

**COMMONWEALTH OF MASSACHUSETTS
CONTRIBUTORY RETIREMENT APPEAL BOARD**

KATHERINE MERCADANTE

Petitioner-Appellant

v.

STATE BOARD OF RETIREMENT

AND

**PUBLIC EMPLOYEE RETIREMENT
ADMINISTRATION COMMISSION,
Respondents-Appellees.**

CR-17-887

DECISION

Petitioner Katherine Mercadante appeals from a decision of an administrative magistrate of the Division of Administrative Law Appeals (DALA), affirming the decision of the respondent State Board of Retirement (SBR), denying her application for accidental disability retirement. The DALA magistrate heard the matter on March 5, 2019. The magistrate's decision is dated June 28, 2019. Ms. Mercadante filed a timely appeal to us.

After considering all the arguments presented by the parties and after a review of the record, we incorporate the DALA decision by reference and adopt the DALA magistrate's Findings of Fact 1- 37 as our own. Ms. Mercadante failed to meet her burden of proof that she was denied a proper medical panel evaluation and that she sustained a disabling hip injury at work on June 12, 2014. We, therefore, affirm the DALA decision adding the following comments.

A condition precedent for granting accidental disability retirement is an affirmative certification by a regional medical panel to the three statutory questions of incapacity, permanence, and causation. ¹ *Kelley v. Contributory Ret. App. Bd.*, 341 Mass. 611, 613 (1961).

¹ The panel addresses three questions: (1) whether the applicant is mentally or physically incapacitated for further employment duties; (2) whether such incapacity is likely to be permanent; and (3) "whether or not the disability is such as might be the natural and proximate

See also *Malden Ret. Bd v. Contributory Ret. App. Bd.*, 1 Mass. App. Ct. 420, 423 (1973) (panel opines on medical questions “beyond the common knowledge and experience of [a] local retirement board”). Unless the medical panel employs an erroneous standard or fails to follow proper procedure, or unless the certificate is “plainly wrong,” the retirement board may not ignore the panel’s findings. *Kelly*, 341 Mass. 611.

Ms. Mercadante contends that she did not have the benefit of a proper medical panel evaluation. This is based in large part on her contentions that one member of the medical panel, Dr. Ritter, (1) did not have pertinent information concerning the specific mechanism of her injury; and (2) presented a biasness towards her, which resulted in an opinion that is not based on any objectivity. Consequently, Ms. Mercadante argues that because of Dr. Ritter’s lack of understanding of the mechanism of her injury and because of his biasness towards her, his certificate is invalid. *Ferraro v. Contributory Retirement Appeal Bd.*, 57 Mass. App. Ct. 728, 730 (2003). If a certificate is invalid, she asserts that she must be allowed a new medical panel evaluation. *Id.*

The resolution of this case depends on weighing the credibility of Ms. Mercadante’s assertions that Dr. Ritter failed to provide a fair and impartial examination and that of Dr. Ritter’s position that he performed his functions in a professional and objective manner. After reviewing the conflicting evidence in the record, the magistrate concluded that Dr. Ritter’s opinion was more credible and conversely, that Ms. Mercadante’s testimony and arguments were less than persuasive. We conclude that the magistrate’s decision is reasonable and is based on the substantial evidence in the record. We, therefore, find no basis to make a different decision.

When reviewing a DALA decision, the Appeals Court in *Vinal v. Contributory Retirement Appeal Bd.*, 13 Mass. App. Ct., 85, 99-100 (1982), instructed that CRAB “should defer to subsidiary findings entered by a hearings officer according to the following guidelines: First, all subsidiary findings made by a hearings officer should be entitled to some deference; second, when those findings rest on the hearings officer’s resolution of credibility questions, they should be entitled to substantial deference; and finally, whenever the appeal board rejects subsidiary findings made by a hearings officer, its decision should, consistent with the

result of the accident or hazard undergone on account of which [an accidental disability] retirement is claimed.” G.L. c. 32, § 6(3).

requirements of G. L. c. 30A, Section 11(8), contain a considered articulation of the reasons underlying that rejection.” *Vinal*, 13 Mass App. Ct. at 101-102; see *Morris v. Board of Registration in Medicine*, 405 Mass. 103, 110-111, cert. denied, 493 U.S. 977 (1989).

Administrative decisions such as these must be based on substantial evidence as well as reasoned findings; this is what makes effective judicial review possible. *Vinal*, supra.

Here, a majority of the medical panel determined that Ms. Mercadante was not disabled from her essential duties as a court officer. After a thorough consideration of the evidence, the magistrate concluded Drs. Ritter and Goss conducted fair and impartial examinations. She discussed in detail on pages 19-20 the evidence in the record, including the hearing testimony, which we incorporate by reference.² In so concluding, the magistrate determined that Ms. Mercadante failed to meet her burden that she was denied a proper medical panel evaluation because Dr. Ritter’s conduct during the examination calls into question his ability to impartially analyze her application under the correct standard. Nevertheless, the magistrate determined that Dr. Ritter reviewed Ms. Mercadante’s records and her job description, that he addressed Ms. Mercadante’s complaint that her attorney was not allowed in the room during the examination, and that he asked questions or had his assistant ask questions for clarification purposes.³ She further found support of Dr. Ritter’s certification and follow up letter in that both Drs. Goss and Nairus also found that Ms. Mercadante presented with exaggerated subjective symptomatology.⁴ Accordingly, we agree with the magistrate that Dr. Ritter’s findings could not be discredited.

On the otherhand, in concluding that Ms. Mercadante’s arguments to be less persuasive, the magistrate explained that she made varying statements regarding Dr. Ritter’s examination at the hearing and in her affidavit, which calls into question the veracity of her claims.⁵ Based on these varying statements and the lack of support from the evidence in the record, the magistrate determined her testimony was less reliable, and instead, weighed Dr. Ritter’s reports more heavily.⁶ We defer to the magistrate’s findings, as she “has heard oral testimony and had the opportunity to assess credibility firsthand.” *Vinal*, 13 Mass. App. Ct. at 97; *Kalu v. Boston Retirement Bd.*, 61 N.E.3d 455, 464 (Mass. App. 2016). Having weighed Dr. Ritter’s opinion

² DALA at *20.

³ Ex. 3, 6; FF 26, 30.

⁴ Ex. 3, 6, 12; FF 12, 18, 24, 25, 26, 27, 30, 33, 34.

⁵ Ex. 5; FF 28; Hearing testimony.

⁶ DALA at *20.

more heavily, we agree with the magistrate that Ms. Mercadante failed to meet her burden that she was denied a proper medical panel evaluation. Because a majority of the medical panel rendered a negative certification in connection with Ms. Mercadante's application for accidental disability retirement, her application must be denied. *Kelley*, supra.

Additionally, the magistrate concluded that Ms. Mercadante failed to prove that she sustained a disabling hip injury on June 12, 2014. The burden of proving each element of a benefit claim is on the applicant. See *Lisbon v. Contributory Retirement Appeal Board*, 670 N.E. 2d 392, 41 Mass. App. Ct. 246 (1996); *Daley v. Contributory Retirement Appeal Board*, 60 Mass. App. Ct. 1110, 801 N.E. 2d 324 (2004); *Hough v. Contributory Retirement Appeal Board*, 309 Mass. 534, 36 N.E. 2d 415 (1941); *Wakefield Contributory Retirement Bd. v. Contributory Retirement Appeal Board*, 352 Mass. 499, 226 N.E.2d 245 (1967). To establish her case, Ms. Mercadante is required to do so by a preponderance of the evidence. *Lisbon v. Contributory Retirement Appeal Board*, 670 N.E. 2d 392, 399, 41 Mass. App. Ct., 246, 255 (1996).

In her decision, the magistrate relied on the objective medical evidence in the record and her credibility assessments of Ms. Mercadante's testimony and the medical opinions. She found very compelling that the contemporaneous medical records reflect no complaints of right hip pain or reports of injury to the right lower extremity on the day Ms. Mercadante was treated for the work injury. In fact, the magistrate noted that the records reflect Ms. Mercadante was treated for low back pain and was found to have no evidence of right leg pain or weakness after her work injury.⁷ She explained that it was not until July 2014 that Ms. Mercadante complained of right hip pain. This was nearly two months after the work injury, and the doctor related the hip pain to arthritis.⁸ Additionally, the magistrate noted that later reports from treating providers contained no objective findings consistent with a right hip injury, including no complaints of hip or right-sided pain and normal range of motion of the hips.⁹ The medical reports, instead, documented a low back injury at work.¹⁰

Moreover, in concluding that Ms. Mercadante could not prevail, the magistrate noted that she presented varying statements relating to the injury and the etiology of her hip pain to independent medical examiners, to the medical panel members, and in her application for

⁷ Ex. 2a, 2b; FF 5, 6.

⁸ Ex. 2c, 2d; FF 7, 8.

⁹ Ex. 2a, 2c; FF 6, 7, 9.

¹⁰ Ex. 2a, 2b, 2c, 2d; FF 5, 6, 7, 8.

accidental disability retirement benefits. She highlighted the varying statements of the onset of Ms. Mercadante's right hip pain and the mechanism of her injury.¹¹ These varying statements were of particular importance because it relates to whether Ms. Mercadante sustained a permanent right hip injury at work on June 12, 2014 as stated in her application. The magistrate explained that "the Petitioner ha[d] proffered so many variations describing the onset of her right hip pain during her hearing testimony and in her statements to different medical providers that no one version can be deemed reliable or weighed heavily." DALA at *23-24. She also found it noteworthy that there was no Report of Injury from the employer, nor a report from Ms. Mercadante describing her original work injury that could be considered. DALA at *21. Further, while a gluteal tear was seen on magnetic resonance imaging (MRI) obtained four months after the work injury that was credited to her work injury, the magistrate deemed that it was not more probable than not that the work injury of June 12, 2014 caused the tear.¹² DALA at *22. The magistrate's conclusion is reasonable in light of the lack of objective medical treatment for right hip pain at the time of the work injury combined with Ms. Mercadante's varying reports of the mechanism of injury and medical opinions noting symptom magnification. We agree with the magistrate that the substantial evidence in the record does not demonstrate that Ms. Mercadante sustained a disabling hip injury as a result of the work injury of June 12, 2014. In our affirmance of the DALA decision, we give some deference to the magistrate's findings and where, as here, credibility of witness testimony is at issue, her findings are entitled to substantial deference. *Vinal*, supra.

Conclusion. The DALA decision is affirmed. In light of the factors discussed above, Ms. Mercadante failed to meet her burden to establish that she was denied a proper medical panel evaluation and that she sustained a disabling hip injury at work on June 12, 2014. She is, therefore, not entitled to accidental disability retirement benefits. *Affirm.*

SO ORDERED.

CONTRIBUTORY RETIREMENT APPEAL BOARD



Uyen M. Tran
Assistant Attorney General

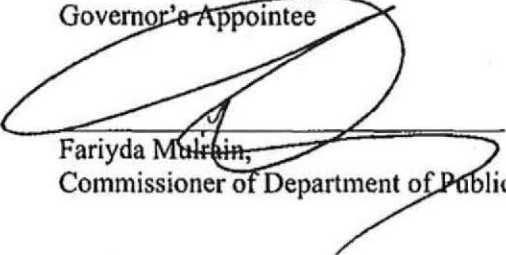
¹¹ DALA at *20-24.

¹² Ex. 2e; FF 13.

Chair
Attorney General's Appointee

Did Not Participate

Nicolle M. Allen, Esq.
Governor's Appointee



Fariyda Mulrain,
Commissioner of Department of Public Health Appointee

Date: December 17 , 2024