COMMONWEALTH OF MASSACHUSETTS

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

**Lisa Pare’-Doherty**,

Petitioner

v. Docket No.: CR-17-829

Date Issued: May 25, 2018

**State Board of Retirement**,

Respondent

**Appearance for Petitioner:**

 *Pro se*

 1035 Ocean Boulevard

 Rye, NH 03870

**Appearance for Respondent:**

 Kathryn Doty, Esq.

 State Board of Retirement

 One Winter Street

 Boston, MA 02108

**Administrative Magistrate:**

Edward B. McGrath, Esq.

 Chief Administrative Magistrate

**SUMMARY OF DECISION**

The State Board of Retirement’s denial of Lisa Pare’-Doherty’s application for a killed in the line of duty benefit following the death of her husband, Jon Doherty, is affirmed because he was not killed in the line of duty and the injury he sustained in the performance of his duties as a public safety employee was not the direct and proximate cause of his death. *See* G.L. c. 32, § 100A.

**DECISION**

Petitioner Lisa Pare’-Doherty timely appeals under G.L. c. 32, § 16(4), the decision of the State Board of Retirement to deny her application for a killed in the line of duty benefit for her late husband. On October 22, 2017 the Petitioner filed a submission to have her case decided upon the papers. Ms. Pare’-Doherty submitted five supporting documents. On November 22, 2017, I issued a Scheduling Order. In response to the Scheduling Order, the Respondent filed a written submission and 13 proposed exhibits. The Petitioner did not file any additional documents. I marked the Petitioner’s Request for Submission without a Hearing “A” for identification. I marked the Respondent’s Written Submission “B” for identification.

From the record and the documents submitted, I enter the following exhibits into evidence:

Ex. 1: Beneficiary Claim Statement for a Line of Duty Death Benefit, dated July 27, 2017;

Ex. 2: Letter from the Board to Ms. Pare’-Doherty denying her request for a Line of Duty Death Benefit, dated September 5, 2017;

Ex. 3: Letter from the Board to Ms. Pare’-Doherty approving her application for Accidental Death Benefits subject to final approval from PERAC, dated May 30, 2017;

Ex. 4: Job posting for Correction Officer I, published by the Massachusetts Human Resources Division;

Ex. 5: A list of all full-time and part-time permanent and provisional employees in Bargaining Unit 4;

Ex. 6: Ms. Pare’-Doherty’s appeal letter, dated September 15, 2017;

Ex. 7: Ms. Pare’-Doherty’s application for Accidental Death Benefits, dated July 11, 2014;

Ex. 8: Jon Doherty’s death certificate;

Ex. 9: Marriage certificate of Jon Doherty and Lisa Pare’-Doherty;

Ex. 10: Autopsy and post-mortem toxicology report of Jon Doherty;

Ex. 11: Job description of HVAC Industrial Instructor II;

Ex. 12: PERAC’s review of medical panel certificate on Jon Doherty to determine cause of death, dated May 4, 2017;

Ex. 13: Beneficiary Claim Statement;

Ex. 14: Request for Appointment of a Regional Medical Panel, dated November 30, 2016;

Ex. 15: Jon Doherty’s medical records.[[1]](#footnote-1)

I decide the matter on the papers pursuant to 801 CMR § 1.01(10)(c).

**FINDINGS OF FACT**

Based on the documents admitted into evidence, I make the following findings of fact:

1. Lisa Pare’-Doherty is the widow of Jon Doherty. Mr. Doherty was born in 1965. (Exs. 1, 9, 13.)
2. Mr. Doherty served the Department of Correction as an HVAC Industrial Instructor II at MCI Norfolk, beginning September 8, 1998. (Exs. 11, 12.)
3. On October 15, 2012, while working on an HVAC unit on the roof at MCI Norfolk, Mr. Doherty fell approximately 14 feet to the ground. As a result of this accident, he sustained injuries to his head, neck, back, shoulder, and knee, including a concussion and herniated discs. He also suffered post-concussion syndrome, memory impairment, blurred vision, headaches, depression, anxiety, and sleep disorder. (Exs. 7, 10, 12, 15.)
4. Mr. Doherty received medical treatment for his injuries, including cortisone shots, physical therapy, and pain medication. (Ex. 15.)
5. Mr. Doherty did not return to work following the accident. (Ex. 12.)
6. As a result of his post-concussion syndrome, Mr. Doherty’s personality changed. He became more withdrawn, irritable, lacked motivation, and lost interest in activities he previously enjoyed. He became depressed because of his chronic pain. His PTSD from childhood sexual abuse was also exacerbated after his work accident. (Exs. 12, 15.)
7. While Mr. Doherty had been sober for a number of years, he relapsed into alcohol abuse and addiction. He also began abusing his prescription opioid medications. (Exs. 12, 15.)
8. In January 2013, Mr. Doherty sought psychiatric treatment after a suicide attempt. He later engaged in self-harming behavior by cutting himself.[[2]](#footnote-2) (Exs. 12, 15.)
9. In October 2013, Mr. Doherty was diagnosed with cervical spine stenosis. Shortly before his death, he underwent surgery to treat his herniated discs. (Ex. 12.)
10. On November 13, 2013, Mr. Doherty died from acute intoxication due to the combined effects of ethanol and oxycodone. This was a result of his chronic substance abuse. (Exs. 8, 10.)
11. On July 11, 2014, Ms. Pare’-Doherty filed an application for accidental death benefits pursuant to G.L. c. 32, § 9. (Ex. 7.)
12. PERAC appointed a regional medical panel. On May 4, 2017, Mr. Doherty’s records were reviewed by Tracy Mullare, M.D., to determine the cause of his death. (Exs. 12, 14.)
13. After reviewing Mr. Doherty’s medical records, Dr. Mullare determined that his death was caused by “acute intoxication due to the combined effects of Ethanol and Oxycodone.” Dr. Mullare also determined that Mr. Doherty died as a natural and proximate result of his October 2012 injury. He wrote,

Prior to his fall, Mr. Doherty was functioning well. In his medical record he was described prior to the accident as being sober and was not obtaining mental health treatment. [. . .] As a result of his head injury, he developed a significant change in personality and cognitive ability. It was not until after his work injury that he developed depression surrounding his inability to work and his efforts to cope with chronic pain.

(Ex. 12.)

1. On May 30, 2017, the Board approved Ms. Pare’-Doherty’s application for Accidental Death Benefits. (Ex. 3.)
2. Ms. Pare’-Doherty then applied for killed in the line of duty benefits pursuant to G.L. c. 32, § 100A, on July 27, 2018. (Ex. 1.)
3. On September 5, 2017, the Board advised Ms. Pare’-Doherty that it had denied her application for benefits under G.L. c. 32, § 100A. (Ex. 2.)
4. On September 15, 2017, Ms. Pare’-Doherty timely appealed the Board’s decision. (Ex. 6.)

**CONCLUSION AND ORDER**

The Board’s denial of Ms. Pare’-Doherty’s application for a Line of Duty Death Benefit is affirmed. Ms. Pare’-Doherty failed to show that her husband was killed in the line of duty or that his work injury was the direct and proximate cause of his death. *See* G.L. c. 32, § 100A.

M.G.L. c. 32, §100A provides for a one-time award of $150,000 payable to the family of a deceased public safety employee “who, *while in the performance of his duties* *and as a result of incident, accident or violence, was killed or sustained injuries which were the direct and proximate cause of his death*.” (Emphasis added.) Neither party disputes that Mr. Doherty was a public safety employee within the meaning of the statute.

Ms. Pare’-Doherty, Mr. Doherty’s widow, applied for and received accidental death benefits pursuant to G.L. c. 32, § 9. That section grants an accidental death benefit to the beneficiary if, in relevant part, “the Board [. . .] finds that any member in service died as the *natural and proximate result* of a personal injury sustained or a hazard undergone as a result of, and while in the performance of, his duties [. . .].” Dr. Mullare, a PERAC appointed expert, determined that Mr. Doherty died as a natural and proximate result of his October 2012 work injury.

Ms. Pare’-Doherty argues that she is also entitled to the killed in the line of duty benefit because Mr. Doherty’s death was a direct result of his on-duty accident. To succeed on her claim, Ms. Pare’-Doherty has to prove that Mr. Doherty "while in the performance of his duties and as a result of incident, accident or violence, was killed or sustained injuries which were the direct and proximate cause of his death." G.L. c. 32, § 100A; *see* *Sparuk v. State Bd. of Ret*., CR-11-268, at \*8 (DALA, Dec. 9, 2011). In this case, Mr. Doherty did not die immediately from his 2012 fall. Thus, to show she is eligible for the killed in the line of duty benefit, Ms. Pare’-Doherty had to meet her burden of showing that Mr. Doherty’s workplace injury was the “direct and proximate cause of his death.” *See* G.L. c. 32, § 100A. This she has failed to do.

Applicants for the Section 100A killed in the line of duty benefit must meet a much higher standard than that imposed by G.L. c. 32, § 9. Instead of merely requiring that the employee’s death be a “natural and proximate result” of a personal injury sustained in the performance of his duties, Section 100A requires that the incident, accident, or violence occurred “while in the performance of his duties” and was the “direct and proximate cause of his death.” Merriam-Webster defines “cause” as “something that brings about an effect or a result,” and “result” as “to proceed or arise as a consequence, effect, or conclusion.” While an accident or injury that arises as a consequence of a workplace accident may qualify for an accidental death benefit, a line of duty benefit must be directly brought about by the workplace accident or incident in question.

Mr. Doherty’s depression and personality changes developed over the course of several months following his accidental fall from a roof at work. While he had been sober for a number of years before the accident, Mr. Doherty started abusing alcohol and prescription medication again after the accident. He was not working during this time. Mr. Doherty’s cause of death was acute intoxication due to the combined effects of ethanol and oxycodone, as a result of his chronic substance abuse. I find that, based on this evidence, Mr. Doherty was not killed in the line of duty.

In addition, his workplace injury was not the direct and proximate cause of Mr. Doherty’s death. Proximate cause is "that which in a continuous sequence, unbroken by any new cause, produces an event and without which the event would not have occurred." *Wallace v. Ludwig*, 292 Mass. 251, 198 N.E.2d 159, 161 (1935); *see* *Araujo v. Bristol County Retirement Bd.*, CR-00-785 (DALA, May 10, 2002); *see also Lynn Gas and Electric Company v. Meriden Fire Insurance Co.*, 158 Mass. 570, 575 (1893) (“The active efficient cause that sets in motion a train of events which brings about a result without the intervention of any force started and working actively from a new and independent source is the direct and proximate cause [. . .].”)

In *McCarthy v. State Board of Retirement*, CR-09-1041 (DALA, Mar. 11, 2011), the widow of a state police captain who committed suicide as a result of his PTSD from several on-duty car accidents was not eligible for a Line of Duty Death Benefit. The magistrate in that case held that the captain’s death was not caused by the injuries sustained in those accidents or as a direct result of the *physical* injuries sustained in those accidents. “Rather, [the captain] experienced cognitive and emotional sequelae following the accidents.” *Id.* at \*17. In the present case, Mr. Doherty’s death was not caused by or the direct result of his physical injuries from his fall at work. Instead, his depression following the accident led to his chronic substance abuse. His accidental overdose was caused, in part, by his alcohol abuse and, in part, by his opioid abuse. Mr. Doherty had suffered from alcohol abuse before. I find that in this case, Mr. Doherty’s substance abuse was the intervening cause of his death, interrupting the chain of events leading from his workplace injury. *Cf. Chaput’s Case*, 85 Mass. App. Ct. 1113, at \*9 (Rule 1:28) (Apr. 10, 2014) (finding that there was a “direct unbroken causal relationship between the industrial injuries and the Employee’s tragic taking of his own life.”) While it may be true that Mr. Doherty would not have overdosed if not for the emotional and personality changes brought about by his post-concussion syndrome after the accident, it does not constitute a direct and proximate cause sufficient to award a § 100A benefit.

 In summary, although the circumstances surrounding Mr. Doherty’s death were tragic, the Petitioner is not entitled to the Line of Duty Death Benefit, pursuant to the criteria of G.L. c. 32, § 100A. Therefore, the Board’s decision is **AFFIRMED** and the Petitioner’s appeal is **DISMISSED**.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

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Edward B. McGrath, Esq.

Chief Administrative Magistrate

DATED: May 25, 2018

1. While I marked each of the documents submitted by the parties, I did not mark duplicate exhibits. [↑](#footnote-ref-1)
2. The psychotherapy progress notes from June 2013 did not detail the extent of Mr. Doherty’s self-injurious behavior. [↑](#footnote-ref-2)