

COMMONWEALTH OF MASSACHUSETTS
Division of Administrative Law Appeals

GEORGE G. ¹	:	Docket No. CR-23-0366
<i>Petitioner</i>	:	
	:	
	:	Date: December 6, 2024
v.	:	
	:	
BOSTON RETIREMENT SYSTEM	:	
<i>Respondent</i>	:	

Appearances:

For Petitioner: Kathleen Becchetti, Esq.
For Respondent: Timothy Smyth, Esq.

Administrative Magistrate:

Eric Tennen

SUMMARY OF DECISION

The Petitioner was a firefighter. In 2010, he was involved in a fire in which two civilians died. This caused him to develop Post Traumatic Stress Disorder (“PTSD”). His PTSD was immediately disabling. And even though he returned to work, he experienced symptoms throughout the rest of his career and was never again able to perform the essential duties of his job. He has proven that this incident proximately caused his disability.

INTRODUCTION

The Petitioner timely appeals a decision by the Boston Retirement System (“BRS”) denying his application for accidental disability retirement. On July 29, 2024, I held an in-person hearing. The Petitioner was the only witness. I admitted Exhibits 1-13 at the hearing. I left the record open, and on August 30, 2024, the parties jointly submitted exhibits 14-17 which I now admit into evidence. The parties submitted closing briefs on October 8, 2024. Because the BRS

¹ A pseudonym. See G.L. c. 4 § 7, 26th para., (c).

made a new legal argument in its brief, I allowed the Petitioner the opportunity to file a reply, which counsel did, on November 1, 2024.

FINDINGS OF FACT

1. The Petitioner was a longtime firefighter for the City of Boston. During his tenure he rose to the rank of lieutenant. (Stipulated facts.)

2. After responding to a fire in 2010 in which two people died, the Petitioner began to suffer from Post Traumatic Stress Disorder (“PTSD”).² When he was unable to get through a training exercise a few months later, he was placed on “injured on duty” status by a department doctor. A subsequent assessment formally diagnosed him with PTSD and Generalized Anxiety Disorder. (Stipulated facts.)

3. He remained out of work on “injured on duty” status until December 2011. At that point, he went back to work, first on light duty, then on moderate duty, before returning to full duty in 2012. During his gradual return to full duty, he participated in therapy related to his trauma. (Ex. 2.)

4. Despite continuing to work until August 2017, his PTSD persisted. In 2015, he went to see a therapist because he was having a hard time; work was triggering for him. The therapist confirmed his symptoms and that he continued to carry a PTSD diagnosis. (Testimony; ex. 14.)

5. In fact, his PTSD affected his work throughout his tenure:

[S]ince the [] fire, [the Petitioner] dragged his feet for 30 seconds to delay or avoid taking action, knowing that other firefighters would go ahead of him. He was anguished and ashamed to make that disclosure. He indicated that he had attempted the Captain’s exam four times and failed it each time. He stated that he experienced chronic anxiety, sleeplessness and nightmares prior to each shift. Dr. Dodd noted that although the applicant knew that PTSD had left him disabled emotionally to continue in fire

² It is not necessary to recount the details of the fire. Suffice it to say, the event was tragic.

service, he remained at work in the hopes of finishing 32 years, even if only to “crawl” across the finish line, so that he could leave without the “stigma” of having “faked” a disability retirement in others’ eyes.³

(Ex. 2, pg. 7.)

6. In his testimony, he elaborated about his “declining work behavior.” He regularly experienced anxiety prior to each shift. He dreaded reporting to work and responding to calls. He had a “hesitancy” on any kind of “real” call. He would sleep at the firehouse when he should have been awake but could not sleep well at home. He was a “slug” avoiding as much of his job as he could. He was supposed to be a leader, but he stopped being the first one out. He ultimately realized just how bad a job he was doing. He does not believe he ever performed at the level he used to before the fire in 2010. He also did not think he should be in his position. (Testimony; ex. 2.)

7. In August 2017, he injured his back while moving equipment inside the firehouse. He was again out of work on “injured on duty” status. (Stipulated facts.)

8. Having experienced back injuries before, he thought he would be unable to return to work because of the severity of this particular injury. Yet, after a few months of physical therapy, he was advised that his back injury was no longer incapacitating, and he was cleared to return. (Testimony; stipulated facts; ex. 17.)

9. However, the thought of returning to work immediately exacerbated his PTSD symptoms. He “felt trapped.” He went to his primary care doctor and told him that he could not return to work because he could not do what he was supposed to do. (Testimony.)

³ Unfortunately, it is not unusual for first responders to be ashamed, or feel a stigma, to admit they have emotional problems caused by on-the-job incidents. *See e.g. Jason J. v. Revere Ret. Bd.*, CR-22-0360, 2024 WL 1616167 (DALA Apr. 5, 2024); *Wayne W. v. Middlesex Cty. Ret. Sys.*, CR-21-0359, 2023 WL 5774616 (DALA Sep. 1, 2023).

10. His doctor referred him to an outpatient program at St. Elizabeth’s hospital. From there he began seeing a psychiatrist at Oasis Behavioral Health Institute. He was prescribed Prozac. After months of treatment, he still did not feel as if he could return to work. His doctor concurred. (Testimony; ex. 1.)

11. The Petitioner remained out on “injured on duty” leave and received benefits pursuant to G.L. c. 41 § 111F. (Exs. 4 & 11.) Although the records are not too detailed, it is clear the Petitioner was receiving “injured on duty” benefits after he was cleared to return from his back injury. I thus infer he continued to receive these benefits on account of his PTSD.

12. On June 20, 2018, the Petitioner filed a Member’s Application for Accidental Disability Retirement based on the lingering emotional impact of the 2010 fire. (Stipulated facts.)⁴

13. He retired for superannuation on December 31, 2021. (Exs. 1 & 11.)

14. In March and April 2022, he was evaluated by a medical panel composed of three psychiatrists. They unanimously opined that the Petitioner was permanently disabled from performing the essential duties of a firefighter. They also unanimously agreed that his disability could have been caused by his workplace injury (the 2010 incident). (Exs. 5-7.)

15. The Board sent the matter to a retirement system hearing officer. He recommended denying benefits because “the applicant was not actively performing his duties as a firefighter

⁴ There is no issue of untimely notice in this case, nor does the BRS suggest differently. At the time of the incident, the department had contemporaneous records of the Petitioner’s diagnosis and inability to perform his job in the form of doctor assessments, treatment notes, and the fact that he was placed on “injured on duty” status because of the disabling impact of this incident. (Ex. 1.) He also filed an injury report, albeit belatedly, in June 2018. (Ex. 10.). *See Baptiste v. Bristol Cnty. Ret. Bd.*, CR-20-001, 2024 WL 215931, (DALA Jan. 12, 2024) (listing different documents that suffice to provide timely notice).

when he became permanently disabled by his PTSD, and was therefore not a ‘member in service.’” (Ex. 1.)

16. On February 15, 2023, the Board voted to deny the accidental disability retirement application without explanation, but ostensibly for the reasons set out in the recommended decision. (Ex. 8.)

DISCUSSION

A Massachusetts public employee is entitled to retire for accidental disability if the employee is “unable to perform the essential duties of his job,” the incapacity is “likely to be permanent,” and the incapacity was caused by a “personal injury sustained...as a result of, and while in the performance of, [the employee’s] duties.” G.L. c. 32, § 7. “The pertinent medical problem is required to have ‘matured,’ i.e., to have become disabling, while the applicant was still a ‘member in service.’” *Walsh v. Malden Ret. Bd.*, CR-19-517, 2024 WL 215930, at *2 (DALA Jan. 12, 2024) quoting *Hollup v. Worcester Ret. Bd.*, 103 Mass. App. Ct. 157, 164-165 (2023).

BRS initially argued that the Petitioner was not disabled while a “member in service” because it said he did not become disabled until after he stopped actively working in 2017. However, that was prior to the decision in *Hollup, supra*, which clarified that this is not the correct standard. BRS now concedes that the Petitioner was disabled while he remained a member in service, through his retirement in January 2021, and this issue is thus no bar to his recovery. Instead, BRS now argues that the Petitioner is precluded from recovery because his injury was on account of a *bona fide* personnel action and thus not compensable. *Reyes v. State Bd. of Ret.*, CR-13-598 (CRAB Feb. 28, 2024) (“under the retirement law, *bona fide* personnel

actions may not form the basis for a claim of emotional harm unless they constitute the intentional infliction of emotional distress”).⁵

Specifically, BRS’s theory is that because the Petitioner worked full duty from 2012 to 2017, it argues he was able to perform his essential duties during that time. In 2017, he was out of work because of his back injury and unable to physically perform his essential duties. It was not until he was cleared to return to work from his back injury that the Petitioner put forth a claim that he was unable to work because of his PTSD. Thus, BRS posits that it was the return-to-work order in 2018 that caused the Petitioner’s disabling PTSD. And because that return-to-work order was a *bona fide* personnel action, the Petitioner has no claim.

However, BRS fails to acknowledge that the Petitioner’s PTSD and disability took root immediately after the 2010 incident, and his symptoms never went away. Some symptoms may have waned from time to time, but they never fully disappeared. Other symptoms were always present. Throughout that time, he was consistently unable to do the essential duties of his job and was covering up his deficiencies. Thus, the Petitioner’s disabling PTSD did not arise from being told to return to work. That request simply put the Petitioner back to where he was before his back injury—suffering from PTSD and the anxiety of having to perform a job he could not perform. *See Scipione v. Barnstable Cty. Ret. Bd.*, CR-12-196, *28-29 (DALA Sep. 4, 2015) (Petitioner’s “refusal to recognize earlier that he should no longer be working as a police officer

⁵ Accidental disability requires a personal injury. Chapter 32 does not define personal injury, but courts have consistently used the definition found within G.L. c. 152, § 1(7A) which says that “[n]o mental or emotional disability arising principally out of a bona fide, personnel action including a transfer, promotion, demotion, or termination except such action which is the intentional infliction of emotional harm shall be deemed to be a personal injury[.]” *See e.g. Sousa v. Bristol Cty. Ret. Sys.*, CR-19-0445, 2023 WL 3042651 (DALA Apr. 14, 2023).

... does not change the fact ... that [he] was disabled by PTSD from serving as a police officer before he actually stopped working.”).

To be sure, there was nothing wrong with the department asking the Petitioner to return to work when he was cleared from his back injury. But the record does not support BRS’s theory that the return-to-work order is what caused or aggravated his PTSD. Instead, as every medical panelist (and the Petitioner’s own treating doctors) agreed, his PTSD was caused by the 2010 incident.⁶

CONCLUSION AND ORDER

The BRS’s decision denying the Petitioner’s application for accidental disability is reversed.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Eric Tennen

Eric Tennen
Administrative Magistrate

⁶ For what it is worth, the Deputy Chief who filled out the employer’s statement for the Petitioner’s disability application noted that the 2010 incident was the disabling event, and the claimed disability was *not* related to a personnel action. (Ex. 4.)