COMMONWEALTH OF MASSACHUSETTS

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

Andrew Kaufmann,
Petitioner,

v.

Westfield Retirement Board,
Respondent.

No. CR-23-0598

Dated: March 7, 2025

Appearances:
For Petitioner: Kevin B. Coyle, Esq.
For Respondent: Joseph Kenyon, Esq.

Administrative Magistrate:
Yakov Malkiel

SUMMARY OF DECISION

The petitioner's employer filed an application to retire him involuntarily for accidental disability. The respondent retirement board denied the application and instead retired the petitioner for ordinary disability. The petitioner's ensuing appeal was within DALA's jurisdiction, because the petitioner's course of conduct before the board effectively converted the application into a voluntary one. On the merits, the board properly denied the application, because the events that caused the petitioner's disability ended more than two years before any record of those events was filed with his employer (or the board).

DECISION

Petitioner Andrew Kaufmann appeals from a decision of the Westfield Retirement Board (board) denying the petitioner's employer's application to retire him for accidental disability. I held an evidentiary hearing on December 12, 2024, at which the petitioner was the only witness. At and after the hearing, I admitted exhibits marked 1-12 into evidence. The record closed with the submission of hearing briefs.

Findings of Fact

I find the following facts.

1. The petitioner was appointed to a position with the Westfield fire department in 1998. He was a certified paramedic. For the next twenty years, the petitioner was assigned to the department's ambulances. (Exhibits 3-4; testimony.)

2. Under the department's standard schedule, the petitioner worked two 24-hour shifts in every eight-day period. The department was busy. The petitioner estimated the number of calls on a typical shift as ranging from two to ten. (Testimony.)

3. The petitioner responded with his ambulances to numerous violent injuries and traumatic scenes. He estimated that calls to such incidents occurred several times per year. Certain of them stand out in his memory as especially distressing. (Exhibits 5-8; testimony.)

4. Over the years, the petitioner developed symptoms of anxiety, depression, hypertension, and substance use disorder. By 2018, he was drinking heavily and struggling with his job duties. At one point, the petitioner's chest pains led his colleagues to take him to the emergency room, where no physical pathologies were identified. (Exhibits 5-8; testimony.)

5. The Westfield department operated a "bidding" system that allotted popular assignments to the most senior employees interested in them. During 2018, the petitioner successfully requested an assignment to a particular fire engine (instead of an ambulance). He hoped and believed that this move would ease his mental health issues. (Exhibit 7; testimony.)

6. Even after his assignment to a fire engine, the petitioner occasionally traveled with ambulances to serious incidents. His mental health symptoms did not disappear. But the petitioner found his new routine to be much more manageable. He expected that he would be able to remain in his fire-engine post long enough to retire for superannuation. (Exhibits 7, 8, 12; testimony.)

7. In October 2021, the petitioner was informed by his supervisors that he would be reassigned back onto ambulance duty. The supervisors described this development as the result of operational needs relating to another paramedic's unavailability. The petitioner had the impression that his fire chief could have rearranged other assignments in a way that would have allowed the petitioner to remain on a fire engine. But the petitioner did not perceive his chief as hostile. He saw himself as having remained neutral with respect to a then-ongoing burst of acrimony in the department.[1] (Testimony.)

8. The petitioner found himself emotionally incapable of returning to ambulance duty. Friends delivered him to a detox facility. The petitioner subsequently attended an extended outpatient program. He has been treated with psychotherapy and antidepressants. His nightmares have become less frequent. But he remains anxious, shaken, and unable to discuss his traumatic experiences without becoming emotional. (Exhibits 5-8; testimony.)

9. The fire department allowed the petitioner's request for medical leave promptly after he began his detox. The petitioner has not returned to work since. In April 2022, he applied for injured-on-duty benefits under G.L. c. 41, § 111F. In support of that application, the petitioner furnished the department with incident reports stating that he suffers from posttraumatic stress disorder (PTSD). (Exhibits 1, 4, 11; testimony.)

10. In June 2022, Dr. Mark Cutler conducted a medical evaluation of the petitioner's fitness for duty. Dr. Cutler's diagnoses were PTSD and anxiety. He reported the petitioner's traumatic experiences as including a particularly violent car crash in 2014, as well as "other episodes, especially with children." Dr. Cutler also paraphrased an earlier record as attributing the

[1] On this point, I credit the petitioner's live testimony over his hearsay statements to Dr. Kahn, reportedly to the effect that the petitioner experienced his reassignment as a "punishment" for siding with department "whistleblowers." (Exhibit 5.)

petitioner's condition to "working as a paramedic for some time and seeing many dead children." (Exhibit 8.)

11. In July 2022, the fire chief filed an application to retire the petitioner involuntarily for accidental disability. By way of identifying the causes of the petitioner's disability, the fire chief referred the board to Dr. Cutler's report. (Exhibits 1-3.)

12. The petitioner was ambivalent about but cooperative with the retirement process. Accompanied by his attorney, he attended an evidentiary hearing before the board in June 2023, where he testified about his condition and its causes. (Exhibits 5, 10; testimony.)

13. The board asked the Public Employee Retirement Administration Commission to convene a regional medical panel. The panel consisted of psychiatrists Dr. Michael Kahn, Dr. Michael Braverman, and Dr. Melvyn Lurie. They conducted separate examinations of the petitioner in September 2023. (Exhibits 5-7, 10.)

14. After their examinations, all three panelists certified that the petitioner is incapable of performing his job duties, that the incapacity is permanent, and that it is such as might be the result of the workplace events identified in the retirement application. The panelists' diagnoses centered around PTSD and anxiety. They all described the petitioner as having undergone multiple traumatic incidents involving deaths of children, including specific car crashes in 2010, 2013, and 2016. (Exhibits 5-7.)

15. The panelists offered two distinct theories about the causes of the petitioner's condition. Dr. Kahn and Dr. Braverman blamed the collective impact of his two decades' worth of traumatic ambulance calls. By contrast, Dr. Lurie zeroed in on the petitioner's reassignment back to ambulance duty in late 2021, writing: "[The petitioner] was told that he had to become a paramedic again. This raised his level of anxiety to the point where he . . . could no longer do his

job. . . . [H]e functioned satisfactorily at work since the [2018 reassignment to a fire engine] . . . after which the symptoms . . . appear to have resolved at least enough so that he was able to do that job. It wasn't until he was told he had to return to the [ambulance] position . . . that his PTSD was aggravated to the point where he could no longer do his job." (Exhibits 5-7.)

16. In November 2023, the board declined to retire the petitioner for accidental disability, citing the "notice" requirements of G.L. c. 32, § 7(1), (3). The board instead retired the petitioner for ordinary disability. In its decision letter, the board described the proper "appeal route in an involuntary claim" as "unsettled." The petitioner promptly lodged the current appeal. (Exhibit 9; administrative record.)

Analysis

I. Jurisdiction

The board contends that this matter exceeds DALA's jurisdiction. The board did not present this claim in the parties' joint prehearing memorandum, waiting instead until three days before the evidentiary hearing. The claim needs to be addressed nevertheless, because jurisdictional defects are not forfeitable. *See Flynn v. Contributory Ret. Appeal Bd.*, 17 Mass. App. Ct. 668, 670 (1984).

The issue stems from the involuntary nature of the application that commenced the retirement process. A statute applicable to such applications states that a member with sufficient age and service who "is aggrieved by any action taken . . . with reference to his involuntary retirement" may obtain review in the district court. G.L. c. 32, § 16(3)(a). Matters reviewable through that route remain outside the jurisdictions of DALA and the Contributory Retirement Appeal Board (CRAB). *See* § 16(4). *See also Bagley v. Contributory Ret. Appeal Bd.*, 397 Mass. 255 (1986); *Barrett v. Police Comm'r of Bos.*, 347 Mass. 298 (1964).

These provisions were the subject of *MacDonald v. Commissioner of Metropolitan District Commission*, 33 Mass. App. Ct. 455 (1992). That case began with an involuntary application. "The board [eventually] . . . notified [the member] by letter . . . that he was permanently disabled but not entitled to accidental disability retirement. In the same letter he was offered an ordinary disability retirement." *Id.* at 461-62. According to the Appeals Court, "[t]hat decision was reviewable in the District Court." *Id.* at 462. The board's guidance to the member that he could appeal to CRAB was an "inexplicable and serious" mistake. *Id.*

A number of CRAB orders issued around the time of *MacDonald* took a similar view. In each case, an employer filed an involuntary retirement application; the local board denied the application; the member took an administrative appeal; and CRAB dismissed for lack of jurisdiction, explaining: "[T]he subject of the retirement board action was involuntary retirement . . . . Such matters are among those specifically appealable to the district court." *Pritzky v. Winthrop Ret. Bd.*, No. CR-92-690 (Contributory Ret. App. Bd. Feb. 18, 1994). *See also Henault v. Pittsfield Ret. Bd.*, No. CR-90-1098 (Contributory Ret. App. Bd. Nov. 13, 1992); *Correa v. Fall River Ret. Bd.*, No. CR-90-972 (Contributory Ret. App. Bd. Sept. 11, 1992).

Matters took a new turn with *Nasuti v. Saugus Retirement Board*, No. CR-93-491, 1995 WL 18263262 (Contributory Ret. App. Bd. Sept. 12, 1995). CRAB wrote there: "[A]fter the Police Chief's filing of the involuntary application . . . the [member] fully cooperated in all respects with the processing of the application. Moreover, after the denial of the application . . . it was the [member] who filed the appeal." *Id.* at *1. These details differentiated *Nasuti* from *MacDonald*, where the member—even in the courts—was seeking primarily to be reinstated. *See* 33 Mass. App. Ct. at 459-61.

Nasuti has controlled the course of practice before DALA and CRAB in the thirty years since. DALA magistrates have so recognized. *See Muth v. Leominster Ret. Bd.*, No. CR-11-218, at *3-5 (Div. Admin. Law App. May 23, 2014); *Ryan v. Salem Ret. Bd.*, No. CR-95-576 (Div. Admin. Law App. Aug. 6, 1996). *See also Massachusetts Public Employee Retirement Guide* 40 (2015). CRAB itself has not apparently reiterated *Nasuti*'s holding; but it has regularly exercised jurisdiction over members' appeals from denials of originally involuntary applications. *See, e.g., Zakeri Pour v. Westfield Ret. Bd.*, No. CR-13-576, 2018 WL 11682002 (Contributory Ret. App. Bd. July 23, 2018); *Sicard v. State Bd. of Ret.*, No. CR-08-96 (Contributory Ret. App. Bd. Sept. 15, 2011).

The board acknowledges the foregoing points. Its essential argument is that *Nasuti* was wrongly decided.[2] But DALA is bound by that precedent unless and until CRAB should overrule it. *See Iran Air v. Kugelman*, 996 F.2d 1253, 1260 (D.C. Cir. 1993); *Briggs v. Worcester Reg'l Ret. Bd.*, No. CR-20-384, 2022 WL 9619041, at *3 (Div. Admin. Law App. Mar. 11, 2022).

II. Merits

On the merits, retirement for accidental disability is available to a member who is permanently unable to perform the duties of his job as a result of a workplace "personal injury sustained or . . . hazard undergone . . . at some definite place and at some definite time." G.L. c. 32, § 7(1). There is no dispute that the petitioner's PTSD and related symptoms are disabling, permanent, and attributable to his workplace experiences. The experts agree on these points, and the board sensibly concedes them.

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[2] The board observes that members appealing to CRAB as "voluntary" applicants under *Nasuti* may already have been treated as "involuntary" candidates under various rules. *See, e.g.*, 840 C.M.R. § 10.06. But there does not appear to be anything illogical about mixed procedural advantages accruing to members who initially are forced into retirement proceedings and subsequently agree to cooperate. *Cf. Sicard*, *supra*.

The question presented is more procedural in nature. Subject to limited exceptions, a member cannot be retired for accidental disability unless the pertinent "injury was sustained or . . . hazard was undergone within two years prior to the filing of [the] application." § 7(1). The board maintains that the petitioner does not satisfy this requirement. Ultimately, its position is meritorious.

The petitioner claims that the two-year limitation period is inapplicable to him under the exception for cases where "a record of [the] injury sustained or hazard undergone is on file in the official records of [the member's] department." § 7(3). The records that the petitioner cites in this context are the medical-leave documents that he filed in and after October 2021.[3] The petitioner maintains that the statute does not inquire into the date of the "records of injury"; but the case law has taken a different approach. As CRAB has explained, documents created long after the underlying events "cannot serve the purpose of the exception, which is intended to allow an opportunity to investigate." *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 (Hampden Super. Aug. 8, 2016).

Under *Zajac*'s analysis, the § 7(3) exception allows a record of an injury to stand in for a retirement application—but only as long as the record of injury satisfies the same deadline of no more than two years after the pertinent occurrences. *See Kane v. Worcester Reg'l Ret Bd.*, No.

[3] The petitioner does not demonstrate that the fire department's routine "run sheets" were within the narrow category of documents whose "content and circumstances communicate the likelihood that the member may have suffered severe emotional harm." *Gonglik v. Westfield Ret. Syst.*, No. CR-21-425, 2024 WL 215938, at *3 n.4 (Div. Admin. Law App. Jan. 12, 2024). *See also Kane*, 2018 WL 11682013, at *4 (emphasizing the inadequacy in this context of "a routine . . . report"). By extension, the petitioner does not establish that, for purpose of § 7(1), "written notice [of the injury or hazard] was filed with the board . . . within ninety days after its occurrence."

CR-14-52, 2018 WL 11682013, at *4, *5 n.35 (Contributory Ret. App. Bd. Aug. 23, 2018); *Baptiste v. Bristol Cty. Ret. Bd.*, No. CR-20-1, 2024 WL 215931, at *9-10 (Div. Admin. Law App. Jan. 12, 2024). To prevail, the petitioner thus must show that the workplace cause of his disability predated his October 2021 leave documents by two years or less.

The retirement law's reference to harm sustained "at some definite place and at some definite time," § 7(1), may tend to evoke the type of case where a disability was caused by "single work-related event or series of events." *Blanchette v. Contributory Ret. Appeal Bd.*, 20 Mass. App. Ct. 479, 485 (1985). The administrative case law has identified this type of case with the statutory rubric "injury." *See Favazza v. Massachusetts Teachers' Ret. Syst.*, No. CR-21-150, 2024 WL 215934, at *5 (Div. Admin. Law App. Jan. 12, 2024). The petitioner does not pursue an injury theory. He does not attribute his disability to any specific event, whether in the field or at the station. Any such claim would have faced likely insurmountable difficulties.[4]

The case law has viewed § 7(1) as extending to employees whose health has deteriorated progressively due to workplace "conditions" not tied to a particular date. *See Blanchette*, 20 Mass. App. Ct. at 485. The administrative decisions have connected this type of theory to the statutory term "hazard." *See Favazza*, 2024 WL 215934, at *5. Archetypical hazards are "exposure to asbestos" and "continual traumatic or depressing events." *Blanchette*, 20 Mass. App. Ct. at

[4] The testimony and exhibits do not refer to specific traumatic events undergone by the petitioner in the field more recently than 2016, five years before the dates of his records of injury. The October 2021 order reassigning the petitioner to an ambulance was recent enough to raise no timeliness issue. But the reassignment order was likely a "bona fide personnel action" of the sort that does not qualify as an injury. *See Griffin v. State Bd. of Ret.*, No. CR-20-207, 2024 WL 2880050, at *2 (Contributory Ret. App. Bd. Jan. 24, 2024). Although the rule about "personnel actions" is more commonly invoked with respect to disciplinary measures, it also covers "transfers" and even "promotions." *See Ciavola v. Lowell Ret. Bd.*, No. CR-13-380, 2021 WL 12297910, at *2 (Contributory Ret. App. Bd. July 29, 2021).

487 n.7. In such cases, it would be impracticable and artificial to document and evaluate isolated exposures as injurious events. The analysis focuses instead on the hazard's duration collectively.

The *Blanchette* line of cases mostly discussed the fine line between true workplace hazards and the non-work-specific declines in health that all individuals eventually experience. *See Adams v. Contributory Ret. Appeal Bd.*, 414 Mass. 360, 366 (1993); *Fender v. Contributory Ret. Appeal Bd.*, 72 Mass. App. Ct. 755, 761-62 (2008). Recent administrative decisions have highlighted another feature of hazard theories: when a workplace harm is effectively continual, it often may be presumed to persist until the member's last day at work, allowing the two-year limitation period to be calculated as commencing only on that day. *See Sibley v. Franklin Reg'l Ret. Bd.*, CR-15-54, 2023 WL 11806176, at *7 (Contributory Ret. App. Bd. May 26, 2023); *Reed R. v. State Bd. of Ret.*, No. CR-22-253, 2024 WL 5055498, at *8 (Div. Admin. Law App. Nov. 29, 2024). *Cf. Benoit v. Everett Ret. Bd.*, No. CR-14-821, 2023 WL 11806155, at *4-5 (Contributory Ret. App. Bd. Sept. 14, 2023).

A difficult question would have been presented if it were necessary to determine whether the petitioner's traumatic calls during his earlier years on ambulances were so "continual" as to be appropriately analyzed as a collective hazard. *See Reed R.*, 2024 WL 5055498, at *8. That determination is unnecessary, however. The petitioner's ambulance-specific work ended in October 2018, with his reassignment to a fire engine. After that date, the petitioner's participation in ambulance calls was sporadic. The calls were sufficiently infrequent that both the petitioner and Dr. Lurie viewed the fire-engine assignment as well suited to the petitioner's mental health as it stood then. The petitioner's duties after October 2018 thus cannot be viewed as entailing the hazard of continual traumatic events.

The foregoing analysis means that the petitioner's claimed hazard ended more than two years before he filed records of that hazard with his department. It follows that, even though the petitioner is permanently disabled as a result of his public service, the governing statutory rules do not entitle him to accidental disability retirement benefits. *See Gonglik*, 2024 WL 215938, at *4.

Conclusion and Order

In view of the foregoing, the board's decision is AFFIRMED.

Division of Administrative Law Appeals

/s/ Yakov Malkiel
Yakov Malkiel
Administrative Magistrate