

**COMMONWEALTH OF MASSACHUSETTS
DIVISION OF ADMINISTRATIVE LAW APPEALS**

July 12, 2024

Middlesex, ss.

Docket No. CR-16-412

STEPHEN B. MEOLA, Petitioner

v.

ESSEX REGIONAL RETIREMENT BOARD, Respondent

DECISION

Appearance for Petitioner

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**Appearance for Intervenor Town of
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Administrative Magistrate:

Mark L. Silverstein, Esq.

Summary of Decision

Accidental Disability Retirement (ADR) - Denial without convening medical panel - Police officer - Injury sustained while in performance of job duties - ADR denial reversed - Medical panel review ordered.

Where (1) a town police officer applied for accidental disability retirement (ADR) based upon a slip-and-fall on ice in the parking area behind the police station, resulting in an exacerbation of a preexisting herniated disk condition that required surgery and left him with unresolving back pain and pain radiating to his left leg; (2) the retirement board denied the application without first convening a medical panel, on the ground that the police officer was not injured while in the performance of his job duties, as required by M.G.L. c. 32, § 7(1); (3) the police officer's uncontradicted testimony, a formal police report of the injury filed by the officer's shift partner, the medical records from the hospital emergency room to which the officer was transported following his injury, and the other evidence in the record showed that the injury occurred on the day in question while the officer was in the middle of his duty shift, moving from one duty station (the police station) to another (his assigned police cruiser, in which he would go out on patrol) while he was in full uniform and carrying his service belt and more than 25 pounds of equipment; and that (4) during this duty shift, the officer had no scheduled lunch break and no entitlement to one under the applicable collective bargaining agreement, and was expected, instead, to obtain and consume food during his shift when doing so did not interfere with responding to calls for assistance and performing other duty obligations, the officer showed by a preponderance of the evidence that he was injured while in the performance of his police duties and not while going out to "grab lunch."

Accordingly, the retirement board's denial of the officer's ADR application is reversed, and the matter is remanded for medical panel review before the Board decides the ADR application.

Background

Petitioner Stephen B. Meola, a Manchester-by-the-Sea police officer, appeals from a decision of respondent Essex Regional Retirement Board (the Board), dated August 23, 2016, denying his accidental disability retirement (ADR) application pursuant to M.G.L. c. 32, § 7 without convening a medical panel. Officer Meola based his ADR application upon his alleged slip and fall on accumulated ice and snow while he was walking to his police cruiser behind the

police station while on duty. He asserted that this injury exacerbated a preexisting herniated disc at L5-S1, as a result of which he underwent a lumbar fusion but continued to have unresolving back pain and pain radiating to his legs, leaving him permanently disabled from performing his duties as a police officer. The Board denied Officer Meola's ADR application without first convening a medical panel to review it. It did so on the ground that the officer was not injured while in the performance of his duties as a police officer, and was therefore not entitled to an accidental disability retirement pursuant to M.G.L. c. 32, § 7.

Officer Meola timely appealed the ADR denial to the Division of Administrative Law Appeals (DALA) on September 2, 2016. He claimed that he was walking from his desk duty position in the police station to the police cruiser in the middle of his shift (shortly before 12 noon) to go out on patrol, during which he was permitted to eat but remained on duty and was required to respond to calls while he did so, and that he was therefore injured while in the performance of his police duties. He requested that the ADR denial be vacated and that his application be reviewed by a medical panel before the Board decided it. The Board opposed this relief, contending that Officer Meola was injured while en route to have lunch and not while performing his police duties.

On March 31, 2017, Officer Meola filed a prehearing memorandum and six proposed hearing exhibits (Exhs. A-F).¹ On May 16, 2017, the Board filed its prehearing memorandum

¹/ Officer Meola's proposed exhibits were:

Exh. A: Formal Report of Injury to the Manchester-by-the-Sea Police Department by Police Officer Michael Richard, dated March 1, 2015 at 13:10 hours (1:10 p.m.), regarding his response to Officer Meola's injury in the area behind the police station at 11:52 a.m. on that

and five proposed hearing exhibits (Exhs. G-K).² On June 2, 2017, DALA issued an order

date.

Exh. B: Denial of Officer Meola's ADR application by the Essex Regional Retirement Board, dated August 23, 2016;

Exh. C: Unsworn statement by Manchester police officer Kevin M. Gordon, dated December 15, 2016 (regarding ice and snow and slippery conditions in the parking area behind the police station where Officer Meola fell on March 1, 2015, including snow that had been cleared from the police station roof and left in the parking area on that date);

Exh. D: Officer Meola's ADR application, dated December 15, 2015;

Exh. E: Neurosurgeon Dr. Terence P. Doorly's Physician's Statement pertaining to Officer Meola's ADR application, dated Dec. 9, 2015; with attached copy of his March 4, 2015 neurosurgery spine consultation regarding Officer Meola; and

Exh. F: Employer's Statement pertaining to Officer Meola's Application for Disability Retirement, prepared by the Manchester-by-the-Sea Chief of Police (undated), with attached documents including Officer Michael Richard's Formal Report of Officer Meola's March 1, 2015 injury; Officer Meola's application for M.G.L. c. 41, § 111F medical disability and benefits dated March 3 and 4, 2015; various medical records pertaining to Officer Meola; and "Commonwealth of Massachusetts Police Officer (Non-Supervisory) Physical Demands" (undated) with attached "Commonwealth of Massachusetts Police Officer Task List-Non-Supervisory" (undated).

²/ The Board's proposed exhibits were:

Exh. G: Pre-injury medical records: Dr. Doorly's operative reports regarding Officer Meola's pre-injury L5-S1 disk herniation-related surgeries on March 26, 2010 and December 26, 2013; radiology report regarding lumbar spine MRI performed on December 15, 2014; portion of a hospital discharge report dated March 1, 2015; and radiology report regarding lumbar spine MRI performed on March 16, 2015.

Exh. H: Dr. Doorly's 2014-15 records regarding Office Meola: December 3, 2014 office visit; December 17, 2014 office visit; and March 4, 2015 neurosurgery spine consultation; and additional records whose addition to Exh. H I allowed after the evidentiary record had closed. *See below at 8-9.*

[footnote continued on next page]

Exh. I: Officer Meola's 2015 medical records: Interventional Radiology Report by Dr. Owen Maddox, dated Jan. 7, 2015 regarding facet and medial branch blocks (injections)

scheduling a hearing for September 12, 2017.

On September 5, 2017, shortly before the hearing, the Town of Manchester-by-the-Sea (Manchester) filed a motion for leave to intervene or participate, pursuant to 801 C.M.R. § 1.01(9). Manchester asserted that it was substantially and specifically affected by the appeal because, as a result of the denial of Officer Meola's ADR application, it was paying full compensation and benefits to the Officer and remained obligated to do so until Officer Meola was retired, pensioned or determined to be no longer incapacitated, *citing* M.G.L. c. 41, §§ 100 and 111F. Manchester claimed that the denial of ADR benefits to Officer Meola was "clearly erroneous" because he was on duty, in full uniform, and walking from one job obligation to another when he fell on snow and ice in the police department's parking area. Officer Meola

performed on Officer Meola on that date relative to his back pain; and Pain Management Procedure Report by Dr. John C. Keel, dated Feb. 17, 2015, regarding back pain-related bilateral lumbar radiofrequency ablation performed on Officer Meola on that date.

Exh. J: Request by Essex Retirement System to the Manchester-by-the-Sea Town Administrator, dated June 23, 2016, for police department call logs, surveillance video, police reports, and supporting photos and witness statements from March 1, 2015, the date of Officer Meola's claimed injury at the Manchester-by-the-Sea Police Station parking lot, and a copy of Officer Meola's application for benefits under M.G.L. c. 41, § 111F; Response of Town Administrator Greg Federspiel to the Board's request, dated June 30, 2016, with enclosed documents including Manchester Police Officer Michael Richard's Formal Report of Officer Meola's Mar. 1, 2015 injury; Officer Meola's notice of claim for medical and disability benefits dated Mar. 3, 2015; and undated memorandum from Manchester-by-the-Sea Lieutenant Todd J. Fitzgerald, Interim Chief of Police, enclosing police reports regarding Officer Meola and stating that the Police Department did not have any surveillance video of the Officer's fall behind the police station on March 1, 2015.

Exh. K: Followup request by Essex Retirement System to Manchester-by-the-Sea Town Administrator, dated July 20, 2016, for police department activity call logs for the one-month period prior to the (March 1, 2015) injury claimed by Officer Meola, including the 30 minutes immediately preceding the injury; and copies of Manchester police log reports for the period

and the Board assented to the motion. On September 9, 2017, I granted Manchester leave to intervene subject to previously-imposed deadlines for filing prehearing memoranda and identifying hearing witnesses. However, I allowed the town to adopt another party's proposed exhibits and, during the hearing, to cross-examine any witness who testified, and to offer additional exhibits.

I held the scheduled hearing at DALA on September 12, 2017. The hearing was recorded digitally. Officer Meola was the only witness who testified.³ During the hearing, the Board offered two additional proposed exhibits (L and M), which were the minutes of two Essex Regional Retirement Board executive sessions held with respect to Officer Meola's ADR application in 2016.⁴ Manchester offered proposed hearing exhibit N, a copy of the collective

February 16, 2015 through 11:53 a.m. on March 1, 2015 for calls that mentioned Officer Meola.

^{3/} Two other potential witnesses were identified in the prehearing memoranda and exhibits filed prior to the hearing, but did not testify. One was Manchester-by-the-Sea Police Officer Michael Richard, who responded to Officer Meola's radio call for assistance at 11:53 a.m. on March 1, 2015, called for EMT assistance, and stayed with Office Meola until the EMT team arrived, and then filed a formal report of Officer Meola's injury with the Manchester-by-the-Sea Police Department later that day. *See* Ex. A and n. 1 above. The other was Manchester-by-the-Sea Police Officer Kevin M. Gordon, who prepared the unsworn statement dated December 15, 2016 regarding ice and snow and slippery conditions in the parking area behind the police station where Officer Meola fell on March 1, 2015, including snow that had been cleared from the police station roof and left in this area on that date. *See* Ex. C and n. 1 above.

^{4/} Exh. L is a copy of the minutes of the Board's May 23, 2016 executive session, during which Officer Meola described and responded to Board questions regarding his work as a Manchester auxiliary and then reserve police officer, his slip-and-fall accident on March 1, 2015, his medical treatment before and after the accident, including lumbar fusion surgery, and his disability, after which the Board voted to table the matter pending its receipt of additional information related to it.

[footnote continued on next page]

Exh. M is a copy of the minutes of the Board's August 22, 2016 executive session, during which the Board discussed how Officer Meola's ADR application could be handled as an

bargaining agreement between Manchester and the Manchester Police Officers Local 42, International Brotherhood of Teamsters, for the period July 1, 2014 through June 30, 2017.

Both Officer Meola and Manchester objected to admitting proposed hearing exhibits G, H and I. Each of these exhibits comprises Officer Meola's medical records. (*See* n. 2 above.) Both objectors argued that this appeal presented "no medical issues" and raised, instead, only the issue of whether Officer Meola was injured while in the performance of his police duties. Their concern was that the Decision here "not preempt" medical panel review if this were ordered. The Board argued that there was no genuine risk of such preemption; it had determined only that Officer Meola was not injured while performing his job duties, but did not address whether he was disabled as the result of a work injury. I overruled the objection, leaving it to the parties to argue what weight if any, the exhibits should be given relative to the issue to be decided here—whether Officer Meola was injured "while in the performance of" his job duties.⁵

involuntary retirement application submitted by the Town of Manchester-by-the-Sea, and that if the Board voted to deny the ADR application "due to Mr, Meola not performing his duties when the incident took place then a DALA appeal could occur." The minutes also record that following this discussion, the Board voted by roll-call to deny Officer Meola's ADR application.

⁵/ The objections to Exhibits G, H and I revealed some confusion as to whether a decision here that Officer Meola sustained an injury while "in the performance of" job duties preempts medical panel review. It does not. Inevitably, deciding whether the injury occurred and, if so, whether Officer Meola sustained the injury while performing his police duties, resolves a subsidiary question a medical panel could have reviewed relative to whether the injury was "sustained" as a result of, or while performing, the officer's duties, if the ADR application been referred to a medical panel for review initially. However, this does not preempt the medical panel's review and opinion (upon remand) regarding the three statutory questions put to it: (1) whether the applicant is "unable to perform the essential duties of his job," (2) whether "such inability is likely to be permanent," and (3) whether the disability might be "by reason of a personal injury sustained or hazard undergone as a result of, and while in the performance of, his duties." *See* M.G.L. c. 32, § 7(1). *See* Transcription of hearing recording at

In addition to overruling the objections as to Exhibits G, H and L, and marking them in evidence, I marked the remaining proposed exhibits in evidence as well, without objection. As a result, there are 14 exhibits in evidence (Exhs. A-N).⁶

At the conclusion of Officer Meola's testimony, the parties waived closing arguments and opted, instead, to file post-hearing memorandum after the recorded hearing was transcribed. I closed the evidentiary record, leaving the record open only for the receipt of a written hearing transcript if one was prepared, and for receipt of the parties' post-hearing memoranda. The Board had the digital hearing recording transcribed by Catuogno Court Reporting and StenTel Transcription. The transcription was completed on October 9, 2017, and the Board filed the written transcript with DALA. Each of the parties filed a post-hearing memorandum.

When the Board filed its post-hearing memorandum on December 28, 2017, it also moved to supplement Exh. H by adding to it two additional medical records.⁷ One of these records was the three-page discharge report regarding Officer Meola's admission to North Shore Medical Center at 12:32 p.m. on March 1, 2015 when he was brought by EMTs to the Medical Center's Emergency Room from the parking area behind the police station. The other

2-13: Administrative Magistrate's colloquy with counsel regarding objections to Exhibits G, H and I.)

While I decide that the injury in question occurred on March 1, 2015, while Officer Meola was in the performance of his police duties and moving from one shift duty site location to another, I do not decide whether he was disabled, likely permanently, as the proximate result of this injury. These questions remain for medical panel review and opinion, and for decision by the Board afterward.

⁶/ Although Exhibit H did not include two relatively brief medical records at the time I marked the Exhibit into evidence, they are part of the Exhibit now. *See* discussion below.

⁷/ For the documents that comprised Exhibit H when the Board first filed it, on May 16,

record was a two-page North Shore Hospital radiology report dated December 15, 2014 regarding a postoperative lumbar spine MRI that Officer Meola underwent, and its comparison with a lumbar spine MRI performed earlier, on October 3, 2013.

The Board did not state why it did not or could not move to include these records before the evidentiary record closed when testimony concluded at the September 12, 2017 hearing. However, neither Officer Meola nor Manchester opposed adding these records to Exh. H. The additional records are not prejudicial to Officer Meola as to the issue decided here. That Officer Meola underwent the two lumbar MRIs discussed in the December 14, 2013 radiology report is not disputed; more to the point here, that these MRIs were performed does not relate to whether Officer Meola suffered an injury while in the performance of his police duties, and is instead related to the issues that a medical panel would address regarding disability, its likely permanence, and the possibility of work-related causation. The March 1, 2015 North Shore Medical Center report documents that Officer Meola was brought to the North Shore Medical Center emergency room following what he described as a slip and fall on ice that left him on his back unable to get up on his own, necessitating a call to the EMT service to transport the Officer to a local hospital on a backboard. The record is some evidence that Officer Meola suffered a fall when and where he testified that it did, that the fall left him unable to get up on his own. and that he was transported to the Medical Center's emergency room less than an hour after the accident occurred. Therefore, it belongs in the record as part of the evidence to be considered in determining whether the injury-causing slip and fall occurred on March 1, 2015,

as Officer Meola claimed.

Accordingly, I allow the addition of these two documents to Exhibit H *nunc pro tunc* as of the hearing date.

Findings of Fact

Based upon the testimony, hearing exhibits and other evidence in the record, and the reasonable inferences drawn from them, I make the following findings of fact:

1. Officer Meola began his employment with the Manchester-by-the-Sea Police Department in January 2011 as an auxiliary police officer. This position did not require attending the Massachusetts Police Academy, and Officer Meola did not do so. However, he took reserve police training courses as required by the Manchester-by-the-Sea Police Department. He became a reserve police officer in this Police Department in 2013. This was initially a part-time position, although Officer Meola performed the duties of a full-time police officer and worked 32-40 hours per week, depending upon the number of eight-hour duty shifts to which he was assigned. Officer Meola became a full-time Manchester-by-the-Sea patrolman on September 7, 2014. He last worked as a patrolman on March 1, 2015, when the injury at issue here occurred. (Meola direct testimony; TR. at 31-33;⁸ Exh. F; Employer's Statement pertaining to Officer Meola's ADR application, at 2-3, and Addendum Sheet following numbered p. 8.)

2. As a paid Manchester-by-the-Sea police officer, Officer Meola was a member of

⁸/ The prefix "TR." refers to the written transcription of the hearing recording. (*See*

the Essex Regional Retirement System. (Undisputed.)

3. Officer Meola's duties as a Manchester-by-the-Sea patrolman in 2015 included those listed in a documents entitled "Commonwealth of Massachusetts Police Officer, Non-Supervisory, Physical Demands" and "Police Officer Task List - Non-Supervisory," both in effect at that time.

(a) These duties included responding to emergencies and providing back-up for other police personnel; operating a police cruiser at high rates of speed; separating persons involved in a fight or disturbance; responding to domestic disputes; detaining mentally or emotionally disturbed, or incapacitated, persons in order to provide for their safe placement; physically restraining or subduing a violent or resisting individual or person arrested to protect himself, the restrained or subdued person and the public and effect custody of the person arrested; displaying or discharging a Police Department-issued firearm to protect himself and/or the public; searching or legally forcing entry into a building for individuals, weapons, fruits of a crime, or contraband to effect an arrest, protect himself and the public, and/or obtain evidence; and pursuing a suspect of violator on foot. (Exh. F: Employer's Statement pertaining to Officer Meola's Application for Disability Retirement, prepared by the Manchester-by-the-Sea Chief of Police (undated) at 2; attached "Commonwealth of Massachusetts Police Officer (Non-Supervisory) Physical Demands" (undated) and "Commonwealth of Massachusetts

above at 8.)

Police Officer Task List- Non-Supervisory” (undated).

(b) Each of these duties could involve running, walking, standing, sitting, jogging, bending, squatting, kneeling, lifting, twisting, pushing, pulling, reaching, climbing, shooting, driving, and performing other similar or related physical demands for unknown periods of time, while carrying up to or more than 100 pounds of equipment. (*Id.*; “Commonwealth of Massachusetts Police Officer (Non-Supervisory) Physical Demands” (undated) at 2, para. 2.)

(c) An officer’s inability to engage in the physical exertion needed to perform these duties risked serious injury or death for a police officer, his fellow officers and/or the public. (*Id.*)

4. In 2015, Manchester-by-the-Sea Police Department employees classified as Sergeants and as “Patrolmen (Permanent Regular)” were covered by a collective bargaining agreement between the town and Manchester Officers Local 42, International Brotherhood of Teamsters (the CBA). (Exh. N.)

5. Among other things, the CBA provided that:

(a) Employees covered by the CBA, including patrolmen, worked four consecutive days followed by two consecutive days off pursuant to a schedule established by the Chief of Police. (Exh. N: CBA § 6.1).

(b) These employees, including patrolmen, were scheduled to work on regular eight-hour work shifts or tours of duty. (*Id.*, § 6.2).

(c) There were four daily eight-hour scheduled shifts or tours of duty to which

employees covered by the CBA, including patrolmen, would be assigned. One of them, known as the “First Shift,” was a day shift, from 7 a.m. to 3 p.m., 8 a.m. to 4 p.m., or from 9 a.m. to 5 p.m. (*Id.*)⁹

6. The CBA included no provision requiring, or even mentioning, lunch or meal breaks for patrolmen working an assigned shift. With no such provision in the CBA, it was for the town and to the Chief of Police to determine whether, when and how lunch or meal breaks were to be taken, or how food and beverages were to be obtained and consumed by employees, including patrolmen, working a shift, subject to requirements of Massachusetts law. (*See* Exh. N: CBA § 2.4, in which the Union “recognizes that the management of the town and the direction of the police force [including] determining the “nature, scope and manner of performance of job duties, is vested in and reserved to the Town, and to the Chief of Police, subject, however to the specific provisions of [the CBA], and to the laws of the Commonwealth of Massachusetts.”)

7. The record is without any evidence that in 2015, the Manchester-by-the-Sea Police Department or the Police Chief had in place a written policy regarding lunch or meal breaks, or the consumption of food and beverages, by patrolmen during assigned shifts.

8. The record is without any evidence that in 2015, the Manchester-by-the-Sea Police Department (a) deducted time or pay for an unpaid lunch or meal break for patrolmen

⁹/ The “Second Shift” was a night shift (from 3 p.m. to 11 p.m., 4 p.m. to midnight, or 5 p.m. to 1 a.m.). The “Third Shift,” was also a night shift, from 11 p.m. to 7 a.m., 12 midnight to 8 a.m., or 1 a.m. to 9 a.m. The “Fourth Shift” was a “combination or split shift” worked by a Sergeant and two patrolmen. The police chief determined whether this combination shift needed to be filled. (Exh. N: CBA § 6.2.)

who worked more than six hours during a calendar day; (b) that it did so with respect to Officer Meola's assigned eight hour work shifts, whether on the date in question here (March 1, 2015) or on any other date; or (c) that at any time during his assigned eight-hour shift on March 1, 2015, Officer Meola was relieved of all police duties, and/or free to leave the workplace or his work site (including a police cruiser), in order to be able to take an unpaid lunch or meal break. (As to meal breaks required generally by Massachusetts law absent overriding public safety-related duty requirements, *see* M.G.L. c. 149, § 100, entitled "Hours of work without interval for meal; duration; violation of statute.")

9. As a patrolman, Officer Meola worked four consecutive days, each with at least one eight-hour duty shift, followed by two consecutive days off. (Meola direct testimony; TR. at 34.)

10. In preparation for, and during, a duty shift, Officer Meola was in full uniform with a heavy duty service belt. His work duties during a duty shift included going on patrol in a police cruiser that was equipped with a computer system. A patrol route was not pre-planned; it could be anywhere in town, and the duty tasks performed during this shift work included running license plates to determine whether they were expired, checking vehicle registrations, looking for persons subject to outstanding arrest warrants, responding (as trained EMTs) to medical calls, and remaining observant and alert to any issues of law enforcement-related interest. (*Id.*; TR. at 33-34.)

11. It was Officer Meola's understanding that, as a Manchester-by-the-Sea

patrolman, (a) he had no dedicated lunch or meal break during an assigned shift; (b) he could obtain food and consume it while on patrol, and patrolmen regularly ate during their shifts in order to maintain their energy levels; (c) a patrolman was expected to respond immediately to a call for assistance or other action or when he witnessed a crime, which meant putting aside anything he was consuming in order to respond; and (d) while he was working his eight hour shift, whether he was performing desk duty or going out on patrol in a police cruiser, a patrolman was never off-duty or free to leave his work site in order to take a lunch or meal break. On at least one occasion, Officer Meola had been standing on line at a deli counter where he had ordered a sandwich when he received a call to respond to a motor vehicle accident and had told the counter-person he had to go and to hold his sandwich for him; he had then responded to the call, and returned to the deli counter to pick up the sandwich two hours later. (Meola direct testimony; TR. at 44-47.).

12. In 2010, before becoming a police officer, Officer Meola underwent a left L5-S1 hemilaminotomy (the removal of a part of the lamina (vertebra) to enlarge spinal canal space so as to reduce nerve compression or pressure at the S1 nerve root) and microdiscectomy (removal of part of a herniated disk) due to a large disc herniation unrelated to his employment.¹⁰ (Exh.

¹⁰/ L5-S1 is located at the base of the spine, known as the lumbosacral joint, and consists of the lower of the lumbar spine's five vertebra and the sacrum. The L5-S1 disc is between the L5 and S1 vertebrae. A herniation of the disk means a disruption of its architecture, causing a protrusion of the disk's inner nucleus pulposus, which can result in pressure upon the spinal cord, nerve root, or adjacent vertebral body. Most herniated discs occur at L4-L5 or L5-S1 disc space, which results in impingement on the L4, L5, or S1 nerve root. This compression results, typically, in lower back pain and radiculopathy into the posterior leg and dorsal foot. *See, e.g.,* Donnally, C.J., Hanna, A. and Varacallo, M., *Lumbar Degenerative Disk Disease* (StatPearls Publishing, Treasure Is., FL, 2024); available at: National Institutes of Health, National Library

G: Dr. Doorly's operative report regarding Officer Meola's L5-S1 disk herniation-related surgery on March 26, 2010). Officer Meola returned to work subsequently. There is no evidence in the record of any work limitation at that time.

13. On December 26, 2013, after becoming a reserve police officer, Officer Meola underwent an additional left L5-S1 hemilaminotomy, microdiscectomy, proximal foraminotomy (widening of the opening of the spine where the nerve roots exit), medial facetectomy (removal of one or both facet joints of a vertebra to relieve pressure on a trapped nerve and reduce pain) and excision of the posterior osteophytic ridge, to address a recurrent L5-S1 disk herniation and decompress the S1 nerve root (which proved to be distorted significantly) and the L5 nerve root. (Exh. G: Dr. Doorly's operative reports regarding Officer Meola's L5-S1 disk herniation-related surgery on December 26, 2013.) He returned to light desk several days later, and to reserve police duty several weeks later. (Meola direct testimony; TR. at 49; Meola cross-examination, TR. at 54-55.)

14. On Sunday, March 1, 2015, Officer Meola was assigned to the day shift that began at 8:00 a.m. and ended at 4:00 p.m. His duty partner for this shift was Police Officer Michael Richard. (Meola direct testimony; TR. at 38.)

(a) Officer Meola and Officer Richard were each assigned a separate police cruiser for performing patrols during this work shift. While both shift patrolmen could go out on patrol together, "99 percent of the time" they went out on patrol separately, in

individual cruisers, and not jointly in a single cruiser. Patrol routes might overlap, but mostly they did not. One might begin a patrol of the downtown Manchester-by-the-Sea area, and another might start his patrol elsewhere. It was also possible that only one officer would be out on patrol at a particular time, with the other officer working at the police station during that same time, performing tasks such as writing a report. If either officer needed backup, he would radio his shift partner first, and the shift partner would respond from wherever he happened to be when the radio call came in, which could be at the police station or on patrol in another police cruiser. (Meola testimony in response to questions by the Administrative Magistrate; TR. at 93-99.)

(b) On March 1, 2015, Officer Meola was assigned marked patrol cruiser number 998, and Officer Richard was assigned marked patrol cruiser number 995. During the time period 11:50–11:53 a.m. on that date, Officer Richard was inside the police station after having completed a patrol in his assigned police cruiser. (Exh. F: Employer's Statement pertaining to Officer Meola's ADR Application (undated); attached Formal Report by Officer Richard of injury to Officer Meola, dated Mar. 1, 2015, 13:10 hrs. (12:10 p.m.), at 2 (narrative by Officer Richard included in his Report.)

(c) Officer Meola had no scheduled break during this shift and was expected to work throughout this eight-hour shift. (Meola direct testimony; TR. at 46.) He began this duty shift at 8:00 a.m. at the police station. At approximately 11:50 a.m., he began to walk toward the police cruiser parking area at the rear of the police station intending to complete, in one of these vehicles, a patrol of the town's downtown area, and then the

area known as Singing Beach. He was dressed in full uniform at this time and had on a leather duty belt, a Glock 22 police service revolver and two ammunition round magazines for it, a can of red pepper spray, a 16-17-inch baton, two sets of handcuffs, and a radio with mic (wireless microphone) receiver. The duty belt and equipment weighed more than 25 pounds, and the radio was on so he could receive calls while on duty. (*Id.* at 42-43.)

15. Because he had no scheduled lunch break during his March 1, 2015 day shift, it was Officer Meola's plan to obtain food from a supermarket after completing the last section of this cruiser patrol through the town that took him to the Singing Beach area, before he headed back to the police station to eat it—unless a call came while he was at the supermarket or afterward requesting that he respond. It was a weekend that did not appear to be busy. Officer Meola recognized that, even so, events requiring his response might happen while he was on patrol, before, during or after he reached the Singing Beach portion of his cruiser patrol, and that responding to calls or what he observed might take longer than he expected. As a result, he “was going to get something to eat if [he] could get something to eat,” and at 4:00 p.m. when his shift ended, he was going to go home. (*Id.*; TR. at 44; Meola cross-examination by Board; TR. at 66-67.)

16. On Sunday, March 1, 2015, shortly before noon, Officer Meola exited the Manchester-by-the-Sea police station, and was walking toward his assigned police cruiser in the parking area behind the station when he slipped on ice in the parking area and fell on his back, leaving him in pain in his back and left leg and unable to get up. (TR. at 38-39; as to the

occurrence of the injury on March 1, 2015, *see also* Meola cross-examination by Board, TR. at 64-69, 73-78); Meola cross-examination by Manchester at 86-87; Meola testimony in response to questions by the Administrative Magistrate; TR. at 68-73; as to hearing exhibits relating the date, time and circumstances of the slip and fall, *see* Exh. E: Dr. Doorly's Physician's Statement pertaining to Officer Meola's ADR application, dated Dec. 9, 2015: and attached neurosurgey spine consultation report by Dr. Doorly dated Mar. 4, 2015 and including history relating that on March 1, 2015, the officer "got out of his cruiser to go into the police station and fell heavily on ice"; *see also* Exh. F: Employer's Statement pertaining to Officer Meola's ADR application (undated); attached Officer Michael Richard's Formal Report of Injury sustained by Officer Meola, dated Mar. 1, 2015 at 13:10 hours (1:10 p.m.).)

(a) Officer Meola was on duty at the time, in the middle of his eight hour day shift, with no scheduled lunch break. (Meola direct testimony; TR. at 38-39, 42.)

(b) Officer Meola was also in full uniform and was wearing his leather duty belt and all of his equipment, which together weighed more than 25 pounds. (*See* Finding 14(c) above). The radio was on so the Officer could receive calls requiring him to respond. (Meola direct testimony; TR. at 42-45.).

(c) Officer Meola had no scheduled lunch break (or any scheduled break) during this duty shift. (*Id.*; TR. at 46.)

(d) As he and other Manchester-by-the-Sea patrolmen had done, Officer Meola planned to eat during his shift without going off duty. He planned to obtain food at a supermarket toward the end of his patrol loop through town if he was able to do,

meaning that he was not responding to a radio call and no response obligation arose while he was obtaining food or consuming it. (*Id.*; TR. at 38-40, 42-46.)

(e) The slip and fall on what Officer Meola recalled as thick ice happened quickly. It left Officer Meola on his back close to his assigned cruiser. He was still wearing his duty belt and over 25 pounds of equipment when he fell. He was in excruciating pain, which he felt in his back and radiating down his left leg, and had no feeling in his left foot. He was unable to get up. His radio was on, and he radioed for help. (*Id.*; TR. at 39-41.)

17. Officer Richard, Officer Meola's partner for the 8:00 a.m. to 4:00 p.m. shift on March 1, 2015, did not witness Officer Meola's slip and fall, but he was the first person to respond to Officer Meola's radio call for assistance, the first to stabilize him and call for EMT assistance, and the only officer to formally report Officer Meola's injury to the Manchester-by-the-Sea Police Department. (Undisputed; *see also* counsel colloquy with the Administrative Magistrate during the Sept. 12, 2017 hearing).¹¹

18. Officer Richard filed a Formal Report to the Manchester-by-the-Sea Police Department at 13:10 hours (1:10 p.m.) On March 1, 2015 regarding "Officer Fell on Ice," and

¹¹/ The subject of this colloquy was the scope of Officer Meola's cross-examination as to (a) Officer Richard's police report, which related Officer Meola's statement to him at approximately 11:53 a.m. on March 1, 2015 that he had slipped on the ice and fallen, hitting his back, head and arm); and (b) the "history" section of Dr. Doorly's Mar. 4, 2015 neurosurgery spine consultation, which states that on March 1, 2015, the officer "got out of his cruiser to go into the [police] station and fell heavily on ice," which appeared to contradict Officer Meola's narrative that he fell while walking to his cruiser from the police station. *See* TR. at 68-73; *see also* Exh. H: history of admission included at first page of the North Shore Medical Center discharge report for Officer Meola's Mar. 1, 2015 emergency room admission, which relates

involving Officer Meola. Officer Richard reported that:

(a) He had started his eight hour shift on March 1, 2015 in marked patrol cruiser Number 995. Officer Meola had started the shift in another police cruiser, Number 998.

(b) Shortly before 11:53 a.m. on March 1, 2015, Officer Richard returned to the police station.

(c) At approximately 11:53 am., while he was inside the police station, Officer Richard heard Officer Meola's radioed request for assistance at the back of the police station.

(d) Officer Richard immediately exited the police station to the cruiser parking area and found Officer Meola on his back next to police cruiser Number 998. He observed Officer Meola to be in excruciating pain. Officer Meola told him that he slipped on the ice and hit his head, back and an unspecified arm.

(e) After holding Officer Meola's head to maintain cerebral immobilization, Officer Richard observed no blood on Officer Meola's head but noted his breathing to be elevated. Officer Richard then requested that Manchester Rescue One EMTs be dispatched to assess Officer Meola.

(Exh. F: Employer's Statement pertaining to Officer Meola's ADR Application (undated) at 4 (referring to what Officer Richard's Formal Report stated); and attached copy of Officer Richard's Formal Report to Town of Manchester-by-the-Sea Police Department regarding injured officer who fell on ice, dated March 1, 2013 at 13:10 hours (1:10 p.m).)

that Officer Meola slipped and fell on ice while he was going to get into his cruiser.

19. The responding MedHost EMTs placed Officer Meola on a backboard and transported him to North Shore Medical Center's Salem campus, arriving with him at the hospital's Emergency Room at 12:32 p.m. (Exh. F: Officer Richard's formal report of injury dated Mar. 1, 2015; Exh. H: North Shore Medical Center Salem Campus Discharge Report for Officer Meola's March 1, 2015 ER admission and subsequent discharge; as to being "scooped up on a scoop stretcher" by the EMTs following his slip and fall; *see also* Meola direct testimony; TR. at 38-39.)

(a) Officer Meola, still in uniform, presented at the hospital's Salem Campus emergency room on March 15, 2015 with a complaint of having been injured after falling. According to the ER discharge report, the Officer stated that "he was going to get into his cruiser and he slipped on the ice," that he "fell right on his back," and "did not think he hit his head but cannot be sure since [it] happened so fast." (Exh. H: North Shore Medical Center Salem Campus Discharge Report for Officer Meola's March 1, 2015 ER admission and subsequent discharge.)

(b) Officer Meola was discharged from North Shore Medical Center Salem Campus ER later on the same day, at 5:13 p.m., in stable condition but with back pain, and with pain medication prescriptions (for Motrin, Valium and Percocet tablets), and with a direction to follow with Dr. Doorly, his treating physician, in one week. (*Id.*)

20. On December 9, 2015, Dr. Doorly assessed Officer Meola's condition and whether he could return to work as a police officer, relative to his then-pending workers' compensation claim and the officer's forthcoming ADR application. (Exh. F: Employer's

Statement pertaining to Officer Meola's Application for Disability Retirement, prepared by the Manchester-by-the-Sea Chief of Police (undated); attached Report of Dr. Terence P. Doorly, dated Dec. 17, 2015, regarding Officer Meola's Dec, 9, 2015 Office Visit, at 1-2.)

(a) Dr. Doorly assessed Officer Meola as suffering from chronic mechanical back pain with ongoing lumbar radiculitis. He noted "an extensive history of lumbar spine disease with prior injury and lumbar disc herniations in 2010 that required surgery" and "a recurrent disc herniation in 2013" that required "another discectomy at L5-S1 in December 2013," after which "[h]e was ultimately doing well from these until he unfortunately fell heavily on ice while going into the police station," Dr. Doorly also noted that Officer Meola had a lumbar spinal fusion following the slip and fall injury, had been "quite asymptomatic" for a short time afterward, but as of December 2015 was "unable to perform the unrestricted duties of a police officer." (*Id.*)

(b) As to Officer Meola's return to full unrestricted duty within a reasonable period of time in the foreseeable future, Dr. Doorly stated "I do not see this happening." While the doctor "fully acknowledge[d]" that Officer Meola "may improve further over the next year and a half," he "did not expect resolution of his symptoms and given his history" including the discectomies, lumbar spinal fusion and "extensive interventional pain management," he thought that it was "unrealistic to assume that he will return at any point in the future to his former duties as a police officer." He opined that while Officer Meola might heal at some point in the future, "this recovery would not allow him to return to the workforce." As to causation, Dr. Doorly opined that Officer Meola's

fall on March 1, 2015 “aggravated his pre-existing conditions [and] led to a permanent worsening of his low back function,” and that while efforts had been made to restore it, it was “medically probably that he would have permanent significant restrictions of function.” (*Id.*)

21. Officer Meola did not return to work after the March 1, 2015 injury.(Exh. D: Officer Meola’s ADR application dated Dec. 15, 2015, at 2; Exh. F: Employer’s Statement pertaining to Officer Meola’s ADR application (undated) at 2.) He began receiving benefits pursuant to M.G.L. c. 41, § 111F (leave with pay for incapacitated police officers and firefighters incapacitated for duty because of an injury sustained in the performance of duty without personal fault). There is no evidence that Officer Meola was cleared to return to work after March 1, 2015, that the Police Department offered reasonable accommodations such as light duty work if he returned to work after that date, or that he was terminated from employment as a police officer and his Chapter 41, § 111F benefits payments ceased.¹²

22. Officer Meola filed an ADR application with the Essex County Regional Retirement Board on December 15, 2015. In it, he claimed personal injury on March 1, 2015 “at approximately 12:00 p.m.” when he “slipped and fell on ice in the parking lot at Headquarters” while he was working as a patrolman and was walking to his cruiser. (Exh. D: ADR Application dated Dec. 15, 2015 at 5.) He claimed to have sustained, as a result of this slip and fall while on duty, “a low back injury” with “radiating pain down [his] left leg, leaving him unable to

^{12/} This situation is central to Manchester’s intervention, and to its support for Officer Meola’s ADR application. Officer Meola’s ADR retirement, if granted, would terminate his payments and benefits under M.G.L. c. 41, § 111F and would relieve Manchester from paying

physically perform the duties of a patrolman. (*Id.*; ADR Application at 2.)

23. Neurosurgeon Dr. Terence P. Doorly prepared a physician's statement, dated December 9, 2015, pertaining to Officer Meola's ADR application. (Exh. E.) As was the ADR application, the Physician's Statement was completed on a form prescribed by the Commonwealth's Public Employee Retirement Administration Commission, and included questions pertaining to the claimed injury. Dr. Doorly attached to his Physician's Statement his earlier report of his March 4, 2015 neurosurgery spine consultation with Officer Meola. That report was prepared three days after the Officer's March 1, 2015 slip and fall injury.

(a) In his Physician's Statement, Dr. Doorly gave the date of Officer Meola's injury and last day he was able to perform his essential duties as "3/2/15." (Exh. E; Physician's Statement at 2,) In the March 4, 2015 neurosurgery spine consultation report that he included with his Physician's Statement, Dr. Doorly stated that the injury occurred on March 1, 2015 and that the Officer had been out of work since that date. (*Id.*; Dr. Doorly's Mar. 4, 2015 neurosurgery spine consultation report at 2.)

(b) Dr. Doorly stated that Officer Meola's medical diagnosis was "L5-S1 disc herniation with nerve root compression, mechanical back pain with radiculopathy," increasing pain during the preceding three months (early September to early December 2015). (Exh. E: Physician's Statement at 2 (full capitalization in original omitted).) He referred to his attached neurosurgery spine consultation with Officer Meola dated March

the Officer's salary while he remained on disability leave. *See* above at 5-6.

4, 2015, which recited an impression of “1. Back pain with left lumbar radiculopathy post fall. 2. Neck and left arm pain post fall.” (Exh. E: Physician’s Statement, prepared by Dr. Doorly, pertaining to Officer Meola’s ADR application, dated Dec. 9, 2015; Dr. Doorly’s attached neurosurgery spine consultation note dated Mar. 4, 2015 at 2.)

(c) Having reviewed Officer Meola’s job duties as a police officer, it was Dr. Doorly’s opinion that (as of December 9, 2015) the officer was incapable of performing his essential police officer duties in view of his increasing pain; inability to “lift, bend, sit , stand or drive for periods of time,” as well as “[l]ittle improvement” during the nine months following the officer’s post-injury spinal fusion, and the possibility that the officer would need additional surgery in the future. (Exh. E: Physician’s Statement at 2, 3.)

24. The Board held a hearing on May 23, 2016 regarding Officer Meola’s ADR Application. (Exh. L.)

(a) After the hearing ended, the Board tabled the application pending the Town of Manchester-by-the-Sea’s response to two requests by the Board for documents and other materials regarding the Officer’s March 1, 2015 fall and injury and his application for on-duty benefits. (Exhs. J, K and L.)

(b) Manchester responded to the Board’s initial request on June 30, 2016, and to the second request on August 1, 2016, in each instance producing documents and materials requested that it was able to locate. (Exhs. J, K.)

(c) In its June 30, 2016 response to the Board’s initial request for materials, the

Town stated that there was no surveillance video showing the incident on March 1 2015, because the video system showing the area behind the police station provided live feed but did not record anything. (Exh. J: Response of Town Administrator Greg Federspiel, dated June 30, 2016, to request by Essex Retirement System for Police Department call logs, surveillance video, police reports and other materials pertaining to Officer Meola's March 1, 2015 injury, with enclosed documents including undated memorandum from Manchester-by-the-Sea Lieutenant Todd J. Fitzgerald, Interim Chief of Police, enclosing police reports regarding Officer Meola and stating that the Police Department did not have any surveillance video of the Officer's fall behind the police station on March 1, 2015.)

25. On August 22, 2016, the Board voted to deny Officer Meola's ADR application on the ground that he "was not in the performance of his duties" when he allegedly fell behind the police station on March 1, 2015. (Exh. B.)

26. Officer Meola timely appealed the Board's denial of his ADR application on September 2, 2016.

Discussion

1. The Issue to be Decided, and the Available Remedy

The sole issue to be decided here is whether Officer Meola was injured "while in the performance of" his job duties. The issue comprises two elements: (a) did the injury in fact occur? and, if so, (b) did it occur while Officer Meola was in the performance of his police

duties?

The injury Officer Meola claims is an exacerbation of a preexisting disk herniation when he slipped and fell to his back on ice in the police cruiser parking area behind the Manchester-by-the-Sea police station on March 1, 2015 at approximately 11:53 a.m. If this injury occurred, the question is whether Officer Meola sustained the injury while performing his police duties—moving from one police task to another while performing his assigned shift, as he claims, rather than while going off-duty for a lunch break, as the Board asserts. If the evidence shows that the answers to both questions is “yes,” sufficiently to entitle Officer Meola to medical panel review of his ADR application, the sole remedy to be granted is to vacate the retirement board’s denial of the officer’s ADR application and remand the matter for medical panel review before the Board decides his ADR application anew.

2. Applicable Law

A public contributory retirement system member, such as Officer Meola, may receive accidental disability retirement benefits when he can show that he was incapacitated from performing his essential job duties, likely permanently, as the result of an injury or series of injuries or a hazard undergone as a result of, and while in the performance of, his job duties. M.G.L. c. 32, §7(1). The ADR applicant must show each of these elements of ADR eligibility by a preponderance of the evidence, including the causal relationship between the disabling personal injury he alleged as the basis for his ADR application and a work-related accident or incident. *Murphy v. Contributory Retirement Appeal Bd.*, 463 Mass. 333, 345, 974 N.E.2d 46,

56 (2012); *Lisbon v. Contributory Ret. App. Bd.*, 41 Mass. App. Ct. 246, 254, 670 N.E.2d 392, 398-99 (1996).

An ADR applicant may show that he sustained a personal injury while in the performance of work duties if the injury occurred while he was proceeding from one duty assignment location to another, as opposed to having occurred while commuting to work from home, or returning home after work ended, or en route to or from a scheduled meal break. *Richard v. Retirement Bd. of Worcester*, 431 Mass. 163, 726 N.E.2d 405 (2000)(municipal public health nurse assigned to work in the city's public schools, who was injured in an automobile accident while driving from her home to her first school assignment of the workday, was not injured while in the performance of her work duties; the SJC noted that Nurse Richard was not injured “while going from one place at which she had an employment obligation to another such place, or while actually performing an employment duty during travel” and was injured, instead, while traveling from home, where she was not required to work, to her assigned workplace, as she was required to do; commuting to work, while necessary to begin the nurse’s shift at the assigned workplace, was not itself being actually engaged in the performance of work duties; 431 Mass. at 165-66, 726 N.E. 2d at 406-07); *Namvar v. Contributory Retirement Appeal Bd.*, 422 Mass. 2004, 663 N.E.2d 263 (1996)(public community college associate professor of mathematics who, after eating lunch at the college cafeteria, slipped and fell while walking to her office to hold office hours for students, was not injured while in the performance of her duties; “if the employee had been going from one place at which she had had an employment obligation to another such place, if she had had an

employment duty at the cafeteria (as well as at her office), or if she had been performing a duty of her employment while walking to her office, the result would be different,” 422 Mass. at 1005, 726 N.E.2d at 264); *Boston Retirement Bd. v. Contributory Retirement Appeal Bd.*, 340 Mass. 109, 111, 162 N.E.2d 821, 823 (1959) (operating room nurse employed at a municipal sanitorium who tripped and fell while descending the sanitorium’s stairs while on the way home to have lunch was not injured while in the performance of her job duties); *see also Civetti v. Plymouth Retirement Bd.*, Docket No. CR-16-411, Decision at 9-10 (Mass. Div. of Admin. Law App., Feb. 22, 2019)(denial of police officer’s ADR application following medical panel review affirmed; because the officer’s allegedly disabling right shoulder injury occurred while he was traveling to work, when he exited his car in the police station parking lot before reporting for duty, and not while the officer was traveling from one place where he had a workplace obligation to another place where he had a workplace obligation, it was not sustained while the officer was in the performance of his work duties, *citing, inter alia, Namvar*). Failure to show that the injury in question was sustained while in the performance of job duties makes the applicant ineligible for accidental disability retirement under M.G.L. c. 32, § 7(1), and his ADR application may be denied without first convening a medical panel to opine as to a causal nexus between the disabling personal injury alleged in the ADR application and a work-related accident or incident. This denial without medical panel review may be appealed to DALA pursuant to M.G.L. c. 32. If, on appeal, the applicant shows, by a preponderance of the evidence, that the injury on which he based his ADR application was performed while he was in the performance of his job duties, the appropriate remedy is to vacate the denial of his ADR

application and remand the matter to the Board for medical panel review. *See* M.G.L. c 32, § 7(1); *Fairbairn v. Contributory Retirement App. Bd.*, 54 Mass. App. Ct. 353, 354, 765 N.E.2d 278, 279 (2002).

3. Was Officer Meola Injured While in the Performance of his Police Duties?

I conclude that Officer Meola has shown, by a preponderance of the credible evidence in the record, that the injury he claimed to have sustained occurred on March 1, 2015, while he was on an assigned eight-hour work shift without a scheduled lunch or meal break or one required under the applicable collective bargaining agreement, and while was traveling from one duty assignment location during his shift (the police station) to another (his assigned police cruiser, preparatory to going out on a “patrol loop” of the town as part of his work shift). As a result, I vacate the denial of Officer Meola’s ADR application and remand the matter to the Board for medical panel review.

a. Did the Claimed Injury Occur?

The credible, reliable evidence in the record shows that Officer Meola was injured during a slip and fall on ice in the parking area behind the Manchester-by-the-Sea Police Station during a ten minute period before noon on March 1, 2015, most likely between 11:50 and 11:53 a.m.

There was some discrepancy as to the date of the injury, but it resolves based upon credible, reliable evidence that the injury date was March 1, 2015 rather than March 2, 2015.

In his Physician's Statement pertaining to Officer Meola's ADR application, Dr. Doorly, Officer Meola's neurologist and treating physician, gave the date of Officer Meola's injury and last day he was able to perform his essential duties as "3/2/15." (Finding 23(a), referencing Exh. E; Physician's Statement at 2.) However, in the March 4, 2015 neurosurgery spine consultation report that he included with his Physician's Statement, Dr. Doorly stated that the injury occurred on March 1, 2015 and that the Officer had been out of work since that date. (*Id.*; Finding. 23(a), referencing Dr. Doorly's Mar. 4, 2015 neurosurgery spine consultation report at 2.) The March 2, 2015 date is an outlier, found nowhere else in the record.

In contrast, Officer Meola, Dr. Doorly's patient, stated consistently that March 1, 2015 was the date of his injury. (*See* Finding 16). In his ADR application, Officer Meola stated that he was injured as the result of a low back injury he sustained on March 1, 2015 while walking to his cruiser, and ceased being able to perform all of the essential duties of his position on that date. (Finding 22, referencing Exh. D (ADR application) at 5.) Officer Meola also stated in his ADR application that he received emergency medical treatment on March 1, 2015 at North Shore Medical Center's Salem Campus in Salem for the injury he claimed to have sustained on that date. (Exh. D at 8; ADR application section entitled "Emergency Medical Treatment.") Officer Richard's March 1, 2015, 1:10 p.m. official report of Officer Meola's injury gave the date of Officer Meola's injury as March 1, 2015. (*See* Finding 18). As I noted above, Dr. Doorly's March 4, 2015 neurosurgery spine consultation report gave the date of Officer Meola's injury as March 1, 2015. The North Shore Hospital, Salem Campus emergency room discharge report gives the time of Officer Meola's admission via the EMT service for a slip on ice and fall

onto his back as March 1, 2015, and the time of ER admission on that date as 12:32 p.m. (Finding 19.) There is no emergency room record for an admission of Officer Meola on March 2, 2015.

I conclude that the March 2, 2015 injury date Dr. Doorly gave in his Physician's Statement was most likely an inadvertent error. As a matter of its evidentiary credibility and weight, the error is corrected by Dr. Doorly's own, earlier neurosurgery spine consultation report dated March 4, 2015 to which his Physician's Statement referred.

The March 1, 2015 injury date is, in contrast, both reliable and credible. I give it greater weight than I do the apparently erroneous March 2, 2015 injury date. March 1, 2015 is the injury date that Officer Meola gave in his testimony and in his ADR application. This date is supported by Officer Richard's injury report of the same date, and by the North Shore Hospital emergency room record for Officer Meola's March 1, 2015 admission, less than an hour after the injury occurred.

There was also some discrepancy as to the precise time that Officer Meola slipped and fell on March 1, 2015. The Officer's ADR application gives the time of his slip and fall behind the police station as "[a]pproximately 12:00 p.m.," while he was on duty as a patrolman in the mid-part of his scheduled 8:00 a.m. to 4:00 p.m. day shift. (Finding 22.) Officer Meola testified at the hearing that he exited the police station and proceeded to his cruiser behind that building to perform a patrol loop, and slipped and fell before making it to his cruiser, at "11:55, 11:58, around that time." (Finding 16.) Officer Richard's official report of the injury gives the time of his response to Officer Meola's radio call for assistance as 11:53 a.m., and the time of the

Officer's transportation by the responding EMTs to the hospital as 12:00 p.m. (Finding 18.)

An injury that occurred at noon may evoke the image of a work lunch break more effectively than does an injury said to have occurred at 11:50, 11:53 or 11:58 a.m. The Board evoked that imagery here in arguing that Officer Meola was headed out for a noon lunch break when he slipped and fell, and that he was, as a result, injured while going to lunch rather than in the performance of his police duties. *See, e.g., Board's Post-Hearing Memorandum*, Dec. 2, 2017 at 15 (Board counsel's argument that "[w]hat is relevant is whether Meola should be believed that he was going out to 'loop' Manchester and then go grab lunch, or whether it is more believable that just as most people who work the day shift do, at just before noon he left the police station with the intent to retrieve his lunch.")

The invited inference of a noon lunch break lacks support in the record. It appears to be based upon a daily work routine that was more widespread in the 20th century than it is today. More reliable, and credible, as to the time of Officer Meola's injury is Officer Richard's recorded recollection of when he responded to Officer Meola's radioed request for assistance, which was 11:53 a.m. on March 1, 2015. (Finding 18.) Officer Richard documented his response relatively contemporaneously in a formal report of Officer Meola he submitted at 1:10 p.m. on the same day, just over an hour after Officer Meola's injury occurred. (*Id.*)

I consider Officer Richard's report as an official record prepared in the regular course of a Manchester-by-the-Sea patrolman's duties and maintained as such in the records of the town's Police Department. The Board did not characterize Officer Richard's report otherwise. It was among the Police Department records mentioning Officer Meola that the Board requested from

the town while it was deciding Officer Meola's ADR application. (*See* Finding 24; *see also* Exh. J: Request by Essex Retirement System to the Manchester-by-the-Sea Town Administrator, dated June 23, 2016, for police department call logs, surveillance video, police reports, and supporting photos and witness statements from March 1, 2015, the date of Officer Meola's claimed injury at the Manchester-by-the-Sea Police Station parking lot, and a copy of Officer Meola's application for benefits under M.G.L. c. 41, § 111F; and Response of Town Administrator Greg Federspiel to the Board's request, dated June 30, 2016, with enclosed documents including Manchester Police Officer Michael Richard's Formal Report of Officer Meola's Mar.1, 2015 injury.)

In terms of giving this document appropriate weight as to its substance, I have taken into account (with no assertion or evidence to the contrary) that reporting a shift partner's injury was within the scope of a Manchester-by-the-Sea patrolman's duties. Officer Richard reported both his day shift partner's injury on March 1, 2015 and his response to his partner's radioed request for assistance. (*See* Exh. F: Employer's Statement pertaining to Officer Meola's ADR application: attached Commonwealth of Massachusetts Police Officer Task List–Non-Supervisory (undated), listing, as among a municipal patrolman's duties, "response to incidents requiring" a police officer's presence "as specified in Departmental policies.")

Officer Richard's report is persuasive, therefore, that Officer Meola's injury occurred on March 15, 2015 between 11:50 a.m. and 11:53 a.m.

It may still be the case, as the Board appears to suggest, that "noon is lunchtime somewhere." It may also remain a popular understanding that lunch is what leaving a

workplace at noon is all about. In some circumstances, a noon lunch break may be a reasonable assumption. That is not the case here, however. As I discuss below regarding the issue of whether Officer Meola's injury occurred while he was in the performance of his duties as a police officer, more reliable and direct evidence regarding the absence of scheduled lunch breaks (or any lunch breaks) for Manchester-by-the-Sea patrolmen at the time in question negates any assumption that the Officer was headed out to a noontime lunch break when he was injured. That, however, relates to whether the Officer was injured while in the performance of his duties as a patrolman. What I determine first is that the injury occurred on March 1, 2015. Its precise time is not determinative of the injury's occurrence, although there is sufficient evidence here to determine that the time of the injury's occurrence on that date was between 11:50 and 11:53 a.m.

*b. Did the Injury Occur While Officer Meola was
"in the Performance of his Police Duties"?*

The Board contends that Officer Meola was not injured while in the performance of his work duties as a patrolman because (1) he intended to obtain lunch during his work shift on March 1, 2015, (2) when he was walking to his police cruiser at (or close to) noon, he was clearly doing so for the purpose of going to obtain lunch; (3) his testimony that he was going out on patrol, as opposed to going out to "grab lunch," was self-serving, and in addition was contrary to common sense concerning what "most people" do in the middle of their shifts at noon, which is going to lunch, and (4) "it is immaterial and irrelevant that the Officer did not have a defined 'lunch break' during his eight-hour shift because he was clearly permitted to

retrieve lunch while out on patrol, and the case law is clear that once an individual is going to or coming from lunch, he is no longer in the performance of his duties,” *citing Namvar*. Board’s Post-Hearing Memorandum, Dec. 2, 2017 at 15.

I begin with what *Namvar* actually held. The decision affirmed ADR denial for a public employee, a public community college professor who was injured while returning from lunch at the school cafeteria to her office where she was scheduled to hold student office hours. The SJC declined to overrule what it had held since 1959, which was, in the main, that, per the unchanged language of M.G.L. c. 32, § 7(1), an employee injured while returning to work after lunch was not injured while in the performance of her duties. However, the SJC also noted in *Namvar* that, per the same caselaw, if the professor “had had an employment duty at the cafeteria (as well as at her office), or if she had been performing a duty of her employment while walking to her office, the result would be different.” *Namvar*; 422 Mass. at 1005, 663 N.E.2d at 264. Notably, *Namvar* did not hold that eating lunch during a work shift, or intending to secure and eat lunch during a duty shift, transformed the duty shift into a lunch break, even if the employee had none or was expected to obtain food and consume it while on duty, provided he could do so without neglecting duty requirements.

The pertinent language of M.G.L. c. 32, § 7(1) remains as it was when the SJC held that an injury sustained while commuting to work, or when going to and from lunch breaks, did not occur during the performance of a public employee’s duty. The pertinent language requiring that a disabling injury have been sustained by the ADR applicant while in the performance of his duties has remained unchanged since the SJC decided *Namvar*. Per *Namvar*, and the still-

unchanged statutory language, an ADR applicant may show, by a preponderance of the evidence, that he was injured while he was proceeding from one duty assignment location to another, as opposed to having been injured while commuting to work from home, while returning home after work ended, or while en route to or from a scheduled meal break. *See* discussion above at 27-30.

Several factors present here show credibly that Officer Meola was neither on, nor en route to, a lunch break when he was walking from the police station (one of his duty stations) to a parked police cruiser (another duty station). His intention to find and eat lunch when it was possible to do so while performing his duties as a patrolman did not transform a work shift with no break into one with a lunch break, or the injury he sustained into one that did not occur while he was in the performance of his patrolman duties. To recapitulate the operative facts:

(1) The applicable collective bargaining agreement for Manchester-by-the-Sea non-supervisory police officers such as Officer Meola included no provision for a lunch break. (Finding 6.)

(2) There is no evidence that in 2015, Manchester-by-the-Sea or its Police Chief had in place a written policy regarding lunch or meal breaks, or the consumption of food and beverages, by patrolmen during assigned shifts. (Finding 7.)

(3) There is also no evidence that in 2015, the Manchester-by-the-Sea Police Department (a) deducted time or pay for an unpaid lunch or meal break for patrolmen who worked more than six hours during a calendar day; (b) deducted time or pay for unpaid lunches

or meal breaks that Officer Meola took during an eight hour work shift to which he was assigned, whether on March 1, 2015 or on any other date; or that (c) at any time during Officer Meola's assigned eight hour shift on March 1, 2015, he was off-duty and/or free to go off-duty at his work site (including a police cruiser), in order to be able to take a lunch break. (Finding 8.)

(4) Officer Meola understood that, as a Manchester-by-the-Sea patrolman, (a) he had no dedicated lunch or meal break during an assigned shift; (b) he could obtain food and consume it while on patrol, and patrolmen regularly ate during their shifts in order to maintain their energy levels; (c) a patrolman was expected to respond immediately to a call for assistance other action or when he witnessed a crime, which meant putting aside anything he was consuming in order to respond; and (d) while he was working his eight hour shift as a patrolman, whether he was performing desk duty or going out on patrol in a police cruiser, he was never off-duty or free to leave his work site in order to take a lunch break. (Finding 11.)

(5) On March 1, 2015, Officer Meola was assigned to an eight hour day shift that ran from 8:00 a.m. to 4:00 p.m., without any scheduled lunch break. This shift was performed at the police station and/or on patrol in an assigned police cruiser. (Findings 14 and 15.)

(6) Because he had no scheduled lunch break on March 1, 2015, Officer Meola planned to get something to eat during the last part of his cruiser patrol before returning to the police station if he was able to do so—for example, if there was no call, or if he did not observe anything, that required him to respond. When his shift ended, he intended to go home. (Finding 15.)

(7) When Officer Meola walked from the police station to his assigned cruiser on March 1, 2015 and slipped and fell on ice in the parking area behind the police station, he was in full uniform and had on a leather duty belt with more than 25 pounds of equipment attached, including his service pistol and ammunition, pepper spray, a 16-17 inch baton, two sets of handcuffs, and a radio with wireless microphone that was on so he could receive calls while on duty. (Finding 14(a).)

None of these circumstances presented in *Namvar* or in other caselaw holding that an injury sustained while going to or from lunch, or commuting to or from work, was not sustained while in the performance of work duties. (*See* above at 28-30.)

When Officer Meola slipped and fell while on the way from the police station to his assigned police cruiser, he was in the middle of an eight hour duty shift on March 1, 2015 that was performed typically at the police station and/or on patrol in an assigned police cruiser, which required him to be on duty without a lunch or other break. He had no prescribed or scheduled lunch break under the applicable collective bargaining agreement or Police Department rules and was expected to eat when he could while on duty. When he slipped and fell on ice behind the police station and was injured on March 1, 2015, Officer Meola was proceeding from one duty assignment location (the police station) to another (his assigned cruiser). At that time, therefore, Officer Meola was “in the performance of his duties” as a Manchester-by-the-Sea patrolman.

The Board presented no testimony or evidence to the contrary. It argued, in effect, that an off-duty lunch break was inferred because the injury occurred at or close to noon when “most

people” took a lunch break, and/or because Officer Meola intended to eat while on duty provided that he was not obligated to respond to a call for assistance or to an activity or situation he observed. These inferences are without legal support in *Namvar* or the other “in the line of duty” caselaw. They are not supported by the evidence here regarding the nature of Officer Meola’s duties as a Manchester-by-the-Sea patrolman, where and how he was expected to perform his eight hour duty shift on March 1, 2015, the lack of a lunch break as of right under the provisions of the applicable collective bargaining agreement, and the absence of any scheduled lunch or other break during his assigned duty shift. The town’s theories do not overcome Officer Meola’s showing, by a preponderance of the credible and reliable evidence, that he was injured while on duty on March 1, 2015 and moving from one work duty assignment location to another.

While I find credible Officer Meola’s testimony that he was going out on patrol in his assigned cruiser and intended to pick up something to eat toward the end of his patrol, it is immaterial whether he might have intended to do this earlier during his patrol route, if he had been able to do so. While he performed his day shift, Officer Meola was required to remain alert for a situation requiring police involvement and to respond immediately, whether he was patrolling in his assigned cruiser or working behind a desk at the police station, and whenever and wherever he was obtaining or eating lunch. This distinguishes Officer Meola’s situation from those of other public employees who were injured during defined, off-duty lunch breaks and were not expected to perform their work duties while obtaining or eating lunch. When he was performing his duties on March 1, 2015 as a patrolman during his assigned eight hour duty

shift, Officer Meola was never off-duty for an assigned lunch break, which he did not have. He was performing his work duties as a patrolman throughout his duty shift, including while moving from one duty assignment location (for example, at the police station) to another (his assigned cruiser).

Taking all of these circumstances into account, I conclude that Officer Meola proved, by a preponderance of the credible evidence, that he was injured on March 1, 2015 while in the performance of his duties as a Manchester-by-the-Sea patrolman. He is entitled to be examined by a medical panel, therefore, before the Board decides his ADR application.

Disposition

For the reasons stated above, the Essex Regional Retirement Board's denial of Officer Meola's ADR application for failure to show an injury sustained while in the performance of his duties is reversed, and the matter is remanded for medical panel review before the Board decides the ADR application.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/ Mark L. Silverstein

Mark L. Silverstein
Administrative Magistrate

Dated: July 12, 2024