

COMMONWEALTH OF MASSACHUSETTS
Division of Administrative Law Appeals

JASON J., ¹	:	Docket No. CR-22-0360
<i>Petitioner</i>	:	
	:	
v.	:	Date: April 5, 2024
	:	
REVERE RETIREMENT BOARD	:	
<i>Respondent</i>	:	

Appearances:

For Petitioner: Daniel Fogarty, Esq.
For Respondent: Ira Zaleznik, Esq.

Magistrate:
Eric Tennen

SUMMARY OF DECISION

The Petitioner’s application for accidental disability retirement should have been approved. The Petitioner was a long-time police officer who experienced several traumatic events while on the job. He was appropriately diagnosed with Post-Traumatic Stress Disorder. Eventually he was unable to perform the essential duties of his job. The medical panel, and the Board’s own independent medical consultant, unanimously agreed his incapacity was likely caused by an April 2019 work-place incident; that incident was within the two-year time frame of his application. The evidence adduced at the hearing supports their conclusions.

INTRODUCTION

Pursuant to G.L. c. 32, § 16(4), the Petitioner timely appeals the Revere Retirement Board’s (“RRB” or “Board”) vote to deny his application for accidental disability. The Petitioner was a police officer in the Town of Revere. He applied for accidental disability in February 2021. The Board ultimately rejected his application in August 2022.

¹ A pseudonym. G.L. c. 4 § 7, 26th para., (c).

I conducted a hearing, in person, at the Division of Administrative Law Appeals office on January 25, 2024. The Petitioner testified on his behalf as did Jeffrey Zeizel, LICSW. The Board offered no witnesses. I entered exhibits P1-P21 and R1 into evidence. Both parties submitted post-hearing briefs on March 22, 2024, at which point I closed the administrative record.

FINDINGS OF FACT

1. The Petitioner began working for the City of Revere in 2005 as a full-time police officer. (Stipulated facts; Petitioner testimony.)
2. During his career, he rose to the rank of Lieutenant. (Stipulated facts; Petitioner testimony.)
3. His last day of work was September 14, 2020. (Ex. P4; Petitioner testimony)

Traumatic incidents

4. During his time as a police officer, he experienced several traumatic events:
 - He responded to his coworker's suicide in 2008;
 - He witnessed a suicidal man actually commit suicide in front of him in 2014;
 - He watched a victim of a gunshot wound die in front of him and then immediately failed to revive another gunshot victim with CPR in 2015;
 - He learned of another coworker's suicide the day after they both attended the funeral of a Chelsea police officer in 2016; and
 - He debriefed two officers who responded to a scene where two small children were killed in a pedestrian accident in 2018.

(Ex. P4.)

5. Perhaps the most traumatic experience occurred in April 2019. By that point, the Petitioner was the Officer in Charge ("OIC"). As OIC, one of his responsibilities was to respond to crimes scenes and take charge of them. He would control the scene and direct

- other officers to action. (Petitioner testimony.)
6. On this date, he received a call from a new, very inexperienced officer, that she was responding to a scene. She needed help. A 10-year-old child had committed suicide, and she conveyed that she was “out of her element.” (Petitioner testimony.)
 7. When he arrived on the scene, the Petitioner overheard someone give the details of what happened. He could hear loud crying and yelling from inside the house. He immediately thought of his own son and simply froze. He could not go in, and he could not perform his job. He placed someone else in command and left. (Petitioner testimony.)
 8. He did subsequently speak with the officer who had called him for help. He tried to counsel and console her. He gave her a few days off to process what she had seen. He referred her to a support group. (Petitioner testimony.)
 9. He explained that there was a culture in which officers tried to avoid documenting emotional problems. Officers were usually afraid that if they communicated that they were depressed or emotionally fragile they would lose their jobs and/or have their guns taken away. There was generally a stigma associated with expressing these feelings. Thus, officers did not talk about it and tried to shield others when they did. (Petitioner testimony.)
 10. By this point, the Petitioner had begun to experience a range of symptoms from Post-Traumatic Stress Disorder (“PTSD”): anxiety, depression, isolation, intrusive thoughts, guilt, sleeplessness, nightmares. Those symptoms worsened after the 2019 incident. (Petitioner testimony.)
 11. As his treating therapist explained, after that incident, “the flood gates” were open. (Ex.

P19; Zeizel testimony.)

12. The Petitioner continued to work, but could not do his job, at least not up to the standards required. Before going to work each day, he would experience anxiety and stress. He took a circuitous route to work to avoid driving past the house from the April incident. As he drove, he would “feel a weight” on his chest. When he got to work, he essentially holed himself up in his office, doing less than minimally required. For example, the OIC was supposed to do role call and book prisoners. He did not do those things anymore. (Petitioner testimony.)
13. Others noticed. One day, while he was in the parking garage, he was just staring at a wall. Another officer who he knew personally approached him and asked if he was okay. The Petitioner explained that he was not, and he could not stop thinking about the April incident. This officer told the Petitioner he should call Jeff Zeizel, a therapist specializing in working with law enforcement officers. (Petitioner testimony.)
14. The Petitioner also experienced personal trauma in his life relevant to this case. On September 15, 2020, while at work, he received a call that his own daughter had attempted suicide. (Petitioner testimony.)
15. Ultimately, she was unharmed. She eventually came to live with the Petitioner. While this incident was certainly scary and troubling, it did not impact the Petitioner like the April incident (and some of the other prior traumatic incidents). He continued to have intrusive thoughts, nightmares, anxiety and depression related to his preoccupation with the April incident. (Petitioner testimony.)

Mental health treatment

16. As noted, over time, the Petitioner began to experience worsening symptoms of PTSD.
17. After the officer referred him to Mr. Zeizel, he finally began to receive mental health treatment in July 2020. (Ex. P19; Zeizel & Petitioner testimony.)
18. Well before the Petitioner received the phone call about his daughter in September 2020, Mr. Zeizel had diagnosed him with PTSD. They met multiple times a week and the Petitioner began to attend a support group. (Zeizel and Petitioner testimony.)
19. Mr. Zeizel explained that the Petitioner's symptoms were palpable.² He continually told the Petitioner he needed to stop working because he was incapable of performing his duties. It was only after the incident with his daughter that the Petitioner heeded Mr. Zeizel's advice. (Zeizel testimony.)
20. In November 2020, the Petitioner began to see Dr. Scott Freeman, a psychiatrist. Dr. Freeman confirmed the PTSD diagnoses and began to prescribe him medication. (Ex. P18; Petitioner testimony.)
21. Dr. Freeman's treatment notes confirm that the Petitioner was experiencing PTSD symptoms well before his daughter's suicide attempt. (Ex. P18.)

Application for Injured in Line of Duty benefits

22. In February 2021, the Petitioner applied for "line of duty" injury benefits. (Ex. R1.)
23. The application consisted of multiple injury reports (drafted in February 2021)

² I was able to observe some of the Petitioner's anxiety at the hearing. I suggested to the parties that, since many facts about the Petitioner's traumatic events were not in dispute, perhaps they could avoid having him recount them in detail so as not to trigger him. Upon that suggestion, the Petitioner let out a heavy sigh of relief. Nevertheless, he had to talk about some of his past trauma and when he did, I observed how it was emotionally overwhelming for him.

concerning the various traumatic incidents discussed above. He attached the police reports from the various events. He also included letters from Mr. Zeizel and Dr. Freeman. (Ex. R1.)

24. The Petitioner also included a narrative explaining his request and why it took him some time to make this request:

The most difficult part of this is admitting to myself and to you, two of my Brothers and Mentors, that I am having difficulty surviving the day to day functions that we, as supervisors and police officers, go through. I have been battling these issues for years and I am finally now recognizing and admitting that these traumatic experiences have changed me as a person, husband, father and human being. I have lost so much of myself over the past several years. I'm hoping this change allows me to become a better father, friend and man.

(Ex. P8.)

25. Eventually, in July 2021, the City of Revere, the police union, and the Petitioner executed a settlement agreement that placed the Petitioner on “injured on duty” status pursuant to G.L. c. 41, § 111F, retroactive to September 15, 2022. (Ex R1.)

Application for Accidental Disability Retirement³

26. On February 9, 2021, the Petitioner filed his application for accidental disability retirement which included a Treating Physician’s Statement from both Dr. Freeman and Mr. Zeizel. (Exs. P1-P3.)
27. He was evaluated by a medical panel composed of three psychiatrists: Drs. Lisa Barreto-D’Silva, Peter Cohen, and Jean Dalpe. (Exs. P10-P12.)

³ The Petitioner also asked that the Board consider whether he may be retired for ordinary disability. Ultimately the RBR voted to approve that. Because ordinary disability requires a finding that the member is permanently incapacitated, the only issue in this appeal is the requirement that differentiates accidental disability from ordinary disability: that the permanent incapacity was caused by a workplace injury or hazard. G.L. c. 32, §§ 6(1) & 7(1).

28. Additionally, the RRB had its own medical advisor and psychologist, Dr. Robert Beaton, review the medical records related to the Petitioner's application. (Ex. P13.)
29. All four doctors agreed that the Petitioner was permanently incapacitated and that his incapacity might have been proximately caused as a result of a personal injury. (Exs. P10-P13.)
30. All four doctors were aware that the Petitioner stopped working after learning about his daughter's suicide attempt. Nevertheless, all four agreed that his incapacity was likely caused by his workplace trauma, and not the incident with his daughter. They all explained the numerous, increasingly intrusive, PTSD symptoms he had been experiencing well before that day. (Exs. P10-P13.)
31. The RBR voted to submit a clarification to the panel (and its medical advisor, Dr. Beaton). It forwarded the following question to the panel and Dr. Beaton:

[The Petitioner] listed a number of incidents in his application in support of his diagnosis of post-traumatic stress disorder. Specifically, [his] application lists a murder of a colleague in 2007, a suicide in 2008, a suicide in 2014, a murder in 2015, a suicide in 2016, the death of two children in a pedestrian accident in 2018, and a suicide of a 10 year old in 2019. Did you consider this entire history in reaching your conclusion that he was disabled? If so, if you were limited to consideration of simply the 2019 incident, would you be able to conclude that his disability was causally related to that incident? In other words, if you were only able to consider the incident involving the suicide of the ten year old boy in April of 2019, do you believe that this incident was sufficient to account for his current psychological state? Did this incident directly result in his current, disabled state?

(Ex. P14.)

32. In response, all four doctors concluded that the April 2019 incident standing alone could still be directly related to his PTSD and incapacity. (Ex. P15.)
33. The Board's own medical advisor provided perhaps the most insightful explanation:

The 4/2019 incident could be said to have overwhelmed the psychological defenses that he had utilized to get past previous events and situations without seeming noticeable impact upon his functioning. It is suggested that all along, the noxious effects of these earlier incidents were in a very real way eroding these defenses. In ways similar to the effects of rising temperatures upon the ice on an apparently frozen pond, where it suddenly can no longer support a person's weight, the emergence of his PTSD symptoms was not a sudden event. Rather, it was the result of the inexorable effects of the many cited incidents upon his psychological status.

(Ex. P15.)

34. Nevertheless, the RRB denied the Petitioner's application, stating he "failed to meet the requirements for an accidental disability retirement." (Ex. P16.)

DISCUSSION

The Petitioner has the burden of proving every element of their disability claim. *Lisbon v. CRAB.*, 41 Mass. App. Ct. 246, 255 (1996); *Frakes v. SBR.*, CR-21-0261, 2022 WL 18398908 (DALA Dec 23, 2022). "G.L. c. 32, § 7(1) provides for accidental disability retirement benefits if a member (1) 'is unable to perform the essential duties of [their] job' and (2) 'such inability is likely to be permanent before attaining the maximum age for [their] group,' (3) 'by reason of a personal injury sustained or a hazard undergone as a result of, and while in the performance of, [their] duties,' (4) 'without serious and willful misconduct on [their] part.'" *Stacey S. v. Bristol Cty. Ret. Bd.*, CR-20-001, 2024 WL 215931 (DALA Jan. 12, 2024.)

First, I must determine which incidents can properly be considered by the Board in support of the Petitioner's application. Typically, a member is eligible for accidental disability only for any injury that occurred "within two years prior to the filing of such application." G.L. c. 32, § 7(1). However, there are some exceptions. G.L. c. 32, § 7(3)(a). The parties agree that the April 2019 incident falls within the two-year window. However, the Board argues no exceptions apply that would allow it to consider the remaining incidents. While some of the other

incidents might meet one of the notice exceptions,⁴ I need not resolve this dispute because the April 2019 incident alone is enough to support the Petitioner’s application.

The experts—the three panelists and even the Board’s own independent consultant—unanimously agreed that the Petitioner was incapacitated, and his incapacity was likely caused by a workplace incident. Then, when asked to consider only the April 2019 incident, they again unanimously agreed that incident alone likely caused his incapacity. I agree with the experts and the evidence supports this conclusion.

The Board’s only argument against causation is that the Petitioner stopped working after he received the news that his daughter had attempted suicide. It argues that it was this incident, and not a work-related trauma, that ultimately caused his incapacity. But besides the timing, there is no other evidence to support this theory. In particular, none of the doctors who examined Petitioner reached this conclusion. Instead, the evidence shows rather conclusively that the Petitioner had been incapacitated well before that day because of his experiences at work.

Prior to the news about his daughter, he was suffering from numerous PTSD symptoms on an almost daily basis, many of which were specific to the April 2019 incident. For example, he could not even drive by the site of the April 2019 incident without feeling anxiety and a weight on his chest. He was unable to perform even rudimentary tasks at work like taking roll call. He had also begun therapy months before the news of his daughter when he finally

⁴ One exception to the two-year rule is if there is a “record of such injury” on file with the department. G.L. c. 32, § 7(3)(a). “A ‘record of such injury’ can be medical records, letters between a member and his employer, or correspondence from therapists to the employer.” *Stacey S.*, *supra* citing *Ciavola v. Lowell Ret. Bd.*, CR-13-380, *20 (DALA Jul. 17, 2015). Because the Petitioner ultimately received “line of duty” benefits, his application and supporting documentation—which included letters by his therapist and doctor about his active, disabling PTSD—might be considered a “record of such injury.” However, as noted, such a finding is unnecessary to resolve this case.

connected his emotional destabilization to the trauma he had experienced at work. His therapist had urged him to stop working before his daughter's incident because it was apparent to him that the Petitioner could not perform his job. I also credit the Petitioner's testimony that while the news about his daughter was difficult, it did not impact him in the same way. Even after her attempt, he continued to have intrusive thoughts, nightmares, anxiety, and depression related to his preoccupation with the Apil incident, not his daughter's troubles.

There is nothing unusual about the Petitioner's delayed insight. I emphasize again what is now a common theme in cases like this, in which a first responder is seeking accidental disability for PTSD:

Usually, someone is suffering from PTSD well before they are ever diagnosed with it. PTSD is an after-the-fact emotional reaction to traumatic incidents. It can take years for someone to recognize their symptoms are connected to prior trauma. Sometimes they do not have access to mental health counseling that could help them identify this sooner; sometimes, like the Petitioner, they also must overcome the fear of admitting this to others (and the consequences it may bring for their careers).

Stacey S, at n.16, quoting *Wayne W. v. Middlesex Cty. Ret. Sys.*, CR-21-0359, 2023 WL 5774616 (DALA Sep. 1, 2023). The Petitioner's case follows this pattern. He began to experience symptoms he did not want to admit he had. He did not connect his symptoms to his work experience. Eventually, one event was so traumatic it totally destabilized him. He finally engaged in treatment during which he was able to make the appropriate connections and realized he could no longer work at his job.

CONCLUSION

Accordingly, the decision of the Revere Retirement Board denying the Petitioner's application for accidental disability benefits is hereby **reversed**.

SO ORDERED

DIVISION OF ADMINISTRATIVE LAW APPEALS

Eric Tennen

Eric Tennen
Administrative Magistrate