COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss. Division of Administrative Law Appeals

John McEachern,
Petitioner

v. Docket No. CR-17-855
Date: Apr. 4, 2025

Weymouth Retirement Board,
Respondent

Appearance for Petitioner:

Michael C. Akashian, Esq.

Appearance for Respondent:

Michael Sacco, Esq.

Administrative Magistrate:

Kenneth J. Forton

SUMMARY OF DECISION

After the medical panel physicians answered clarifying questions, it is impossible to discern whether there is a majority medical panel on the issue of causation. One doctor clearly opines "yes." Another opines "no." The third equivocates between an underlying condition and two workplace injuries. Without a majority yes or no on causation, it is impossible to apply the retirement law because a negative panel would require me to dismiss the appeal unless certain limited conditions are present, and a positive panel would require a detailed factual analysis of causation that typically relies, at least in part, on the learned opinions of the panel physicians. A remand for a new medical panel is therefore required.

DECISION

Petitioner John McEachern timely appealed, under G.L. c. 32, § 16(4), the September 20, 2017 decision of Respondent Weymouth Retirement Board to deny his

application for accidental disability retirement. DALA ordered the parties to file a joint pre-hearing memorandum, which they did on June 15, 2018, along with 43 proposed exhibits. A hearing was held on December 12, 2018, after which the parties each submitted closing briefs: Petitioner on February 11, 2019 and Respondent on March 25, 2019. On October 23, 2024, DALA reassigned this appeal to me. Mr. McEachern requested a rehearing.

On March 12, 2025, I conducted the rehearing by Webex video conference. It was recorded digitally. Petitioner testified on his own behalf and called no witnesses. The Board called no witnesses. After the hearing, the parties supplemented the record with additional exhibits 44 and 45; I admitted these exhibits—together with the remaining proposed exhibits—into evidence as Exhibits 1–45. (Exs. 1–45.) On March 28, 2025 the Board filed a supplemental brief. Mr. McEachern relied on his February 11, 2019 closing brief.

FINDINGS OF FACT

Based on the testimony and exhibits in the record, I make the following findings of fact:

1. John McEachern is a member of Weymouth Retirement Board. (*See* Ex. 1.)

2. Mr. McEachern has worked as a custodian since September 22, 2008 for the Town of Weymouth. (Testimony; Ex. 44, Ex. 15 at 125.)[1]

[1] There is conflicting information provided by the parties as to when Petitioner began his employment with the Town of Weymouth. Exhibit 3 and 45 note a 12/26/07 start date. Because the exact start date is not relevant to this appeal, I do not address it further.

3. On July 21, 2014,[2] Mr. McEachern reported that he had suffered an acute injury to his "lower back and groin" while emptying a wet vacuum into a sink. (Ex. 44.) He sought evaluation and treatment for the injury at South Shore Hospital. (*Id.*; *see also* Exs. 26–27.) The hospital discharged him the next day with instructions to return to work in not less than three days. (Ex. 26 at 288.) The next day, Dr. James Mitterando, who was affiliated with South Shore Hospital, evaluated Mr. McEachern, Ex. 28 at 419, and recommended he return to work on July 25 with no restrictions. (Ex. 30 at 426.)

4. On October 6, 2014, Mr. McEachern began seeing David M. Burgdorf, a Weymouth Chiropractor, to address pain in his "[l]ower left back and hip." (Ex. 32 at 440, 469.)

5. By December 22, 2014, Petitioner had visited his chiropractor 24 times for ongoing treatment of his back pain. (*See* Ex. 32 at 465.)

6. While working for the Town of Weymouth, Petitioner was also employed at an Autozone store in Weymouth on a part-time basis. (Ex. 11.) In the course of that employment, he received 15 hours of short-term disability pay for the pay period ending on September 12, 2015. (Ex. 11 at 95; Ex. 6 at 50.)

7. On September 21, 2015, Mr. McEachern reported that he had suffered an acute injury to his "back[, which] radiated down [his] hips and legs, up [the] middle of [his] back to [his] neck + shoulders" while lifting to empty a mop bucket. (*See* Ex. 45.)

[2] There is conflicting evidence on the date of injury. *Compare* Joint Br. ¶ 4 ("he complained of lower back pain after lifting a wet vacuum at work on *July 18, 2014*") *with* Ex. 44 at 2 (question "20. Date of Accident: *7/21/14*"). Because the exact injury date is not relevant to this appeal, I do not address it further.

8. Mr. McEachern saw Dr. Eric Wallace on September 22, 2015 for evaluation and treatment of the injury. (*See* Ex. 37 at 602.) Dr. Wallace noted that Petitioner had limited range of motion "in all directions." (*Id.*)

9. On September 25, 2015, Dr. Mitterando noted that Mr. McEachern had been "absent from work" since September 21 "due to a work related injury" and stated that he could return to work on a date to be determined in the future. (Ex. 30 at 427; Ex. 28 at 421.)

10. The Town of Weymouth filed its report of Mr. McEachern's injury with the Department of Industrial Accidents on September 28, 2015, restating the circumstances of his September 21, 2015 injury. (Ex. 15 at 125.)

11. On February 4, 2016,[3] Dr. Richard Warnock examined Mr. McEachern in connection with the workers' compensation claim and concluded that his injuries "are permanent in nature" and "are related to his pre-existing issues." (Ex. 40 at 651.)

12. On February 25, 2016, Dr. David Heller examined Mr. McEachern in connection with the workers' compensation claim and concluded that his September 21, 2015 injury was, in his "opinion and to a reasonable degree of medical certainty, a major cause of the" Petitioner's "diagnoses, [his] ongoing symptoms, the disability and the need for treatment." Dr. Heller further concluded that Petitioner "has been totally disabled since September 21, 2015." (Ex. 41 at 657.)

[3] There is conflicting evidence on when Petitioner saw Dr. Warnock, *compare* Joint Br. ¶ 12 ("On February 5, 2016") *with* Ex. 40 at 651 (Petitioner "was seen for an independent medical evaluation on February 4, 2016"). Because the exact examination date is not relevant to this appeal, I do not address it further.

13. On March 10, 2016, the Department of Industrial Accidents ordered the Town of Weymouth's "insurer to pay the [Petitioner] temporary total incapacity compensation under M.G.L. c. 152, § 34, at the rate of $735.00 per week . . . and to pay the [Petitioner] partial incapacity compensation under M.G.L. c. 152, § 35, at the rate of $546.00 per week . . . plus medical benefits under the provisions of M.G.L. c. 152, § 30." (Ex. 14 at 123–24.)

14. On April 5, 2016, Mr. McEachern applied for accidental disability retirement. (Ex. 3 at 14.) He listed his July 2014 and September 2015 injuries as causing his disability. (Ex. 3 at 18.)

15. Dr. Heller filed a supporting physician's statement on March 29, 2016 and "describe[d] the event(s) or onset of condition(s) that in [his] opinion led to the [Petitioner's] disability" as "low back injury lifting mop bucket." (*See* Ex. 4 at 35–36.)

16. On May 2, 2016, Mr. McEachern was examined by Dr. Christopher Rynne "at the Department of Industrial Accidents' direction," Joint Br. ¶ 13, and concluded "that the July 2014 and September 2015 incidents resulted in an aggravation of his pre-existing, but by history asymptomatic, degenerative disc disease." (*See* Ex. 42 at 662.)

17. On February 2, 2017, the Town of Weymouth transmitted Petitioner's relevant information to the Regional Medical Panel, comprising Drs. Samuel Doppelt, Robert Nicoletta, and Steven McCloy. (*See generally* Ex. 16.)

18. Petitioner was examined first by Dr. Doppelt on February 22, 2017, second by Dr. Nicoletta on February 25, 2017, and finally by Dr. McCloy on February 28, 2017. (*See generally* Exs. 17–19.)

19. On their Regional Medical Panel Certificates, all three physicians agreed that Petitioner's disability (i) rendered him incapable of performing the essential duties of his job and (ii) was likely to be permanent. (Exs. 17, 18, 19.)

20. Two of the three physicians further agreed in their Certificates that Petitioner's disability was the natural and proximate result of the personal injury sustained on account of which Petitioner claims accidental disability retirement. (*See id.*) Only Dr. Doppelt dissented on causation. (*See id.* at 141.)

21. In his original narrative report, accompanying his Certificate, Dr. Doppelt concluded that Petitioner suffered "a permanent partial disability related to his lumbar spine" and that the same "would be attributable to his pre-existing degenerative lumbar spondylosis." (Ex. 17 at 149.) Dr. Doppelt further concluded that Petitioner's "lifting injury of 9/21/15 was an exacerbation of his pre-existing condition resulting in a temporary and transient increase in his symptoms. In my opinion he has returned to his pre-9/21/15 status. . . . It is also my opinion that said incapacity is not such as might be the natural and proximate result of the personal injury sustained or hazard undergone on account of which retirement is claimed." (*Id.* at 149–50.)

22. In his original narrative report, accompanying his Certificate, Dr. Nicoletta concluded that Petitioner's "diagnosis is chronic lower back pain, work-related injuries, lumbar strains with radicular symptoms of the right leg, and multilevel degenerative disk disease by CT scan. . . . This inability is deemed permanent and causally related to his injuries at work as described. . . . Said incapacity is such as might be the natural and proximate result of the personal injury sustained or hazard undergone on account of

which retirement is claimed." He provided no further explanation of causation. (Ex. 18 at 160.)

23. In his original narrative report, accompanying his Certificate, Dr. McCloy wrote that Petitioner's underlying condition—"multilevel spinal arthritis"—is "a pre-existing condition" and "is not caused by [Petitioner's] work." (Ex. 19 at 173.) Considering that "[t]he lifting [Petitioner] performs is not trivial" Dr. McCloy believed it was "reasonable to conclude that [Petitioner] aggravated his underlying spondylosis and developed chronic and disabling back pain," in part because "[t]he mechanics of injury that [Petitioner] describes [we]re convincing" to Dr. McCloy's medical judgment. (*Id.*)

24. Sometime before April 11, 2017, the Board held a hearing at which Board counsel "indicated that [he was] going to ask the doctors for further clarification." (Ex. 20 at 175.) Petitioner's counsel opposed this request, writing that he "respectfully disagree[d] that clarification is necessary," but ultimately acquiesced to Board counsel's request for clarification. (*Id.*) Petitioner's counsel submitted to Board counsel three questions to include with the requests for clarification. (*Id.* at 175–76.)

25. On April 13, 2017 the Board sought clarification from the three medical panel physicians by sending them each a list of three or four questions; none of Petitioner's counsel's three questions, *see supra* ¶ 24, were included in the clarification request to the panel. (*See* Ex. 21.)

26. Board counsel asked Dr. Doppelt the following questions:

> 1) You indicated that Mr. McEachern had a negative straight leg raising to 75 degrees bilaterally – was this done in the seated or supine position? Does this mean the test was "positive" beyond 75 degrees? What is considered "acceptable" as range of motion for this test? Was the 75 degrees the limit due to back pain or hamstring tightness?

2) In your narrative report, you did not mention Mr. McEachern's July 14, 2014 injury as it possibly related to his pre-existing condition. Is it more likely than not that Mr. McEachern's pre-existing condition was the result of the July 21, 2014 injury, or more likely that his pre-existing condition pre-dated the July 14, 2014 injury?

3) You also stated in your narrative report that at the time you examined Mr. McEachern he had "returned to his pre-9/21/15 status." Mr. McEachern's "pre-9/21/15 status" was that he was able to perform his duties. These two statements seem contrary to each other – could you kindly explain and reconcile these comments?

(Ex. 21.)

27. Board counsel asked Dr. McCloy the following questions:

1) You indicated in your narrative report that Mr. McEachern has "multilevel spinal arthritis … not caused by his work." You also noted that Mr. McEachern claims to "not recall ever even having a backache," however the medical records, in particular an October 28, 2010 pelvis CT scan and the July 21, 2014 emergency room records, the Board reviewed indicate that he complained of back pain as far back as July 2010. Did you discuss this with Mr. McEachern?

2) During the course of your examination, did you determine that Mr. McEachern suffered from right leg radiculopathy? If so, is there any objective evidence to support this finding?

3) As noted above, Mr. McEachern has pre-existing multilevel spinal arthritis unrelated to his employment, and with respect to causation you stated, "[i]t is reasonable to conclude that he aggravated his underlying spondylosis and developed chronic and disabling low back pain." Is there any objective evidence that either or both of the July 21, 2014 or September 21, 2015 lumbar strains aggravated (fundamentally worsened) rather than exacerbated (transient increase in symptoms) this pre-existing condition?

(Ex. 21.)

28. Board counsel asked Dr. Nicoletta the following questions:

1) You indicated in your narrative report that causation in this case has been established "by the history." This "history" of this case also demonstrates that Mr. McEachern had multilevel degenerative disk disease. Based on the diagnostic studies you reviewed as part of your examination, can you state with a reasonable degree of medical certainty

> whether Mr. McEachern's multilevel degenerative disk disease was caused by predated his July 21, 2014 injury?
>
> 2) In referring to the "history," can you expand upon that opinion – meaning, was it the fact that Mr. McEachern stopped working after the September 21, 2015 injury and never returned to work that formed the basis of your causation opinion?
>
> 3) Was there any objective evidence to establish Mr. McEachern's claimed radiculopathy or his pain?
>
> 4) Can you elaborate as to how two claimed lumbar strains aggravated (fundamental worsening), rather than exacerbated (transient increase in symptoms), Mr. McEachern's pre-existing degenerative disk disease?

(Ex. 21.)

29. On May 19, 2017, Dr. Nicoletta clarified that, in his view:

> The findings of multilevel degenerative changes in terms of degenerative disk disease is not caused by one specific acute traumatic incident, however, [sic] are progressive in nature and occurring over time. The [Petitioner's] back pain was intensified related to the incidents sustained, in my opinion . . . .
>
> . . .
>
> It is my opinion the patient has chronic lower back pain as a diagnosis. He sustained two work-related injuries, which were soft tissue strain injuries along with radiating radicular symptoms down the right leg. Also, the patient has underlying multilevel disk disease by CT scan, which is progressive and degenerative in nature. It is my opinion that the patient has a combination of both underlying advanced progressive degenerative disease in regards to the lumbar spine at multiple levels, along with two incidents sustained at work.

(Ex. 22 at 189.)

30. On May 30, 2017, Dr. McCloy clarified that in his view "it remains [his] opinion to a reasonable degree of medical certainty that one can conclude that there was a worsening of [Petitioner's] lumbar arthritis, and that the mechanism of injury [Petitioner]

described would be a reasonable mechanism to cause such an aggravation." (Ex. 23 at 193.)

31. On June 28, 2017, Dr. Doppelt clarified that in his view "[i]t is more likely than not that [Petitioner's back disorder] was pre-existing well before this 7/21/14 work-related injury," and that as of his examination, Petitioner had "returned to his pre-9/21/15 status." (Ex. 24 at 195–96.)

32. On September 18, 2017, the Board voted to deny Petitioner's application for accidental disability retirement. (Ex. 1 at 4.)

33. On September 26, 2017, Petitioner timely appealed the Board's decision. (Ex. 2 at 11.)

CONCLUSION AND ORDER

This case is remanded for a new medical panel. For an accidental disability claim to be adjudicated, it "is necessary" for the medical panel "to determine the natural and proximate cause" of the member's disability. *Compare* G.L. c. 32, § 7(1) ("No such retirement shall be allowed unless . . . [there is an] examination by the regional medical panel provided for in subdivision (3) of section six and including a certification of such incapacity by a majority of the physicians on such medical panel, shall find that such member is unable to perform the essential duties of his job and that such inability is likely to be permanent, and that he should be so retired"), *with* G.L. c. 32, § 6(3)(c) ("The physicians composing the regional medical panel may obtain . . . other medical evidence which, in their judgment is necessary to determine the natural and proximate cause, nature and degree of disability of such member"). DALA must take the medical panel's clarifications into account when assessing the panel physicians' opinions. *See Mello v.*

Fall River Retirement Board, CR-13-315, at *17 (CRAB July 23, 2018) (denying accidental disability retirement based on medical panel's clarification statements even when "[t]he panel did not explicitly disavow its prior, positive certificate").

Rather than clarify the issue of causation, Dr. Nicoletta's answers to the clarification questions obfuscated his opinion regarding which injury caused/aggravated Petitioner's current condition. With one "yes" and one "no" on causation, without a definite answer from Dr. Nicoletta it is thus not possible to determine whether a majority of the panel has opined that Mr. McEachern's disability was caused by his workplace injuries. As a result, it is necessary to remand this case for a new medical panel.

Viewing the record in full, as DALA must, *see Mello* at *17, there appear to be three different positions on causation by the medical panel: (i) Dr. Doppelt's view that Petitioner "has returned to his pre-9/21/15 status"; (ii) Dr. McCloy's view that "to a reasonable degree of medical certainty . . . one can conclude that there was a worsening of [Petitioner's] lumbar arthritis, and that the mechanism of injury [Petitioner] described would be a reasonable mechanism to cause such an aggravation"; and (iii) Dr. Nicoletta's view that "[t]he findings of multilevel degenerative changes in terms of degenerative disk disease is not caused by one specific acute traumatic incident, however, are progressive in nature and occurring over time. The [Petitioner's] back pain was intensified related to the incidents sustained, in my opinion." *See supra* ¶ 26–28 (quoting Exs. 22–24). In short, one doctor (Dr. Doppelt) seems to judge that Petitioner's workplace injuries had no effect on his disability, a second doctor (Dr. McCloy) seems to judge that Petitioner's workplace injuries aggravated and worsened Petitioner's condition (which itself was "not caused by [Petitioner's] work") to the point of permanent disability, and a third doctor

(Dr. Nicoletta) seems to judge that Petitioner's workplace injuries "intensified" Petitioner's condition but that ultimately Petitioner's condition "is not caused by one specific acute traumatic incident, however, are progressive in nature and occurring over time." *See supra* ¶ 23, 26 (quoting Exs. 19, 22).

DALA has no way of reconciling Dr. Nicoletta's written statements into a discernable medical opinion as to causation—does the doctor believe that Petitioner's underlying condition was "progressive in nature" (and "not caused by one specific acute traumatic incident") such that he'd be as permanently disabled as he is today without his workplace injuries? Or does the doctor believe that *but for* Petitioner's workplace injuries—which the doctor concedes "intensified" Petitioner's "back pain"—he would not be as permanently disabled as he is today? This gap as to causation requires DALA to remand the case.

Lest we add to the confusion of this case on remand, we do decide one issue that the Board contests as follows. The Board argues that, because Dr. Heller listed only the September 2015 "mop bucket" injury in his Physician Statement, Mr. McEachern may prevail on his claim if, and only if, his present disability stemmed from that September 2015 "mop bucket" injury, and not his July 2014 "wet vac" injury. That is not correct; a physician statement does not attempt to resolve (or narrow) causation—that's the job of the medical panel. The three cases the Board cites in support of its argument all deal with *separate medical conditions* and thus stand for the proposition that to prevail on an accidental disability retirement claim, the Physician Statement must discuss each condition believed to give rise to the applicant's disability. This is partly meant to inform PERAC *which* type of doctors to empanel so, for example, a panel of dermatologists is

not convened to assess an alleged ophthalmic injury. *Compare Jenkins v. State Bd. of Ret.*, CR-06-222 (Div. Admin. Law. App. May 25, 2007) ("[The] application for disability retirement . . . note[s] as a condition, along with her *left foot condition*, a post traumatic stress disorder. Nevertheless, nowhere in Dr. Potee's physician's statement in support of the application for disability retirement *is there mention of any psychiatric disability*. Therefore, at this point, there is no need to convene a Medical Panel *in regard to any psychiatric disability* in terms of ordinary disability or accidental disability.") (emphasis added), *with Knight v. State Bd. of Ret.*, CR-11-197 (Div. Admin. Law. App. June 14, 2013) ("The Physician's Statement that he filed with the Board . . . certified disability *as to the orthopedic problems only*. He did not address the *neurological or post-concussive injuries* that Knight claimed.") (emphasis added), *and Leonard v. Essex Reg'l Ret. Bd.*, CR-16-506 (Div. Admin. Law. App. Aug. 17, 2018) ("[T]he Physician's Statement, cit[ed] *only the right shoulder* as the condition for which the applicant seeks disability retirement. Conversely, Petitioner's retirement application lists '*lower and mid back, neck and head injuries*' as being the condition for which the Petitioner seeks disability retirement, *and fails to mention any shoulder injury*. Based on this discrepancy alone, the Board should have rejected Petitioner's application.") (emphasis added). As a result, a future medical panel in this case may permissibly conclude that either, neither, or both the July 2014 and September 2015 injuries were "the natural and proximate cause . . . of disability." *See* G.L. c. 32, § 6(3)(c).

For the above-stated reasons, the medical panel's opinion is **VACATED** in full, a new medical panel is **ORDERED**, and this case is **REMANDED** for further proceedings consistent with this decision.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/ Kenneth J. Forton

Kenneth J. Forton
Administrative Magistrate

DATED: Apr. 4, 2025