

**COMMONWEALTH OF MASSACHUSETTS  
CONTRIBUTORY RETIREMENT APPEAL BOARD**

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**MALCOM M.<sup>1</sup>**

**Petitioner-Appellant**

v.

**STATE BOARD OF RETIREMENT,**

**Respondent-Appellee.**

**CR-21-0303**

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**DECISION**

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Petitioner Malcom M. appeals from a decision of an administrative magistrate of the Division of Administrative Law Appeals (DALA) upholding the decision of respondent State Board of Retirement (SBR) denying his application for accidental disability retirement benefits pursuant to G.L. c. 32, § 7. The magistrate held an evidentiary hearing on February 9, 2023 and admitted twenty (20) exhibits.<sup>2</sup> The magistrate's decision is dated February 17, 2023.<sup>3</sup> Petitioner filed a timely appeal to us.

After considering the evidence in the record and the arguments presented by the parties, we adopt the magistrate's findings of fact 1 - 12 as our own and incorporate the DALA decision by reference. We affirm the DALA decision for the reasons stated in the Analysis, adding the following comments.

The Contributory Retirement Appeal Board (CRAB) recognizes this matter has been difficult for the petitioner and does not make light of the circumstances petitioner reported having endured. Nevertheless, CRAB is charged with applying the law uniformly. This appeal involves the question of whether the petitioner's disability was caused by a workplace injury.

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<sup>1</sup> The DALA magistrate used a pseudonym in this appeal. For consistency purposes, we do the same.

<sup>2</sup> The exhibits filed at CRAB totaled 501 pages.

<sup>3</sup> The DALA decision totaled 9 pages.

Entitlement to accidental disability retirement benefits requires that petitioner's disability be causally connected to a personal injury. “[P]ersonal injury” as defined in G.L. c. 152, § 1(7A) is given the same meaning under G.L. c. 32. *Fender v. Contributory Ret. App. Bd.*, 72 Mass. App. Ct. 755, 761 (2008). For an emotional or mental disability, a personal injury does not arise where the disability “[arose] principally out of a bona fide, personnel action...including termination,” *Retirement Bd. of Salem v. Contributory Retirement Appeal Bd.*, 453 Mass. 286, 289-90 (2009), unless it is the intentional infliction of emotional harm.<sup>4</sup>

Based on the evidence in the record, we conclude that the action of the employer to terminate petitioner's employment was a bona fide, personnel action. We see no evidence in the record to view this action as rising to the level of intentional infliction of emotional harm. Accordingly, we conclude that the magistrate reasonably determined that the petitioner failed to meet his burden of proving his case by a preponderance and that he suffered a personal injury for entitlement to accidental disability retirement benefits. *Murphy v. Contributory Ret. App. Bd.*, 463 Mass. 333, 345 (2012); *Lisbon v. Contributory Ret. App. Bd.*, 41 Mass. App. Ct. 246, 255 (1996) (applicant must show it was “more likely” that the disabling injury, flowing from a work accident, was directly caused by or was the aggravation of a preexisting condition, “than by the natural, cumulative, deteriorative effects of his preexisting diseased condition and unhealthy habits.”).

Furthermore, a condition precedence to the granting of accidental disability retirement benefits is the affirmative certification by a majority of the medical panel to the statutory questions of incapacity, permanence and causation.<sup>5</sup> *Kelley v. Contributory Ret. App. Bd.*, 341 Mass. 611, 613 (1961). A negative certification by the majority medical panel is binding on the retirement board, on DALA, and on CRAB.<sup>6</sup>

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<sup>4</sup> *Agis v. Howard Johnson Co.*, 371 Mass. 140, 355 N.E.2d 315 (1976); *Walsh v. State Board of Retirement*, CR-03-1144 (2005).

<sup>5</sup> The panel addresses three questions: (1) whether the applicant is mentally or physically incapacitated for further employment duties; (2) whether such incapacity is likely to be permanent; and (3) “whether or not the disability is such as might be the natural and proximate result of the accident or hazard undergone on account of which [an accidental disability] retirement is claimed.” G.L. c. 32, § 6(3).

<sup>6</sup> *Malden Retirement Board v. Contributory Retirement Appeal Bd.*, 1 Mass. App. Ct. 420, 423-424 & n.6 (1973).

CRAB may not substitute its judgment for the opinions of the physicians on the regional medical panel, whose function is to provide an independent review of whether an applicant has met the statutory prerequisites of disability, permanence, and potential causation. As long as the panel physicians considered all pertinent facts and applied a proper medical standard, their negative certification is final. This is true even if contrary opinions are possible or have been issued by other physicians.<sup>7</sup> Here, Drs. Kahn and Goldbarg answered the question of causation in the negative. That is, they concluded that the claimed disability was not such as might be the natural and proximate cause of the personal injury sustained on account of which retirement was based. When asked to clarify their responses to the question of causation, they did not change their answers.

There is no indication that the majority panel members failed to consider pertinent medical facts or that they applied an erroneous medical standard.<sup>8</sup> The panel's detailed narrative reports reflect a careful review of the record and a thorough examination of the petitioner. The reports amply satisfy the requirement of *Fairbairn v. Contributory Retirement Appeal Bd.*, 54 Mass. App. Ct. 353, 354 (2002) that the panel members provide a reasoned explanation for their conclusions. In the absence of a determination that the majority medical panel lacked pertinent information or employed an erroneous standard, the denial of the petitioner's application must be upheld.

**Conclusion.** The DALA decision is affirmed. The petitioner did not suffer a personal injury for entitlement to accidental disability retirement benefits pursuant to G.L. c. 32, § 7. Further, in light of the negative certification by the majority medical panel to the question of causation and in the absence of a determination that the majority medical panel lacked pertinent information or employed an erroneous standard, the denial of the petitioner's application must be upheld. **Affirm.**

SO ORDERED.

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<sup>7</sup> *Id.* at 426.

<sup>8</sup> *See id.* at 423-424.

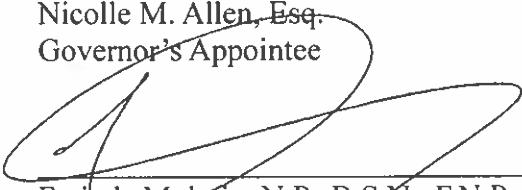
CONTRIBUTORY RETIREMENT APPEAL BOARD<sup>9</sup>

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Date: December 15, 2025

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<sup>9</sup> CRAB Standing Order 2008-1 is silent as to whether a majority vote requires a majority of the members, a majority of the quorum, or a majority of the votes cast. The traditional rule, quoted from Judith A. Roberts' Robert's Rule of Order 110 (1978), is that "[a] majority vote...is a majority of the votes cast, ignoring blanks." A member of a body may be present for purposes of achieving a quorum, but may choose not to vote, in which case the body may take action based on a majority of the votes cast even if the majority of the quorum does not vote in the affirmative. See generally In re Opinion of the Justices, 98 N.H. 530, 532-533 (1953); cf. Cashman v. Entwistle, 213 Mass. 153, 155 (1912) (action is taken on a majority of votes cast; blank ballots "cannot stop the machinery of government").