

**COMMONWEALTH OF MASSACHUSETTS  
CONTRIBUTORY RETIREMENT APPEAL BOARD**

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**ERIK MIREAULT,**

**Petitioner-Appellant**

**v.**

**STATE BOARD OF RETIREMENT,**

**Respondent-Appellee.**

**CR-17-168**

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**DECISION**

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Petitioner Erik Mireault appeals from a decision of an administrative magistrate of the Division of Administrative Law Appeals (DALA) concluding that his appeal was untimely and that he was not entitled to accidental disability retirement pursuant to G.L. c. 32, § 94. The magistrate held an evidentiary hearing on February 8, 2020, and admitted Exhibits 1 - 9 from the Petitioner and 1 - 13 from the Respondent into evidence. The magistrate's decision is dated December 21, 2022. Mr. Mireault filed a timely appeal to us.

After considering the evidence in the record and the arguments presented by the parties, we adopt the magistrate's findings of fact 1 - 24<sup>1</sup> as our own and incorporate the DALA decision by reference. We affirm the DALA decision for the reasons stated in the Analysis, adding the following comments.

***Background***

Mr. Mireault began serving as a correction officer for the Department of Corrections (DOC) in 1991 and was stationed at the Shirley MCI facility at the time he stopped working. He passed a pre-employment physical examination, which did not reflect the existence of any heart

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<sup>1</sup> The DALA decision is missing Finding of Fact 4, which only partially states that Mr. Mireault had undergone multiple ablation procedures and has an implantable cardiovascular defibrillator.

condition. He also had no knowledge of any heart issues.<sup>2</sup> Nevertheless, on July 20, 1994, when he presented for a pre-operative examination, echocardiogram revealed mild concentric left ventricular hypertrophy with a wall thickness of 12 mm. Mr. Mireault was diagnosed with mild hypertrophic cardiomyopathy and an apical aneurysm but was asymptomatic at the time. He required no medication for prophylactic arrhythmia. Over the course of 20 years, he experienced multiple PVCs and ventricular tachycardia and tachycardia storm, which resulted in the implantation of a defibrillator on November 10, 2006 to prevent sudden cardiac death. Mr. Mireault was placed on various medication therapies and was seen regularly at the arrhythmia clinic of Tufts Medical Center for symptoms of dizziness due to ventricular tachycardia. He also required cardiac catheterization, which did not reveal any evidence of coronary artery disease. He had five (5) ablations of his ventricular tachycardia focus - the last performed in 2010 appeared to be helpful in controlling his ventricular tachycardia storm.<sup>3</sup>

On November 23, 2014, Mr. Mireault experienced rapid heart rate and dizziness while driving. He was not at work, and he was not performing any of his job duties at the time.<sup>4</sup> He was hospitalized at Tufts Medical Center and remains under the care of a cardiologist, Mark Link, M.D., at the Tufts Arrhythmia Center. Mr. Mireault stopped working on November 23, 2014.

On February 26, 2015, Mr. Mireault filed an application for accidental disability retirement pursuant to G.L. c. 32, § 94.<sup>5</sup> SBR denied his application after a majority of the medical panel determined that his disability was based on a congenital heart condition. In January 2016, Mr. Mireault then requested that the medical panel clarify whether his disability was aggravated by his work.<sup>6</sup> SBR did not act on this request, which prompted a status update request by Mr. Mireault in August 2016.<sup>7</sup> Mr. Mireault then filed and withdrew an appeal in October 2016 and then filed another appeal in April 2017.<sup>8</sup>

### ***Jurisdiction***

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<sup>2</sup> Finding of Fact 1-2; Petitioner Exhibit 1.

<sup>3</sup> FF 4 and Testimony.

<sup>4</sup> FF 5.

<sup>5</sup> FF 6; Ex. 1.

<sup>6</sup> FF 16; Respondent Ex. 4.

<sup>7</sup> FF 17; Petitioner Ex. 5.

<sup>8</sup> FF 18-22. Ex. Petitioner Ex. 6-9.

G.L. c. 32, § 16(4) governs whether DALA and CRAB have jurisdiction to hear appeals of retirement board decisions or inactions and provides that an appeal must be filed "*within fifteen days after the expiration of one month following the date of filing a written request with the board or the commission if no time for action thereon is specified, in case the board or the commission failed to act thereon within the time specified or within one month, as the case may be.*" The time limits set out in Chapter 32 are jurisdictional. *Lambert v. Massachusetts Teachers' Retirement Bd.*, CR-09-0074 (CRAB Feb. 17, 2012). While Chapter 32 does not set out time limits for responding to requests for clarification by a medical panel, we agree with the magistrate that for a timely appeal of agency inaction, Mr. Mireault must file an appeal within fifteen days after the expiration of one month after his request, G.L. c. 32, § 16(4), and we incorporate the magistrate's discussion at page 8 of the DALA decision. For DALA and CRAB to have jurisdiction to hear his appeal, Mr. Mireault was required to file his appeal by early March 2016, which he failed to do. The record reflects that Mr. Mireault sought a status update in August 2016. Mr. Mireault later filed an appeal and withdrew the appeal in October 2016 and then finally filed another appeal in April 2017. These appeals were well beyond the timeframe permitted for appeal. DALA and CRAB do not have the authority to extend a jurisdictional deadline, and waiver or consent cannot confer it. *Flynn v. CRAB*, 17 Mass. App. Ct. 668 (1984) cited in *Sullivan v. SBR*, CR-19-0435 (CRAB Feb. 8, 2021).

Nevertheless, Mr. Mireault argues that because neither party raised the issue of whether this appeal was timely filed that it was an abuse of discretion for the magistrate to address this issue. We disagree. CRAB and DALA may address an issue not raised by the parties and are not prohibited from doing so. See *Ryan v. Ryan*, 419 Mass. 86, FN 11 (1994), citing *Foley v. Lowell Sun Publishing Co.*, 404 Mass. 9, 10-11, 533 N.E.2d 196 (1989) and *Commonwealth v. Elder*, 389 Mass. 743, 746, 452 N.E.2d 1104 (1983). See also Mass.Rules.App.Proc., Rule 16(a)(4), as amended, 43B M.G.L.A.

#### ***The Heart Law Presumption Pursuant to § 94***

Alternatively, if it is determined that CRAB and DALA have jurisdiction to address the merits of this appeal, we conclude that the magistrate correctly determined that Mr. Mireault failed to meet his burden to establish that the claimed injury caused his disability.

In order to be eligible for accidental disability retirement benefits, Mr. Mireault must prove that, as of his last day of work, he was "unable to perform the essential duties of his job,"

that "such inability is likely to be permanent," and that the disability was the result of a personal injury or hazard undergone "as a result of, and while in the performance of, his duties."<sup>9</sup> In the case of a correction officer with no pre-existing heart condition, causation is generally presumed if the disability arises from a heart condition.<sup>10</sup>

Mr. Mireault is appealing the decision of the magistrate, who concluded that competent evidence existed to rebut the presumption that his job as a correction officer caused his disabling heart condition. He argues that he met the criteria established under the heart law of G.L. c. 32, § 94 to entitle him to accidental disability retirement. Specifically, he contends that the initial physical examination findings did not disclose hypertension or a cardiac condition and that he subsequently was diagnosed with a disabling cardiac condition which precludes him from performing the essential duties of his job as a correction officer. He, therefore, argues that it is presumed that his disabling cardiac condition was caused by his job. Mr. Mireault further contends that the magistrate erred when concluding that the heart law presumption was rebutted by competent evidence and urges CRAB to reverse the DALA decision.

In considering this appeal, we are mindful of the job that Mr. Mireault performed on behalf of the Commonwealth, but CRAB is delegated with the task of applying the retirement laws as it is written. The "heart law," G.L. c. 32, § 94, provides in pertinent part:

Notwithstanding the provisions of any general or special law to the contrary affecting the non-contributory or contributory system, any condition of impairment of health caused by hypertension or heart disease resulting in total or partial disability or death to a uniformed member of a paid fire department or permanent member of a police department,... or to any employee of the department of correction or a county correctional facility whose regular or incidental duties require the care, supervision or custody of prisoners... shall, if he successfully passed a physical examination on entry into such service, or subsequently successfully passed a physical examination, which examination failed to reveal any evidence of such condition, be presumed to have been suffered in the line of duty, unless the contrary be shown by competent evidence.<sup>11</sup>

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<sup>9</sup> G.L. c. 32, § 7(1) (in pertinent part); *see generally Murphy v. Contributory Retirement Appeal Bd.*, 463 Mass. 333, 345 (1985).

<sup>10</sup> G.L. c. 32, § 94.

<sup>11</sup> St. 1956, c. 580 approved July 30, 1956 inserted", or to any employee in the department of correction whose regular or incidental duties require the care, supervision or custody of prisoners, criminally insane persons or defective delinquents, or to any permanent crash crewman crash boatman, fire controlman or assistant fire controlman employed at the General

Based on the statute, there are several elements of the heart law presumption: (1) the applicant must be an employee of the department of correction with regular or incidental duties that require the care, supervision or custody of prisoners; (2) the applicant has an impairment of health caused by heart disease disabling the individual partially or totally; (3) the applicant passed a physical examination on entry to service to becoming, in this case, a correction officer; (4) the physical examination failed to reveal any evidence of hypertension or heart disease; and (5) the presumption that hypertension or heart disease was suffered in the line of duty is not overcome by competent evidence. This matter involves the fifth element of the heart law presumption.

Here, we agree with the magistrate that SBR was warranted in finding that the heart law presumption was rebutted by the majority medical panel's conclusion that he was permanently disabled by hypertrophic cardiomyopathy, a congenital condition that was inherited. In concluding that the incapacity was not such as might be the natural and proximate result of the personal injury sustained or hazard undergone, Madhu Thakur, M.D., explained that hypertrophic cardiomyopathy is an hereditary condition with autosomal dominant transmission. Further, he noted that Mr. Mireault's treating physician statement was explicit in noting the condition to be hereditary.<sup>12</sup> Michael Johnstone, M.D., also concluded that hypertrophic cardiomyopathy to be a congenital condition that predated Mr. Mireault's time when he joined the DOC, and therefore, was not the result of his employment at this job. He further explained that the apical aneurysm and arrhythmias were also the result of hypertrophic cardiomyopathy and not the result of his employment.<sup>13</sup> Martin Maron, M.D., completed the Treating Physician Statement, reporting that Mr. Mireault suffers from end stage hypertrophic cardiomyopathy with recurrent arrhythmias. He stated in his answer to the question of causation that the disability is due to the genetic heart disease (hypertrophic cardiomyopathy) and not related to work.<sup>14</sup> The opinion that hypertrophic cardiomyopathy is a congenital condition by the majority medical panel and Dr. Maron serves as competent evidence to demonstrate that the incapacity was not the result of Mr. Mireault's

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Edward Lawrence Logan International Airport." St. 2007, c. 162, approved November 13, 2007, effective November 14, 2007, in the first paragraph inserted "or a county correctional facility".

<sup>12</sup> FF 12-13; Respondent Ex. 12.

<sup>13</sup> FF 14; Respondent Ex. 12.

<sup>14</sup> FF 7; Respondent Ex. 7.

employment as a correction officer. In the absence of evidence that the majority medical panel lacked pertinent facts or applied an erroneous standard, its certification bars Mr. Mireault from receiving accidental disability retirement pursuant to G.L. c. 32, § 94. *See* 840 C.M.R. § 10.10(9); G.L. c. 32 §§ 6(3)(a), 7(1); *Malden Retirement Bd. v. Contributory Retirement Appeal Bd.*, 1 Mass. App. Ct. 420,423 (1973); *Kelley v. Contributory Retirement Appeal Bd.*, 341 Mass. 611,617 (1961).

*Hayes v. City of Revere*, 24 Mass. App. Ct. 671 (1987) is appropriately applicable to the circumstances in this matter, where the medical evidence demonstrated the police officer's heart disease was not caused by the high speed police chase, the only incident claimed by the officer as attributing to his illness. In addressing the applicability of the heart law presumption, the Supreme Judicial Court (SJC) stated that the "presumption is not conclusive and is lost when it is 'shown by competent evidence' that the disabling heart condition was not suffered 'in the line of duty.'" *Id.* at 679. Similarly here, once the majority medical panel determined Mr. Mireault suffers from hypertrophic cardiomyopathy, a condition congenital in nature, this is competent evidence to overcome the presumption. While this condition was undetected at the time he entered service, the heart law presumption cannot be applied in this situation to conclude that it was caused by Mr. Mireault's work, especially in the absence of records or reports of injury to demonstrate his employment caused his disability. The heart law presumption is, thus, lost to Mr. Mireault, as was in *Hayes*.

We also agree that that there was no obligation on the part of SBR to request that the medical panel clarify whether Mr. Mireault's work aggravated this pre-existing condition to the point of disability. The record reflects that both SBR and Mr. Mireault requested that clarification be sought from the medical panel as to the aggravation standard required by G.L. c. 32, § 7.<sup>15</sup> On January 17, 2018, PERAC advised SBR that it must furnish any documentation regarding work-related incidents prior to consideration of clarification regarding the application under Section 7.<sup>16</sup> The record contains no documentation regarding any work-related incidents, and the heart-related incident that Mr. Mireault experienced on November 23, 2014 was not documented by any employer's injury report because the incident occurred when he was off-duty and not while performing any work duties. Given these facts, there was no reason to pursue any

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<sup>15</sup> FF 16, 20, 23; Petitioner Ex. 7; Respondent Ex. 1, 4.

<sup>16</sup> FF 23; Respondent Ex. 1.

further clarification from the medical panel.<sup>17</sup> As the magistrate explained, there exists the difference between suffering from a condition that is disabling itself versus circumstances that cause symptoms of the condition to manifest. There is no evidence in the record to suggest that Mr. Mireault's disabling condition was caused by his job as a correction officer. The fact that the condition may have manifested itself with worsening symptoms while he was employed at the DOC does not mean that the condition was caused by his employment. The magistrate was correct to deny Mr. Mireault's request to seek further clarification from the medical panel on the aggravation standard.

**Conclusion.** Mr. Mireault's appeal was not timely filed and DALA and CRAB have no jurisdiction to hear this appeal. Alternatively, we conclude there is competent evidence in the record demonstrating Mr. Mireault's disability was not caused by his work and clarification from the medical panel on the aggravation standard was not warranted. Mr. Mireault *is* not entitled to accidental disability retirement benefits pursuant to G.L. c. 32, § 94. **Affirm.**

SO ORDERED.

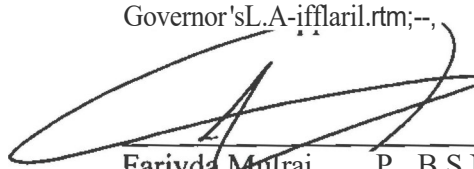
CONTRIBUTORY RETIREMENT APPEAL BOARD



Uyen M. Tran  
Assistant Attorney General  
Chair  
Attorney General's Appointee

**Did not participate**

Nicolle M. Allen, Esq.  
Governor's Liaison



Fariyda Mulrai, P., B.S.N., F.N.P.  
Commissioner of Department of Public Health Appointee

Date: April 28

, 2025