COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Mark Leporati,
Petitioner,

v.

Framingham Retirement System,
Respondent.

No. CR-19-7

Dated: November 12, 2021

Appearance for Petitioner:
Charles M. MacLean, Esq.
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Appearance for Respondent:
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Administrative Magistrate:
Yakov Malkiel

SUMMARY OF DECISION

A deputy fire chief was injured while driving from his home to the fire station via his daughter's medical appointment. He did not incur his injury "while in the performance of[] his duties," G.L. c. 32, § 7, and therefore was not entitled to accidental disability retirement.

DECISION

Petitioner Mark Leporati appeals from a decision of the Framingham Retirement System (board) denying his application for accidental disability retirement without referring the application to a medical panel. An evidentiary hearing took place on November 3, 2021, at which the witnesses were Mr. Leporati, his daughter Lauren Martin, and former Framingham fire

chief Joseph Hicks. I admitted into evidence exhibits marked 1-7, 8A, 8B, 9-16, and 18-19.[1] The record closed after the parties' oral summations.

Facts

Mr. Leporati's evidence, supplemented by other evidence consistent with it, supports the following findings.[2]

1. Mr. Leporati worked for the Town of Framingham as a deputy fire chief, having previously served in other roles. (Leporati testimony; Hicks testimony; Exhibits 1, 10.)

2. On September 7, 2016, at approximately 7:00 AM, Mr. Leporati began his shift at the fire station. From there he drove in his cruiser to 59 Fountain Street, for a meeting about code violations at that building. He was scheduled to attend another meeting concerning the same building later that day. (Leporati testimony; Hicks testimony; Exhibits 1, 9, 13, 15.)

3. Sometime during the morning, Mr. Leporati realized that he had left a thumb drive containing documents about 59 Fountain Street at home. Accordingly, from his meeting at that building, Mr. Leporati drove home, where he retrieved his thumb drive and placed it in his cruiser. (Leporati testimony; Martin testimony; Exhibits 1, 9, 13, 15.)

4. While at home, Mr. Leporati encountered his daughter, who was about to set off on foot toward a doctor's appointment. Mr. Leporati offered his daughter a ride. Because of ongoing roadwork, Mr. Leporati's route from his home (at 342 Brook Street) to the fire station

[1] Documents originally identified as exhibits 8 and 17 were duplicates and, with the parties' agreement, not made part of the record.

[2] The standard by which the evidence must be judged at this juncture is discussed *infra*.

(at 10 Loring Drive) would have taken him in any case past the doctor's office (at 657 Franklin Street). (Leporati testimony; Martin testimony; Exhibits 9, 15.)[3]

5. At approximately 11:10 AM, before Mr. Leporati and his daughter reached the doctor's office, the cruiser collided with another vehicle. The collision occurred at the corner of Main Street and High Street. Mr. Leporati sustained injuries to his right wrist, elbow, and hand. He has undergone surgery twice. (Leporati testimony; Martin testimony; Exhibits 2, 3, 6, 7, 11.)

6. On May 25, 2018, Mr. Leporati applied for accidental disability retirement. After gathering additional information, the board denied Mr. Leporati's application without convening a medical panel. He timely appealed. (Leporati testimony; Exhibits 9, 13-16, 18-19.)

Analysis

A retirement board may deny a disability retirement application at any time upon determining "that the member cannot be retired as a matter of law." 840 C.M.R. § 10.09(2). An offshoot of this rule is that, where a member fails to present a prima facie case to entitlement, the board is not required to convene a medical panel. *Duquet v. Malden Ret. Bd.*, No. CR-18-297, at 8 (DALA Aug. 28, 2020). A prima facie case requires "sufficient evidence 'that, if unrebutted and believed, would allow a factfinder to conclude that [the member] is entitled to accidental disability retirement benefits.'" *Hickey v. Medford Ret. Bd.*, No. CR-08-380, at 4 (CRAB Feb. 16, 2012) (quoting *Lowell v. Worcester Ret. Bd.*, No. CR-06-296 (DALA 2009)). Here the board concluded correctly that Mr. Leporati did not present a prima facie case.

A public employee seeking accidental disability retirement must establish that he "is unable to perform the essential duties of his job," that the disability "is likely to be permanent,"

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[3] Department policy did not permit Mr. Leporati to transport an unauthorized civilian in his cruiser. The parties agree that this fact does not bear on the result of the appeal.

and that the disability arose "by reason of a personal injury sustained . . . as a result of, and while in the performance of, his duties." G.L. c. 32, § 7(1). The third of these elements is a "strict causation requirement." *Damiano v. Contributory Ret. Appeal Bd.*, 72 Mass. App. Ct. 259, 259 (2008). It demands that the injury must occur not only during working hours, but also "during the actual performance of [the employee's] duties." *Id.* at 263. "An employee's 'duties' are essentially the activities that his job required him to perform." *Cohen v. MTRS*, No. CR-17-210, at 7 (DALA Sept. 10, 2021).

Travel from a duty to a non-duty, or vice versa, does not satisfy the statute's causation requirement. *Boston Ret. Bd. v. Contributory Ret. App. Bd.* (*Palmeri*), 340 Mass. 109, 111 (1959). An employee injured in transit must show, instead, either that he was performing duties en route, or that he was "going from one place at which [he] had an employment obligation to another such place." *Richard v. Worcester Ret. Bd.*, 431 Mass. 163, 165 (2000) (citing *Namvar v. Contributory Ret. Appeal Bd.*, 422 Mass. 1004, 1005 (1996)); *Combra v. State Bd. of Ret.*, No. CR-18-2021 (DALA June 16, 2021).

Mr. Leporati does not suggest that he was discharging any job duties while in transit. His theory is that he was traveling from the location of one employment duty to the location of another. This theory ultimately fails both at its start and at its intended endpoint.

The point of departure for Mr. Leporati's travel was his own home. His activity there was removing a work-related thumb drive from his home and placing it in his vehicle. "These facts . . . do not set [his] situation apart from that of most employees in this Commonwealth." *Richard*, 431 Mass. at 165. An employee delivering herself to the workplace, namely commuting, is not yet considered to be discharging her duties. *See id.* at 166 ("injuries . . . suffered during [a] commute . . . do not satisfy the statute[]"); *Barros v. State Bd. of Ret.*, No.

CR-16-186 (DALA July 28, 2017). Many or most commuters simultaneously transport work-related papers or objects from their homes to their workplaces. An employee returning work paraphernalia to the office later in the day, having neglected to do so in the morning, is performing the exact same action. All of these employees are engaged, not in the substance of their duties, but still in their home-to-work transitions.

There would be no question that Mr. Leporati was not performing an employment duty if he had taken his thumb drive with him to the start of his shift; it would not make sense for the same act to count as an employment duty simply because it occurred later in the day.

As for Mr. Leporati's intended destination, the parties frame their disagreement as whether the focus must be on Mr. Leporati's "immediate" destination, namely the doctor's office, or his "ultimate" destination, namely the station house. Precedent supports the former view. The notion that a traveler even *has* an ultimate destination relies on a subjective intent, i.e., a mental itinerary that schedules another leg of travel after the one that's underway. But "subjective intent does not control [an employee's] eligibility for accidental disability retirement benefits." *Damiano*, 72 Mass. App. Ct. at 264. "It is not the employee's intent to perform job duties that is significant; what is significant is whether or not the employee was actually engaged in the performance of job duties when she was injured." *Leite v. New Bedford Ret. Bd.*, No. CR-17-97, at 8-9 (DALA Aug. 28, 2020). Employees on their way to lunch, or anywhere else, expect eventually to arrive back at work: yet this expectation does not suffice to make them headed-toward-a-duty in the pertinent sense. *Namvar*, 422 Mass. at 1005; *Palmeri*, 340 Mass. at 111. It is not the plans that control, but rather the immediate circumstances.

For these reasons, Mr. Leporati's own account of his injury would not allow a factfinder to find him entitled to accidental disability retirement. The board was thus correct to deem his application futile as a matter of law.

Conclusion and Order

The board's decision is AFFIRMED.

Division of Administrative Law Appeals

/s/ Yakov Malkiel
Yakov Malkiel
Administrative Magistrate