COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss. Division of Administrative Law Appeals

Mark Krentzman,
Petitioner

v. Docket No. CR-23-0556
Date Issued: Apr. 11, 2025

Everett Retirement System,
Respondent

Appearance for Petitioner:

Steven H. Kantrovitz, Esq.

Appearance for Respondent:

Nicholas Poser, Esq.

Administrative Magistrate:

Kenneth J. Forton

SUMMARY

The Petitioner, a municipal water meter reader and inspector, suffers from a back injury. A preponderance of the evidence, including the opinions of a majority medical panel, establishes that the incapacity is the result of aggravation from a workplace injury, not degenerative changes. The petitioner is therefore entitled to retire for accidental disability.

DECISION

This is the second time Mr. Krentzman has appealed the Everett Retirement Board's denial of his application for accidental disability retirement benefits. The first time was in DALA Docket No. CR-19-0368 ("*Krentzman I*"), when I had to decide whether Mr. Krentzman made out a prima facie case for accidental disability retirement

and was therefore entitled to examination by a medical panel. In a decision dated June 17, 2022, I ruled that he had and remanded the matter so that he could be examined.

After a positive medical panel, the Board has again denied his application, this time because it claims he has not proven that his disability was caused by a workplace injury. Mr. Krentzman timely appealed the Board's second decision.

DALA ordered the parties to file a joint pre-hearing memorandum. In February 2024, the parties submitted their joint pre-hearing memorandum, with 14 proposed exhibits. The parties requested that I decide the matter on written submissions under 801 CMR 1.01(10)(c). I admitted into evidence the 14 proposed exhibits as marked. (Exhibits 1-14.)

FINDINGS OF FACT

Based on the written submission of the parties and my findings in *Krentzman I*, I make the following findings of fact:

1. Mark Krentzman was born in 1959 and has a high school education. In November 2012, he began working as a Water Meter Reader and Inspector for the City of Everett. (Ex. 1.)[1]

2. When Mr. Krentzman commenced his employment with the City of Everett, he was medically capable of performing all of the essential duties of his employment without limitation or restriction. (Joint Prehearing Memo.)

3. Mr. Krentzman was primarily required to read water meters and report the consumption of users. He was not required to install, test, or repair water meters. The

[1] Exhibit 1 is my decision in Mr. Krentzman's first appeal. *Krentzman v. Everett Ret. Bd.*, CR-19-0368 (DALA June 17, 2022) ("*Krentzman I*").

duties of a water meter reader and inspector required repetitive reaching, getting low to the ground, and also required Mr. Krentzman to have a valid Massachusetts driver's license so that he could drive his city vehicle from customer location to customer location. (Ex. 1.)

4. In addition to his duties as a water meter reader and inspector, upon the completion of his daily assignments, as planned and coordinated by his immediate supervisors, Mr. Krentzman was required to return to the "city yard" located at 19 Norman Street in Everett to receive instructions to perform other laborer-related tasks as directed by his immediate supervisors. (Ex. 1.)

5. The additional labor-intensive job duties included, but were not limited to, assisting the water department in the physical labor of water meter repairs, digging up the city streets as required for the repair of water lines, removal of fire hydrant covers, the lifting of sewer covers to access underground water issues, snow removal, and the cleaning up of the city yard, as instructed by his supervisors. (Ex. 1.)

6. Approximately two days per week, Mr. Krentzman would complete his regular assigned duties early and then perform the above-noted labor-intensive tasks, as directed by his immediate supervisors. (Ex. 1.)

7. On August 28, 2013, upon the completion of his assigned duties as a water meter reader and inspector, Mr. Krentzman returned to the city yard, to receive instructions for further duties to be performed. (Ex. 1.)

8. Water Superintendent Earnest Lariviere assigned Mr. Krentzman to clean and organize the city yard. On that day, these duties required the lifting and moving of heavy metal filing cabinets, weighing 75-100 pounds, located within the city yard. Mr.

Krentzman, with the assistance of co-worker Philip Spaulding, lifted a heavy metal file cabinet that had been lying on its side in the city yard. In the process of lifting this heavy cabinet, Mr. Krentzman sustained acute injuries to his right dominant shoulder, right elbow, and cervical spine. (Ex. 1.)

9. Mr. Krentzman experienced sudden and severe pain in his right shoulder and cervical spine. The pain radiated into his right arm and hand and was further aggravated by neck motion. (Ex. 1.)

10. Mr. Krentzman immediately and accurately reported his injury to his employer. (Ex. 1.)

11. On the date of the injury, both Mr. Krentzman and Mr. Lariviere completed an Employee's Report of On-The-Job Injury and a Supervisor's Investigation Report. (Ex. 1.)

12. Mr. Krentzman collected temporary total disability workers' compensation for the injury. (Ex. 3.)

13. While Mr. Krentzman had sustained injuries to his cervical spine, his right shoulder, and elbow, the focus of his medical care was his cervical spine. (Ex. 2.)

14. Dr. John J. Lynch evaluated the patient on September 5, 2013. He recorded tenderness at the cervical spine and right shoulder. There was numbness in the ulnar fingers of the right hand. He diagnosed acute cervical radiculitis, recommended a cervical MRI, and scheduled outpatient physical therapy. The cervical spine MRI was done on September 21, 2013; it recorded a broad annular disc-osteophyte complex at C4-C5. This narrowed the central canal and impinged on the exiting right C4 nerve root. There were attritional changes at C3-C4, C5-C6, and C6-C7 without focus protrusions or

central canal stenosis. Dr. Lynch recommended physical therapy. The patient had persistent neck and right arm pain associated with numbness and tingling. Dr. Lynch re-evaluated the patient on October 4, 2013. He recommended an EMG and referred the patient to Dr. Emad Younan for pain management. (Ex. 4.)

15. Since February 24, 2014, Mr. Krentzman has been under the care and treatment of Dr. Terence P. Doorly, a board-certified neurosurgeon. After a comprehensive physical examination, review of all medical records, and objective diagnostic studies, Dr. Doorly offered the following diagnoses: ulnar neuropathy of the right elbow, cervical spondylosis with disc osteophyte complex at C4-C5, cervical radiculopathy, possible tendinitis, possible labral tear, and rotator cuff injury of the right shoulder. After Mr. Krentzman failed to improve with more conservative medical management, Dr. Doorly recommended surgical intervention directed at the C4-C5 disc levels. (Joint Hearing Memo, Ex. 2.)

16. The Department of Industrial Accidents (DIA) initially denied payment for the recommended surgery to Mr. Krentzman's cervical spine, pending a court-appointed IME. (Ex. 3.)

17. On November 12, 2014, Mr. Krentzman was evaluated by Dr. Daniel W. Bienkowski, an orthopedic surgeon. Dr. Bienkowski offered the following diagnoses: cervical disc herniation C4-C5, degenerative cervical disc disease, partial tear right rotator cuff, or right cubital tunnel. He opined that the diagnosed C4-C5 cervical disc herniation was directly causally related to his injury on August 28, 2013. Dr. Bienkowski further opined that the diagnosed partial tear to the right rotator cuff and the right cubital

tunnel syndrome were likely incidental findings and not related to the workplace injury. With respect to disability, Dr. Bienkowski opined that it was total and long-term. (Ex. 4.)

18. Following Dr. Bienkowski's examination and opinion, the Department of Industrial Accidents ordered Everett to pay for all medical treatment. (Joint Hearing Memo.)

19. On April 12, 2016, Mr. Krentzman underwent surgery to the cervical spine. The surgery was performed by Dr. Doorly; he performed an anterior cervical discectomy and osteophyte resection at C4-C5 with decompression of the right C5 nerve root. Surgery also included an inter-body fusion with PEEK cage and DEX along with an anterior cervical plate at C4-C5. (Ex. 5.)

20. On September 7, 2016, Mr. Krentzman's workers' compensation claim was the subject of a second DIA conference, after which a judge ordered total and permanent disability benefits to be paid from April 12, 2016 (the date of the surgery) through April 12, 2017. The judge also ordered partial incapacity benefits from April 13, 2017 and continuing. (Ex. 3.)

21. On December 8, 2016, Mr. Krentzman underwent a second DIA-ordered IME with Dr. Bienkowski, who again conducted an examination and reviewed all medical records, objective studies, and the operative report of April 12, 2016. Dr. Bienkowski diagnosed Mr. Krentzman with cervical disc herniation C4-C5, failed disc syndrome, multilevel degenerative cervical disc disease, partial tear right rotator cuff, and right cubital tunnel syndrome. Consistent with his first IME's opinion, Dr. Bienkowski opined that the C4-C5 disc herniation and subsequent failed disc syndrome were directly causally related to the August 28, 2013 injury, and the rotator cuff and cubital tunnel

syndrome were not. He further opined that the disability was partial and long term. Dr. Bienkowski limited Mr. Krentzman to lifting less than 25 pounds occasionally and forbade him from repetitively reaching or lifting. Finally, Dr. Bienkowski opined that Mr. Krentzman was unable to return to work as a Water Department employee and that he was at a medical end point. (Ex. 4.)

22. Following the second IME, the City of Everett withdrew its appeal of the September 8, 2016 DIA conference order, and Mr. Krentzman continued to receive weekly workers' compensation benefits. (Joint Hearing Memo.)

23. On September 26, 2017, Dr. Doorly, the neurosurgeon, prepared a detailed narrative medical report. He diagnosed Mr. Krentzman with stable anterior cervical discectomy and fusion C4-C5 without evidence of hardware failure. He opined that Mr. Krentzman had reached an end result and did not advocate additional surgery. Dr. Doorly noted that Mr. Krentzman was significantly limited by ongoing pain and limited range of motion of his cervical spine and that, as a result of the residual limitations and pain, Mr. Krentzman could not return to work. Dr. Doorly concluded that Mr. Krentzman was left with a "permanent disability, and will never be able to return to his former work duties." (Ex. 6.)

24. On July 20, 2020, Mr. Krentzman consulted with Dr. Doorly again. He reported continued symptoms of disabling neck pain, as well as bilateral arm pain and numbness, right worse than left. Dr. Doorly ordered additional CT scanning of the cervical spine to evaluate the stability and integrity of the 2016 surgery. Dr. Doorly noted that this further treatment had been stalled because the workers' compensation insurer had argued that the injury was not work-related. (Ex. 2.)

25. A week later, the CT imaging revealed satisfactory bony fusion at the C4-C5 level. Dr. Doorly did not recommend further surgery, but he referred Mr. Krentzman to a pain management specialist for consideration of a spinal cord stimulator. (Ex. 2.)

26. Mr. Krentzman was last evaluated by Dr. Doorly on April 23, 2021. He noted continued neck pain and right arm pain, numbness and weakness, as well as significant decreases in ranges of motion. Mr. Krentzman's pain was being managed pharmacologically, with 3000 mg daily of Tylenol and 1800 mg daily of Gabapentin. Dr. Doorly noted a typical pain level of 9, on a scale of 1-10, with 10 meaning unbearable. Dr. Doorly further noted that Mr. Krentzman kept his right arm tucked to his side in a guarded fashion and had difficulty putting his jacket on after the examination. (Ex. 2.)

27. Following Dr. Doorly's recommendation, Mr. Krentzman consulted with the Pain and Wellness Center. Mr. Krentzman had a trial spinal cord stimulator implanted on April 26, 2021. The device was subsequently removed on April 30, 2021, once it was concluded that Mr. Krentzman was not a good candidate for a spinal cord stimulator. (Ex. 7.)

28. Dr. Doorly prepared a detailed narrative medical report on May 5, 2021. He discussed the failure of the trial spinal cord stimulator and specifically noted that all treatment options had been exhausted. He opined again that the damage to the cervical spine was caused by the August 28, 2013 injury. Dr. Doorly reiterated his medical opinion that Mr. Krentzman was permanently and totally disabled from performing his former work duties. (Ex. 6.)

29. On July 27, 2021, the workers' compensation claim was the subject of a third conference before the DIA. Mr. Krentzman was awarded permanent and total

disability benefits. He has been receiving weekly workers' compensation benefits from August 28, 2013 through the present time and continuing. (Ex. 3.)

30. On September 21, 2021, Mr. Krentzman underwent a third DIA-ordered IME, this time with Dr. Mark Berenson. He conducted an exhaustive physical examination and reviewed all medical records. He made careful note of Mr. Krentzman's prior medical history of a cervical disc disease and subsequent anterior discectomy at C5-C6 and C6-C7 in September 2000, approximately 13 years prior to the 2013 work injury. Dr. Berenson noted that the 2000 surgery was a complete success, with no residual problems. He then went on to diagnose Mr. Krentzman with a C4-C5 discectomy and fusion, causally related to the 2013, with additional diagnoses of degenerative cervical disc disease that preexisted the injury. He noted that there appeared to be marked symptom magnification during his exam and struggled to determine what was real and related to the surgery. Dr. Berenson opined that Mr. Krentzman was permanently disabled from performing the functions of his employment as a meter reader and inspector, causally related to the 2013 injury, but was capable of purely sedentary employment. (Exs. 5, 8.)

31. Mr. Krentzman continues to receive weekly permanent and total disability benefits. (Ex. 3.)

32. After *Krentzman I*, Mr. Krentzman was evaluated by a medical panel of three neurologists: Drs. Diana Apetauerova, Daniel D. Vardeh, and Julian Fisher. (Exs. 9, 10, 11.)

33. Each doctor filled out the standard PERAC Regional Medical Panel Certificate and attached a narrative report. The standard certificate contains the

following certification above the signature line: "I hereby certify that I have examined the member named on this certificate, and that the findings stated in this certificate and narrative express my professional medical opinion which was arrived at in an independent manner and free of undue influence." Each panelist duly signed his or her certificate. (Exs. 9, 10, 11.)

34. All of them agreed that Mr. Krentzman was physically incapable of performing his essential job duties and that the incapacity was likely to be permanent. Regarding causation, the panel voted 2-1 that the incapacity was such as might be the natural and proximate result of the August 28, 2013 injury. (Exs. 9, 10, 11.)

35. Dr. Apetauerova examined Mr. Krentzman on August 2, 2023. With respect to incapacity, Dr. Apetauerova opined:

> Mr. Krentzman is right-handed and has not only pain, but also motor sensory changes, significant limitations of movements of the cervical spine and complex regional pain syndrome, which are also affecting the function of his right hand. I therefore opine that he is incapacitated from his job as a water meter reader.

She also concluded that the disability was permanent, as Mr. Krentzman had experienced symptoms for over 10 years. With respect to causation, Dr. Apetauerova answered in the affirmative:

> Based upon the history presented by Mr. Krentzman and the medical records available for my review, there would appear to be a causal relationship between the incident of 08/28/2013 and diagnoses listed above. Although, he had degenerative changes of the cervical spine before, the work injury of 08/28/2013 clearly caused all of the acute problems that later required surgery.

(Ex. 9.)

36. Dissatisfied with the causation opinion offered by Dr. Apetauerova, the Board submitted three clarification questions to her. When asked whether Mr. Krentzman is disabled by the effects of the surgery and repaired osteophyte complex at C4-5, and whether the degenerative condition was affected by the August 28, 2013 lifting incident, Dr. Apetauerova responded by noting:

> Mr. Krentzman's disability likely has several factors, including osteophyte complex at C4-5 and other pre-existing severe degenerative changes in the cervical spine, which were aggravated by the work-related injury. He also developed right sided radiculopathy and in my opinion, developed complex regional pain syndrome.

Dr. Apetauerova was then asked to discuss whether she detected any exaggeration of muscle weakness or pain on the physical examination, to which she stated:

> Mr. Krentzman holds his right upper extremity in [a] flexed elbow position, close to his body. He has discoloration of the fingers and fingertips on the right hand. His right hand is purplish, but there is no edema and no trophic changes. His right hand is colder than left. He has significant limitation of neck motion in all directions. He has spasm in both trapezius muscles. He is unable to lift up his right arm. He has weakness in right deltoid muscle.

Finally, Dr. Apetauerova was asked if Mr. Krentzman's current disability is related not to the osteophyte complex at C4-5, but rather to the ulnar radiculopathy shown on the EMG. She responded by simply stating that she believes Mr. Krentzman's disability is multifactorial. These answers were consistent with the medical opinion offered in her initial narrative report. (Ex. 9.)

37. Dr. Vardeh examined Mr. Krentzman on August 19, 2023, and opined that he was permanently disabled. With respect to causation, Dr. Vardeh opined that Mr. Krentzman's ongoing cervical and upper extremity symptoms were causally related to

pre-existing degenerative changes, and unrelated to the injury of August 28, 2013. In support of his opinion, Dr. Vardeh noted the following:

> In summary, Mr. Krentzman suffered from a right upper extremity injury while lifting a steel cabinet. While this has caused an exacerbation of his right arm symptoms of pain, I believe to a reasonable degree of certainty that he had a pre-existing condition similar to his current symptoms, for which he underwent decompression surgery in 2000. In addition, his EMG shows no evidence of a cervical radiculopathy, but rather an ulnar neuropathy, which is not mechanically related to his work accident of 08/28/2013. On the cervical MRI, there is an osteophyte complex at the C4-C5 level, which is likely a main driver of the examinee's symptoms, and the reason he eventually underwent cervical fusion surgery, but these degenerative changes are unrelated to the accident.

He also noted that during the exam there were signs of symptom embellishment and giveaway weakness. Dr. Vardeh believed the work injury did not aggravate the pre-existing degenerative disease of the cervical spine. The Board did not seek clarification from Dr. Vardeh. (Ex. 10.)

38. Dr. Julian Fisher examined Mr. Krentzman on August 29, 2023. He opined that Mr. Krentzman was permanently disabled. With respect to the causation question, Dr. Fisher answered in the affirmative. In his initial narrative report, Dr. Fisher did not explicitly differentiate between the cervical spine degenerative disease and disc disease status post-surgery. (Ex. 11.)

39. However, after the Board requested clarification, Dr. Fisher opined:

> [Mr. Krentzman's] August 28, 2013 accident affected one level higher, with resulting pain and disability. The accident produced the spondylosis and radiculopathy with weakness, both as a primary event and to a lesser extent, as an aggravation of pre-existing degenerative spine disease. The former, the primary event, is the more important cause of his present disability.

(Ex. 11.)

40. On October 25, 2023, the Board denied the Petitioner's application. The Board heavily relied on Dr. Vardeh's opinion in its decision. It cited Dr. Vardeh's notes of symptom exaggeration and poor effort and his conclusion that the degenerative changes were the main driver of symptoms. The Board also stated that Dr. Apetauerova's reports were too ambiguous and she did not clearly state her opinion on causation. Its conclusion, based on these findings, was that Mr. Krentzman did not meet his burden of proof on the issue of causation. (Ex. 12.)

41. On November 1, 2023, Mr. Krentzman timely appealed. (Ex. 13.)

CONCLUSION AND ORDER

An applicant for accidental disability retirement is required to prove (1) that he is incapacitated from performing his essential duties, (2) that the incapacity is permanent, and (3) that the incapacity is proximately caused by a workplace injury or hazard. G.L. c. 32, § 7(1).

In order to qualify for accidental disability retirement, a member must undergo a medical evaluation by a regional medical panel comprised of three physicians. G.L. c. 32, §§ 6(3)(a) and 7(1). An application may be approved only if a majority of the medical panel determines that the applicant is unable to perform his essential job duties, that the incapacity is permanent, and that the incapacity could reasonably result from the person's injury or hazard encountered during employment. *See Malden Ret. Bd. v. Contributory Ret. App. Bd.*, 1 Mass. App. Ct. 420, 423 (1973); *Quincy Ret. Bd. v. Contributory Ret. App. Bd.*, 340 Mass. 56, 60 (1959). Affirmative answers to all three questions is a "condition precedent" to accidental disability retirement. *Hunt v. Contributory Ret. App. Bd.*, 332 Mass. 625, 627 (1955). A negative panel report

precludes an applicant from receiving disability retirement benefits unless exceptions not pertinent here are met. *Kelley v. Contributory Ret. App. Bd.*, 341 Mass. 611, 617 (1961); *Quincy Ret. Bd.*, 340 Mass. at 60.

The Board maintains that the medical panel is negative because Dr. Apetauerova's opinion on causation was ambiguous as to whether the workplace injury aggravated the pre-existing condition. However, Dr. Apetauerova's report clearly states that the workplace injury played a significant role in the development of Mr. Krentzman's condition. She explained that there was a causal relationship between the injury on August 28, 2013 and "although he had degenerative changes of the cervical spine before, the work injury . . . clearly caused all his acute problems that later required surgery." While she used the phrasing "there would appear to be a causal relationship," this language is not inconsistent with the statutory requirement, which asks whether causation is "possible" or "plausible." *See Narducci v. Contributory Ret. App. Bd.*, 68 Mass. App. Ct. 127, 134-35, 144 (2007) (medical panelists required to determine only whether causation is plausible). Dr. Apetauerova's certificate and opinion certainly meet this standard.

The Board's reliance on the claim that the certificates completed by Drs. Fisher and Apetauerova are defective because they did not certify their medical opinions "to a reasonable degree of medical certainty as required by statute" is also misplaced. As explained in *Silva v. Plymouth Ret. Bd.*, CR-11-393 (DALA Dec. 4, 2015), the standard phrasing "to a reasonable degree of medical certainty" commonly used by physicians is

> likely due to the fact that many physicians appointed to medical panels for disability retirement cases under Chapter 32 also conduct examinations and give opinions in workers' compensation under Chapter 149. Since the

> standard for a physician's opinion as to causation in workers' compensation cases is "within a reasonable degree of medical certainty," G.L. c. 152, § 11A(2), it is likely that physicians who give opinions in both types of cases have adopted the habit of communicating their opinions in this standard language, regardless of the type of case.

There is no requirement that medical panelists use the phrase "within a reasonable degree of medical certainty" in their narrative reports. The standard PERAC medical panel certificate requires only that the medical panelists "certify that [they] have examined the member named on [the] certificate, and that the findings stated in [the] certificate and narrative express [their] professional medical opinion which was arrived at in an independent manner and free of undue influence." This certification covers both the certificate opinions and those in the narrative reports. There is no further requirement to reiterate the certification in the narrative reports. Here, all three of the panelists fulfilled the law's and PERAC's requirements.

To sum up, all of the panel physicians agreed on disability and permanence, and both Dr. Fisher and Dr. Apetauerova opined in the affirmative regarding causation. Therefore, there is a positive medical panel. A more detailed analysis of causation is now necessary.

Mr. Krentzman acknowledges that he suffered from pre-existing back conditions. His theory, however, is that the August 28, 2013 work injury aggravated his underlying condition to the point of permanent disability. As established by the case law, if a pre-existing condition leads to incapacity due to its "natural, cumulative, deteriorative effects," the causation element is not satisfied. *Lisbon v. Contributory Ret. App. Bd.*, 41 Mass. App. Ct. 246, 255 (1996). However, if the pre-existing condition was "aggravated" by a workplace injury to the point of disability, then the causation element

is met. *See Baruffaldi v. Contributory Ret. App. Bd.*, 337 Mass. App. Ct. 495, 501 (1958). Mr. Krentzman bears the burden of proving this aggravation by a preponderance of the evidence. *See Lisbon*, 41 Mass. App. Ct. at 255.

The medical evidence in this case heavily supports Mr. Krentzman's claim that his pre-existing condition was aggravated by his work injury. After his first surgery in 2000, Mr. Krentzman fully recovered and had no significant issues related to his condition until the workplace injury in 2013. Prior to his 2013 injury, Mr. Krentzman had been performing his job without any significant limitations or symptoms. His condition markedly worsened after the injury. These circumstances support the conclusion that his disability resulted from the workplace injury rather than the natural progression of symptoms from a degenerative disease.

Dr. Doorly explained that, while Mr. Krentzman had underlying degenerative spondylosis in his cervical spine, his work activities aggravated his condition, leading to the development of neck and arm symptoms. He noted that Mr. Krentzman's symptoms began after he hurt himself lifting. Dr. Bienkowski concurred that the C4-C5 cervical disk injury was caused by the August 28, 2013 work injury. He explained that Mr. Krentzman was not experiencing cervical symptoms before the injury, and the injury itself was of a type that was capable of rupturing the cervical disc. Dr. Apetauerova further reinforced this conclusion, stating that "although Mr. Krentzman had degenerative changes of the cervical spine before, the work injury clearly caused all of his acute problems, which later required surgery." Dr. Fisher's opinion also confirms a causal relationship between the work injury and the disability, noting that this injury affected a different level of the spine than the previous injury, resulting in pain and disability. He

emphasized that the primary event – the workplace injury – was the most significant cause of Mr. Krentzman's disability. These three physicians' opinions were based on all of the medical evidence and provide a reasonable explanation of what caused Mr. Krentzman's disability.

Dr. Vardeh's opinion, which downplays the role of the workplace injury and suggests that the degenerative changes were unrelated, does not align with the majority of the medical evidence. Unlike Drs. Doorly, Bienkowski, and Apetauerova, Dr. Vardeh seemed more focused on the shoulder injury, which is not the basis of Mr. Krentzman's application, than the back injury, which is.

The Board's denial relies on Dr. Vardeh's and Dr. Berenson's concerns that Mr. Krentzman may have been magnifying his symptoms. Dr. Vardeh described "diffuse, giveaway weakness and some embellishment of symptoms," but also certified that Mr. Krentzman was permanently unable to perform his duties. Dr. Berenson similarly acknowledged that there was "definite over-magnification of findings," but also acknowledged that Mr. Krentzman's disability was permanent. While symptom magnification may complicate assessment of the severity of the condition or its permanence, it does not really relate to causation. Drs. Vardeh and Berenson both agreed that Mr. Krentzman's disability was permanent, meaning that any potential symptom magnification does not change the fact that every doctor who assessed Mr. Krentzman concluded that he is unable to perform his essential duties.

For the reasons stated above, Mr. Krentzman has successfully demonstrated that his permanent incapacity is the result of an aggravation of a pre-existing condition caused

by his 2013 workplace injury. He is therefore entitled to retire for accidental disability.

Consequently, the Board's denial of his application is REVERSED.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/ Kenneth J. Forton

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Kenneth J. Forton
Administrative Magistrate

DATED: Apr. 11, 2025