

Commonwealth of Massachusetts
Contributory Retirement Appeal Board

Shaun Osborn,
Petitioner-Appellant v.
Pittsfield Retirement Board,
Respondent-Appellee.

CR-16-446

DECISION

Petitioner Shaun Osborn appeals from a decision of an administrative magistrate of the Division of Administrative Law Appeals (DALA), affirming the decision of the respondent Pittsfield Retirement Board (PRB) denying Osborn's application for accidental disability retirement benefits.¹ The DALA magistrate heard the matter on October 2, 2017, and admitted eighteen (18) exhibits into evidence.² The Magistrate's decision is dated May 25, 2018, and Osborn filed a timely appeal to us.

After considering all the arguments presented by the parties and after a review of the record, we incorporate the DALA decision by reference and adopt the magistrate's Findings of Fact 1-37 as our own. We affirm adding the following remarks.

Osborn was a police officer for the Town of Pittsfield from 1999 until 2015. He initially worked the night shift but was reassigned to the day shift in 2004 following increased calls for police involvement and increased interactions with drugs, gangs and weapons.³ He

¹ Osborn applied for ordinary and accidental disability retirement pursuant to G.L.c.32 § 6 and § 7, respectively. His claim for ordinary disability benefits was allowed. This decision concerns only his claim for accidental disability retirement benefits, which PRB denied.

² Exhibits 1-18 and Hearing transcript totaled 412 pages.

³ Ex. 3-4; Finding of Fact 1, 4; Hearing Testimony.

had no gastrointestinal problems prior to his employment but his family history was significant for irritable bowel syndrome (IBS) and neurofibromatosis.⁴

In May 2006, Osborn sought treatment for bowel and gastrointestinal symptoms. He reported experiencing gastrointestinal problems over the past several years, which had intensified in 2004. A colonoscopy revealed ulcerative colitis.⁵ With worsening symptoms, he underwent surgery in May 2010 to remove his colon and to create a J-pouch and was diagnosed with Crohn's disease. Unfortunately, Osborn continued to be symptomatic with gastrointestinal issues and in 2012 began experiencing episodes of urgency, incontinence and tenesmus.⁶ He had hernia repair in March 2012.⁷ Subsequently, the Police Chief created a special position at the police station for Osborn. Osborn was tasked with researching white collar crimes from 2013-2014 to give him access to the restroom.⁸

In addition to treatment for gastrointestinal issues, Osborn also reported experiencing symptoms of anxiety and stress. Treatment notes from Nurse Mickle reflect that Osborn complained of stress in May 2006 due to a recent breakup, as well as concerns relating to his gastrointestinal issues.⁹ In February 2011, Osborn expressed that his struggles with bowel issues were negatively impacting his social life and relationships. He also reported being passed over again for a promotion to the rank of Detective and complained of sleep disturbance.¹⁰ His complaints of work stress and bowel issues continued when he was seen in July 2012.¹¹

In September 2014, Mark Peppercorn, M.D., a gastroenterologist, determined that Osborn was not suffering from Crohn's disease, but did document that Osborn was experiencing fatigue, poor sleep, and spent five hours per day in the bathroom. Dr. Peppercorn recommended medication changes to address Osborn's symptoms and commented that stress was exacerbating his symptoms.¹²

⁴ FF 2; Hearing Testimony.

⁵ Ex. 9, 11; FF 6.

⁶ Ex. 9, 11, 13- 14, 16; FF 8-11.

⁷ Ex. 9; FF 14.

⁸ Ex. 2, 16; FF 17.

⁹ Ex. 11; FF 7.

¹⁰ Ex. 7, 11; FF 13.

¹¹ Ex. 11; FF 16.

¹² Ex. 12; FF 18.

Although Dr. Peppercorn opined that he was not suffering from Crohn's disease, Osborn continued treating for it in 2014 and 2015 with medication therapy, including Remicide infusions¹³ and ileo-anal pouch excision on July 21, 2015.¹⁴ Osborn remained confined to desk duty through the Spring of 2015. He was last physically engaged in work activities in July 2015. The record suggests that Osborn stopped working because the desk position was no longer available.¹⁵

On July 28, 2015, Osborn applied for accidental disability retirement benefits, claiming disability under the hazard theory as a result of colitis/removal of colon in 2010, pouchitis and Crohn's disease, as well as having had surgery for a permanent colostomy bag in July with severe exhaustion. He ceased being able to perform the essential duties of his position in the Spring of 2015. He provided the date of injury as 2004 and exposure to high stress and anxiety throughout his career as the cause of his disability. Osborn did not receive workers' compensation benefits, nor Section 111F benefits.¹⁶ The record does not contain any reports of injury relating to stress, anxiety or gastrointestinal problems.¹⁷

Jeffrey St. John, M.D., completed the Physician Statement in support of Osborn's application, diagnosing him with ulcerative colitis status post total colectomy with ileostomy. He explained that Osborn had been experiencing ongoing symptoms due to ulcerative colitis. Dr. St. John concluded his disability to be permanent and opined that his disability might be the natural and proximate result of the claimed personal injury sustained or hazard undergone. He explained, however, that it was difficult to conclude whether or not stress may have contributed to Osborn's symptoms, noting that diarrhea and pain may have been exacerbated by stress but also probably more so related to the chronic inflammation in his pouch. Dr. St. John also stated that Osborn's disability was related more so to nonwork-related conditions, consisting of his diagnosis of ulcerative colitis and subsequent diagnosis of chronic pouchitis.¹⁸

¹³ Ex. 9; FF 19.

¹⁴ Ex. 10, 14; FF 22.

¹⁵ Ex. 2, 7, 13; FF 20-21.

¹⁶ Ex. 1-2, 7; FF 23-26.

¹⁷ The record contains incident reports relating to injuries during physical encounters with people. Osborn received medical treatment and took time off from work. No notices of injuries were filed in connection with these incidences. See Exhibits 2, 7, 15 and FF 5.

¹⁸ Ex. 14.

To be eligible for accidental disability retirement benefits under G. L. c. 32, § 7, an applicant must establish by a preponderance of the evidence that he is totally and permanently incapacitated from performing the essential duties of his position because of a personal injury sustained or hazard undergone while in the performance of his duties. G. L. c. 32, § 7(1). An applicant must prove that his disability stemmed from either a single work-related event or series of events, or, if the disability was the result of gradual deterioration, that his employment exposed him to an “identifiable condition . . . that is not common or necessary to all or a great many occupations.” *Blanchette v. Contributory Ret. App. Bd.*, 20 Mass. App. Ct. 479, 485 (1985). An applicant, such as Osborn, may also be entitled to accidental disability retirement benefits when a work injury aggravates a pre-existing condition. *Robinson v. Contributory Ret. App. Bd.*, 20 Mass. App. Ct. 634, 638 (1985).

Under G.L. c. 32, § 7(1), an applicant must prove that the work-related injury was the “natural and proximate cause” of the disability. *Campbell v. Contributory Ret. App. Bd.*, 17 Mass. App. Ct. 1018, 1018-19 (1984). The applicant bears the burden of proving the causal relationship by a preponderance of the evidence. *Murphy v. Contributory Ret. App. Bd.*, 463 Mass. 333, 345 (2012); *Lisbon v. Contributory Ret. App. Bd.*, 41 Mass. App. Ct. 246, 255 (1996). (Applicant must show it was “more likely” that the disabling injury, flowing from a work accident, was directly caused by the work accident or was the aggravation of a preexisting condition, rather than being caused or aggravated by the natural, cumulative, deteriorative effects of his preexisting diseased condition and unhealthy habits.”)

An applicant seeking accidental disability retirement benefits must be examined by an independent medical panel. G.L. c. 32, § 6(3)(a); *Kelley v. Contributory Ret. App. Bd.*, 341 Mass. 611, 613 (1961). *See also Malden Ret. Bd v. Contributory Ret. App. Bd.*, 1 Mass. App. Ct. 420, 423 (1973) (panel opines on medical questions “beyond the common knowledge and experience of [a] local retirement board.”) A condition precedent to granting accidental disability retirement benefits is the panel’s issuance of an affirmative certification on questions of incapacity, permanence, and causation.¹⁹ *Kelley*, 341 Mass. at 613.

¹⁹ The panel addresses three questions: (1) whether the applicant is mentally or physically incapacitated for further employment duties; (2) whether such incapacity is likely to be

A medical panel was convened to examine Osborn. Here, Drs. Cohen and McCloy provided detailed narrative reports that relied on the factual records provided and applied the proper standard. Dr. Cohen discussed Osborn's history, physical examination, and medical records, including the finding of inflammatory bowel disease, complications, and treatment with colostomy. He considered whether Osborn's work conditions could have proximately caused his disabling inflammatory bowel disease and concluded that it could not. As recommended by the caselaw, Dr. Cohen expressed his opinion in the form of the statute – that his incapacity was “not such as might be” the proximate result of exposure to a hazard at work.²⁰ This was a proper certification.

Similarly, Dr. McCloy reported that he reviewed all relevant medical records, took a history from Osborn, and performed a thorough physical examination.²¹ He concluded that Osborn's disabling inflammatory bowel disease was not caused by stress incurred in the performance of his duties. The inflammatory bowel condition was “not such as might be” the proximate result of Osborn's exposure to a hazard at work because there is no relationship between his development of ulcerative colitis, Crohn's disease or neurofibromatosis and his work as a police officer. When asked to clarify whether Osborn's work contributed to the aggravation or acceleration of his bowel disease, Dr. McCloy responded no and explained that there was no clear epidemiological research evidence to support a role for job “stress” as causing bowel inflammatory disease. While there was some evidence demonstrating a role of “stress” in gastric ulcers, there was none for inflammatory bowel disease such as the condition from which Osborn suffers. Dr.

permanent; and (3) “whether or not the disability is such as might be the natural and proximate result of the accident or hazard undergone on account of which [an accidental disability] retirement is claimed.” G.L. c. 32, § 6(3).

²⁰ See *Fairbairn v. Contributory Retirement Appeal Bd.*, 54 Mass. App. Ct. 353, 361 (2002) (while not required, repeating the statutory standard places focus on statute). In *Fairbairn*, the Appeals Court held that it is not error for a panel physician to provide a direct opinion that a work injury did not cause a member's disability, as long as the narrative makes clear that the physician considered whether causation was possible based on the work injury or exposure and explains the physician's answers to the statutory questions. *Id.* at 36-361. To this extent, the court limited and narrowed its holding in *Noone v. Contributory Retirement Appeal Bd.*, 34 Mass. App. Ct. 756, 762 (1993) (invalidating a negative certification based solely on risk factors).

²¹ Ex. 15; FF 29-32.

McCloy's narrative and certification were also fully in compliance with the requirements of *Fairbairn* that he provide an explanation for his opinions. Like Dr. Cohen, Dr. McCloy expressed his opinion using the words of the statute. His certification was also proper.

Contrary to Drs. Cohen and McCloy's opinions on causation, the third physician, Dr. Weinstock answered "yes" to this question.²² While all three panel members concluded that Osborn was permanently unable to perform the essential duties of his job, Dr. Cohen concluded that his condition was such as might have been caused by exposure to stress and anxiety from his job as a police officer that spanned his career.²³ Nevertheless, the magistrate's decision and the opinions of the majority medical panel on causation were reasonable and supported by the substantial evidence in the record. The medical records from Osborn's treating physicians make multiple references to Osborn's debilitating symptoms, which included, but were not limited to incontinence, urgency, pain, bloody stools, various surgical procedures, and related infections. Osborn expressed concerns about these symptoms and their effects on his ability to perform his job and on his social life. Treating medical professionals, however, do not reference any job-related injury that caused the symptoms of his gastrointestinal diseases or that the symptoms were brought about by regular exposure to stressful incidents encountered or hazards undergone during his police work.²⁴

In this instance, we agree with the DALA magistrate and the PRB that the negative certification as to causation by the majority members of the regional medical panel bars the award of accidental disability retirement benefits to Osborn. A majority negative certification is binding unless the panel members lacked significant information or applied an incorrect standard.²⁵ If the certification is proper, we may not substitute our judgment for the negative opinion of the majority panel members, even if, as here, other physicians have issued contrary opinions.²⁶ Opinions of other treating or evaluating physicians cannot

²² Ex. 17; FF 34-35.

²³ *Id.*

²⁴ Ex. 9-11, FF. 12.

²⁵ See *Malden Retirement Board v. Contributory Retirement Appeal Bd.*, 1 Mass. App. Ct. 420, 423-424 & n.6 (1973).

²⁶ *Id.* at 424.

replace the Panel majority's findings. *Wakefield Contributory Retirement Bd. v. Contributory Retirement Bd.* 352 Mass. 499 (1967).

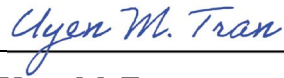
While Osborn did not object to the affirmative findings regarding incapacity and permanence, he objected to the Panel Majority's negative determination regarding causation. The fact that the Panel Majority's opinion differs from Osborn's opinion and that of some treating physicians does not establish that the Panel Majority employed an erroneous standard in rendering its determination. *Campbell v. Contributory Retirement Appeal Bd.*, 17 Mass. App. Ct. 1018 (1984). Opinions of other treating or evaluating physicians cannot replace the Panel majority's findings. *Wakefield Contributory Retirement Bd. v. Contributory Retirement Bd.* 352 Mass. 499 (1967). The Panel Majority concluded that any stress and anxiety Osborn experienced from his employment did not cause or aggravate his gastro-intestinal disability. The Panel Majority's negative opinion with respect to causation precludes the allowance of disability retirement benefits. Nothing in G.L. c. 32, § 16 (4) permits us to substitute our opinion for that of the Panel Majority responding in the negative to any of the three parts of the medical certificate. *Malden Retirement Board v. Contributory Retirement Appeal Board & another* 1 Mass. App. Ct. 420 at 424-425 (1973).

Based on this conclusion, we need not address whether Mr. Osborn sustained a compensable personal injury with the meaning of G.L. c. 32, § 7(1) or whether his employment presented a hazard that was not common or necessary to all or a great many occupations. *Blanchette*, 20 Mass. App. Ct. 479 (1985). Nor is it necessary for us to consider whether Mr. Osborn fulfilled the notice requirement as set forth in G.L. c. 32, § 7(1).

Conclusion. The DALA decision is affirmed. In the absence of evidence that the majority panel members lacked significant information or applied an incorrect standard, Osborn's application must be denied. This decision is based purely on the application of G.L. c. 32, § 7 and in no way should be taken as diminishing the service Osborn provided, nor minimize the significant health difficulties he experienced. Osborn is not entitled to accidental disability retirement benefits. **Affirm.**

SO ORDERED.

CONTRIBUTORY RETIREMENT APPEAL BOARD



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Date: April 30, 2025