

**COMMONWEALTH OF MASSACHUSETTS**

**Middlesex, ss.**

**Division of Administrative Law Appeals**

**Gregory Hines,**  
Petitioner,

No. CR-18-0357

Dated: October 25, 2024

v.

**Dukes County Retirement System,**  
Respondent.

**Appearances:**

For Petitioner: Ryan Benharris, Esq.

For Respondent: James H. Quirk, Jr., Esq.

**Administrative Magistrate:**

Yakov Malkiel

**SUMMARY OF DECISION**

The petitioner suffers from incapacitating back pain and related symptoms. A preponderance of the evidence, including the analysis of a unanimous medical panel, establishes that the incapacity is the result of workplace accidents. The petitioner is therefore entitled to retire for accidental disability.

**DECISION**

Petitioner Gregory Hines appeals from a decision of the Dukes County Retirement System (board) denying his application to retire for accidental disability. An evidentiary hearing took place before Administrative Magistrate Mark L. Silverstein in February 2020. The matter was reassigned to the undersigned magistrate in September 2024. The parties reported their agreement that no additional proceedings or submissions were necessary. *See* 801 C.M.R. § 1.01(11)(e). The record consists of an audio recording of the hearing and thirteen exhibits.

**Findings of Fact**

I find the following facts.

1. Mr. Hines became a public employee in 1987, working part-time for the Oak Bluffs fire department. Early in his working life, he took jobs relating to manufacturing and construction. (Exhibit 1; testimony.)

2. In 2010, Mr. Hines began to serve as the building coordinator of the Martha's Vineyard High School. His duties required him to sit at a desk for long hours, carry around heavy mail items, and climb ladders. Beginning in early 2015, Mr. Hines was also expected to participate in custodial tasks such as plowing snow, shoveling snow, and mopping floors. (Exhibits 1, 3, 10; testimony.)

3. On January 28, 2015, Mr. Hines was plowing and shoveling snow out of the school parking lot. While straining to open a metal gate, Mr. Hines fell to the ground, landing on his back. He was able to stand and clear the parking lot. He filed a prompt incident report, complaining of pain in his back and shoulder. (Exhibits 1, 3, 4; testimony.)

4. Six days later, on February 3, 2015, Mr. Hines was working in the school gym, when a running student collided with him. Mr. Hines felt sharp pain in his leg. He filed another incident report and visited the emergency room for an x-ray. (Exhibit 1; testimony.)

5. Mr. Hines continued to report to work for another approximately three months. During and after that period, he was treated for pain in his neck, back, and legs. MRI studies in March 2015 and May 2016 revealed significant degeneration of Mr. Hines's spine. He underwent surgical procedures in December 2015 and December 2016. After the surgeries, he was treated with medication. (Exhibits 1, 4; testimony.)

6. Mr. Hines had a significant history of back issues predating his accidents of early 2015. His records reflect complaints of leg, back, and neck pain as long ago as 2009. He

underwent disc surgery in 2011. His MRIs in 2011, 2012, 2013, and 2014 revealed significant pathologies. (Exhibit 4.)

7. Mr. Hines’s surgeries in 2015 and 2016 improved but did not resolve his symptoms. He continues to suffer from pain in his lower back, pain in his legs, and balance issues. Walking and lifting remain difficult for him. (Exhibit 4; testimony.)

8. At some point, Mr. Hines commenced a workers’ compensation proceeding based on neck and back pain. At least two examiners opined that certain of his symptoms were not attributable to his workplace accidents. Nonetheless, the claim was ultimately successful. (Exhibits 1, 3, 10, 11; testimony.)

9. In July 2016, Mr. Hines applied to retire for accidental disability, describing his medical issues as diminished abilities to walk, stand, sit, and lift items. A treating physician’s statement was executed by Dr. Ellen McMahon. She diagnosed Mr. Hines with degenerative disc disease, stating that this condition was “exacerbated” by the workplace accident.<sup>1</sup> In an earlier letter, Dr. McMahon had explained that, until his early 2015 accidents, “Mr. Hines had been able to work and perform daily activities.” (Exhibits 2, 7.)

10. A regional medical panel was convened to evaluate Mr. Hines’s application. The panel consisted of Dr. Henry Drinker (orthopedics), Dr. John Goldberg (orthopedics), and Dr. Judy Fine-Edelstein (neurology). The panelists conducted a joint examination of Mr. Hines in October 2017, returned a certificate supportive of his application, and answered a clarification request in April 2018. (Exhibits 4, 5.)

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<sup>1</sup> In common parlance, the word “exacerbate” does not necessarily denote a transitory problem. *See Bostic v. State Bd. of Ret.*, No. CR-17-193, at \*11 (DALA Nov. 22, 2019).

11. In their original certificate, the panelists described Mr. Hines’s post-accident and pre-accident histories in detail, including his serial MRI studies and surgeries. The panelists’ series of diagnoses included stenosis of the cervical and lumbar spine, degenerative disc disease, and degenerative arthritis. Concluding that Mr. Hines is permanently disabled, the panel explained: “[H]e would unlikely be able to tolerate the demands of his work and . . . would potentially put himself at significant risk of further reinjury were he to return to the demands of his previous occupation.” With respect to causation, the panel originally stated that “[the early 2015] incidents appear to have resulted in an aggravation of underlying disease and pathology in the cervical and lumbar spine.” (Exhibit 4.)

12. The panelists’ clarification letter focused in part on causation. They wrote:

The panel felt that [Mr. Hines’s] incapacity was arising as a combination of several different areas of spinal disease. . . . The ongoing disease process was pre-existing, but [Mr. Hines] appeared to be functioning at a reasonable level up until the incident. The injuries . . . created a significant aggravation of symptoms of the pre-existing degenerative spinal disease . . . . In general, degenerative spinal disease is a slowly progressive condition . . . but can easily deteriorate quickly from an injury.

(Exhibit 5.)

13. In June 2018, the board denied Mr. Hines’s application, describing no specific grounds for its decision. Mr. Hines timely appealed. (Exhibits 12, 13.)

### **Analysis**

A public employee seeking to retire for accidental disability is required to prove three primary elements: that he is incapacitated from performing his essential duties, that the incapacity is permanent, and that it was proximately caused by a workplace injury or hazard. *See* G.L. c. 32, § 7(1). There is no question here as to the elements of incapacity and permanence.

The dispute focuses on causation, which presents a difficult problem in the case of a member who suffered even before the pertinent workplace accidents from a condition related to

the eventual incapacity. The causation element is not satisfied where the preexisting condition caused the incapacity through its “natural, cumulative, deteriorative effects.” *Lisbon v. Contributory Ret. Appeal Bd.*, 41 Mass. App. Ct. 246, 255 (1996). But a workplace accident that “aggravated” a preexisting condition to the point of disability is sufficient. *See Baruffaldi v. Contributory Ret. Appeal Bd.*, 337 Mass. 495, 501 (1958). The burden of proving the latter hypothesis by a preponderance of the evidence rests with the applicant. *See Lisbon*, 41 Mass. App. Ct. at 255.

Causation is considered to present a partly nonmedical issue for resolution by the finder of fact. *See Fairbairn v. Contributory Ret. Appeal Bd.*, 54 Mass. App. Ct. 353, 359 (2002). But a nonexpert’s common knowledge and experience provide little insight into whether a preexisting disease would have matured into an incapacity in its natural course. This type of question must be evaluated chiefly in the light of competent expert input. *See Robinson v. Contributory Ret. Appeal Bd.*, 20 Mass. App. Ct. 634, 639 (1985).

The retirement statute gives regional medical panels “the responsibility for determining medical questions which are beyond . . . common knowledge and experience.” *Malden Ret. Bd. v. Contributory Ret. Appeal Bd.*, 1 Mass. App. Ct. 420, 423 (1973). But on causation, the statute asks the panelists a narrow question, i.e., whether the member’s incapacity is “such as might be” the result of the workplace accidents. G.L. c. 32, § 6(3)(a). The panelists’ duty is thus to say whether causation is medically “possible” or “plausible.” *Narducci v. Contributory Ret. Appeal Bd.*, 68 Mass. App. Ct. 127, 134-35, 144 (2007). When they limit themselves to that question, their opinions offer only “some evidence” on the “ultimate fact of causal connection.” *Blanchette v. Contributory Ret. Appeal Bd.*, 20 Mass. App. Ct. 479, 483 (1985).

Standard preprinted forms oblige today’s medical panels to address at least the narrow question posed to them by the statute. But it is commonplace for the panels to also offer their views of the “ultimate fact of causal connection,” *Blanchette*, 20 Mass. App. Ct. at 483, either in written narratives or in clarification letters. A majority of the Appeals Court blessed that practice in *Narducci*, 68 Mass. App. Ct. at 134-36. *See also Pease v. Worcester Reg’l Ret. Bd.*, No. CR-21-82, 2022 WL 19762164, at \*6 (DALA Dec. 23, 2022). When a panel does agree to discuss whether workplace accidents *actually* caused a disability, its analysis takes on substantial weight: “The panelists are vested with statutory responsibility for expert questions of medicine; they also are prequalified by [the Public Employee Retirement Administration Commission] as trustworthy experts in their fields.” *Christopher C. v. Boston Ret. Bd.*, No. CR-19-342, 2023 WL 3434934, at \*7 (DALA May 5, 2023). Further, the panelists receive and review the full set of medical records collected by the applicant and the board. *See* 840 C.M.R. § 10.08(6). A nonexpert assessment of those records rarely offers good reason to depart from the statutory panel’s expert conclusions.

Mr. Hines’s case presents factual complexity. There is no question that he suffered from serious, relevant spinal issues years before his pertinent workplace accidents. But a unanimous panel of statutorily appointed experts have shared their unambiguous conclusions. They believe that Mr. Hines’s preexisting degenerative spinal disease was likely progressing slowly, until the accidents of early 2015 “created a significant aggravation of symptoms.” The panelists made this clearcut assessment after conducting a hands-on medical examination, and after both reviewing and summarizing Mr. Hines’s substantial medical history. The board identifies no deficiencies in the panel’s work; it presents no competing expert analysis through testimony or other means. The panel’s analysis and opinion also are not inconsistent with the other facts

disclosed by the record. All in all, it is reasonably clear that Mr. Hines has established causation by a preponderance of the evidence.

**Conclusion and Order**

Mr. Hines is entitled to retire for accidental disability. The board's contrary decision is REVERSED.

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate