

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Jonathan Martyna,
Petitioner,

No. CR-23-0306

Dated: October 11, 2024

v.

Dukes County Retirement System,
Respondent.

Appearances:

For Petitioner: Morgan J. Gray, Esq.

For Respondent: James H. Quirk, Jr., Esq.

Administrative Magistrate:

Yakov Malkiel

SUMMARY OF DECISION

Based on the unanimous certificate of a regional medical panel and other pertinent facts, the petitioner established by a preponderance of the evidence that he is entitled to retire for accidental disability.

DECISION

Petitioner Jonathan Martyna appeals from a decision of the Dukes County Retirement System (board) denying his application to retire for accidental disability. An evidentiary hearing took place by Webex on October 3, 2024. Mr. Martyna was the only witness. At and after the hearing, I admitted into evidence exhibits marked 1-19.

Findings of Fact

I find the following facts.

1. Mr. Martyna served as a truck driver and heavy equipment operator for the Oak Bluffs department of public works. He took that position in October 2019. His duties included mowing lawns, trimming trees, filling potholes, and other physical tasks. (Exhibits 1-2, 4; testimony.)

2. As of the time he was hired, Mr. Martyna had never experienced problems with either of his knees. He used insoles in his shoes for an arch irregularity and was being treated with injections for back pain. These issues did not impair his ability to work. (Testimony.)

3. In early December 2019, Mr. Martina suffered a workplace injury to his finger. He missed some time from work and was paid workers' compensation. (Exhibit 10; testimony.)

4. On January 3, 2020, Mr. Martyna was assigned by his supervisor to take down Christmas lights from a tree in a public square. While standing on a bench to perform this task, Mr. Martyna badly twisted his left knee. He soon felt serious pain and became unable to walk without a limp. He completed an injury report and initiated a successful workers' compensation claim. (Exhibits 2, 4, 16; testimony.)

5. Mr. Martyna's access to prompt care for his knee was impaired by the COVID-19 pandemic. An MRI in March 2020 revealed a tear of his medial meniscus. That study also showed some arthritic degeneration. Mr. Martyna underwent arthroscopic knee surgery in June 2020. (Exhibits 4, 15; testimony.)

6. In August 2020, Mr. Martyna returned to work. His knee pain and instability promptly returned. He was unable to perform motions such as bending and climbing. In May 2021, Mr. Martyna underwent a total knee replacement. The operation was followed by six weeks of physical therapy. (Exhibits 7, 8; testimony.)

7. In October 2021, Mr. Martyna returned to work once more. He again found his knee pain to be insurmountable. His last day on the job was in January 2022, after which his physician recommended that he remain out of work indefinitely. (Exhibits 3, 4, 8; testimony.)

8. Approximately in September 2022, Mr. Martyna applied to retire for accidental disability. Dr. Paul Dimond executed a treating physician's supporting statement. (Exhibit 4.)

9. A regional medical panel consisting of three orthopedists convened to evaluate Mr. Martyna's application. The panelists conducted separate examinations during December 2022-January 2023. Thereinafter, all three panelists certified that Mr. Martyna is incapacitated, that the incapacity is permanent, and that it is such as might be the natural and proximate result of Mr. Martyna's January 2020 workplace accident. (Exhibits 5-7.)

10. Dr. Wojciech Bulczynski diagnosed Mr. Martyna with a meniscus tear leading to effusion, pain, postoperative osteoarthritis, and an "[a]ggravation of asymptomatic degenerative arthritis." He viewed these symptoms as "unlikely to resolve with time or any further treatment." On causation, Dr. Bulczynski stated primarily that Mr. Martyna's incapacity is "such as might be" the result of the January 2020 incident. (Exhibit 5.)

11. Dr. Henry Drinker agreed. With respect to causation, he added: "The event on 1/3/20 is opined by this examiner to represent more than a 50% likelihood of being the direct and proximate cause of the subsequent need for treatment and incapacity." (Exhibit 6.)

12. Dr. Douglas Bentley's diagnoses included a meniscus tear and "[p]rogressive post traumatic degenerative arthritis . . . with eventual bone-on-bone apposition." Dr. Bentley noted that Mr. Martyna's history included "pre-existing degenerative disease in the left knee." He nonetheless concluded that Mr. Martyna's current diagnoses are "a direct result of his accident, which occurred at work on 1/3/20." (Exhibit 7.)

13. In May 2023, the board denied Mr. Martyna's application. The board stated concisely that Mr. Martyna had "suffered from other conditions that preexisted his town[] employment," and therefore "failed to prove the necessary element[] of causation." Mr. Martyna timely appealed. (Exhibit 11.)

14. While the appeal was pending, Mr. Martyna was seen by Dr. Richard W. Smith for an examination relating to workers' compensation. Dr. Smith stated his opinion that "the work related injury of 1/3/2020 is the major and the predominant cause of [Mr. Martyna's] disability." (Exhibit 14.)

Analysis

A public employee seeking to retire for accidental disability must prove three main elements: that he is incapacitated, that the incapacity is permanent, and that it was caused by a "personal injury sustained or hazard undergone as a result of, and while in performance of his duties." G.L. c. 32, §7(1).

The board first questions whether the petitioner is permanently incapacitated. On that point, the medical panel's unanimous certificate is close to conclusive. The fundamental purpose of the process established by G.L. c. 32, §§ 6-7, is "to vest in the medical panel the responsibility for determining medical questions which are beyond the common knowledge and experience of the members of the local board (or the Appeal Board)." *Malden Ret. Bd. v. Contributory Ret. Appeal Bd.*, 1 Mass. App. Ct. 420, 423 (1973). Incapacity and permanence are classic "medical questions." *Id.* See *Retirement Bd. of Revere v. Contributory Ret. Appeal Bd. (DiDonato)*, 36 Mass. App. Ct. 99, 111 (1994). They are "in the heartland of the medical panel's expertise." *Cohen v. Massachusetts Teachers' Ret. Syst.*, No. CR-17-210, 2021 WL 9870567, at *3 (DALA Sept. 10, 2021). The record presents no reason to doubt the panelists' conclusion that Mr. Martyna's symptoms are incapacitating and permanent.

The board's challenge to the causation element of Mr. Martyna's case requires a more nuanced analysis. Causation for purposes of § 7(1) is ultimately a legal issue. *Narducci v. Contributory Ret. Appeal Bd.*, 68 Mass. App. Ct. 127, 134-35 (2007). The statute does not call on the medical panelists to resolve that issue: it asks them only whether the member's incapacity

is “such as might be” the result of the workplace accident. In other words, the panelists are only required to certify whether the requisite causal connection is “possible” or “plausible.” *Id.* It remains the member’s burden to prove the causal connection by a preponderance of the evidence. *See Lisbon v. Contributory Ret. Appeal Bd.*, 41 Mass. App. Ct. 246, 255 (1996).

The main question raised by the board with respect to causation is whether Mr. Martyna’s incapacity might be the result of “the natural, cumulative, deteriorative effects of a pre-existing condition.” *Lisbon*, 41 Mass. App. Ct. at 255. In this regard, the board points to Mr. Martyna’s arthritis, his back pain, and his foot issue; the board suggests essentially that Mr. Martyna might have ended up in the same incapacitated state even absent the January 2020 incident.

The inquiry into whether preexisting conditions would or would not have led to a disability in a counterfactual scenario is advanced little by common knowledge and experience. A fact finder undertaking such an inquiry must rely instead on expert input. *See Robinson v. Contributory Ret. Bd.*, 20 Mass. App. Ct. 634, 639 (1985). In this context, the views of physicians other than the regional medical panelists require serious attention. *See Zamarro v. Massachusetts Teachers’ Ret. Syst.*, No. CR-95-924, at *10 (DALA Nov. 25, 1997, *aff’d*, CRAB Apr. 6, 1998). Still, when the panelists go beyond the statutory question of medical possibility and opine on whether the workplace accident *actually* caused the member’s disability, those opinions are especially weighty. *See Christopher C. v. Boston Ret. Bd.*, No. CR-19-342, 2023 WL 3434934, at *7 (DALA May 5, 2023). *See also Hollup v. Worcester Ret. Bd.*, 103 Mass. App. Ct. 157, 162 (2023).¹

¹ As the board’s counsel observed at the hearing, a medical panel is not permitted to return “an unqualified certificate that [the incapacity] was ‘not work-related.’” *Noone v. Contributory Ret. Appeal Bd.*, 34 Mass. App. Ct. 756, 761 (1993) (emphasis added). “This is because the local board is entitled to know whether, in the opinion of the panel, there is a

The experts' input is one sided here. Dr. Bulczynski mostly hewed to the statutory "such as might be" language, though he specifically called Mr. Martyna's preexisting degenerative arthritis "asymptomatic." The two other panelists were more emphatic. Dr. Drinker saw a "more than a 50% likelihood" of a causal connection between Mr. Martyna's disability and his January 2020 accident. Dr. Bentley described the disability as the "direct result of [the] accident." All three panelists referenced Mr. Martyna's osteoarthritis in their narratives. They were not persuaded that it was responsible for his symptoms. They also ascribed no significance to Mr. Martyna's back and foot issues, which were disclosed to them by his medical records. *See Robillard v. State Bd. of Ret.*, No. CR-18-470, 2022 WL 18283524, at *4 (DALA Dec. 19, 2022). Dr. Smith's opinion in the workers' compensation proceedings only buttresses Mr. Martyna's causation case.

The medical opinions collected in the record are consistent with the timeline of Mr. Martyna's symptomology, namely the materialization of serious knee problems only after a cartilage-destroying fall. *See Hudson v. Boston Ret. Bd.*, No. CR-19-582, 2022 WL 16921456, at *6 (DALA May 6, 2022). It is also highly significant that the opinions in Mr. Martyna's favor are unrebutted by any contrary expert analyses. On the pivotal question of whether Mr. Martyna's disability flows from preexisting conditions, very limited weight can be given to a board's skepticism, even if it is informed by experience with prior cases. The analysis must be driven first and foremost by the opinions of the qualified experts.

medical *possibility* that the causal relation exists." *Id.* at 762. On the other hand, "[w]here it is the opinion of the medical panel that the 'disability *is* . . . the natural and proximate result' . . . the required statement of possibility of causal connection is of course included in the unqualified conclusion." *Kelley v. Contributory Ret. Appeal Bd.*, 341 Mass. 611, 615-16 (1961) (emphasis added). *See also Narducci*, 68 Mass. App. Ct. at 134-35.

Conclusion and Order

Mr. Martyna 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