

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Helen Irvin,
Petitioner,

No. CR-24-0472

Dated: September 13, 2024

v.

Boston Retirement System,
Respondent.

ORDER OF DISMISSAL

The petitioner reports that the appeal is now moot. Accordingly, it is hereby ORDERED that the appeal is DISMISSED. Brief remarks relating to future proceedings on the petitioner’s application appear in the margin.¹

Division of Administrative Law Appeals

/s/ Yakov Malkiel
Yakov Malkiel
Administrative Magistrate

¹ *First*, as the respondent observes, a board fielding an application for accidental disability retirement must ask the member’s employer for “copies of any and all injury or incident reports.” 840 C.M.R. § 10.07(1)(h). The word “any” is important. An employer’s statement that it possesses no helpful information is no impediment to the application’s progress. *Khranova v. Boston Ret. Bd.*, No. CR-11-522, 2016 WL 11956822, at *6 (CRAB July 25, 2016). *Second*, an evidentiary hearing in advance of referral to a medical panel is not mandatory. *Cf.* 840 C.M.R. § 10.11(4). It follows that a board facing a serious backlog may serve its mission best by convening a medical panel first and holding its hearing later, if need be, with the benefit of the panel’s input. *Third*, the board’s authority to deny an application *without* referring it to a panel arises when the member cannot be retired “as a matter of law.” *Id.* § 10.09(2). The obvious implication of this phrase is that it does not reach ineligibilities to retire “as a matter of fact.” *Cf.* 801 C.M.R. § 1.01(7)(h); *Barnes v. City of Springfield*, 273 Mass. 283, 286 (1930). A board certainly may deny the application of a member whose allegations the board disbelieves; but only after the medical panel has weighed in. *See Hollup v. Worcester Ret. Bd.*, 103 Mass. App. Ct. 157, 164 n.5 (2023); *Sibley v. Franklin Reg’l Ret. Bd.*, No. CR-15-54, 2023 WL 11806176, at *4 (CRAB May 26, 2023). *Fourth*, parties appearing before administrative tribunals are required to “conduct themselves in a manner consistent with the standards of decorum commonly observed in any court.” 801 C.M.R. § 1.01(10)(d)(1). Any “belligerent” advocacy is both impermissible and counterproductive. *See* Mass. R. Prof. C. 3.5 cmt. 5.