

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Pamela P.,¹
Petitioner,

No. CR-23-0178

Dated: September 20, 2024

v.

**Massachusetts Teachers' Retirement
System,**
Respondent.

Appearances:

For Petitioner: Robert P. McMullen, Esq.

For Respondent: Lori Curtis Krusell, Esq.

Administrative Magistrate:

Yakov Malkiel

SUMMARY OF DECISION

The petitioner began to experience debilitating knee and hip pain after two workplace falls. A preponderance of the evidence establishes that she is permanently disabled as a result of the workplace accidents, and not due to the natural progression of a preexisting condition. The petitioner is therefore entitled to retire for accidental disability.

DECISION

The petitioner appeals from a decision of the Massachusetts Teachers' Retirement System (MTRS) denying her application to retire for accidental disability. I held an evidentiary hearing on July 16, 2024. The petitioner was the only witness. I admitted into evidence exhibits marked 1-22 and stipulations numbered 1-13.

Findings of Fact

I find the following facts:

¹ A pseudonym used at the petitioner's unopposed request. *See* G.L. c. 4, § 7, 26th para., (c).

1. The petitioner is a special education teacher. She began working for a middle school in Essex County in approximately 2007. Her job duties revolved around preparing lesson plans, teaching, and meeting with students. On a regular basis, she was required to chase, corral, and subdue her students. She spent long hours standing, walking, bending, and negotiating stairs. (Stipulations 1, 3, 4; exhibits 1, 10, 16; testimony.)

2. Outside of work, the petitioner pursued an athletic lifestyle. She ran for exercise approximately five times per week. On occasions dating back to 2009, the petitioner complained to her primary care providers about non-debilitating hip pain, which she attributed to her running regimen. At least once, the petitioner was treated with cortisone shots to one or both hips. (Exhibits 7-9, 17; testimony.)

3. During the 2015-2016 school year, the petitioner began to undergo a prolonged process of progressive evaluation. She received a series of negative performance reviews. She was placed on two directed improvement plans. The petitioner disagreed with the reviewers' criticisms, felt severely undervalued, and filed several grievances. (Exhibits 20, 22; testimony.)

4. In March 2016, the petitioner tripped over a backpack while walking through her classroom to assist a student with an assignment. She twisted her right knee. She promptly filed an incident report. The petitioner's doctor arranged for her to be treated with cortisone injections and physical therapy. Walking and standing became more painful for the petitioner, but she did not miss work at that time. (Exhibit 5; testimony.)

5. In June 2016, the petitioner slipped in a small puddle while rushing down a school hallway toward a commotion in a student bathroom. She immediately felt serious pain in her left hip. She was able to stand and complete the school day. She then visited the nurse's office, where she filled out another incident report. (Exhibit 6; testimony.)

6. During the next month (July 2016), the petitioner underwent knee surgery. The procedure was followed by additional physical therapy. At the time, the petitioner's doctors viewed her hip pain as potentially related to overcompensation for her injured knee.

(Exhibits 7-9, 17; testimony.)

7. The petitioner attempted to return to work in the fall of the 2016-2017 school year. She was walking on crutches, enduring physical pain, and experiencing anxiety relating to her performance evaluation process. Her sleep and concentration deteriorated. On her therapist's recommendation, the petitioner was granted extended leave from work. (Exhibit 17; testimony.)

8. In early 2017, the petitioner sought out additional care for her hip. She underwent more cortisone injections and physical therapy. An MRI disclosed a partial tear of tissue in the petitioner's hip. In May 2018, she underwent hip surgery. (Stipulation 10; exhibits 7-9, 17; testimony.)

9. The petitioner has not worked since her hip surgery. She continues to suffer from pain, numbness, and weakness in her hip. It is difficult for her to move laterally or up and down stairs. She is no longer physically active. (Stipulation 9; exhibits 7-9; testimony.)

10. In July 2018, the petitioner's employer notified her of its intent to terminate her employment. In November 2018, the petitioner and the employer reached an agreement to globally resolve the employer's concerns and the petitioner's grievances. The agreement stipulated that the petitioner would resign effective in June 2019. She is retired for superannuation as of that time. Her condition has not subsequently improved or deteriorated to a significant degree. (Exhibit 10; testimony.)

11. Around the time of her retirement for superannuation, the petitioner applied for accidental disability retirement benefits. Her original application cited her June 2016 hip injury. She subsequently amended the application to also cover her March 2016 knee injury. The physicians who filed statements in support of the petitioner's application stated that no non-workplace events or circumstances could have contributed to her condition. (Stipulations 5-7; exhibits 1-4.)

12. A regional medical panel convened to evaluate the petitioner's application. The panel consisted of orthopedists Dr. Wojciech Bulczynski, Dr. B. Eugene Brady, and Dr. Samuel Doppelt. They conducted separate examinations during March 2022. They completed standard PERAC forms, which required them to certify that they had reviewed the petitioner's medical records. The forms also reminded the panelists to focus on "whether the member was disabled at the time he or she was last employed by a governmental unit." The three panelists certified unanimously that the petitioner is incapacitated, that the incapacity is permanent, and that it is such as might be the natural and proximate result of the petitioner's claimed accidents. (Exhibits 7-9.)

13. Dr. Bulczynski diagnosed the petitioner with a "left hip partial gluteus medius tear" and a "right knee medial lateral meniscus tear as well as chondromalacia." He viewed her as disabled "primarily due to her left hip diagnosis." With respect to causation, Dr. Bulczynski wrote: "In my opinion her disability is directly related to the injury sustained to her left hip [in June 2016]." (Exhibit 7.)

14. Dr. Brady's diagnoses included "left hip pain," "trochanteric pain syndrome," and "right knee pain . . . post medial and lateral meniscal tears." He observed that the petitioner's medical history included complaints of hip pain dating back to 2009, along with a related steroid

injection. But Dr. Brady nonetheless concluded that “[t]he disability is the result of her work-related injury . . . occurring [in June 2016].” He explained: “Her current complaints of left hip pain represent an aggravation of a previous complaint.” He added that the petitioner’s June 2016 fall “may have also been responsible for further tearing of her abductor muscle.” (Exhibit 8.)

15. Dr. Doppelt emphasized the petitioner’s hip-related diagnoses, which he described as a “contusion to [the] left hip,” “partial tearing of [the] gluteus minimum,” “trochanteric bursitis,” and an “aggravation of degenerative disc disease.” On causation, Dr. Doppelt said: “Her disability is causally related to the injury she sustained while at work [in June 2016], also causing an aggravation of degenerative issues in her left hip area.” (Exhibit 9.)

16. The petitioner underwent several evaluations in connection with her workers’ compensation proceedings. The most recent evaluation report was authored by Dr. Frank Graf, who wrote: “[T]here is a causal connection [T]wo work related injuries . . . have contributed to the patient’s current condition.” Dr. Graf described this opinion as supported by a “well documented nexus of patient treatment” and also by “observations of other physicians.” (Exhibits 11-13.)

17. In February 2023, MTRS denied the petitioner’s application, stating that she had not proven a causal connection between her incapacity and her workplace accidents. This timely appeal followed. (Stipulations 3, 11-13; exhibits 10, 14, 18.)

Analysis

An applicant for accidental disability retirement must establish three essential elements: that she “is unable to perform the essential duties of his job,” that the incapacity “is likely to be permanent,” and that the incapacity 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(1). The incapacity is required to have “matured,” i.e., to have become disabling, while the applicant was still a

member in service. *Hollup v. Worcester Ret. Bd.*, 103 Mass. App. Ct. 157, 164-65 (2023); *Vest v. Contributory Ret. Appeal Bd.*, 41 Mass. App. Ct. 191, 193 (1996).

MTRS expresses doubts as to whether the petitioner is incapacitated. Highlighting the petitioner's performance-related difficulties at work, MTRS wonders in essence whether the petitioner is exaggerating her symptoms.² But incapacity and permanence are the core questions that the retirement statute assigns to the regional medical panelists. *See Malden Ret. Bd. v. Contributory Ret. Appeal Bd.*, 1 Mass. App. Ct. 420, 423 (1973); *Retirement Bd. of Revere v. Contributory Ret. Appeal Bd. (DiDonato)*, 36 Mass. App. Ct. 99, 111 (1994); *Cohen v. Massachusetts Teachers' Ret. Syst.*, No. CR-17-210, 2021 WL 9870567, at *3 (DALA Sept. 10, 2021). The panelists gave their expert attention to the petitioner's pre-accident history, courses of treatment, surgeries, MRI, and current complaints. They juxtaposed that wealth of medical information against the findings of their own hands-on examinations. They were unanimous and unequivocal in their conclusions. No expert analysis supports a contrary view. *See Robinson v. Contributory Ret. Appeal Bd.*, 20 Mass. App. Ct. 634, 639 (1985).

MTRS next theorizes that the petitioner may have become incapacitated only after her departure from her public employment. This theory also finds no support in expert analysis. The three panelists, through their standard-form certificates, indicated that the petitioner "was disabled at the time . . . she was last employed by a governmental unit." And no record evidence establishes that the petitioner's symptoms worsened after her resignation. "When an applicant for disability is incapacitated . . . by a workplace injury, and the applicant has not undergone

² MTRS appears to acknowledge that the petitioner is not required to establish that her resignation resulted from her medical issues. *See Kane v. Worcester Reg'l Ret. Bd.*, No. CR-14-52, 2021 WL 12297913, at *1 n.2 (CRAB June 8, 2021); *Sagendorph v. Hampden Cty. Reg'l Ret. Bd.*, No. CR-21-631, 2023 WL 4846321, at *7 & n.7 (DALA July 21, 2023).

significant health-related developments since then . . . it is typically reasonable to conclude . . . that the employee was incapacitated as of the date of his or her departure from [service].”

Christopher C. v. Boston Ret. Bd., No. CR-19-342, 2023 WL 3434934, at *8 (DALA May 5, 2023) (collecting cases).³

Perhaps the most serious question presented is whether the petitioner’s disability was caused by her workplace injury. In this regard, MTRS emphasizes the petitioner’s pre-incident hip pain and related injection(s). Section 7(1)’s causation requirement is not satisfied where the member’s incapacity resulted from “the natural, cumulative, deteriorative effects of [a] preexisting diseased condition.” *Lisbon v. Contributory Ret. Appeal Bd.*, 41 Mass. App. Ct. 246, 255 (1996). See *Kalu v. Boston Ret Bd.*, 90 Mass. App. Ct. 501, 516 (2016).

On the other hand, causation *is* established when a member’s workplace injury aggravated a preexisting condition to the point of disability. *Baruffaldi v. Contributory Ret. Appeal Bd.*, 337 Mass. 495, 501 (1958); *Adams v. Contributory Ret. Appeal Bd.*, 26 Mass. App. Ct. 1032, 1034 (1989). PERAC’s standard form reminded the panelists of this rule. Dr. Brady and Dr. Doppelt discussed it explicitly. And although the retirement law asks the panelists only whether the member’s incapacity is “such as might be” the result of the workplace accident, i.e., whether the requisite causal connection is medically “possible,” all three panelists went further: they all described the petitioner’s fall in June 2016 as the *actual* cause of her incapacity (“is directly related” in Dr. Bulczynski’s words, “is the result” in Dr. Brady’s, and “is causally related” in Dr. Doppelt’s). Such statements on causation from the PERAC-appointed panelists are both permissible, *Narducci v. Contributory Ret. Appeal Bd.*, 68 Mass. App. Ct. 127, 134, 144 (2007),

³ As MTRS observes, it is not necessarily clear when exactly the petitioner’s treating physician viewed her disability as having matured. But the panelists’ views are more critical. See *Malden*, 1 Mass. App. Ct. at 423.

and weighty, *Christopher C.*, 2023 WL 3434934, at *7 (collecting cases).⁴ The panelists' shared opinion about the cause of the petitioner's incapacity is consistent with the general chronology of her case, i.e., manageable pain, followed by a workplace fall, leading to a tear of the petitioner's hip tissue, followed by debilitating pain and reduced mobility. This view also is not meaningfully undercut by any contrary expert opinion.⁵

Conclusion and Order

For the foregoing reasons, the petitioner is entitled to accidental disability retirement benefits. MTRS's contrary decision is REVERSED.

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate

⁴ The board suggests that the panelists may have overlooked certain causation-related details that do not make appearances in their narratives. But it is generally sufficient for the panelists to certify that they have reviewed the applicant's history. "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 (DALA Dec. 19, 2022). A board's concern that the panelists may have missed material facts also may be dispelled through a request for clarification under 840 C.M.R. § 10.11.

⁵ Dr. Steven Sewall provided an opinion adverse to the petitioner's case in the workers' compensation proceedings. But his examination took place early in the development of her condition, and prior to her May 2018 hip surgery.