

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Missy Lima,
Petitioner

v.

Docket No. CR-23-0499
Date Issued: November 28, 2025

Fall River Retirement Board,
Respondent

Appearance for Petitioner:

Nicole M. McDonald, Esq.

Appearance for Respondent:

Joesph R. Kenyon, Esq.

Administrative Magistrate:

Kenneth J. Forton

SUMMARY

The Petitioner, a school cafeteria worker, aggravated her pre-existing back condition to the point of permanent disability by plunging a large table-mounted can opener down into an industrial-sized can of fruit and then twisting the opener's arm in a large circular motion. Petitioner's complaints of pain, compliance with all recommended treatments, ability to perform all job duties before the can opener incident and an inability to do so afterward was enough to prove that the incident caused her disability. There is no hard and fast rule that "objective" tests must corroborate subjective complaints of pain.

DECISION

Pursuant to G.L. c. 32, § 16(4), Petitioner Missy Lima appealed the decision of Respondent Fall River Retirement Board to deny her application for accidental disability

retirement. An in-person hearing was conducted on November 21, 2024, by Administrative Magistrate Melinda Troy. Ms. Lima testified on her own behalf. A transcript was made from this hearing. Magistrate Troy entered Exhibits 1-23 into evidence. The parties submitted closing briefs. Magistrate Troy left DALA before issuing a decision, and the appeal was reassigned to me. The parties have agreed that I may decide the matter on the written record. On October 6, 2025, at their request, I also heard the parties' oral closing argument.

FINDINGS OF FACT

Based on the exhibits and the Petitioner's testimony, I make the following findings of fact:

1. Missy Lima was born in 1967. She stopped school after eighth grade, began working in a factory at 16 years old, and worked various jobs since then, including factory jobs, retail jobs, and a nurse assistant job. (Testimony.)
2. Ms. Lima began working for Fall River School System in 2013 as a part-time cafeteria worker. In 2014, the school hired her full time as the assistant manager's cook. Some confusion arose with different job descriptions, with one version supposedly including "Required Qualifications" that did not apply to Ms. Lima when she was hired. There is another version of the job description that states the employee is "responsible for the preparation and cooking of meats, vegetables, fish, salads, desserts, soups, sauces, and gravies, baking and any other related food preparation duties." It is clear however that Ms. Lima's job has physical demands. (Testimony; Respondent's Prehearing Memorandum.)

3. Ms. Lima worked at stations preparing and cooking food. Preparation included chopping vegetables, mixing food, lifting heavy boxes, getting food to her stations, opening industrial size cans of fruit, cooking, and deep cleaning, which requires bending and twisting. The job required Ms. Lima to be on her feet all day. The heaviest item she had to carry to her station was sacks of potatoes that weighed about 50 pounds. (Testimony; Ex. 1.)

4. Ms. Lima reported a history of back problems. First, in 2011 she had an x-ray taken of her lumbar spine due to back pain. Additionally, on December 11, 2017, after a slip and fall at work, she had another x-ray on her back and hip, which revealed a contusion. Her medical records show she stayed out of work for one day and returned without restriction on December 13, 2017. She also experienced a back spasm on January 15, 2019 when cleaning her house. Her doctor prescribed her Diazepam, a sedative, to take at bedtime. Ms. Lima had trouble remembering the details of her previous back injuries. (Testimony; Exhibit 23, pp. 32, 51, 269-70.)

Workplace Incident

5. On November 6, 2019, Ms. Lima opened an industrial-sized can of fruit, which required her to place it on a metal table, then use a large handle in an upright position to puncture the top of the can, bend the handle down ninety degrees, then keep downward pressure while twisting. While stretching to turn the handle, she felt a sharp pain and weakness in her back. She described feeling herself twisting and about to fall. (Testimony.)

6. She sat for a few minutes, then attempted to return to work. While working, she felt the pain radiate down her left side. Her manager made her stop work, and Ms. Lima went to the emergency room. (Testimony.)

7. At the emergency room, she was diagnosed with a lower lumbar back sprain and was told to perform modified work for 5 days. That included no reaching above the shoulder, no twisting, pulling, or pushing. (Exhibit 23, pp. 85-90.)

8. Ms. Lima did not return to work right away. She did eventually attempt to return to work, but she felt pain when working and her manager sent her home. She has been unable to work since November 18, 2019. (Testimony; Exhibit 23, pp. 269-70; Exhibit 4.)

9. On November 12, 2019, Ms. Lima filed an injury report with her employer. She described the injury: “felt pain in lower back when opening a can of fruit.” (Ex. 5.)

Post-Incident Treatment

10. On November 20, 2019, Ms. Lima returned to the doctor because she still had pain in her back and hip that radiated to her leg. The doctor ordered an x-ray of her left hip and gave her a muscle relaxant to take at night. (Exhibit 23, pp. 105-08.)

11. Ms. Lima began her first round of physical therapy on December 12, 2019. She continued with physical therapy through January 23, 2020, but sessions were discontinued because they aggravated her symptoms. (Exhibit 23, pp. 129, 190, 193.)

12. On January 10, 2020, Ms. Lima underwent an MRI of her lumbar spine and lower thoracic spine. In summary, this imaging revealed issues at L1-2, L2-3, L3-4,

L4-5, and L5-S1 including small central protrusions, disc bulging, and annular tears. The overall impression was “[t]here are multilevel degenerative changes There is no central stenosis. There is mild-left side neural foraminal narrowing at L4-5 and bilateral neural foraminal narrowing at L3-4 and L5-S1. Disc material comes close to the L4 nerve root on the left and abuts both L5 nerve roots. The nerve roots are not swollen.”

(Exhibit 23, pp. 164, 173, 176.)

13. Through the duration of her treatment, Ms. Lima underwent more imaging. On July 9, 2021, she underwent a second MRI of her back, and the results were "similar to previous examinations." She got a third MRI on May 13, 2022, and the "findings [were] not significantly changed to MRI of 7/9/21." She also received a hip MRI on January 25, 2021. (Exhibit 23, p. 403; p. 507; p. 313.)

14. On January 30, 2020, Ms. Lima visited her doctor, Dr. Carlos Correia; he diagnosed her with lumbar disc herniation and sacroiliitis. He recommended an epidural steroid injection (ESI) and continued physical therapy. Ms. Lima returned for another office visit on February 27, 2020, for her workers' compensation follow-up. Her doctor gave her a prescription for Norflex. (Exhibit 23, pp. 202, 210.)

15. On March 7, 2020, Ms. Lima saw Dr. Connolly, an orthopedic surgeon, who assessed that she was “not an ideal candidate for surgical intervention due to the multilevel nature of her problem.” (Exhibit 23, pp. 216-19.)

16. On July 22, 2020, Ms. Lima received her first ESI in her L3-4 joint. After experiencing only temporary relief but no improvement, she then received a second ESI

in her L4-5 joint on September 2, 2020. This shot produced the same result—temporary relief but no permanent change. (Exhibit 23, p. 244-45, 259.)

17. On top of the injections, Ms. Lima took many conservative measures to attempt to alleviate her pain. She did two more rounds of physical therapy, one starting on February 12, 2020, and then another on October 14, 2020, both without any improvement. She went to a chiropractor many times but reached “static symptoms.” She tried acupuncture. She uses a TENS (transcutaneous electrical nerve stimulation) unit, which she purchased. She did a nerve study which came back with no results. She inquired about more shots or surgery. She took medication to manage the pain. (Testimony; Exhibit 23, pp. 203, 265, 425, 445.)

18. On May 17, 2021, Ms. Lima had another office visit with her doctor about her chronic pain. Her physician noted, “I believe the patient has reached the status of disability.” Then, in an office visit on August 4, 2021, after Ms. Lima was told she was not a surgical candidate, her physician noted: “she has really exhausted all conservative means.” (Exhibit 23, pp. 364, 414.)

Workers’ Compensation Examination

19. Dr. DiTullio, a neurosurgeon, conducted an “independent medical exam” of Ms. Lima on October 22, 2020, for purposes of workers’ compensation. He concluded Ms. Lima experienced a “lumbosacral strain and mild exacerbation . . . which were coincidentally and contemporaneously related to her activities” on November 6. (Exhibit 23, p. 278).

20. Based “solely and only” on the January 10, 2020, MRI, Dr. DiTullio concluded that Ms. Lima is permanently, but only partially, disabled. He opined that her condition should have responded to conservative measures, like physical therapy, giving time for the soft tissue injuries to resolve. (Exhibit 23, pp. 278-80.)

21. On the issue of causation, Dr. DiTullio found that her condition “coincidentally” took place at work and was not a direct consequence of the duty she was performing. He thought that her condition is “merely the results of one of any type of activities of daily living,” reflecting his belief that the mechanism of opening a can is “hardly indicative of a potentially damaging traumatic activity.” (Exhibit 23, pp. 278-79.)

22. Instead of her accident, Dr. DiTullio explained her disability as the result of her “natural, insidious, spontaneous, nontraumatic progression of well-documented pre-existing degenerative disease . . . as well as detrimental body habitus.”¹ Dr. DiTullio stated that her body habitus “by itself was sufficient to aggravate, exaggerate, and accelerate” her degenerative disease. (Exhibit 23, pp. 279-80.)

23. Dr. DiTullio also did not believe Ms. Lima’s self-assessment. During the straight leg assessment he conducted, Dr. DiTullio reported there was inconsistency between the symptoms she described between the sitting and supine exam. He further noted a lack of “objective evidence to support [her] subjective complaint.” Combined, Dr. DiTullio concluded that this implied “a certain degree of symptom magnification.” (Exhibit 23, pp. 277-80.)

¹ “Body size and habitus describe the physical characteristics of an individual and include such considerations as physique, general bearing, and body build.” *Clinical Methods*, c. 137 (H. Kenneth Walker, MD et al. eds., 3d ed. 1990).

24. He recommended that she “permanently continue to avoid those activities which would involve lifting over 20 pounds, prolonged postural fixation, repetitive bending, or excessive spinal loading” but that these physical restrictions “represent a longstanding, *non-work related* situation/issue,” and there is nothing he considered a “*clinically significant* posttraumatic radiological abnormality.” He concluded that she could work as long as she was able to follow his recommended restrictions. (Exhibit 23, page 280-81.) (Emphasis in original.)

Retirement Application

25. On October 5, 2021, Ms. Lima submitted her application for accidental disability retirement. She claimed medical conditions of low back pain with radiating pain and numbness, lumbar disc herniations, sacroiliitis/SI joint pain, hip pain, and trochanteric bursitis. She described the incident that caused her conditions: “I was opening an industrial size can of fruit when I felt a sharp pain in my lower back.” (Ex. 1.)

26. On May 7, 2021, Dr. Correia filled out a supporting physician’s statement. He described her diagnoses as foraminal stenosis of lumbar region, protrusion of lumbar intervertebral disc, and degenerative disc disease. He certified that she was permanently disabled. He opined that the “episode of reaching out, stretching her back, and twisting to reach [the] can” was more likely than not the cause of her disability. (Ex. 2.)

27. On June 7, 2021, Dr. Ajit Mirani submitted an additional supporting physician’s statement, diagnosing her with SI joint pain and lumbar disc herniation. Dr. Mirani opined that Ms. Lima was disabled, but reserved judgment on permanence

because he was under the impression that she had a surgical consult pending.

(Ultimately, no doctor recommended surgery for Ms. Lima.) Finally, he opined that her disability was caused by her November 6 job injury. (Ex. 3.)

28. In its employer's statement, Fall River School Department characterized Ms. Lima's disability as degenerative disc disease. The School Department also documented two injuries that occurred before her incident with the can; in these incidents she injured her hip, thigh and rib cage. (Ex. 4.)

Medical Panel Reports and Clarifications

29. Ms. Lima was evaluated individually by a three-physician medical panel: Drs. Fisher, Goldberg, and Nicoletta. In summary, the panel unanimously answered in the affirmative on the questions of incapacity, permanency, and causality. The Board submitted two subsequent rounds of clarification questions to each panelist. Even after clarification, none of the panelist changed his opinion. Each doctor's opinion is described below.

Doctor Fisher:

30. Doctor Fisher, a neurologist, examined Ms. Lima on November 16, 2022. He identifies the mechanism of injury as "lifting and opening" a can. He concluded that, considering the MRI showing "multiple disk protrusions and other degenerative changes aggravated by her accident" and the lack of recovery after two years of treatment, Ms. Lima should not return to work. He thought her disability was permanent. Finally, Dr. Fisher opined that her incapacity "might be" the natural and proximate result of the injury. (Ex. 7.)

31. The Board's first request for clarification asked Dr. Fisher to clarify which findings were attributable to the injury, how the twisting caused this injury, and if it was medically probable (51%) that the accident caused the injury. The Board also noted its heterodox understanding of the difference between aggravation, which it defined as permanent worsening, and exacerbation, which it defined as a temporary change in the condition. The Board additionally asked if Ms. Lima was a surgical candidate. (Ex. 10.)

32. In his response, Dr. Fisher explained that when pain, as opposed to weakness, is the major symptom, surgery is not a reliable option. Instead, Ms. Lima engaged in all therapeutic measures and did not "achieve a sufficient return of function." Further, he clarified that there is poor correlation between imagining and the pain Ms. Lima experienced because it is more correlated to strength/weakness. Instead, he pointed to her ability to work prior to the accident, and then her inability afterward, stating "what was pre-existing was made worse by a subsequent event." He stated that the accident "is 51% or greater direct causation of the worsening of her condition." He did not change any of his affirmative opinions. (Ex. 12.)

33. The Board sent a second request for clarification on June 26, 2023. This clarification asked (1) if changing the mechanism of injury to twisting instead of lifting changes Dr. Fisher's opinion, (2) how a twisting injury results in a lumbar injury, (3) how the twisting mechanism aggravated her lumbar to the point of incapacity, and (4) whether her permanent incapacity was more likely than not (51%) because of the injury. (Ex. 17.)

34. In his second addendum, Dr. Fisher further clarified that “given [her] pre-existing condition, any stressor, be it lifting up, pushing down, or twisting . . . can serve to cause the aggravating injury.” Not only that, but twisting “can produce as much if not more damage than a lifting injury” because twisting can “destabilize a pre-existing degenerative spine condition, causing hard surfaces . . . to touch, impinge upon or crush soft tissue.” He concluded that, because the injury irrevocably changed the clinical picture and her ability to perform her duties, the injury was an aggravation of her condition. He found it is more likely than not that the injury produced the aggravation of the condition. He did not change any of his affirmative opinions. (Ex. 18.)

Doctor Goldberg:

35. Doctor Goldberg, an orthopedist, examined Ms. Lima on November 22, 2022. He answered yes to all three questions based on her injury of “working with” the industrial-sized can of fruit. He described the physical examination, review of the medical records, and concluded her “incapacity is permanent insofar that she has had minimal resolution of symptoms despite treatment over time” and that the disability was “such as might be the natural and proximate result” of her work accident. He recommended that she not go back to work. (Ex. 8.)

36. The Board's first request for clarification from Dr. Goldberg was very similar to its requests from the other panelists. It asked which findings were attributable to the injury, how the twisting caused this injury, if it was medically probable (51%) that the accident caused the injury, if he understood the difference between aggravation and exacerbation, and if Ms. Lima is a surgical candidate. (Ex. 10.)

37. In his response, Dr. Goldberg stated that Ms. Lima was not a surgical candidate because she had multilevel degenerative disease. This disease was “substantially and permanently aggravated by the incident of record and has failed to resolve despite all conservative measures.” He based his finding of causation on the persistent symptoms Ms. Lima experienced without any improvement from conservative measures and classified it as permanent aggravation. He clarified that he believed it was medically possible (1%) that the injury was caused by the workplace accident, and that it is more likely than not (51%) that the accident “precipitated the onset of symptoms.” He explained that there was no specific focus on any acute condition of the spine but rather a “combination of the multilevel disease” and no corrective measure that will return her to her baseline ability to work. He did not change his affirmative opinions. (Ex. 13.)

38. In its second request for clarification on June 26, 2023, the Board asked (1) if changing the mechanism of injury to twisting changes his opinion, (2) how the injury resulted in the incapacity, (3) how the injury could have aggravated her condition to the point of permanent incapacity, and (4) whether her permanent incapacity was more likely than not (51%) the result of the accident, or just a progression of her pre-existing condition. (Ex. 17.)

39. In his second addendum, Dr. Goldberg clarified that he understood the mechanism of opening the can, presuming correctly that it must also be lifted. He opined: “regardless . . . this specific task resulted in acute onset of back pain that had not previously been identified.” He reiterated his opinion that her current condition was more likely than not a consequence of the workplace incident, and it was a permanent

aggravation of her pre-existing condition. He did not change any of his affirmative opinions. (Ex. 19.)

Doctor Nicoletta:

40. Dr. Nicoletta, another orthopedist, examined Ms. Lima on December 2, 2022. He answered yes to all three questions based on her injury of “opening a can” of fruit. He pointed to the multilevel degenerative disk disease, and how it was unchanged as compared to her 2021 MRI. He concluded that the chronic lower back pain Ms. Lima was experiencing was from a lumbar strain and the underlying degenerative changes were “more than likely aggravated by her work injury.” He concluded she could not return to work because her job required “bending, turning, flexion, pivoting, [and] twisting of the lumbar spine.” (Ex. 9.)

41. The Board's request for clarification from Dr. Nicoletta was again similar to its requests from the other panelists. It asked which findings were attributable to the injury, how the twisting caused this injury, if it was medically probable (51%) that the accident caused the injury, and if he understood the distinction between aggravation and exacerbation. It also asked about surgical options for Ms. Lima. (Ex. 10.)

42. In his response, Dr. Nicoletta stated that, while Ms. Lima could consult with a surgeon, it may not be recommended by her treating physician. He pointed to the multitude of treatments Ms. Lima attempted, and how she was never able to return to work. He found that her “ongoing symptomatology relates to those underlying” changes in the lumbar spine, and that the “work injury did seem to accelerate these

changes” because she was “never able to return to work.” He did not change his affirmative opinions. (Ex. 14.)

43. In its second request for clarification on June 26, 2023, the Board asked (1) which MRI finding supported his conclusion that her disability was directly attributable to the work injury, (2) how the twisting mechanism could have resulted in the lumbar injury, (3) how he concluded that the injury was aggravated rather than exacerbated, (4) whether it was more likely than not (51%) that the injury caused her permanent incapacity. (Ex. 17.)

44. In his second addendum, Dr. Nicoletta clarified the MRI findings showed “degenerative changes that were sufficiently aggravated by her work injury that she was unable to return to work.” He noted that while he was not present when Ms. Lima was injured, he understood the mechanism of injury as opening an industrial-sized can of fruit. Further, he stated that his opinions on the causation question had already been addressed and did not further clarify this point. He did not change any of his affirmative opinions. (Ex. 20.)

45. The Board denied Ms. Lima’s application for accidental disability retirement on September 27, 2023. The Board explained that it was “dissatisfied with the evidence before it, and the causation explanation the Panel provided despite repeated attempts to obtain some clarity.” (Ex. 21.)

46. Ms. Lima timely appealed. (Ex. 22.)

CONCLUSION AND ORDER

Ms. Lima would be entitled to retire for accidental disability if she is “unable to perform the essential duties of [his or her] job,” the disability is “likely to be permanent,” and the disability was caused by an injury or hazard sustained “as a result of, and while in the performance of, the member’s duties . . . without serious and willful misconduct on the member’s part.” G.L. c. 32, § 7(1). She must prove her entitlement by a preponderance of the evidence. *Lisbon v. Contributory Ret. App. Bd.*, 41 Mass. App. Ct. 246, 255 (1996).

Accidental disability benefits may be rewarded only when a majority of a regional medical panel concludes that the applicant meets the above requirements. *See Malden Ret. Bd. v. Contributory Ret. App. Bd.*, 1 Mass. App. Ct. 420, 423 (1973). A positive medical panel is “a condition precedent” to granting accidental disability retirement. *Quincy Ret. Bd. v. Contributory Ret. App. Bd.*, 340 Mass. 56, 60 (1959). Once the panel renders a positive opinion, however, its opinions are then considered “some evidence on the question of causation . . . [and are] not determinative.” *Warren v. Boston Ret. Bd.*, CR-13-199 (Div. Admin. L. App. Sept 30, 2022). It is up to the Board to make the ultimate determination based on the whole record. *See Blanchette v. Contributory Ret. App. Bd.*, 20 Mass. App. Ct. 479, 482 (1985).

In the instant case, a medical panel consisting of a neurologist and two orthopedists unanimously determined that Ms. Lima met all the requirements for accidental disability retirement. The Retirement Board does not dispute that Ms. Lima is permanently disabled. But, it attributes her disability to her pre-existing back condition

and not the workplace incident that occurred while she was opening the industrial-sized can of fruit. Ms. Lima admits that she had a pre-existing back condition but argues that it was aggravated by the November 6 incident to the point of permanent disability.

“If an applicant suffers from an underlying condition that was aggravated by a work-related injury to the point of disability, that injury is compensable.” *B.G. v. State Bd. of Ret.*, CR-20-0207 (Div. Admin. L. App. Oct 8, 2021), *aff’d* (Contributory Ret. App. Bd. Jan 24, 2024). When proving that a condition was aggravated to the point of disability, it is still the petitioner’s burden to show the disability was not caused by the “the natural, cumulative, deteriorative effects of [her] preexisting diseased condition and unhealthy habits.” *Lisbon*, 41 Mass. App. Ct. at 255. Instead, the applicant must show the accident is at least “a significant contributing cause to [her] disability.” *Robinson’s Case*, 416 Mass. 454, 460 (1993).

The Retirement Board contends that Ms. Lima is not a credible witness and, since the majority panel’s positive causation opinion turns largely on her subjective pain complaints, little weight if any should be placed on the panel’s opinions. As discussed, below, this conclusion does not rest on a solid foundation.

DALA has concluded that a compensable aggravation exists when an applicant has a pre-existing condition but can demonstrate an injury has “left permanent pain without proof that the pain was caused by particular structural damage.” *Parker v. Bristol County Ret. Sys.*, CR-16-364 (Div. Admin. L. App. April 12, 2019). Retirement boards should “exercise caution before rejecting a positive causation opinion merely because it rests on pain complaints by an applicant whose general credibility the

factfinder deems questionable.” *Kephart v. Revere Ret. Bd.*, CR-23-0455, at *8 (Div. Admin. L. App. Nov. 15, 2024). This is because the “degree to which an applicant’s report of subjective symptoms should be credited is a medical question beyond the common knowledge and experience of the retirement board.” *Back v. Barnstable Cnty. Ret. Bd.*, CR-18-0361, at *18 (Div. Admin. L. App. Nov. 13, 2020).

In a recent appeal, for example, a unanimous medical panel found the petitioner’s pre-existing injury had been permanently aggravated by a workplace injury, but the retirement board denied her application because there was no “objective” evidence of the injury. *Carreiro v. New Bedford Ret. Bd.*, CR-21-0355 (Div. Admin. L. App. July 21, 2023). The administrative magistrate, on the other hand, concluded that, “[w]hen an employee is perfectly capable of doing their job, and then totally unable to following a workplace injury, this goes a long way toward meeting their burden of proving causation.” *Id.* Even when an applicant has a pre-existing condition, “as long as it is clear the pre-existing condition did not limit the applicant in the same way the new injury does,” the injury can be compensable. *Id.* See also *Smith v. Essex Reg’l Ret. Sys.*, CR-19-0533 (Div. Admin. L. App. Dec. 16, 2022) (when a condition used to be manageable and not debilitating before an accident, and then it is unmanageable and disabling after, this is evidence of an aggravation). Taking these factors into account, the ultimate question in an accidental disability retirement case with a pre-existing condition is a hypothetical one: “whether the condition would have progressed naturally into the member’s current symptoms even if the workplace accident had not occurred.” *Rogers v. Worcester Ret. Bd.*, CR-22-164 (Div. Admin. L. App. Jan. 26, 2024).

The Board relies nearly exclusively on one evaluation: Dr. DiTullio's report. He focused on Ms. Lima's pre-existing condition, ultimately concluding it was this condition that explains her permanent disability. Just as the Board does, Dr. DiTullio concentrated on the "lack of objective evidence" corroborating Ms. Lima's complaints. He characterized her complaints as "magnifications." Dr. DiTullio variously describes her disability as a natural deterioration of her pre-existing disease, but also as a "spontaneous . . . progression," without explaining how this disease can both naturally and spontaneously progress to the point of disability.

Dr. DiTullio concluded that Ms. Lima's injury should have resulted in a temporary exacerbation that, with time and conservative treatment, should have returned to baseline. Except that it hasn't. He agrees that Ms. Lima is permanently disabled, even instructing her to permanently stop lifting more than 20 pounds. But Ms. Lima was daily required to lift parcels up to 50 pounds, which she performed consistently before the accident and now cannot. When a "[preexisting] condition was manageable and not debilitating before [the accident] and then unmanageable and disabling after," this obvious difference is better explained by an aggravation and not by "a slow, degenerative worsening . . ." *Smith v. Essex Reg'l Ret. Sys.*, CR-19-0533 (Div. Admin. L. App. Dec. 16, 2022). Dr. DiTullio's conclusions do not sufficiently explain the clear break between Ms. Lima's ability to do her job pre-incident and her permanent inability to do it afterward.

Dr. DiTullio's final assessment stated that Ms. Lima's pain was temporary and should have improved with physical therapy but then did not explain why her condition

had not responded to the same conservative measures he recommended. It is difficult to see how Ms. Lima's condition, which was once manageable and not limiting her work life, deteriorated naturally and coincidentally with a workplace injury that left her condition unmanageable. Even after the extensive, conservative measures Ms. Lima took, her symptoms did not subside, and Dr. DiTullio's report does not adequately explain why.

In comparison, the medical panelists' reports and subsequent clarification opinions are more convincing. All of the panelists not only concluded that it is a medical possibility (1%) that the November 6 incident aggravated Ms. Lima's disability, but they go further by finding a medical probably (51%) that it did. The doctors point out the "substantial multilevel degenerative disease" seen in the imaging that revealed multiple disc protrusions and other degenerative changes. Additionally, the failure of treatment to respond, prolonged limitations, and inability to return to work are all pieces of evidence that the doctors considered in making their determinations. Ms. Lima performed all aspects of her job before the November 6 incident, including opening similar large cans regularly and lifting 50 pounds, and now she is unable to do these tasks. Considering all these factors, the three panelists concluded that the November 6 incident aggravated her pre-existing condition to the point of permanent disability. Even Ms. Lima's primary care doctor, who has been seeing her for years, concluded that "the patient has reached the status of disability" and that "she has really exhausted all conservative measures."

The Board is reluctant to credit Ms. Lima's testimony regarding her pain. It asserts that "her misremembering her symptoms and injuries" undermines her credibility because she is attempting to minimize her pre-existing condition and exaggerate the results of the November 6 incident. How much weight to assign Ms. Lima's subjective complaints of pain, in the first instance, is "a matter for the panel's judgment" beyond the experience of the Board. *Back v. Barnstable Cnty. Ret. Bd.*, supra, at *18. It is within the panelists' discretion and expertise to understand and determine upon which complaints to base their conclusions. *Id.* Other than Dr. DiTullio, none of the other doctors or physical therapists opined that Ms. Lima may be exaggerating her symptoms.

Contrary to the Board's conclusion, the evidence reveals that Ms. Lima was in real pain and that she did everything she could to alleviate the pain so that she could return to work: she attended 3 rounds of physical therapy, went to a chiropractor, went to an acupuncturist, purchased her own TENS unit, took medication, did two rounds of steroid injections and inquired about more, and met with a surgeon. Her work history has been consistent since she was 16 years old—she's hardly a person trying to avoid work. I conclude that Ms. Lima's inability to remember the details of her medical history and post-incident treatment were more likely influenced by the vast amount of treatment she received. It was not a purposeful misrepresentation.

Finally, the Board asserts that the medical panelists did not understand the mechanism of injury. But, when asking for clarification, the Board itself described the mechanism of injury in detail and then asked the panelists how this mechanism caused

the injury. None of the panelists amended their opinions or indicated they understood the mechanism of injury any differently than the Board did. Dr. Fisher, for example, explained that the twisting “destabilize[d the] pre-existing degenerative spine condition” and caused “bones/joint to touch, impinging or crushing tissue such as nerves.” It is clear the panel understood the physical nature of her job and the mechanism of opening the industrial sized can.

Taking all the medical opinions and other evidence into account, it is my conclusion that Ms. Lima’s pre-existing condition was permanently aggravated by the act of opening and twisting the heavy can on November 6. Her pain and inability to perform as she did before the incident are key factors in the panel’s decision making and support its reasonable and understandable conclusions.

For the foregoing reasons, the Petitioner has proven by a preponderance of the evidence that she is entitled to accidental disability retirement. The Board’s decision denying her application is therefore reversed.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/ Kenneth J. Forton

Kenneth J. Forton
Administrative Magistrate

DATED: November 28, 2025