COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. Division of Administrative Law Appeals

 One Congress Street, 11th Floor

 Boston, MA 02114

**LAVORA MILTON**, (617) 626-7200

 *Petitioner* Fax: (617) 626-7220

 **www.mass.gov/dala**

*v.* Docket No: CR-14-19

**BOSTON RETIREMENT BOARD,** Date: February 17, 2017

 *Respondent*

**Appearance for Petitioner**:

Pro se

394 Truman Highway

Milton, MA 02186

**Appearance for Respondent**:

 Edward H. McKenna, Esq.

 66 N Street

 Boston, MA 02127

**Administrative Magistrate**:

Angela McConney Scheepers, Esq.

**SUMMARY**

The Petitioner has not proven by a preponderance of the evidence that her work was the significant contributing factor in her psychiatric incapacity. *Robinson’s Case*, [416 Mass. 454](http://sll.gvpi.net/document.php?id=sjcapp:416_mass_454), 460 (1993). The Petitioner’s incapacity was due to the natural progression of her psychiatric illness, which she had successfully managed for a long time.

**DECISION**

Pursuant to G.L. c. 32, s. 16(4), the Petitioner, Lavora Milton, appealed the January 9, 2014 decision of the Boston Retirement Board (Board) to the Contributory Retirement Appeal Board (CRAB), denying her application for accidental disability retirement benefits.

A hearing was held at the Division of Administrative Law Appeal (DALA) on September 10, 2015. The hearing was digitally recorded.

During his opening statement, counsel for the Board presented an oral Motion to Dismiss on the premise that Ms. Milton had not satisfied the notice requirement pursuant to M.G.L. c. 32, § 7; had failed to submit all her medical records to PERAC pursuant to 840 CMR 10.06; had failed the *Vest* test because she was not disabled on the last day of work, *Vest v. CRAB*, 41 Mass. App. Ct. 191 (1996); and had failed to meet pre-existing injury standard. The Board had given no previous notice to the pro se Petitioner or DALA. The Motion to Dismiss was denied.

Ms. Milton testified on her own behalf. I marked Ms. Milton’s Pre-Hearing Memorandum “A” for identification and the Board’s Pre-Hearing Memorandum “B” for identification. I admitted Joint Exhibits 1 – 19 into evidence. I submitted Ms. Milton’s appeal to DALA as Exhibit 20.

The Board submitted a Post Hearing Brief on October 17, 2015, whereupon the administrative record closed.

**FINDINGS OF FACT**

Based on the documents admitted into evidence and the testimony presented at the hearing, I make the following findings of fact:

1. The Petitioner, Lavora Milton (born in 1955), worked as an elementary school teacher from September 15, 1978 until February 13, 2010. She was last employed by the Boston Public Schools (BPS). (Exhibits 1 and 3; Testimony of Milton.)
2. Ms. Milton obtained her Bachelor’s Degree from Suffolk University. She obtained a Master’s Degree in Education in 2004. (Exhibits 4 and 6; Testimony of Milton.)
3. The following Job Description lists the essential duties of Ms. Milton’s job as a teacher:

JOB GOALS: To educate all students to the maximum extent possible.

SPECIFIC RESPONSIBILITIES:

1. Teach Students by:
	1. Presenting planned learning experiences and information in a manner that motivates students toward achievement by utilizing a variety of procedures and methodology.
	2. Organizing instruction around system curriculum goals, principles of child growth and development, and psychological principles of learning.
	3. Drawing upon and recognizing the skills, strengths, needs and experiences of individual students.
	4. Employing a variety of diagnostic and achievement instruments to assess student instructional levels and to plan for effective instruction.
	5. Selecting instructional materials such as textbooks, film, etc., and preparing materials such as classroom and homework exercises which are appropriate for student achievement levels, a propos to the system curriculum objectives and challenging the student.
	6. Developing and maintaining lesson plans for organization of instruction and materials.
2. Create a classroom atmosphere conducive to and supportive of the learning process by:
	1. Maintaining appropriate discipline standards among students.
	2. Developing positive student work habits and clear classroom procedures.
	3. Maintaining a classroom that is attractive, stimulating, and reflective of instructional goals.
3. Maintain effective and supportive relationships with parents and community.
4. Perform routinely a variety of administrative activities, such as maintaining student attendance records, correcting and guiding students’ work, computing and posting students’ grades, providing statistical data, completing reports, etc., required my mandate or practice.
5. Participate in the activities of the school by working with other staff members, serving on committees seeking to improve school programs, and by assuming general responsibility for the welfare of the school and its students.

(Exhibit 8.)

1. Ms. Milton suffered from depression and anxiety over the years, up to and including her tenure as a BPS teacher. Ms. Milton had three psychiatric hospital episodes. She was first admitted for anxiety in 1976, admitted for a medication overdose in 1987, and in 2010 presented to a psychiatric emergency service, but was not admitted. (Exhibits 4-6.)
2. Ms. Milton began treating with Alexandra Accardi, M.D., a psychiatrist at Nova Psychiatric Services (Nova) in 1996. There was indication of longstanding depression as a result of a childhood with an alcoholic father. She also had a conflicted relationship with her 27-year old daughter. After a hiatus, Ms. Milton returned to Dr. Accardi in 2002. She had been divorced the previous year after a four-year marriage, due to her husband’s infidelity. Dr. Accardi diagnosed Ms. Milton with major depression, and prescribed Wellbutrin and Klonopin. Ms. Milton treated with Dr. Accardi for three years, then returned five years later after the psychiatric episode in 2010. Ms. Milton’s medications were changed and she pursued regular treatment with Dr. Accardi. (*See* Finding of Fact 4; Exhibits 4-7.)
3. Ms. Milton began her current treatment with Janice Hannah, PhD., a therapist, on July 15, 2003. (Exhibit 19; Testimony of Milton.)
4. Ms. Milton takes Risperdal in addition to the Wellbutrin and Klonopin. (Exhibit 4.)
5. Therapy and medication enabled Ms. Milton to identify her anxiety and depression, and she was able to function well at school until the advent of a new principal at the Murphy School in Dorchester in 2003. The new principal, Ms. Russo, was very critical and unsupportive. In her therapy session, Ms. Milton revealed that Ms. Russo:
* rearranged the layout of Ms. Milton’s classroom in September 2003, telling her to follow the same classroom layout as the other teachers;
* reassigned some of Ms. Milton’s students to other teachers, some of whom were younger and had less seniority;
* sometimes criticized Ms. Milton in the presence of her second grade students. The principal criticized Ms. Milton’s spelling on one occasion; and
* told Ms. Milton that no one wanted her for a teacher.

Ms. Milton asked Ms. Russo not to assign her “tough kids.” (Exhibits 4-6, 19[[1]](#footnote-1); Testimony of Milton.)

1. Ms. Milton applied for and was granted a transfer for the 2004-2005 school year to the Henry Grew School in Hyde Park. For the next year, she enjoyed her new surroundings and the support of the principal. Her anxiety level diminished and she returned to her previous level of function as a teacher. (Exhibits 5 and 6; Testimony of Milton.)
2. In 2005, Ms. Milton became symptomatic again: triggered by two factors. First, she continued to feel overwhelmed and unable to maintain a high quality of work performance, mostly due to student assessments and preparing students for standardized testing. She was also burdened by the need to produce computerized report cards and frequent formal reading assessments. She had to put in time over and above her regular work hours for the past few years in order to get the work done. She began to feel behind in her work, and this led to more anxiety. She was concerned that her students’ poor test performance could be construed as inadequacy on her part. (Exhibit 5.)
3. Second, she began to see her students as presenting more behavioral problems and classroom management problems every year. She did not miss deadlines, but handed in work at the last minute where previously she had submitted it with time to spare. (Exhibits 4-6; Testimony of Milton.)
4. Ms. Milton’s anxiety and depression escalated throughout the 2009-2010 school year. She would leave school emotionally distraught and fearful of being able to return the next day. She felt unable to cope, was losing sleep, and was unable to organize daily lesson plans. She began to have a variety of somatic symptoms for which no medical cause could be found, including headaches and flank pain. She had an occipital nerve block to treat the headaches and back pain. She developed hoarding behavior at home and binge eating. (Exhibits 4-6; Testimony of Milton.)
5. During the 2009-2010 school year, Ms. Milton lost 30 lbs. Ms. Milton tried to relocate as an assistant teacher. She also sought assistance from the employee assistance program (EAP) in May 2010,[[2]](#footnote-2) but was unable to find adequate and relevant substitute work. (Exhibits 1 and 4.)
6. Ms. Milton’s last day of work was June 28, 2010. (Exhibit 13.)
7. Ms. Milton’s weight loss precipitated her request to Dr. Accardi to support her application for a leave of absence. On August 17, 2010, Ms. Milton submitted a leave of absence letter from Nova, dated August 12, 2010. On August 30, 2010, she submitted another letter, signed by Dr. Accardi and dated August 24, 2010, requesting a leave of absence for the 2010-2011 school year “due to exacerbations of her mental health symptoms.” (Exhibits 5 and 11; Testimony of Milton.)
8. Ms. Milton was very demoralized after she stopped teaching. She felt that she had let her students and her school down. This triggered her visit to emergency psychiatric services in 2010. (*See* Finding of Fact 4; Exhibit 5.)
9. Ms. Milton had three leaves of absence: from August 28, 2010 until September 1, 2011; August 27, 2011 until March 1, 2012; and March 1, 2012 until September 1, 2012. Ms. Milton did not receive Workers Compensation benefits. (Exhibits 9 and 10.)

*Application for Accidental Disability Retirement*

1. The Board informs all accidental disability applicants that they must submit all medical records from the last five years with the Member’s Application for Disability Retirement (Application). (Exhibits 15 and 16.)
2. On June 5, 2012, Ms. Milton filed an Application for both ordinary and accidental disability, electing to be scheduled for three separate single examinations with the panel physicians. In the Application, she claimed that “work exacerbates my anxiety and depression and has caused weight loss, hair loss, profound paralyzing anxiety and severe depression. My health is compromised.” Within the Application, Ms. Milton described her duties as “Classroom teacher, instructing, monitoring achievement, assessing student progress, planning lessons to develop academic success, control student behavior to provide a safe learning environment and contacts with parents regarding student progress and behavior.” She stated that she ceased being able to perform these duties “Dec 2009 or Jan 2010 through June 2010. It was progressive.” Ms. Milton stated that as a result of her disability, she was unable to perform “all classroom teaching duties.” (Exhibit 1.)
3. Under the heading “Reason for Disability,” Ms. Milton checked the “personal injury” box on her application, and stated that the requirements for teaching became stressful “in or about 2008 and the condition progressively got worse through May – June 2010.”[[3]](#footnote-3) She described the specific time or length of time exposed to the “incident(s) or hazard” in the application as “daily classroom routines from 8A – 3p,” the location as “[i]n classroom at the school”, and the description of the incident or hazard as “[a]nxious about duties, worried about deadlines and student progress or lack of progress. Fearful of failure to meet requirements of job. My fear and anxiety began to negatively impact my job performance.” (Exhibit 1.)
4. In the Application, Ms. Milton wrote that she notified BPS of her condition when she filed an EAP report for the City of Boston with Wendy Cook in May 2010. She also noted that she treated with Dr. Hannah and Dr. Accardi. (Exhibit 1.)
5. The Treating Physician’s Statement (Physician’s Statement) was submitted by Dr. Accardi and dated May 29, 2012. In the Statement, Dr. Accardi asserted that Ms. Milton was unable to perform the essential duties of her position, her incapacity was permanent, and that the natural and proximate cause of the personal injury was sustained in the performance of her duties. (Exhibits 2 and 17.)
6. In the Physician’s Statement, Dr. Accardi wrote that her diagnosis of Ms. Milton was based on neuropsychological testing, and that the member had “poor concentration mental defects[,] loss of organizational skills[, and] forgetful, incoherent thought.” Dr. Accardi wrote that the condition had changed over time in the past year and worsened in the last three months. Dr. Accardi prescribed Xanax. Dr. Accardi assessed that the natural course of the diagnosis was regression, and that a maximum medical improvement (MMI) had been reached. (Exhibit 2.)
7. In response to whether the disability would continue indefinitely, Dr. Accardi stated that Ms. Milton was difficult to ascertain, finding that her patient was basically crippled from her OCD and hoarding, and now suffered from an eating disorder. Describing the events or onset of conditions that in her opinion led to Ms. Milton’s disability, Dr. Accardi wrote that Ms. Milton began having symptoms of severe anxiety especially over her job, developed such anxiety that it led to hair loss, developed severe hoarding, and had to take a leave of absence September 2010 when things got severe. In response to what other life event/circumstance/condition in Ms. Milton’s medical history may have contributed or resulted in the disability, Dr. Accardi responded, none. She wrote that Ms. Milton had weight loss and hair loss as a result of her OCD/anxiety, had no other precipitant other than her job. Ms. Milton also suffered from headaches, unexplainable pains and aches. Dr. Accardi opined that there was a causal relationship between Ms. Milton’s symptoms and job related stress. (Exhibit 2.)
8. In the addendum to the Statement, Dr. Accardi wrote:

Patient came to see me to help her with the anxiety, weight loss, insomnia, hair loss, fear, apprehension as it related to her job. Fear of going to work, worrying excessively over the weekends about what transpired the previous week then on Sat-Sunday about returning to work. She was very neat and meticulous prior to developing the anxiety diagnosis, becoming afraid to throw any paper out which was part of her anxiety diagnosis. She couldn’t throw out any paperwork for school because she thought if she saved it someone could benefit from it. She has also developed depression as a result as well and did not have these problems before she had the job as a teacher.

(Exhibit 2.)

1. On July 5, 2012, Deborah E. Pullen, the Director of Human Resources, submitted the Employer’s Statement Pertaining to a Member’s Application for Disability Retirement (Employer’s Statement). Ms. Pullen noted that Ms. Milton could not perform the physical requirements of her essential job duties as described in the job description due to the claimed disability. (Exhibit 3.)
2. On April 11-18, 2013, pursuant to G.L. c. 32, § 6(3), PERAC convened a psychiatric medical panel comprised of Rafael D. Ornstein, M.D., Robert W. Farrell, M.D. and Edward K. Silberman, M.D. The Board sent each panel physician Ms. Milton’s medical records from South Shore Internal Medicine Associates dated October 7, 2009 to November 9, 2010; from Nova Psychiatric Services dated December 24, 2002 to May 25, 2015; from Dr. Accardi dated February 10, 2012 to August 23, 2012; and, from Dr. Hannah dated September 18, 2003 to August 3, 2010.[[4]](#footnote-4) (Exhibits 4-7.)
3. The panel physicians reviewed Ms. Milton’s job description and medical records and conducted separate single examinations. Dr. Ferrell examined Ms. Milton on May 10, 2013, Dr. Silberman examined her on May 20, 2013, and Dr. Ornstein examined her on May 21, 2013. (Exhibit 7.)
4. Each panel physician answered in the affirmative on questions 1 and 2, finding that Ms. Milton was psychiatrically disabled and thus mentally incapable of performing the essential duties of her job as described in the current job description, and that said incapacity was likely to be permanent. (Exhibits 4-6.)
5. A majority of the panel certified causation by answering in the affirmative on question 3, finding that said incapacity was such as might be the natural and proximate result of the personal injury sustained or hazard undergone on account of which retirement is claimed, by the aggravation of a pre-existing condition. (Exhibits 4-6.)
6. After reviewing Ms. Milton’s job description; her medical records from Dr. Accardi, Kenneth Harris, M.D.[[5]](#footnote-5) and Dr. Hannah; the Nova progress notes and examining her on May 10, 2013, Dr. Ferrell diagnosed Ms. Milton with Axis I major depression, anxiety disorder with obsessive compulsive traits; Axis II Deferred; and Axis III Hypertension, weight loss, history of diverticulitis[[6]](#footnote-6), asthma. (Exhibit 4.)
7. Dr. Ferrell found no evidence of delusions, auditory or visual hallucinations, or dissociation. He noted that Ms. Milton exhibited sadness and a feeling of intense dysphoria[[7]](#footnote-7) in talking about her social life, which was impaired to the extent that she hardly went out. Dr. Ferrell found that Ms. Milton exhibited significant self-esteem impairment and had herself noted the co-occurrence of her hoarding as a result of stress. Ms. Milton admitted that she had so saved every piece of paper with her name on it that her house was cluttered, and she was embarrassed to invite anyone to her home. (Exhibit 4.)
8. In his assessment, Dr. Ferrell opined that Ms. Milton presented with major depression associated with anxiety and hoarding behavior, and that the condition of depression was exacerbated by difficulties in her work environment as a teacher. As a result, Ms. Milton’s job performance and her ability to maintain her position were severely impaired by her symptoms. Dr. Ferrell found that it was highly unlikely that any form of employment in the future was possible in the teaching profession, and that there was significant risk of re-injury or exacerbation of her condition if she were to return to work. (Exhibit 4.)
9. Dr. Ferrell opined that Ms. Milton was no longer mentally capable of performing the essential duties of her job as a result of her depression. Dr. Farrell opined that Ms. Milton’s incapacity was such as might be the natural and proximate result of the personal injury sustained or hazard undergone on account of which retirement is claimed. He concluded that there is causal relationship to Ms. Milton’s work as a teacher by application of the aggravation of a pre-existing condition standard. (Exhibit 4.)
10. Dr. Silberman found that Ms. Milton appeared thin and fragile at the May 10, 2013 interview, with an anxious look. After reviewing Ms. Milton’s job description; her medical records from Dr. Accardi, Dr. Kenneth Harris and Dr. Hannah; the Nova progress notes and examining her, Dr. Silberman diagnosed Ms. Milton with major depressive disorder and mixed anxiety disorder with a fair prognosis. (Exhibit 4.)
11. Dr. Silberman found no evidence of delusional thinking or perceptual distortions, but that Ms. Milton’s judgment was distorted by bias toward negative self-evaluations. Ms. Milton understood that she needed psychiatric treatment. (Exhibit 5.)
12. In his assessment, Dr. Silberman opined that Ms. Milton was emotionally incapable of performing the essential duties of her job as described in the job description. Ms. Milton had long-standing symptoms related to mood and anxiety, but for most of her career as a teacher, she was able to function adequately despite her mental illness. Dr. Silberman found that in the last five years of her tenure, Ms. Milton did not fail to function. Rather, her functioning came at an increasingly greater cost to her mental health that by the end of the last year of teaching, Ms. Milton was crying uncontrollably, hoarding compulsively to the detriment of her living environment, had multiple somatic symptoms, and was losing weight precipitously. Such a situation could not be sustained indefinitely. Dr. Silberman opined,

Had she continued to work, she would have become more frail physically, with the inevitable result of not being able to teach or take care of herself adequately. In this sense, she was unable to keep working.

(Exhibit 5.)

1. Dr. Silberman opined that Ms. Milton was no longer mentally capable of performing the essential duties of her job as a result of her depression, and that her incapacity was permanent. Despite psychotherapy and medication treatment, Ms. Milton remained symptomatic three years after leaving her job. Although her mood, anxiety and compulsive behaviors were moderated, she became anxious when she dealt with or thought about matters related to teaching. It was likely that Ms. Milton would remain impaired and symptomatic for the presently foreseeable future. Dr. Silberman opined that Ms. Milton’s incapacity was such as might be the natural and proximate result of the personal injury sustained or hazard undergone on account of which retirement is claimed. (Exhibit 5.)
2. Dr. Silberman concluded that there was a causal relationship to Ms. Milton’s work as a teacher by application of the aggravation of a pre-existing condition standard. He found that she already had a psychiatric condition when she became a teacher, but this was not the cause of disability since she was able to function in the profession successfully for 20 years. Rather her illness left her fragile and vulnerable to stress, beyond what would be expected in a well person. Dr. Silberman wrote:

This was first demonstrated by her reaction to a critical school principal. She recovered from this with a change in venue, but became symptomatic again as her students became more difficult to deal with and the school required more administrative work from her. Thus, the demands of her work triggered more intense symptoms which, once established, became chronic. She has improved to some degree in her current low-demand situation, but has not shown the degree of resilience that she did after her transfer in 2004. This represent[s] progression of her illness due to the stresses of teaching.

(Exhibit 5.)

1. Dr. Ornstein saw Ms. Milton on May 21, 2013. He found no evidence of psychosis, and Ms. Milton’s thought processes seemed normal. She reported spending a lot of time worrying about things, feeling guilty and feeling self-critical. Dr. Orenstein diagnosed Ms. Milton with major depressive disorder, generalized anxiety disorder, obsessive compulsive disorder and hoarding. Dr. Ornstein agreed with the majority on questions 1 and 2, finding after reviewing the medical records and job description that Ms. Milton was incapable of performing the essential duties of her job, was not likely to tolerate a return to her job, and that such incapacity should be considered permanent. (Exhibit 6.)
2. Dr. Orenstein differed from the panel majority by answering in the negative on question 3. When he examined Ms. Milton on May 21, 2013, she described her average working conditions and responsibilities as a teacher without specific traumatic events. Dr. Orenstein found that in her own writing, Ms. Milton stated that her anxieties about her duties were disabling, rather than the duties themselves. He opined that Ms. Milton had a severe underlying anxiety disorder, obsessive compulsive disorder. He found that Ms. Milton’s own comments buttress his conclusion that the natural progression of her underlying illness began to interfere with her capacity to handle her job effectively. He wrote,

As she had increasing problems keeping up with routine demands she became more anxious and debilitated and more worried about her job. In the setting of this anxiety she became depressed. This cycle led her to become totally disabled. Because, in my medical opinion her disability arises out of the natural progression of her anxiety disorder, I believe that ordinary disability is warranted. It is my opinion that the job itself was not a hazard, but rather it was the natural progression of the patient’s anxiety disorder which led to her difficulty managing the duties of her job, therefore accidental retirement is not warranted.

(Exhibit 6.)

1. It was Dr. Orenstein’s prognosis that although Ms. Milton’s condition may improve, it was unlikely to improve to the degree that she could return to teaching, therefore her condition should be considered permanent. (Exhibit 6.)
2. The Board held a hearing on September 18, 2013 pursuant to G.L. c. 32, §§ 6(3), 7(1), 21(1)(d) and PERAC Regulation 840 CMR 10.00. The Hearing Officer accepted Dr. Orenstein’s opinion that Ms. Milton’s condition was caused by a pre-existing condition, but that her work as a teacher was not the predominant contributing factor.[[8]](#footnote-8) The Hearing Officer wrote in the October 23, 2013Recommended Decision:

The demands placed upon the Applicant by her duties as a teacher exacerbated her underlying psychiatric condition. This occurred from approximately 2003 through 2010, when her symptoms reached a point where she could no longer work. The injury developed over a period of time, but is specifically tied to her duties as a teacher at definite places of employment. Although the injury developed in a fluid manner, it occurred during a definite time period at a refined work environment. The injury occurred through a series of events described as the daily demands placed on the Applicant as a teacher.

(Exhibit 12.)

1. In a notice dated January 9, 2014, the Board informed Ms. Milton that it had voted on January 7, 2014 to deny her application for accidental disability retirement. The notice stated,

The application of Lavora Milton is denied for the reason stated in the Hearing Officer’s Recommended Decision attached hereto. Specifically, the member’s alleged disability was the result of the natural progression of an underlying condition.

(Exhibit 20.)

1. On January 21, 2014, Ms. Milton filed a timely appeal at DALA. (Exhibit 20.)

**CONCLUSION AND ORDER**

After careful consideration of the evidence presented in this case, the Board's denial of Ms. Milton’s application for disability retirement benefits is affirmed.

It is undisputed that the Petitioner suffered from a psychiatric condition before she became a teacher and continued to do so during the tenure of her profession. This is documented in the Application, Physician’s Statement, medical records and Ms. Milton’s testimony before DALA. With psychotherapy and psychiatric medication, however, Ms. Milton was able to teach successfully for twenty years.

An applicant bears the burden of proving her entitlement to accidental disability retirement by a preponderance of the evidence. *Lisbon v. Contributory Retirement Appeal Bd*., [41 Mass. App. Ct. 246](http://sll.gvpi.net/document.php?id=sjcapp:41_mass_app_ct_246), 255 (1996). To qualify for accidental disability retirement, an applicant must prove total and permanent disability by reason of a personal injury sustained or a hazard undergone as a result of, and while in the performance of, her duties at some definite place and at some definite time. G. L. c. 32, § 7. Accidental disability benefits are awarded only when a regional medical panel majority concludes that the applicant is incapable of performing the essential duties of the job, that the incapacity is permanent, and that the incapacity might be the natural and proximate result of the personal injury sustained or hazard undergone in the course of employment. *See Malden Retirement Bd. v. Contributory Retirement Appeal Bd*., [1 Mass. App. Ct. 420](http://sll.gvpi.net/document.php?id=sjcapp:1_mass_app_ct_420), 423 (1973). A certification of incapacity is a condition precedent to accidental disability retirement by the local board. *Quincy Retirement Bd. v. Contributory Retirement Appeal Bd*., [340 Mass. 56](http://sll.gvpi.net/document.php?id=sjcapp:340_mass_56), 60 (1959).

 Ms. Milton was examined by a psychiatric medical panel. That panel majority concluded that she was psychiatrically disabled, and was unable to perform as a teacher. However, while an affirmative medical panel certificate is a condition precedent to an award of a disability pension, it is not conclusive, and the retirement board or CRAB must make the ultimate determination based on the record as a whole. *See Blanchette v. Contributory Retirement Appeal Bd.*, [20 Mass. App. Ct. 479](http://sll.gvpi.net/document.php?id=sjcapp:20_mass_app_ct_479), 482 (1985).

 After the September 18, 2013 Board hearing, the Hearing Officer issued a decision accepting the minority opinion of Dr. Ornstein, finding that Ms. Milton’s psychiatric disability was due to the natural progression of her underlying psychiatric condition and not due to the demands of the job. Specifically, the Board argued that Ms. Milton has not provided any evidence that psychiatric issues resulting from a work-related injury rendered her unable to perform her job duties on her last day of work. The Board argued that Ms. Milton has not proven a causal connection between her disabling symptoms, the 2003-2004 rocky relationship with the principal at the Murphy School and her work environment at the Grew School. When Ms. Milton left the teaching profession, it had been more than five years since her tenure at the Murphy School.

In order to meet the burden of proof with regards to causation, a member must prove one of two hypotheses: that the disability was caused by a single or series of work-related events, or that the applicant’s employment exposed her to an “identifiable condition … that is not common and necessary to all or a great many occupations.” *Blanchette*, 20 Mass. App. Ct. at 485, quoting *Zerofski’s Case*, [385 Mass. 590](http://sll.gvpi.net/document.php?id=sjcapp:385_mass_590), 595 (1982). It is the applicant’s burden to prove that she has a permanent and total disability that is the natural and proximate result of a personal injury sustained as a result of the performance of her duties. *Fairbairn v. Contributory Retirement Appeal Bd*., [54 Mass. App. Ct. 353](http://sll.gvpi.net/document.php?id=sjcapp:54_mass_app_ct_353), 357 (2002), citing *Blanchette*, 20 Mass. App. Ct. at 483.

 Aggravation of a pre-existing condition to the point of total and permanent disability satisfies the “natural and proximate” cause requirement. *Baruffaldi v. Contributory Retirement Appeal Bd*., [337 Mass. 495](http://sll.gvpi.net/document.php?id=sjcapp:337_mass_495), 499 (1958). Massachusetts courts have held that in order to meet the “natural and proximate cause” standard, the applicant’s work-related incident must be more than a “contributing” or “aggravating” factor to a pre-existing condition. *Blanchette*, 20 Mass. App. Ct. at 485; *Campbell v. Contributory Retirement Appeal Bd*., [17 Mass. App. Ct. 1018](http://sll.gvpi.net/document.php?id=sjcapp:17_mass_app_ct_1018), 1019 (1984). The Supreme Judicial Court has noted that in order for an event of employment to be more than a “contributing cause,” it must be found to be “a significant contributing cause to [the] employee’s disability.” *Robinson’s Case*, [416 Mass. 454](http://sll.gvpi.net/document.php?id=sjcapp:416_mass_454), 460 (1993).

Based on her past history of anxiety and depression, Ms. Milton had been suffering for some time. Up to the 2003-2004 school year and the issues with the principal, it had not stopped her from working. After she applied for a transfer for the 2004-2005 school year, Ms. Milton was assigned to the Henry Grew School where she enjoyed a good working relationship with the principal and other teaching staff until she stopped teaching. She was not subject to outrageous working conditions, and had the work environment common to the other teaching staff. Ms. Milton testified that she was injured due to the treatment she suffered at the hands of the principal during the 2003-2004 school year, noted in her Application she writes she that she ceased being able to perform the duties of her job “Dec 2009 or Jan 2010 through June 2010. It was progressive.”

Based on the evidence presented, I conclude that the events of the 2003-2004 school year and the atmosphere of Ms. Milton’s last assignment at the Grew School did not “significantly contribute” to Ms. Milton’s disability by aggravating her underlying anxiety and depression. Ms. Milton was able to teach effectively at her new assignment in the 2004-2005 school year, and continued to do so until the 2009-2010 school year. Ms. Milton’s anxiety about her work, rather than the conditions of her job, was the contributing factor. To reiterate, Ms. Milton’s underlying anxieties about the duties of her job proved disabling, not the conditions of the job or the responsibilities of the duties themselves. Ms. Milton was the oracle of her own psychiatric incapacity: she became anxious about her ability to do her job, then she became anxious and depressed, then her anxiety and depression prevented her from performing her duties.

 The Board raises additional arguments. First, it argues that Ms. Milton is not entitled to accidental disability benefits because she did not receive workers’ compensation for her psychological disability. G.L. c. 32, § 7(3)(a) provides:

Lapse of time or failure to file notice of an injury sustained or a hazard undergone as provided for in subdivision (1) of this section or subdivision (1) of section nine, as the case may be, shall not be a bar to proceedings under either of said sections if such member received payments on account of such injury or hazard under the provisions of [the Massachusetts workers’ compensation law] …

By its terms, this section must be read in conjunction with § 7(1), which states:

Except as provided for in subdivision (3) of this section, no such retirement shall be allowed unless such injury was sustained or such hazard was undergone within two years prior to the filing of such application or, if occurring earlier, unless written notice thereof was filed with the board by such member or in his behalf within ninety days after its occurrence.

G.L. c. 32, § 7(1).

A plain reading of this provision clearly indicates that an applicant for accidental disability retirement must submit an application within two years of the injury sustained or hazard undergone, or must have notified the Board within ninety days if such application is submitted more than two years later. *Id*. Thus, G.L. c. 32, § 7(3)(a) simply provides a way for an applicant to avoid having her claim barred by a failure to comply with § 7(1) if she received workers’ compensation benefits for the injury. Nowhere in the text of G.L. c. 32, § 7 is there a suggestion that an applicant must have received workers’ compensation benefits to be eligible for accidental disability retirement. The injury upon which Ms. Milton’s application is based occurred during the 2003-2004 school year. She submitted her application on June 5, 2012, many years later. Therefore, her application does not satisfy the timeliness provision of G.L. c. 32, § 7(1), and it also fails under the exception as provided in § 7(3)(a).

The Board also presents a variation on this argument, a second argument that Ms. Milton’s application is deficient because she failed to provide a notice of injury to the Board indicating that she had experienced some psychological injury or symptoms. As previously stated, Ms. Milton was not required to submit a notice of injury to the Board at all, provided she filed an application for disability benefits within two years of her injury; and this she failed to do. The phrase “written notice thereof “ in § 7(1) refers to the “injury sustained or hazard undergone;” it would have been sufficient for Ms. Milton to provide written notice of being seriously undermined and unfairly criticized by the principal of the Murphy School; she would not have been required to provide notice of specific psychiatric symptoms.

Third, the Board argues that Ms. Milton is ineligible for accidental disability retirement benefits because she failed to file all of her medical records for the last five years pursuant to 840 CMR 10.06(1). *Malden Retirement Bd. v. Contributory Retirement App. Bd*., 1 Mass. App. Ct. 420, (1973); *Kelly v. Contributory Retirement App. Bd*., 341 Mass. 611 (1967). It is true that the panel had non-psychiatric medical records covering just one year. But Ms. Milton filed a claim based on a psychiatric injury and was evaluated by a psychiatric medical panel. The panel had access to Ms. Milton’s psychiatric and therapy medical multi-year records; records from Dr. Accardi dating from February 10, 2012 to August 23, 2012, and medical records from Dr. Hannah dated September 18, 2003 to August 3, 2010. The panel’s determination was based on “the facts found and all the underlying evidence.” *Blanchette*, 20 Mass. App. Ct. at 483.This affirmative panel certificate is binding because the panel psychiatrists had all the pertinent medical facts for review.

Fourth, the Board argues that Ms. Milton could not receive accidental disability benefits because she was not totally and permanently disabled on her last day work due to a work-related disabling condition or incapacity. *Vest v. Contributory Retirement App. Bd.,* 41 Mass. App. Ct. 191 (1996). As has already been set forth, a preponderance of the evidence shows that Ms. Milton’s incapacity was due to the natural progression of her underlying psychiatric condition. She was unable to prove that her condition was due to a work-related injury, and thus could not be so injured on the last day of her employment.

 For the foregoing reasons, Ms. Milton’s claim fails because of her pre-existing condition and the lack of causation related to the claimed date of injury for the alleged disabling condition. Accordingly, the Boston Retirement Board’s denial of Lavora Milton’s application for accidental disability retirement is affirmed.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

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Angela McConney Scheepers

Administrative Magistrate

DATED:

1. Unfortunately, Dr. Hannah’s notes are for the most part illegible. I read them to the best of my ability. (Exhibit 19.) [↑](#footnote-ref-1)
2. Ms. Milton states in her Application that she filed an incident report via an EAP with Wendy Cook of the City of Boston. (Exhibit 1.) [↑](#footnote-ref-2)
3. In the addendum sheet to the Application, Ms. Milton further elaborated,

“My anxiety became severe literally paralyzing me. I shook, trembled and gradually reached a point where I could not perform my duties.

*Since 2003 I have been struggling to meet the ever increasing demands of my teaching position.* In my efforts to get help I have seen Dr. Alexandra Accardi and Dr. Janice Hannah for almost 10 years. Dr. Accardi has prescribed medication and Dr. Hannah has provided therapy and help in every way possible. I transferred schools in 2004 in hopes that I’d obtain a more humane environment that would help. Despite all this I became increasingly overwhelmed and less able to do my job. Due to my dedication to my job and my students I continued to struggle until finally in 2010, upon advice of my psychiatrist and my psychologist I took a medical leave. During that time I have worked hard to overcome my anxiety and depression but was not able to.

There are more specific details that my illness prevents me from disclosing at this time but when dates and circumstances become clearer I will submit that information.”

(Exhibit 1.) (Emphasis added.) [↑](#footnote-ref-3)
4. The 10/7/2009-11/9/2010 South Shore Internal Medicine Associates medical records and the 2/10/2012-8/23/2012 medical records from Dr. Accardi were not submitted into evidence at DALA. [↑](#footnote-ref-4)
5. The medical records from Dr. Harris are not in evidence at DALA. [↑](#footnote-ref-5)
6. Inflammation of a diverticulum, especially of the small pockets in the wall of the colon which fill with stagnant fecal material and become inflamed; rarely, they may cause obstruction, perforation, or bleeding. *Stedman’s Medical Dictionary*, (28th ed. 2006.) [↑](#footnote-ref-6)
7. A feeling of unpleasantness or discomfort. *Stedman’s Medical Dictionary*, (28th ed. 2006.) [↑](#footnote-ref-7)
8. Ms. Milton’s attorney filed a response with the Board asserting that after her suffering at the Murphy School, Ms. Milton never recovered. “That original harassment caused her to be fearful on a daily basis. ... It was that original harassment that exacerbated her symptoms over time to [the] point where she became totally disabled.” (Exhibit 14.) [↑](#footnote-ref-8)