COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Kenneth Sagendorph,
Petitioner,

v.

Hampden County Regional Retirement Board,
Respondent.

Nos. CR-21-631, CR-22-117

Dated: July 21, 2023

Appearance for Petitioner:
Leigh Panettiere, Esq.
Boston, MA 02108

Appearance for Respondent:
Edward M. Pikula, Esq.
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Appearance for Public Employee Retirement Administration Commission:
Felicia McGinnis, Esq.
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Administrative Magistrate:
Yakov Malkiel

SUMMARY OF DECISION

The petitioner, a firefighter, applied to retire for accidental disability. He suffers from disabling PTSD as a result of a car crash to which he was dispatched. A preponderance of the evidence establishes that the petitioner's disability matured before his departure from service. And the respondent board received sufficient contemporaneous notice of the petitioner's injury to excuse him from the usually applicable two-year limitation period. The petitioner's application is therefore meritorious.

DECISION

The petitioner appeals from decisions of the Hampden County Regional Retirement Board denying his application to retire for accidental or ordinary disability. PERAC intervened.

An evidentiary hearing took place during May 2023. The petitioner was the only witness. I admitted into evidence exhibits marked 1-41 and stipulations marked 1-35. The record closed upon the submission of hearing briefs.

Findings of Fact

I find the following facts.

Background

1. The petitioner is a licensed EMT and a firefighter by profession. He began working for the Agawam fire department in April 2000, eventually achieving the rank of lieutenant. (Tr. 28; Stipulation 1.)

2. In addition to his full-time position in Agawam, the petitioner worked part-time for the Dalton fire department. Because of the structure of their schedules, it was common for Agawam's firefighters to perform additional work. The fire chief and deputy chief did not initiate these arrangements, but were aware of them and saw no basis to object. (Tr. 30-32, 61-64.)

3. Over the course of his career, the petitioner witnessed a number of incidents involving violent injuries. His work for both Agawam and Dalton involved such incidents. Until late 2017, they did not impact his ability to perform his duties. (Stipulations 2-4; Exhibits 1, 2, 27.)

October 2017 Incident

4. On October 31, 2017, the Agawam department was called to the scene of a car crash. The petitioner responded. A father was injured in the crash along with his eleven-year-old child. The child's injuries were especially severe. He was covered with blood and vomit, and his skull was "deformed." The petitioner had a son of approximately the same age. (Tr. 33-36, 47-49; Stipulation 5; Exhibit 3.)

5. Despite an extensive course of CPR, the Agawam firefighters were unable to save the child's life. The petitioner oversaw the resuscitation efforts and participated in them. At some point, the child's father asked the petitioner whether his son would survive. The petitioner knew that the answer was no; he provided an uninformative response. (Tr. 33-36, 50-51; Exhibit 3.)

6. The petitioner prepared and filed the fire department's incident report. The report categorized the crash as a "critical incident," noting that it had involved "death or serious injury to a child." The label "critical incident" denoted the potential for adverse effects on first responders' wellbeing. That label was applied sparingly in the Agawam department. Any critical incident was followed as a matter of policy by a "Critical Incident Stress Management Debriefing Session," where participants were encouraged to discuss the incident. The petitioner attended the Critical Incident Stress Management Debriefing Session that followed the October 2017 car crash. (Tr. 36-37, 52-56, 66; Exhibits 3, 4.)

7. The petitioner's mental health began to deteriorate after the October 2017 incident. He had trouble sleeping and focusing. He persistently recalled the badly injured boy and the petitioner's exchange with the boy's father. The petitioner began to drink excessively. He became increasingly irritable. He grew anxious and unhappy about his work duties, but continued to perform them for financial reasons. (Tr. 37-39, 57; Exhibits 21, 23.)

2018-2020 Incidents

8. On April 10, 2018, in service of Dalton, the petitioner was called to the scene of a head-on car crash. One of the drivers sustained massive injuries, was mechanically extricated from his vehicle, and was pronounced dead at the hospital. A fire department report classified the incident as one "with unusually strong emotional components." (Stipulation 6; Exhibit 5.)

9. On the very next day, this time while serving Agawam, the petitioner responded to a standoff with an active shooter. The firefighters remained near the scene for several hours, hearing sporadic gunfire. The incident ended in a suicide. At some point, the petitioner failed to react promptly when shots were fired in his general direction. (Tr. 39-40; Stipulation 7; Exhibits 6, 21.)

10. During March 2019, in service of Dalton, the petitioner was called to the scene of yet another car crash. A pedestrian there suffered from extensive head injuries. He was bloodied and nonresponsive. (Tr. 41-42; Stipulation 8; Exhibit 7.)

11. On April 12, 2020, again with Dalton, the petitioner responded to the home of a woman who had fallen down, and who died later that day. The petitioner's performance at that event was dangerously inadequate. He did not perform an appropriate physical exam. He signed the name of the patient's son on a form that the son never saw. The petitioner had no prior history of meaningful discipline or performance-related complaints. (Tr. 32-33, 42-43; Stipulation 10; Exhibit 27.)

12. The petitioner has no memory of the April 12, 2020 event. He could not recall it even during the ensuing days. Doctors have described this failure of memory as "dissociative." Dissociation refers to a disruption of the normal integration of memory, among other things. It is often seen in the wake of trauma. (Tr. 43-44; Stipulations 11-12; Exhibits 21, 31, 41.)

13. As a result of his performance on April 12, 2020, the petitioner's EMT license was suspended. The Agawam department placed him on administrative leave. His last day on duty with Agawam was April 17, 2020. Before the petitioner left the department, the fire chief referred him to a psychologist. (Tr. 45-46, 59-60, 67; Stipulations 13-15; Exhibit 27.)

Aftermath

14. Approximately six weeks after leaving work, in early June 2020, the petitioner was admitted to McLean Hospital. He was suffering from suicidal thoughts. He was hospitalized for approximately three weeks. His medical providers described his symptoms as including flashbacks, nightmares, depression, anxiety, and "functional decline." Their diagnosis was PTSD. (Tr. 46-47, 60-61; Stipulation 17; Exhibits 21-23, 31, 32.)

15. While the petitioner was hospitalized at McLean, the Agawam fire department required him to choose between resigning and being terminated. He resigned. Employment records mark his last date of employment as June 4, 2020. (Tr. 46-47, 64-66; Exhibits 35, 36, 38.)

16. The petitioner has remained in treatment since. He sees his individual therapist once a week. He participates in group therapy for PTSD patients and meets with a prescribing nurse practitioner every two months. He is treated with antidepressants. He has stopped drinking. He continues to suffer from sleep issues and intrusive thoughts of the October 2017 accident. He becomes emotional and tearful when he discusses that event. He works part time conducting home inspections on a municipality's behalf. (Tr. 29-30; Stipulation 18; Exhibits 21-23, 32-34.)

Retirement Proceedings

17. In October 2020, the petitioner applied to retire for accidental or ordinary disability. His application was supported by a statement of his treating physician, who diagnosed PTSD, anxiety, and depression. (Stipulation 19; Exhibits 9-11.)

18. A regional medical panel conducted separate examinations of the petitioner during April-May 2021. All three panelists certified that the petitioner is incapacitated, that the

incapacity is permanent, and that the incapacity is such as might be the natural and proximate result of the petitioner's workplace incidents. (Stipulations 20-23; Exhibits 21-23.)

19. Dr. Melvyn Lurie characterized the petitioner as suffering from nightmares, flashbacks, avoidance symptoms, hyperarousal, and depression. Dr. Lurie specifically discussed the petitioner's persistent thoughts of the October 2017 accident: the petitioner "filled with emotion and was teary when describing this . . . . He said the nurse had never seen such a mangled boy." With respect to the progression of the petitioner's condition, Dr. Lurie explained:

> This . . . case . . . involves a member whose performance deteriorated significantly . . . . The evidence strongly supports there being an underlying medical/psychiatric condition that led to this deterioration in performance. It is PTSD . . . with concomitant anxiety and depression, the diagnosis of which is clear . . . . For [the petitioner], the traumatic event occurred in about October 2017 when he saw a badly mangled boy who was killed by a motor vehicle. Since, he has had typical features of PTSD . . . . It reached the point where he could no longer do his job, leaving him a danger to victims, coworkers, and himself.

Dr. Lurie also noted that PTSD symptoms are "rarely talked about or admitted to by employees in first responder jobs," because such symptoms are "considered to be a sign of weakness." (Exhibit 21.)

20. Dr. Mohamed Och wrote that the petitioner suffers from "PTSD leading to some dissociation and anxiety." He added: "Mental status examination showed him to be very emotional and tearful. He has anxiety and nightmares, along with poor sleep." On causation, Dr. Och stated: "His disability is the result of the work incidents . . . specifically the [October 2017 car crash]. The possibility of reinjury is very high, and if he were to return to work, he would be putting himself and others at unreasonable risk of harm." (Exhibit 22.)

21. Dr. Mark Cutler's diagnoses were PTSD and major depressive disorder. He explained: "His mood and affect were depressed and anxious. . . . When relating the story of the little boy found dead on the pavement after being hit by a car and him not being able to answer

the father who wanted to know if he would be okay, he became tearful. When talking about being responsible for his crew, he became very anxious." Dr. Cutler added that the petitioner "has had dissociative episodes in April of 2020 which would not allow him to meet the demands of his job as a lieutenant in the fire department or any other first responder jobs." (Exhibit 23.)

22. Upon receipt of the panelists' opinions, the board requested clarification. Given the petitioner's multiplicity of potentially traumatic experiences, the board questioned the panelists' conclusion that his current condition results specifically from the October 2017 car crash. The board also wondered whether the petitioner's poor performance on April 12, 2020 might have played a role in his departure from employment. Finally, the board observed that the petitioner did not seek treatment until after he had stopped working. (Exhibits 24-27.)

23. The three panelists stood by their original certificates. Dr. Ochs wrote: "I would not change my conclusion, that this disability is related to the [October 2017 car crash]. . . . I believe this event having involved an 11-year-old child has left a serious impact on him . . . . [H]is flashbacks and nightmares . . . were related to that event . . . . [F]urther events that occurred in 2018, 2019 and 2020 further aggravated this posttraumatic stress disorder reaction. . . . [T]he event in 2017 stayed with him and made his reaction to the other events more traumatic . . . ." (Exhibit 28.)

24. Dr. Cutler allowed that it is impossible to know the petitioner's "motives in seeking treatment and/or disability benefits." But with respect to the petitioner's performance on April 12, 2020, Dr. Cutler wrote: "[T]he mistakes he is reported to have made may have been secondary to post-traumatic stress disorder." He added: "It is also possible that he did not seek treatment or counseling as not everyone recognizes the need immediately." (Exhibit 30.)

25. Dr. Lurie was again the most expansive, providing the following analysis:

> [T]reatment rarely starts soon after a traumatic event in first responders. The cultural values in these professions are that no one complains, but the job has to get done. . . . [T]here are numerous occasions when the individual does not even know he has any diagnosis. . . . [T]he other events/incidents did not happen to cause PTSD. . . . [H]is emotional response to focusing on [the October 2017] incident in my examination led to clear distress. . . . The incident of April 12, 2020 and the resulting death of the victim, as well as the administrative sequelae, are the *result*, not the cause, of the deterioration from the 2017 traumatic event.

(Exhibit 29.)

26. The board initially denied the petitioner's application as to accidental disability but relayed the ordinary disability application to PERAC. PERAC remanded, discerning inadequate evidence that the petitioner had been disabled "as of his last day of employment." PERAC stated that this concern might be allayed by records of the petitioner missing work or obtaining medical treatment prior to his separation from employment. Upon receipt of PERAC's correspondence, the board denied the petitioner's application as to ordinary disability as well. He timely appealed from both denial decisions. (Stipulations 28-35; Exhibits 14, 15, 17-19.)

Analysis

An applicant for accidental disability retirement must prove three primary elements: that he "is unable to perform the essential duties of his job," that the disability "is likely to be permanent," and that the disability arose "by reason of a personal injury sustained or hazard undergone[1] as a result of, and while in the performance of, his duties." G.L. c. 32, § 7(1). An

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[1] A "hazard" is an uncommon work-related condition that causes "gradual deterioration" of the employee's health. *See Blanchette v. Contributory Ret. Appeal Bd.*, 20 Mass. App. Ct. 479, 485, 487 (1985). *See also Narducci v. Contributory Ret. Appeal Bd.*, 68 Mass. App. Ct. 127, 128-29 (2007). In the mental-health context, the paradigm of a hazard is "constant" or "continual" exposure to "life threatening situations" or "traumatic events." *Blanchette*, 20 Mass. App. Ct. at 487 n.7. The petitioner does not attribute his disability to any hazard.

applicant for *ordinary* disability retirement must prove only the first two of these elements, i.e., incapacity and permanence, but not causation. § 6(1).

The medical aspects of the statutory elements are not in doubt here. The experts are in agreement. The petitioner suffers from incapacitating PTSD. That condition is likely to be permanent. It was proximately caused by the trauma of the October 2017 car crash, and further worsened by the subsequent incidents of 2018-2020. The board astutely conceded these points at the hearing. *See Malden Ret. Bd. v. Contributory Ret. Appeal Bd.*, 1 Mass. App. Ct. 420, 423 (1973).[2]

I

The first hurdle facing the petitioner's case arises from *Vest v. Contributory Ret. Appeal Bd.*, 41 Mass. App. Ct. 191 (1996). The member in *Vest* was terminated for non-medical reasons. Four years later, he became disabled with hypertension. That condition was attributable to his public employment through the Heart Law, G.L. c. 32, § 94. But the Appeals Court held that an employee cannot retire for accidental disability based on an "incapacity that does not manifest itself until after he has left government service." 41 Mass. App. Ct. at 193. Rather, a qualifying medical issue is required to have "matured," i.e., to have become incapacitating, while the member was still in "active service." *Id.* at 193-94.

The precise form of "active service" during which the employee's disability is required to have matured has been the subject of developing case law. In *Vest* itself, the member's incapacity arose years after his total separation from employment; he was beyond active service

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[2] PERAC suggests in its brief that the petitioner's incapacity may have resulted from the disciplinary measures taken against him. *Cf. B.G. v. State Bd. of Ret.*, No. CR-20-207, 2021 WL 9583594, at *18-19 (DALA Oct. 8, 2021) (discussing the "bona fide personnel action" rule). But the expert opinions and other evidence provide no support at all for this theory.

in every sense of the term. More difficult cases arise when an employee's disability matured while she was still formally employed, but after the last day when she performed her job duties. Typically, this dilemma is presented when the employee became disabled while on leave. CRAB has held that, at least for purposes of *accidental* disability retirement,[3] the member must have been "actually working at the time that a disability matured." *Forrest v. Weymouth Ret. Bd.*, No. CR-12-690, at *3 (CRAB Apr. 13, 2015). She must have been disabled as of "her last day of performing her duties." *Id. See Barbosa v. Middlesex Cty. Ret. Bd.*, No. CR-15-501, at *8 (CRAB Apr. 3, 2023).[4]

On a preponderance of the evidence, the petitioner became incapacitated while he was still working, i.e., before he was placed on administrative leave. Indeed, as in many prior cases, the petitioner was disciplined for conduct that, in hindsight, reflected his medical inability to perform his duties. *See Thomson v. MTRS*, No. CR-20-340, 2023 WL 183536, at *9 (DALA Jan. 6, 2023); *Norton-Wenzel v. State Bd. of Ret.*, No. CR-16-498, 2018 WL 2773279, at *6 (DALA

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[3] For purposes of *ordinary* disability retirement, it is unsettled whether various types of leave "may still qualify as 'active' employment." *Kane v. Worcester Reg'l Ret. Bd.*, No. CR-14-52, at *2 (CRAB June 8, 2021). It is beyond serious dispute that the petitioner was incapacitated by the time of his arrival at McLean, exhibiting suicidal thoughts, flashbacks, nightmares, depression, anxiety, and functional decline. He was then still on administrative leave.

[4] These statements of the *Vest* rule provide tantalizing fodder for denial decisions by boards hard-pressed to explain their adverseness to a member's application. In practically any given case, it is possible to maintain that a member wasn't "unable to perform" her job duties, G.L. c. 32, § 7(1), on the last day when she "actually . . . perform[ed]" them. *Forrest*, *supra*, at *3. *See also Elwell v. Gloucester Ret. Bd.*, No. CR-16-488, at *20 (DALA July 8, 2022) (describing a presumption that an employee who "report[s] for work" is "not unable to perform her essential duties"). *Vest* did not intend to generate such arguments; it conceived of "active service" as the period running through the "termination of [the member's] employment." 41 Mass. App. Ct. at 191, 192, 194. Indeed, it is not clear whether the "last day of work" mantra took hold in the administrative cases through reasoned analysis or casual paraphrasing. *See, e.g.*, *Corbett v. Boston Ret. Bd.*, No. CR-92-286, at *8 (DALA Mar. 10, 1995); *Paulson v. TRB*, No. CR-94-801, at *12 (DALA Oct. 3, 1996); *Alberghini v. TRB*, No. CR-95-886, at *9 (DALA Nov. 27, 1996); *Pollack v. TRB*, No. CR-96-239, at *6 (DALA Apr. 18, 1997).

Apr. 20, 2018); *Andrade v. State Bd. of Ret.*, CR-13-104, 2017 WL 5195181, at *6 (DALA Aug. 4, 2017); *Scipione v. Barnstable Ret. Sys.*, CR-12-196, at *31 (DALA Sept. 4, 2015).

The petitioner began to exhibit symptoms of PTSD as early as October 2017. Those symptoms included trouble sleeping, trouble concentrating, intrusive thoughts, and irritability. By April 2018, the petitioner failed to react promptly when gunshots were fired in his direction. By April 2020—six weeks before his hospitalization—the petitioner, previously a high-performing employee, provided dangerously inadequate care to a patient, experienced a pronounced episode of "dissociative" amnesia, and was referred by his supervisor to a psychologist.

Whether the foregoing events signify that the petitioner was incapacitated by the time of their occurrence is a question that warrants expert medical analysis. *See generally Robinson v. Contributory Ret. Appeal Bd.*, 20 Mass. App. Ct. 634, 639 (1985). In the context of disability retirement, questions of medical expertise are specifically assigned to the regional medical panelists. *See Malden*, 1 Mass. App. Ct. at 423.

The PERAC form that the panelists completed instructed them to consider whether the member was disabled "at the time he or she was last employed by a governmental unit."[5] The panelists complied. In essence, they explained that, during the final stretch of his firefighting career, the petitioner was no longer medically capable of discharging his duties safely and effectively. *Cf. Boston Ret. Bd. v. Contributory Ret. Appeal Bd.*, 95 Mass. App. Ct. 1126, slip

[5] The quoted language is excerpted from a longer instruction to the same effect. That instruction is a recent addition to PERAC's standard form. PERAC's position here suggests that it may doubt whether panelists are attuned to the new, *Vest*-inspired guidance. PERAC may wish to consider whether those doubts might be assuaged by training, emphatic typeface, or other measures.

op. at 7 n.3 (2019) (unpublished memorandum opinion) (explaining that *Vest* focuses on "the timing of the employee's injury, not the date of the medical opinion").

Dr. Ochs and Dr. Cutler both referenced the petitioner's "dissociative" episode at work as a disabling symptom. Dr. Cutler suggested—and Dr. Lurie insisted—that the petitioner's substandard performance during April 2020 was a manifestation of his PTSD. Those two panelists explained that individuals suffering from disabling PTSD do not necessarily obtain timely treatment or sick leave. Dr. Lurie also noted that PTSD symptoms are "rarely talked about or admitted to by employees in first responder jobs," because such symptoms are "considered to be a sign of weakness." All in all, it is impossible to read the panelists' reports and conclude that the petitioner's disability matured only after he stopped working.

Finally (with respect to *Vest*), the board suggests that the decisive reason for the petitioner's resignation from his job may have been the disciplinary issues he was facing, not his disability. The distinction is exceedingly fine in cases where the discipline-provoking incident(s) resulted from the member's disabling medical problem. In any event, CRAB has unambiguously rejected the premise of the board's argument, stating:

> We do not agree . . . that *Vest* requires that the *reason* for the member's leaving work be his disability. Although this will nearly always be the case in practice, it is possible, even in accidental disability cases, for a member to have left work for an unrelated reason and still show he was disabled as of his last day at work.

Kane, *supra*, at *2 n.2 (citing cases). The determination that the petitioner was disabled at the time of his departure from work therefore resolves the *Vest* analysis. Any other subjective

reasons he may have had for wanting to leave work are immaterial. *See also Kelly v. Norwood Ret. Bd.*, No. CR-19-500, 2021 WL 9697053, at *4 (DALA Nov. 19, 2021).[6]

II

The remaining issue concerns the timing of the petitioner's application to retire. With an exception not pertinent here,[7] the rule is that:

> no [accidental disability] retirement shall be allowed unless [the] injury was sustained or [the] hazard was undergone within two years prior to the filing of [the] application or, if occurring earlier, unless written notice thereof was filed with the board by [the] member or in his behalf within ninety days after its occurrence.

G.L. c. 32, § 7(1).

The petitioner filed his retirement application in October 2020. The incident to which the experts attribute his PTSD occurred three years earlier. The petitioner claims that he satisfies the two-year limitation period because of his more recent traumas of March 2019 and April 2020. The Achilles heel of this theory is that the 2019-2020 episodes occurred while the petitioner was moonlighting with the Dalton fire department. Although that work was countenanced by the petitioner's supervisors, it arguably exceeded the petitioner's "duties," namely the obligatory assignments of his retirement-eligible job. *Cf. Burchell v. Barnstable Cty. Ret. Syst.*, No. CR-20-0204, at *14 (DALA Apr. 23, 2021); *Fletcher v. Holyoke Ret. Bd.*, No. CR-12-50, at *4 (CRAB

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[6] CRAB's forceful holding in *Kane* lends perspective to its occasional statements that a member seeking accidental disability retirement "must establish that the same reason he or she stopped working is the same reason for which he or she later seeks the benefit." *See Barbosa*, *supra*, at *8-9; *Perez v. MTRS*, No. CR-15-155, at *2 (CRAB Mar. 1, 2023); *Brown v. Boston Ret. Sys.*, No. CR-16-51, at *5 (CRAB Mar. 1, 2023). In context, each of these statements meant that an employee cannot stop working as a result of one (non-permanent) disability and later retire for accidental disability based on a second (late-maturing) disability.

[7] The exception concerns members who received timely workers' compensation payments on account of the pertinent injury or hazard. G.L. c. 32, § 7(3)(a).

May 27, 2016); *Moran v. Brockton Ret. Bd.*, No. CR-20-332, 2021 WL 9697057, at *3 (DALA June 18, 2021) (collecting cases).[8]

The key question here is whether the petitioner's trauma of October 2017 is excused from the two-year limitation period through the "written notice" exception. G.L. c. 32, § 7(1). Although the statute speaks of notice to "the board," adequate notice to the member's employer generally suffices: For some employees,[9] a specific paragraph of the statute makes do with "a record of [the] injury . . . on file in the official records of [the employee's] department." *Id.* § 7(3)(a). *See Ciavola v. Lowell Ret. Bd.*, No, CR-13-380, at *21 (DALA July 17, 2015). With respect to other employees, the case law has deemed notice to the employer sufficient based on the employer's statutory obligation to relay such information to the board. *See* G.L. c. 32, § 7(3)(b); *Benoit v. Everett Ret. Bd.*, No. CR-14-821, 2017 WL 2505937, at *3 (DALA Apr. 28, 2017); *Rosario v. Fall River Ret. Bd.*, No. CR-13-233, at *12 (DALA Apr. 15, 2016); *Storlazzi v. TRB*, No. CR-01-585, at *9 (DALA Jan. 8, 2002); *Marion v. Lowell Ret. Bd.*, No. CR-91-1714, at *11 (DALA Apr. 15, 1993).

"The purpose of the notice of injury provision is to ensure that the public employer was alerted to any alleged injury and had an opportunity to make a contemporaneous investigation."

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[8] In view of the remainder of this decision, it is not necessary to reach a firm conclusion as to whether, in some circumstances, a member might be eligible to retire as a result of an injury incurred in the service of a governmental unit other than his usual employer. *Cf. Savage v. Boston Ret. Bd.*, No. CR-11-397, at *8 (CRAB Aug. 9, 2016) (extending the category of a member's "duties" to police details, while emphasizing that a detail "is an official . . . assignment" dispensed by an officer's supervisors); G.L. c. 32, § 7(4)(a)-(b) (addressing situations where one governmental unit requests aid from another, and "in the judgment of the head of the department in which [the] member is regularly employed [the aid to the requesting unit] is necessary").

[9] This category consists of group 4 members under G.L. c. 32, § 3(2)(g) who are ineligible for workers' compensation. It would appear that the petitioner fits within this category, but the parties offer no evidence or argument on this point.

Simonelli v. Malden Ret. Bd., No. CR-16-224, at *17 (DALA Jan. 12, 2018). *See Cohen v. TRB*, No. CR-97-1837, at *5-6 (DALA May 21, 1999, *aff'd*, CRAB Sept. 24, 1999); *Shea v. Marlborough Ret. Bd.*, No. CR-14-185, at *23-24 (DALA Aug. 25, 2017); *Murray v. Norfolk Cty. Ret. Bd.*, No. CR-08-443, at *18-19 (DALA Nov. 10, 2011). The notice requirement is not designed to exclude wholesale categories of medical problems from eligibility for accidental disability retirement. The Legislature also did not necessarily mean to deny benefits to members who lacked "sufficient knowledge at the time [of the disabling incident] to file the notice of injury." *Simpreux v. Cambridge Ret. Bd.*, No. CR-14-770, 2016 WL 3476360, at *4 n.7 (DALA Mar. 25, 2016).

This combination of statutory purposes presents a conundrum in the event of medical conditions, such as PTSD, that may generate symptoms only years after the causative incident occurred. By the time the symptoms materialize, it may be difficult for the employer or board to conduct an effective investigation. On the other hand, it would be senseless to demand that, immediately after the incident, the member must provide clairvoyant notice that he or she will develop a medical problem at some future date. *Cf. Carnevale v. Barnstable Cty. Ret. Bd.*, No. CR-20-105, at *15-16 (DALA Sept. 16, 2022) (observing that an employee may not realize at the time of a traumatic event that he or she is suffering psychological harm). As a rule, statutes must not be construed in a manner that would achieve illogical results or contradict obvious legislative goals. *See Rotondi v. Contributory Ret. Appeal Bd.*, 463 Mass. 644, 648 (2012); *Costa v. Fall River Hous. Auth.*, 71 Mass. App. Ct. 269, 277-78 (2008).

The foregoing considerations impact the controlling analysis here only to a limited extent. Psychiatric disabilities resulting from trauma are not exempt from § 7(1)'s two-year limitation period. *See Sugrue v. Contributory Ret. Appeal Bd.*, 45 Mass. App. Ct. 1 (1998). And

that limitation period is not subject to a general-purpose "discovery rule." *See Witkowski v. Massport Auth. Empls.' Ret. Syst.*, No. CR-12-494 (CRAB Jan. 16, 2014), *aff'd*, 90 Mass. App. Ct. 1122 (2016) (unpublished memorandum opinion); *Ackerman v. Worcester Reg'l Ret. Bd.*, No. CR-11-405 (July 23, 2018).

Still, § 7(1)'s purposes are critical inputs into the construction and application of its open-ended terms. *See Ortiz v. Examworks, Inc.*, 470 Mass. 784, 788 (2015). For present purposes, it is sufficient to focus on the section's phrase "written notice thereof," i.e., written notice of the "injury" or "hazard." The "injury" that the written notice must identify is the harmful "event or series of events," *Blanchette*, 20 Mass. App. Ct. at 485, not the materialization of disabling symptoms. *See Milton v. Boston Ret. Bd.*, No. CR-14-19, 2017 WL 2538145, at *12 (DALA Feb. 17, 2017).[10] What the statutory language leaves indefinite is the character of the "notice" sufficient to satisfy the statute's demands.

First responders prepare incident reports on a regular basis. An incident report does not always signify any injury to an employee. The case law has therefore distinguished between reports of employees' activities and reports of harms or dangers to them. Typically, only reports of the latter type provide the notice that § 7(1) requires. *See Ledoux v. West Springfield Ret. Bd.*, No. CR-18-459, at *8 (DALA Dec. 6, 2019); *Brown v. Boston Ret. Bd.*, No. CR-12-52, at *15-16 (DALA Dec. 6, 2013). *But see Milton*, 2017 WL 2538145, at *12 (emphasizing that the written notice is required to identify only the injurious event, not specific medical consequences).

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[10] A requirement of notice within 90 days of the disability's materialization likely would have been satisfied here by the petitioner's correspondence with the police department about his leave and hospitalization.

It remains true that a report of an employee's participation in a severely distressing event may simultaneously communicate both the employee's activities and his or her exposure to the danger of severe emotional harm. *See Shea*, *supra*, at *21. When the report makes that risk clear, § 7(1)'s mix of purposes favors the construction that the employer and board have received the requisite "written notice." If they wish, they are then able to make prompt inquiries into the veracity of the employee's account. The report's existence on file may also in itself alleviate the risk that the employee's eventual claim for benefits rests on a fabricated version of events. And the employee in this scenario has done everything that logically can be asked of him or her to convey the risk that he or she may later become disabled. *See Kooken v. Amesbury Ret. Bd.*, No. CR-17-112, at *17 (DALA June 5, 2020) (records of a police chief's decision to place officers on leave for purposes of psychological counseling "serve[] the very purpose [§ 7(1)] is designed to address").

The petitioner did not recognize his PTSD symptoms or report them to his employer until more than two years after the October 2017 car crash. The contemporaneous incident report that the petitioner filed did not assert that he had suffered any emotional harm. Still, that incident report was not limited to a description of the petitioner's activities. It flagged the car crash as a "critical incident," explaining that the reason for that label was a "death or serious injury to a child." The very purposes of the "critical incident" label were to identify events that might compromise employee wellbeing and to provoke mental-health interventions, including the Critical Incident Stress Management Debriefing Session that the petitioner attended.

In these circumstances, the petitioner's incident report sufficed to alert his employer and (by extension) the board that the October 2017 incident was a potential cause of emotional trauma among participating employees, including the petitioner. The employer and board were

free to conduct timely inquiries. Section § 7(1)'s demand for "written notice" was therefore satisfied in accordance with the framework described *supra*. *See Kooken*, *supra*, at *17. The result is that the two-year limitation period does not defeat the petitioner's application.

Conclusion and Order

The petitioner is entitled to retire for accidental disability. The board's contrary decision is REVERSED.

Division of Administrative Law Appeals

/s/ Yakov Malkiel
Yakov Malkiel
Administrative Magistrate