COMMONWEALTH OF MASSACHUSETTS

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

Joni J.,[1]
Petitioner,

v.

Middlesex County Retirement System,
Respondent.

Docket No.: CR-24-0610

Appearances:
For Petitioner: Leigh A. Panettiere, Esq.
For Respondent: Thomas F. Gibson, Esq.

Administrative Magistrate:
Yakov Malkiel

SUMMARY OF DECISION

The petitioner is permanently disabled with symptoms of posttraumatic stress disorder. Her condition arises from the combined impact of two incidents. The first of them took place more than two years before the petitioner filed her retirement application. When the second incident occurred, the petitioner was not "in the performance of [her] duties." G.L. c. 32, § 7(1). She is not entitled to retire for accidental disability.

DECISION

The petitioner appeals from a decision of the Middlesex County Retirement System (board) denying her application to retire for accidental disability. An evidentiary hearing took place on November 3, 2025. The petitioner testified on her own behalf. Board employee Katherine Ryan testified for the board. I admitted into evidence exhibits marked 1-41.

Findings of Fact

I find the following facts.

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[1] A pseudonym adopted under a separate order.

1. The petitioner began working for a municipal police department in 2006. She was hired as a patrol officer. In 2014, the petitioner became a sergeant, a role involving a mix of supervisory and patrol duties. (Tr. 32; exhibit 10.)

2. The petitioner's job placed her in many high-stress situations, including the following. In March 2010, the petitioner participated in a car chase that culminated in the death of a civilian driver; she was pressured by a supervisor to write her incident report in a light favorable to another officer, but she declined. In 2011, the petitioner was present when the police recovered the body of a murdered teenage girl. In 2016, the petitioner's arm became caught in a moving car; she was dragged along with it for some distance. After each of these incidents, the petitioner was able to return to work successfully. (Tr. 46-47, 64-66, 92; exhibits 4, 10, 11, 40.)

3. The petitioner served her labor union in leadership roles. In October 2010, she attended a convention on the union's behalf. Under an applicable collective bargaining agreement, union personnel were entitled to paid time off for the purpose of attending such conventions. They were expected to receive educational content at the conventions, to learn about contract negotiations, and to network with attendees from other unions. (Tr. 33-37; exhibit 38.)

4. The petitioner attended the October 2010 convention along with a male colleague (colleague).[2] At the time, the colleague was a sergeant. He outranked the petitioner,

[2] This decision states serious findings about the colleague, relying on a preponderance of the evidence presented in this proceeding. The colleague did not testify at the hearing or participate in any other way. This decision and its findings are not intended to be binding on him or on other nonparties. *See Mullins v. Corcoran*, 488 Mass. 275, 288-89 (2021).

who was still a patrol officer. On the first night of the convention, the petitioner and the colleague had drinks together at a reception. They then ate dinner at a restaurant with other conventiongoers. At the dinner, the colleague bought the petitioner drinks called "bomb pops." She became intoxicated. The colleague walked with her to her hotel room, speaking of his higher rank and of his personal relationship with the petitioner's father. The petitioner asked the colleague to leave her alone for the night; but he pressured her into allowing him to stay and to have sex with her. (Tr. 36-46.)

5. The petitioner struggled with her mental health after the unwanted sexual encounter with the colleague. She did not report the incident to anyone. She felt sad and anxious about the potential stigma of a sexual interaction with a supervisor, but she was able to continue to do her job. (Tr. 45-46.)

6. In late 2016, the petitioner reported to a local politician that a department intern had been sexually harassed by a department officer. Months later, during 2017, the petitioner was terminated from her position. The reason given for the termination was "inattention to duty," referring to one or more occasions on which the petitioner watched television during a night shift. In 2019, after a grievance proceeding, an arbitrator reinstated the petitioner, finding that the termination had been disproportionate to the seriousness of the petitioner's conduct. Around that time, suffering from cumulative stress, the petitioner started to see a therapist. (Tr. 47-49; exhibits 10, 37.)

7. In late 2021, the colleague—the same sergeant who had pressured the petitioner into sexual intercourse—became the new chief of the petitioner's police department. A swearing-in ceremony open to the public took place during December of that

year. Afterward, the colleague hosted a private party at a restaurant. The petitioner was invited to the party along with the rest of the department. She was reluctant to attend. But friends on the force persuaded her that her absence would predispose department officials against her for purposes such as promotions. (Tr. 25-26, 50-52; exhibit 41.)

8. The petitioner remained at the party for three hours. As the event was winding down, she found herself alone with the colleague. He offered her a drink, specifically proposing a "bomb pop" (the same drink that he had bought for her at the 2010 convention); the colleague then commented on how much he had enjoyed his night with the petitioner, noting his surprise that she had told no one about it. (Tr. 52-57.)

9. Soon after the party, the petitioner's anxiety and depression worsened. She began to suffer from nightmares and suicidal thoughts. She became withdrawn. She avoided work duties that would have required her to leave the police station. Contemporaneous notes from the petitioner's therapist discuss her symptoms and her uncertainty about whether to take action against the colleague. (Tr. 59-61, 94-97; exhibits 30, 35.)

10. In March 2022, the petitioner complained to the town about the colleague's conduct at the October 2010 convention and the December 2021 party. The town investigated and placed the colleague on leave. Thereafter, the petitioner's coworkers began to make unpleasant comments to her: they wondered aloud whether she was going to report them for misconduct; they speculated that she had been too drunk at the convention to remember the colleague's behavior. The petitioner's anxiety, nervousness, and distrust of her coworkers became severe. (Tr. 29, 58-60, 96-98; exhibit 7.)

11. During June 2022, the petitioner spoke to her primary care doctor about her "ongoing stress," "posttraumatic symptoms," and "emotional distress." The doctor and the petitioner's therapist agreed that her continued employment was compromising her health. The petitioner last reported to work on June 17, 2022. (Exhibits 4, 31, 35.)

12. Two doctors evaluated the petitioner's entitlement to medical leave. In August 2022, Dr. Michael Mufson recommended that the petitioner be returned to work, opining that she had been treated successfully for an "adjustment disorder." But in December 2022, Dr. Michael Rater concluded that the petitioner was permanently disabled with symptoms of posttraumatic stress disorder (PTSD) attributable to her job. (Exhibits 6, 8.)

13. In May 2023, the board received two retirement applications: the petitioner herself applied to retire for accidental disability; her employer applied to retire her for ordinary disability. The board arranged for separate medical panels to evaluate the two applications. (Exhibits 10-19.)

14. The ordinary disability retirement application was considered by Dr. Michael Kahn, Dr. Melvyn Lurie, and Dr. Peter Cohen. They found unanimously that the petitioner is permanently incapacitated with depression, anxiety, and PTSD. Although they were not specifically asked to do so, the panelists all commented on the causes of the petitioner's condition. Each one mentioned both the sexual incident in October 2010 and the colleague's remarks to the petitioner in December 2021. Dr. Cohen specifically referred to the December 2021 exchange as the "index event" underlying the petitioner's disability. (Exhibits 12-15.)

15. The accidental disability retirement application was referred to Dr. Michael Braverman, Dr. Mark Cutler, and Dr. Maitri Patel. Each of them examined the petitioner, returned a certificate supportive of her application, and responded to a clarification request from the board. The panelists agreed that the petitioner's depression, anxiety, and PTSD are permanently disabling. With respect to the causes of the disability, the panelists pointed to three events: those of October 2010 and December 2021, plus the March 2010 car chase, including the ensuing pressure on the petitioner with respect to her incident report. Specifically, according to Dr. Braverman, the colleague's remarks in December 2021 "stirred up and aggravated the PTSD from the original assault back in 2010." Dr. Cutler opined that the "October 2010 incident aggravated the PTSD sustained [in March 2010]." And Dr. Patel thought that the petitioner's PTSD began in March 2010, with serial aggravations flowing from the October 2010 incident, the December 2021 incident, and the "harassment and teasing" that characterized the petitioner's last few months at work. (Exhibits 16, 18, 19, 24-26.)

16. Upon consideration of the panel's certificates, the board retired the petitioner for ordinary disability but not for accidental disability. She timely appealed. (Exhibits 15, 27, 28.)

Analysis

The petitioner bears the burden of proving her entitlement to retire for accidental disability. *Lisbon v. Contributory Retirement Appeal Bd.*, 41 Mass. App. Ct. 246, 255 (1996). The essential elements that she must establish are: (1) that she is physically unable to perform the duties of her job; (2) that the incapacity is permanent; and (3) that the incapacity is the result of

an injury or hazard that occurred "as a result of, and while in the performance of, [the petitioner's] duties." G.L. c. 32, § 7(1).

There is no dispute that the petitioner satisfies the statutory elements of incapacity and permanence. The disagreement focuses on causation. The petitioner attributes her condition to the combination of two injurious incidents: the original unwanted sexual intercourse of October 2010, and the colleague's remarks about that incident in December 2021. The board does not press an alternative causal theory. Its argument is that neither of the two pertinent incidents is a qualifying injury or hazard under § 7(1).

Specifically with respect to the October 2010 incident, the petitioner does not necessarily disagree. In order to support an application for accidental disability retirement, the causative injury or hazard is required to have occurred "within two years prior to the filing of [the retirement] application." *Id.* *See generally Zajac v. State Bd. of Ret.*, No. CR-12-444, 2015 WL 14085625, at *3 (Contributory Ret. App. Bd. Aug. 21, 2015), *aff'd*, No. 1579-00660 (Super. Ct. Aug. 8, 2016). The limited exceptions to this rule are not implicated here. *See* § 7(1), (3). The October 2010 incident preceded the petitioner's retirement application by more than a decade.

The petitioner's principal theory is that the December 2021 event aggravated her previously manageable symptoms to the point of disability. *See Baruffaldi v. Contributory Ret. Appeal Bd.*, 337 Mass. 495, 501 (1958). This theory faces its own insuperable hurdle, namely the rule that the disabling injury or hazard needs to have occurred while the member was "in performance of [her] duties." G.L. c. 32, § 7(1). The case law has read this rule stringently. It is not enough for the member to have been injured while at work: she is required to have been

performing articulable obligations of the employment position at the time. *See Namvar v. Contributory Ret. Appeal Bd.*, 422 Mass. 1004 (1996); *Boston Ret. Bd. v. Contributory Ret. Appeal Bd.* (*Palmeri*), 340 Mass. 109 (1959). This doctrine has defeated the retirement cases of members who sustained their injuries while performing such employment-adjacent tasks as reading incoming mail or standing to visit the restroom. *Murphy v. Contributory Ret. Appeal Bd.*, 463 Mass. 333 (2012); *Damiano v. Contributory Ret. Appeal Bd.*, 72 Mass. App. Ct. 259, 263 (2008).

The incident that the petitioner suffered in December 2021 is outside the boundaries of the "performance of . . . duties" requirement. She attended the colleague's post-swearing-in party reluctantly: but she understood that her attendance was not mandatory. Neither the petitioner's standard job duties nor any instructions from her supervisors required her to be there. *See Retirement Bd. of Salem v. Contributory Ret. Appeal Bd.* (*Cole*), 453 Mass. 286, 291 (2009). Even more critically, the activities that occurred at the party revolved around dining and socializing. While there, the petitioner was not performing any articulable duties of her public-service position. *See Damiano*, 72 Mass. App. Ct. at 263.

Conclusion and Order

The events that have disabled the petitioner are not necessarily beyond redress. She apparently is pursuing compensation through separate legal proceedings. The current appeal is limited to the issue of whether the petitioner is entitled to retire for accidental disability under

the public retirement statute. On that issue, the petitioner's case does not satisfy the strict applicable requirements. The board's decision is therefore AFFIRMED.

Dated: February 20, 2026

/s/ Yakov Malkiel
Yakov Malkiel
Administrative Magistrate
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