COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss. **Division of Administrative Law Appeals**

Stephen Gonglik,[1]
Petitioner,

v.

Westfield Retirement System,
Respondent.

No. CR-21-425

Dated: January 12, 2024

Appearance for Petitioner:
Leigh A. Panettiere, Esq.

Appearance for Respondent:
Christopher J. Collins, Esq.

Administrative Magistrate:
Yakov Malkiel

SUMMARY OF DECISION

The petitioner applied to retire for accidental disability in 2021, citing workplace incidents that occurred in 2007. Based on the timing of the application, the respondent retirement board did not err by declining to refer the application to a medical panel. More recent incidents described by the petitioner on appeal do not entitle him to relief on appeal because they were not presented in his application to the board.

DECISION

Petitioner Stephen Gonglik appeals from a decision of the Westfield Retirement System denying his application to retire for accidental disability. The appeal was submitted on a written record consisting of an affidavit from Mr. Gonglik, stipulations marked 1-34, and exhibits marked 1-28 and R1-R4.[2] The parties also filed joint and separate memoranda.

---

[1] Observing that mental health conditions should no longer be associated with stigma or shame, the petitioner through counsel asked for his name not to be replaced in this decision by a pseudonym. *See* G.L. c. 4, § 7, 26th para., (c).

[2] The petitioner initially intended to testify live, as did a witness for the board. An interlocutory order observed that the applicable case law evaluates a member's entitlement to a medical panel without regard to his credibility or the strength of the board's countervailing

Facts

For reasons discussed *infra*, the following facts are drawn from Mr. Gonglik's evidence, believed and unrebutted.

1. Mr. Gonglik became a police officer with the Westfield Police Department in approximately 1999. (Gonglik affidavit ¶ 4; Stipulation 1; Exhibits 14, 20.)

2. During 2007, Mr. Gonglik was among the first officers to arrive on the scenes of three violent car crashes. In each instance, the responding officers filed only routine incident reports. (Gonglik affidavit ¶¶ 5-8; Stipulation 2; Exhibits 1-3.)

3. Each of the three crashes involved terrible injuries and one or more deaths. Mr. Gonglik was personally acquainted with the victim of the first crash. The victim of the second crash sat in his mangled car, attempting unsuccessfully to breathe, while Mr. Gonglik called for help. At the third crash, the roof of the car was crushed right into an infant's car seat. Mr. Gonglik eventually found the car seat empty, but the infant's mother sat dying nearby. (Gonglik affidavit ¶¶ 5-8; Stipulation 2; Exhibits 1-3.)

4. Mr. Gonglik's exposure to the three crashes caused him severe psychological harm. He could not talk about these events with his wife. He began to have nightmares. Eventually, he developed disabling symptoms of PTSD. (Gonglik affidavit ¶¶ 9-11, 31, 36, 38; Stipulations 10-14, 18-20; Exhibits 11, 16-19.)

---

evidence. *See infra* p. 4. Thereafter, the board withdrew its proposed witness (for other reasons) and the petitioner agreed to file an affidavit. The board preserved an argument that it should have been permitted to cross-examine the petitioner. *See infra* note 3.

5. During 2018-2019, Mr. Gonglik suffered a series of knee injuries. They required an extensive course of treatment and some time away from work. (Gonglik affidavit ¶¶ 15, 16, 20; Stipulations 4-7; Exhibits 6, 7, 9, 11.)

6. During September 2019, Mr. Gonglik's job duties required him to view an unusually gruesome photograph of a murder victim. That experience further aggravated Mr. Gonglik's mental health problems. (Gonglik affidavit ¶¶ 17-19; Stipulation 26; Exhibit 8.)

7. Mr. Gonglik last performed his job duties during May 2020. In April 2021, represented by an attorney, he applied to retire for accidental disability. His application was supported by a treating physician's statement prepared by Dr. Elizabeth Armstrong. (Gonglik affidavit ¶ 24; Stipulations 11, 15, 29; Exhibits 13, 16, 20.)

8. On his application, Mr. Gonglik described his disabling condition as PTSD. He checked a box to indicate that his incapacity was caused by a "hazard," not an "injury." An adjacent instruction on the application form explained that a hazard means "generally, exposure to a harmful situation over a period of time." (Exhibit 20.)

9. In a field on the form designated for information about specific incidents that caused the applicant's disability, Mr. Gonglik identified the three car crashes of 2007. In a field designated for information about medical treatment the applicant has underdone, Mr. Gonglik referenced his treatment for his knee injuries. (Exhibit 20.)

10. A medical panel evaluated Mr. Gonglik's entitlement to retire for ordinary but not accidental disability. The board allowed Mr. Gonglik to retire for ordinary disability in May 2021. In October 2021, the board denied the retirement application as to accidental disability. Mr. Gonglik timely appealed. (Gonglik affidavit ¶¶ 32-35; Stipulations 16, 17, 31, 32; Exhibits 21, 22.)

Analysis

A public employee seeking to retire for accidental disability must prove that he is permanently incapacitated as a result of a workplace "injury" or "hazard." G.L. c. 32, § 7(1). Subject to certain exceptions, the pertinent injury or hazard is required to have occurred during the two years immediately preceding the date of the application. § 7(1), (3).

A retirement board may deny a member's retirement application at any time if the member "cannot be retired as a matter of law." 840 C.M.R. § 10.09(2). By extension, there is no need for a medical panel to consider an application, or a component of an application, that does not make out a prima facie case. *See Duquet v. Malden Ret. Bd.*, No. CR-18-297, at *8 (DALA Aug. 28, 2020). A prima facie case consists of "sufficient evidence that, if unrebutted and believed, would allow a fact finder to conclude that [the member] satisfies the threshold requirements to qualify for accidental disability retirement." *Sibley v. Franklin Reg'l Ret. Bd.*, No. CR-15-54, at *5-6 (CRAB May 26, 2023). *See Hollup v. Worcester Ret. Bd.*, 103 Mass. App. Ct. 157, 164 n.5 (2023).[3]

The retirement statute refers to two scenarios that may support retirement for accidental disability: "a personal injury sustained" or "a hazard undergone." § 7(1). In turn, the appellate case law describes two "hypotheses" that an applicant may advance: "that [the] disability

[3] At a prehearing conference, the board theorized that a member is entitled to a medical panel only if his or her evidence is *in fact* unrebutted and *in fact* believed. The board misunderstands the nature of the prima facie analysis. A tribunal conducting such an analysis "acts as a data collector, not as a fact finder," taking "specific facts affirmatively alleged by the [claimant] as true." *Cepeda v. Kass*, 62 Mass. App. Ct. 732, 737-38 (2004). This attitude is reflected in the conditional mood of the *Hickey* standard ("*if* unrebutted and believed, *would* allow . . ."). *See also Traynor v. Gloucester Ret. Bd.*, No. CR-20-281, 2023 WL 8170656, at *5 (DALA Nov. 17, 2023); *St. Martin v. State Bd. of Ret.*, No. CR-21-258, 2023 WL 1824049, at *3 (DALA Feb. 3, 2023); *Internicola v. Saugus Ret. Bd.*, No. CR-20-385, 2022 WL 17081140, at *4 (DALA Nov. 10, 2022).

stemmed from a single work-related event or series of events," or, "if the disability was the product of gradual deterioration, that the employment . . . exposed [the member] to an identifiable condition . . . that is not common and necessary to all or a great many occupations." *Blanchette v. Contributory Ret. Appeal Bd.*, 20 Mass. App. Ct. 479, 485 (1985). The administrative decisions have drawn a parallel between these two distinctions, associating the term "injury" with the single-event-or-series-of-events hypothesis and the term "hazard" with the gradual-deterioration-resulting-from-uncommon-condition hypothesis. See the decision issuing today in *Favazza v. MTRS*, No. CR-21-150, at *8 & n.3 (DALA Jan. 12, 2024) (collecting authorities).

The text of Mr. Gonglik's application portrayed the cause of his disability as an "injury," namely the three specific car crashes to which he responded in 2007. The insurmountable hurdle facing this theory is that the three crashes occurred long before the two-year limitations period. Mr. Gonglik conceded at a prehearing conference that he did not give his employer or the board contemporaneous "written notice" of the car crashes within the meaning of § 7(1).[4] And his application did not name more recent incidents as aggravating events.

On appeal, Mr. Gonglik identifies his exposure to the murder-victim photo in 2019[5] and his knee injuries of 2018-2019 as additional specific incidents detrimental to his mental health.

---

[4] Documents styled "incident reports" may serve as "notices of injury" when their content and circumstances communicate the likelihood that the member may have suffered severe emotional harm. *See Wayne W. v. Middlesex Cty. Ret. Syst.*, No. CR-21-359, 2023 WL 5774616, at *6 n.6 (DALA Sept. 1, 2023); *Kurt K. v. Hampden Cty. Reg'l Ret. Bd.*, No. CR-21-631, 2023 WL 4846321, at *9-10 (DALA July 21, 2023). *Cf. Gale*, *supra*, at *3. The incident reports filed here did not convey that message, instead focusing straightforwardly on the first responders' observations and actions.

[5] The board contends that a member's exposure to photos of traumatic incidents cannot support accidental disability retirement, because (the board says) the job duty of viewing such photos is insufficiently uncommon. This argument reflects a recurrent misreading of *Morse*,

The problem is that Mr. Gonglik did not present these incidents as causes of his disability in his application to the board. They also were not portrayed as pertinent in Dr. Armstrong's supporting statement or in the application's other enclosures. CRAB has stated that:

> The application provides the basis for the claim and guides the retirement board and [PERAC] in evaluating and responding to the claim. If a member wishes to rely on a specific event, or on a series of specific events, those events must be stated in the application. . . . If new injuries or incidents were permitted to be added after this process is underway, the claim would become a "moving target" and a source of confusion.

Zajac v. State Bd. of Ret., No. CR-12-444, at *4-5 (CRAB Aug. 21, 2015), *aff'd*, No. 1579-00660 (Hampden Super. Aug. 8, 2016). *See Poulten v. Boston Ret. Bd.*, No. CR-11-88, at *3-4 (CRAB Aug. 14, 2015); *Collins v. Boston Retirement Bd.*, No. CR-10-58, at *9 n.24 (CRAB Apr. 13, 2015). The board here had no occasion to consider whether Mr. Gonglik's experiences in 2018-2019 warranted a referral of his case to a medical panel. CRAB's guidance makes clear that such incidents therefore exceed the scope of this appeal. *See also Pereira*, *supra*, at *8; *LeFebvre v. Springfield Ret. Bd.*, No. CR-19-415, at *6 (DALA Apr. 16, 2021); *Pomeroy v. Pittsfield Ret. Bd.*, No. CR-19-80, at *12 (DALA Apr. 9, 2021).[6]

---

supra. The demand for a condition "not common and necessary to . . . a great many occupations" arises only when the member pursues a "hazard" theory. *Blanchette*, 20 Mass. App. Ct. at 485. "It is not the law . . . that [a member] cannot collect accidental disability retirement benefits if he injured himself in a single event while doing something common." *Comito v. Salem Ret. Bd.*, No. CR-20-209, 2022 WL 16921430, at *5 (DALA July 1, 2022). *See Shea v. Marlborough Ret. Bd.*, No. CR-14-185, at *20 (DALA Aug. 25, 2017).

[6] When injuries or incidents are disregarded on appeal because they were not originally presented to the board, the member generally is not precluded from pursuing those injuries or incidents in a new retirement application. *See Surabian v. State Bd. of Retirement*, No. CR-07-544, at *20 (DALA Apr. 30, 2010); *Tatro v. State Bd. of Retirement*, No. CR-09-67, at *10 (DALA Jan. 8, 2010); *Gryszowka v. Hampshire Cty. Ret. Bd.*, No. CR-97-1520, at *7 (DALA Dec. 4, 1998). Further, when a member's application omits material injuries or incidents in good faith, it often may be appropriate for the board to allow the original application to be amended or supplemented (thus preserving its effective date). *See Whooley v. Middlesex Cty. Ret. Syst.*, No. CR-22-207, 2023 WL 8643787 (DALA Dec. 8, 2023); *Reid R. v. Pittsfield Ret. Bd.*, No. CR-21-

A checkbox on Mr. Gonglik's application form indicated that he was pursuing a "hazard" theory, namely (in the words of his preprinted form) a claim based on "exposure to a harmful situation over a period of time."[7] An applicant asserting a hazard theory satisfies § 7(1)'s two-year limitation as long as the hazard persisted into the two years immediately preceding the application date. *See Sibley*, *supra*, at *2, *9-10; *Jessica J. v. MTRS*, CR-20-0288, 2022 WL 18673981, at *4 n.5 (DALA Jun 3, 2022). But Mr. Gonglik's application does not describe any viable hazard theory. In the mental-health context, a hazard generally consists of "constant" or "continual" exposure to "life threatening situations" or "traumatic events." *Blanchette*, 20 Mass. App. Ct. at 487 n.7. *See Jessica J.*, 2022 WL 18673981, at *4; *Reid R.*, 2023 WL 5170543, at *3 n.5. The three specific incidents that Mr. Gonglik's application identified, all within the same year, do not satisfy this standard. And the application described no other persistent "condition" responsible for a gradual deterioration of Mr. Gonglik's mental health.

The short of the matter is that a commonsense reading of Mr. Gonglik's retirement application—believed, unrebutted, and liberally construed—told the board that he was seeking to retire in 2021 based on three incidents that occurred in 2007, all unaccompanied by contemporaneous notices of injury. In light of § 7(1)'s limitation period, the application failed to

---

302, 2023 WL 5170543, at *4 (DALA Aug. 4, 2023). *See also MacDonald v. Commissioner of Metro. Dist. Comm'n*, 33 Mass. App. Ct. 455, 463 (1992); *Crowley v. State Bd. of Ret.*, No. CR-96-844, at *4 (DALA June 26, 1997); *Kelley v. Middlesex Cty. Ret. Bd.*, No. CR-94-725, at *3-4 (DALA July 5, 1995). In all events, boards must pursue substantive justice, i.e., they must "assist retirement system members to exercise all rights and obtain all benefits to which [they are] entitled . . . while protecting the retirement system and the public against claims and payments . . . not authorized by law." 840 C.M.R. § 10.02.

[7] The board does not contend that Mr. Gonglik's "hazard" checkbox precluded him from also pursuing an "injury" theory. *See Budris*, *supra*, at 8 n.1; *Wayne W.*, 2023 WL 5774616, at *7.

make out a prima facie case. The board therefore appropriately denied the application without convening a medical panel.

It may be important to observe in closing that—even on the basis of the limited application that Mr. Gonglik filed—the result of this appeal is not necessarily consistent with § 7(1)'s purposes. Mr. Gonglik's permanent incapacity is common ground. There appears to be no real dispute that his condition was caused by his public employment duties. It is hard to imagine what the board or Mr. Gonglik's employer might have investigated if he had filed notices of injury immediately after the 2007 car crashes. *Cf. Zajac*, *supra*, at *8-9; *Kurt K.*, 2023 WL 4846321, at *8. Cases such as Mr. Gonglik's could have come within § 7(1)'s ambit if the decisional law had subjected the two-year limitation period to a "discovery rule." But binding precedents have declined to do so. *See Witkowski v. Massport Auth. Empls.' Ret. Syst.*, No. CR-12-494 (CRAB Jan. 16, 2014), *aff'd*, 90 Mass. App. Ct. 1122 (2016) (unpublished memorandum opinion); *Ackerman v. Worcester Reg'l Ret. Bd.*, No. CR-11-405 (CRAB July 23, 2018). *See also Sugrue v. Contributory Ret. Appeal Bd.*, 45 Mass. App. Ct. 1 (1998).

Conclusion and Order

For the foregoing reasons, the board's decision is AFFIRMED.

Division of Administrative Law Appeals

/s/ Yakov Malkiel
Yakov Malkiel
Administrative Magistrate