COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss. Division of Administrative Law Appeals

Glendon King,
Petitioner

v. Docket No. CR-18-0401

Boston Retirement Board,
Respondent

Appearance for Petitioner: Kathleen Kiely-Becchetti, Esq.
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Administrative Magistrate: James P. Rooney

Summary of Decision

Firefighter applied for accidental disability retirement claiming that the knee he disabled in a 2016 slip and fall was caused by an on-the-job ankle injury in 2013. Two medical panelists found no connection between the two injuries, and consequently his retirement board denied his application. The denial is affirmed as the firefighter's theory of causation is unclear, the medical panel did not employ an erroneous standard when it attempted to determine whether one injury led to the other, and the analyses by the two doctors who voted in the negative were not plainly wrong.

DECISION

Glendon King appeals the June 19, 2018 decision of the Boston Retirement Board denying his application for accidental disability retirement. The parties elected to have the case decided on the jointly submitted documents in lieu of a hearing. 801 CMR 1.01(10)(c). The parties submitted a joint prehearing memorandum in June 2022 that I marked as Pleading A. After reviewing the record, I determined that I needed testimony from Mr. King about the injury on which he based his application. I held the hearing at the Division of Administrative Law

Appeals on June 6, 2023 and took Mr. King's testimony, which was digitally recorded. I ultimately admitted 168 exhibits. Each party filed a closing memorandum. I marked Mr. King's memo as Pleading B and the Board's memo as Pleading C. The record closed on May 28, 2024.

Findings of Fact

Based upon the testimony, the exhibits, and reasonable inferences from them, I make the following findings of fact.

1. Glendon King worked as a firefighter for the Boston Fire Department from 1999 to 2016. He stopped working sometime after a fall on ice on January 13, 2016, in which he injured his knee.[1] (Ex. 4, p. 2; Ex. 1, p. 5.)
2. On December 10, 2001, Mr. King sprained his left ankle while on duty and climbing through a window on Salem Street with a charged 2.5-inch water line. Mr. King remained on duty. (Ex. 6.)
3. On January 19, 2005, Mr. King slipped on a wet surface twisting his left knee and left ankle while on duty and investigating an incident in a basement. (Ex. 19.) X-ray of the left knee demonstrated no fracture, dislocation or effusion. (Ex. 20.) Mr. King was discharged with instructions to take Motrin for pain as needed, to elevate and ice the leg, and to use a cane for the first two days. (Ex. 21.)

October 2013 ankle injury

4. On October 9, 2013, Mr. King hurt his left ankle sliding down a fire pole and landing on the mat on the main floor of his fire station. Mr. King's ankle had been fine the day before this happened. He had gone upstairs to go to the bathroom when he heard a fire

[1] The record is not clear as to the exact date Mr. King last worked for the Fire Department. It is sometime between his fall on January 13, 2014 and his application for accidental disability retirement on June 29, 2016.

alarm calling him to go to the fire truck.[2] He slid down the fire pole with wet hands and landed hard when he hit the ground floor. The injury initially was diagnosed as a sprain but was later determined to be more serious. (King testimony; Ex. 7.)

5. On December 18, 2013, Mr. King saw Jeffrey R. Jockel, M.D. of Boston Sports and Shoulder Center. Dr. Jockel noted that Mr. King had sustained an injury to his left ankle on October 9, 2013 while sliding down the fire pole, resulting in pain and swelling. He had been treated by an outside primary care physician and received an ankle lace-up support and physical therapy with some improvement in his pain, but he continued to limp. Dr. Jockel noted that Mr. King was currently performing light duty desk work. (Ex. 22, pp. 52-53.)
6. Dr. Jockel noted that an MRI on December 11, 2013 demonstrated an ankle sprain with ligamentous changes, avulsion of the anterior process of the calcaneus,[3] and peroneal tendinopathy as well as Achilles tendinopathy. (Ex. 22, p. 54; Ex. 23.)
7. Dr. Jockel referred Mr. King to physical therapy on December 18, 2013, noting that he could do no lifting or carrying of more than 10 pounds, could not walk for more than 5 minutes, and could not climb or work at heights or on uneven surfaces. (Exs. 26, 27.)
8. On March 5, 2014, Mr. King saw Paul Weitzel, M.D. of Boston Sports and Shoulder Center. Mr. King told Dr. Weitzel that he had a work-related left ankle injury which was managed by Dr. Weitzel's partner, Dr. Jockel. Mr. King said that on February 8, 2014,

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[2] He testified that his job that day was to drive the Fire Chief. (King testimony.) This became his job sometime after he injured his ankle. I doubt this was his job before he was injured.

[3] This is a fracture. "Anterior Process Calcaneus fractures occur from an inversion injury to the ankle. The bifurcate ligament pulls on the anterior aspect of the calcaneum resulting in a fragment of bone being pulled away." https://ankleandfootcentre.com.au/anterior-process-calcaneus-avulsion-fracture/.

while off-duty "he was walking out of a condominium" when his left ankle gave way, causing his right knee to buckle, causing a sprain of the MCL (medial collateral ligament) in his right knee that was confirmed by MRI in April 2014. Dr. Weitzel opined that the work-related left ankle injury caused the right MCL sprain. (Exs. 28, 31, 32.)

9. On May 7, 2014, Dr. Weitzel ordered physical therapy twice a week for 6 to 8 weeks for Mr. King's right knee. (Ex. 33.) That day, Mr. King also complained to Dr. Weitzel about chronic pain in his left knee. (Ex. 22.)
10. An MRI of the left knee on May 7, 2014 demonstrated mild degenerative changes of the patellofemoral joint, with no fracture or dislocation identified. (Ex. 41.)
11. On June 3, 2014, Mr. King filed a Continuance of Disability form relaying that he was working on part-time light duty, receiving his full salary. He stated that he had been partially disabled from October 9, 2013 to the present. (Ex. 29.)
12. On June 26, 2014, Mr. King had left ankle arthroscopy with a Brostrom procedure to tighten and firm up one or more ankle ligaments on the outside of the ankle performed by Jeffrey L. Zilberfarb, M.D. of Beth Israel Deaconess Medical Center. (Ex. 30; hopkinsmedicine.org.)
13. On September 3, 2014, Mr. King consulted Dr. Weitzel with complaints of pain and swelling in both knees. Fluid was aspirated from both knees, and the left knee received a Cortisone injection. X-rays demonstrated osteoarthritis in both knees. (Exs. 34; 41.)
14. Mr. King was seen in consultation by Gerald B. Miley, M.D. of New England Baptist Hospital on September 15, 2014 at Dr. Weitzel's request. Dr. Miley noted Mr. King's history of left ankle injury, right knee injury and left knee swelling "although the left [knee] has not had any trauma." He noted that Mr. King had Osgood-Schlatter's disease

in 1979, a childhood illness in which repeated stress on the patellar tendon caused by running and jumping results in swelling, tenderness, and a painful bump just below the kneecap.[4] (Exs. 38, 37.)

15. On September 22, 2014, Dr. Miley opined that Mr. King had osteoarthritis of both knees with no underlying systemic disease, in view of a serologic workup that was unrevealing for rheumatoid arthritis or gout, an excellent lipid profile and a negative Lyme titer. Dr. Miley advised Mr. King to take Aleve for his knee pain. (Ex. 39.)

16. On October 21, 2014, an MRI of Mr. King's left knee demonstrated a torn lateral meniscus, an MCL sprain, mild tricompartmental osteoarthritis, small joint effusion with nonspecific synovial fluid proliferation and a small partially ruptured Baker's cyst. (Ex. 41.)

17. By letter of October 29, 2014, to the Boston Fire Department, Thomas S. Pacheco, a physician's assistant at Boston Sports and Shoulder Center, informed the Department that Mr. King would be undergoing left knee partial lateral meniscectomy and chondroplasty on November 10, 2014. PA Pacheco noted:

    > He was originally seen for left ankle pain from a work-related injury on 10/9/13 while sliding down a pole and twisting his ankle and injuring his knee at the same time. He was seen by Dr. Jockel initially and treated for his ankle. He was then referred to Dr. Weitzel for treatment of his knee. The injuries [i.e., the ankle and the knee injury] did happen on that same work-related date.[5]

(Ex. 42.)

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[4] "Osgood-Schalatter disease is an overuse condition or injury of the knee that causes a painful bum and swelling on the shinbone below the knee." https://www.childrenshospital.org/conditions/osgood-schlatter-disease#:~text=Osgood%2DSchlatter%20disease%20is%20an,12%20to%2014)%20for%boys.

[5] I do not think PA Pacheco meant that Mr. King injured his knee in 213, but rather that the 2013 ankle injury ultimately caused he later knee injury.

18. In a to-whom-it-may-concern letter dated October 29, 2014, Alice Chen, PT, DPT disclosed that Mr. King had been in physical therapy for 15 visits for his October 2013 left ankle injury: "Pt has had an antalgic gait pattern since starting physical therapy, which potentially could have increased the pain in his left knee. Pt's last couple of visits has been modified to non-weight bearing exercises secondary to pt having increased pain in his left knee. Pt will be undergoing surgery for a left knee meniscectomy in November 2014." (Ex. 43.)

19. Mr. King made a postoperative visit to Dr. Zilberfarb on October 30, 2014, concerning his ankle. On examination, the doctor determined that Mr. King had full range of motion in the ankle, the surgery wounds were well-healed, and that there was "no evidence of ligamentous laxity" in the repaired ligaments. He concluded thar Mr. King's ankle "is back to normal function," but "he is not able to return to work due to his left knee injury." (Ex. 72.)

20. By letter of November 3, 2014, Dr. Zilberfarb stated that he had been following Mr. King after his left ankle surgery. He opined, "I believe his left knee injury is related to the left ankle injury that occurred when he was sliding down a firepole at work on October 9, 2013." (Ex. 44.) He did not explain his reasoning.

21. On November 10, 2014, Dr. Weitzel performed arthroscopic surgery on Mr. King's left knee consisting of partial medial and lateral meniscectomies, chondroplasty of trochlea and lateral femoral condyle and synovectomy of anterior synovium and suprapatellar plica.[6] (Ex. 47.)

[6] "A knee arthroscopy with synovectomy or chondroplasty is a minimally invasive surgical procedure to repair and reshape cartilage in the knee. During the procedure, loose and redundant tissue is removed, including inflamed membrane surrounding the knee joint, called synovium,

22. After surgery, Mr. King was immediately referred to physical therapy for 6 to 8 weeks for strength and range of motion exercises for his left knee. He was recertified for additional physical therapy on December 31, 2014, and February 5, 2015. (Exs. 48, 49, 50, 51.)

23. On November 19, 2014, Dr. Weitzel wrote a to-whom-it-may-concern letter regarding whether the meniscus surgery on Mr. King's left knee was related to his October 2013 left ankle injury. After reciting his treatment of Mr. King's left knee and Dr. Miley's opinion that Mr. King's "knee pain was predominantly due to arthritis," he concluded that "[b]ased upon that information I cannot link his left knee status to his work-related injury of October of 2013." (Ex. 58.)

24. Mr. King had a left knee MRI on March 4, 2015, as a result of continuing knee pain. The MRI revealed nonspecific mild new soft tissue swelling in the region of the patellar tendon. (Ex. 52.)

25. By March 4, 2015, Mr. King had been cleared to resume work. His job on his return to the Fire Department was to be the Fire Chief's driver. (Ex. 22; King testimony.)

January 2016 Knee Injury

26. On January 13, 2016, Mr. King was driving a fire truck to the scene of an unspecified emergency. While he was waiting in the truck, two firefighters came back to the truck to tell him the lieutenant had fallen and asked him to come and assist the lieutenant. He got out of the truck, slipped on ice, and injured his left knee. (King testimony.)

(synovectomy) and loose cartilage flaps (chondroplasty). Removal of damaged tissue allows healthy cartilage to be able to grow in its place." https://www.fairmarkethealth.com/services/knee-arthroscopy-surgery-with-synovectomy-or-chondroplasty/980.

27. On January 13, 2016, Mr. King filed a notice of left knee injury. In response to the instruction to describe how the injury occurred, he wrote: "Old injury from 10/2013." He remained on duty. The report does not indicate what activity Mr. King was engaged in when the recurrence of the October 2013 injury occurred. (Ex. 8.)
28. On January 21, 2016, Mr. King had an MRI on each knee as a result of his complaint of bilateral knee pain. The MRI of the left knee demonstrated tiny tricompartmental osteophytes [bone spurs] and an effusion." (Ex. 53.)
29. On February 11, 2016, the Boston Fire Department physician referred Mr. King for another MRI of his left knee because of his complaint of constant left medial knee pain and instability. The MRI revealed status post partial lateral meniscectomy with attenuation of the body posterior horn of the lateral meniscus, with no definite findings to indicate a residual tear. There were mild adjacent lateral femoral tibial degenerative changes; intact medial meniscus with blunting of the free edge of the body and mild medial femoral tibial degenerative cartilage thinning and spurring; small knee joint effusion with mild synovial hypertrophy; and femoral sulcus cartilage loss. (Ex. 54.)
30. On May 19, 2016, Mr. King had a visit with Dr. Weitzel to follow up for his left knee after having a cortisone injection with minimal response. Physical examination revealed a modest medial-sided effusion, positive patellar crepitus and positive patellar grind. Dr. Weitzel noted a diagnosis of unilateral primary osteoarthritis of the left knee. (Ex. 56.)
31. In May 2016, the Boston Fire Department asked Brian P. McKeon, M.D. of Boston Sports and Shoulder Center review Mr. King's records and render an opinion about whether Mr. King was able to continue to do the job of a firefighter, or whether he should "go out permanently on work disability." (Ex. 57.)

32. Dr. McKeon evaluated Mr. King on May 24, 2016. Physical examination of the left knee revealed full range of motion with some minor synovial thickening and a trace effusion. Mr. King had decreased quadriceps tone, decreased calf tone, no meniscus signs, no signs of instability and no patellar apprehension. There were status post lateral meniscus changes with no gross evidence of re-tearing. The medial compartment was normal. There was no edema in the bone and the patella appeared stable. (Ex. 57.)
33. Dr. McKeon noted that Mr. King said that any repetitive activity causes the knee to swell, and he has pain in the medial compartment. (Ex. 57.)
34. Dr. McKeon opined "from a structural standpoint I would see no reason why this gentleman could not continue to do his job. It is all going to be about how he feels and what he can and cannot do... this patient could continue to work based on all of the parameters that I reviewed with the exception of his pain and his own perceived ability to work." (Ex. 57.)

Accidental Disability Retirement Application

35. On June 29, 2016, Mr. King filed an application for accidental disability retirement benefits stating that he sustained a permanently disabling injury to his left ankle and left knee on January 13, 2016 that was a "reoccurrence of a previous injury on October 9, 2013" when he slid down a fire pole while responding to an alarm. The application describes the manner in which he was injured in 2013 but not the manner in which he was injured in 2016. (Ex. 1, pp. 2, 5.)
36. Dr. Weitzel filed a Treating Physician's Statement in support of the application, answering in the affirmative to the issues of disability, permanence and causation. He opined that Mr. King is unable to perform the essential duties of a firefighter, including

climbing ladders, kneeling, crawling and carrying more than 20 pounds because of an injury suffered on October 9, 2013 that caused him to become disabled on January 13, 2016. He explained that the 2013 injury "has resulted in degenerative changes in his knee which is unlikely to improve." (Ex. 3.)

37. Dr. Weitzel offered diagnoses of left knee medial and lateral meniscectomy and chondral injury.[7] He opined that the disability is likely to be permanent because "it is a painful problem which has resulted in degenerative changes in his knee which is unlikely to improve." He indicated that the injury occurred while sliding down a fire pole. He indicated that there was no other circumstance in Mr. King's medical history that may have contributed to or resulted in the disability. (Ex. 3.)

Medical Panel Reports

38. Mr. King was evaluated in May 2017 by a regional medical panel composed of orthopedic surgeons. The panel comprised John S. Ritter, M.D., Richard Warnock, M.D. and George Hazel, M.D. Each panel physician reviewed a job description and medical records, took a history and performed a physical examination. (Exs. 12, 13, 14.)

39. Drs. Ritter and Warnock certified in the affirmative to the issues of disability and permanence, and in the negative with respect to causation. Dr. Hazel certified in the affirmative to all certificate questions. (Exs. 12, 13, 14.)

[7] "An articular cartilage injury, or 'chondral' injury, may occur as a result of a pivot or twist on a bent knee, similar to the motion that can cause a meniscus tear. Small pieces of the articular cartilage can actually break off and float around in the knee as loose bodies, causing locking, catching, and/or swelling. " Articular cartilage is "the shiny, white surface that covers the ends of most bones. . . . Painful osteoarthritis develops when this smooth, gliding surface on the end of the bone has lost its cushioning." https://www.thesteadmanclinic.com/patient-education/knee/chondral-defects#:~:text=An%20articular%20cartilage%20 injury%2C%20or,as%20the%20anterior%20cruciate%20ligament.

40. Dr. Ritter evaluated Mr. King on May 3, 2017. Dr. Ritter diagnosed primary osteoarthritis of the left knee. (Ex. 12.)
41. Dr. Ritter noted that Mr. King "alleges that on January 13, 2016, he sustained a twisting injury to his left knee exiting his truck. He recalls that he finished the shift and reported to the company doctor the next morning. He returned to work full capacity but continued to experience symptoms in his right knee." (Ex. 12, p. 2.)
42. In the recitation of documents he reviewed, Dr. Ritter mentioned Dr. Wetzel's letter dated November 19, 2014, in which the doctor stated that the "initial treatment for left knee pain was on September 3, 2014," and opined that he "could not link the left knee status to the work-related injury of 2013." (Ex. 12, p. 5.)
43. Dr. Ritter's physical examination revealed a mildly antalgic gate on the left; mild swelling at the left anteromedial knee joint line with tenderness to palpation; active left knee range of motion measured from full extension to 115 degrees of knee flexion; full motor function was intact; the patella tracked the midline, and the knee was stable to stress. (Ex. 12, p. 6.)
44. Dr. Ritter concluded that Mr. King is permanently unable to perform the duties of a Boston firefighter. He opined that the disability "is not the proximate result of the reason for which he is seeking disability, but secondary to progressive osteoarthritis of the left knee." (Ex. 12, p. 7.)
45. Dr. Warnock evaluated Mr. King on May 16, 2017. He noted Mr. King's complaint of left knee pain, swelling and popping. Dr. Warnock diagnosed osteoarthritis, left knee, status post medial meniscectomy. Regarding the meniscus surgery, he noted that the "articular surface changes are not known to me." (Ex. 13.)

46. Dr. Warnock opined that Mr. King has a "confusing history," noting Mr. King's assertion that the original injury of October 9, 2013 while sliding down the fire pole was an injury to his left ankle and right knee. "He is now claiming that his left knee was also injured, however, the first mention of left knee issues is when he sees Dr. Weitzel on May 31, 2014, complaining of left knee pain. According to Dr. Weitzel, the left knee pain is chronic" and was related to arthritis. (Ex. 13, pp. 1-2.)

47. Dr. Warnock noted Mr. King "states that he had another injury on January 13, 2016, when he slipped on the ice, injuring his left knee. He sees Dr. Weitzel on January 26, 2016 and complains of left knee pain, but there is no mention that he had a new injury. He states that his knee pain was worse after a few months. Mr. King then relates it back to the original injury of 2013, but as I have stated, the left knee was not reported as part of an injury util 2014, as far as I can determine." (Ex. 13, p. 2.)

48. Physical examination revealed no deformity, no effusion, full extension, full flexion, mild medial joint line tenderness and no instability. (Ex. 13, p. 2.)

49. Dr. Warnock concluded that Mr. King is permanently unable to perform the essential duties of a firefighter. With respect to causation he opined, "I cannot, however, [state] with any certainty that his injury is causally related to the incident on October 9, 2013. He apparently injured his right knee at that time; however, the first mention of left knee symptoms was May 2014, and Dr. Weitzel did not relate it to a work injury and noted that it was osteoarthritic. It would be helpful to review the operative note from November 2014 as well as more recent MRIs to confirm this opinion." (Ex. 13, p. 3.)

50. Dr. Hazel evaluated Mr. King on May 19, 2017. He noted that Mr. King's main complaint of disability was related to his left knee where he experienced burning under

the kneecap with constant pain. Dr. Hazel diagnosed osteoarthritis of the left knee. (Ex. 14, pp. 1, 2, 4.)

51. Dr. Hazel noted that Mr. King had suffered injuries to his left knee, right knee and left ankle. He acknowledged the left ankle injury of October 9, 2013, and then noted the "most recent injury to the left knee occurred in January 2016." He opined, "The most recent report available is from Dr. Weitzel, dated June 20, 2016, at which point he permanently disabled Mr. King and completed the paperwork for his retirement disability. (Ex. 14, p. 2.)
52. Physical examination of the left knee revealed an effusion. Range of motion included extension to full flexion of 120 degrees. The medial collateral ligament and the anterior cruciate ligament were slightly lax and crepitation was noted on flexion and extension of the patella. (Ex. 14, pp. 3-4.)
53. Dr. Hazel concluded, this "member is physically incapable of performing the essential duties of his job as described in the current job description. Said incapacity is likely to be permanent. The disability is such as might be the natural and proximate result of the injuries sustained on account of which retirement is claimed." (Ex. 14, p. 4.)
54. The essential duties of a firefighter are primarily to protect life and property under any and all circumstances, including the most extreme emergencies. Firefighters must be of above-average intelligence, versatile in their abilities, self-disciplined, and courageous in any and all circumstances. (Ex. 5, p. 1.)
55. On June 19, 2018, the Boston Retirement Board denied Mr. King's accidental disability retirement application because "the majority of the regional medical panel failed to certify his disability based on causation." (Ex. 16.)

56. Mr. King filed a timely appeal. (Ex. 17.)

Discussion

In order to receive accidental disability retirement benefits, an applicant must prove by a preponderance of the evidence that he is totally and permanently incapacitated from performing the essential duties of his or her position as a result of an injury sustained or hazard undergone while in the performance of his duties. M.G.L. c. 32, § 7; *Donnelly v. State Bd. of Retirement*, Docket No. CR-08-312, at *8 (DALA Aug. 26, 2010). No application may be approved until the applicant has been examined by a medical panel whose function is to determine medical questions that are beyond the common knowledge and experience of a local retirement board. *Malden Retirement Bd. v. Contributory Retirement App. Bd.*, 1 Mass. App. Ct. 420, 423 (1973). If a majority of the medical panel determines that the applicant is not disabled, not permanently disabled, or that the disability was not job-related, a retirement board must deny the application, and the applicant can prevail on appeal only by showing that the medical panel has applied an erroneous standard, failed to follow the proper procedures, or unless the certificate is "plainly wrong." *Id.* at 424; *Kelley v. Contributory Retirement App. Bd.*, 341 Mass. 611, 617 (1961).

The Boston Retirement Board maintains that the panelists performed their task properly. Mr. King argues that the two negative panelists failed to consider the possibility that his slip and fall injury aggravated the existing problems with his left knee, whether or not those problems were work-related.

While it is true that, if an injury occurs while working aggravates a pre-existing condition to the point of disability, it may be a valid basis on which to base an accidental disability claim, *see Baruffaldi v. CRAB*, 337 Mass. 495 (1958), it is not at all clear that this was the theory under which Mr. King was pursuing a disability pension. Indeed, it is not clear what his theory was.

Both the application and Dr. Weitzel's physician's statement mention the ankle injury Mr. King suffered in October 2013 and claim that this injury led to his disability on January 13, 2016. Neither one described the knee injury that occurred on that date or explained how the knee injury and his subsequent disability was related to the ankle injury more than two years earlier.

The medical records contain reports by Physician Assistant Pacheco, physical therapist Chen, and Dr. Zilberfarb that the left knee pain Mr. King experienced before his 2016 slip and fall was related to his earlier ankle injury. Neither Mr. Pacheco nor Dr. Zilberfarb explained the bases of their opinions. (Findings 17 and 20.) Ms. Chen thought his antalgic gait could have increased his knee pain, with the relationship presumably being that his ankle injury altered his gait. (Finding 18.) None of the panelists discussed these opinions. Medical panelists are free to disagree with other medical providers' conclusions. *See Rosemarie R. v. Amesbury Retirement Sys.*, CR-22-0590 (DALA June 14, 2024). In this instance, these opinions might have been accorded little weight because they were offered after it was discovered that Mr. King had a torn meniscus in his left knee, and thus the three medical providers may have believed Mr. King's meniscus tear was caused in some fashion by his ankle injury, with only Ms. Chen explaining the basis of her opinion.

More hurtful to Mr. King's case was Dr. Weitzel's opinion from November 2014 -- after the meniscus surgery -- that Mr. King's left knee pain was unrelated to his prior ankle injury and that adopted Dr. Miley's opinion that the pain was related to osteoarthritis. (Finding 23.) Dr. Weitzel took a different view in his physician's statement but did not explain the change in his opinion. (Findings 36 and 37.) It could be that because Dr. Weitzel was asked in 2014 whether Mr. King's torn meniscus was caused by the ankle injury, his response was limited to answering this question and his physician's statement was addressing whether the ankle injury caused

arthritis to develop in Mr. King's knee. But his 2014 answer was more general than this. It concluded that Mr. King's left knee pain was related to arthritis and, by implication, unrelated to the ankle injury. Nevertheless, Dr. Weitzel did not explain the basis of his opinion in support of Mr. King's application. This left the Retirement System and the medical panelists to guess on what basis Mr. King and Dr. Weitzel saw a connection between the ankle injury and his later disabling knee condition.

DALA has previously held that an applicant for accidental disability retirement may not change the basis on which he seeks disability in the middle of the process as retirement boards are not required to "respond to a moving target." *Poulten v. Boston Retirement Bd.*, CR-11-88, at *31 (DALA, May 22, 2014), aff'd (CRAB, Aug. 14, 2015) (application based on psychological injury morphed into claim of physical injury). Here, it is simply not clear on what basis Mr. King thought his ankle injury in 2013 caused his left knee disability in 2016. Because neither Mr. King nor Dr. Weitzel mentioned the January 2016 knee injury, it would appear that his slip and fall on January 13, 2016 played little role in the theory of causation being advanced. But that does not help clarify how the ankle injury was supposed to have caused a knee injury years later. Mr. King and Dr. Weitzel should have explained their theory of causation in some detail so that the Boston Retirement System and the medical panel would not have to guess as to what it was. And as they failed to do that, the Retirement System could have asked for such an explanation before it had the medical panelists examine Mr. King. Dr. Weitzel's physician's statement offers a hint as to his thinking. He diagnosed Mr. King with a chondral injury and stated that the 2013 injury led to degenerative conditions in his left knee. A chondral injury from the twisting of a bent knee may ultimately lead to osteoarthritis, a condition Mr. King has. Thus, it may be that Dr. Weitzel thought that Mr. King suffered a chondral injury to his left knee when

he hurt his ankle while sliding too fast down his station's fire poll, and this later caused him to have disabling arthritis in his knee. But this is just speculation on my part. Medical panelists should not have to speculate as to what an applicant thinks is the cause of his disabling injury.

Each negative medical panelist made an effort to evaluate whether the 2013 ankle injury caused a disabling knee condition in 2016. Dr. Ritter weighed heavily Dr. Weitzel's statement in November 2014 that Mr. King's developing left knee pain was not related to his 2013 ankle injury. Thus, he concluded that Mr. King's disabling arthritic left knee developed over time not as a result of the 2013 ankle injury. While he did not explicitly state whether there was a possibility that the ankle injury caused knee problem, his reliance on Dr. Weitzel's 2014 opinion shows that he did not think it was a possibility. Dr. Ritter's approach was not based on an erroneous standard and is not plainly wrong. It was well within his purview to take seriously Dr. Weitzel's opinion that was made a few months after Dr. King complained about left knee pain.

Likewise, Dr. Warnock relied heavily on Dr. Weitzel's opinion that Mr. King's left knee pain was chronic and related to arthritis. He discounted the possibility that Mr. King's left knee pain was related to his ankle injury because the first complaint of left knee pain did not happen until almost eight months after the ankle injury and Mr. King's treating physician, Dr. Weitzel, did not think the left knee problem was related to the left ankle injury. Dr. Warnock was a bit confused about Mr. King's right knee injury, which did not happen at the same time or place as his left ankle injury, but this does not make his opinion plainly wrong. He expressed a desire for more information from Mr. King's meniscus surgery evidently for the purpose of learning whether, or to what extent, Mr. King had left knee osteoarthritis at the time. But he did not suggest that there was a potential that he would change his opinion if he saw the records of the surgery. Dr. Warnock's opinion addressed the question asked as to whether the 2013 ankle

injury caused disabling left knee problem by January 2016. He did not apply an erroneous standard and his opinion was not plainly wrong.

Neither of these two doctors addressed whether the January 2016 injury aggravated the underlying condition of Mr. King's left knee to the point of disability. They did not attempt to answer this question because it was not asked.

Conclusion

Thus, while I affirm the denial of Mr. King's application for accidental disability retirement based on the proposition that his 2013 ankle injury led to his 2016 disabled knee, he is not precluded from filing a new application based on the 2016 slip and fall injury aggravating the weakened condition of his left knee to the point of disability.

DIVISION OF ADMINISTRATIVE LAW APPEALS

James P. Rooney

James P. Rooney
First Administrative Magistrate

Dated: October 18, 2024