

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Linda Gutmans,
Petitioner,

Docket No.: CR-22-0149

Dated: July 17, 2026

v.

Gardner Retirement Board,
Respondent.

Appearances:

For Petitioner: Jesse Gibbings, Esq.

For Respondent: Christopher J. Collins, Esq.

Administrative Magistrate:

Yakov Malkiel

SUMMARY OF DECISION

The petitioner suffered a severe back injury while working. Twenty-eight months later, the petitioner's employer proposed to modify her employment obligations. In all the circumstances, the proposal was made after the end-date of the employer's "reasonable opportunity to accommodate the injury." *Foresta v. Contributory Ret. Appeal Bd.*, 453 Mass. 669, 680 (2009). As a result, for purposes of the petitioner's application to retire for accidental disability, the "essential duties" of her job are those to which she was assigned on "the date of the application." *Id.* at 680. In this regard, the petitioner's case is consistent with "the vast majority of cases." *Id.* at 680 n.11.

DECISION

Petitioner Linda Gutmans appeals from a decision of the Gardner Retirement Board (board) denying her application to retire for accidental disability. Administrative Magistrate Melinda E. Troy held an evidentiary hearing in November 2023, admitting exhibits marked 1-27, and hearing testimony from school principal David Fredette, human resources director Debra Pond, and Ms. Gutmans herself.

The case was reassigned to me when Magistrate Troy became unavailable to prepare a decision. The parties narrowed their factual disagreements through several rounds of stipulations. I held a limited supplemental hearing in April 2026, at which the same three witnesses testified. I admitted stipulations marked I.1-37, II.1-66, III.1-30, and IV.1-14.

Findings of Fact

I find the following facts.

1. Ms. Gutmans entered public service in the late 1990s, working in the Gardner school system as a paraprofessional. She was assigned primarily to the fourth grade.

(Stips. II.1-3, II.5, II.13; 1 Tr. 9-10; 2 Tr. 83-85.)

2. As a paraprofessional, Ms. Gutmans's overarching duty was to assist the school's classroom teachers. She typically worked with two teachers at a time, moving from one classroom to the other as needed. Within the classroom, Ms. Gutmans provided extra explanations and reinforcement to students about their lessons. During some stretches, she walked the classroom from one help-needing student to another, crouching by their desks for hushed conversations. At other times, Ms. Gutmans sat and worked with a group of students at a child-height table. (Stips. II.4, II.6; 1 Tr. 10-11, 40-42; 2 Tr. 64, 85-93.)

3. Ms. Gutmans was charged with supervising large groups of students outside the classroom. At lunchtime, she was responsible for patrolling the cafeteria, spotting misbehaviors, and remedying them. At recess, she oversaw large outdoor areas, broke up minor skirmishes, and helped students with minor injuries. (Stip. II.12; 1 Tr. 12, 38-42, 51-52, 97-99; 2 Tr. 96-100, 125-126.)

4. Each day, Ms. Gutmans escorted half a classroom worth of students on trips to the restroom. Multiple times each week, she accompanied an entire class to a “special” period such as art or music. The latter excursions required Ms. Gutmans to take her students up and down staircases: the school’s elevator could accommodate only a few riders at a time. (1 Tr. 38-39; 2 Tr. 95-97, 116-118.)

5. Now and then, Ms. Gutmans was expected to lift and carry students’ books or backpacks for them. In the winter, she helped students with their wet winter boots, sticking zippers, and similar outerwear-related issues. Ms. Gutmans was neither certified nor expected to place students in formal physical “restraints.” (Stips. II.9-10; 1 Tr. 53-55; 2 Tr. 60-62, 94, 111-113, 119.)

6. The school system maintained a formal job description for the paraprofessional position. That document covered many but not all of Ms. Gutmans’s day-to-day obligations. Among the duties it named were: “a reasonable amount of lifting,” “assisting students with . . . support and discipline,” “assisting students with physical tasks such as putting on and taking off outerwear,” “performing simple errands and tasks for students, such as carrying lunch trays,” and “accompanying students on trips to the office or to the school nurse.” (Exhibit 5.)

7. Until October 31, 2018, Ms. Gutmans had no significant history of back pain. On that day, while Ms. Gutmans was supervising the recess period, a running fourth grader collided with her accidentally. Ms. Gutmans fell backwards onto an old railroad tie. The student tripped and landed on top of her. Ms. Gutmans’s back began to hurt. (Stips. II.15, II.21; 1 Tr. 13-17; 2 Tr. 84.)

8. Ms. Gutmans's husband collected her from the school and drove her to the hospital. Originally, she was diagnosed with an acute strain. On January 4, 2019, Ms. Gutmans underwent an MRI study, which revealed a "compression fracture," "mild stenosis," and "neural foraminal narrowing." Ms. Gutmans has suffered serious back pain since then, including spasms several times per week that are unmanageable except when she lies down. She has not returned to work. She has been treated with prescription medications and physical therapy. None of her providers has recommended surgery. (Stips. II.18-20, II.22, II.24-25, II.28-29, II.46; 1 Tr. 17-26, 34-43; 2 Tr. 101-103.)

9. In November 2019, Ms. Gutmans applied to retire for accidental disability, citing her back injury, and stating that she cannot "sit, stand or walk for long periods." A statement from Ms. Gutmans's doctor confirmed that she "cannot do the stairs, prolong[ed] sitting or standing." In June 2020, the board received an employer's statement prepared by Ms. Pond and another administrator. The form asked, "Could the applicant perform the essential duties of his or her current position if he or she was reasonably accommodated?" Ms. Pond and her colleague answered "no." (Exhibits 1, 2, 4; 1 Tr. 111-115, 148-150; 2 Tr. 40-42, 54-56, 73-74.)

10. In November 2020, the board conducted an evidentiary hearing. On that occasion, the board asked Ms. Pond and Mr. Fredette to reconsider whether any accommodations could be extended to Ms. Gutmans. In February 2021, Ms. Pond and Mr. Fredette issued a memorandum stating that Ms. Gutmans would be granted the following accommodations (reordered for convenience): "no prolonged walking or climbing stairs," "opportunities for movement to avoid prolonged periods of sitting and standing," "no requirement[] to lift more than ten . . . pounds," and "no requirement to perform restraints

on students.” The memo invited Ms. Gutmans to reach out to Mr. Fredette in the event of any “changes in [her] condition.” (Stips. II.38, II.44-45; exhibit 8; 2 Tr. 18-27, 42-54, 119-121.)

11. Ms. Pond and Mr. Fredette believed that the accommodations they were offering would be feasible. But among the practical points that they neither pondered nor discussed were: whether Ms. Gutmans would continue to be assigned to more than one classroom; whether it would be practical for her to assist students from one spot, without moving around the classroom; whether she would continue to supervise lunch and recess periods; and whether she would continue to accompany groups of students to the restrooms and to special periods. (2 Tr. 25-26, 39-40, 52-58, 63-72, 76-80.)

12. Even with the benefit of hindsight, the practical measures that the school would have adopted if Ms. Gutmans had returned to work in 2021 remain hazy. Mr. Fredette was not sure whether applicable class-size-related regulations would have permitted the school to keep Ms. Gutmans in a single classroom. It would have been very unusual and probably disruptive for Ms. Gutmans to have been seated in one location, with students crossing the classroom to seek her help. If Ms. Gutmans were to be excused from supervising students during lunch, during recess, on the way to the restrooms, and on the way to special periods, the school had no apparent plan for other staff to pick up these assignments. If Ms. Gutmans were to experience back spasms on the job, the school apparently had no room in which she could lie down. (2 Tr. 21-26, 33-36, 56-65, 68-72, 75-78.)

13. In July 2021, Ms. Gutmans’s treating physician filed an updated statement, apparently in response to Ms. Pond and Mr. Fredette’s accommodations memo. He emphasized that Ms. Gutmans “cannot move quickly, stand for prolonged periods, sit for

prolonged periods, bend, pivot, or use stairs,” adding: “She further cannot concentrate or remain on task and employed for prolonged periods of time due to her pain when moving around class to class Her injury is life altering and prohibits her from working in an active work environment such as a school.” It is not clear from the record whether the board relayed this updated statement to the school system, which has not revised its proposed accommodations. (Exhibits 3, 8; 2 Tr. 36, 70-71, 103-104.)

14. In September-October 2021, a regional medical panel convened to evaluate Ms. Gutmans’s application. The panel consisted of orthopedists Dr. Marc Linson, Dr. Thomas Goss, and Dr. Ryan Friedberg. After separate examinations, the panelists all returned certificates supportive of the application. (Exhibits 15-17.)

15. Dr. Linson diagnosed a compression fracture and aggravation of preexisting degenerative changes. He described Ms. Gutmans’s complaints as including continuing pain, tingling, and numbness. In his own examination, Dr. Linson observed discomfort, stiffness, tenderness, and tentative movement. He wrote: “If she was to resume work, she would be at high risk of re-injuring herself.” Dr. Linson added that Ms. Gutmans’s condition “is causally related to the work injury.” (Exhibit 15.)

16. Dr. Goss characterized Ms. Gutmans’s compression fracture as a “significant injury.” He described her pain as constant, radiating, worsening, and accompanied by a reduced range of motion. In Dr. Goss’s opinion, if Ms. Gutmans were to return to work, “the unpredictability of the students and the significant nature of the fracture deformity would place her at unacceptable risk of another serious injury.” With respect to causation, Dr. Goss

certified that Ms. Gutmans's condition was "such as might be" the proximate result of her workplace accident. (Exhibit 16.)

17. Dr. Friedberg reported: "The patient unfortunately continues to have ongoing pain in her back Sitting for prolonged periods or standing for prolonged periods causes an aggravation of her pain as does pivoting." Dr. Friedberg agreed with Ms. Gutmans's sense that she could not return to work, particularly because she would not be able to "twist" or "care for . . . children that need extra care." On causation, Dr. Friedberg wrote, "I do feel the [incapacity] is the natural and proximate result[] of the personal injury sustained." (Exhibit 17.)

18. A clarification request from the board asked the panelists in part to address the accommodations offered to Ms. Gutmans by her employer. Dr. Friedberg responded that none of his findings "would prevent [Ms. Gutmans] from doing her job if one includes the reasonable accommodations." Dr. Goss disagreed, stating that Ms. Gutmans would remain "at an unacceptable risk of another serious injury." Dr. Linson offered a middle-ground analysis. On the one hand, he wrote: "[If the accommodations] could . . . allow for avoidance of prolonged walking, prolonged sitting and standing, opportunities to change position frequently, and to be restful . . . [Ms. Gutmans] would be able to resume reasonable gainful employment." But Dr. Linson cautioned: "Please be aware that I still have the opinion that she could not perform what I perceive to be the usual normal duties of a paraprofessional and the job she was doing prior to this." (Exhibits 19-21.)

19. In March 2022, the board denied Ms. Gutmans's application, explaining that a panel majority had found her to be "physically capable of performing her modified duties." Ms. Gutmans timely appealed. (Exhibits 22, 23.)

Analysis

An applicant for accidental disability retirement is required to prove three essential elements: that she is “unable to perform the essential duties of [her] job”; that the disability is “permanent”; and that the disability was caused by an injury or hazard that the member sustained while “in performance of” her duties. G.L. c. 32, § 7.

The board’s arguments on the elements of permanence and causation do not necessitate sustained discussion. The hypothesis that Ms. Gutmans’s condition might improve with additional reasonable treatment, 840 C.M.R. § 10.04(2); *Retirement Bd. of Revere v. Contributory Ret. Appeal Bd. (DiDonato)*, 36 Mass. App. Ct. 99, 107-12 (1994), is rooted in no expert medical analysis, *Robinson v. Contributory Ret. Appeal Bd.*, 20 Mass. App. Ct. 634, 639 (1985). And the causal connection between Ms. Gutmans’s condition and her schoolhouse accident is supported by a strong preponderance of the evidence, including the following points: Ms. Gutmans’s symptoms began when her accident occurred; according to the panel’s expert input, the accident was a medically possible or probable cause of the symptoms; and the record offers no alternative explanation for Ms. Gutman’s condition. *See Wood v. Lawrence Ret. Bd.*, No. CR-21-83, 2022 WL 17081141, at *3 (Div. Admin. Law App. Aug. 19, 2022).

It is also clear beyond serious doubt that Ms. Gutmans is incapable of performing the essential duties of her job as originally constituted. When they focused on the original job duties—in their original certificates—the medical panelists all found Ms. Gutmans to be disabled. No physician has suggested otherwise. *See Robinson*, 20 Mass. App. Ct. at 639; *Malden Ret. Bd. v. Contributory Ret. Appeal Bd.*, 1 Mass. App. Ct. 420, 423 (1973). Nor does anything else in the record.

The significant issue presented arises from the accommodations eventually extended to Ms. Gutmans by her employer. The rules that govern that development are prescribed by *Foresta v. Contributory Ret. Appeal Bd.*, 453 Mass. 669 (2009). The details of that opinion require close attention here.

The theory presented by the member in *Foresta* was that his “essential duties” for purposes of accidental disability retirement “must be determined as of the date his injury first caused him to miss work.” 453 Mass. at 679. The Supreme Judicial Court disagreed. It read the retirement law as hospitable toward measures “designed to allow the [injured] employee to continue to work.” *Id.* at 681. The Court therefore held that an employee’s essential duties “must be determined after the employer has had a reasonable opportunity to accommodate the injury.” *Id.* at 680. An employer interested in this option may “modify [the] injured employee’s . . . responsibilities . . . thereby revising the ‘essential duties of his job.’” *Id.* at 670.

The duration of the employee-retention opportunity offered by *Foresta* is not infinite but “reasonable.”¹ The opportunity “generally” expires, and the employee’s essential duties become fixed, on “the date of the application for disability.” 453 Mass. at 680. In a footnote, the *Foresta* Court elaborated:

[I]n the vast majority of cases . . . the public employer will have time reasonably to accommodate the employee’s injury before the employee submits an application for retirement disability benefits. In cases where an application is filed before the employer has had a fair opportunity to consider possible revisions to the employee’s essential duties . . . the employer should do so within a reasonable time, after consultation with the employee, and submit a description of the job responsibilities, as

¹ The timing of the attempt by Ms. Gutmans’s employer to modify her duties has not been the primary focus of Ms. Gutmans’s submissions; but the board has picked up on the issue and has addressed it in its papers.

modified, to the regional medical panel In this way, an employee cannot improve his chance of obtaining retirement disability benefits by rushing to apply for the benefits immediately after an injury rather than allowing his employer to take steps to accommodate [the injury].

453 Mass. at 680 n.11.² No matter when the employee’s job is modified, the new duties must be “similar in responsibility and purpose to those performed by the employee at the time of injury,” and must “result in no loss of pay or other benefits.” *Id.* at 670.

Foresta did not dwell on the reasons why the opportunity to modify an employee’s duties should be time limited. Some pertinent considerations are clear enough. *Foresta’s* overall goal is to return injured employees to productive employment. 453 Mass. at 681. Practically and psychologically speaking, the likelihood of an effective return to work may tend to decline over time. With each passing month, the employee and her colleagues may grow increasingly entrenched in the expectation that the employee no longer belongs at her post. In addition, an injured employee’s return to work is likely to be constructive only if the employer remains genuinely interested in the employee’s updated abilities. Such an employer may be expected to act promptly. Sluggishness may signify an employer’s doubts that the reintegration effort will be fruitful. The doubts themselves may produce halfhearted accommodation efforts. Circumstances along the lines described in this paragraph will tend to result in unproductive assignments, abrasive work environments, and increased risks of reinjury.

² It appears in context that *Foresta* envisioned the “reasonable opportunity to accommodate the injury,” 453 Mass. at 680, or “fair opportunity to consider possible revisions to the employee’s essential duties,” *id.* at 680 n.11, as roughly corresponding to the amount of time that an interested and industrious employer would need in order to analyze and adopt the necessary modifications (with latitude for unexpected contingencies). The current decision’s analysis does not necessarily hinge on this particular formula, however.

Ms. Gutmans left work in October 2018. She did not file her retirement application until thirteen months later, in November 2019. That date would mark the end of the employer's opportunity to modify the member's job duties in "the vast majority of cases." *Foresta*, 453 Mass. at 680 n.11. Nothing in the record suggests that this case belongs outside the general rule. Ms. Gutmans did not by any account "rush[] to apply for the benefits immediately . . . rather than allowing [the] employer . . . to accommodate [the injury]." *Id.*

Regardless, no later than during the months that followed Ms. Gutmans's submission of her application—sometime in late 2019 or early 2020—it became perfectly clear that her employer had forgone its "fair opportunity to consider possible revisions to the employee's essential duties." *Foresta*, 453 Mass. at 680 n.11. On a straightforward interpretation of its course of conduct, the school system did not believe that Ms. Gutmans could make a productive return to her position. The school's representatives said so clearly in their June 2020 employer's statement, where they certified that no reasonable accommodations could be offered to Ms. Gutmans.

The school system did not attempt to articulate any accommodations for Ms. Gutmans until February 2021, at the board's invitation. By then, Ms. Gutmans had been at home for twenty-eight months. Her retirement application had been pending for fifteen months; by way of comparison, the Legislature generally expects the boards to *decide* applications for accidental disability within *six* months. G.L. c. 32, § 7(6). Neither the school system nor the board has offered any explanation for these delays. Again, the most natural inference is that the school system was not interested in any accommodations. By the time of its change of heart, a modification of Ms. Gutmans's essential duties was no longer within the "reasonable"

chronological range. It follows that the proper focus for the medical panel's analyses was—as in the usual case—Ms. Gutmans's job as it stood on “the date of the [retirement] application.” 453 Mass. at 680.

The details of the school system's belated attempt to accommodate Ms. Gutmans illustrate the wisdom of *Foresta's* reasonableness-based time limit. The attempt was predictably halfhearted. The school's accommodations memo was drafted without “consultation with the employee.” 453 Mass. at 680 n.11. The memo also did an indifferent job of “descri[bing] . . . the job responsibilities[] as modified.” *Id.* The one specific task that the memo excused Ms. Gutmans from performing, i.e., physical restraints, had never been among her duties. Other than that, the memo stated principally that Ms. Gutmans would be excused from “prolonged” walking, sitting, and standing. This vague guidance informed neither Ms. Gutmans nor her coworkers whether her updated duties would include alternating among classrooms, assisting students at their child-height desks, patrolling lunch and recess, or chaperoning visits to the restrooms and to special periods. If Ms. Gutmans was in fact to be excused from any of these duties, the memo did not say who would pick up the slack. Contrast *Foresta*, 453 Mass. at 672. In practical effect, the memo set the stage for open-ended uncertainty and probable friction.³

³ When a disabled employee requests a reasonable accommodation, federal law requires the employer to engage in an “interactive process,” in “good faith,” without “empty gestures.” *E.E.O.C. v. Kohl's Dep't Stores, Inc.*, 774 F.3d 127, 132 (1st Cir. 2014). The federal requirements are not at issue here. But they aptly reflect the attitude that an employer genuinely interested in returning an employee to work may be expected to exhibit.

Aside from *Foresta*, the principal case discussed in the briefs is *Cesaitis v. Worcester Ret. Bd.*, No. CR-15-74 (Contributory Ret. App. Bd. Mar. 9, 2023), *aff'd*, No. 2385CV00326 (Worcester Super. Aug. 22, 2025). That case offers a counterpoint to this one in some ways. It warrants its own brief discussion.

The employer in *Cesaitis* proposed a modified job to the employee seven months after learning of the employee's disabling issue. The proposal identified the duties that the employee would continue to discharge, specified the tasks from which he would be excused, and explained how the latter tasks would be handled going forward. The employer, the employee, and his representative proceeded to confer. The employee requested additional modifications, to which the employer agreed. The employee accepted the employer's proposal and returned to work for a time. He sustained another injury only after undertaking duties that he was no longer supposed to be performing. DALA, CRAB, and the Superior Court agreed that the incapacity analysis should focus on the employee's duties as modified.

In *Cesaitis*'s circumstances, there was good reason to conclude that the employee's duties were modified "within a reasonable time." *Foresta*, 453 Mass. at 680 n.11. The seven months that went by until the employer made its proposal, while significant, were one quarter of the delay in the current case.⁴ Not surprisingly, the other facts of *Cesaitis* demonstrated the employer's genuine interest in bringing the employee back to work. The proposed

⁴ The board suggests that the delay in Ms. Gutmans's case should be measured as beginning when the board asked the school system to reconsider whether accommodations would be feasible. But it is clear from *Foresta* that the employer's reasonable opportunity to modify the employee's job duties does not depend on the retirement board's involvement: after all, in the vast majority of cases, the opportunity will be complete before the employee has filed any papers with the board. 453 Mass. at 680 n.11.

modifications were constructed in consultation with him. They described the specific responsibilities that he would and would not be expected to perform. They truly were “designed to allow the employee to continue to work.” *Id.* at 681.

The Superior Court judge in *Cesaitis* also developed an alternative theory: that *whenever* an employer modifies an employee’s assigned duties, at *any* juncture, the incapacity analysis must focus on the new duties instead of those in place on “the date of the application.” *Foresta*, 453 Mass. at 680. This theory was not essential to the result in *Cesaitis*. See *Commonwealth v. Lewis*, 497 Mass. 90, 95 (2026). It did not appear in CRAB’s opinion. See *Sutkus v. State Bd. of Ret.*, No. CR-09-837, at *6 n.14 (Contributory Ret. App. Bd. Feb. 17, 2011). It is hard to reconcile with *Foresta*’s text. And for reasons probably more apparent here than in *Cesaitis*, the policy goal of drawing injured employees back into constructive employment is consistent with a reasonableness-based time limit on the opportunity to modify their duties.⁵

Conclusion and Order

Ms. Gutmans is entitled to retire for accidental disability. The board’s contrary decision is REVERSED.

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate

Division of Administrative Law Appeals

⁵ One of the considerations that animated the Superior Court judge’s opinion in *Cesaitis* was a reluctance to “disregard” the medical panel’s conclusions. That concern may be less salient here: in addition to Dr. Friedberg’s insistence that Ms. Gutmans is incapacitated, Dr. Linson palpably doubted that the modifications proposed for her would work in practice.