

**COMMONWEALTH OF MASSACHUSETTS
CONTRIBUTORY RETIREMENT APPEAL BOARD**

**MARY AGNES MURPHY,
Petitioner-Appellee**

v.

**STATE BOARD OF RETIREMENT,
Respondent-Appellant.**

CR-17-1021

DECISION

Respondent State Board of Retirement (SBR) appeals from a decision of an administrative magistrate of the Division of Administrative Law Appeals (DALA), granting petitioner Mary Agnes Murphy’s application for accidental disability retirement benefits. The DALA magistrate heard the matter on May 21, 2019, and admitted eleven exhibits. The magistrate’s decision is dated June 19, 2020. The SBR filed a timely appeal to us.

After considering all the arguments presented by the parties and an examination of the record, we adopt the magistrate’s findings of fact 1 – 9 as our own and incorporate the DALA decision by reference. For the reasons stated in the Discussion, we affirm.

This matter involves one issue – whether Ms. Murphy was injured “while in the performance of her work duties.” G.L. c. 32, § 7 “requires not only that the injuries must result from one’s duties but that they must also be sustained ‘while in the performance’ of [those] duties. The requirements are conjunctive.” *Boston Retirement Bd. v. Contributory Retirement Appeal Bd.*, *supra*. In other words, the causation requirement of G.L. c. 32, § 7(1), demands that the claimed injury must be sustained “during the actual performance of the duties that the employee has undertaken to perform on behalf of the public.” *Damiano v. Contributory Retirement Appeal Bd.*, *supra* at 263, 890 N.E.2d 173. See *Retirement Bd. of Salem v. Contributory Retirement Appeal Bd.*, 453 Mass. 286, 291, 901 N.E.2d 131 (2009) (benefits awarded under G.L. c. 32, § 7 [1], “only for those who experience a personal injury not merely as a result of the performance of work duties, but *during* the performance of these duties as

well”). “Whether a particular activity is within the [applicant’s] duties is ultimately a factual inquiry particular to each case.” *Connolly v. Contributory Retirement Appeal Bd.*, 73 Mass. App. Ct. 1127, quoting *Damiano, supra*. The distinction between the actual performance of work and something incidental to such work must be made. *Boston Retirement Bd. v. Contributory Retirement Appeal Bd.*, 340 Mass. 109, 111 (1959).

Here, the magistrate concluded that Ms. Murphy was injured while in the performance of her duties when she was walking towards the adult education program location where she was scheduled to perform her inspection. Alternatively, the magistrate also concluded that Ms. Murphy was injured while traveling from one work obligation to another. In making this determination, the magistrate explained that traveling was part of and a condition of Ms. Murphy’s job duty and that she had an agreement with her employer to be paid after the first hour of her commute to the inspection site.¹

The magistrate distinguished Ms. Murphy’s circumstances from those in *Richard v. Worcester Retirement Bd.*, 431 Mass. 163, 726 N.E.2d 405 (2000), where the Supreme Judicial Court (SJC) deemed that public employees, who are injured after completing work for the day, on the way to work, or going to lunch or returning from lunch, are not eligible for accidental disability retirement benefits. He explained that Ms. Murphy’s employer recognized that lengthy traveling throughout the Commonwealth to be a job requirement for program specialists, and as such, her workday did not necessarily begin upon reaching the program site to be inspected. Consequently, the first hour of her commute was non-compensable commuting, and any time beyond the first hour was compensable. Because she was beyond the non-compensable commuting hour and was being paid for that time by her employer, Ms. Murphy was performing a work duty when she sustained her injuries, and therefore, the magistrate concluded she was injured while in the performance of her duties. In our concurrence with the DALA decision, we give the DALA magistrate’s findings of facts “some deference,” *Vinal v. Contributory Retirement Appeal Bd.*, 13 Mass. App. Ct., 85, 99-100 (1982), and incorporate the magistrate’s discussion at pages 5-7.

We also agree with the magistrate’s alternative conclusion that the evidence demonstrates that Ms. Murphy was traveling from one job duty to another when she was injured. The magistrate determined that Ms. Murphy was injured while traveling between one job duty –

¹ DALA Decision at *5-8.

preparing for the inspection at the train station and while on the train – to another job duty – conducting the inspection. In this instance, we agree with the magistrate that because she was required to prepare for her inspections and was being paid while she was preparing for that inspection, Ms. Murphy was performing a job duty. We defer to the magistrate's findings and incorporate the magistrate's discussion on page 8. *Id.*

Conclusion. Ms. Murphy has met her burden to establish entitlement to accidental disability retirement benefits pursuant to G.L. c. 32, § 7. She was permanently disabled from a fall that occurred "as a result of and while in the performance of her duties." The DALA decision is affirmed.

SO ORDERED.

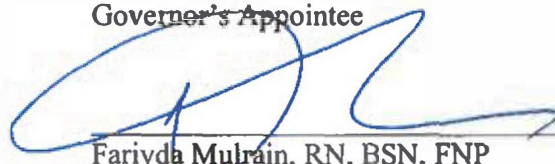
CONTRIBUTORY RETIREMENT APPEAL BOARD



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Date: October 7, 2024