COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.	**Division of Administrative Law Appeals**
Thomas McDonough Petitioner v. State Board of Retirement, Respondent	Docket No. CR-15-098 Dated: March 1, 2024

Appearance for Petitioner:

Thomas F. Gibson, Esq.
Law Offices of Thomas F. Gibson
2400 Massachusetts Ave.
Cambridge, MA 02140

Appearance for Respondent:

Sarah G. Kim, Esq.
State Board of Retirement
One Winter St., 8th Floor
Boston, MA 02108

Administrative Magistrate:

Bonney Cashin

Summary of Remand Decision

Mr. McDonough has shown, by a preponderance of the evidence, that J.M.'s death was the predominant contributing cause of his increased depression and anxiety.

REMAND DECISION

Introduction

By order of the Contributory Retirement Appeal Board (CRAB) dated August 24, 2022, this matter was remanded to the Division of Administrative Law Appeals (DALA)

"to consider and fully assess all possible causes of Mr. McDonough's Claim for accidental disability retirement, including the stress related to his new job responsibilities. This assessment is needed to properly determine the 'natural and proximate' cause of Mr. McDonough's psychological disability as it relates to the issues of causation. In making this determination, the magistrate may consider any additional evidence the parties submit."[1] In its remand CRAB noted that "[i]t does not appear from the DALA decision that a proper evaluation of whether Mr. McDonough's claimed injury was more than a "contributing" or "aggravating "factor to his pre-existing conditions of anxiety, depression, and ADHD, as there are indications in the record of other possible causes of his psychological disability."[2] This Remand Decision addresses the issue raised by CRAB. I continue to rely on the Decision dated September 8, 2017, at 10-12 where I discuss the only issue in dispute raised by the parties.

The parties submitted additional argument on June 15, 2023. They also provided a copy of a treatment note referenced by CRAB in its Remand Order.[3]

Approximately four pages of the Remand Order were in a section titled "Background." There are numerous references to the Findings of Fact in the magistrate's decision dated September 8, 2017, and to the exhibits in the record. It is not clear whether CRAB has adopted any of the 53 findings from the magistrate's decision, and so I incorporate them into this remand decision for the reader's convenience.

[1] Decision and Remand Order at 5.
[2] Decision and Remand Order at 4.
[3] Ex. 8 (10/23/2010, pp. 118-120.)

FINDINGS OF FACT

Based on the evidence in the record and reasonable inferences drawn from it, I make the following findings of fact:

1. Thomas F. McDonough was born in 1951. (Ex. 3.)

2. Mr. McDonough was licensed in Massachusetts as an Alcohol and Drug Addiction Counselor I. (McDonough Test.)

3. Mr. McDonough held a GED. (Ex. 3.)

4. Mr. McDonough was employed by the Chelsea Soldiers' Home (CSH) from October 25, 1998, until February 5, 2012. (Ex. 3.)

5. Mr. McDonough was employed as a substance abuse counselor at CSH until early 2010, and, since 2011, also as Director of Residential and Addictive Services until February 5, 2012. (McDonough Test.)

6. Mr. McDonough's duties as a substance abuse counselor included one-on-one counseling with residents, and helping residents achieve or maintain sobriety. (McDonough Test.)

7. Mr. McDonough held both regularly scheduled appointments for counseling residents and conducted spontaneous counseling sessions with residents throughout his day. (McDonough Test.)

8. If Mr. McDonough was not physically at CSH, he would receive phone calls from staff or residents for counseling. (McDonough Test.)

9. Mr. McDonough gave his phone number to residents who he believed "were on a slippery slope" and made himself available to them. (McDonough Test.)

10. As Director of Residential and Addictive Services, McDonough's duties included supervising staff including social workers and adjutant staff, and overseeing admissions, treatment, and other regular management of operations at CSH. (McDonough Test., Ex. 5.)

11. Mr. McDonough's responsibilities as Director of Residential and Addictive Services were in addition to his continuing direct care duties as a Substance Abuse Counselor. (McDonough Test., Ex. 5.)

12. Mr. McDonough has been dealing with depression, attention deficit disorder, and anxiety for about 14 years, although these conditions were under control until late in 2010. (McDonough Test, Ex. 4.)

13. Mr. McDonough began to suffer from depression and anxiety regarding his work at CSH and sought treatment from the Department of Veterans Affairs. (McDonough Test.)

14. In December of 2010, Mr. McDonough began treatment under the care of Dr. Sean R. Stetson, M.D. for his generalized anxiety disorder, recurring major depressive disorder, and attention deficient/hyperactivity disorder. (McDonough Test., Exs. 4, 16.)

15. Mr. McDonough was also being treated by primary care physicians for hypertension, diabetes mellitus, spinal stenosis and chronic back, neck, and hip pain. He also began treatment for atrial fibrillation in 2011. (Exs. 15, 16.)

16. In 2011, about a year into his position as Director of Residential and Addictive Services, Mr. McDonough reported to his supervisor, Betty Anne Ritcey, that he felt increased stress with his new responsibilities. (Ex. 5.)

17. Ms. Ritcey's concern about Mr. McDonough increased in fall 2011, "as he started to 'second-guess' himself on decisions and actually seemed to avoid making decisions when possible… He seemed more bothered and upset about residents who relapsed in their substance abuse journey whereas previously he seemed to really understand that relapse was part of recovery." (Ex. 5.)

18. On November 7, 2011, Mr. McDonough informed Ms. Ritcey that he could not come in to work after a stressful discussion with a resident, E.D., regarding a relapse in sobriety. (McDonough Test., Ex. 5.)

19. Mr. McDonough had recommended that, after his relapse, E.D. be put on restriction at CSH for the week, but E.D. disagreed with this decision. Mr. McDonough stated "he didn't agree with me as far as the restriction, and he went over my head. And pretty much I was told to leave him alone…." (McDonough Test.)

20. November 7, 2011, was the first time that Mr. McDonough missed work because of "the stressfulness of being second-guessed." (McDonough Test.)

21. On November 15, 2011, Mr. McDonough had a meeting with a resident, J.M., who had recently relapsed. (McDonough Test.)

22. J.M. had been taking OxyContin, and he had a history of heroin addiction. (McDonough Test.)

23. Mr. McDonough wanted J.M. to go to a detox program, and J.M. disagreed. (McDonough Test.)

24. Against his usual practice and because of being overruled on his decision about E.D., Mr. McDonough decided to send J.M. to his doctor for another opinion on whether J.M. should go to detox. (McDonough Test.)

25. The doctor told Mr. McDonough that J.M. did not need detox. Mr. McDonough placed J.M. on restriction instead of requiring him to go to detox. (McDonough Test.)

26. On the morning of November 16, 2011, J.M. was found dead in his room. The cause of J.M.'s death is not stated in the record. (McDonough Test.)

27. On November 16, while Mr. McDonough was driving to work, a resident of CSH, D.C., called Mr. McDonough and told him of J.M.'s death. (McDonough Test.)

28. D.C. was a childhood friend of J.M. and was being treated by Mr. McDonough at this time. (McDonough Test.)

29. Mr. McDonough stated that the call from D.C. was not just to inform Mr. McDonough of J.M.'s death, but because D.C. "was devastated" and "was hysterical when he was calling [him]." (McDonough Test.)

30. When Mr. McDonough arrived at work, there was a note on his door from his immediate supervisor, Ms. Ritcey, requesting that he see her. Ms. Ritcey confirmed J.M.'s death and emphasized to Mr. McDonough that the death was not his fault. (McDonough Test.)

31. Mr. McDonough's supervisor sent him home because he was "devastated, beside himself, unable to function…." (McDonough Test., Ex. 5.)

32. Mr. McDonough was convinced that J.M. did not cease his drug use and that if J.M. had been admitted to a detox facility, he would not have been able to continue any drug use and he could have received medical treatment if his death was due to other causes. (McDonough Test.)

33. Mr. McDonough did not attend work for over one week. When he returned to work, he continued to feel guilty and could not "stop thinking if [he] had sent [J.M.] to detox things may have been different." (McDonough Test., Exs. 5, 15.)

34. Mr. McDonough continued to feel he was being second-guessed about his counseling and treatment of residents. (McDonough Test.)

35. McDonough continued counseling with Dr. Stetson. (McDonough Test.)

36. On February 5, 2012, Mr. McDonough went out on medical leave and did not return to work. (McDonough Test.)

37. On March 14, 2013, Mr. McDonough applied for Ordinary and Accidental Disability retirement pursuant to G.L. c. 32 §§ 6 and 7, citing Generalized Anxiety Disorder, Recurrent Major Depressive Disorder and Attention Deficit/Hyperactivity Disorder, as well as cardiac and back and knee orthopedic issues. (McDonough Test., Ex. 3.)

38. Mr. McDonough developed and began treatment for atrial fibrillation in 2011. This condition had not occurred before; he eventually had surgery for it. Mr. McDonough's cardiologist, Dr. Alexei Shivilkin, M.D. opined that "high levels of psychological stress can certainly trigger a relapse of his arrhythmia. Therefore I do not recommend him to continue working in a high stress psychological situation." (McDonough Test., Exs. 8, 15.)

39. In his application, Mr. McDonough identified J.M.'s death on November 16, 2011 as the basis for his accidental disability application, considering it to be both a personal injury and a "hazard undergone," in the language of c. 32. He identified

November 16, 2011 to February 5, 2012 as the period of time he was exposed to the hazard. (Ex. 3.)

40. Dr. Stetson submitted a Physician's Statement as part of Mr. McDonough's retirement application. He concluded that Mr. McDonough's physical and emotional stress associated with his work position rendered him permanently disabled. Dr. Stetson referred to Mr. McDonough's previous depression and anxiety worsening with his promotion to Director of Residential and Addiction Services. Dr. Stetson identified Mr. McDonough's decision not to admit J.M. into detox, and J.M.'s subsequent death as the events that triggered Mr. McDonough's symptoms to worsen to the point of not being able to return to work. (Ex. 4.)

41. An Employer's Statement form that is part of a member's accidental disability application was completed by the Commandant at the Chelsea Soldiers' Home, Michael Resca, and the Chief Operating Officer, Ms. Ritcey. Mr. Resca identified Mr. McDonough's decision not to admit J.M. to detox, and J.M.'s subsequent death as an incident related to Mr. McDonough's job duties that may have contributed to Mr. McDonough's disability. (Ex. 5.)

42. Mr. McDonough filed for Workers' Compensation benefits, and it was resolved with a lump sum settlement. (McDonough Test., Ex. 17).

43. The Public Employee Retirement Administration Commission (PERAC), pursuant to G.L. c. 32 §§ 6(3) and 7(1), convened a regional medical panel comprised of three psychiatrists to examine Mr. McDonough. (Ex. 7).

44. Rafael Ornstein, M.D. examined him on July 27, 2013, Michael W. Kahn, M.D. examined him on June 28, 2013, and Tracy Mullare, M.D. examined him on July 29, 2013. (Ex. 7.)

45. The panel members reviewed Mr. McDonough's accidental disability application, supporting statements, his medical records, and his job description. (Ex. 6.)

46. Drs. Ornstein, Khan, and Mullare concluded that Mr. McDonough was mentally incapable of performing the essential duties of his job as described in the job description, his incapacity was likely to be permanent, and that his incapacity is such as might be the natural and proximate result of the hazard undergone on account of which his retirement is claimed. (Ex. 7.)

47. Dr. Ornstein stated that Mr. McDonough's symptoms began after his promotion to the Director position. Mr. McDonough was "uncharacteristically uncertain" about the correct treatment for J.M. and left the decision up to J.M.'s doctor, leading to his death. Mr. McDonough "became markedly depressed and anxious and lost the confidence that had marked his 14 years of work [at the CSH]. He quickly went from being an effective worker and a man who enjoyed life to someone who was severely psychiatrically disabled." (Ex. 7.)

48. Dr. Kahn stated that Mr. McDonough had acquired more responsibility than he was comfortable with as a result of his promotion, and "he was becoming progressively overwhelmed by the demands of his new job in November when his childhood friend [J.M.] died, as described above, and this was something of a 'last straw' which eventually led to his leaving the job." Dr. Khan stated that the job itself was the

primary stressor, the death of J.M. was traumatic for Mr. McDonough, and may have resulted in his incapacity. (Ex. 7).

49. Dr. Mullare stated that Mr. McDonough's "experience of the death of a resident while performing his job duties predisposed him to development of a Post Traumatic Stress Disorder, and worsening depressive and anxiety symptoms which account for his emotional impairment for which he applies for disability." (Ex. 7.)

50. On October 30, 2013, the Board voted to approve Mr. McDonough's application for Ordinary Disability Retirement and to table his application for Accidental Disability Retirement. (Ex. 9.)

51. On February 26, 2015, the Board denied Mr. McDonough's Accidental Disability Retirement application. (Ex. 1.)

52. The Board's decision stated, contrary to the conclusion of the medical panel that, "a majority of the panel concluded that his condition was not caused or aggravated by reason of a personal injury sustained or a hazard undergone as a result of, and while in the performance of his work-related duties." (Ex. 1.)

53. On March 9, 2015, Mr. McDonough appealed the Board's decision to the Division of Administrative Law Appeals. (Ex. 2.)

ADDITIONAL FINDINGS OF FACT

54. Mr. McDonough has been in recovery from a substance use disorder since 1989. (Ex. 8 Tab 9 at 77, Tab 10 at 196.) His medical records refer to this only in his medical history. (Ex. 8 Tab 9 and 10 generally.) There is no evidence that his status had any effect on his mental state during the events referenced in this decision.

55. Mr. McDonough began treatment at the Boston VA on December 7, 2010. (Ex. 8 Tab 10 at 196.)

56. In addition to Boston VA PCP appointments for his numerous physical ailments, Mr. McDonough had regular appointments with Francis O'Sullivan,[4] a Psychiatric Clinical Nurse Specialist, for medication management and therapy.[5] (Ex. 8 Tab 9.)

57. At his initial appointment with Mr. O'Sullivan on December 23, 2010, Mr. McDonough's chief complaint was anxiety. He related that he had to take a lorazepam to calm down upon learning that he had to sit in on a meeting with one hour's notice. He was prescribed lorazepam prn[6] by his prior provider, which he used occasionally. He also was previously prescribed Wellbutrin, Concerta, and Ritalin. (Ex. 8 Tab 9 at 75, 77, 82; Tab 10 at 196-197.)

58. After several medication changes due to both side effects and control of anxiety and depression in January through May, Mr. McDonough reported that the medication regime "seemed right." (Ex. 8 Tab 9 at 67.)

59. At his next appointment with Mr. O'Sullivan on September 19, 2011, Mr. McDonough reported that he was tolerating his medications. (Ex. 8 Tab 9 at 68.)

60. During a primary care visit on October 31, 2011, Mr. McDonough told a nurse that he was considering applying for accidental disability retirement because of

[4] Mr. McDonough knew Mr. O'Sullivan professionally. (McDonough Test. at Tr.14.)
[5] Mr. O'Sullivan's apparent supervisor, Dr. Sean Stetson, completed the Treating Physician's Statement. (Ex. 4.)
[6] "Prn" means "as needed." Merriam-Webster.com Dictionary, Merriam-Webster, https://www.merriam-webster.com/dictionary/prn Accessed 28 Jan. 2024.

work. His anxiety and depression were worse, and he felt burnt out, according to the Note. (Ex. 8 Tab 10 at 156.)

61. That same day, Mr. McDonough met with Mr. O'Sullivan. Mr. McDonough was tolerating his medication regime yet feeling stressed and tense. He was struggling at work---"getting fried," and just wanted to be alone at home, which worried his wife. Mr. McDonough mentioned talking with "providers" about "retirement for stress," a likely reference to his provider visit that day. (Ex. 8 Tab 9 at 60-61.)

62. On November 23, 2011, Mr. McDonough was still stressed and tense, "[m]ade worse" by the recent death at the CSH of a childhood friend for which he felt responsible. (Ex. 8 Tab 9 at 57-58.)

63. On December 22, 2011, Mr. McDonough was still feeling guilty and responsible for D.M.'s death. He continued to feel very stressed and tense and the time off he had taken to rest did not give him any relief. He was considering applying for accidental disability retirement. (Ex. 8 Tab 9 at 54-58.)

64. Mr. McDonough's increasing tendency to second guess his decisions included likely included administrative as well as clinical judgment calls. (McDonough Test. 12, 17, 39; Ex. 5.)

65. Mr. McDonough continues to replay J.M.'s death in his mind, and its "haunts" him. He went out on medical leave February 5, 2012, and did not return to work. (McDonough Test. 28, 40-41.)

66. Dr. Stetson and Mr. O'Sullivan opined that Mr. McDonough was "greatly affected by [J.M.'s] death and felt guilty and frustrated as well as experiencing

bereavement at the unexpected loss of a resident who had also been a childhood friend. …[T]his death was very significant." (Ex. 16.)

67. The medical panel members all considered Mr. McDonough's past psychiatric history, his growing anxiety and stress about his new job responsibilities and concluded that J.M.'s death worsened his depression and anxiety to the point of disability. While Dr. Kahn referred to the overall stress from Mr. McDonough's new role as "the primary difficulty," he acknowledged that J.M.'s death was "something of a 'last straw.'" Dr. Mullare noted Mr. McDonough's history of anxiety and depression for which he received appropriate treatment. He concluded: "[Mr. McDonough] was able to perform the essentials of his job duties until decompensation directly related to the death of the resident under his care." (Ex. 7.)

68. Mr. McDonough's last Boston VA appointment in evidence was on July 3, 2012. His therapy appointments in January and February 2012 focus on his job stress, anxiety, and his guilt over J.M.'s death. Following his last day of work on February 5, 2012, his therapy appointments focus on his depression and coping challenges. (Ex. 8 Tab 9.)

69. At a PCP appointment on May 1, 2012, Mr. Mc-Donough requested "a letter at some point in support of need to leave his job secondary to exacerbation of anxiety/depression." (Ex. 8 Tab 10 at 120.)

70. Ms. Ritcey did not notice a change in Mr. McDonough until about a year into his new position. He acknowledged he was feeling stressed by his new responsibilities, and she mentored him by providing management skills. (Ex. 5.)

71. She became concerned in the fall 2011, when he started to second guess himself. He seemed to have less patience with residents who relapsed and had trouble focusing on issues and tasks. Substance abuse counseling, "his absolute strength" seemed to become a "difficult and painful chore." She had to take some responsibilities away from him. (Ex. 5.)

72. Ms. Ritcey saw J.M.'s death as the "final tragedy" for Mr. McDonough. She described him as "devastated, beside himself, unable to function." He was unable to perform his duties when he returned to work for a few days, and she sent him home. She spoke with him during his leave and did not detect any improvement. (Ex. 5.)

73. Ms. Ritcey thought highly of Mr. McDonough's clinical skills, stating that he excelled as a LADC. (Ex. 5.)

DISCUSSION

Accidental disability retirement is granted to a retirement system member who is unable to perform his essential job duties, when such inability is likely to remain permanent until retirement age, and when the disability is by reason of an injury or series of injuries or of a hazard undergone as a result of and while in the performance of his job duties. G. L. c. 32, §7(1). An applicant must demonstrate by a preponderance of the evidence[7] either that a disability "stemmed from a single work-related event or series of events" or, "if the disability was the product of gradual deterioration, that the employment [had] exposed [the employee] to an identifiable condition…that is not

[7] "[T]he plaintiff's burden of proof is to show causation by a probability or by "more than the possibility or chance" of the existence of a causal connection. *Tassinari's Case*, 9 Mass. App. Ct. 683, 686 (1980)." *Robinson v. Contributory Ret. App. Bd.*, 20 Mass. App. Ct. 634, 641 (1985).

common or necessary to all or a great many occupations." *Blanchette v. Contributory Ret. App. Bd*., 20 Mass. App. Ct. 479, 485 (1985) (internal citations and quotations omitted).[8]

A mental or emotional disability resulting from a single injury or a series of work–related injuries has been recognized as a "personal injury" under c. 32, §7(1). *Fender v. Contributory Retirement Appeal Bd*., 72 Mass. App. Ct. 755, 762 (2008); *Blanchette*, 20 Mass. at 482. The term "personal injury" is to be "interpreted in harmony with c. 152," the workers' compensation statute. *Sugrue v. Contributory Ret. App. Bd*., 45 Mass. App. Ct. 1, n.4 (1998). Under this statute, personal injuries "include mental or emotional disabilities only where the predominant contributing cause of such disability is an event or series of events occurring within employment." G. L. c. 152, § 1(7A).

Mr. McDonough was awarded ordinary disability retirement under G.L. c 32, § 6 due to his emotional disability, and therefore the only issue is whether Mr. McDonough's permanent disability was the natural result of work-related events and whether those events come within the accidental disability requirements. To prevail, Mr. McDonough must prove that his injury was sustained as a result of and while in the performance of his duties at CSH. That is, he must prove that his personal injury was a "natural and proximate cause" of his incapacity. *Fender, 72* Mass. App. Ct. at 761, *Campbell v. Contributory Ret. App. Bd.*, 17 Mass. App. Ct. 1018, 1019 (1984) *rev. denied* 391 Mass. 1105 (1984).

Mr. McDonough filed for accidental disability on March 14, 2013, and only events undergone within two years prior to the filing of this application shall be

[8] Mr. McDonough's injury does not fall within the second prong, and so I have not considered it.

considered pursuant to G.L. c. 32, § 7(1). The events Mr. McDonough relied on occurred within this two-year period.

Aggravation of a pre-existing condition to the point of total and permanent disability satisfies the "natural and proximate" cause requirement. *Baruffaldi v. Contributory Ret. App. Bd.*, 337 Mass. 495, 499 (1958). Massachusetts courts have held that to meet the "natural and proximate cause" standard, the applicant's work-related incident must be more than a "contributing" or "aggravating" factor to a pre-existing condition. *Blanchette*, 20 Mass. App. Ct. at 485; *Campbell v. Contributory Ret. App. Bd.*, 17 Mass. App. Ct. 1018, 1019. The Supreme Judicial Court has explained that for an employment event to be more than a "contributing cause," it must be found to be "a significant contributing cause to [the] employee's disability." *Robinson's Case*, 416 Mass. at 623.

Because questions of medical causation tend to exceed common knowledge and experience, the finder of fact is expected to be "guided" on such questions by expert testimony. *Smith v. Gloucester Ret. Bd. and Public Employees Ret. Admin. Com.,* CR-19-493 (DALA, Apr. 22, 2022) citing *Robinson v. Contributory Ret. App. Bd*., 20 Mass. App. Ct. at 639. Correspondingly, the member's proof of causation ordinarily must rely on one or more expert opinions. *Id*. *See generally Santiago v. Rich Prod. Corp.*, 92 Mass. App. Ct. 577, 585 (2017); *Pitts v. Wingate at Brighton, Inc.,*82 Mass. App. Ct. 285, 289 (2012). *Smith v. Gloucester Ret. Bd. and Public Employees Ret. Admin. Com.,* *5. This principle applies when a factfinder must determine whether a disability is the result of a preexisting condition that would have progressed naturally into the member's current

symptoms even if the employment event had not occurred, or whether the disability is the result of the claimed injury.

A positive medical panel is a prerequisite to a grant of accidental disability retirement. G. L. c. 32, s. 6(3)(a). A medical panel provides the necessary medical expertise on whether the required causal connection is "possible" or "plausible." *Narducci v. Contributory Ret. App. Bd*., 68 Mass. App. Ct. 127, 134-135.

Information and opinions contained in the narrative statements of the doctors who comprise the regional medical panel, including clarifications, may, except for unqualified opinions as to actual causation, be considered by a retirement board and CRAB on the question of causality. "... [A] medical panelist may have useful information and learning to impart that will help CRAB reach an intelligent decision on issues of causation. The better the medicine or science is understood, the better a lay decisionmaker can make an informed judgement on such questions." *Id.* at 135.

The medical panel agreed unanimously that Mr. McDonough was permanently disabled at work in the performance of his duties. While an affirmative certificate does not require approval (*Kelley*, 341 Mass. at 614) and is not conclusive on causation (*Lisbon*, 41 Mass. App. Ct. at 254), in this case I give it considerable weight, because all medical panel members described differences in Mr. McDonough's mental health before and after J.M. 's death.[9] See Findings 46-49, 67.

Mr. McDonough began working at the CSH in 1998. He was diagnosed with anxiety, depression, and ADHD in 1998 or earlier. These conditions were under control

[9] "The probative value of the expert testimony is for the fact-finding tribunal to decide…." *Robinson*, 20 Mass. App. Ct. at 639.

until late in 2010, when he sought further treatment for anxiety and depression.[10] Mr. McDonough was competent, confident, and successful in his LADC role. His supervisor said he excelled at it. There is no evidence that his anxiety and depression affected his work until late in 2010. There is no evidence at all that other aspects of his life were affected by anxiety or depression or that his treatment was because of factors other than his work.

Mr. McDonough was experiencing greater anxiety and depression in 2011 because of the stress of his new position. He took steps to manage his mental state by trying different medications and by speaking with his supervisor. Throughout this period, he continued to work, until November 7, 2011, after a stressful difficult conversation with a resident the day before. He was out for one day. A week later, on November 15, 2011, he met with J.M., and had another difficult experience. J.M. was found dead the next morning. Mr. McDonough took some time off but could not shake the feeling he was responsible for J.M.'s death. No doubt this feeling was intensified by their childhood friendship. This is the event that caused Mr. McDonough to stop working. This is the event that he continues to replay in his mind, the one that haunts him. He went out on medical leave February 5, 2012, and did not return to work. Test. 28, 40-41

J.M.'s death was a pivotal event for Mr. McDonough. As his mental health providers, Dr. Stetson and Mr. O'Sullivan were in the best position to assess Mr. McDonough over time. They described Mr. McDonough as greatly affected by J.M.'s death. Ms. Ritcey is not a medical provider, but she has worked closely with Mr.

[10] The medical record does not describe the effect, if any, of ADHD on Mr. McDonough's mental state. Ex. 8.

McDonough throughout his employment at CSH. She was in the best position to observe changes in him day to day. She wrote a lengthy Employer's Statement detailing her concerns and supervision. She described Mr. McDonough as "devastated, beside himself, unable to function." Findings 63, 64, 66, 68, 70-73

The findings do not point to any evidence of a nonmedical nature that would tend to contradict the expert's opinion on causation. *Robinson* at 640. Although Mr. McDonough's depression and anxiety had increased during 2011 because of his increased job responsibilities, he continued to work. A couple of weeks before J.M.'s death he mentioned retirement to his medical providers, but the medical notes do not reflect any real discussion. Mr. McDonough did not take any concrete steps toward retirement. *See T.A. v. Mass. Teachers' Ret. Sys*., 29-30, 32 (DALA, Dec. 12, 2019). It is not unusual when all is not going well at work for people to consider their options. At worst, the evidence is inconclusive as to whether Mr. McDonough would have retired but for J.M.'s death. This case is unlike *Blanchette* in which the plaintiff had a 34-year history of severe psychoneurosis, multiple jobs where he had difficulties with coworkers and supervisors before the events leading to his application for accidental disability retirement. 20 Mass. App. Ct. at 480-482

Finally, I found Mr. McDonough to be a credible witness. He was forthright and answered questions completely. Based on his demeanor, I concluded that J.M.'s death was still upsetting for him to discuss.

CONCLUSION

Mr. McDonough has shown, by a preponderance of the evidence that J.M.'s death was the predominant contributing cause to his workplace injury, that is, his increased depression and anxiety. The retirement board's decision remains reversed.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Bonney Cashin

Bonney Cashin
Administrative Magistrate

DATED: March 1, 2024