COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss. **Division of Administrative Law Appeals**

Robert Melchionda,
Petitioner,

v.

Massachusetts Teachers' Retirement System and **Public Employee Retirement Administration Commission**,
Respondents.

No. CR-21-0674

Dated: March 29, 2024

Appearances:
For Petitioner: Daniel S. O'Connor, Esq.
For Massachusetts Teachers' Retirement System: James C. O'Leary, Esq.
For Public Employee Retirement Administration Commission: Felicia M. McGinniss, Esq.

Administrative Magistrate:
Yakov Malkiel

SUMMARY OF DECISION

An employee of a public school system was shot and killed when she answered the door to her home while working remotely. Binding case law imposes severe restrictions on the circumstances in which an employee's injury or death may create an entitlement to benefits. The essential rule is that the injury or death must occur while the employee was not only "at work," but actively engaged in discharging duties of her job. The sparse facts available here do not establish that the employee was actively engaged in discharging duties of her job at the time of her injury and death.

DECISION

Petitioner Robert Melchionda is the widower of the late Laurie Melchionda. Before her death, Ms. Melchionda was a member of the Massachusetts Teachers' Retirement System. Based on guidance from the Public Employee Retirement Administration Commission, MTRS denied Mr. Melchionda's application for accidental death benefits. He appeals. I held an evidentiary hearing on March 11, 2024. The only witness was Ms. Melchionda's former supervisor, Jennifer Truslow. I admitted into evidence exhibits marked 1-16.

Findings of Fact

I find the following facts.

1. Ms. Melchionda worked for many years as a school nurse. In 2018, she became the director of health services for the Weston public schools. In that role, Ms. Melchionda was responsible for the school system's health curriculums, health policies, and team of nurses. She was also expected to respond to "emergency situations." (Exhibit 15; Testimony.)

2. In the spring of 2020, the administrative employees of the Weston public schools were working furiously to respond to the COVID-19 pandemic. Whenever possible, they worked from their homes, communicating with each other by email, telephone, and videoconference. Ms. Melchionda's working hours during that time ran from early in the morning until approximately 5 pm. (Exhibit 3; Testimony.)

3. Ms. Melchionda's major projects included an overhaul of the school system's health curriculum. She was also working on equipping the system's schools with COVID-19-related protective equipment. Ms. Melchionda collaborated with Ms. Truslow on both projects. (Testimony.)

4. Both Ms. Melchionda and Ms. Truslow researched curriculums and equipment that the school system might wish to use. They each independently identified potentially useful items and arranged for samples to be mailed to them. Vendors mailed the samples either to their offices or to their homes. Ms. Truslow estimated that she was receiving an average of 1-2 work-related packages per week to her home. (Testimony.)

5. On June 17, 2020, Ms. Melchionda was working from home. She attended a work-related Zoom meeting from 10:00 to 10:40. She corresponded with colleagues throughout the morning. Among her outgoing emails were messages timestamped 10:41 and 10:42. She saved another draft email at 10:45. (Exhibits 1-6, 8.)

6. Police reports indicate that, approximately at 10:45, the doorbell of Ms. Melchionda's home was ringing "frantically." As soon as she answered the door, an individual not named in these proceedings shot Ms. Melchionda multiple times with a gun. She was pronounced dead less than an hour later. Additional details about the murder are not pertinent to these proceedings and were not explored here. (Exhibit 7.)

7. In July 2020, Mr. Melchionda applied for accidental death benefits. MTRS at first approved the application and advanced it to PERAC. Subsequently, when PERAC remanded for additional proceedings, MTRS voted to take no further action. Mr. Melchionda timely appealed. (Exhibits 10-14.)

Analysis

The surviving beneficiaries of a public employee may be entitled to accidental death benefits if the employee "died as the natural and proximate result of a personal injury sustained . . . as a result of, and while in the performance of [his or her] duties." G.L. c. 32, § 9. The applicant for benefits bears the burden of proving the statute's elements. *Cataldo v. Contributory Retirement Appeal Board*, 343 Mass. 312, 314 (1961).

An identically worded demand for an injury sustained "as a result of, and while in the performance of" the employee's duties appears in G.L. c. 32, § 7. That provision governs the benefits of an employee who was injured nonfatally. A rich body of case law illuminates the phrase "as a result of, and while in the performance of" in the context of § 7. The parties agree that the same set of holdings controls entitlements under § 9. *See Bolduc v. Cambridge Ret. Bd.*, No. CR-91-662, at *4 (DALA Sept. 15, 1992, *aff'd*, CRAB Dec. 11, 1992).

The parties concentrate the analysis on whether Ms. Melchionda was injured "while in the performance of" her duties.[1] A familiar series of appellate cases has assigned an exceedingly strict meaning to this phrase. A brief recap follows.

The first pertinent decision was issued by the Supreme Judicial Court in 1959. The employee there was a sanatorium nurse who tripped "while descending a flight of stairs in the sanatorium." *Boston Ret. Bd. v. Contributory Ret. Appeal Bd.* (*Palmeri*), 340 Mass. 109, 109 (1959). The problem that the Court discerned was that the nurse was on her way to lunch at the time. The Court said: "To say that a person who falls while descending a flight of stairs on her way to lunch sustains an injury 'while in the performance' of her duties would stretch the meaning of the statute beyond permissible limits." *Id.* at 111.

A parallel situation arose in 1996, when a community college professor, "after eating lunch at the college cafeteria, slipped and fell while walking to her office to hold office hours." *Namvar v. Contributory Ret. Appeal Bd.*, 422 Mass. 1004, 1004 (1996). The Court adhered to *Palmeri*'s analysis, explaining that the professor was not "performing a duty of her employment while walking to her office." 422 Mass. at 1004. The Court was not necessarily without regrets, stating: "A line was drawn in 1959. As an initial matter, we might not draw it in the same place today. The rule is, however, well established. . . . If the Legislature wants to make a change . . . it can do so." *Id.*

A third often-cited case is most decisive here. The employee in that matter was a civilian 911 dispatcher named Teresa Damiano. "Damiano had just stood up at her desk with the

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[1] Given the outcome of this decision, it is not necessary to determine whether Ms. Melchionda was killed "as a result of" her job duties, though the answer is less clear here than in many prior cases.

intention of going to the ladies' room and then to a supply room to obtain additional copies of forms required for her job." *Damiano v. Contributory Ret. Appeal Bd.*, 72 Mass. App. Ct. 259, 260 (2008). "As Damiano stood in front of her desk and computer, a police officer approached her from behind and, in an ill-advised attempt at horseplay, placed her in a headlock." *Id.* at 260-61. She fell and suffered a disabling injury. *Id.* The Appeals Court wrote:

> Damiano's disability . . . arises from an occurrence having nothing to do with the performance of her job duties . . . . [H]er claim fails because her disability does not arise from an injury sustained . . . while in the performance of her job. . . . She sustained her injuries . . . while not actually engaged in the performance of her job.

Id. at 263-64 (citations omitted). Granting that this analysis may "yield harsh results," the Appeals Court again described any reforms as the Legislature's prerogative. *Id.* at 264.

This survey suffices to demonstrate the heart of the case law's demands. In order for benefits to be available under sections 7 or 9, it is not enough for an employee to have been injured "at work" in a colloquial sense. Instead, the employee is required to have been actively performing a particular job duty at the time of the injury. This demanding rule has been enforced in one boundary-pushing case after another. *See, e.g.*, *Murphy v. Contributory Ret. Appeal Bd.*, 463 Mass. 333 (2012) (judge who opened hate mail in chambers); *Connolly v. Contributory Ret. Appeal Bd.*, 73 Mass. App. Ct. 1127 (2009) (unpublished memorandum opinion) (employee who replaced a workplace water jug); *Glynn v. Boston Ret. Syst.*, No. CR-14-295 (CRAB Apr. 5, 2022) (employee who attempted to seek assistance for a supervisor engaged in a fistfight).

The application of these principles to Ms. Melchionda's case must account for the added wrinkle that she was working from home on the day of her death. In the spring of 2020, a large portion of the workforce was likewise working remotely; and many employees continue to work from home on a regular basis. Even before the pandemic, courts did not hesitate to recognize that an employee's home may sometimes serve as a workplace. *See, e.g.*, *Sedgwick CMS v.*

Valcourt-Williams, 271 So. 3d 1133, 1135 (Fla. Dist. Ct. App. 2019); *Verizon Pennsylvania, Inc. v. W.C.A.B. (Alston)*, 900 A.2d 440, 445 (Pa. Commw. Ct. 2006). Here there is no dispute that Ms. Melchionda, in her home and at her doorway, was effectively "at work."

The question remains whether Ms. Melchionda was engaged in performing a job duty when she was shot and killed. The circumstances of remote work may encumber the task of determining whether an employee was performing a job duty at the decisive moment. Obviously, the home provides ready opportunities for assorted work-related and non-work-related actions, errands, and injuries. *See Sedgwick*, 271 So. 3d at 1136-37. It is commonplace for remote employees to vacillate between their professional and personal responsibilities. Tasks such as writing a note, taking a phone call, or opening an office door may be easy to classify as job duties when they are performed on an employer's premises. When the same tasks are performed from the home, they may reflect *either* qualifying job duties *or* the kind of non-duties identified in *Palmeri*, *Namvar*, and *Damiano*.

The analysis of whether an employee working from home was performing a job duty at the time of a fatal injury becomes inordinately more difficult when no witnesses were present. It is that difficulty that is ultimately insurmountable here. Mr. Melchionda's essential theory is that, when his late wife opened the door to her home, she was performing the job duty of gathering curriculums and protective equipment for use in the Weston schools. The factual support for this theory is too speculative to form a preponderance of the evidence. Speaking about herself, Ms. Truslow could only estimate that work-related packages arrived at her home once or twice per week. Ms. Truslow could not say when or how often Ms. Melchionda obtained work-related materials by mail. She did not venture to speculate whether Ms. Melchionda was due to receive anything work-related on the day of her death. In the absence of nonspeculative

evidence that Ms. Melchionda was engaged in a job duty while answering the door to her home, the governing statute is not satisfied. *See Cataldo*, 343 Mass. at 314.[2]

Conclusion and Order

The respondents acknowledge Ms. Melchionda's character and contributions to her school system. The result of this case is harsh for her survivors. But the appellate courts, anticipating exactly the sort of difficulty presented here, have left their decades-old holdings in place. In view of those holdings, MTRS's decision is AFFIRMED.

Division of Administrative Law Appeals

/s/ Yakov Malkiel
Yakov Malkiel
Administrative Magistrate

[2] Mr. Melchionda's primary doctrinal support for his contrary position is the rule that an employee may be entitled to benefits if she was injured while "going from one place at which she had . . . an employment obligation to another such place." *Namvar*, 422 Mass. at 1005. *See also Combra v. State Bd. of Ret.*, No. CR-18-2021 (DALA July 16, 2021). Travel from one work duty toward another is itself a duty, namely an activity that "the job obligate[s] the employee to perform." *Moran v. Brockton Ret. Bd.*, No. CR-20-332, 2021 WL 9697057, at *3 (DALA June 18, 2021) (collecting cases). The same cannot necessarily be said of answering a household door (as in the current case) or even rising and pausing briefly at a workplace desk (as in *Damiano*).