COMMONWEALTH OF MASSACHUSETTS
CONTRIBUTORY RETIREMENT APPEAL BOARD

MARYTZA REYES,

Petitioner-Appellant

v.

STATE BOARD OF RETIREMENT,

Respondent-Appellee.

CR-13-598

DECISION

Petitioner Marytza Reyes appeals from a decision of an Administrative Magistrate of the Division of Administrative Law Appeals (DALA) allowing the Respondent State Board of Retirement's (SBR) Motion for Summary Decision regarding its decision to deny her application for accidental disability retirement. The magistrate admitted ten exhibits. In lieu of the presentation of testimony and further evidence, a discussion was held with the magistrate, SBR counsel, and Ms. Reyes on November 3, 2016. The DALA decision is dated September 29, 2017. Ms. Reyes 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 – 24 as our own and incorporate the DALA decision by reference. For the reasons discussed in the Conclusion and Ruling, we affirm. Ms. Reyes failed to meet her burden of proof for entitlement to accidental disability retirement benefits pursuant to G.L. c. 32, § 7.

Ms. Reyes' application for accidental disability retirement benefits is based on claims of work conflict and workplace harassment by her supervisor. For entitlement to accidental disability retirement benefits, Ms. Reyes must prove by a preponderance of the evidence that she is totally and permanently disabled from performing the essential duties of her position as a result of a personal injury sustained or a hazard undergone while in the performance of her

duties. G.L. c. 32, § 7. To do so, she must demonstrate that she sustained a personal injury based on a single incident or a series of incidents or that the injury was the result of exposure to an identifiable condition that is not common and necessary to all or a great many occupations. *Blanchette v. Contributory Retirement Appeal Bd*., 20 Mass. App. Ct. 479, 485, 481 (1985) *quoting Zerofski's Case* 385 Mass. 590, 595 (1982); *Sugrue v. Contributory Retirement Appeal Bd.*, 45 Mass. App. Ct. 1, 694 N.E.2d 391 (1998). It has long been recognized that an emotional or mental disability arising from work-related incidences is a personal injury under the retirement laws. *Fender v. Contributory Retirement Appeal Bd*., 72 Mass. App, Ct. 755, 762, 894 N.E. 2d 295 (2008).

Here, the magistrate correctly concluded that Ms. Reyes failed to establish that she sustained a compensable personal injury. Ms. Reyes, nor did her supervisor or employer, filed notices of injury relative to any of the events claimed by Ms. Reyes that resulted in her emotional disability. Moreover, we also agree with the magistrate that workplace disagreements and conflicts are "not common and necessary to all or a great many occupations" to constitute a workplace hazard. *Blanchette v. Contributory Retirement Appeal Bd*., 20 Mass. App. Ct. 479, 485 (1985) (internal quotation and citations omitted); *Madonna v. Fall River Retirement Bd*., CR-10-175 (CRAB Nov. 2013); *Zajac v. State Bd. of Retirement*, CR-12-444 (CRAB Aug. 2015); *Ibanez v. Boston Retirement Bd*., CR-13-386 (CRAB Feb. 2022); *Porter v. Barnstable County Retirement Bd*., CR-14-248 (Mar. 2019 and March 2022).

Nonetheless, under the retirement law, bona fide personnel actions may not form the basis for a claim of emotional harm unless they constitute the intentional infliction of emotional distress. *See Sugrue v. Contributory Retirement Appeal Bd.*, 45 Mass. App. Ct. 1, 694 N.E.2d 391 (1998). For conduct to be an intentional infliction of emotional harm, it must be "extreme and outrageous, beyond all possible bounds of decency, and utterly intolerable in a civilized society." *Agis v. Howard Johnson Co.*, 371 Mass. 140, 144-45 (1976). Liability "cannot be predicated upon 'mere insults, indignities, threats, annoyance, petty oppressions, or other trivialities.'" *Foley v. Polaroid Corp.*, 400 Mass. 82, 99 (1987); Restatement (Second) of Torts §46, comment d (1965). We agree with the magistrate that it was not unreasonable for her supervisor to require her to account for all her absences given her history of chronic absenteeism and addressing work performance issues. Issuing reprimands were also within the supervisor's authority. The actions taken by Ms. Reyes' supervisor were bona fide personnel actions and did

not amount to an intentional infliction of emotional harm. Ms. Reyes provided no evidence to demonstrate the supervisor's conduct was extreme and outrageous beyond all possible bounds of decency and utterly intolerable in a civilized community. *Agis v. Howard Johnson Co.*, 371 Mass. 140, 355 N.E.2d 315 (1976); *Walsh v. State Board of Retirement*, CR-03-1144 (2005). In the absence of intentional infliction of emotional distress, Ms. Reyes is not entitled to accidental disability retirement benefits.

Conclusion. The DALA decision is affirmed. Ms. Reyes failed to meet her burden to establish entitlement to accidental disability retirement benefits pursuant to G.L. c. 32, § 7.

SO ORDERED.

CONTRIBUTORY RETIREMENT APPEAL BOARD

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Date: February 28, 2024