

COMMONWEALTH OF MASSACHUSETTS

Middlesex. ss.

Division of Administrative Law Appeals

Mary Hughes,  
Petitioner

v.

Docket No. CR-21-0073

Dated: January 19, 2024

Melrose Retirement Board,  
Respondent

Appearance for Petitioner:

Mary Hughes, *pro se*  
P.O. Box 1893  
Hampton, NH 03843

Appearance for Respondent:

Christopher J. Collins, Esq.  
Law Offices of Michael Sacco, P.C.  
P.O. Box 479  
Southampton, MA 01073-0479

Administrative Magistrate:

James P. Rooney

**Summary of Decision**

Application for accidental death benefits is denied because Petitioner failed to meet burden of proving the decedent died of the same condition that caused his retirement under M.G.L. c. 32, § 9.

**DECISION**

Mary Hughes appeals the January 27, 2021 decision of the Melrose Retirement Board to deny her request for accidental death benefits under M.G.L. c. 32, § 9 with respect to the death of her husband, Charles A. Hughes. The Board filed a Motion for Summary Decision under 801 CMR 1.01(7)(h). The Petitioner filed her opposition. The case is decided on the documents in lieu of hearing under the provisions of 801 CMR 1.01(10)(c). A list of exhibits appears on the last page of this decision.

## Findings of Fact

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

1. Mary Hughes is the surviving spouse of Charles A. Hughes who died on May 19, 2018 of acute myelogenous leukemia and diastolic congestive heart failure. She was married to and living with her husband at the time of his death. (Exs. 1, 11.)
2. Mr. Hughes was employed as a police officer for the City of Melrose Police Department from January 1, 1961 to April 20, 1988, when he was retired for accidental disability under M.G.L. c. 32, §§ 7 and 94 for hypertension and left ventricular hypertrophy. (Exs. 13, 15.)
3. The regional medical panel that evaluated Mr. Hughes pursuant to his application for accidental disability retirement noted in its narrative that a cardiac catheterization in August 1987 demonstrated “moderate diastolic ventricular dysfunction,” and a physical examination by the panel on March 9, 1988 demonstrated “no signs of congestive heart failure.” (Exs. 14, 15, p. 5.)
4. On April 18, 2018, Mr. Hughes, who was 81 years old, presented at the Exeter Hospital in Exeter, New Hampshire with complaints of cough, shortness of breath, weakness, dizziness and fatigue. He was discharged on April 27, 2018. The discharge summary noted that he had been hospitalized for pancytopenia (low red, white and platelet counts) and fever. He was awaiting the results of a bone marrow biopsy done the day prior to discharge. (Exs. 3, 16, pp. 72-76, 107.)
5. The result of the bone marrow biopsy was deemed to be “consistent with at least a high-grade myelodysplastic syndrome<sup>1</sup> with excess blasts [MDS-ES].” (Ex. 16, p. 109.)

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<sup>1</sup> “In a patient with a myelodysplastic syndrome, the blood stem cells (immature cells) do not become mature red blood cells, white blood cells, or platelets in the bone marrow. These immature blood cells,

6. Mr. Hughes was readmitted to the hospital on May 3, 2018. He learned that he had high-risk MDS for which the only cure is an allogenic stem cell transplant for which he was not a candidate, leaving palliative care his only option. He was informed that he was at high risk for developing acute myeloid leukemia (AML), “an aggressive and often quickly fatal condition.” (Ex. 16, pp. 111-114, 119.)
7. Mr. Hughes’s condition continued to deteriorate. Due to the grim prognosis, his durable power of attorney decided on “comfort measures only.” Mr. Hughes was extubated and put on a morphine drip with Ativan on May 19, 2018. He died that day of multiorgan failure and acute myeloid leukemia. His discharge diagnoses were acute myelogenous leukemia; acute respiratory failure; septic shock; febrile neutropenia; lactic acidosis; acute renal failure; and atrial fibrillation. (Ex. 16, pp.119-219.)
8. There are two different death certificates in the record, both signed by Richard D. Hollister, M.D. on May 30, 2018. One stated the cause of death as Acute Myelogenous Leukemia with Diastolic Congestive Heart Failure as another significant condition. The other stated the cause of death as Acute Myelogenous Leukemia with Septic Shock as another significant conditions. (Ex. 1 and 10.) There is nothing in this record to explain why the two different death certificates were prepared.

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called blasts, do not work the way they should and either die in the bone marrow or soon after they go into the blood. This leaves less room for healthy white blood cells, red blood cells, and platelets to form in the bone marrow. When there are fewer healthy blood cells, infection, anemia, or easy bleeding may occur.” <https://www.cancer.gov/types/myeloproliferative/patient/myelodysplastic-treatment-pdq#:~:text=and%20treatment%20options,-.Myelodysplastic%20syndromes%20are%20a%20group%20of%20cancers%20in%20which%20immature,mature%20blood%20cells%20over%20time>.

In myelodysplastic syndrome with excess blasts, “[t]There are too few red blood cells in the blood and the patient has anemia. Five percent to 19% of the cells in the bone marrow are blasts. There also may be changes to the white blood cells and platelets. Refractory anemia with excess blasts may progress to acute myeloid leukemia (AML).

9. Mary Hughes filed a Petition for Accidental Death Benefits under M.G.L. c. 32, § 9 on February 13, 2019. (Ex. 11.)
10. Mrs. Hughes submitted to the Board a letter of February 26, 2019 from Dr. Hollister of Exeter Pulmonary and Critical Care Medicine, who was the certifier of death mentioned on the death certificate. Dr. Hollister opined that Mr. Hughes died on May 19, 2018 “due to complications from acute myelogenous leukemia and respiratory failure from multiple clinical factors that include acute diastolic congestive heart failure.” (Ex. 2.)
11. By letter of January 27, 2021, the Board voted to deny Mrs. Hughes’s application for accidental death benefits “due to the lack of medical evidence that causally related to your husband’s death to the same medical condition for which he retired.” (Ex. 3.)
12. Mrs. Hughes filed a timely appeal of the Board’s decision on February 3, 2021. (Ex. 10.)

#### **Discussion**

The decision of the Melrose Retirement Board to deny the application of Mary Hughes for accidental death benefit is affirmed. The Petitioner has not met her burden of proving that the death of Charles Hughes was the natural and proximate result of the injury or hazard on account of which he was retired, as is required under M.G.L. c. 32, § 9(1).

Mr. Hughes retired for hypertension and left ventricular hypertrophy. He died of acute myelogenous leukemia, an aggressive form of cancer, and diastolic congestive heart failure.

The Petitioner bears the burden of proving a causal nexus between the injury and the cause of death. *Cataldo v. Contributory Retirement Appeal Board*, 343 Mass 312, 314 (1961). This is a case in which medical evidence is required to establish a causal connection between the condition that caused Mr. Hughes’s retirement and the condition that caused his death. *State Board of Retirement v. Contributory Retirement Appeal Board*, 342 Mass. 58 (1961). Proof of a

causal connection between the deceased's work and his death is beyond the common knowledge of a magistrate, and expert testimony is required to determine whether a petitioner is entitled to accidental death benefits. *Robinson v. Contributory Retirement Appeal Board*, 20 Mass. App. Ct., 634 (1985).

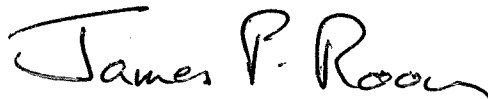
The record contains the opinion of one expert, Dr. Hollister, who opined that Mr. Hughes died of acute myelogenous leukemia and respiratory failure from multiple clinical factors that include diastolic congestive heart failure. His opinion is in accord with the death certificate that he prepared.

Mrs. Hughes argues that Mr. Hughes died of both leukemia and congestive heart failure, thus satisfying the requirement that his death was caused by the same condition that caused him to retire. This argument is that it is not supported by the facts. The death certificate does not use the word "and" to suggest that leukemia and congestive heart failure were equal causes of Mr. Hughes's death. Rather, it lists leukemia as the cause of death and congestive heart failure (and septic shock) as significant factors. Nor does the letter from Dr. Hollister treat these two conditions equally. He states that death was "due to complications from acute myelogenous leukemia and respiratory failure from multiple clinical factors that include acute diastolic congestive heart failure." At best these documents suggest that congestive heart failure plays some role but was hardly the principal cause of Mr. Hughes's death. However, Mr. Hughes retired for hypertension, not congestive heart failure. Hypertension and congestive heart failure are not synonymous. In fact, the medical panel that evaluated him for accidental disability retirement status in 1988 noted specifically that their examination demonstrated "no signs of congestive heart failure." The best evidence that Mrs. Hughes offered to demonstrate a connection between Mr. Hughes's hypertension and his congestive heart failure is a website that

lists hypertension as one of a number of possible causes of congestive heart failure. (Ex. 17.) That is not enough to prove that Mr. Hughes's congestive heart failure was caused by his hypertension, let alone that congestive heart failure related to hypertension caused his death when the medical evidence shows that he died of an aggressive form of cancer.

The Petitioner has failed to meet her burden of proving a causal nexus between the conditions that caused Mr. Hughes to retire and the conditions that caused his death. This application for accidental death benefits must therefore be denied.

DIVISION OF ADMINISTRATIVE LAW APPEALS,

A handwritten signature in black ink that reads "James P. Rooney". The signature is written in a cursive style with a large, sweeping flourish at the end of the name.

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James P. Rooney  
First Administrative Magistrate

## EXHIBITS

1. Amended Death Certificate, 6/26/2018
2. Opinion of Richard Hollister, M.D., 2/26/2019
3. Melrose Retirement Board, decision, 2/27/2021
4. Diagnostic Imaging Report, 4/18/2018
5. EM Clinical Report, 4/18/2018
6. Hospitalist Discharge Summary, 4/27/2018
7. Infectious Disease Consultation Report, 4/20/2018
8. Consultation Report, Pancytopenia, 4/19/2018
9. Letter of Jim Cusolita, 8/31, 2021
10. Board decision, appeal, two death certificates, 2/3/2021
11. Petition for Accidental Death Benefits, 3/7/2019
12. Application for Disability Retirement, 1/28/1988
13. Intent to Retire Form, undated
14. Request for Appointment of Regional Medical Panel, 2/25/1988
15. Regional Medical Panel Certificate, 3/21/1988
16. Medical Records, 220 pages
17. Petitioner's Statement of Relevant Facts, Dyspnea, Diastolic Heart Failure, Heart Failure Signs and Symptoms, 1/4/2022