

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)**

**Kimberly Godfrey,**  
Petitioner

v.

Docket No. CR-16-562

**State Board of Retirement,**  
Respondent

**Appearance for Petitioner:**

Steven M. Buckley, Esq.  
111 Pleasant Street  
Milton, MA 02186

**Appearance for Respondent:**

Alison K. Eggers, Esq.  
Deputy General Counsel  
Office of the Treasurer  
One Winter Street, 7th Floor  
Boston, MA 02108

**Administrative Magistrate:**

Kenneth Bresler

**SUMMARY OF DECISION**

Petitioner applied for accidental disability retirement benefits, received a negative panel report, appealed, and invoked no exceptions to the general rule that a negative panel report ends an accidental disability application. Denial affirmed.

**DECISION**

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

Magistrate Mark L. Silverstein held a hearing on January 9, 2018, which he recorded. He

admitted 15 exhibits at and after the hearing. Ms. Godfrey was the only witness. Both parties submitted post-hearing memoranda.

In December 2024, the case was reassigned to me. On January 10, 2025, both parties assented to my writing the decision based on the record, rather than my conducting another hearing.

### **Findings of Fact**

1. On October 17, 2013, Ms. Godfrey was working as a certified nursing assistant (CNA) while working for the Commonwealth of Massachusetts. While rolling a patient, she was injured. (Ex. 11; testimony)

2. At some time, Ms. Godfrey received workers' compensation. (Testimony)

3. Around January 17, 2016, Ms. Godfrey applied for accidental disability retirement benefits. (Ex. 11)<sup>1</sup>

4. On August 11, 2016, Dr. Thomas P. Goss, a medical panelist and orthopedist, examined Ms. Godfrey. (Ex. 7)

5. Dr. Goss opined that Ms. Godfrey was physically incapable of performing the essential duties of her job, her incapacity was likely to be permanent, but her incapacity was not such as it might be the natural and proximate result of the injury she sustained. (Ex. 7)

6. In the narrative portion of his report, Dr. Goss wrote in part:

The apparent relatively minor soft tissue injury [that] Ms. Godfrey sustained to her lower back on 10/17/2013 was directly causally related to the occupational event of that date. Since such injuries heal fairly reliably in 4 – 6 weeks[,] however, I find it difficult to relate her persistent lumbosacral mechanical difficulties after early December 2013 to this event. Rather, I believe her

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<sup>1</sup> If Ms. Godfrey's application is in the record, I cannot locate it. January 17, 2016 was the date that Dr. Emmett A. Clemente signed the Treating Physician's Statement for Ms. Godfrey's application. (Ex. 11)

persistent mechanical lumbosacral discomfort/dysfunction has been due to the...significant right-sided degenerative disease involving the L4-L5 level which pre-existed the 10/17/2013 event.

(Ex. 7)

7. On August 18, 2016, Dr. Ronald Marvin, a medical panelist and orthopedist, examined Ms. Godfrey. (Ex. 7)

8. Dr. Marvin opined that Ms. Godfrey was physically 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. (Ex. 7)

9. In the narrative portion of his report, Dr. Marvin wrote in part:

Because of her persistent symptomatology[,] including the persistent back pain and radiculopathy, it is my opinion that she is disabled from her previous occupation.

Her situation could change if she has successful surgery but that would have to be determined at a later date, and therefore at this time I consider her disability to be permanent.

It is my opinion with a reasonable degree of medical certainty that the disability is the result of the work-related incident which was described occurring on 10/17/13.

(Ex. 7)

10. On August 31, 2016, Dr. John S. Ritter, a medical panelist and orthopedist, examined Ms. Godfrey. (Ex. 7)

11. Dr. Ritter opined that Ms. Godfrey was physically incapable of performing the essential duties of her job, her incapacity was likely to be permanent, but her incapacity was not such as it might be the natural and proximate result of the injury she sustained. (Ex. 7)

12. In the narrative portion of his report, Dr. Ritter wrote in part:

It is my opinion, with reasonable medical certainty, that the current diagnosis and presenting symptoms are not causally related to the work related incident of

10/17/2013 but rather to the progression of the claimant's pre-existing degenerative changes in the lumbar spine.

(Ex. 7)

13. During one medical panelist's examination, an unidentified woman was present and asked questions in addition to the doctor. (Testimony)

14. On November 22, 2016, SBR denied Ms. Godfrey's application for accidental disability retirement benefits. The denial "was based in part" on the majority of the medical panel's conclusion that her condition was not caused or aggravated by an injury sustained or hazard undergone as a result of and while performing her work-related duties. (The denial did not state on what else it was based.) (Ex. 9)

15. On November 29, 2016, Ms. Godfrey timely appealed. (Ex. 10)

### **Discussion**

The medical panel issued a so-called negative panel report. *Lynne M. Saulnier v. State Board of Retirement*, CR-98-156 (DALA 1999). A negative panel report generally precludes an applicant from receiving accidental or involuntary disability retirement benefits. *Quincy Retirement Board v. Contributory Retirement Appeal Board*, 340 Mass. 56, 60 (1959) ("A certification of incapacity is a condition precedent to accidental disability retirement by the local board.") (citations omitted).

The general rule that a negative panel ends an application for accidental or involuntary disability retirement benefits has a few exceptions: if the medical panel did not "conform[] to the required procedure of physical examination"; it lacked "all the pertinent facts"; it used an erroneous legal standard; or the medical certificate was "plainly wrong." *Kelley v. Contributory Retirement Appeal Board*, 341 Mass. 611, 617 (1961).

The "plainly wrong" exception does not entitle a petitioner to "an opportunity for a retrial

of the medical facts.” *Id.* A medical panel’s opinion is not plainly wrong simply because a petitioner disagrees with it. *Debra L. Burke v. State Board of Retirement*, CR-17-677 (DALA 2020).

Ms. Godfrey’s first argument, through her lawyer, is that because Ms. Godfrey received workers’ compensation, she should receive accidental disability retirement benefits. (Pet. Closing Memorandum 2) This argument has no basis in law. Ms. Godfrey acknowledged that the decision to award her workers’ compensation “is not binding here,” but retracted that acknowledgement by arguing that her receipt of worker’s compensation “should carry significant weight” – so much weight that SBR’s denial of accidental disability retirement benefits was arbitrary and capricious. (Pet. memo 2) SBR’s denial was not arbitrary and capricious; it adhered to the law.

Ms. Godfrey’s next argument began by contending that Public Employee Retirement Administration Commission (PERAC) rules require medical panelists to list everyone who is present at a medical examination. In support, she attached to her closing memorandum one page pulled from the middle of a PERAC document. The title of the document is unknown. It includes this statement directed to medical panelists: “At the beginning of your Report, it is important to include:…Names of all individuals in attendance at the examination.” (Bold omitted) Whether this statement is binding on medical panelists is unknown, absent the full document’s context.

Ms. Godfrey alleged that a third person in Dr. Ritter’s examination room, possibly his assistant, was not named in Dr. Ritter’s report. Ms. Godfrey does not explain how this omission prejudiced her.

Ms. Godfrey further alleged that the presence of the third person in Dr. Ritter’s examination room “prevented any kind of meaningful discourse.” However, she did not explain

what meaningful discourse was prevented, and how that prejudiced her.

Ms. Godfrey's lawyer then offered in the post-hearing memorandum his personal representation that another person had told him that Dr. Ritter was deaf. This personal representation was not supported by affidavit. The allegation about Dr. Ritter was not in the record. Ms. Godfrey did not allege that she was prejudiced by Dr. Ritter's alleged condition. She did not allege that Dr. Ritter did not "conform[] to the required procedure of physical examination," *Kelley*, 341 Mass. at 617, which is one exception to the rule that a negative panel result generally ends an application for accidental disability retirement benefits. (Pet. memo 2-3)

Ms. Godfrey's next argument is that Dr. Ritter's assertion that she had a pre-existing condition "is absolutely false" (Pet. memo 2); Dr. Ritter's and Dr. Goss's opinions are "[p]reposterous" (relying on the opinions of doctors who were not on the medical panel) (Pet. memo 4); Dr. Ritter "manufacture[d]" a pre-existing diagnosis; and one of Dr. Goss's statements was "another fabrication." (Pet. memo 4)

The medical records in this appeal are approximately two inches thick. Ms. Godfrey, through her lawyer, did not argue further, with citations to the medical records, to prove by a preponderance of the evidence that the medical panelists' opinions were false, preposterous, manufactured, or fabricated. Ms. Godfrey, through her lawyer, has either made a "plainly wrong" argument without trying to support it or has tried to retry the medical facts of the case, which case law bars her from doing.

Ms. Godfrey argued that Dr. Ritter used an incorrect medical standard but did not fully develop or cite the argument. Nor did she explain how if the alleged incorrect medical standard were corrected, she would prevail. (Pet. memo 4)

Ms. Godfrey concluded that she should receive accidental disability retirement benefits because the “majority opinion” (there were three separate opinions) contained “errors, omissions, and obfuscations, (to be kind).” (Pet memo 5) She did not identify omissions or obfuscations. She did not explicitly invoke any of the four exceptions to the general rule that a negative medical panel report ends an application for accidental disability retirement benefits.

### **Conclusion and Order**

The State Board of Retirement’s denial of the petitioner’s application for accidental disability retirement benefits is affirmed.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/

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Kenneth Bresler  
Administrative Magistrate

Dated: