

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Sandra Joniaux,
Petitioner

v.

Docket No. CR-21-0183
Date Issued: Sept. 1, 2023

Framingham Retirement Board,
Respondent

Appearance for Petitioner:

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Administrative Magistrate:

Kenneth J. Forton

SUMMARY OF DECISION

The Framingham Retirement Board's denial of the Petitioner's accidental disability retirement application is affirmed. The negative medical panel properly evaluated the Petitioner's ability to perform the essential duties of her teaching assistant job with reasonable accommodations and certified that she was not incapacitated from performing them. *See* G.L. c. 32, §§ 6, 7; *Foresta v. Contributory Retirement Appeal Bd.*, 453 Mass. 669, 679-80 (2009). The Petitioner's opinion that the accommodations offered by her employer would not enable her to do her job effectively is not sufficient to overturn the negative panel, especially since she refused to return to work to see.

DECISION

Petitioner Sandra Joniaux appealed timely under G.L. c. 32, § 16(4) the April 27, 2021 decision of Respondent Framingham Retirement Board, denying her application for accidental disability retirement. On January 14, 2022, the Division of Administrative Law Appeals ordered the parties to file a joint pre-hearing memorandum. The joint memorandum, submitted on October 11, 2022, included 44 exhibits proposed by the Petitioner (numbered 1-44) and 4 exhibits proposed by the Board (numbered 45-48).

On February 15, 2023, I held a hearing at DALA, 14 Summer Street, 4th Floor, Malden, MA 02148. It was digitally recorded. I entered 48 exhibits into evidence. (Exs. 1-48.) The Petitioner testified on her own behalf and called two witnesses: Yelinda Melendez, a teacher who worked regularly with Ms. Joniaux, and Rosaura Quitarte-Perez, a teacher who worked occasionally with Ms. Joniaux and served as the teachers' union representative. The Board called one witness: Ashley Bletzer, a Framingham Public Schools HR employee. The parties filed closing briefs.

FINDINGS OF FACT

Based on the record evidence and the parties' stipulations, I make the following findings of fact:

1. On January 13, 2014, Ms. Joniaux was hired by Framingham Public Schools as a Teacher Assistant (Bilingual). (Ex. 35.)
2. Ms. Joniaux worked full-time assisting teachers and students in several different classes every day at Fuller Middle School. (Joniaux Test.)
3. One of Ms. Joniaux's primary tasks was to explain the teacher's instructions to students whose primary language was Spanish. She was the only bilingual

Teacher Assistant at the school. (Joniaux Test., Melendez Test.)

4. To assist these students, Ms. Joniaux would identify a student in need of clarification, walk over to them, and kneel by their desk to discretely explain the teacher's instruction without disrupting the rest of the class. Ms. Joniaux estimated that she worked with students one-on-one in a kneeling position about 90% of every 50-minute class. (Joniaux Test.)

5. Ms. Joniaux played an essential role in enabling teachers to continue instruction while she quietly helped students keep up. (Melendez Test.)

6. Both Ms. Joniaux and the teachers she worked with felt it was very important for her to kneel and otherwise be at the students' level when assisting them. They felt this was especially important given that their student population had experienced a high level of serious trauma. (Joniaux Test., Melendez Test., Perez Test.)

7. Ms. Joniaux and Ms. Melendez both opined that while a student could conceivably walk over to Ms. Joniaux to receive assistance from her, this would disrupt the class. (Joniaux Test., Melendez Test.)

8. Ms. Joniaux opined that she would be unable to do her job without bending, kneeling, or crouching. (Joniaux Test.)

9. Ms. Joniaux also made photocopies for teachers as part of her regular duties. The copy machine was in the center of the building, often far from the classroom she was working in, so this task required a lot of walking. (Joniaux Test.)

10. Prior to June 2, 2016, Ms. Joniaux experienced no pain in her right knee beyond general fatigue after a long day. Prior to that date, she had never visited a physician regarding her right knee. (Joniaux Test.)

11. On June 2, 2016, Ms. Joniaux assisted in an art class for the first time. (Joniaux Test.)

12. For the art class on June 2, 2016, the students painted a large mural in downtown Framingham for about four hours. (Joniaux Test.)

13. Ms. Joniaux worked alongside the students, kneeling directly on the pavement for most of the four hours as she painted the mural. She also climbed a small ladder to paint the upper part of the mural and accompanied the students when they needed to go to the bathroom, which was located on the third floor of the building. (Joniaux Test.)

14. While painting, Ms. Joniaux did not feel any pain in her right knee. (Joniaux Test.)

15. Ms. Joniaux felt a little pain in her right knee on the bus ride back to school. (Joniaux Test.)

16. The pain in her right knee increased when she was back at the school cafeteria. Ms. Joniaux started walking to stretch the leg, and the pain increased. When Ms. Joniaux began to sit back down, she heard a crack and felt terrible pain in her right knee. She was not able to bend the knee at all. (Joniaux Test.)

17. Ms. Joniaux's husband picked her up from school, and they went directly to the emergency room at Marlborough Hospital. (Joniaux Test.)

18. The triage notes from the ER read "Severe right knee pain, can't move[.] was walking and heard a crack, no fall[.] Some days a little pain in knees but not much, today the pain is very severe." Ms. Joniaux reported her pain level was a 9 out of 10 and her right knee was swollen. Ms. Joniaux "noted increased right knee pain" after

completing the mural. (Ex. 1.)

19. They performed an X-ray at the Marlborough Hospital and found “no evidence of acute fracture or dislocation.” They prescribed Ms. Joniaux with painkillers and discharged her. (Ex. 1.)

20. On June 7, 2016, Ms. Joniaux saw Dr. William Balcom, a surgeon, in his office for evaluation. His notes indicated she “[c]annot recall a specific inciting event” and she experienced “continued right knee discomfort” and “some tenderness along the joint line” of her knee but “[n]o major rest pain.” Dr. Balcom diagnosed her with a “small effusion” and injected Marcaine and Depo-Medrol into her right knee. (Ex. 2.)

21. Ms. Joniaux saw Dr. Saqib Qureshi, her family physician, on June 10, 2016, and Dr. Qureshi referred her for an MRI of her right knee. (Ex. 3.)

22. The June 21, 2016 MRI revealed a “full-thickness radial tear involving the posterior root medial meniscus” and small joint effusion. (Ex. 1, 4.)

23. On June 22, 2016, Ms. Joniaux was evaluated by Dr. Serena Young, who diagnosed her with a “[r]ight knee medial meniscus tear” and discussed treatment options with Ms. Joniaux. Ms. Joniaux opted for immediate surgery, scheduled for the next day. (Ex. 5.)

24. Ms. Joniaux underwent right knee arthroscopy, partial medial meniscectomy, and partial lateral meniscectomy on June 23, 2016. Dr. Young noted that Ms. Joniaux was traveling to Ecuador imminently and planned to do physical therapy while she was away. Dr. Young also noted that Ms. Joniaux “may be weightbearing as tolerated.” (Exs. 5, 6.)

25. Ms. Joniaux continued physical therapy in Ecuador. (Ex. 12.)

26. While in Ecuador, Ms. Joniaux experienced severe pain in her right knee and on July 12, 2016 she visited Dr. Camilo Chiquito, an orthopedist, who diagnosed her with a post-surgery infection and prescribed her antibiotics. (Ex. 12.)

27. Sometime between July 12 and the end of August, 2016 Ms. Joniaux returned to Massachusetts. (Joniaux Test.)

28. Ms. Joniaux returned to work for the 2016-2017 school year in late August 2016 to prepare the classroom for the start of class. She experienced bad knee pain after the workday. (Joniaux Test.)

29. On August 30, 2016, the second day of class, a student accidentally struck Ms. Joniaux's right knee with a metal chair. Ms. Joniaux immediately experienced extreme pain. She did not return to school for the rest of the school year. (Joniaux Test., Ex. 36.)

30. Ms. Joniaux went to an urgent care facility in Marlborough. Ms. Agustina Boehringer, a physician's assistant, noted that Ms. Joniaux "cannot bear weight or bend the knee because of the pain." A physical exam revealed extreme tenderness and bruising in the right knee. Ms. Boehringer ordered an X-ray, which revealed no fracture or dislocation, but she highly suspected "a ligamentous or other soft tissue injury." Ms. Boehringer instructed Ms. Joniaux to rest the leg and avoid putting weight on it and indicated "[f]urther work recommendations to be determined by orthopedic surgeon." (Joniaux Test., Ex. 7.)

31. On September 1, 2016, Ms. Joniaux saw Dr. Young, who diagnosed her with "[r]ight knee contusion/strain, reinjury." Dr. Young again recommended an MRI, which Ms. Joniaux underwent on September 13, 2016. (Ex. 8.)

32. After reviewing the September 13, 2016 MRI and examining Ms. Joniaux, Dr. Young determined Ms. Joniaux “continues to be in significant discomfort with some slight improvement” and that wearing a “knee immobilizer” helped the knee feel more stable. Dr. Young recommended Ms. Joniaux undergo physical therapy, which Ms. Joniaux did and continued throughout her recovery. (Exs. 8, 11, 12, 14, 15, 19.)

33. On October 11, 2016, Dr. Young conducted a follow-up assessment of Ms. Joniaux’s right knee and found the physical therapy was helping, but noted Ms. Joniaux still “complain[ed] of significant pain, especially when getting up from a seated position.” Dr. Young diagnosed her with “[s]lowly resolving right knee contusion.” (Ex. 8.)

34. Regarding Ms. Joniaux’s return to work, Dr. Young recommended Ms. Joniaux avoid “significant standing and walking, bending or climbing.” In a letter to the Town of Framingham School Department, Dr. Young explained that Ms. Joniaux was instructed to minimize standing, walking, lifting any amount of weight, bending, or climbing. Ms. Joniaux did not return to work, however. (Exs. 8, 9.)

35. In November 2016, Ms. Joniaux returned to Ecuador to be with her father as his health deteriorated. (Joniaux Test.)

36. While in Ecuador, Ms. Joniaux continued experiencing pain in her right knee and again sought treatment from local orthopedic surgeons. (Joniaux Test., Ex. 12.)

37. Ms. Joniaux underwent another MRI while in Ecuador, which revealed a “posterior horn medial meniscus tear.” On December 7, 2016, Dr. Hector Bohorquez Patiño recommended an arthroscopic surgery and cautioned that otherwise the “articular cartilage risks to be damaged resulting in an arthrosis.” (Ex. 12.)

38. Ms. Joniaux returned to Massachusetts in December 2016 and began seeing orthopedist Dr. John Siliski. (Joniaux Test., Ex. 13.)

39. During her first visit with Dr. Siliski on December 15, 2016, he diagnosed Ms. Joniaux with “functionally disabling knee pain from residual medial mensicus [sic] tear.” Dr. Siliski noted Ms. Joniaux was “[u]nable to return to work until her knee issue is resolved.” Ms. Joniaux and Dr. Siliski decided she would undergo another surgery. (Ex. 13.)

40. Ms. Joniaux underwent an arthroscopy on her right knee on April 14, 2017. During her post-operative visit on April 25, 2017, Dr. Kevin Kopko noted that Ms. Joniaux was “progressing well” and walking normally without assistance. Dr. Siliski affirmed Dr. Kopko’s findings. (Ex. 13.)

41. During Ms. Joniaux’s visit to Dr. Siliski’s office on June 6, 2017, Dr. Tiffany Castillo noted that Ms. Joniaux “has no concerns, but notes weakness . . . [p]ain is well controlled” and she was walking normally without assistance. Dr. Castillo and Ms. Joniaux agreed she would continue physical therapy and that they would have a follow-up visit in August between Ms. Joniaux’s trip to Ecuador and her return to work in late August 2017. Dr. Siliski affirmed Dr. Castillo’s findings and treatment plan. (Ex. 13.)

42. On June 15, 2017, Dr. Michael Ackland completed an Impartial Physician Examination of Ms. Joniaux for her pending workers’ compensation case. Dr. Ackland opined that “there is no causal connection between Ms. Joniaux’s diagnosis of a torn medial meniscus and her work injury on June 2, 2016.” He arrived at this conclusion because the MRI “conducted shortly after this incident show[s] a mild to moderate

diffuse thinning and surface irregularity involving the patellar cartilage” and “moderate to severe thinning of the weight-bearing cartilage of the condyle and medial tibial plateau.” From this, he inferred that “[t]he meniscal tear is more of a product of degeneration of the joint” and “her activities at work on June 2, 2016 exacerbated a previous condition.” (Ex. 23.)

43. Contrary to other physicians’ findings and Ms. Joniaux’s testimony, Dr. Ackland also noted that Ms. Joniaux “denies feeling a tear or hearing a pop” on June 2, 2016. (Ex. 23.)

44. Dr. Ackland found that Ms. Joniaux “should be permanently partially disabled” and recommended she “avoid climbing, squatting, excessive negotiation of stairs, excessive walking, and kneeling” and that she “be allowed to take breaks from weight-bearing and/or walking every two hours and should not carry any objects greater than 30 lbs.” (Ex. 23.)

45. Ms. Joniaux traveled to Ecuador again and returned to the United States in July 2017. (Joniaux Test.)

46. During a post-surgery visit with Dr. Siliski on August 1, 2017, Ms. Joniaux reported that “she was doing well until she returned from vacation in Ecuador.” He also noted that her knee pain “can bother her walking, kneeling, on stairs and transitioning from sitting/standing.” (Ex. 13.)

47. Ms. Joniaux returned to Dr. Siliski on August 22, 2017 to receive an injection of cortisone into her right knee with the hope that it would resolve the pain when crouching and kneeling and thus permit her to return to work. (Joniaux Test., Ex. 13.)

48. She returned to work for the 2017-2018 school year; however, the shot was insufficient and Ms. Joniaux continued experiencing severe pain in her right knee. She claims she was in extreme pain every day she was back at work. Nevertheless, she continued to work until November 2, 2017. (Joniaux Test.)

49. On November 2, 2017, Ms. Joniaux wrote to Ms. Inna London, the Assistant Superintendent for Human Resources, requesting the accommodation that she no longer be required to make photocopies for teachers. (Ex. 37, Joniaux Test.)

50. Also on November 2, 2017, Dr. Siliski submitted a Functional Capacity Report indicating that Ms. Joniaux could sit over 67% of the time, stand and walk less than 33% of the time, and lift 0-10 lb. less than 33% of the time. He indicated she was not capable of climbing, stooping, kneeling, crouching, and crawling at all. He also recommended that Ms. Joniaux work 6 hours per day, 5 days per week. (Ex. 13.)

51. Ms. Joniaux underwent another MRI on November 3, 2017, which showed “new meniscal tears and degenerative changes” that were not present in her last MRI in September 2016. (Ex. 13.)

52. Ms. Joniaux’s last day of work for Framingham Public Schools was November 14, 2017. (Ex. 35.)

53. On December 8, 2017, Dr. Siliski submitted a Physician’s Release to Return to Work form to Framingham Public Schools indicating that Ms. Joniaux was unable to return to work until after she underwent surgery. He filled out similar forms for Ms. Joniaux’s health insurance. (Ex. 13.)

54. Dr. John Corsetti, an orthopedist, examined Ms. Joniaux on December 15, 2017. In his subsequent narrative report to Ms. Joniaux’s counsel in her workers’

compensation case, Dr. Corsetti noted that Ms. Joniaux “denies any history of knee problems prior to the events of 06/02/2016.” Dr. Corsetti also opined that “[a]ll evidence . . . point[s] towards the 06/02/2016 injury as the major causal factor in [Ms. Joniaux’s] symptomatology, diagnosis, and need for treatment.” Dr. Corsetti also noted that permanent reasonable accommodations enabling Ms. Joniaux to return to work “would include alternate sit and stand as needed, no squatting or kneeling, minimal stair climbing, and predominantly sedentary work.” (Ex. 20.)

55. In Dr. Siliski’s narrative report to Ms. Joniaux’s counsel on January 30, 2018, he opined that “the activity of kneeling on 6/2/16 while working is a mechanism by which this type of tear occurs. There does appear to be a causal relationship between the activity of 6/2/16 and the right medial meniscal tear.” In his later letter to counsel on March 4, 2018, Dr. Siliski edited this opinion to state that “the work-related incident of 6/2/16 is the major, but not necessarily predominant, cause of Ms. Joniaux’s disability.” (Ex. 13.)

56. In his letter to counsel on February 24, 2018, Dr. Siliski noted Ms. Joniaux had two surgical options: 1) another knee arthroscopy to address the meniscal tears, but not treat the developing arthritis; or 2) a right knee replacement. (Ex. 13.)

57. Ms. Joniaux saw Dr. Qureshi on May 14, 2018. He diagnosed her with both a meniscus tear and osteoarthritis in the right knee. (Ex. 1.)

58. Ms. Joniaux returned to Dr. Siliski on June 14, 2018, reporting that “her pain is worse than before.” Dr. Siliski found that her pain was “likely related to her moderate arthritis in her right knee” and did not think another arthroscopy would help. He noted that she would eventually be a candidate for a knee replacement. (Ex. 13.)

59. On November 15, 2018, Dr. Ackland conducted another Impartial Physician Examination. His findings were very similar to that of his first exam, except that this time he noted that Ms. Joniaux “reports hearing a pop while walking following periods of prolonged kneeling and squatting earlier in the day” on June 2, 2016. He still opined that her partial disability was caused by a pre-existing condition of osteoarthritis rather than the events of June 2, 2016. (Ex. 23.)

60. In neither examination is there a record that Dr. Ackland inquired what Ms. Joniaux’s job responsibilities were as a Teacher Assistant. (Ex. 23.)

61. On March 1, 2019, Ashley Bletzer from Framingham Schools’s HR office sent Ms. Joniaux an offer to return to work as a Language Program Assistant Teacher at Fuller Middle School with a new accommodated job description. The accommodations in the description included working 6.17 hours per day, no climbing other than the three stairs at the entrance of the school, not being “required to walk and/or stand for more than two hours at one time,” being permitted to “sit whenever [she] need[s] to do so . . . [and] not need[ing] or be[ing] required to kneel, crouch or squat, lift more than 30 pounds at any time” or “participate in recess.” The letter specifically identified Dr. Ackland’s November 15, 2018 report as the origin of the restrictions. (Ex. 39.)

62. On March 19, 2019, Ms. Joniaux responded to Ms. Bletzer via email, declining the offer as her “leg still has some pain, even though [her] leg itself is noticeabl[y] better, the pain still remains as well as some impediment to complete my work.” Ms. Joniaux identified driving as a major issue for her and indicated her injury would “not allow [her] to do [her] work as it is expected.” (Ex. 40.)

63. Ms. Joniaux visited Dr. Siliski on July 11, 2019, where she reported

receiving an injection of stem cells and platelet rich plasma into her right knee while in Ecuador in 2018. She reported that the injections helped, and her maximum pain was 5 out of 10. (Ex. 13.)

64. Nonetheless, Ms. Joniaux filed for disability retirement on October 19, 2019. She marked that she was applying for “Either Accidental or Ordinary Disability.” (Ex. 35.)

65. In the Employer’s Statement regarding Ms. Joniaux’s disability retirement application, Assistant Principal Michael P. Stevens marked that she was applying for “Accidental” disability only. In the statement, Mr. Stevens indicates that “[t]he accommodations would have been a scooter or mobility aid.” He also wrote that the school modified Ms. Joniaux’s job so “[t]he requirement for kneeling, squatting and crouching was dropped” and “[t]he school would not ask Ms. Joniaux to do recess.” (Ex. 36.)

66. Mr. Stevens’s reference to the “scooter or mobility aid” turned out to be erroneous, as the accommodations in Ms. Bletzer’s letter did not include providing Ms. Joniaux with a scooter or any other mobility aid device. (Ex. 29.)

67. Mr. Stevens included the original job description for Ms. Joniaux’s role, “Language Program Assistant Teacher,” in the Employer’s Statement as well. Her essential duties and responsibilities included:

- Assists the teacher with instructions direct and/or indirect.
- Assist the teacher in the selection and utilization of education materials and general supplies
- Assist the teacher with general classroom maintenance.
- Assist the teacher in the supervision of students involved in school activities.
- Assist the teacher in preparing for the day’s activities before school, and after school, planning for the following day

(Ex. 36.)

68. The Physical Working Conditions listed in the original job description included: “occasionally travers[ing] throughout the school building” and

work[ing] in a classroom with the ability to sit, stand, walk, kneel, crouch, stoop, squat, bend or twist at the neck and trunk . . . occasionally lift[ing] or position[ing] students to provide services . . . on rare occasions, it may be necessary to move quickly across even or uneven surfaces . . . lift at least 20 lbs. . . . stand, walk and/or push a wheelchair for extended periods of time.

(Ex. 36.)

69. The Employer’s Statement was signed by Mr. Stevens and Mr. Mark Spillane (Bilingual Department Head) on November 14, 2019. (Exs. 36, 37)

70. On December 26, 2019, the Board asked Mr. Stevens and Mr. Spillane for more information regarding the “job accommodations offered by the Framingham School Department that would have allowed the applicant to continue her employment.” Specifically, the Board wanted to know whether the accommodations Mr. Stevens had provided in the Employer’s Statement, including providing Ms. Joniaux with a scooter or other mobility device, were intended to be permanent, whether the accommodations would result in Ms. Joniaux receiving a decrease in pay or other benefits, and whether the essential duties of the accommodated position were similar to those of the original position. (Ex. 38.)

71. Ms. Joniaux was evaluated by a three-physician medical panel consisting of Drs. John Golberg, Douglas Bentley, and Eugene Brady, all orthopedists. (Exs. 24, 25, 26, 27, 28, 29, 30, 31, 32.)

72. Ultimately, the medical panel provided three separate assessments of Ms.

Joniaux's incapacity, permanency of her disability, and causality of her disability arising from its original examination and two subsequent sets of clarification questions from the Board. (Exs. 24, 25, 26, 27, 28, 29, 30, 31, 32.)

73. For their first assessments, conducted in June 2020, the medical panel members reviewed Ms. Joniaux's medical records, her application for disability retirement, and job description. It is unclear whether they reviewed Ms. Bletzer's offer of accommodations. (Exs. 24, 25, 26.)

74. Each panel member also examined Ms. Joniaux. These examinations are typically conducted in person, but these were via telemedicine due to the COVID-19 pandemic. Ms. Joniaux used her phone camera to show the physicians her knee and how she walked. (Exs. 24, 25, 26; Joniaux Test.)

75. Dr. Bentley examined Ms. Joniaux on June 20, 2020. He diagnosed her with acute tear, medial meniscus, right knee; aggravation of tricompartmental degenerative arthritis, right knee, previously asymptomatic and unknown; and acute contusion and sprain, right knee. He concluded that her right knee injury incapacitated her from performing the essential duties of her job, the disability was permanent, and the disability "might be the natural and proximate result of the personal injury sustained or hazard undergone on account of which retirement is claimed." (Ex. 25.)

76. Dr. Brady examined Ms. Joniaux on June 22, 2020. He diagnosed her with status post torn medial meniscus, status post arthroscopic surgery x2 for meniscal damage to the knee, and progressive onset of posttraumatic degenerative arthritis of the right knee. He concluded that her right knee injury incapacitated her from being able to perform the essential duties of her job and the disability was permanent. Unlike Dr.

Bentley and Dr. Golberg, Dr. Brady opined that the injury was caused predominantly by pre-existing degenerative arthritis, which was temporarily exacerbated by the work incident. (Ex. 26.)

77. Dr. Golberg examined Ms. Joniaux on June 24, 2020. Like Dr. Bentley, Dr. Golberg also opined that Ms. Joniaux’s knee injury incapacitated her from performing all the essential duties in the job description, the disability was permanent, and the work-related injury was “a major cause of her present condition.” (Ex. 24.)

78. On September 21, 2020, the Board sought clarification from the medical panel on four points. The first regarded whether, in each physician’s opinion, Ms. Joniaux “would be able to perform the essential duties of Assistant Teacher with the accommodations offered by the employer.” The Board specifically identified the accommodations provided in the Employer’s Statement, erroneously including that the school department had offered Ms. Joniaux a scooter or other mobility aide. (Ex. 41.)

79. The second point of clarification regarded the medical significance of the differing history of Ms. Joniaux’s injury as reported by Dr. Ackland in his first examination, specifically surrounding when the pain started on June 2, 2016, and whether Ms. Joniaux felt a tear or pop in her right knee. (Ex. 41.)

80. The third point of clarification sought by the Board regarded how the chair striking Ms. Joniaux’s knee on August 30, 2016 factored into the panel’s diagnoses and opinions on causation. (Ex. 41.)

81. The fourth point asked the panel to clarify whether Ms. Joniaux’s meniscus injuries “were more likely to be the result of the natural progression of her underlying and pre-existing osteoarthritis, rather than a result of the incidents occurring at

work in June and August, 2016.” (Ex. 41.)

82. The medical panel members issued addenda to their reports to answer the Board’s questions. (Exs. 27, 28, 29.)

83. On October 20, 2020, Dr. Brady sent his addendum to PERAC. He found that the accommodations, including “no kneeling, squatting, or crouching, no recess activities, and that her work could provide a scooter and/or mobility aid to assist with ambulation” would enable Ms. Joniaux to return to work. He maintained his opinion that Ms. Joniaux’s “main problem is pre-existing osteoarthritis in her knee.” He also opined that the August 30, 2016 incident with the chair was a “minor injury in which she sustained no significant structural injury.” (Ex. 29.)

84. On October 21, 2020, Dr. Golberg sent his addendum to PERAC. He also found that given the requirements of the job and the accommodations offered, Ms. Joniaux was not incapacitated and was able to return to work. He did not change his conclusions about causation, acknowledging that the arthritis played some role, but opining that the work-related injury was a major cause of Ms. Joniaux’s condition. (Ex. 27.)

85. On October 23, 2020, Dr. Bentley sent his addendum to PERAC. He found that with the accommodations offered, including “no kneeling, squatting or crouching, and no recess duties, and provided a scooter or some other type of mobility device, she would be able to perform the essential duties of Assistant Teacher.” Dr. Bentley also did not change his opinion about causation of Ms. Joniaux’s condition. (Ex. 28.)

86. On December 16, 2020, Ms. Joniaux’s counsel for this appeal notified the

Board that Ms. Joniaux never actually received an offer for a scooter or other mobility aid. (Ex. 42.)

87. The Board, upon learning that Ms. Joniaux had never been offered a scooter or other mobility device, relayed that update to the medical panel. At this point the medical panel also had access to Ms. Bletzer's offer letter and the accommodations therein. Each member of the medical panel issued a second addendum with their third and final assessments of Ms. Joniaux's claimed disability. These final assessments considered only the actual accommodations offered by Framingham, and not the erroneous reference to the scooter or other mobility aid. (Exs. 30, 31, 32.)

88. On February 21, 2021, Dr. Bentley disagreed that the offered accommodations would be sufficient to allow Ms. Joniaux to return to work. Specifically, he disagreed with the "walking and standing requirement of not more than two hours at a time" because it appeared Ms. Joniaux had "very limited walking capacity" and "is in need of a mobility scooter to be able to get around the classroom." Dr. Bentley also disagreed with the accommodation that she would not lift over 30 pounds at a time, stating that "Ms. Joniaux is not capable of lifting any more than 10 pounds at one time." He also opined that "she would require a ramp to negotiate those three stairs" leading up to the school. Taken altogether, Dr. Bentley concluded Ms. Joniaux remained incapacitated from her essential duties, even with the accurate list of accommodations. (Ex. 31.)

89. On February 23, 2021, Dr. Brady reaffirmed his conclusion in his first addendum; after reviewing the accommodations in Ms. Bletzer's offer letter, he opined that Ms. Joniaux "should be able to return to work." (Ex. 32.)

90. On February 29, 2021, Dr. Golberg also reaffirmed the conclusions in his first addendum. While he was concerned that “[w]orking with children often requires a certain degree of stooping, bending, and crouching . . . the accommodations offered are perfectly reasonable” and with them in place he saw “no particular reason why [Ms. Joniaux] would not be able to return to work.” He also cautioned that it may be “necessary for her to use a cane at school.” (Ex. 30.)

91. These final addenda represent the panel’s final medical certification of Ms. Joniaux’s knee injury and related disability. Since two of the three physicians on the panel concluded that Ms. Joniaux was not incapacitated from performing her essential duties as accommodated, their opinions constituted a negative medical panel for purposes of Ms. Joniaux’s ADR application. (Exs. 30, 31, 32.)

92. On April 29, 2021, the Board accordingly notified Ms. Joniaux that it must deny her application. (Ex. 45.)

93. On May 11, 2021, Ms. Joniaux timely appealed to DALA. (Ex. 46.)

CONCLUSION AND ORDER

The Board’s denial of Ms. Joniaux’s accidental disability retirement application is affirmed for the following reasons.

As described *infra*, G.L. c. 32, § 7 was designed to provide substantial retirement benefits for Massachusetts public employees who are unable to work at their jobs because of an injury they sustained during job-related activities. G.L. c. 32, § 7. It was not designed for a situation like this, where the medical panel determines that an employee is able to work with reasonable accommodations, but she decides on her own that the accommodations offered by the employer are insufficient for her to perform the job the

way that *she wants to*.

To receive accidental disability retirement benefits (ADR), a member must prove that she is “unable to perform the essential duties of [her] job . . . by reason of a personal injury sustained or a hazard undergone as a result of, and while in the performance of, [her] duties at some definite place and some definite time” G.L. c. 32, § 7(1); *see also Retirement Bd. of Salem v. Contributory Retirement Appeal Bd.*, 453 Mass. 286, 287 (2009); *Sugrue v. Contributory Retirement Appeal Bd.*, 45 Mass. App. Ct. 1, 3 (1998). The Petitioner must prove each element by a preponderance of the evidence. *See Lisbon v. Contributory Retirement Appeal Bd.*, 41 Mass. App. Ct. 246, 255 (1996); *Wakefield Contributory Retirement Appeal Bd.*, 352 Mass. 499, 502-03 (1967).

To assist the Board in addressing medical questions beyond its competence, a majority of a three-physician regional medical panel must certify whether the applicant is unable to perform the essential duties of her job, whether the incapacity is likely to be permanent, and whether there is a medical possibility that the injury was the proximate cause of the disability. *See* G.L. c. 32, §§ 6(3), 7(1); *Malden Retirement Bd. v. Contributory Retirement Appeal Bd.*, 1 Mass. App. Ct. 420 (1973). “A negative panel report generally precludes an applicant from receiving accidental or involuntary disability retirement benefits.” *Quincy Retirement Bd. v. Contributory Retirement Appeal Bd.*, 340 Mass. 56, 60 (1959). The general rule that a negative panel ends an application for disability retirement benefits has a few exceptions. The applicant must show “the medical panel did not ‘conform[] to the required procedure of physical examination’; it lacked ‘all the pertinent facts’; it used an erroneous legal standard; or the medical certificate was ‘plainly wrong.’” *Chiasson v. Worcester Retirement Bd.*, CR-17-867, at

*11 (DALA Dec. 10, 2021) (citing *Kelley v. Contributory Retirement Appeal Bd.*, 341 Mass. 611, 617 (1961)).

The medical panel’s evaluation of disability is impacted by whether the employer offers the injured employee reasonable accommodations, as Framingham Public Schools did here to Ms. Joniaux. The Supreme Judicial Court established in *Foresta v. Contributory Retirement Appeal Bd.*, 453 Mass. 669, 679 (2009), that if a public employer offers the disability applicant reasonable accommodations enabling her to “perform the ‘essential duties’ of the position from which [she] retired or a ‘similar job within the same department,’” then the employee is not eligible for ADR. “The essential duties of the job as modified must be similar in responsibility and purpose to those performed by the employee at the time of injury, and must result in no loss of pay or other benefits.” *Foresta*, 453 Mass. at 680. The accommodations proposed by Framingham Schools for Ms. Joniaux met these requirements. If accommodations are offered, the medical panel must assess whether the applicant can perform the essential duties of her job with reasonable accommodations, *not* the job duties the applicant was performing at the time of the injury. *Id.* at 680.

The retirement statute and case law lean heavily towards encouraging employers to provide their injured employees with reasonable accommodations. In *Foresta*, the Court notes that G.L. c. 32 evolved to “limit the Commonwealth’s liability and prevent possible abuses of the system by requiring an injured public employee who is physically capable of performing some of the important duties of [her] position to do so.” *Id.* at 678. Furthermore, “[t]he Legislature intended that public employers have substantial leeway to modify the job responsibilities of an injured employee to accommodate the physical

limitations imposed by the injury and to keep the employee working at a job [she] is capable of performing.” *Id.* at 679; *see also id.* at 677-80 for full history of amendments.

Ms. Joniaux thus carries a heavy burden in her appeal. She has to prove, despite the weight of the negative panel and the law’s inclination towards reasonable accommodations, that the panel nevertheless incorrectly certified that she was able to perform her essential duties with the correct list of accommodations listed in Ms. Bletzer’s offer letter (and not the erroneously listed offer of a scooter or mobility aid). I find that Ms. Joniaux did not meet this burden.

Here, as in *Foresta*, the medical panel first found that Ms. Joniaux’s right knee injury incapacitated her from performing her essential duties as a Teacher’s Assistant. This finding was based on Ms. Joniaux’s original job description and her own account of how she carried out her duties. As in *Foresta*, once the panel received Ms. Joniaux’s correct accommodated job description, two of the panel physicians reversed their opinions on disability and certified that Ms. Joniaux *could* perform her essential duties with the reasonable accommodations offered. The panel correctly considered Ms. Joniaux’s abilities related to the new job duties, as accommodated, rather than to her unaccommodated job duties. This resulted in a negative medical panel. Consequently, the Board properly denied Ms. Joniaux’s ADR application.

Ms. Joniaux maintains that the accommodations offered by Framingham were based upon restrictions suggested by Dr. Ackland in one of his impartial medical examinations for Workers’ Compensation. She insists that accommodations derived from these restrictions could not possibly be accurate because Dr. Ackland did not properly diagnose her and did not know what the physical requirements of her job were,

and Framingham failed to consult a rehabilitation counselor.¹

Ms. Joniaux's criticisms, while understandable, miss the mark. The accommodations do not have to be requested by the employee, and an employer's offer of accommodations can be different from an accommodation requested by the employee. It was up to Framingham to decide how it would accommodate her. The actual test is whether the medical panel concludes that the offered accommodations will allow the employee to perform her essential job duties. The source of the specific accommodations is not important as long as a majority of the medical panel determined, as it did here, that she could perform her essential duties as accommodated.

Since the panel returned a negative response, Ms. Joniaux must prove one of the exceptions to the general rule. While she does not explicitly name any of the four exceptions to overturn the negative panel, her submissions come closest to the following two exceptions: that the panel failed to "conform[] to the required procedure of physical examination" and that the panel lacked some pertinent facts regarding her job responsibilities. *Chiasson, supra*, at *11. She fails to prove either one.

First, Ms. Joniaux notes that the physicians in the panel examined her via

¹ Ms. Joniaux also insists that Framingham's failure to establish an early intervention plan under G.L. c. 32, § 5B means that the accommodations cannot be considered when assessing her potential incapacity. Section 5B requires employers who employ members of chapter 32 retirement systems to, among other things, establish a medical and vocational rehabilitation plan. Section 5B was enacted in 1996, as part of the legislation that created PERAC. *See* Acts 1996, c. 306, § 10. The original version of this section placed the responsibility for establishing rehabilitation plans on the retirement systems. *See id.* However, just two years later, the statute was amended to place that responsibility on employers instead of the retirement systems. Acts 1998, c. 252, § 1. Perhaps this is why § 5B is silent as to any consequence for an employer's failure to have an early intervention plan. *Kalu v. Boston Retirement Bd.*, CR-09-880, at *41 (DALA Jan. 15, 2021).

telemedicine, rather than in person, and she calls into question whether the examination gave the physicians sufficient information. Essentially, this is arguing that they did not conform to the required procedure for such an examination. The panel was able to observe Ms. Joniaux's knee and how she walked via live video. They each discussed Ms. Joniaux's symptoms and previous treatment with her. The only component missing from the examination was palpating the knee itself. It is unclear how much additional information the panel could have ascertained from palpation that they did not glean from observing Ms. Joniaux via video, conversing with her, and reviewing her considerable medical records. Furthermore, the examination took place during the early part of the COVID-19 pandemic, when virtual physical examinations via telemedicine were the standard procedure, and Ms. Joniaux failed to object to this method before the examination. For these reasons, her argument must fail.

Ms. Joniaux also argues that the accommodations in the offer letter were unrealistic and would not actually allow her to do her job. She asserts that there is no way to do her job without kneeling, crouching, and standing for more than two hours. While Ms. Joniaux has never performed her job without extended kneeling and standing, this does not mean that it is impossible for her to do so. Of course, we have no way of knowing in her case because she refused to return to work in the accommodated position. However, it is not difficult to imagine a classroom where middle school students walk over to speak with a stationary Teacher Assistant, or where a Teacher Assistant walks over to the students' desks but does not crouch down on her knees to speak with them. Ms. Joniaux's employer, aware of the duties her job entailed and the concerns over classroom disruption she and Ms. Melendez highlighted in their testimony, nevertheless

determined that the role could be accomplished with the offered accommodations in place. *Foresta* requires only that the accommodated duties be “similar in responsibility and purpose to those performed by the employee at the time of injury.” The accommodated duties easily met that standard. Ms. Joniaux does not get to choose between (1) determining the very best way for her to do her job and then have the medical panel judge her incapacity against her ideal, or (2) retiring for accidental disability. I appreciate the great pride Ms. Joniaux took in her work and her dedication to serving students as effectively as possible. However, she cannot decide that the best way to perform the Teacher’s Assistant role is the *only* way to do so.

For the above-stated reasons, the Board’s denial of Ms. Joniaux’s application for accidental disability retirement benefits is affirmed.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/ Kenneth J. Forton

Kenneth J. Forton
Administrative Magistrate

DATED: Sept. 1, 2023