

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Joy Menard,
Petitioner,

No. CR-22-341

Dated: January 19, 2024

v.

**Massachusetts Teachers' Retirement
System,**
Respondent.

Appearance for Petitioner:
Robert McMullen, Esq.

Appearance for Respondent:
Salvatore Coco, Esq.

Administrative Magistrate:
Yakov Malkiel

SUMMARY OF DECISION

The petitioner is permanently incapacitated with pain and numbness in her left arm. A preponderance of the evidence establishes that the incapacity is the result of a workplace incident during which a student threw a heavy object at the petitioner. The petitioner is therefore entitled to retire for accidental disability.

DECISION

Petitioner Joy Menard appeals from a decision of the Massachusetts Teachers' Retirement System denying her application to retire for accidental disability. An evidentiary hearing took place on January 18, 2024, at which Ms. Menard was the only witness. I admitted into evidence exhibits marked 1-19 and 24, excluding nos. 20-23 as duplicative.

Findings of Fact

1. Ms. Menard served as a special education teacher in several cities. She began working for the Malden Public Schools in 2011, teaching kindergarten and first-grade students.

Her job duties required her to write, lift objects, and move furniture with her dominant hand, which is her left hand. (Testimony; Exhibits 1, 5.)

2. During 2012, Ms. Menard suffered for a time from numbness in her face, arms, and legs, along with pain in her neck and left arm. An MRI showed signs of disc disease and spinal stenosis. Ms. Menard was treated with physical therapy for approximately three months, after which her symptoms resolved. (Testimony; Exhibits 10-12.)

3. On December 9, 2016, a student threw a heavy walkie talkie at Ms. Menard. The device struck her in her left hand, near the base of the thumb. She suffered immediate pain, swelling, and bruising. At the emergency room, an x-ray revealed no fracture. Ms. Menard completed an incident report several days later. (Testimony; Exhibits 1, 5, 11.)

4. Ms. Menard has not returned to work since. Her pain has worsened over time, spreading from her thumb up her forearm and toward her elbow. She has been treated with braces, casts, physical therapy, steroid injections, and elbow surgery. These measures have provided no significant relief. (Testimony; Exhibits 10-12.)

5. During 2018, Ms. Menard underwent MRI and EMG studies. They showed no evidence of “degenerative changes” or “radiculopathy.” Later that year, Ms. Menard underwent a second surgery, designed to decompress her radial nerve and to release a “trigger thumb.” That surgery was followed by more physical therapy. (Exhibits 12, 16, 17.)

6. Ms. Menard’s symptoms persist to this day. Her current treatment regimen is described as pain management. She has undergone a variety of steroid injections. She now takes pregabalin (a nerve pain medication) daily. She cannot write, lift heavy objects, or drive. She feels constant or near-constant pain in her left arm. Sometimes, the entire arm is numb. Other times, the arm changes color. (Testimony; Exhibits 10, 18.)

7. Ms. Menard’s primary care physician, Dr. Ronald P. Sen, has provided most of her care in recent years. He formed an evolving series of theories about the etiology of her symptoms. In March 2017, Dr. Sen hypothesized that that Ms. Menard “may have some underlying arthritis stirred up by her injury.” In May 2017, he diagnosed a thumb sprain, likely underlying arthritis, and several additional conditions. In October 2017, he wrote that Ms. Menard’s elbow symptoms were not related to her pre-accident spine issues. In June 2018, he changed his mind, writing that Ms. Menard’s pain was “multifactorial” and that a “good portion” of it may be spine-related. (Exhibit 10.)

8. In connection with workers’ compensation proceedings, Ms. Menard was examined in January 2019 by Dr. Frank A. Graf. Dr. Graf found Ms. Menard to be totally disabled with a guarded prognosis. With respect to the cause of the disability, Dr. Graf wrote:

There is a causal connection between the patient’s present medical condition . . . [and] the history of injury provided. . . . [T]here is a well-documented nexus of observation and testing and a total of 3 operative procedures. Both the initial injury and the operative procedures have led to a diagnosis of complex regional pain syndrome. There is a past history of autoimmune disorders She has never however been diagnosed with cervical radiculopathy and she has had testing for autoimmune markers which have all been negative. It is not likely that this syndrome represents any immune disorder The patient’s . . . diagnoses are causally related to . . . work-related and surgical trauma.

(Exhibit 23.)

9. In November 2019, Ms. Menard applied to retire for accidental disability. Dr. Sen completed a supporting physician’s statement, indicating there that he now agreed with Dr. Graf’s diagnosis of complex regional pain syndrome (CRPS). Dr. Sen added that Ms. Menard cannot use her left hand and that her condition was caused by her being “struck by a heavy object.” (Exhibits 1, 19.)

10. A regional medical panel consisting of three orthopedists convened to evaluate Ms. Menard's application. The panelists conducted separate examinations during December 2021. Thereafter, the panelists all certified that Ms. Menard is incapacitated, that the incapacity is permanent, and that the incapacity is such as might be the natural and proximate result of Ms. Menard's workplace injury. (Exhibits 20-22.)

11. Dr. B. Eugene E. Brady concurred with Dr. Graf and Dr. Sen's diagnosis of CRPS. He noted that the diagnosis is supported not only by Ms. Menard's history but also by "visible vascular changes" to her arm. With respect to causation, Dr. Brady wrote that Ms. Menard's diagnosis and course of treatment "are consistent with her work-related injury as described." He considered her medical history prior to her accident to have been "non-contributory." (Exhibit 20.)

12. Dr. Samuel Doppelt's diagnoses included trigger thumb, nerve entrapment, and CRPS. He observed that Ms. Menard "cannot make much of a grip or grasp objects." Her strength was "quite poor" and her dexterity was "obviously off." On causation, Dr. Doppelt wrote: "Her disability is directly related to the injury sustained while at work." His description of Ms. Menard's history identified no other conditions relevant to her current symptoms. (Exhibit 21.)

13. Dr. Wojciech Bulczynski observed decreased sensation, a "weak grip," and a reduced range of motion. He described Ms. Menard's diagnosis as "traumatic injury to the left upper extremity, secondary to injuries sustained on 12.9.16." He wrote that, before her workplace injury, Ms. Menard's medical history was "unremarkable." (Exhibit 22.)

14. All three of the panelists returned their certificates on a preprinted form published by PERAC. The form's section about causation identified a number of factors for the panelists'

consideration, including: “Is there any other event or condition in the member/applicant’s medical history . . . other than the personal injury sustained . . . that might have contributed [to] . . . the disability claimed?” (Exhibits 20-22.)

15. In July 2022, MTRS allowed Ms. Menard to retire for ordinary disability but not for accidental disability. She timely appealed the decision’s latter element. (Exhibits 6, 7.)

Analysis

To be entitled to retire for accidental disability, Ms. Menard must prove three essential elements: that she is incapacitated, that the incapacity is permanent, and that the incapacity was caused by a workplace injury or hazard. G.L. c. 32, § 7(1). *See Campbell v. Contributory Ret. Appeal Bd.*, 17 Mass. App. Ct. 1018, 1018 (1984). Retirement for ordinary disability—which MTRS has granted to Ms. Menard—also requires the first two of these elements to be established. G.L. c. 32, § 6(1). MTRS therefore acknowledges appropriately that the dispute concentrates on causation. *See Christopher C. v. Boston Ret. Bd.*, No. CR-19-342, 2023 WL 3434934, at *6 n.4 (DALA May 5, 2023).¹

With respect to that element, MTRS hypothesizes that Ms. Menard’s current condition is the result of “the natural, cumulative, deteriorative effects of [a] preexisting diseased condition.” *Lisbon v. Contributory Ret. Appeal Bd.*, 41 Mass. App. Ct. 246, 255 (1996). *See Kalu v. Boston Ret. Bd.*, 90 Mass. App. Ct. 501, 516 (2016). The preexisting condition that MTRS identifies as the potential culprit is Ms. Menard’s neck-related issues in 2012. As support, MTRS points to

¹ Given MTRS’s agreement that Ms. Menard is incapacitated, I excluded evidence of investigative surveillance of her activities conducted during 2017. (Exhibit 5.) For the same reason, there is no need to dwell on the fact (which MTRS emphasizes) that Ms. Menard’s diagnosis relies substantially on subjectively reported symptoms. *See also Marquis M. v. Worcester Ret. Bd.*, No. CR-18-385, 2023 WL 2035318, at *3 (DALA Feb. 10, 2023).

Dr. Sen's comments in 2017-2018 that Ms. Menard may have "stirred up" underlying arthritis and that her pain may be "multifactorial," with a portion attributable to the spine.

The case law has described causation as ultimately a legal issue. *Narducci v. Contributory Ret. Appeal Bd.*, 68 Mass. App. Ct. 127, 134-35 (2007). But laypersons are poorly equipped to assess whether a person's symptoms are the natural result of a preexisting medical condition. *Pease v. Worcester Reg'l Ret. Bd.*, No. CR-21-82, 2022 WL 19762164, at *4 (DALA Dec. 23, 2022). That issue needs to be addressed first and foremost through expert medical opinions. *Robinson v. Contributory Ret. Appeal Bd.*, 20 Mass. App. Ct. 634, 639 (1985); *Smith v. Gloucester Ret. Bd.*, No. CR-19-493, at *3 (DALA Apr. 22, 2022).

The expert evidence here is one-sided. In the workers' compensation proceedings, Dr. Graf explained in a detailed report that Ms. Menard's condition is the result of her workplace trauma. Dr. Sen came around to the same view by the time of his treating physician's statement, abandoning the other theories he had entertained earlier. Medical panelists Dr. Doppelt and Dr. Bulczynski agreed, describing Ms. Menard's workplace accident not only as a *possible* cause of her disability but as its *actual* cause. *See Narducci*, 68 Mass. App. Ct. at 134-35; *Christopher C.*, 2023 WL 3434934, at *7. All three panelists described Ms. Menard's pre-accident history as unrelated to her current condition. MTRS's position is not supported by a single current expert opinion.

The remaining key factor from a non-expert factfinder's perspective is the case's chronology. Ms. Menard enjoyed a period of sustained health. She then endured an accident that—according to all of the experts—carried the potential to produce her current symptoms. Those symptoms then promptly materialized and persisted. *See Wood v. Lawrence Ret. Bd.*, No.

CR-21-83, 2022 WL 17081141, at *3 (DALA Aug. 19, 2022). This timeline further supports the experts' view that causation is established here.

Conclusion and Order

Ms. Menard is entitled to retire for accidental disability. MTRS's contrary decision is REVERSED.

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate