COMMONWEALTH OF MASSACHUSETTS

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

**Francine Hopkins,**

 Petitioner

v. Docket No. CR-15-470

 Date: June 9, 2017

**Bristol County Retirement System,**

 Respondent

**Appearance for Petitioner:**

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**Appearance for Respondent:**

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**Administrative Magistrate:**

James P. Rooney

**Summary of Decision**

Decision of retirement board to deny accidental death benefits to widow of police officer affirmed because of insufficient proof that the officer’s suicide was a result of mental illness predominantly caused by his work-related duties.

**DECISION**

 Francine Hopkins, the widow of Charles Hopkins, a police officer in the Town of Easton, appeals from a decision of the Bristol County Retirement System denying her request for accidental death benefits in connection with Officer Hopkins’s suicide. I held a hearing on November 16, 2016 at the Division of Administrate Law Appeals, One Congress Street, Boston, Massachusetts. I heard testimony from Mrs. Hopkins; Michael Fox, a former patrol sergeant at the Easton Police Department; and Eric Perez, a Massachusetts State Trooper in the Narcotics and Homicide Section of the Bristol County District Attorney’s Office, who responded to the scene of Officer Hopkins’s suicide. I admitted 13 exhibits into evidence, and I recorded the hearing digitally. I marked Mrs. Hopkins’s prehearing memorandum as Pleading A and the Bristol County Retirement Board’s prehearing memorandum as Pleading B. Post-hearing briefs were filed by both parties, and the Bristol County Retirement Board submitted with its brief a copy of text messages from Mrs. Hopkins to Officer Hopkins that was admitted as exhibit 13 during the hearing.

**Findings of Fact**

 Based on the testimony and exhibits presented at the hearing and reasonable inferences from them, I make the following findings of fact:

1. Francine Hopkins is the surviving spouse of Charles Hopkins, who worked as a police officer with the Town of Easton Police Department. (F. Hopkins testimony; Pleadings A and B.) Officer Hopkins died at age 40 on April 5, 2014 as a result of a self-inflicted gunshot wound at the home he shared with Mrs. Hopkins. (Ex. 5.)
2. Officer Hopkins and Mrs. Hopkins were staying temporarily with Officer Hopkins’s aunt while awaiting their move to a new house. (F. Hopkins testimony; Pleading A.)
3. Prior to his death, Officer Hopkins experienced mood swings, slept most of the time he was at home, and had a hard time separating himself from incidents he encountered as a responding officer. (F. Hopkins and M. Fox testimony.) The following cases especially bothered him:
* A domestic dispute between a mother and son in which the mother refused to press charges, and Officer Hopkins felt he knew that something bad was going to come of it. The son later killed the mother and buried her in the back yard;
* A young man crashed his car into a tree and was severely burned to the point where responding officers could not identify the sex of the body; and
* An elderly man walking his dog was hit by a car and died.

(F. Hopkins and M. Fox testimony; Pleading A.) Officer Hopkins did not seek any mental health treatment or therapy, nor did he file any injury reports claiming that he was traumatized by these incidents. (Pleading B.) While Sergeant Michael Fox was able to observe Officer Hopkins’s change in behavior and talked to him about the cases listed above, Officer Hopkins never explicitly told Sgt. Fox about any emotional trauma he was experiencing. (M. Fox testimony.)

1. In the months leading to his death, Charles Hopkins and Francine Hopkins experienced marital difficulties that led to arguments in person and via text message. (F. Hopkins testimony.) For example, Mrs. Hopkins sent Officer Hopkins texts such as one on February 26, 2014 – “The biggest mistake I made in my life was marrying you. It’s been nothing but HELL. I HAVE TO TRY TO CONVINCE MYSELF TO LIKE YOU ON A DAILY BASIS” – and another on March 29, 2014 – “AFTER 4/12. You are dead to me.” (Ex. 13.) Mrs. Hopkins even had a dream in which Officer Hopkins. In her dream, she did not know how he died, but she was holding her daughter and crying. She described the dream to Officer Hopkins. (F. Hopkins testimony.)
2. On April 5, 2014, Officer Hopkins came home from work after receiving a text from Mrs. Hopkins at 11:51 a.m. asking him to get his son, Steven, ready so she could leave. It said, “PLEASE COME HERE AND ASK STEVEN TO GET DRESSED SO I CAN GET THE F\_\_\_ OUT OF HERE!!!!!!!!!!!!!!!!!!!!!!!!!!!!” (Exs. 5 and 13.) Officer Hopkins and Mrs. Hopkins argued in their room with their infant daughter, Sienna Hopkins, present. Officer Hopkins was sitting on the bed. He asked Mrs. Hopkins, “Do you remember the dream?” and then shot himself around 12:30 p.m. with his work-issued gun. (F. Hopkins testimony; Ex. 5; Pleadings A and B.)
3. On May 14, 2014, Francine Hopkins applied for Accidental Death Benefits pursuant to M.G.L. c. 32, § 9. (Ex. 4 and Pleading B.)
4. Robert M. Weiner, M.D., a psychiatrist certified in forensic psychiatry, interviewed Francine Hopkins on September 25, 2014 and Michael Fox on February 26, 2015 about Charles Hopkins’s psychological state. (Pleading A.) He was told about Officer Hopkins’s work-related issues and not about the severity of his marital problems. (F. Hopkins testimony.) After these interviews, Dr. Weiner explained:

[Officer Hopkins’s] cumulative depression interfered with his ability to insulate himself from the tragedies in which his career required that he involve himself. His professional duties and concurrent sorrow and pain overcame his ability to deal rationally with his current complex painful personal situation.

(Ex. 9.)

1. On July 29, 2015, the Bristol County Retirement Board denied Francine Hopkins’s request for accidental death benefits in a 2-2 vote. (Exs. 1 and 2.) Mrs. Hopkins filed a timely appeal. (Ex. 3.)

**Discussion**

 The Bristol County Retirement Board’s decision to deny accidental death benefits to Francine Hopkins, the widow of Charles Hopkins, is affirmed. There is insufficient evidence to establish that the cause of Officer Hopkins’s death was related to his duties as a police officer.

 Under Massachusetts law, a member of a public employee retirement system who “died as the natural and proximate result of a personal injury sustained or hazard undergone as a result of, and while in the performance of, his duties…without serious and wilful misconduct on his part” is entitled to accidental death benefits. M.G.L. c. 32, § 9(1). The beneficiary has the burden of establishing this causal connection. *Robinson v. Contributory Ret. Appeal Bd.*, 20 Mass. App. Ct. 634, 639, 482 N.E.2d 514, 518 (1985). To meet this burden, the beneficiary must “show causation by a probability or by ‘more than the possibility or chance’ of the existence of a causal connection.” *Id*. at 641, 482 N.E.2d at 519, *quoting* *Tassinari's Case*, 9 Mass. App. Ct. 683, 686, 403 N.E.2d 1193 (1980). Because the beneficiary must prove the connection between the member’s death and the “injury sustained or hazard undergone” and because proof of such a connection is beyond common knowledge, expert testimony is needed to show causation. M.G.L. c. 32, § 9(1); *Robinson*, 20 Mass. App. Ct. at 639, 482 N.E.2d at 518; *see also Teachers’ Ret. Bd. v. Contributory Ret. Appeal Bd.*, 346 Mass. 663, 666, 195 N.E.2d 318, 320 (1964). Consequently, “[p]roper proof [would be] medical opinion evidence that expresses the cause of death with reasonable medical certainty.” *Ellsworth v. Weymouth Retirement Board*, CR-03-249, Decision at 5 (Mass. Div. of Admin. Law App., Nov. 3, 2004).

 There is no dispute that the immediate cause of Officer Hopkins’s death was a self-inflicted gunshot to the head suffered on April 5, 2014. The Bristol County Retirement System questions whether Officer Hopkins’s suicide occurred “while in the performance of” his employment duties since he had returned home on a break from work. *See* M.G.L. c. 32, § 9(1). This determination is “a factual inquiry particular to each case.” *Damiano v. Contributory Ret. Appeal Bd.*, 72 Mass. App. Ct. 259, 263 890 N.E.2d 173, 176 (2008). The nature of Officer Hopkins’s duties as a police officer required him to be on call to respond to a situation if a problem arose nearby even while he was at home on a break. Additionally, and more importantly here, if Officer Hopkins did suffer some sort of depression or other mental health problems caused by traumatic incidents he encountered while on duty, simply because he was at home when his death occurred does not preclude his widow from receiving benefits. If he developed mental health problems as a consequence of performing his job and encountering traumatic incidents, then Officer Hopkins’s unfortunate suicide, if related to those mental health problems, would have occurred, for present purposes, while he was performing his duties. *See* *Ret. Bd. of Salem v. Contributory Ret. Appeal Bd.*, 453 Mass. 286, 291, 901 N.E.2d 131, 135 (2009) (employee’s injury was sustained while meeting with her supervisor at work, even though her heart attack occurred later when she was at home). Therefore, the primary issue is whether Officer Hopkins’s suicide was caused by his work-related stresses and any mental health problems that resulted.

 An obvious problem with any attempt to recover a death benefit after a suicide is that the death must have occurred “without serious and willful misconduct” on the part of the member. *See* M.G.L. c. 32, § 9(1).[[1]](#footnote-1) The Division of Administrative Law Appeals has previously held that:

suicide, in and of itself, is not a bar to receipt of s.9 benefits, even though suicide is arguably “serious and wilful misconduct”. (*See* Commonwealth v. Mink, 123 Mass. 422 (1877), “By the law of this commonwealth, suicide is deemed criminal as malum in se” and McCarthy’s (Dependent’s) Case, 540 N.E. 2d 889 (Mass. App. Ct. 1990), "an act of suicide ought to preclude compensation if the decision to commit suicide is made voluntarily by a person not suffering from work-related mental illness or unsoundness of mind".) In the case of Dorothy Fitzgibbons v. Middlesex County Retirement Board, CR-3487 (July 29, 1980), the Contributory Retirement Appeal Board awarded a widow accidental death benefits after her husband committed suicide due to the finding that [his] “death was the natural and proximate result of his employment”. See also Francis Lambert v. Watertown Retirement Board, CR-1228 (August, 1978).

*Borstel v. Malden Ret. Bd.*, Docket No. CR-90-967, Decision at 5-6 (Div. of Admin. Law App., Apr. 15, 1994.) Proof that suicide is proximately caused by employment is not easy. In *Borstel*, for example, the magistrate was unconvinced by the two doctors testifying on behalf of a deceased police lieutenant’s widow. She discounted the testimony of one doctor because he had not treated or even met the lieutenant and the other doctor, who had treated the lieutenant for one year and three-quarters, because he could not say what caused the lieutenant to kill himself, and particularly because he could not tie his death to job stress. Decision at 6-7.

 Mrs. Hopkins must show that it is more than a mere possibility that Officer Hopkins’s work-related psychological stresses caused a mental breakdown resulting in his unfortunate suicide. *Tassinari’s Case*, 9 Mass. App. Ct. 683, 686, 403 N.E.2d 1193 (1980). Unfortunately, she lacks any proof developed before his death, like injury reports or medical evaluations. She relies only on the evaluation made by Dr. Weiner after Officer Hopkins’s death.

 Dr. Weiner posited that Officer Hopkins’s exposure to traumatic situations within his job as a police officer, as well as his inability to deal with them in a healthy manner, caused him to become depressed and isolated. This explanation is certainly possible. Officer Hopkins did witness some very tragic incidents that could be traumatic to anyone. However, the undeniable marital issues present in his life are another possible explanation. Since Dr. Weiner was unaware of these issues when he provided his evaluation, there is no expert opinion ruling them out as a cause or evaluating whether his marital issues were themselves associated with any job-related mental health problem. Furthermore, if the marital issues were an “immediate and acute stressor” that thrust Officer Hopkins into an impulsive and depressed state that caused his suicide, then it is possible that any job-related issues he had were not the actual cause of the suicide, especially since he was seemingly able to operate on the job for some time in his depressed state. *See Borstel* at Decision 5-6. Thus, while Dr. Weiner’s opinion suggests a possibility of job-related causation, that is unfortunately all it does. Absent any stronger medical evaluation, injury reports filed, or more explicit testimony concerning emotional and mental troubles, the burden of proof has not been met. To diagnose a man after his death with depression caused primarily by exposure to traumatic incidents at work ultimately leading to his suicide, more certainty is needed.

 Although I sympathize with Mrs. Hopkins over the loss of her husband, without sufficient proof connecting Officer Hopkins’s suicide to depression caused by his duties as a police officer, I must affirm the Bristol County Retirement Board’s decision denying her death benefits.

 DIVISION OF ADMINISTRATIVE LAW APPEALS

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 James P. Rooney

 First Administrative Magistrate

Dated: June 9, 2017

1. Compare the workers’ compensation statute, which provides that suicide can qualify as a personal injury if it occurred under “such unsoundness of mind as to make [the deceased] irresponsible for his act of suicide.” M.G.L. c. 152, § 26A. [↑](#footnote-ref-1)