

**COMMONWEALTH OF MASSACHUSETTS
CONTRIBUTORY RETIREMENT APPEAL BOARD**

NANCY PEREZ,

Petitioner-Appellant

v.

MASSACHUSETTS TEACHERS' RETIREMENT SYSTEM,

Respondent-Appellee.

CR-15-155

DECISION

Petitioner Nancy Perez appeals from a decision of an administrative magistrate of the Division of Administrative Law Appeals (DALA), affirming the decision of the respondent Massachusetts Teachers' Retirement System (MTRS) denying her application for accidental disability retirement benefits. The DALA magistrate admitted seventeen exhibits. The magistrate's decision is dated June 30, 2017. Ms. Perez filed a timely appeal to us.

After considering the arguments by the parties and after a review of the record, we incorporate the DALA decision by reference and adopt its Findings of Fact 1 – 63 as our own. We affirm the DALA for the reasons discussed in its Conclusion at pages 14-15 and incorporate that in our decision.

While we commend Ms. Perez for her years of service to the Holyoke Public Schools and recognize the importance of her role, Ms. Perez failed to meet her burden of proof that she was disabled as of her last day of work to be entitled to accidental disability retirement. *Vest v. Contributory Retirement Appeal Bd.*, 41 Mass. App. Ct. 191 (1996) (employee who has left government service without established disability may not, after termination of government service, claim accidental disability retirement status on basis of subsequently matured disability). We have consistently interpreted *Vest* to stand for the proposition that a member must establish

permanent incapacity as of the date he or she last actively performed his or her essential duties based on the same disability for which the member is now seeking accidental disability retirement. See *Mathew Tinlin v. Weymouth Retirement Bd.*, CR-13-361 (CRAB Aug. 9, 2016); *Lauren Forrest v. Weymouth Retirement Bd.*, CR-12-690 (CRAB Apr. 13, 2015); *Myra Wolovick v. Teachers' Retirement Bd.*, CR-02-1410 (CRAB Oct. 12, 2004); *Jose Chavez v. PERAC*, CR-04-427 (CRAB Dec. 23, 2004); *Collins v. Boston Retirement Bd.*, CR-10-58 (CRAB Apr. 2015); *Kelly v. Boston Retirement Bd.*, CR-13-202 (CRAB Dec. 2022). Said differently, when an applicant seeks accidental disability retirement, he or she must establish that the same reason he or she stopped working is the same reason for which he or she later seeks the benefit. Here, we conclude that the magistrate correctly determined that Ms. Perez was not disabled as of her last day of work.

Although she claimed that she experienced significant anxiety returning to work after the Code Blue incident, Ms. Perez maintained good attendance for the remainder of the school year from April 23, 2012 to June 15, 2012, the last day of school. She experienced no further panic attacks during this period despite the fact that she noted in her application that seeing the custodian caused more panic attacks.¹ She also reported that her interaction with the custodian upon her return after the incident was unavailing.² Moreover, Ms. Holliday noted in her therapy note of June 4, 2012 that Ms. Perez reported her symptoms had resolved and that she would be leaving her job and seeking early retirement.³ Thereafter, Ms. Perez discontinued treatment and no additional treatment was recommended.⁴ Despite her claim that she could not return to work due to being heavily medicated,⁵ medical records from Dr. Spence and Ms. Holliday reflect that Ms. Perez was prescribed Lorazepam .5 mg and directed to take one pill daily as needed for her anxiety, although she had declined medication. Ms. Perez was also prescribed Trazodone 50 mg for sleep.⁶ There were no reports of side effects from these medications, nor do the records reflect heavy usage, high dose prescribed or that these medications interfered with her ability to teach. Lastly, we note that Ms. Perez submitted a letter of resignation on August 1, 2012, stating

¹ Finding of Fact 25, 30; Exhibits 1, 11.

² FF 22; Ex. 7.

³ FF 26, Ex. 7.

⁴ FF 27; Ex. 7.

⁵ Ex. 1.

⁶ Ex. 8 (03/22/2012, 05/18/2012, 08/22/2012); 14.

that as of June 30, 2012, she was retiring early from teaching in the Holyoke Public Schools.⁷ Considering all the above, we cannot conclude that Ms. Perez was disabled as of her last day of work.

Because Ms. Perez failed to establish by a preponderance of the evidence that she was disabled as of her last day of work, we need not address the issue of whether the actions of the custodian was a bona fide personnel action.

For the reasons stated above, although we recognize the importance of her role as a teacher and the contributions she has made in that capacity, we conclude Ms. Perez is not entitled to accidental disability retirement benefits. The DALA decision is affirmed.

SO ORDERED.



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Date: March 1, 2023

⁷ FF 29; Ex. 4.