COMMONWEALTH OF MASSACHUSETTS
Division of Administrative Law Appeals

HELEN GALLAGHER, *Petitioner*	:	Docket No. CR-22-0257
	:	Date: March 1, 2024
v.	:	
MASSACHUSETTS TEACHERS' RETIREMENT SYSTEM *Respondent*	:	

Appearance for Petitioner:

Charles Casartello, Esq.

Appearance for Respondent:

Lori Curtis Krusell, Esq.

Administrative Magistrate:

Eric Tennen

SUMMARY OF DECISION

The Massachusetts Teacher's Retirement System denying the Petitioner's application for accidental disability is reversed. The Petitioner was a longtime special education teacher. She suffered various injuries on the job. Despite prior injuries, by the 2014-2015 school year, she was working without physical restriction. Then, she suffered two new injuries in September and November 2014. She ultimately applied for accidental disability retirement in 2018. Although applicants are generally limited to events occurring within two years of their application, there are some exceptions. There is no dispute that the November 2014 incident could be considered in her application because it falls under one of those exceptions. That incident alone supports her application because it proximately caused her disability.

INTRODUCTION

Pursuant to G.L. c. 32, § 16(4), the Petitioner timely appeals the Massachusetts Teachers' Retirement System ("MTRS") vote to deny her application for accidental disability. The

Petitioner was a special education teacher. She applied for accidental disability in October 2018, but the MTRS ultimately rejected her application.

I conducted an in-person hearing on December 7, 2023. The Petitioner testified on her behalf and the Board offered no witnesses. I entered 33 exhibits into evidence without objection. Both parties submitted post-hearing briefs on February 5, 2024, at which point I closed the administrative record.

FINDINGS OF FACT

1. The Petitioner was a special education teacher. (Stipulated facts; Testimony.)
2. She worked for various schools over the years, including in Southbridge and Springfield. (Stipulated facts; Testimony.)
3. Her work was particularly challenging because she always worked with children who had severe behavioral issues and required additional assistance. While her initial response to a child acting out was not physical, sometimes she had no choice but to get physical. A student might "bolt"—run from the classroom. Or they may need to transition to another room but refuse. These were typical situations requiring a physical response such as physically moving the child. (Testimony.)
4. Sometimes a student would become violent with her, charging at her, hitting her, biting her, or worse. This would require a more rigorous, physical response because she had to control and restrain the child. (Testimony.)
5. She had some sort of physical contact with a child almost daily. She had to restrain a child less, maybe once a week, because it only occurred when the situation had escalated and required more physical exertion. (Testimony.)
6. Between 2009 and June 2014, she worked in Springfield. During that time, she suffered

several injuries at that school and one at home. (Exs. 28 & 29.)

7. Collectively, these injuries resulted in medical treatment, therapy, and two surgeries—one to her right shoulder and one to her left shoulder. During that time, she also had a total right hip replacement. (Ex. 5; Testimony.)

8. She understandably had to miss numerous days of work to deal with her treatment. For some of these injuries, she received workers' compensation. (Testimony.)

9. Yet, although she had medical limitations over the years, towards the end of her tenure in Springfield, she was physically cleared to work without restriction. She did, however, continue to experience some right shoulder pain. But her injuries mostly resolved. (Ex. 28, pg. 430; Testimony.)

10. After the 2013-2014 school year ended, she moved. She left her job in Springfield and took a new one in Southbridge for the 2014-2015 school year. (Testimony.)

11. Almost immediately after beginning there, she suffered two injuries that form the basis of her accidental disability application. (Testimony.)

12. The first was in September 2014. In "[t]rying to keep a student safe as he exhibited challenging behaviors" she was "twisted, pushed and hit." This student was in third grade and particularly strong. She injured her right side and immediately felt pain in her arm and shoulder. (Ex. 1; Testimony.)

13. She did not experience "excruciating pain" and ultimately did not take any days off. (Testimony.)

14. She did go to the school nurse, who could not do much but suggested she fill out an incident report. (Ex. 1; Testimony.)

15. However, after the Petitioner filled out the form for this incident, she did not hear anything from the principal (or anyone else). She was in pain but worked through it. She did not follow up because this was a new job, and she was afraid to question things. (Testimony.)

16. She did not seek out medical treatment independently because she believed she first needed a referral from the school or human resources ("HR").[1] (Testimony.)

17. Then, on November 3, 2014, she was injured again by the same student exhibiting "challenging behaviors." The student was on the wrong bus, noticed it, and ran away. She had to chase him down and restrain him to prevent him from running more. During the struggle he pushed, pulled and twisted resulting in further injury to her right side, again including her arm and shoulder. (Ex 1; Testimony.)

18. Although she still had pain from the first incident, this one felt different. She again filled out an incident report, left it with the principal, and then went home (Ex. 19; Testimony.)

19. Like before, she did not seek out immediate medical treatment because she believed she needed to wait for the school to refer her for treatment. She worked another eight school days in pain. When she could not tolerate it anymore, she reached out directly to someone at HR. (Ex. 32; Testimony.)

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[1] The Petitioner explained more fully that she wanted to go to a doctor but did not think she could until someone responded to her injury report. That was how it worked in Springfield for her prior injuries. She was afraid to follow up with the principal because she did not want to do something that would cause her to lose her job since she was new and also perceived the principal was hard on her. At one point, the principal complained about teachers filing too many incident reports. That had a chilling effect on her willingness to follow up. I credit the Petitioner's testimony.

20. In an e-mail on November 18, 2014, she explained she had submitted "two injury reports" but never went to the doctor. She had hoped the pain would improve but it had not. She inquired "what should I do? I would like to see a doctor." (Ex. 32.)

21. She followed up on December 3, 2014 and December 10, 2014, explaining that she could not make doctor appointments until she had a claim number, which apparently had not been provided to her. (Ex. 32.)

22. She later found out that the principal never submitted her September incident report and did not submit her November incident report until December 9, 2014. Although it is not clear to whom the principal had to submit the injury form, she must have ultimately submitted it somewhere because the Petitioner was finally able to make a medical appointment for early January. (Testimony.)

23. The Petitioner was out of work on medical leave periodically from December 2014 through April 2015. During that time, she was given cortisone shots and engaged in physical therapy. This helped alleviate the pain a little, but not effectively. That is why she would return to work only to go out on leave again. (Testimony.)

24. From April 2015 through the end of that school year in June 2015, she did not take time off for her shoulder. Her symptoms were a little better. However, her job continued to take its regular physical toll on her, and she experienced ongoing pain in her right arm and shoulder. Her pain could be sharp and sudden with certain movements; otherwise, it was a consistently "dull and arthritic" pain with a poor range of motion. (Testimony.)

25. After the 2014-2015 school year, her contract was not renewed with Sturbridge because she was told she "was not a good fit." Instead, she found a new job working again in the

Springfield school system. (Testimony.)

26. She was still dealing with her injuries. In the summer of 2015, she was cleared to return to work by her doctors with restrictions: she could lift "with her arm at her side" and "full lifting can only be done with arm held to side, no lifting anything over 5 pounds above shoulder level." (Stipulated facts; Ex. 33.)

27. Also in the summer of 2015, her doctors began recommending more aggressive treatment. She had an MRI in July 2015 which showed her repair (from her prior surgery) to still be intact. However, because she continued to experience pain, her doctor recommended "arthroscopy, revision decompression with lysis of adhesions" and possibly "revision rotator cuff repair." (Ex. 5, pg. 107, & Ex. 33.)

28. In November 2015, she applied for workers' compensation. She submitted two claims, one each for the September and November incidents.[2] (Exs. 11-16, 26.)

29. Despite the doctor's recommendation, the Petitioner was not immediately scheduled for surgery. That is because the process had to go through the workers' compensation case, which stalled. Although she had received some payments for temporary incapacity, it was taking longer to have her surgery approved. (Exs. 11-15.)

30. Her doctor continued to recommend the same surgery, as documented in April and September 2016, and March 2017. (Ex. 5, pgs. 108-111.)

31. In the meantime, she returned to work in Springfield and taught there from 2015 through

[2] The November 2015 date comes from the docket of that specific claim. (Ex. 11.) There is no docket for the September 2015 claim. However, I infer it was filed around the same time because both claims were dealt with together at a May 16, 2016 pre-hearing conference. (Ex. 15.)

June 2017. She experienced two more workplace injuries in 2016 and 2017. They caused her pain, but because she was always in constant pain, it is hard for her to say if the symptoms were new. (Testimony.)

32. During this tenure in Springfield, she was always medically restricted from doing certain things such as carrying heavy objects higher than her waist, lifting over 10 pounds with her right shoulder, raising her arm above her head, or restraining children. (Exs. 22 & 25.)

33. She had various medical evaluations and hearings for her workers' compensation claims. She went before different judges. Surgery was tentatively approved, then stayed. In July 2017, it was finally approved. (Exs. 11-15.)

34. She had surgery in August 2017 to repair tears in her bicep and rotator cuff. (Ex. 5.)

35. She could not return to work right away. She was out on medical leave, receiving workers' compensation. She had physical therapy, more cortisone shots, and extended rest. She never fully recovered. Eventually, her doctor "did not think any further surgery is likely to improve her situation . . . [he] thought she would be left with some degree of permanent disability relative to this shoulder." (Exs. 2 & 4.)

36. Her workers' compensation case was finally resolved with an agreement to pay her benefits and for her surgery. The agreement, dated November 20, 2017, settled both her claims in one document, a Form 113 titled "Agreement to Pay Compensation." The agreement listed both events under the "date of injury." It provided for payment for her surgery and 12 weeks of temporary total disability. Nevertheless, the insurer maintained its denial of liability for the September 2014 incident. (Ex. 15.)

37. In March 2018, her doctor cleared her to return to work but only with various restrictions. (Ex. 5.)

38. Springfield, however, indicated it could not accommodate those restrictions, given the physical demands of her job. She did not work again after that. (Testimony.)

39. The Petitioner then applied for accidental disability retirement in October 2018, listing the September and November 2014 incidents as the personal injuries sustained which caused her disability. (Ex. 1.)

40. She was individually evaluated by three doctors specializing in orthopedics: Drs. Ronald Marvin, Marc Linson and Thomas Goss. (Exs. 2-4.)

41. All the doctors agreed she was permanently incapacitated. However, they disagreed on causation. (Exs. 2-4.)

42. Drs. Marvin and Linson both opined her incapacity was likely the result of the workplace incidents. (Exs. 2 & 3.)

43. Dr. Marvin summarized his assessment:

> Unfortunately, she has had two surgical procedures on the right shoulder and since 2017 continues to have significant pain, weakness, and limitation of motion in the right shoulder. Because of the nature of her job description and the fact that she not uncommonly has to restrain students, she is unable to do this in a safe manner.
>
> She has had multiple incidents, although she describes two particular incidents in September and November 2014 as the primary reason for her disability. It is my opinion with a reasonable degree of medical certainty that it is a culmination of the multiple incidents described in her history that have resulted in her permanent disability. . . .
>
> It is also my opinion that said incapacity is such as might be the natural and proximate result of the personal injury sustained or hazard undergone on account of which retirement is claimed.

(Ex. 2.)

44. Dr. Linson, after having acknowledged the broad history of the Petitioner's workplace injuries, concluded that it was his "medical opinion to a reasonable degree of medical certainty the above diagnoses[3] have occurred, ongoing complaints predominantly of the right shoulder appear to be fairly well documented as being work related. She is unable to resume the full and normal duties of her former occupation on a permanent basis. This is causally related approximately[4] to her work injuries described[.]" (Ex. 3.)

45. Dr. Goss disagreed. He acknowledged that her injuries throughout her career, including

> in the fall of 2014 (possibly September, possibly November), and during the summer of 2015 were all directly causally related to the occupational events of those dates. . . However, she appears to have done quite well after each of these events having returned to work on a full time, full duty basis thereafter. I cannot relate the right shoulder pathology addressed surgically by Dr. Corsetti in August 2017 to her employment and her leaving her employment since, following the right shoulder difficulty [she] noted during the summer of 2015 and for which Dr. Corsetti recommended surgical management on 04/01/2016, by 09/27/2016 the surgery was no longer recommended and not performed until August 2017, i.e., due to subsequent events.
>
> . . .
>
> It is also my opinion, however, that such incapacity is <u>not</u> 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 Petitioner] is applying for a disability retirement as a consequence of injuries she sustained to her right shoulder at the time of occupational events on 09/03/2009, 03/20/2014, during the fall of 2014 and during the summer of 2015; however, she returned to her pre-injury occupational duties after each on a full time, full duty basis. She left her employment prior to her aforementioned surgery in August 2017; however, this surgery does not appear to have been done as a consequence of an specific occupationally related event, bearing in mind that 1) the aforementioned MRI obtained on 07/23/2015 following her occupationally related injuries during the summer of 2015 showed no worrisome pathology and she subsequently returned

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[3] "Work-related shoulder injuries, rotator cuff tear aggravation of glenohumeral degenerative changes and rotator cuff tears, coincidental non-work related osteoarthritis right hip requiring hip replacement, right elbow lateral epicondylitis." (Ex. 3.)

[4] Given the context of this quote and the totality of the doctor's report, I believe he meant "proximately."

> to work on a full time, full duty basis and 2) the surgery was performed over two years later. It appears the right shoulder pathology addressed by Dr. Corsetti during the summer of 2017 was related to events after the summer of 2015 and unrelated to any specific occupationally related event.

(Ex. 4.)

46. MTRS ultimately denied the Petitioner's application because she "did not sustain [her] burden of proof pursuant to G.L. c. 32, § 7, including but not limited to, that [her] claimed incapacity was the natural and proximate result of the personal injury sustained or a hazard undergone as a result of, and while in the performance of, [her] duties." (Ex. 8.)

DISCUSSION

The Petitioner has the burden of proving every element of her disability claim. *Lisbon v. Contributory Ret. App. Bd*., 41 Mass. App. Ct. 246, 255 (1996); *Frakes v. State Bd. of Ret.*, CR-21-0261, 2022 WL 18398908 (DALA Dec 23, 2022). "G.L. c. 32, § 7(1) provides for accidental disability retirement benefits if a member (1) 'is unable to perform the essential duties of [their] job' and (2) 'such inability is likely to be permanent before attaining the maximum age for [their] group,' (3) 'by reason of a personal injury sustained or a hazard undergone as a result of, and while in the performance of, [their] duties,' (4) 'without serious and willful misconduct on [their] part.'" *Brady v. Weymouth Ret. Bd.*, CR-20-0201, *9 (DALA Jul. 15, 2022).

Typically, a member is only eligible for accidental disability for any injury occurred "within two years prior to the filing of such application." G.L. c. 32, § 7(1). There are a few exceptions potentially applicable here: 1) if a written notice of the injury was filed with the Board within ninety days of its occurrence 2) if the member received workers' compensation payment "on account of" such injury or 3) upon learning of the injury, the head of a department notifies the Board in writing (which they are mandated to do within 15 days of receiving such

notice of injury).[5] G.L. c. 32, §§ 7(1) & 7(3). The incidents that the Petitioner says led to her injury occurred in September and November 2014. Her application was filed in October 2018. Thus, she must meet one of the timing exceptions.

MTRS does not dispute the November 2014 incident provides an exception to the two-year limitation because the Petitioner's workers' compensation payments were "on account" of that injury. *Stolpinski v. Hampshire Cty. Ret. Bd.*, CR-19-0038, *10, n.4 (DALA May 14, 2021). MTRS does dispute whether the Petitioner received payments "on account of" the September incident because, in the agreement to pay compensation, the insurer continued to deny liability. It is a close call as to whether the September incident is a payment "on account of" the injury.[6]

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[5] Another exception clearly not applicable here is, if a member is a part of Group 2, 3, or 4, and not eligible for worker's compensation, a record of the injury is on file with the department. G.L. c. 32, §§ 7(1).

[6] There is a long line of DALA and CRAB cases indicating that a "lump sum settlement agreement" where the insurer continues to deny liability does not qualify as a payment "on account of" an injury. *Baer v. Boston Ret. Bd.*, CR-13-279 (CRAB May 25, 2017); *Zajac v. SBR*, CR-12-444, *8-9 (CRAB Aug. 21, 2015); *Murray v. Norfolk Cty. Ret. Bd.*, CR-08-0443, *2 (CRAB Jul. 16, 2012); *Doe v. MTRS*, CR-19-0547, *16 (DALA Dec. 10, 2021). However, these cases also relied on the fact that the workers' compensation claims were filed years after the injury. *See e.g. Zajac* ("Zajac did not file for workers' compensation until 2011, after his last day of work. We have held that receipt of workers' compensation years after the alleged injury or incidents cannot serve the purpose of the exception, which is intended to allow an opportunity to investigate."); *Stolpinski*, *10, n.4 (summarizing cases). Indeed, one case directly connected the two concepts: "Lump sum settlements of workers' compensation claims cannot serve to avoid or extend the two-year deadline for giving notice of injury because they do not provide timely notice of the claim." *Coletti v State Bd. of Ret.*, CR-10-306, *2 (CRAB Jul. 3, 2014).

The instant case does not fit neatly within this framework. On the one hand, the claim was filed mere months after the injury and while the Petitioner was still employed, giving all parties timely notice of it. And the ultimate agreement was not a "lump sum" settlement, which is a term of art applying to one specific kind of settlement, G.L. c. 152, § 48, but rather an "agreement to pay compensation." *Compare* DIA Form 113 "agreement to pay compensation" *with* DIA Form 117 "lump sum settlement agreement" available at <https://www.mass.gov/info-details/dia-numerical-form-list> (last visited February 22, 2024); *Stolpinski*, *10, n.4 (order to pay pursuant to §§ 34 and 35 is a merits determination and different than a settlement in which the insurer denies liability). On the other hand, the insurer continued to deny liability for the September incident suggesting that, to the extent the settlement dealt with the September

However, I need not decide it because I find the November incident alone caused the the Petitioner's disability.[7]

To receive accidental disability, a Petitioner must show they sustained their injuries from either a specific event or series of events. *Lisbon v. CRAB,* 41 Mass. App. Ct. 246, 255 (1996). The event, or events, must be "a significant contributing cause to [the] employee's disability." *Robinson's Case,* 416 Mass. 454, 460 (1993). "If an applicant suffers from an underlying condition that was aggravated by a work-related injury to the point of disability, that injury is compensable." *B.G. v. State Bd. of Ret.,* CR-20-0207, 2021 WL 9583594 (DALA Oct. 8, 2021). In those cases, a Petitioner must still prove their disability was not caused merely "by [the] natural, cumulative, degenerative effects of her pre-existing condition." *Lisbon,* at 255.

While a positive medical panel is "some evidence on the question of causation . . . it is not determinative." *Warren v. Boston Ret. Bd.*, CR-13-199, 2022 WL 16921473, *16-17 (DALA Sep. 30, 2022). Rather, "[t]he ultimate finding on causation is left to the retirement board to determine, considering all the evidence, both medical and non-medical." *Id*. at *17, *citing Wakefield Contributory Ret. Bd. v. CRAB,* 352 Mass. 499 (1967).

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incident, it was a payment in lieu of workers compensation and not "on account of" of the injury. *Zajac*, *9, n. 20, *citing Kelley v. Essex Cty. Ret. Bd.*, CR-92-437 (DALA Oct. 15, 1993) (CRAB Mar. 21, 1994); *Simpreux v. Cambridge Ret. Bd.*, CR-14-70, 2016 WL 3476360 (Mar. 25, 2016).

[7] The parties cursorily addressed whether filing an incident report with a department head (her principal), who then fails to file it with the retirement board, would still exempt the Petitioner from the two-year requirement. G.L. c. 32, § 7(3). This is a disputed proposition. *Compare and contrast Fenton v. Norfolk Cty. Ret. Bd.*, CR-10-61 (DALA Jul. 19, 2013) (department head's failure to file report with Board no bar to Petitioner's application); *Storlazzi v. MTRS*, CR-01-585 (DALA Jan.8, 2002) (same); *Trundley v. SBR*, CR-89-810 (DALA July 15, 1995) (same), *with Clifford v. SBR*, CR-16-187, 2017 WL 11805068 (DALA Oct. 20, 2017) (department head's failure to file report with Board does not excuse member's obligation to provide written notice). Because the parties simply mentioned this exception without fully briefing it, I decline to address it.

The majority panel opinions of Drs. Linson and Marvin are consistent with my factual findings and a helpful data point regarding causation. Dr. Marvin opined the 2014 incidents might be the natural and proximate result of the Petitioner's disability; Dr. Linson went further, opining her disability was causally related to the workplace incidents. To be sure, neither was specific as to whether the 2014 incidents significantly caused the Petitioner's disability or rather aggravated a pre-existing condition. But either theory is supported by their opinions, further buttressed by the most salient point—before the 2014 incidents, the Petitioner was able to work without restrictions and did so. There is thus a clear line between her physical condition before 2014 and her condition after 2014. "When an employee is perfectly capable of doing their job, and then totally unable to following a workplace injury, this goes a long way toward meeting their burden of proving causation." *Carreiro v. New Bedford Ret. Bd.*, CR-21-0355, 2023 WL 4846320 (DALA Jul. 21, 2023).

Further, I find the November 2014 incident was the straw that broke the camel's back. In the September incident, the Petitioner hurt herself and was in pain. Yet she powered through it, continued to work without formal restriction, and took no time off. She filed an incident report but did not follow up at all. Then, as she put it, the November incident "was different." She tried to struggle through work but after a few weeks she could not take the pain and discomfort anymore. Unlike in September, after this incident, she was persistent, e-mailing and texting HR in a desperate attempt to see a doctor. From that point forward, she could work only with restrictions and took time off for her various procedures and treatment.

The November incident may have directly caused her disability. However, more likely, it aggravated a pre-existing condition, which itself arose from some combination of the September

incident and her prior injuries. Either way, the November injury proximately caused her disability. This is consistent with the majority panel opinions and the Petitioner's work history.[8]

MTRS argues that the minority opinion of Dr. Goss is more persuasive. However, Dr. Goss's opinion is based on some facts which are incorrect and contrary to my findings in this case. *Cf. Commonwealth v. Hinds*, 450 Mass. 1, 12, n.7. (2007) (fact finder decides whether to accept facts relied on by expert and what conclusions to draw from their opinion). For example, he believed that after the 2014 incidents, the Petitioner returned to her "pre-injury occupational duties . . . on a full time, full duty basis." A close reading of the record shows this was not the case. As noted, she struggled with pain and discomfort from both incidents. After November, she took periodic medical leave. That summer, she was cleared to return to work but only with restrictions that remained in place until the end of her employment.

Also, Dr. Goss downplayed the connection between her 2017 surgery and the work incidents. He wrote that by 2016 the surgery "was no longer recommended" and then not performed until August 2017. I do not see anything in the record that says the surgery was no longer recommended. In fact, the delay was due to the lengthy workers' compensation process. Were it up to the Petitioner and her doctors, she would have had the surgery immediately after it was recommended. Instead, she had it immediately after payment was approved.

CONCLUSION

MTRS's decision denying the Petitioner's application for accidental disability benefits is hereby **reversed**.

[8] To the extent the workers' compensation process is relevant, my conclusion is consistent with the insurer's position, who contested liability for the September 2014 incident but admitted liability for the November 2014 incident.

SO ORDERED

DIVISION OF ADMINISTRATIVE LAW APPEALS

Eric Tennen

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Eric Tennen
Administrative Magistrate