

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)**

**Susan Gallagher,**  
Petitioner

v.

Docket No. CR-20-0448

**State Board of Retirement,**  
Respondent

**Appearance for Petitioner:**

Daniel S. O'Connor, Esq.  
639 Granite Street  
Suite 305  
Braintree, MA 02184

**Appearance for Respondent:**

Yande Lombe, Esq.  
State Board of Retirement  
One Winter Street, 8th Floor  
Boston, MA 02018

**Administrative Magistrate:**

Kenneth Bresler

**SUMMARY OF DECISION**

State Board of Retirement's denial of petitioner's application for accidental disability retirement benefits is affirmed because petitioner did not prove that workplace injury or hazard disabled her, and she missed application deadline.

**DECISION**

The petitioner, Susan Gallagher, appeals the denial by the State Board of Retirement (SBR) of her application for accidental disability retirement benefits.

I held a hearing on September 7, 2022 by Webex, which I recorded. Dr. Gallagher

testified and was the only witness. I admitted 12 exhibits at the hearing: Exhibits 1 through 12; Exhibit 6 comprised Exhibit 6A through 6G.

Both parties submitted post-hearing briefs in February 2023.<sup>1</sup> With its post-hearing brief, SBR submitted Dr. Gallagher's personnel file and asked that it be admitted as an exhibit. I admitted it as Exhibit 13. Instead of reopening testimony to allow Dr. Gallagher to comment on her personnel file, I proposed that she have the opportunity to submit an affidavit commenting on it. At the same time, I gave both parties the opportunity to supplement their briefs to comment on Dr. Gallagher's personnel file. Dr. Gallagher submitted her affidavit and supplemental brief on July 7, 2023. SBR submitted its supplemental brief on July 21, 2023.

### **Findings of Fact**

#### Dr. Gallagher's workplace experiences leading to appeal

1. Dr. Gallagher, a Ph.D. in political science, was an assistant professor at the University of Massachusetts Lowell (UMass Lowell). (Tr. 8)
2. Dr. Gallagher had post-traumatic stress disorder (PTSD) before she began working at UMass Lowell but it was not disabling. (Ex. 6F)
3. On October 22, 2020, Dr. Gallagher signed an affidavit, which she submitted as part of her appeal and which provides a good background for this appeal. (Ex. 2) (This is not the affidavit that she submitted after the hearing commenting on her personnel file.)
4. The substance of the three-page single-spaced affidavit follows:

Starting in 1996, I worked in the Political Science Department at UMass Lowell (UML), first as an assistant professor, then as an associate professor with tenure after I was promoted in 2002. I was forced to retire on January 1, 2019,

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<sup>1</sup> The parties complied with my instruction to number documents longer than five pages. However, Dr. Gallagher's brief did not *use* the page numbers, diminishing its utility. Rather, the brief cited documents in Exhibit 1 by date and description, asking me, in effect, to search for documents in an 82-page exhibit not organized chronologically to make Dr. Gallagher's case.

many years earlier than I had planned. I loved my job, but stress resulting from mistreatment by my colleagues and university officials reignited an anxiety disorder I had previously managed successfully and made it impossible for me to fulfill my professional responsibilities. As my condition worsened, my doctors advised me to stop working at UML for the sake of my health. A summary of the chain of events that led to this outcome shows why I had to follow this advice.

In April 2014, I criticized a colleague's unsupported arguments against LGBTQ rights. I did not think that this exchange reflected a larger problem until December 2014, when I served on a search committee to fill a tenure-track job in Political Science. The search went off track when the other committee members, including the colleague I had criticized, refused to consider a supremely qualified gay man for a tenure-track position. In a good-faith effort to adhere to university policy, I reported what I perceived as a clear-cut case of discrimination to UML's Office of Equal Opportunity and Outreach (EEO). Several months later, I notified the Political Science faculty, as well as EEO, that some of my students had told me they were disturbed by this same colleague's anti-LGBTQ rhetoric, particularly his equation of same-gender marriage with polygamy.

In addition to relaying what my students said in class, I noted that two students had spoken to me privately about the hostility they encountered at UML, which had made them fearful of coming out on campus. One of these students mentioned my colleague by name, while the other spoke more generally about the unwelcoming atmosphere, pointing out that UML did not offer any courses on LGBTQ history, law, or politics, and that I was the only openly non-heterosexual professor she had met at school.

Rather than addressing the issues I had raised, my fellow professors and university officials denounced me as an "offensive" and "reckless" "martyr" and "pain in the ass" who was engaging in "a guerilla action to block progress." I never suggested that my colleague should be censored or penalized, but he retaliated by falsely accusing me of "bullying." Instead of acknowledging my position as the only publicly identified non-heterosexual in Political Science, and one of only three full-time faculty who had disclosed their sexual orientation on campus, the Administration supported my colleague's claim that my objections to his anti-LGBTQ statements stemmed from my inexplicable hostility against him. Likewise, without defending any of my colleague's deliberately provocative remarks, UML officials pretended that my well-grounded criticism of his scholarship amounted to a personal attack.

The antagonism I faced in my Department was compounded by the University's failure to respond appropriately to my report of student complaints. Instead of trying to improve the hostile climate, EEO demanded that I identify the two students who had told me of their fears of disclosing their sexual orientation at school. Of course, if the Administration had sought to incorporate LGBTQ perspectives into university policy, EEO would never have ordered me to betray

these students by outing them to university officials. Broadcasting willful ignorance of the emotional upheaval involved in coming out, EOO arranged for the Provost to reprimand me for trying to protect the students' privacy.

From the start of this ordeal, I found it difficult to maintain my emotional bearings at school. For example, in 2014, at the final search committee meeting, after I brought up my concerns about the other members' failure to follow Affirmative Action guidelines, the colleague I had criticized several months earlier berated me for having raised the issue of discrimination. He declared in contradiction to anti-discrimination policy that it was offensive and unprofessional even to discuss any suggestion of bias. As his voice got louder, I could not help but recall that I had always addressed him politely even though he claimed that I had no rights. Then, much to my surprise, I burst into tears and fled the room. I became determined from that point on to avoid any further confrontations, and I managed to plan my schedule so carefully that I have not had any personal interactions with him or the other committee members since that day.

I recognized the source of my increasing anxiety during unsuccessful mediation at the EEOC<sup>2</sup> on December 22, 2015. While I did not have an attorney, UML sent three lawyers who made it clear that their only purpose was to intimidate me. My main goal was simply to get away from Political Science because I feared that the climate would only become more toxic as my colleagues and the University sought to punish me for speaking out. However, UML would not even consider transferring me to another department or arranging a temporary placement at another UMass campus. Feeling trapped, I suddenly found myself talking of my experience with the Catholic Church: Years ago, after I threatened to publicize the name of the priest who abused me throughout my childhood, Church officials vowed to destroy me. I did not mean to compare the way I was treated at UML with what happened earlier in my life, but seeing no way out of the hostility at work, I was brought back to a time when powerlessness defined my existence.

Perhaps I was naive, but I also imagined that letting the lawyers know about my history might encourage UML to pull back from its retaliatory actions. I later learned that, to the contrary, university administrators labored throughout the following year to help the colleague who had falsely accused me of bullying craft a formal complaint against me. He filed it in January 2016 and, even though I had withdrawn from all evaluation of his work and had not caused him any injury, UML fully supported his baseless claim that I was scheming to wreck his career.

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<sup>2</sup> It is not clear that Dr. Gallagher meant the U.S. Equal Employment Opportunity Commission (EEOC). She testified that she filed a complaint at EEOC (Tr. 34) but may have meant the Massachusetts Commission Against Discrimination (MCAD) (Ex. 11, Tr. 55)

I was not informed of the complaint until the following May, when I was notified that I was being investigated for harassing and intimidating a junior colleague. At the interview that followed, the lawyer who conducted the inquiry did not allow me to bring an attorney, present evidence, call witnesses, or see the complaint. She also refused to inform me of the scope of her investigation or identify the policies I might have violated. Nearly five months later, and three days after I filed a complaint against UML at the Massachusetts Commission on Discrimination (MCAD), the Dean of my college requested a meeting to discuss the investigator's conclusions. After I refused to meet before having a chance to see the report, the Dean sent me a copy. The investigator detailed my ostensibly malicious behavior, which included criticizing my colleague's scholarship nearly two years earlier, but apart from causing him to worry about actions I did not take, my primary offense was reporting his discriminatory conduct.

Given the distorted charges against me, I could not endure a confrontation with the Dean. I obtained an excuse from my primary care physician stating that I was unable to meet with him for medical reasons.<sup>3</sup> On October 12, 2016, the Dean sent me a memo informing me that he agreed with the investigator's conclusions and accusing me of a "serious deviation from University policies and guidelines." The most alarming statement in the memo was his warning that I would be fired if I continued to speak out about perceived discrimination or again objected to my colleague's arguments against LGBTQ rights: "Please be advised that future breaches of this kind will be met with discipline, up to and including the University's right to invoke termination and/ or dismissal proceedings pursuant to Art. XIV of the contract with the Massachusetts Society of Professors."

The Dean's threat defined my future at UML: my colleagues would be protected no matter what they did or said, and I would pay the price if I failed to go along with whatever discriminatory decisions they chose to make. I spent the rest of the term in a state of panic and actually felt relieved when I had to take extended medical leave in the spring to deal with a series of health issues. These problems, which necessitated eye surgery, brain surgery, and other treatments, were debilitating for a time, but it was the hostile environment that prevented me from returning to my job. When UML made it clear that nothing would change, retirement became the only way to manage my anxiety and restore my physical and emotional health.

(Ex. 2)<sup>4</sup>

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<sup>3</sup> Presumably this appears in Ex. 1, p. 82.

<sup>4</sup> The affidavit provides background for this appeal, as I have stated. While the affidavit provides Dr. Gallagher's perspective, I do not attempt to determine if the affidavit's allegations are factual. I do not so find for a few reasons. No other witness testified about the incidents at UMass Lowell; some of the exhibits do not speak for themselves, as the expression goes; and as

Dr. Gallagher's mental health care

October 2016 through September 2017

5. On September 5, 2019, Elaine Westerlund, EdD, wrote a To Whom It May Concern letter. (Ex. 6F)

6. Dr. Westerlund stated that Dr. Gallagher had most recently been her patient from October 11, 2016 through September 20, 2017. (Ex. 6F)

7. Dr. Westerlund reported that Dr. Gallagher had discussed "a series of hostile and retaliatory events" at UMass Lowell. (Ex. 6F)

8. Dr. Westerlund also reported that Dr. Gallagher was dealing with significant health problems, including two eye surgeries related to Grave's Disease and a possible diagnosis of Relapsing Polychondritis....  
(Ex. 6F)

Dr. Westerlund added:

Yet another source of anxiety, as well as concomitant depression, for Dr. Gallagher during this time was the ineffectiveness of the attorneys handling her case who were not representing her interests well and appeared to be sabotaging her case due to conflict of interest.

(Ex. 6F)

October 2017

9. On October 26, 2017 Dr. Gallagher conferred with Dr. Catherine Lager, a psychiatrist who later signed Dr. Gallagher's treating physician statement to accompany her application for accidental disability retirement benefits. (Ex. 1, p. 55)

10. Dr. Lager wrote in a progress note that Dr. Gallagher's workplace situation "remains

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of the hearing before me on September 7, 2022, Dr. Gallagher's litigation in at least one other forum was ongoing. (Tr. 35) I do not want to make a passing factual finding that is innocuous in this appeal but that might have significance in another forum.

unbearable and triggering.” (Ex. 1, p. 55)

11. Dr. Gallagher reported that her “chief complaint” was ““I stopped smoking.”” (Ex. 1, p. 55)

12. Dr. Gallagher also reported that she was anxious and worried about her brother who had stage-4 cancer. (Ex. 1, p. 55)

November 2017

13. On November 14, 2017 Dr. Gallagher conferred with Dr. Lager. (Ex. 1, p. 52)

14. Dr. Lager wrote in her progress note that Dr. Gallagher’s workplace situation “remains triggering of her PTSD.” (Ex. 1, p. 52)

15. Dr. Gallagher’s “chief complaint” was ““I have ringing in my ears.”” (Ex. 1, p. 52)

16. Dr. Gallagher reported that her mood was a little better even though MCAD had found no probable cause. She and her lawyer thought that she had a strong case on appeal and were pursuing it. (Ex. 1, p. 52)

January 2018

17. On January 16, 2018 Dr. Gallagher conferred with Dr. Lager. (Ex. 1, p. 49)

18. Dr. Gallagher’s “chief complaint” on that day was ““I have a huge fear of this undiagnosed rheumatological illness.”” (Ex. 1, p. 49)

19. Dr. Lager wrote that Dr. Gallagher reported that she had experienced a great deal of anxiety and depression, which Dr. Gallagher attributed to “work stressors and significant medical issues.” (Ex. 1, p. 49)

20. Dr. Gallagher reported that the stressors that triggered her PTSD were, quoting Dr.

Gallagher, ““being on campus and the prospect of being on campus,<sup>5</sup> interacting with colleagues and feeling powerless”” and MCAD’s having found no probable cause that she had been discriminated against. (Ex. 1, p. 49)

February 2018 through November 2018

21. On September 20, 2019 Dr. Nancy M. Sweeney, Psy.D. wrote a To Whom It May Concern letter. (Ex. 6G)

22. Dr. Sweeney’s letter stated that she saw Dr. Gallagher for psychotherapy from February 4, 2018 through November 29, 2018. (Ex. 6G)

23. Dr. Sweeney wrote,

A prominent issue in our meetings was her conflict with her employer and her negotiations with them regarding her employment. This was the primary focus and caused her acute distress.

(Ex. 6G)

24. Dr. Sweeney reported that Dr. Gallagher had “multiple physical problems (recurring polychondritis, aneurisms, among others)” which “further increased her on-going anxiety....”

(Ex. 6G)

June 2018

25. On June 26, 2018 Dr. Gallagher conferred with Dr. Lager (Ex. 1, p. 37)

26. Dr. Lager wrote in her progress note, “Issues around work continue to be a major stressor.” (Ex. 1, p. 37)

27. Dr. Gallagher’s “chief complaint” was: ““I have filed the law suit.”” (Ex. 1, p. 37)

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<sup>5</sup> Exactly a year before, on January 16, 2017 Dr. Gallagher began a medical leave of absence. (Ex. 1, Employer’s statement) That is, she was not on campus. Dr. Gallagher thinks that the last time she was on campus was December 2016. (Tr. 69)



July 2018

28. On July 17, 2018, Dr. Gallagher conferred with Dr. Jennifer L. Beach, M.D., a primary care doctor. (Ex. 1, p. 73)

29. Dr. Beach wrote about Dr. Gallagher:

She continues to struggle with anxiety and PTSD-symptoms related to her workplace discrimination. She has been engaged in a lawsuit against UMass Lowell since 2015 for discrimination based on her sexual orientation. She has been on medical leave since spring 2016. Most recently, she has been on paid administrative leave.

(Ex. 1, p. 73)

Dr. Beach continued:

Retirement disability paperwork. I reviewed the forms needed by the Commonwealth of Massachusetts/public employee retirement administration commission. I do think her most likely avenue for success is related to an exacerbation of anxiety/PTSD related to her workplace discrimination. I have emailed Dr. Lager today to collaborate with her on this issue. I do not think we would be successful stating that the autoimmune condition (which does not yet clear [sic] have a clear diagnosis) and/or the aneurysms could be postulated to be related to workplace events/discrimination. I do think there is the very real possibility of PTSD exacerbation that would be the result of discrimination on any basis but particularly on the basis of her sexual orientation.

(Ex. 1, p. 73)

30. On July 24, 2018 Dr. Gallagher conferred with Dr. Lager. (Ex. 1, p. 34)

31. Dr. Lager repeated in her progress note what she had written a month earlier, “Issues around work continue to be a major stressor.” (Ex. 1, p. 34)

32. Dr. Gallagher’s “chief complaint” was: ““I have filed the law suit.”” (Ex. 1, p. 34)

33. Dr. Gallagher reported that her anxiety had increased in the “context of filing of law suit and medical issues.” (Ex. 1, p. 34)

September 2018

34. On September 11, 2018 Dr. Gallagher conferred with Dr. Beach for Dr. Gallagher’s

annual physical examination. (Ex. 1, p. 71)

35. Dr. Beach wrote about Dr. Gallagher:

She continues to struggle with issues around her work. She is currently not at work but seeking to pursue a medical retirement. She is working with Dr. Lager to facilitate this. Alternatively, she hopes it may be possible for her to teach online. She really does love to teach [and] hopes that she can do this in some capacity but has really found the physical workplace unacceptable.

(Ex. 1, p. 71)

36. Dr. Beach added that another source of stress for Dr. Gallagher was “a niece with a very stressful delivery.” (Ex. 1, p. 71)

Chronology leading to appeal, including application and medical panel

37. Dr. Gallagher thinks that the last time she was on campus was December 2016. (Tr. 69)<sup>6</sup>

38. On January 16, 2017 Dr. Gallagher began a medical leave of absence. (Ex. 1, Employer’s statement) The reason for her medical leave is not in the record.<sup>7</sup>

39. On December 17, 2018, Dr. Gallagher resigned, effective January 1, 2019. (Ex. 6E; stipulation) She was still on medical leave.

40. On December 16, 2018, the day before she signed her resignation letter, Dr. Gallagher applied for accidental disability retirement benefits. (Ex. 1 (application is undated); stipulation (regarding date))

41. On the application, Dr. Gallagher did not directly and strictly answer the questions

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<sup>6</sup> What is not in the record is the last time that Dr. Gallagher taught, completed a course, or performed any of her job’s essential duties.

<sup>7</sup> Dr. Gallagher testified that UMass Lowell did not require her to specify a reason for medical leave. (Tr. 68) Nonetheless, apart from what UMass Lowell required, Dr. Gallagher did not specify the reason for her medical leave, whether it was for her physical ailments, her mental ailments, a combination of ailments, and which one(s).

that were asked her. (Ex. 1)

42. When asked for the medical reason for her application, Dr. Gallagher stated:

PTSD, Anxiety Disorder, Panic Attacks, Insomnia, originally due to long-term sexual abuse by a Catholic priest, which had previously resolved, but returned and became much worse after I was subjected to hostile mistreatment by my employer. The profound stress caused by the hostility and animosity I confronted at work made it impossible for me to do my job because the symptoms of PTSD became more debilitating than I had ever experienced before.

(Ex. 1, p. 4)

43. When asked to describe the duties that she is unable to perform, Dr. Gallagher stated:

I am unable to interact with my colleagues, contribute to my dept., teach my classes, provide guidance to my students and generally participate in campus life.

(Ex. 1, p. 4)

44. When asked when she ceased to be able to perform all the essential duties of her position, Dr. Gallagher stated:

Having tried to withstand the mistreatment I experienced at work since it began in late 2014, I was forced to go on medical leave in January 2017, when I became unable to manage the panic and anxiety, as well as other physical symptoms, including insomnia<sup>8</sup> and fatigue,<sup>9</sup> brought on by my co-workers' and employer's verbal and written attacks.

(Ex. 1, p. 4)

45. When asked to describe her physical activities, including medical rehabilitation activities, Dr. Gallagher stated:

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<sup>8</sup> Since panic, anxiety, and insomnia are not physical symptoms, it is unclear what Dr. Gallagher meant by "other physical symptoms, including insomnia...."

<sup>9</sup> When asked for the medical reason for her application, Dr. Gallagher did not list fatigue. (Ex. 1, p. 4) It is unclear whether she applied for accidental disability retirement benefits *not* based on fatigue but mentioned that fatigue was one reason that she went on medical leave in January 2017. If so, it is unclear how to separate a condition that caused her to go on medical leave but for which she is not seeking accidental disability retirement benefits.

I have been intermittently incapacitated following bilateral orbital decompression surgery, 6/6/17<sup>10</sup>; symptoms of suspected relapsing polychondritis, 7/17 – Present<sup>11</sup>; and Pipeline Embolization surgery for multiple brain aneurysms, 3/31/18.<sup>12</sup> These medical conditions were serious, but only my ongoing PTSD, 2014-present, prevented me and continues to prevent me from performing my job.

(Ex. 1, p. 6)<sup>13</sup>

46. When asked to describe her activities of daily living, Dr. Gallagher stated:

I have been intermittently unable to carry out activities of daily living due to fatigue and enervation brought on by severe anxiety and insomnia caused by the hostile environment at my work. Apart from limited periods, I have generally been able to carry out basic activities[,] such as driving and cleaning.

(Ex. 1, p. 6)

47. When asked to identify the reason for her disability, Dr. Gallagher checked the boxes for both “Personal Injury” and “Hazard.” (Ex. 1, p. 7)

48. The instruction above the next five questions stated:

In describing the personal injury that you sustained or the hazard to which you were exposed, it is important to be as specific as possible.

(Ex. 1, p. 7)

49. When asked the date that she was injured and exposed to a hazard, Dr. Gallagher stated:

I’ve experienced PTSD since my mistreatment began in 12/14, but my feelings of panic and anxiety have become progressively worse<sup>14</sup> as I have been subjected to increasingly hostile verbal and written attacks.<sup>15</sup> My work-related stress became

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<sup>10</sup> Dr. Gallagher did not state how long she had been disabled.

<sup>11</sup> That is, the date of her application, December 16, 2018.

<sup>12</sup> Dr. Gallagher did not state how long she had been disabled.

<sup>13</sup> Dr. Gallagher did not mention that anxiety disorder, panic attacks, insomnia, or fatigue, as she did on page 4 of her application, prevented her from working.

<sup>14</sup> Dr. Gallagher did not specify when the conditions worsened.

<sup>15</sup> This is the hazard that Dr. Gallagher alleges she was exposed to, but she did not specify the date, as she was asked.

unmanageable<sup>16</sup> after I spoke out about anti-LGBTQ attitudes on campus, and my co-workers and school officials responded by denouncing me as a “self-identified martyr,” “bully,” and “pain in the ass.” School officials threatened to fire me if I continued to raise concerns about the campus climate.

(Ex. 1, p. 7)

50. When asked the “[s]pecific time(s) or if hazard, length of time exposed,” Dr.

Gallagher stated:

Since I first complained about homophobia on campus 3 years ago,<sup>17</sup> my colleagues have repeatedly maligned my character and credibility, falsely charged me with “bullying,” and threatened to terminate me. These undeserved and inappropriate attacks have caused me to experience anxiety, insomnia, tinnitus, eye problems, and other stress-related conditions[,]<sup>18</sup> which require ongoing medical treatment.

(Ex. 1, p. 7)

51. When asked the locations of the personal injury or hazard, Dr. Gallagher stated:

These verbal and written expressions of hostility took place in meetings on campus and were also included in emails, letters, and legal documents.

(Ex. 1, p. 7)

52. When asked for a description of the “incident(s) or hazard,” Dr. Gallagher stated:

The hostility began in 12/14 when a co-worker angrily berated me at a meeting after I complained about my dept.’s discrimination against a gay man. Although I had politely voiced my concern, the co-worker angrily castigated me as “offensive and unprofessional.” Overwhelmed, I burst into tears and fled the room. Rather than disciplining my co-worker, my employer supported him when he later falsely charged me with bullying. Since then, my co-workers and university officials have repeatedly subjected me to similarly hostile treatments.

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<sup>16</sup> Dr. Gallagher did not specify a date for this development or any other development or incident in the rest of her answer.

<sup>17</sup> That is, in 2015, three years before her application in 2018.

<sup>18</sup> Dr. Gallagher did not provide “[s]pecific time(s),” as she was asked. Dr. Gallagher did not identify tinnitus, eye problems, or other stress-related conditions when asked for the medical reason for her application. (Ex. 1, p. 4) Nor did she identify the other stress-related conditions, even though the instructions stated that “it is important to be as specific as possible.” (Ex. 1, p. 7)

(Ex. 1, p. 7)

53. When asked to describe the job duties that she was performing when she was injured or exposed to a hazard, Dr. Gallagher stated:

The mistreatment started in 12/14, after I complained about anti-LGBTQ attitudes at work. Since then, I have been subjected to insults and expressions of personal animosity in retaliation for speaking out on campus, where I am the only non-heterosexual member of my dept. and one of only 3 identified LGBTQ professors among over 1,100 faculty. The toxic climate caused the PTSD I suffered from years ago to recur and become much worse than I have ever experienced, leaving me unable to teach and perform my other professional duties.

(Ex. 1, p. 8)

54. When asked to describe other circumstances, events or physical conditions that contributed or may have contributed to her disability, Dr. Gallagher stated:

I suffered from PTSD as a result of long-term sexual abuse by a Catholic priest when I was a child. However, I learned through therapy and support groups to manage my symptoms, and the condition never prevented me from performing my job effectively until 2014-2017, when my co-workers and university officials began to subject me to virulent animosity. My other medical problems are serious, and generally worsened by stress, but it is PTSD that is keeping me from returning to work.

(Ex. 1, p. 13)

55. On August 9, 2019 Dr. Lager signed the Physician's Statement to accompany Dr. Gallagher's application for accidental disability retirement benefits. (Ex. 1, p. 27)

56. When asked if Dr. Gallagher were mentally or physically incapable of performing the essential duties of her job, Dr. Lager answered yes. (Ex. 1, p. 26)

57. When asked the dates of Dr. Gallagher's injuries or exposures, Dr. Lager answered, "2015-2018." (Ex. 1, p. 26)<sup>19</sup>

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<sup>19</sup> Dr. Lager did not explain how Dr. Gallagher could have been injured or exposed to a hazard in 2018 if she went on medical leave on January 16, 2017. (Ex. 1, Employer's statement)

58. When asked Dr. Gallagher’s “medical diagnoses,” Dr. Lager crossed out “medical,” handwrote “psychiatric,” and stated, “Post Traumatic Stress Disorder / Generalized Anxiety Disorder / Panic Disorder / Recurrent Major Depression Moderate.” (Ex. 1, p. 26)<sup>20</sup>

59. On February 28, 2020, a three-member panel jointly examined Dr. Gallagher. It consisted of Drs. Susannah Sherry, Michael Kahn, and George Dominiak, all psychiatrists. (Ex. 2, p. 2)

60. All three members of the panel determined that Dr. Gallagher was mentally incapable of performing the essential duties of her job, her incapacity was likely to be permanent, and her incapacity might be the natural and proximate result of the injury she sustained or the hazard she underwent. (Ex. 3)

61. The panel wrote:

There are some elements of post-traumatic stress disorder, but the panel would give a diagnosis of adjustment disorder with mixed features, currently in remission. Given her experience at her former workplace, the likelihood of her being able to return to work successfully there is minimal, and the panel felt that she was therefore mentally incapable of performing the essential duties of her job as described in [the] current job description....

(Ex. 3)

62. The panelists mentioned Dr. Gallagher’s “*ongoing* legal process[,] as well as an MCAD lawsuit” in the context of her stress. (Ex. 3) (emphasis added)

63. The panel wrote:

Although she prefers not to think about the experience [at her workplace], at this time she is fully functional, nondepressed, at times anxious, but taking care of all of her activities of daily living without difficulty.

(Ex. 3)

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<sup>20</sup> In her application, Dr. Gallagher did not mention depression.

64. The panel noted that Dr. Gallagher’s polychondritis “is another significant stress in her life,” and that multiple intracranial aneurysms and ocular problems “have been quite stressful.” (Ex. 3)

65. On November 3, 2020 SBR denied Dr. Gallagher’s application for accidental disability retirement benefits. (Ex. 4)

SBR stated in part:

The basis of your application...was a diagnosis of PTSD, generalized anxiety disorder, panic disorder and recurrent major depression[,]<sup>21</sup> which you asserted arose from hostile treatment by your colleagues and your employer.....

....

....Specifically excluded from the definition of personal injury...are mental or emotional disabilities “arising principally out of a bona fide personnel action[,] including a transfer, promotion, demotion, or termination except which is the intentional infliction of emotional harm.”...

Here, the Board determined that the actions taken by your employer would be properly considered to be bona fide personnel actions and therefore not compensable injuries under G.L. c. 32.

(Ex. 4) (citation omitted)

66. On November 5, 2020 Dr. Gallagher timely appealed the denial. (Ex. 5)

### **Discussion**

Dr. Gallagher’s application made it hard to understand what injury she sustained and hazard she was exposed to, and when.

What was Dr. Gallagher’s injury? Short answer: Post-Traumatic Stress Disorder (PTSD).

Long answer: When asked for the medical reason for her application, Dr. Gallagher answered: PTSD, anxiety disorder, panic attacks, and insomnia. (Ex. 1, p. 4) Later in the same

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<sup>21</sup> SBR used the statement of Dr. Gallagher’s physician for these diagnoses. (Ex. 1, p. 26)



answer, Dr. Gallagher used the phrases “PTSD,” “more debilitating than I had ever experienced before,” and “impossible for me to do my job” in the same sentence, leading me to believe that PTSD was her debilitating injury. Nine pages later, she stated that PTSD “is keeping me from returning to work.” (Ex. 1, p. 13) When Dr. Gallagher’s treating physician, Dr. Lager, was asked for Dr. Gallagher’s *diagnoses* (which are not precisely the same thing as the reason for her application), she wrote: PTSD, generalized anxiety disorder, panic disorder, and recurrent major depression - moderate. (Ex. 1, p. 26) However, Dr. Gallagher herself identified PTSD as the condition that made it impossible for her to do her job and return to work. I have to go with Dr. Gallagher’s assessment of PTSD as her injury.

What was the hazard that Dr. Gallagher was exposed to? Short answer: workplace hostility.

Long answer: When asked to describe the “incident(s) or hazard,” Dr. Gallagher began her answer with “The hostility began in 12/14....” She ended her answer with the words “similarly hostile treatments.” (Ex. 1, p. 7) When asked the date that she was injured and exposed to a hazard, Dr. Gallagher’s answer included the words “hostile verbal and written attacks.” (Ex. 1, p. 7) When asked the “[s]pecific time(s) or if hazard, length of time exposed,” Dr. Gallagher’s answer included the words “undeserved and inappropriate attacks.” (Ex. 1, p. 7) When asked the locations of the personal injury or hazard, Dr. Gallagher’s answer began with “These verbal and written expressions of hostility.” (Ex. 1, p. 7) Thus, Dr. Gallagher’s answers about the hazard she was exposed to referred to workplace hostility.<sup>22</sup>

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<sup>22</sup> Dr. Gallagher had explored with health care providers her applying for accidental disability retirement benefits on the theory that *discrimination* against her had exacerbated her pre-existing PTSD. (Ex. 1, p. 73) She decided to apply based on the theory that *hostility* against her had exacerbated her pre-existing PTSD.

When was the injury or when were the injuries to Dr. Gallagher? When was she exposed to the hazard?

Short answer: Unclear. The injury, injuries, or exposure began in December 2014, with no specific dates for the injury or injuries, and no end time for the exposure. Or, the injuries were in 2014 through 2017, with no specific dates. Or Dr. Gallagher's exposure began in 2015, with no end time for the exposure. Or Dr. Gallagher's exposure was from 2015 through 2018 (even though Dr. Gallagher was on medical leave for all of 2018 and almost all of 2017). Or the injury, injuries, or exposure lasted from April 2014 (not December 2014) through on or about October 12, 2016.

Long answer: When asked the date that she was injured and exposed to a hazard, Dr. Gallagher stated that her "mistreatment began in 12/14." (Ex. 1, p. 7) She did not answer how long her mistreatment continued. When asked the length of time that she was exposed to the hazard, Dr. Gallagher stated that it began when she "first complained about homophobia on campus 3 years ago," that is, in 2015, three years before her application in 2018. (Ex. 1, p. 7) She did not answer how long the hazard continued. When asked to describe other things that contributed or may have contributed to her disability, Dr. Gallagher answered that she could perform her job effectively "until 2014-2017, when my co-workers and university officials began to subject me to virulent animosity." (Ex. 1, p. 13) When asked the dates of Dr. Gallagher's injuries or exposures, Dr. Lager answered, "2015-2018." (Ex. 1, p. 26) Dr. Lager did not explain how Dr. Gallagher could have been injured or exposed to a hazard in 2018 if she went on medical leave on January 16, 2017. (Ex. 1, Employer's statement) In her post-hearing brief, Dr. Gallagher listed a series of incidents that triggered her PTSD and "eventually made her permanently and totally disabled from working." (Pet. Br. 18) The first incident was April 2014;

the last incident was on or about October 12, 2016. (Pet. Br. 18-24)

When did Dr. Gallagher cease being able to perform all the essential duties of her position? Short answer: Unclear. December 2016 or January 16, 2017.

Long answer: When asked this question, Dr. Gallagher answered (along with extraneous things):

...I was forced to go on medical leave in January 2017, when I became unable to manage the panic and anxiety, as well as other physical symptoms....”

(Ex. 1, p. 4) Her medical leave began on January 16, 2017. (Ex. 1, Employer’s statement)

When Dr. Gallagher’s treating physician was asked this question, Dr. Lager answered: December 2016. (Ex. 1, p. 26)

Dr. Gallagher’s did not prove her case

Dr. Gallagher did not prove by a preponderance of the evidence that a workplace injury or hazard disabled her. *Campbell v. Contributory Retirement Appeal Board*, 17 Mass. App. Ct. 1018; *Lisbon v. Contributory Retirement Appeal Board*, 41 Mass. App. Ct. 246, 255 (1996). She herself used the word “incapacitated” and the dates “7/17 – Present,” that is, to the date of her application for accidental disability retirement benefits, December 16, 2018, to describe her “symptoms of suspected relapsing polychondritis.” (Ex. 1, p. 6) She stated that only her PTSD prevented her from doing her job – but she did use the word “incapacitated” to discuss a condition *other* than PTSD. To the extent that she is claiming that her treatment at work renewed her PTSD symptoms, she did not prove that PTSD has permanently disabled her from teaching.

The reason(s) why Dr. Gallagher was on medical leave when she applied for accidental disability retirement benefits – mental ailments, physical ailments, a combination of them, and which one(s) – is not in the record. She could have been on medical leave for a reason other than PTSD, but PTSD was the reason that she applied for accidental disability retirement benefits.

Dr. Gallagher told Dr. Beach that she was “seeking to pursue a medical retirement,” as Dr. Beach put it. Dr. Beach continued, “Alternatively, she hopes it may be possible for her to teach online.” (Ex. 1, p. 71) The report is ambiguous. It is unclear what Dr. Beach meant by “Alternatively.” That Dr. Gallagher would try to teach online if she did not receive accidental disability retirement benefits? If so, that may have meant that Dr. Gallagher was not disabled. It is also unclear what “it may be possible for her to teach online” means. That Dr. Gallagher may have been healthy enough to teach online? If so, that too may have meant that Dr. Gallagher was not disabled. That Dr. Gallagher may be able to arrange to teach online? If so, Dr. Gallagher did not explain how she should be considered permanently disabled if she could actually resume teaching.

The medical panel’s form was positive but the narrative was negative and used the wrong standard. When asked if Dr. Gallagher was mentally incapable of performing the essential duties of her job and her incapacity was likely to be permanent, the medical panel checked “Yes” as the answer to both questions. Yet the medical panel wrote in its narrative that Dr. Gallagher was “fully functional.” It said that her mental condition was “in remission.” “[F]ully functional” does not sound as if Dr. Gallagher is incapable of performing the essential duties of her job. “[I]n remission” does not sound as if any disability is permanent. It appears, then, that the panel’s report was negative on the issue of permanence. An applicant cannot prevail without a positive panel report on disability, permanence, and causation. On appeal, an applicant may overcome a negative panel by showing that the panel applied an erroneous standard to reach its conclusion. *Paul Beauregard v. Fall River Retirement Board*, CR-18-0498 (DALA 2023). Dr. Gallagher has not alleged or made such a showing.

Furthermore, Dr. Gallagher had two major stressors other than the workplace: her physical health (Ex. 1, pp. 34, 49, 52; Ex. 6F; Ex. 6G) and the legal proceedings *related to* her workplace. (Ex. 1, pp. 37, 49, 52, 73; Ex. 2, p. 2; Ex. 6F; Ex. 6G) (These two major stressors were separate from other apparently *lesser* stressors: Her brother had stage-4 cancer (Ex. 1, p. 55) and her niece had a very stressful delivery. (Ex. 1, p. 71)) The medical panelists acknowledged the two major stressors (calling Dr. Gallagher’s health “another significant stress” and “quite stressful”) but did not try to allocate how much of her disability was due to the workplace and how much was due to non-workplace factors.

Whereas accidental disability retirement benefits are for “a personal injury sustained or a hazard undergone...while in the performance of...duties,” G.L. c. 32, §7(1), an employee undergoing stress while seeking legal remedies for workplace stress is not performing job duties. Therefore, any stress that an applicant for accidental disability retirement benefits undergoes, not directly in response to occurrences in the workplace, but rather in response to the applicant’s legal and related efforts to counter those occurrences, cannot lead to a workplace injury or constitute a hazard. It is far from clear that the medical panelists made that distinction in reviewing Dr. Gallagher’s medical records.

Furthermore, the panel opinion used an incorrect legal standard to find disability. The panel wrote:

Given her experience at her former workplace, the likelihood of her being able to return to work successfully there is minimal, and the panel felt that she was therefore mentally incapable of performing the essential duties of her job as described in [the] current job description....

(Ex. 3) It is not clear what the panel meant by “Given her experience at her former workplace” and “return to work successfully.” Being able to return to work successfully is not the standard

for eligibility for accidental disability retirement. The standard is permanent inability to perform the essential duties of one's job. G.L. c. 32, §7(1).

If the panel meant that because Dr. Gallagher's experience at her former workplace was negative, she could not return there successfully from a professional perspective, that does not meet the standard of disability. If by returning to work successfully, the panel meant that the likelihood was minimal that Dr. Gallagher could perform the essential duties of her job, then the panel engaged in roundabout reasoning that made the word "therefore" superfluous. If that's what the panel meant, then it wrote, in effect: Given that Dr. Gallagher could not perform the essential duties of her job and that the likelihood was minimal that she could perform the essential duties if she returned to her job, "therefore," she could not perform the essential duties of her job.

A final note about the panel report: Although Dr. Gallagher claimed to have been disabled by PTSD, the medical panel found only "some elements of post-traumatic stress disorder," and diagnosed her condition as "adjustment disorder with mixed features, currently in remission." (Ex. 3) That difference – Dr. Gallagher claimed one mental condition, but the medical panel largely found another condition – may not be significant in evaluating Dr. Gallagher's claim. But it does seem in this appeal to weaken her claim.<sup>23</sup>

I do not remand the report to the panel for clarification because Dr. Gallagher missed the deadline for applying for benefits, as I discuss below.

Dr. Gallagher missed the application deadline

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<sup>23</sup> I am not ruling what, if any, significance a similar difference between a claimed condition and a diagnosed condition would or should have in another appeal.

As I wrote in *Gayle Clifford v. State Board of Retirement*, CR-16-187 (DALA 2017),

2017 WL 11805068:

A member of a state retirement system who applies for accidental disability retirement benefits must generally do so within two years of sustaining an injury or undergoing a hazard. G.L. c. 32, § 7(1). Four exceptions exist.

1. The two-year deadline does not apply if the member filed a written notice with the appropriate retirement system within 90 days of sustaining the injury or undergoing the hazard, or if someone filed a notice on his or her behalf. G.L. c. 32, § 7(1).

2. The two-year deadline does not apply if the member received workers' compensation for the injury or hazard. G.L. c. 32, § 7(3)(a).

3. The two-year deadline does not apply for (A) a member in Groups 2, 3, and 4 who is not eligible for workers' compensation (B) "if a record of such injury sustained or hazard undergone is on file in the official records of his department." G.L. c. 32, § 7(3)(a).

4. The fourth exception appears in a provision that also imposes a requirement on the head of a department. In general,

the head of a department shall, within fifteen days of the receipt of knowledge of a personal injury sustained by a member in his department as a result of, and in the performance of, his duties, notify the board in writing of the time, place, cause and nature of such injury, together with such further information relative thereto as he may obtain.

G.L. c. 32, § 7(3)(b). If a department head notifies the appropriate retirement board, the member's two-year deadline does not apply.

None of these four exceptions exist in Dr. Gallagher's appeal.

Dr. Gallagher applied for accidental disability retirement benefits on December 16, 2018.

(Ex. 1; stipulation) That means that for her to be eligible for accidental disability retirement benefits, her last injury or exposure had to have occurred on or after December 16, 2016.

However, Dr. Gallagher did not present evidence about any such injury or exposure. In her post-hearing brief, Dr. Gallagher asserted that her last injury or exposure was on or about

October 12, 2016 (Pet. Br. 24), two years and two months before her application – that is, two months beyond the two-year window that she had.

In her application, Dr. Gallagher indirectly indicated that she was last exposed to a hazard sometime in 2017. (Ex. 1, p. 13) Since she began medical leave on January 16, 2017 (Ex. 1, Employer’s Statement), she would have had to have been injured or been exposed to a hazard in the first 16 days of 2017. However, she did not identify any such injury or exposure. In the treating physician’s statement, Dr. Lager stated that Dr. Gallagher’s last injury or exposure was sometime in 2018 (Ex. 1, p. 26), a year that doesn’t make sense, as I have noted, because Dr. Gallagher began medical leave on January 16, 2017. (Ex. 1, Employer’s Statement)

Dr. Gallagher missed the deadline for applying for accidental disability retirement benefits by two months. Her arguments to the contrary are unavailing. (Pet. Br. 44-47) *See Clifford*.

Because Dr. Gallagher did not prove that a workplace hazard or injury disabled her and because she missed the deadline to apply, I do not need to reach whether she was the subject of bona fide personnel action or a hazard common to many workplaces. *See e.g., Andrew Sousa v. Bristol County Retirement System*, CR-19-0445 (DALA 2023). To determine whether UMass Lowell’s actions were bona fide would require more evidence than is in the record and would serve no purpose because Dr. Gallagher’s application was late.

### **Conclusion and Order**

The petitioner did not prove that a workplace injury or hazard disabled her. She also missed the two-year deadline to apply for accidental disability retirement benefits. The State Board of Retirement’s denial of her application is affirmed.



DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/

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Kenneth Bresler  
Administrative Magistrate

Dated: October 13, 2023