COMMONWEALTH OF MASSACHUSETTS

Division of Administrative Law Appeals

Jose Molina, Jr.,
Petitioner

Docket No. CR-22-0412

v.

Boston Retirement Board,
Respondent

Appearances:

For Petitioner: Bryan Decker, *Esq.*
For Respondent: Edward McKenna, *Esq.*

Administrative Magistrate:

Timothy Pomarole

SUMMARY OF DECISION

The Petitioner, a former police officer, applied for accidental disability retirement on the ground that he suffered a disabling back injury as a result of a fall while on duty. The Respondent denied his application. That decision is reversed. The Petitioner has met his burden of establishing that he became permanently disabled from performing the essential duties of his position as a result of the fall. The Petitioner has also established that he suffered this injury as a result of, and while in the performance of, his duties.

DECISION

The Petitioner, Jose Molina, appeals the decision of the Boston Retirement Board ("the Board") to deny his application to retire for accidental disability. I held a hearing on September 7, 2023, at the Division of Administrative Law Appeals. The hearing was recorded. I admitted into evidence Exhibits 1-41. The Petitioner was the only witness.

On August 27, 2024, the parties submitted post-hearing briefs and a transcript of the hearing, whereupon the record was closed.

FINDINGS OF FACT

I make the following findings of fact:

1. The Petitioner began working as a Patrol Officer for the City of Boston in November 1986. (Ex. 1; Testimony).
2. In 2002, the Petitioner was in an automobile accident while on duty. He injured his back and spent two to three months out of work on injured leave. The Petitioner returned to full duty with no limitations after that accident. (Testimony).
3. Sometime after, in the early 2000s, the Petitioner had a bicycle accident while on duty. He was assigned light duty for 6-8 weeks and returned to full duty without restrictions. (Testimony).
4. In the several months prior to the incident at issue in this appeal, the Petitioner, who had been experiencing persistent and significant left sided abdominal/flank pain, underwent tests associated with a mass in his pancreas. (Exhibits 42-45).
5. On the evening of February 3, 2016, the Petitioner was assigned to the prisoner transport vehicle ("the wagon"). (Testimony).
6. Officers assigned to the wagon were expected to perform the same duties as any other full duty police officer. Accordingly, the Petitioner's duties on that assignment included responding to radio calls, prisoner transport, and patrol. (Exhibit 4; Testimony).
7. The Petitioner and his partner were driving around in the wagon. Because it was raining hard that evening, the Petitioner and his partner decided to get their raincoats from their

personal vehicles, which were parked in the District 14 parking lot. When they reached the parking lot, the Petitioner first dropped his partner off at his partner's personal vehicle so his partner could retrieve his raincoat. The Petitioner then drove the wagon to his own personal vehicle so that he could retrieve his own raincoat. While walking to get his raincoat, the Petitioner slipped and fell on his back/buttocks and felt immediate pain. (Exhibit 5; Testimony).

8. The Petitioner got up from his fall, retrieved the jacket, and went back to the wagon. (Testimony).
9. The Petitioner initially thought he was fine, but soon felt that something was wrong. He reported the accident to his supervisor, who relieved him of his radio and service weapon. (Testimony; Exhibit 5).
10. The Petitioner was transported by ambulance to St. Elizabeth's emergency room. (Testimony; Exhibit 17).
11. At St. Elizabeth's, the Petitioner was diagnosed with a low back strain. The discharge plan was Motrin for his pain, rest, ice, and elevation. The Petitioner was given a note to take three days off work. (Exhibit 17).
12. The Petitioner never returned to work. (Testimony; Exhibit 1).
13. One week later, on February 10, 2016, the Petitioner underwent a scheduled US Intra-op pancreatic exam and laparoscopic intraoperative ultrasound procedure. (Exhibit 43).
14. On February 17, 2016, the Petitioner underwent a pancreatectomy and splenectomy. (Exhibit 45).
15. The Petitioner took pain medication to manage his pain during the process of recovering

from his surgery. (Testimony).

16. The Petitioner began experiencing back pain again after he stopped taking the pain medication. (Testimony; Exhibit 25A).
17. At some point prior to August 3, 2016, the Petitioner saw his primary care physician, Dr. Ross Reel, complaining of back pain. Dr. Reel surmised that the pain was caused by his surgery. The surgery resulted in weakened core muscles, causing the back muscles to overcompensate. (Testimony; Exhibit 20; Exhibit 21).
18. Dr. Reel referred the Petitioner to physical therapy, which the Petitioner underwent with two or three providers. (Testimony; Exhibit 20; Exhibit 21).
19. Dr. Reel later referred the Petitioner to Atrius Health's spine unit for his back pain. (Testimony; Exhibit 20; Exhibit 21).
20. On August 3, 2016, the Petitioner was examined by a nurse practitioner at the spine unit, Benjamin Simms. The Petitioner reported that he had presented to the emergency room with lower back pain, but later developed pain in his thigh as well. The Petitioner described his pain as a five-out-of-ten. NP Simms stated that the Petitioner had had "off-and-on back pain" prior to the fall, but after the fall had "persistent back pain." NP Simms noted that the Petitioner's pain persisted even though he had undergone one full course of physical therapy, was taking non-steroidal pain medications, and employed rest, ice, and heat. Noting this "failure of conservative therapies," NP Simms ordered an MRI of the Petitioner's spine. (Exhibit 20).
21. On August 14, 2016, the Petitioner underwent an MRI. He did not have any prior MRI for comparison. The MRI showed a mild-to-moderate lumbar spondylosis. (Exhibit 18).

22. The doctor who performed the pancreatectomy and splenectomy cleared the Petitioner to return to work on October 26, 2016. (Ex. 41).
23. On December 14, 2016, NP Simms again examined the Petitioner and referred him to physical therapy. (Exhibit 19).
24. The Petitioner participated in approximately 45 physical therapy sessions related to his back injury between December 2016 or January 2017 and May 2017, pausing in May 2017 because he had surgery on his shoulder for a torn rotator cuff arising from his work fall. (Exhibit 25A – 25H).[1]
25. The Petitioner had physical therapy for his shoulder between June 2017 and October 2017. (Exhibit 26A – 26G).
26. On November 17, 2017, the Petitioner saw Renee Heberlie, a physician assistant. He reported that his symptoms had improved, but he still experienced pain that ranged from a one-out-of-ten to a nine-out-of-ten. PA Heberlie referred the Petitioner to a chiropractor. (Exhibit 27A).
27. The Petitioner resumed physical therapy for his back in December 2017, and continued until December 2018, participating in several dozen sessions. (Exhibit 26H-Exhibit 26P).
28. On December 21, 2017, the Petitioner again saw PA Heberlie, reporting that his pain had reduced since its original onset. There was constant pain, but it ranged from a one-out-of-ten to a four-out-of-ten. (Exhibit 27B).
29. On April 3, 2018, the Petitioner underwent a functional capacity evaluation. The therapist

[1] The Petitioner also had surgery on his hand for a condition seemingly unrelated to his February 3, 2016 fall. That surgery took place in March 2017. (Exhibit 25C; Exhibit 26H).

who conducted the evaluation concluded that the Petitioner met the "Light work category and [fell] within the Medium work category." (Exhibit 29).

30. Over the course of his treatment, the Petitioner underwent at least two lumbar epidural steroid injections. The first provided about six weeks of relief. The second provided a couple of weeks of relief. The second injection resulted in an infection that required the Petitioner to be hospitalized. (Exhibit 32A; Exhibit 38B). The Petitioner also underwent a piriformis trigger point injection, which provided little relief. (Exhibit 21; Exhibits 27A -27B; Exhibit 32A; Exhibit 36).
31. Because the Petitioner did not experience significant improvement after steroidal injections and multiple courses of physical therapy, he was referred to Dr. Eugenio Martinez, a physiatrist. (Exhibit 21).
32. On July 17, 2018, Dr. Martinez ordered an MRI. (Exhibit 21).[2]
33. The Petitioner underwent an MRI, and on August 29, 2018, Dr. Martinez reviewed the results with him, informing him that it yielded "no concerning finding, nor for that matter, any specific finding that would necessarily be responsible for his chronic, ongoing subjective pain symptoms. Therefore, there is certainly no indication for spine surgery." He added that, in general, "spinal imaging studies reveal the specific cause of pain in only a

[2] In his Recommended Decision, a hearing officer for the Boston Retirement System stated that Dr. Martinez did not attribute the Petitioner's back pain to the fall, "but rather to genetically determined, age activated, diminished cellular function as the cause of degeneration." (Exhibit 12 (quoting Exhibit 21)). I do not believe that is a correct interpretation of Dr. Martinez's report. The quoted passage was contained in a longer discussion prefaced "Patient Education," which covered a range of topics and appeared to provide a generalized overview of issues pertaining to the spine. I do not read it as a specific comment on the origin of the Petitioner's back problems.

relatively small minority of patients." These observations were reiterated when the Petitioner returned to Dr. Martinez on October 10, 2018. (Exhibit 22; Exhibit 23).

34. On December 7, 2018, the Petitioner again treated with Dr. Martinez, who concluded that "high-quality nonsurgical conservative treatment" has not succeeded and that there was nothing more he could do for the Petitioner. Dr. Martinez added that because he is not a surgeon, he could not advise him whether surgery might be beneficial. Dr. Martinez suggested that the Petitioner talk with other physicians about a surgical referral, "if he likes." (Exhibit 24).
35. On March 2, 2020 and November 30, 2020, the Petitioner met with his primary care physician, Dr. Reel. Dr. Reel's notes state that Dr. Martinez "suggested surgery," an overstatement of Dr. Martinez's position. Dr. Reel reported that the Petitioner did not want surgery or further injections. In any case, Dr. Reel's November 30 note also observes that the Petitioner is "not a great candidate for spinal surgery given his history of splenectomy which causes him to have an immunocompromised state" and that he responded poorly to spinal injections. Given those considerations and the fact that "other conservative treatments including physical therapy, chiropractic care and massage therapy" had failed to resolve his back pain issues, Dr. Reel concluded that the Petitioner had reached maximal medical improvement. (Ex. 38A; Ex. 38B).
36. On December 4, 2018, the Petitioner applied for accidental disability retirement. He claimed that as a result of his back pain, he could not sit or stand for more than one hour, could not run after suspects, or run up stairs. (Exhibit 1).
37. Dr. Reel completed the Physician's Statement and diagnosed him with bilateral sciatica and

ongoing back pain that persisted after "maximal medical therapy." Dr. Reel opined that, as a result of these conditions, the Petitioner could not run, carry, push, pull, or stand or sit for more than one hour. (Exhibit 2).

38. The Employer's Statement stated that there were no reasonable accommodations that would enable the Petitioner to perform the essential duties of his position. (Exhibit 3).
39. On April 4, 2020, the Petitioner saw Dr. Joseph Audette, a physiatrist. Dr. Audette opined that trigger point injections could "provide a more profound release of that tightness [in the Petitioner's back] and therefore potentially help in a more sustained way with both the back pain and sciatica" and he remarked that such injections would not involve the use of cortisone or steroids and so would be safe in his immunocompromised state. The Petitioner was open to that approach, but wanted to wait until the COVID-19 pandemic was less acute, which Dr. Audette thought was sensible given the Petitioner's immunocompromised state. (Exhibit 32A).
40. On October 13, the Petitioner saw Dr. Audette for a second time. Dr. Audette opined that the Petitioner is "not a great candidate for surgery given his history of splenectomy which causes him to have an immune compromised state." Dr. Audette observed, "[G]iven the variety and extent of treatment and the lack of progress, I think he [ha]s reached maximal medical improvement with regard to his works comp case with the Boston Police Department." (Exhibit 32B).
41. The Petitioner was seen by a Public Employee Retirement Administration Commission (PERAC) orthopedic medical panel. The Petitioner was examined by Dr. Wojciech Bulczynski on October 5, 2021, by Dr. John Goldberg on October 12, 2021, and by Dr.

Steven McCloy on October 22, 2021. (Ex. 6; Ex.7; Ex. 8).

42. Dr. Bulczynski diagnosed the Petitioner with lumbar radiculopathy and pre-existing lumbar degenerative disease. Dr. Bulczynski further opined:

> In my opinion, the injuries sustained during the February 16, 2016 fall aggravated preexisting lumbar degenerative disc disease and foraminal stenosis and resulted in the above radiculopathy. Prior to this, there was no evidence of having low back pain or, therefore, a symptomatic preexisting condition. Therefore, in my opinion, the injuries sustained on February 16, 2016, represent[ ] a major cause of his ongoing symptoms and need for treatment.
>
> (Exhibit 6).

43. Dr. Bulczynski further opined that even if the Petitioner underwent surgery for his back, it was not likely he could return to full duty as a police officer. (Exhibit 6).

44. Dr. Goldberg opined that the Petitioner's injury resulted in "acute herniation, aggravation of underlying degenerative disk disease and ongoing with left side radiculopathy." (Exhibit 7).

45. Dr. McCloy diagnosed the Petitioner with lumbar strain with herniated disk, S1 radiculopathy, and right rotator cuff tear with repair. "He has weakness on the left side. He is not capable of running, chasing perpetrators, or climbing stairs. He also cannot sit comfortably for extended periods of time. He has some limitations of motion of his right shoulder." With respect to causation, he added: "His disability started with that injury and has persisted. He was fully engaged with his job up until the time of that work injury." (Exhibit 8).

46. The Board issued a formal denial of the Petitioner's application for accidental disability retirement dated September 22, 2022. (Ex. 9).

47. The Petitioner timely appealed the Board's decision on September 26, 2022. (Ex. 10).

CONCLUSION AND ORDER

A public employee applying for accidental disability retirement must establish three elements: 1) that the employee is "unable to perform the essential duties of his job"; 2) that the disability "is likely to be permanent"; and 3) that the disability arose "by reason of a personal injury sustained . . . as a result of, and while in the performance of, [the employee's] duties." G.L. c. 32, § 7.

A. Permanent Disability

The statute requires applicants for accidental disability retirement to be examined by a regional medical panel. The purpose of this arrangement is "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. Contrib. Ret. App, Bd.*, 1 Mass. App. Ct. 420, 423 (1973).

The determination of whether an applicant is permanently disabled falls squarely within "the heartland of the panel's specialized expertise." *Kirsten K. v. Mass. Teachers' Ret. Sys.*, CR-20-675, 2023 WL 415580, at *4 (Div. Admin. L. App. Jan. 6, 2023) (citation and internal quotation marks omitted). Accordingly, "when a medical panel concludes that a member is permanently disabled, it is rare for a nonexpert factfinder to find cause to disagree." *Rosemarie R. v. Amesbury Ret. Sys.*, CR-22-0590, 2024 WL 3101692, at *4 (Div. Admin. Law App. June 14, 2024) (citation omitted); *see also Wadson v. Mass. Teachers' Ret. Sys.*, CR-24-0216, 2025 WL 2634176, at*5 (Div. Admin. Law App. Sept. 5, 2025) (observing that "the cases in which DALA and CRAB have found that a medical panel was wrong to find a member permanently incapacitated are vanishingly rare").

Here, all three panelists concluded that the Petitioner is permanently disabled. The Board's arguments to the contrary are unpersuasive.

First, as a threshold matter, the Board incorrectly argues that the Petitioner was required to establish that he was disabled as of the last day he performed the essential duties of his position. This argument, based on *Vest v. Contrib. Ret. App. Bd.*, 41 Mass. App. Ct. 191 (1996), is foreclosed by *Hollup v. Worcester Ret. Bd.*, which clarified that the relevant standard is not whether the member was still performing work responsibilities when he or she became disabled, but instead whether the individual was still a "member in service." 103 Mass. App. Ct. 157, 164 (2023). The Board does not suggest that the Petitioner's disability matured after he was no longer a member in service. Accordingly, many of its arguments about the medical evidence, which are directed to the Petitioner's condition as of the last day on which he performed work duties, are unavailing.

The Board also misses the mark in arguing that that the "actual" reason the Petitioner stopped working was because of the issues related to his pancreatectomy and splenectomy, and not because of his back injury. The motivations behind an applicant's decision to stop working may be relevant to assessing his or her credibility (regarding subjective reports of symptoms, for example), but such motivations are otherwise irrelevant to whether an applicant is, in fact, disabled. *Sagendorph v. Hampden County Regional Ret. Bd.*, CR-21-631 & CR-22-117, 2023 WL 4846321, at *7 (Div. Admin. Law App. July 21, 2023); *Kirsten K. v. Mass. Teachers' Ret. Sys.*, CR-20-675, 2023 WL 415580, at *4 (Div. Admin. Law App. Jan. 6, 2023).

Likewise, there is no merit to the Board's suggestion that the Petitioner did not establish permanence because he failed to avail himself of reasonable medical treatments. An

applicant's disability cannot be deemed permanent if he or she rejected a course of treatment that "would probably successfully eliminate the disabling condition" and such refusal was "unreasonable" in the circumstances. *Ret. Bd. of Revere v. Contrib. Ret. App. Bd.*, 36 Mass. App. Ct. 99, 108 (1994). Here, however, there is scant evidence that back surgery, additional rounds of physical therapy, or additional injections had any likelihood of resolving the Petitioner's incapacity. And the Petitioner's reluctance to embrace surgery or additional injections was not unreasonable in the circumstances – the former because he risked complications as an immunocompromised individual; the latter because at least one prior injection appears to have resulted in complications.[3]

The Board's lay assessments of the medical evidence do not fare any better. For example, the Board appears to conclude from Dr. Martinez's observation, that the results of the 2018 MRI did not yield any concerning findings that would account for the Petitioner's "chronic, ongoing subjective pain symptoms," (Exhibits 22-23), that the Petitioner's symptoms are either manufactured or non-disabling. The conclusion is unsound. Dr. Martinez himself remarked that "spinal imaging studies reveal the specific cause of pain in only a relatively small minority of patients." (*Id.*). And, more generally, the Board overlooks the fact that determinations of permanent incapacity may be based on "subjective" complaints assessed in the context of the rest of the medical record. *See*, *e.g.*, *Back v. Barnstable County Ret. Bd.*, CR-18-361, 2020 WL

[3] I also reject the argument that the Petitioner did not establish disability because he failed to seek reasonable accommodations for his condition. His employer stated that there were no reasonable accommodations that would enable him to perform the essential duties of his position. (Exhibit 3). Moreover, the onus was on the employer, not the Petitioner, to proffer possible modifications to his essential duties. *Christopher C. v. Boston Ret. Bd.*, CR-19-342 & CR-19-343, 2023 WL 3434934, at *8 (Div. Admin. Law App. May 5, 2023) (citing *Foresta v. Contrib. Ret. App. Bd.*, 453 Mass. 669, 680 n.11 (2009)).

13607017, at *11 (Div. Admin. Law App. Nov. 13, 2020); *Wadson*, *supra*, at *5; *Marquis M. v. Worcester Ret. Bd.*, CR-18-385, 2023 WL 2035318, at *3 (Div. Admin. Law App. Feb. 10, 2023).

The Board is arguably on somewhat stronger ground in relying upon the medical records review by Dr. Blair, who opined that the Petitioner is not disabled from performing the essential duties of his position. That argument, at least, is based squarely on medical evidence. But I see little reason to credit the opinion of Dr. Blair over the opinions of Drs. Bulczynski, Goldberg, and McCloy. "Unlike Dr. [Blair], the panelists examined [the Petitioner] in person; and they are in any event the body in which the Legislature 'vest[ed] . . . 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).'" *Foster v. Boston Ret. Sys.*, CR-24-0032, 2025 WL 2021566, at *5 (Div. Admin. Law App. July 11, 2025) (citations omitted). Moreover, there is no indication that Dr. Blair reviewed, let alone followed, the Public Employment Retirement Commission's instructions. Nor is the substance of her analysis noticeably superior to those contained in the panelists' respective narratives.

B. Causation

The Board makes two categories of causation arguments: (1) the Petitioner's fall did not occur while in the performance of his duties; and (2) the Petitioner has not established that the fall caused the claimed disability.

1. "While in the performance of [his] duties"

To be eligible for accidental disability retirement benefits, the Petitioner must have sustained his disabling injury "as a result of, and while in the performance of, [his] duties." G. L. c. 32, § 7 (1). The "as a result of" and "while in the performance of" requirements "are

conjunctive," meaning the applicant must prove not only that his injury resulted from his duties, but also that it occurred "while in the performance of these duties." *Boston Ret. Bd. v. Contrib. Ret. App. Bd.*, 340 Mass. 109, 111 (1959). Accidental disability retirement is not available to an employee who is hurt, even during working hours, while performing a non-duty. *Namvar v. Contrib. Ret. App. Bd.*, 422 Mass. 1004, 1005 (1996). The purpose of this "restrictive" language is to limit the very generous accidental disability retirement allowance to circumstances where the job itself caused the employee's permanently disabling injury. *Id.* "Whether the disability complained of . . . is owing to an injury sustained 'while in the performance of' an employment duty is a factual inquiry particular to each case." *Murphy v. Contrib. Ret. App. Bd.*, 463 Mass. 333, 348 (2012).

Section 7(1) "does not prescribe exactly what procedures an employee must use to perform his duties" and does not "contemplate retirement boards second-guessing the manner in which employees performed their duties." *Perry v. Marblehead Ret. Bd.*, CR-19-0578, at 20 (Div. Admin. Law App. Nov. 19, 2021) (finding an employee's actions in performance of his street sweeping duties, "even if unwise in some fashion," did not bar him from eligibility for accidental disability retirement). Accordingly, a "retirement board cannot deny ADR because it thinks that there was a different or better way for the employee to complete his duties that the Board speculates would not have resulted in the employee injuring himself." *Smith v. Springfield Ret. Bd.*, CR-22-0163, at 4 (Div. Admin. Law App. Oct. 4, 2024).

In *Smith v. Springfield Ret. Bd.*, for example, a firefighter assigned to snow and ice removal fell while walking to his personal vehicle to retrieve gloves. Although the gloves had not been issued by his employer, the magistrate concluded that that the firefighter's choice of

equipment was merely a method of executing a work responsibility, not a personal errand. Accordingly, the magistrate determined that the disabling injury occurred as a result of and while in the performance of the firefighter's duties.

Similarly, here, the Petitioner's decision to retrieve his raincoat was a permissible choice concerning how he would perform his law enforcement duties. The Petitioner was obliged to respond to radio calls and deal with whatever may have arisen while on patrol. Had he become drenched by the rain, he would have likely been distracted and less able to discharge his duties. In fact, retrieving the raincoat was not merely a permissible choice, it was perhaps what his employer would have wanted him to do in the circumstances. Cf. *Wilson v. Newton Ret. Sys.*, CR-24-0294, 2025 WL 689851, at *3 (Mass. Div. Admin. Law App. Feb. 21, 2025) (remarking that work duties include those actions that "the employment relationship clearly and reasonably would prompt the employer to expect and demand" such that the "employer would be predictably and appropriately dismayed by an employee's failure" to perform them). Accordingly, the Petitioner's fall occurred as a result of and while in the performance of his work duties.

2. Medical causation

The Board also argues that the Petitioner has not met his burden of demonstrating that his injury on February 3, 2016 caused his incapacity. The argument fails.

Although the statute requires members of the medical panel to answer the narrow questions of whether the applicant's incapacity is "such as might be" the result of the workplace accidents, G.L. c. 32, § 6(3)(a), when panelists offer their assessment of not only the possibility of causation, but the actual cause of the disability, their "analysis takes on

substantial weight." *Hines v. Dukes County. Ret. Sys.*, 18-CR-0357, 2024, WL 4815148, at *3 (Div. Admin. Law App. Oct. 25, 2024).

Here, in their respective narratives, all three panelists essentially opined that the fall not only could have caused, but was in fact the cause of, the Petitioner's permanent incapacity.

The Board counters that the panelists' causation opinions rest on incomplete information because medical records relating to the Petitioner's splenectomy and pancreatectomy and treatment of non-back-related injuries are "conspicuously absent" from the record. If various records were "conspicuously absent," however, the Board could have tried to obtain them. *Kalu v. Boston Ret. Bd.*, 90 Mass. App. Ct. 501, 511-12 (2016) (noting that although the Board indicated the applicant had not been forthcoming, its contentions were unavailing because it did not request the treatment records that would have illuminated the issue); *see also* 840 Code Mass. Regs. § 10.09(1) (1998) (retirement boards "shall obtain any pertinent information known to exist without regard to the five year time period[ ]" and "shall conduct such investigation as may be necessary to determine the facts").[4] In any case, the panelists had the same records referencing the Petitioner's other conditions that the Board had. The panelists evidently determined that they could render an opinion notwithstanding the fact that they did not have the full treatment records concerning the Petitioner's finger surgery, his shoulder surgery, or his pancreatectomy and splenectomy.

[4] At the hearing, the Board's counsel asked the Petitioner and his counsel whether they would be willing to execute a release so the Board could obtain the records relating to the Petitioner's cancer surgery and the surgery on his finger. The Petitioner's counsel indicated that the Petitioner would likely assent to that request. Whether there was any further follow-up on the topic is not apparent from the record.

In a related argument, the Board faults the panelists for failing to discuss other possible contributing causes of his incapacity. The Board proffers miscellaneous contenders, including the Petitioner's weight and his pancreatomy and splenectomy. Medical panelists are not required, however, to shadowbox every conceivable alternative conclusion or argument:

> Panelists are obligated to conduct a careful and expert review of the member's case. It is generally sufficient for them to certify that they have done so. They are not required to undertake the potentially unfeasible task of refuting every record that may appear to challenge their conclusions.

Robillard v. State Bd. of Ret., No. CR-18-470, 2022 WL 18283524, at *4 (Div. Admin. Law App. Dec. 19, 2022). When a panelist's narrative does not address a particular issue, that generally means that the panelist did not view it as material to his or her analysis. *Kiely v. State Bd. of Ret.*, No. CR-18-496, at 5 (Div. Admin. Law App. Oct. 15, 2021).

The Board does accurately observe that Dr. Bulczynski incorrectly stated that there was no evidence the Petitioner had suffered from lower back pain prior to his fall. The Petitioner reported to NP Simms that prior to the fall he had experienced "off-and-on back pain." It is not clear from this comment how frequent (or infrequent) this pain was, when it began, or how severe it may have been. Regardless, even if Dr. Bulczynski's oversight fatally undermined his causation opinion, the fact remains that the two other panelists also concluded that the fall caused the Petitioner's disabling back pain.

For the foregoing reasons, the Board's decision to deny the Petitioner's application for accidental disability retirement is *reversed***.**

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/ Timothy M. Pomarole

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Timothy M. Pomarole, Esq.
Administrative Magistrate

Dated: July 24, 2026