

**COMMONWEALTH OF MASSACHUSETTS  
CONTRIBUTORY RETIREMENT APPEAL BOARD**

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**TIMOTHY JACKSON,  
Petitioner-Appellee**

**v.**

**STATE BOARD OF RETIREMENT,  
Respondent-Appellant.**

**CR-14-294**

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**DECISION**

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Respondent State Board of Retirement (SBR) appeals from a decision of an administrative magistrate from the Division of Administrative Law Appeals (DALA) determining that petitioner Timothy Jackson met the criteria for an evaluation by a regional medical panel. A hearing was held on February 7, 2017. The DALA magistrate admitted seven exhibits from SBR and twenty exhibits from Jackson and issued a decision on December 15, 2017. SBR filed a timely appeal to us.

After considering the arguments presented by the parties and after a review of the record, we incorporate the DALA decision by reference and adopt its Findings of Fact 1 – 24 as our own with changes.<sup>1</sup> We affirm the DALA decision for the reasons discussed in the Decision adding the following.

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<sup>1</sup> DALA decision p. 2: Witness Rachel Harbachuk was called by the Respondent State Board of Retirement, not the Petitioner.

Finding of Fact 7 is corrected as follows:

Patient B attempted to block the Petitioner from the elevator and got in front of him (time stamp 3:02 or 3:48:02.00 pm). The Petitioner took hold of Patient B's right arm in an attempt to reach

Jackson is a former rehabilitation counselor at the Worcester Recovery Center & Hospital, an adult psychiatric hospital. He was attacked at work by a mental health patient, who broke Jackson's nose in two places and then struck him again in the face with a closed fist holding a bag of candy. The magistrate determined that Jackson's actions following his injuries did not constitute serious and willful misconduct. She concluded that the State Board of Retirement erred in determining that Jackson was the aggressor based on viewing the fast-moving security video in real time, which goes too fast to see either blow. A frame-by-frame view shows that the patient first struck Jackson without provocation, breaking Jackson's nose and that the patient, not Jackson, was the initial aggressor. Accordingly, the magistrate concluded that Jackson met the criteria to be examined by a regional medical panel to determine

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around Patient B and press the elevator button (time stamp 3:10 or 3:48:10.00 pm). Patient B then pulled his arm away and struck the Petitioner in the left side of his nose, backhand (time stamp 3:48:12.59 pm). The Petitioner's head snapped back (time stamp 3:48:12.66 pm). This blow broke the Petitioner's nose in two places. Patient B then punched the Petitioner in the face with a fist full of candy, which flew out of his hand to the floor (time stamp 3:48:14.53-79 pm). That blow came from the Petitioner's right side and caused the Petitioner's head to move back and away (time stamp 3:48:14.53 pm). The Petitioner was stunned and in a great deal of pain. (Petitioner, Harbachuk, Feine Testimony; R-Exhibits 6,7; P-Exhibit 20.)

Finding of Fact 7a is added as follows:

After the first blow, which broke his nose in two places, the Petitioner reached out to push Mr. B away from the elevator buttons. The video shows the Petitioner reaching for Mr. B's shoulder and then placing both hands around Mr. B's neck and pushing him to the side. The Petitioner's hands were on Mr. B's neck from time stamp 3:48:13.33 pm to 3:48:14.39 pm, or approximately one second and six milliseconds. (R-Exhibit 7; P-Exhibit 20.)

Finding of Fact 8 is amended to add after the third sentence:

The Petitioner's head was in contact with Mr. B's chest for less than a second, from time stamp 3:48:17.46 pm to 3:48:17.66 pm (20 milliseconds). (*Id.*)

Finding of Fact 10 is amended as follows:

Before the word "broken," add the words "comminuted, or double."

if he is entitled to accidental disability retirement benefits based on his psychological and physical injuries arising from the assault. SBR argues to the contrary, which we address below.

The main determining factor of this case lies in a close review of the security video and the stills that an expert witness extracted from the video. The readable video and stills are called “Videos & Stills – Ex. 20.” The real-time video is the last file: “Camera 009.” The frame by frame view of the injuries to Jackson and his conduct afterwards are found under “Stills.” Each of those stills all seem to be the same.

The time stamp on the real-time video begins at 00, which was actually 3:45 pm, zero seconds, and zero milliseconds, or 3:45:00.00 pm. The stills show the actual time broken into milliseconds. Our review of the video follows.

**1. Patient “Mr. B” arrives on first floor:**

At 00:41 in the video, it shows the patient (“Mr. B”) enters the hallway from the elevator and walks towards the Social Center or day room. That time is 3:45 pm and 41 seconds. It is noted in the record that earlier in the day, Mr. B had threatened Jackson and tried to assault him; Mr. B was escorted to his locked ward. After a shift change, Mr. B was erroneously allowed a pass to return to the Social Center without supervision. This video shows Mr. B’s return from the locked ward. Off screen, Mr. B then approaches Jackson, who is afraid of him after the morning threats and immediately gets up and begins walking to the elevators to get away. Mr. B follows him.

**2. Mr. B blocks Petitioner from leaving:**

At 03:02 in the video, it shows Mr. B follows Jackson into the vestibule in front of the elevators. Mr. B bumps into Jackson and gets in front of Jackson so that he cannot hit the elevator button. The actual time was 3:48 pm and 2 seconds.

**3. Mr. B breaks Jackson’s nose (his bone is broken in two places):**

The stills begin ten seconds later, at 3:48:12.26, or 3:48 pm and 12 seconds and 26 milliseconds. At this point, the video shows Jackson has tried to move Mr. B away from the elevator buttons, and Mr. B has just pulled his right arm out of Jackson’s grip (video 3:11, actual time 3:48:11.00). The video shows Mr. B’s arm is up and across his body.

Half a second later, at 3:48:12.56 pm, the video shows Mr. B’s right fist hitting Jackson on the right side of his nose as he backhands Jackson. At 3:48:12.66 pm, the video shows Jackson’s head has snapped back.

**4. Jackson holds Mr. B by the neck for about one second:**

From 3:48:13.33 to about 3:48:14.39 pm, the video shows Jackson is still trying to push Mr. B away from the elevator buttons. As they are struggling, Jackson has his hands on Mr. B's neck. At 3:48:14.39, Jackson has let go of Mr. B. So if Jackson was choking Mr. B, or at least grabbing him by the neck, Jackson let go after 1 second and 6 milliseconds.

**5. Mr. B strikes Jackson's face with a closed fist holding a bag of candy:**

At 3:48:14.46 the video shows Mr. B is moving his left arm towards the right side of Jackson's face. Mr. B is holding a bag of candy, which was visible in Mr. B's left hand in the previous still frame.

At 3:48:14.53 the video shows Mr. B's left arm and hand are up next to the right side of Jackson's face.

At 3:48:14.59 the video shows Mr. B has just struck Jackson with the bag of candy in his closed fist. The video shows Mr. B's left arm up next to the right side of Jackson's face, and Jackson's head is moving away from the impact.

At 3:48:14.79 the video shows Mr. B's arm is moving down and the candy bag has broken from being struck against Jackson's face. The video shows pieces of candy flying through the air. At 3:48:15.06 the video shows the candy has landed and scattered across the floor towards the hallway.

**6. Jackson pushes Mr. B into a door to the left, with his head down for less than a second:**

At 3:48:17.26 the video shows Jackson is trying to move Mr. B across the vestibule to the side of the elevators. Jackson has his left hand on Mr. B's right arm.

At 3:48:17.39 the video shows Jackson is starting to lower his head, without touching Mr. B, as he pushes Mr. B with his arm.

At 3:48:17.46 the video shows Jackson's head is lowered and near or against Mr. B's chest.

At 3:48:17.59 the video shows Mr. B has placed his hand on Jackson's side.

At 3:48:17.66 the video shows Mr. B has both arms around Jackson, and Jackson's head is no longer touching Mr. B.

The video shows a push with the head. The contact with Mr. B's chest only lasted about 20 milliseconds.

At 3:48:18.66 the video shows Jackson has pushed Mr. B into the door.

At 3:48:18.86 the video shows Mr. B still has his arm around Jackson's back.

At 3:48:19.06 the video shows Jackson moves back and away from Mr. B.

The stills end at 3:48:19.53 pm.

## **7. Remainder of video-subduing of Mr. B**

The video continues at time stamp 3.20 (actual time 3:48:20.00 pm) and shows Jackson moving away, reaching for his nose, and finally succeeding in hitting the elevator button. However, Mr. B again approaches close to Jackson and squeezes into the elevator next to him. At this point, a staff member, Jean Carlos Ramos, arrives and together with Jackson, tries to push Mr. B out of the elevator.

From 3.34 to 3.39, or about five seconds, the video shows Ramos struggling alone with Mr. B as Jackson stands back.

At 3.39, the video shows Jackson begins to assist Ramos. Jackson and Ramos struggle with Mr. B and end up on the floor.

At 4.03 the video shows a second male staff member arrives and begins to help subdue Mr. B in the elevator.

At 4.04 the video shows a third male staff member also starts helping to subdue Mr. B in the elevator.

At 4:12 (actual time 3:49:12.00 pm) the video shows Jackson is finally able to stand up as the other three staff members struggle with Mr. B in the elevator.

The total time elapsed since Jackson entered the vestibule with Mr. B was one minute and ten seconds.

At 4:21-24 the video shows Jackson steps out of the elevator, showing multiple apparent blood spots on the front of his white shirt. Jacks is offered a white paper towel or tissue to hold to his bleeding nose.

The video shows several additional staff members arrive until there are a total of seven staff members plus Mr. B in the elevator.

At 7:24, or actual time 3:52:24.00 pm, the video shows Mr. B is led to the other elevator and taken upstairs.

The magistrate credited the testimonies of Jackson, witness Rachel Harachuck, and expert testimony of Bruce Feine. She determined that the testimonies, the video evidence, Mr. Feine's report support the notion that Patient B was the aggressor in the incident. When considering this appeal, we give the DALA magistrate's findings of facts "some deference." *Vinal v. Contributory Retirement Appeal Bd.*, 13 Mass. App. Ct., 85, 99-100 (1982). The magistrate's findings are entitled to "particular deference" when they are based on determinations of credibility. *Id.*, at 100.

**Conclusion.** The DALA magistrate concluding that Jackson met the criteria for an evaluation by a regional medical panel is affirmed. *Affirm.*

SO ORDERED.

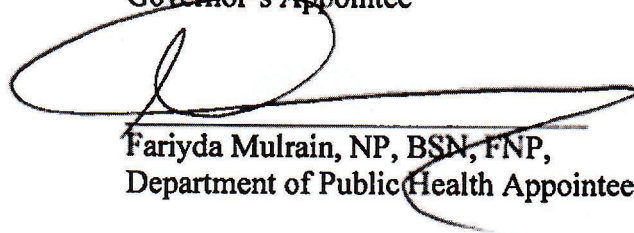
CONTRIBUTORY RETIREMENT APPEAL BOARD

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Date: December 8, 2023