

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Wadson Michel,
Petitioner,

No. CR-24-0216

Dated: September 5, 2025

v.

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

Appearances:

For Petitioner: Robert McMullen, Esq.

For Respondent: Salvatore Coco, Esq.

Administrative Magistrate:

Yakov Malkiel

SUMMARY OF DECISION

The petitioner suffers from symptoms of post-concussion syndrome. A preponderance of the evidence supports the conclusion that he is permanently incapacitated as a result of an injury he sustained while performing his duties—even if he performed those duties differently than his employer would have liked. The petitioner is entitled to retire for accidental disability.

DECISION

Petitioner Wadson Michel appeals from a decision of the Massachusetts Teachers' Retirement System (MTRS) denying his application to retire for accidental disability. I held an evidentiary hearing on June 17, 2025, at which Mr. Michel was the only witness. I admitted into evidence exhibits marked 1-16 and 18-23.¹

Findings of Fact

I find the following facts.

¹ Before the hearing, I excluded proposed exhibit 17, a haystack of medical records whose relevance remained—the parties said—“unforeseen.” *See* G.L. c. 30A, § 11(2). *Cf. Nicholas Acoustics & Specialty Co. v. H & M Const. Co.*, 695 F.2d 839, 846-47 (5th Cir. 1983). Mr. Michel then successfully offered “additional, relevant, targeted” exhibits, i.e., nos. 20-23.

1. Mr. Michel is an educator with a master's degree in clinical social work. In 1996, he began to work as an adjustment counselor with the Next Wave Junior High and Full Circle High School, which offer alternative educations to children with special needs in the sixth to twelfth grades. (Testimony; exhibits 1, 10, 15.)

2. Mr. Michel's responsibilities revolved around assisting students with social, emotional, environmental, and physical obstacles to learning. He counseled students individually and in groups. He intervened during crises. He met with parents to discuss their children's progress. Mr. Michel also supervised several elective activities, including "magic tricks," "kite flying," and "soccer." (Testimony; exhibits 1, 10, 15.)

3. Over the years, Mr. Michel sustained several significant injuries. At a point in time not clear from the record, he injured his head while skiing, suffering periodic headaches for some time thereafter. During 2005, in a motorcycle accident, Mr. Michel suffered a concussion and a neck injury. And in November 2016, in another motor vehicle accident, Mr. Michel was struck by a van; he sustained both a serious leg injury and neurological harm. (Testimony; exhibits 1, 18.)

4. Mr. Michel's courses of treatment after the November 2016 accident included physical therapy and speech therapy. He missed close to a year of work. At all times after his return to work, Mr. Michel was accommodated for concussion-related symptoms: he was assigned a dimly lit office, advised to take periodic "cognitive breaks," and permitted to wear sunglasses and noise-reducing earphones. In 2018, Mr. Michel spoke to his superintendent about the possibility of being reassigned to a less strenuous position, but nothing came of the discussion. (Testimony; exhibits 1, 10, 16, 18.)

5. When Mr. Michel and other school staff members supervised the soccer elective, it was their practice to participate in the game as players. According to unsworn reports written by the school principal, she commented to Mr. Michel at some point that it would be a “good idea” for him to monitor the games from the sidelines. But Mr. Michel believed that playing the game allowed him to show his students how to behave well in the face of adversity. I credit his testimony that the school never forbade his preferred approach. (Testimony; exhibits 10, 14.)

6. In the afternoon hours of Thursday, May 16, 2019, the soccer elective was held in the school gym. Mr. Michel and a colleague were supervising the game as participants. Mr. Michel was serving as a goalie. At some point, he collided with a student and fell, striking his head against a padded wall. Mr. Michel lay on the floor for a few minutes. When he was able to stand up, he declined to see the school nurse, and the game resumed. (Testimony; exhibits 1, 11-13.)

7. Mr. Michel saw several caregivers soon after the May 16, 2019 accident. He did not mention the accident during a preexisting medical appointment on May 17. But on May 20, he visited a nurse practitioner with mental foginess, struggles with balance, tinnitus, nausea, sensitivity to noise and light, fatigue, insomnia, and a “light” headache. On May 24, he was diagnosed with a concussion by a physician, who listed similar symptoms and noted that Mr. Michel was displaying “a degree of retrograde amnesia.” (Exhibits 14, 18.)

8. In the meantime, Mr. Michel came to work for the last time on May 21, when he told his principal about his injury. On the next day, he filed an incident report. Sometime after that, he pursued a successful workers’ compensation claim. (Testimony; exhibits 1, 11, 14, 18.)

9. During the ensuing months, Mr. Michel underwent evaluations and treatment at several facilities. The forms of treatment provided to him included medication, speech-language

therapy, and physical therapy. Prism glasses helped with his headaches. His long-term symptoms have included dizziness, sensitivity to light, fatigue, and struggles with memory, concentration, and word finding. He suffers especially from mood swings, impatience, frustration, and irritability. He is able to drive, shop for groceries, garden, and listen to audiobooks. (Testimony; exhibits 1-2, 18, 20-22.)

10. After he stopped working, Mr. Michel was surveilled for two days by a private investigator. On the first day, Mr. Michel was not seen outside his home. On the second day, Mr. Michel shopped at a home-improvement store and drove home erratically. Perhaps confused about Mr. Michel's diagnoses, the investigator commented that he got around "with no visible sign of injury or distress and . . . without the use of any visible medical brace or device." (Exhibits 7, 23.)

11. On two post-employment occasions, Mr. Michel took significant trips abroad, one to Vietnam and one to Africa. He was accompanied by family members both times. His medical records memorialize discussions between Mr. Michel and his doctors about both trips. (Testimony; exhibit 18.)

12. In August 2020, Mr. Michel applied to retire for accidental disability. The application was supported by a treating physician's statement from Dr. Stephanie Cho of Spaulding Hospital. A regional medical panel composed of neurologist Dr. Julian Fisher, internist Dr. Seth Schonwald, and neurologist Dr. Daniel Vardeh conducted separate examinations during March-April 2023. A panel majority consisting of Dr. Fisher and Dr. Schonwald then executed certificates supportive of Mr. Michel's application. (Exhibits 1-5.)

13. Dr. Fisher diagnosed Mr. Michel with disabling symptoms of "a traumatic brain injury and post-concussive syndrome," including tinnitus, memory issues, "diffuse headache that

increases with stress and with cognitive activities,” “a degree of photophobia,” “mood swings,” and “occasional outbursts of anger.” With respect to causation, Dr. Fisher wrote: “While he had a previous traumatic brain injury in 2016, based on the fact that he was able to return to work and that the testing and imaging at the time were unrevealing, in my opinion, Mr. Michel’s disability is directly related to the [May 2019] work injury.” (Exhibit 4.)

14. Dr. Schonwald described Mr. Michel as reporting “a number of symptoms associated with post-concussive syndrome,” including “memory difficulties, balance, problems with speech, mood swings, and nausea, as well as daily headaches.” Dr. Schonwald recognized that “a previous concussion sustained [in November 2016] . . . may have contributed to [Mr. Michel’s] ongoing post-concussive symptoms.” He nonetheless concluded that “the [May 2019] event . . . aggravated [Mr. Michel’s] pre-existing condition.” (Exhibit 5.)

15. Dr. Vardeh returned a dissenting certificate. He acknowledged that Mr. Michel sustained a concussion in May 2019, but discerned no “objective findings” or “hard evidence” of neurological deficits. Dr. Vardeh concluded that Mr. Michel’s symptoms “far exceed what would be expected . . . of a mild concussion,” deducing that the problem was likely “symptom amplification.” Even so, Dr. Vardeh suggested that Mr. Michel’s mental status “would be best evaluated with a dedicated neurocognitive exam.” (Exhibit 3.)

16. Mr. Michel has been evaluated by other physicians in his workers’ compensation case. In January 2020, Dr. Paul Chervin diagnosed a mild concussion, which in his view should have resolved within a few weeks after the May 2019 accident. In part, Dr. Chervin explained that Mr. Michel’s “subjective symptomatology is not supported by the contradictory activity

noted on surveillance.”² In July 2020, Dr. Anatoly Shalnov diagnosed Mr. Michel with post-concussion syndrome, found him to be partially and temporarily disabled, and saw “a direct causal connection” between the May 2019 accident and Mr. Michel’s condition. (Exhibits 7-8.)

17. In March 2024, MTRS denied Mr. Michel’s retirement application, citing issues discussed below. Mr. Michel timely appealed. (Exhibit 9.)

Analysis

A member of a public retirement system is entitled to retire for accidental disability if he or she is “unable to perform the essential duties of [his or her] job,” the disability is “likely to be permanent,” and the disability was caused by an injury or hazard sustained “as a result of, and while in the performance of, the member’s duties . . . without serious and willful misconduct on the member’s part.” G.L. c. 32, § 7(1). Three questions are presented here: whether Mr. Michel was performing his job duties at the time of the May 2019 accident³; whether he is permanently disabled; and whether the May 2019 accident proximately caused his current condition.

I

The key facts pertinent to § 7(1)’s requirement that the member must be injured while “in the performance of[] the member’s duties” are simple and undisputed. It was a duty of Mr. Michel’s job to supervise the soccer elective. He was performing that duty at the time of the May 2019 accident. It follows straightforwardly that he was in the performance of his duties when he sustained his injury.

² The surveilling investigator’s findings are summarized earlier. It is hard to see an inconsistency between them and Mr. Michel’s reported symptoms.

³ MTRS does not deny that Mr. Michel sustained his accident “as a result of” his job duties. See *Damiano v. Contributory Ret. Appeal Bd.*, 72 Mass. App. Ct. 259, 262-63 (2008).

The argument that MTRS articulates on this issue is that Mr. Michel's job duties did not include "playing soccer with the students." Fairly restated, MTRS's point is that Mr. Michel was performing his duties differently than his employer would have liked: he was supervising by "playing" instead of by observing as a nonparticipant. But the only question that § 7(1) asks about the *manner* in which the employee was doing his or job is whether the accident involved "serious and willful misconduct."

MTRS acknowledges that Mr. Michel engaged in no serious, willful misconduct. *See generally Jones v. Weymouth Ret. Bd.*, No. CR-04-181 (Contributory Ret. App. Bd. 2005). In these circumstances, it makes no difference that his principal would have preferred for him to supervise the soccer elective from the sidelines. In an instructive case, an equipment operator was injured as a result of an improper and dangerous vehicle-towing technique. The Contributory Retirement Appeal Board (CRAB) wrote:

He was out plowing roads and was then being towed back to the highway department. We have no difficulty in agreeing that this qualified as being in the performance of his duties . . . however questionable the method.

Sanko v. Worcester Reg'l Ret. Bd., No. CR-12-659, 2017 WL 11905796, at *4 (Contributory Ret. App. Bd. May 25, 2017). In another matter, a maintenance laborer was injured when he carried a heavy piece of equipment alone instead of enlisting help. CRAB rejected an argument that the laborer had acted outside the scope of his job duties, explaining:

The determination as to whether the act was done within the performance of [the member's] duties rests on "if it can be seen that the whole affair had its origin in the nature and conditions of the employment, so that the employment bore to it the relation of cause to effect."

Loura v. Taunton Ret. Bd., No. CR-13-186, 2021 WL 12297908, at *21 (Contributory Ret. App. Bd. July 14, 2021) (quoting *Dillon's Case*, 324 Mass. 102, 107 (1949)). In short, "the manner in which the employee performed his duties, even if unwise . . . will not bar eligibility for

accidental disability retirement.” *Perry v. Marblehead Ret. Bd.*, No. CR-19-578, at *21 (Div. Admin. Law App. Nov. 19, 2021). *See Smith v. Springfield Ret. Bd.*, No. CR-22-0163, 2024 WL 4475616, at *5 (Div. Admin. Law App. Oct. 4, 2024).⁴

II

The requirements of incapacity and permanence pose paradigmatic questions of medical expertise. In the context of accidental disability retirement, the Legislature has decided “to vest in the medical panel the responsibility for determining medical questions which are beyond the common knowledge and experience of the members of the local board (or the Appeal Board).” *Malden Ret. Bd. v. Contributory Ret. Appeal Bd.*, 1 Mass. App. Ct. 420, 423 (1973). *See Robinson v. Contributory Ret. Appeal Bd.*, 20 Mass. App. Ct. 634, 639 (1985).

Mr. Michel’s panel examinations produced a majority opinion in his favor. Consistent with *Malden*’s guidance, the cases in which DALA and CRAB have found that a medical panel was wrong to find a member permanently incapacitated are vanishingly rare. The determinations of Mr. Michel’s panel majority are convincing here. Although other physicians have reached different conclusions, the technique of referring applicants to a panel of neutral specialists “is built to resolve even cases that generate divergent expert assessments.” *Robillard v. State Bd. of Ret.*, No. CR-18-470, 2022 WL 18283524, at *4 (Div. Admin. Law App. Dec. 19, 2022). And while there may be no “objective” or “hard” evidence of Mr. Michel’s deficiencies (as Dr. Vardeh said), none is required: it is the expert panelists’ mandate in each case to draw the medical conclusions that the available information warrants. *See Laumann v. Norfolk Cty.*

⁴ Unlike Mr. Michel, the members in the DALA decisions cited by MTRS appear to have been injured while violating their employment obligations. *See Cesaitis v. Worcester Ret. Bd.*, No. CR-15-74 (Div. Admin. Law App. June 2, 2017); *Clancy v. Bristol Cty. Ret. Bd.*, No. CR-08-321 (Div. Admin. Law App. July 24, 2009). Regardless, the analysis prescribed by CRAB in *Sanko* and *Loura* controls.

Ret. Syst., No. CR-10-822, at *13-14 (Div. Admin. Law App. June 20, 2014); *Rosemarie R. v. Amesbury Ret. Syst.*, No. CR-22-590, 2024 WL 3101692, at *4-5 (Div. Admin. Law App. June 14, 2024).

MTRS also does not identify any material information that was unknown to the panelists. Mr. Michel's trips abroad were reflected in his medical records, which the panelists received; it is entirely plausible that he would have been able to travel in the supportive company of his family notwithstanding the neurological and mood-related symptoms that, in the majority's view, disable him from educational work with special-needs students. And while the panel may not have known about the surveillance of Mr. Michel, that surveillance revealed nothing that casts doubt on the majority's conclusions.

III

The last question presented is whether Mr. Michel's current symptoms were caused by the May 2019 accident. The causation requirement is not met when a member's incapacity resulted from "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). But causation *is* established when a workplace injury aggravated a member's preexisting condition to the point of disability. *See Baruffaldi v. Contributory Ret. Appeal Bd.*, 337 Mass. 495, 501 (1958); *Adams v. Contributory Ret. Appeal Bd.*, 26 Mass. App. Ct. 1032, 1034 (1989).

The majority panelists recalled and discussed this rule. They took Mr. Michel's preexisting concussion-related issues seriously, but concluded that he would have remained capable of performing his job duties if not for the aggravating effect of the May 2019 accident. Both majority panelists ventured beyond the question posed to them by statute, namely whether Mr. Michel's condition is "such as might be" the result of his workplace accident. *See G.L.*

c. 32, § 6(3)(a); *Kelley v. Contributory Ret. Appeal Bd.*, 341 Mass. 611, 616 (1961). Dr. Fisher described Mr. Michel's disability as "directly related" to the May 2019 accident; Dr. Schonwald thought that it was "clear" that the accident aggravated Mr. Michel's preexisting condition. These opinions carry substantial weight. *See Narducci v. Contributory Ret. Appeal Bd.*, 68 Mass. App. Ct. 127, 134, 144 (2007); *Christopher C. v. Boston Ret. Bd.*, No. CR-19-342, 2023 WL 3434934, at *7 (Div. Admin. Law App. May 5, 2023).

The majority panelists' conclusion on causation is supported by the views of treating physician Dr. Cho and workers' compensation examiner Dr. Shalnov. That conclusion is also consistent with the chronology of Mr. Michel's case: at the time of the May 2019 accident, workable accommodations were allowing Mr. Michel to discharge his job duties successfully. His symptoms worsened promptly after the May 2019 accident and remained disruptive thereafter. All in all, Mr. Michel has carried his burden of proving causation by a preponderance of the evidence. *See Lisbon*, 41 Mass. App. Ct. at 255.

Conclusion and Order

In view of the foregoing, Mr. Michel 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