress and to complete tasks. Dr. Braverman added: "There was no brightening of affect, never at ease." (Exhibits 5-7.)

11. With respect to causation, Dr. Lurie offered the following analysis:

There are inconsistencies between [Ms. Foster's] reports during my examination and her medical record. . . . She denied a history of alcohol abuse to me but was said to have been drinking heavily for a 6-8 month period [S]he also denied past psychiatric conditions, but the VA notes indicated she had been seeing a therapist for 10 years. . . .

[P]rior stressors . . . would not have been so severe as to render her incapable of performing her job. That appears to have resulted from the [November 2018] event described at work. . . . [T]he events at work appear to have resonated with prior traumatic events in her life. . . . [T]he events at work worsened any present or dormant PTSD to the degree that she could no longer work.

(Exhibit 5.)

12. Dr. Barreto-D'Silva wrote:

[Ms. Foster's] current trauma disorder [and] depression . . . are all directly causally related to her work trauma leading up to 2018 and completing her work as a fire dispatcher. Aggravation of ongoing PTSD symptoms . . . results in total and permanent psychiatric disability at this time. Thus the work stressor is the major predominant contributing cause of her current decompensation

(Exhibit 6.)

13. Dr. Braverman added:

This is a . . . woman with a history of previous traumatic experiences, but [she] had always been able to work successfully She suffered two traumatic experiences in 2017 and 2018. Following the incident in 2018,

she decompensated, with severe anxiety, panic, PTSD symptoms, and . . . severe depression. . . . The disability is the result of the work-related incidents described . . . of 2017 and 2018.

(Exhibit 7.)

14. The board commissioned a records review by Dr. Daniel Harrop, who concluded that Ms. Foster “is not incapable of performing the essential duties of the job.” Dr. Harrop added: “One cannot say with any degree of medical certainty that the incident of [November 2018] aggravated the preexisting conditions such that disability retirement is required.” After an evidentiary hearing before a hearing officer, the board denied Ms. Foster’s application. She timely appealed. (Exhibits 16-18, 34.)¹

Analysis

Retirement for accidental disability is available when a public employee “is unable to perform the essential duties of [the employee’s] job,” the incapacity “is likely to be permanent,” and the proximate cause of the incapacity was “a personal injury sustained or a hazard undergone as a result of, and while in the performance of, [the employee’s] duties.” G.L. c. 32, § 7(1). The board does not deny that Ms. Foster satisfies the elements of incapacity and permanence. The dispute focuses on the rest of the statutory test.

¹ The retirement law arranges for medical analyses of each applicant’s case to be prepared by three neutral, pre-qualified experts. An additional records review by a board-retained doctor may not always be “reasonably calculated to produce expeditious and evenhanded decisions.” *Christopher C. v. Boston Ret. Bd.*, No. CR-19-342, 2023 WL 3434934, at *4 n.2 (Div. Admin. Law App. May 5, 2023). I nevertheless overruled an objection to Dr. Harrop’s report in view of the relaxed evidentiary standard of G.L. c. 30A, § 11(2).

The first question presented is whether Ms. Foster’s case involves any “personal injury sustained.”² The board maintains that the answer is no, because (the board says) Ms. Foster’s on-the-job experience of November 2018 was not “traumatic or out-of-the-ordinary.”

The board’s theory is erroneous on several levels. Ms. Foster’s job required her to process incoming information under extreme pressure and with lives on the line. Most individuals may reasonably expect never to face the experience of imperiling innocent lives through a stress-induced error. From a commonsense perspective, the November 2018 incident was not at all ordinary or mundane. Contrast *Benoit v. Massachusetts Teachers’ Ret. Syst.*, No. CR-15-347 (Div. Admin. Law App. Feb. 7, 2018). The reports of the unanimous medical panel make clear that the incident also cannot be considered to have been benign or “non-traumatic” from a medical perspective.

What’s more, the board’s approach is a non-starter under settled law. “Personal injuries” are specific events or acts that produce harm or pain. *See Namay v. Contributory Ret. Appeal Bd.*, 19 Mass. App. Ct. 456, 460 (1985). The Appeals Court has said as clearly as can be that the events “need not be unusually stressful or traumatic to support a recovery.” *Blanchette v. Contributory Ret. Appeal Bd.*, 20 Mass. App. Ct. 479, 485 n.4 (1985). *See Fender v. Contributory Ret. Appeal Bd.*, 72 Mass. App. Ct. 755, 763-64 (2008). Even an unremarkable event arising from the member’s job duties may be “compensable” if it proximately caused the member’s disability. *See Steinberg v. State Bd. of Ret.*, No. CR-08-171 (Contributory Ret. App. Bd. Mar. 3, 2011). Nor is it relevant in this context whether the injurious event involved any

² The statutory rubric “hazard undergone” is not implicated here. *See generally Kane v. Worcester Reg’l Ret Bd.*, No. CR-14-52, 2018 WL 11682013, at *4 n.30 (Contributory Ret. App. Bd. Aug. 23, 2018); *Favazza v. Massachusetts Teachers’ Ret. Syst.*, No. CR-21-150, 2024 WL 215934, at *5 (Div. Admin. Law App. Jan. 12, 2024).

job-related errors by the member, with the exception not implicated here of “serious and willful misconduct.” G.L. c. 32, § 7(1). *See generally Underwood v. Boston Ret. Bd.*, No. CR-21-353, 2024 WL 4582630, at *8-9 (Div. Admin. Law App. July 26, 2024).³

The more serious question presented is whether the November 2018 incident proximately caused Ms. Foster’s incapacity. Ms. Foster bears the burden of proving the requisite causal connection. *See Lisbon v. Contributory Ret. Appeal Bd.*, 41 Mass. App. Ct. 246, 255 (1996). It is sufficient for purposes of that burden for the November 2018 incident to have aggravated a preexisting medical condition to the point of disability. *See Baruffaldi v. Contributory Ret. Appeal Bd.*, 337 Mass. 495, 501 (1958).

The views of the three expert, neutral medical panelists carry substantial weight. *See Rogers v. Worcester Ret. Bd.*, No. CR-22-164, 2024 WL 413690, at *4 (Div. Admin. Law App. Jan. 26, 2024). The panelists did not limit themselves to the statutory question of whether a workplace incident was “such as might be” the cause of Ms. Foster’s disability. G.L. c. 32, §§ 6(3)(a), 7(1). They all instead opined that the disability was *in fact* caused by Ms. Foster’s work. *See Narducci v. Contributory Ret. Appeal Bd.*, 68 Mass. App. Ct. 127, 134-35 (2007).

All three panelists recognized that Ms. Foster came to her job with preexisting PTSD; two panelists, Dr. Barreto-D’Silva and Dr. Braverman, indicated that pre-2018 workplace events

³ Two additional precedents cited by the board in its brief are not to the contrary. In one case, the fateful problem for the petitioner was the causal link between her incapacity and a “bona fide personnel action.” *Denoyer v. Plymouth Cty. Ret. Bd.*, No. CR-01-539 (Contributory Ret. App. Bd. Mar. 8, 2002), *aff’d*, 2003 WL 25897500 (Super. Ct. July 31, 2003), *aff’d*, 64 Mass. App. Ct. 1112 (2005) (unpublished memorandum opinion). In the other case, the incapacity was the endpoint of “gradual deterioration” that the petitioner attributed to a continual feature of her job. *Knowles v. State Bd. of Ret.*, No. CR-09-1087, 2013 WL 12629426 (Contributory Ret. App. Bd. Dec. 6, 2013). It is specifically cases of that type that require the member to demonstrate that the injurious circumstances were “unusual.” *Gonglik v. Westfield Ret. Syst.*, No. CR-21-425, 2024 WL 215938, at *3 n.5 (Div. Admin. Law App. Jan. 12, 2024).

also contributed to Ms. Foster’s incapacity. But neither the panel reports nor other record evidence show a likelihood that Ms. Foster lost the ability to perform her essential job duties any earlier than the November 2018 incident. Contrast *Scipione v. Barnstable Cty. Ret. Bd.*, No. CR-12-196, at *29-30 (Div. Admin. Law App. Sept. 4, 2015). The best reading of all three panelists’ opinions is that Ms. Foster’s condition was manageable until the November 2018 incident and would have so remained if not for the aggravating impact of that event. Compare *Baruffaldi*, 337 Mass. at 501, with *Lisbon*, 41 Mass. App. Ct. at 255.

The panelists provided detailed narrative explanations for their conclusions. They reviewed the same records now wielded by the board. Medical experts are better situated than laypersons to identify the life events most likely to have prompted disabling PTSD symptoms. See *Bowman v. Heller*, 420 Mass. 517, 521 (1995). See generally *Robinson v. Contributory Ret. Appeal Bd.*, 20 Mass. App. Ct. 634, 639-41 (1985); *Hollup v. Worcester Ret. Bd.*, 103 Mass. App. Ct. 157, 162 (2023). Unlike Dr. Harrop, the panelists examined Ms. Foster in person; and they are in any event the body in which the Legislature “vest[ed] . . . the responsibility for determining medical questions which are beyond the common knowledge and experience of the members of the local board (or the Appeal Board).” *Malden Ret. Bd. v. Contributory Ret. Appeal Bd.*, 1 Mass. App. Ct. 420, 423 (1973).

Conclusion and Order

Ms. Foster is entitled to retire for accidental disability. The board’s contrary decision is REVERSED.

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate