COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss. **Division of Administrative Law Appeals**

Craig Mitchell,
Petitioner,

v.

State Board of Retirement,
Respondent.

No. CR-23-0330

Dated: September 13, 2024

ORDER OF DISMISSAL

Petitioner Craig Mitchell appeals from a decision of the State Board of Retirement (board) denying his application to retire for accidental disability. The board moves to dismiss. For the reasons that follow, the motion is meritorious.

At this juncture, Mr. Mitchell's submissions are taken as true. *See White v. Somerville Ret. Bd.*, No. CR-17-863, at *5 (DALA Nov. 16, 2018). They present the following claims. Mr. Mitchell worked for the Turnpike Authority from 2001 until 2009. During that period, Mr. Mitchell's colleagues bullied him and discriminated against him. These behaviors caused Mr. Mitchell to become physically and mentally disabled. His conditions included paranoia, anxiety, and major depression. Mr. Mitchell's supervisors were aware of his workplace circumstances and medical issues.

In August 2009, Mr. Mitchell applied to withdraw his accumulated retirement contributions. The instructions on his application form stated: "Taking a refund of your accumulated deductions terminates your rights in the retirement system . . . ." But by the time Mr. Mitchell executed the form, his ability to appreciate such warnings was impaired.

In late 2022, Mr. Mitchell applied to retire for accidental disability. The board denied the application, stating: "When you refunded your accumulated retirement contributions, you lost all rights associated with [retirement system membership]." Mr. Mitchell timely appealed.

The retirement law states that an application for accidental disability retirement may be filed by a "member in service." G.L. c. 32, § 7(1). A "member in service" is a member who is "regularly employed in the performance of his duties." *Id.* § 3(1)(a)(i). The essential rationale of the board's decision was that, by the time of his retirement application, Mr. Mitchell was no longer a member in service, or any member at all.

Mr. Mitchell's response rests on *Boston Retirement Board v. McCormick*, 345 Mass. 692 (1963). The member in that matter also applied for accidental disability retirement after withdrawing her retirement contributions; at the time of the withdrawal, she was already incapacitated by a workplace injury. *Id.* at 693-94. The Supreme Judicial Court observed that the provision applicable to the member's refund covered only "[a] member not entitled to a retirement allowance." G.L. c. 32, § 10(4). Because the member *had been* entitled to a retirement allowance when she made her withdrawal, "the board had no authority . . . to pay . . . her accumulated total deductions." *Id.* at 697. The refund was therefore "an honest error which can . . . be corrected." *Id.* at 698. The Court concluded that the member was "not barred . . . from applying for an accidental disability retirement allowance." *Id.* at 699.

McCormick remains good law. *See Dinatale v. Contributory Ret. Appeal Bd.*, 39 Mass. App. Ct. 401, 406 (1995); *O'Donnell v. Contributory Ret. Appeal Bd.*, 13 Mass. L. Rptr. 497, 500 (Suffolk Super. 2001), *aff'd*, 60 Mass. App. Ct. 1112 (2004) (unpublished memorandum opinion). In view of its holding, the board overestimated the conclusiveness of Mr. Mitchell's refund of 2009. If Mr. Mitchell was at that time "entitled to a retirement allowance," G.L. c. 32, § 10(4), then his refund was a correctable error, not an insuperable barrier to a subsequent retirement application. For present purposes, Mr. Mitchell's submissions adequately plead that he was indeed eligible for accidental disability retirement as of 2009.

But the board in its motion explains that Mr. Mitchell's retirement application is deficient for another reason. The general rule is that a member may retire for accidental disability only on the basis of an injury that occurred "within two years prior to the filing of [the retirement] application." G.L. c. 32, § 7(1). This requirement is excused if the member received workers' compensation on account of the injury,[1] or if "written notice [of the injury] was filed with the board . . . within ninety days." *Id.* These rules seek to afford the pertinent board an opportunity to conduct a contemporaneous investigation of the potentially disabling circumstances. *See Sibley v. Franklin Reg'l Ret. Bd.*, No. CR-15-54, 2023 WL 11806176, at *3 (CRAB May 26, 2023).

Mr. Mitchell did not receive workers' compensation in connection with the medical conditions he describes. He does not claim that the board received written notice of his injury. He argues instead that his workplace supervisors "were fully aware" of the mistreatment he was suffering and its adverse medical consequences.

It is true that the administrative case law has tended to view the "written notice" rule as satisfied even when the notifying document was filed with the member's employer, not the retirement board itself. *See Storlazzi v. Massachusetts Teachers' Ret. Syst.*, No. CR-01-585, at *7-8 (DALA Jan. 8, 2002, *aff'd*, CRAB May 16, 2002); *Marion v. Lowell Ret. Bd.*, No. CR-91-1714, at *11 (DALA Apr. 15, 1993, *aff'd*, CRAB Nov. 22, 1993). This approach stems from the statutory rule that every "head of department" must inform the pertinent board upon acquiring "knowledge" of a member's workplace injury. G.L. c. 32, § 7(3)(b). But the Contributory

[1] The member in *McCormick* received workers' compensation in connection with her injury and therefore did not run into a timeliness problem. 345 Mass. at 692-93. *See also Dinatale*, 39 Mass. App. Ct. at 407-08.

Retirement Appeal Board has recently clarified that an employer's knowledge is not enough unless the employer received its own notice in writing:

> That department heads are directed . . . to file reports of injuries sustained in the performance of member's duties . . . cannot excuse the member's failure to file notice of his injury. . . . A department head's knowledge of an injury, where no written report or record exists, is . . . insufficient to fulfill the retirement law's notice requirements . . . .

Benoit v. Everett Ret. Bd., No. CR-14-821, 2023 WL 11806155, at *4 & n.42 (CRAB Sept. 14, 2023). Given that no "written report or record exists" of Mr. Mitchell's injuries, the two-year limitation period remains in place. Mr. Mitchell's disabling incidents ended no later than 2009, when he left work. He did not file his retirement application until thirteen years later.

In view of the foregoing, Mr. Mitchell's appeal does not state a claim upon which relief can be granted. *See* 801 C.M.R. § 1.01(7)(g)(3). It is therefore ORDERED that the motion to dismiss is ALLOWED and the appeal is DISMISSED.

Division of Administrative Law Appeals

/s/ Yakov Malkiel
Yakov Malkiel
Administrative Magistrate