

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Kimberly LaFland,
Petitioner

v.

Docket No. CR-20-0431

Date: May 31, 2024

Teachers' Retirement System,
Respondent

Appearance for Petitioner:

Kathryn Waters, Esq.
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Appearance for Teachers' Retirement System:

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Massachusetts Teachers' Retirement System
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Administrative Magistrate:

James P. Rooney

Summary of Decision

Preschool teacher applied for ordinary disability claiming she suffered disabling pain from some of the physical demands of her job, such as prolonged sitting in a child-size chair. Medical panel determined that she was not disabled, but failed to address her claim that she was disabled by prolonged physical activities associated with her job. The matter is therefore remanded for a new medical panel evaluation.

DECISION

Kimberly LaFland, a special education preschool teacher, appeals from the denial by the Teachers' Retirement Board of her application for ordinary disability retirement based on a medical panel report concluding that she was not disabled.¹ I held a hearing on October 24, 2022 via Webex. Ms. LaFland was the only witness who testified. Both parties filed prehearing memoranda. I marked Ms. LaFland's as Pleading A and the Retirement System's as Pleading B. I admitted into evidence twenty-seven exhibits into evidence from Ms. LaFland and eighteen from the Retirement System. Ms. LaFland filed a motion in limine to exclude MTRS's exhibits 7-9, which dealt with disciplinary matters. MTRS withdrew those exhibits. I added Ms. LaFland's appeal as her twenty-eighth exhibit. I recorded the hearing digitally. Both parties filed post-hearing briefs, which closed the record on August 4, 2023.

Findings of Fact

Based on the testimony and exhibits presented at the hearing and reasonable inferences from them, I make the following findings of fact:

1. Kimberly LaFland was born in 1966 and worked as a special education teacher in the Tewksbury Public Schools from September 1, 1999 to June 30, 2014. She typically taught kindergarten, although in her last two years she taught preschool. The job required her to sit at

¹ This is Ms. Lafland's second appeal over her claim for disability retirement. She first appealed the Retirement Board's refusal to have her evaluated by a medical panel. I issued a decision requiring such an evaluation. *See LaFland v. Teachers' Retirement System*, Docket No. CR-15-546 (DALA, Feb. 16, 2018) [LaFland Ex. 21.]. The first fifteen findings in this decision are taken from the earlier decision. I dropped original paragraphs 3 and 9 as they dealt with disciplinary matters. I made some additions or changes in Findings 1, 10, 12, and 15. The exhibits submitted in the two matters were not exactly the same. Those submitted in the first hearing are in parentheses; those submitted in the second hearing are in brackets.

low tables, bend, squat, and sometimes restrain children. Ms. LaFland was an active member of the Teachers' Retirement System from September 1988 until 2014. (K. LaFland testimony; LaFland Exs. 2 and 3; Pleading A) [LaFland Exs, 18 and 19.]

The only job description for Ms. LaFland's work was a generic description that applied to all teachers throughout the Tewksbury Public School System, not just special education preschool teachers. It stated that teachers were to "[g]uide the learning process toward the achievement of district and school curriculum goals." They were also to "[c]reate a classroom environment that is conducive to learning and appropriate to the maturity and interest of the students." As for the physical demands imposed on teachers, it mentioned only that teachers must have the "[a]bility to work in a normal classroom and school building environment" and "to move freely about the building to perform duties with students and teachers." [MTRS Ex. 5.]

Ms. Lafland testified that as a preschool teacher teaching special education and general education students, she regularly sat in a child-size chair when teaching students songs, colors, shapes and the weather. She would sit on the floor during "circle time." She would have to bend over to help students put on their jackets. She would squat to help them tie their shoes. She would have to carry ten pounds of materials for student activities. She also had to restrain children if they presented a threat to themselves or others, a process that could take about 20 minutes and involved her being on the floor the whole time. This could happen numerous times during the week. She testified that she could sit in a child chair for only so long and would have to stand up to relieve the pain. [LaFland testimony.]

2. Beginning in 2009, she injured her back on a number of occasions, both at work and at home. She suffered work injuries in January 2009, September 2009, and November 2010. She took a few days off for these injuries, and filed a notice of injury when she hurt her back in 2010 while bending over a classroom table, but she did not seek medical treatment. (LaFland testimony; LaFland Ex. 15; MTRS Ex. 11) [MTRS Ex. 3.]

3. Ms. LaFland missed work from November 6 - 12, 2012 with a back injury. She also missed work the week of December 10, 2012. She does not recall why she was out that week. (K. LaFland testimony.) Principal Galello sent her a memorandum telling her she had neglected to inform the school that she would be out sick from Wednesday through Friday of that week. Ms. LaFland responded that her union representative had told her that she had lived up to her obligations under the contract. (MTRS Ex. 4.)

4. Ms. LaFland saw Phyliss Speiler, M.D., on January 25, 2013 for an occasional irregular heartbeat and for low back pain. Dr. Speiler's notes reflect that Ms. LaFland was contemplating a leave of absence. (MTRS Ex. 12) [MTRS Ex. 10.] Ms. LaFland does not recall saying this to Dr. Speiler. (LaFland testimony.)

5. Ms. LaFland stopped working sometime thereafter. She hoped to return to work, but on Sunday, March 31, 2013, she suffered a back injury at home when she bent down to pick up something, and after that did not return to work. (LaFland testimony.) Tewksbury attendance records reflect that Ms. LaFland was out sick beginning on February 27, 2013 and throughout

March 2013 she was sick four out of every five days. She was out sick every day of the week beginning in April 2013.² (MTRS Ex. 10.)

6. Dr. Speiler provided six notes written between February 28 and October 23, 2013 excusing Ms. LaFland from work. In February, Dr. Speiler stated that Ms. LaFland needed to be out of work to undergo unspecified tests. (LaFland Ex. 1) [LaFland Ex. 10.] A stress test showed that Ms. LaFland did not have heart problems. (LaFland Ex. 5) [LaFland Ex. 1.] Ms. LaFland next saw Dr. Speiler on April 8, 2013. A note the doctor prepared on that day stated that Ms. LaFland had a “flareup of chronic sacroiliitis and is currently involved in a program of physical therapy for her back. Until this problem is resolved she will remain out of work.” (LaFland Ex. 1) [LaFland Ex. 2.] On September 25, 2013, the doctor reported that “MRI scans [of Ms. LaFland’s lower back] show disc herniations including a large disc herniation at L5 causing significant foraminal narrowing.” She made a similar report on October 23, 2013 and wrote that Ms. LaFland “continues with severe back pain and will be seeing a neurologist.” (LaFland Ex. 1) [LaFland Exs. 8 and 10.]

7. Ms. LaFland underwent a “return to work evaluation” on May 28, 2013 conducted by Martha Lipchitz, M.D. Dr. Lipchitz reported on October 16, 2013 that Ms. LaFland had “positive back exam findings, including being uncomfortable just sitting.” She stated, “In my

² Ms. LaFland asserts that she last worked on March 28, 2013, just before her injury at home. (Pleading A.) The Retirement System contends she stopped working in February 2013. (Pleading B.) The evidence suggests that Ms. LaFland started taking extensive sick time in late February 2013. It also shows that by mid-March 2013, Tewksbury Public Schools was contemplating listing her as out-of-work under the Family Medical Leave Act. (System Ex. 10.) Determining the exact date on which she started her sick leave is not important to this decision.

opinion, she was unable to work as a pre-school special education teacher when I saw her.”

(LaFland Ex. 8) [LaFland Ex. 5.]

8. Ms. LaFland did not return to work for the 2013-2014 school year. The school ordered her to be examined by a doctor to determine her fitness for duty. (MTRS Ex. 6.) She missed the initial appointment because she could not get a ride; she then rescheduled the appointment.

(LaFland testimony.) The school superintendent, John E. O'Connor sent her a letter on

December 3, 2013, ordering her to attend the physical examination. He also noted that Ms.

LaFland had used up her sick time and had twice been granted additional time through the sick-leave bank, but this leave would expire on January 9, 2014 and would not be renewed. (MTRS Ex. 6.)

9. On December 10, 2013, Ms. LaFland was evaluated by Stefanos Kales, M.D., and Diane Chen, M.D. The doctors' report states that:

In our examination today, Ms. LaFland has [a] normal motor and sensory examination, normal and equal deep tendon reflexes, and well as normal gait, heel walk and tiptoe walk capabilities. She exhibits positive Wadell signs. There are no functional deficits.

Based on our Fitness for Duty evaluation today it is our opinion that there are no medical contraindications for the duties listed in her job description.

(MTRS Ex. 11) [MTRS Ex. 3.] On December 18, 2013, the Superintendent sent Ms. LaFland a letter stating that he was “preparing for your return to work on January 2, 2014.” (MTRS Ex. 4.)

10. Ms. LaFland did not return to work. On January 6, 2014, she saw neurologist Ted Gavrilesco, M.D. He prepared a note stating, “This is to verify that Ms. LaFland was seen in my office today. I have advised her not to return to work until after her follow up appointment on

January 31, 2014.” (LaFland Ex. 1.) Dr. Gavrilescu’s notes of that visit reflect that he thought Ms. LaFland had “lumbar degenerative changes” with probable “L5 root irritation.” (LaFland Ex. 6) [LaFland Ex. 13.] He continued to have this impression after a May 15, 2014 visit. At that visit Ms. LaFland reported that “she experiences ‘electric shocks’ when bending or twisting the upper and lower back. After doing simple activity, day to day chores, notes worsening LBP [lower back pain].” (LaFland Ex. 6) [LaFland Ex. 17.]

Ms. LaFland did not report for work on January 2, 2014. Afterwards, she submitted a note from Dr. Gavrilescu. Thereafter, the Superintendent of Schools met with her and then sent her a letter on January 15, 2014 informing her that she could use only five more sick days, and after that her leave would be unpaid. [MTRS Ex. 18.]

11. On June 18, 2014, Ms. LaFland entered into a settlement agreement with the Tewksbury Public Schools. The agreement recites that Ms. LaFland has been on extended sick leave, that she has not been granted any additional sick time, and that the parties wish to settle their differences amicably. Ms. LaFland agreed to resign her teaching position irrevocably and Tewksbury agreed to treat “her last day of employment . . . [as] the last work day of the 2013-2014 school year.” Ms. LaFland also agreed to release any claims she might have, including any claim for accidental disability retirement. The agreement, however, did “not preclude Ms. LaFland [from] applying for Ordinary Disability Retirement Benefits.” (LaFland Ex. 2; MTRS Ex. 9) [LaFland Ex. 18.]

12. Ms. LaFland filed an application for ordinary disability retirement on August 5, 2014. She described the medical reason for her disability as “lower disc protrusions, herniated discs, [and] degenerative disease.” She stated that her job required her to:

Teach & assist special needs & typical children with academics & self help skills - requires me to bend, squat, reach/lean across child sized table; physical tasks of cleaning, carrying learning materials; prolonged sitting at desks & tables.

(LaFland Ex. 3, MTRS Ex. 1) [LaFland Ex. 19, MTRS Ex. 1.]

13. Dr. Speiler submitted a physician's statement in support of the application. Dr. Speiler declared that Ms. LaFland was disabled and that the disability was permanent. She diagnosed Ms. LaFland with "lumbar spondylosis with multilevel disc disease including disc herniation" and stated the chronic nature of her condition, which had not responded to physical therapy, made it likely that the disability would continue indefinitely. (LaFland Ex. 4) [LaFland Ex. 20.]

14. The Tewksbury Public Schools submitted an employer's statement on October 21, 2014. In it, the school district stated that Ms. LaFland had been cleared to work but had not returned to her job. The district noted that "[a]fter facing several written warnings, Ms. LaFland stopped reporting to work on or about January 25, 2013." Furthermore, the district stated that it "does not believe that Ms. LaFland is 'disabled.'" It went on to complain about another teacher who it believed had been erroneously granted a disability retirement.³ (LaFland Ex. 9) [MTRS Ex. 2.]

15. On September 15, 2013, the Teachers' Retirement System denied Ms. LaFland's application without sending it to a medical panel. It explained in a letter to Ms. LaFland's attorney that:

[T]here certainly is some evidence that Ms. LaFland had a back condition that resulted in her use of sick leave in the 2012-2013 and 2013-2014 school years. At the same time, there is also evidence that she was having performance issues unrelated to her medical

³ At the first hearing, MTRS stated that the employer filed an amended Employer's Statement in 2015. The amended statement was not placed in the record. MTRS does not make such a claim in this proceeding. (Pleading B.)

condition (e.g., performance improvement plan, parent complaints) during those same school years.

As you know, Ms. LaFland's employment ended pursuant to the terms of a *Settlement Agreement and General Release of Claims* in order to "avoid protracted litigation in connection with potential grievance or legal proceedings." She irrevocably resigned her position, effective June 2014, and successfully negotiated for the right to receive additional retirement credit and health insurance benefits.

(MTRS Ex. 2.)

16. On February 16, 2018, DALA issued a decision reversing the denial of Ms. LaFland's ordinary disability retirement application and remanding it to MTRS to have her evaluated by a medical panel. [LaFland Ex. 21.]

17. On December 10, 2019, Ms. LaFland was evaluated by a medical panel made up of orthopedic surgeons Vivek M. Shah, M.D. and Aaron Gardiner, M.D., and neurologist Julian Fisher, M.D. (LaFland Ex. 22) Ms. LaFland was asked to walk, bend over, and squat. She was not asked about the physical demands of her job. [LaFland Ex. 22, LaFland testimony.]

18. The medical panel concluded that Ms. LaFland was not disabled. Its review of her medical records showed that she had lumbosacral disc disease, including "minimal-to-mild posterior disc bulges" in five places, an "annular tear at L2-L3, central canal narrowing of mild degree at L3-L4, mild right neural foraminal narrowing at L4-L5, and mild left neural foraminal narrowing at L5-S1." She also had an unspecified disc disease and also complained of losing her balance because of an unsteady gait. [LaFland Ex. 22.]

19. When the doctors examined Ms. Lafland, they observed that she had:

a minimally unsteady gait with Romberg negative.⁴ She is unable to heel or toe walk, complaining of low back pain in association. She was able to do a squat to half distance with ample strength, maintaining a steady state in the half squat position.

Formal muscle group testing revealed 5/5 throughout in both upper and lower extremities. Full range of motion about the neck was observed. Straight leg raising was accomplished to 70 degrees with minimal pain evidenced. No sensory deficits were seen. Deep tendon reflexes were 1+ in the upper extremities and 2+ in the lower extremities. Cranial nerves were intact 2 through 12. No evidence of cerebellar deficits was seen.

Id.

20. The panel explained its conclusion saying:

Ms. LaFland is not significantly impaired by the back pain as evidenced by the facial expressions that did not reflect an extreme or even modest response to pain on percussion and palpation of the spine from cervical to lumbar with extreme movements.

There would appear to be a somewhat excessive response to perceived pain in this case. She does not qualify for a permanent medical disability on this basis.

Id. The panel's report did not discuss the physical demands of Ms. LaFland's job, such as sitting at low tables for long periods, bending, squatting, and sometimes restraining children. *Id.*

21. On February 28, 2020, Ms. LaFland's counsel requested that the panel be asked to clarify whether Ms. LaFland is "capable of prolonged sitting in small furniture for a long period, every work day," whether her diagnosed sacroiliitis interferes with her ability to sit or stand in one

⁴ "The Romberg test is a simple and short physical test that healthcare providers use to see if you have balance issues and to help narrow down the possible causes of them. . . . A Romberg test is negative if you're able to stay stable during the test and have minimal swaying." <https://my.clevelandclinic.org/health/diagnostics/22901-romberg-test>.

place for long periods, and whether she is capable of restraining small children while sitting or kneeling on the floor.”⁵ (LaFland Ex. 23.)

22. MTRS declined to send the proposed questions to the panel for clarification. Regarding sacroiliitis, MTRS counsel thought the panel had adequately addressed back pain when it said that Ms. LaFland “is not significantly impaired by back pain.” [LaFland Ex. 24.]

23. Ms. LaFland timely appealed. [LaFland Ex. 28.]

Discussion

No application for accidental or ordinary disability retirement 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. 420, 423, 298 N.E. 2d 902, 904 (1973). To overcome a negative panel certificate, a petitioner must prove that the panel used an erroneous standard or lacked pertinent information. *Mello v. Fall River Retirement Bd.*, CR-13-315, Decision at 17 (DALA Aug. 7, 2015).

The issue raised by Ms. LaFland is whether the medical panel fully appreciated the physical demands of her job and the situations that cause her to experience back pain that interfered with her ability to perform her job, particularly prolonged sitting on child-size chairs. MTRS responds that the panel considered her job description and should have been aware of her particular complaints by looking at her application. It maintains that even if the panel failed to

⁵ Although Ms. LaFland has been diagnosed with sacroiliitis, neither her application nor Dr. Speiler’s statement mention this condition. If she wishes to have this condition considered on remand she must amend her application and her doctor’s statement.

ask Ms. LaFland about the details of her job or the circumstances in which she suffered pain, she could have spoken up and told the panel the bases on which she considered herself to be disabled.

One of the elements Ms. LaFland must prove in order to be eligible for ordinary disability retirement is that she is “unable to perform the essential duties of [her] job.” M.G.L. c. 32, § 6. That is, the focus is on her particular job, not teaching jobs generally. The job description in the record is of no help in this regard because it focused on the job responsibilities of all teachers in the school system from preschool through high school. It did not mention the particular duties of a preschool special education teacher or the physical demands of that job. The panel could have been aware of some of those demands and the health problems Ms. LaFland experienced associated with them if the panel read her application in which she described difficulty with “prolonged sitting at desks & tables.” Ms. LaFland testified that the panel did not ask her questions about the aspects of her job that caused her pain, but she could have spoken up and provided the panel with this information, as MTRS pointed out.

The trouble with the panel’s report is that it shows no awareness that Ms. LaFland is claiming disability based on prolonged activities that cause her pain. She does not appear to be claiming that toward the end of her time teaching preschool she could not sit in a child-size chair at all, or carry ten pounds of teaching material, or reach over a child-size table to hand something to a students, or bend to help a child put on a jacket, or squat to tie a child’s shoes. Rather, she is claiming that it was prolonged activities of this sort that caused her back pain that interfered with her ability to do her job. The panel asked her to walk, bend over, and squat. From these simple

tests, the panel determined that she was “not significantly impaired by the back pain” and that her problem was “a somewhat excessive response to perceived pain.” (Finding 20.)

Maybe that is enough to determine that Ms. LaFland does not really experience disabling pain from prolonged sitting, bending, or squatting, but that is just not evident. Ms. LaFland's case presents obvious difficulties. She has been diagnosed with a number of back problems. The doctors who have examined her have reached diametrically opposing conclusions about whether these conditions cause her to be disabled from her teaching job. Most strikingly, she had two fitness for duty evaluations in 2013. In May 2013, Dr. Lipchitz determined that she was unable to return to teaching kindergarten. In December 2013, Drs. Kales and Chen reached the opposite conclusion. A more thorough report that directly addresses Ms. LaFland's claim that she is disabled by prolonged physical activities associated with her job is necessary, as it would sort out the difficulties associated with determining whether Ms. LaFland is disabled from her job.

Conclusion

In order to make an informed decision about whether the prolonged physical demands of Ms. LaFland's teaching job have caused her to be disabled, I remand this matter to the Teachers' Retirement System to have a medical panel examine her to determine if the prolonged sitting, bending or squatting associated with being a special education preschool teacher causes her pain sufficient to disable Ms. LaFland from that job.⁶

⁶ Ms. LaFland reportedly has around 26 years of creditable service. She may wish to consider at this juncture whether superannuation retirement is a preferable option for her.

So Ordered.

DIVISION OF ADMINISTRATIVE LAW APPEALS

James P. Rooney

James P. Rooney

First Administrative Magistrate

Dated: May 31, 2024