

**COMMONWEALTH OF MASSACHUSETTS
CONTRIBUTORY RETIREMENT APPEAL BOARD**

ESTATE OF PAUL POIRIER

Petitioner-Appellee

v.

NEW BEDFORD RETIREMENT BOARD,

Respondent-Appellant.

CR-18-0075

REISSUED DECISION¹

Respondent New Bedford Retirement Board (NBRB) appeals from a decision of an administrative magistrate of the Division of Administrative Law Appeals (DALA), ordering a medical examination by a new medical panel in connection with petitioner Paul Poirier's application for accidental disability retirement benefits. The parties requested that a decision be issued based on the record pursuant to 801 CMR 1.01(10)(c). The DALA magistrate held a hearing on August 19, 2019 only to clarify which records were made available to the regional medical panel. The magistrate's decision is dated October 25, 2019. The NBRB 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. We also incorporate the DALA decision in *Poirier v. New Bedford Retirement Bd.*, CR-15-503 (DALA Aug. 25, 2017) by reference. We affirm the DALA decision of October 25, 2019, adding the following comments.

On September 17, 2012, Mr. Poirier fell while closing a high window in a basement classroom and injured his low back and left knee. After his application for accidental disability retirement was denied by NBRB without a medical panel, he appealed to DALA. Administrative Magistrate Kenneth Forton ordered a new medical panel after concluding that there was no misconduct in the petitioner's climbing up onto a large metal heater to reach the window, since it

¹ This decision is being reissued to correct errors noted in the first two paragraphs.

was both the usual method and the only reasonable way to accomplish this necessary task.² *Poirier v. New Bedford Retirement Bd.*, CR-15-503 (DALA Aug. 25, 2017).

Magistrate Forton was not notified that Mr. Poirier passed away before he issued his decision. Nevertheless, the medical panel review proceeded without a physical examination, and without the factual findings made by Magistrate Forton. The panel concluded that although he was disabled and the disability was likely to be permanent, the work-related injury was not the natural and proximate cause of his permanent disability.³ NBRB again denied Mr. Poirier's application, and his estate appealed this decision.

In this current appeal, the Estate of Paul Poirier advanced two grounds for appeal. First, it contends that the medical panel was not provided all the records as required by 840 CMR 10.08; and second, the panel employed an erroneous standard when it concluded that Mr. Poirier's injury was not the natural and proximate cause of his disability. A Joint Pre-Hearing Memorandum revealed there to be uncertainty regarding which records were provided to the medical panel with two conflicting affidavits from Executive Director of the retirement board – the second purporting to correct the first stating that only a portion of the available medical records was sent to the medical panel. NBRB sought to admit the second affidavit, which the Petitioner opposed. The parties advised that they wished to submit the case for a decision on the record pursuant to 801 CMR 1.01(10)(c), but that a hearing was necessary to clarify which records were and were not sent to the medical panel if the second affidavit was not admitted. The magistrate in this appeal admitted both affidavits and held a hearing on August 19, 2019 to take testimony on what documents were provided to the medical panel.

Here, the parties agree that this matter should be remanded back to a medical panel, but the parties disagree as to whether the same medical panel or whether a new medical panel should be convened to evaluate Mr. Poirier's records. The magistrate agreed with the Estate of Paul Poirier and determined that a new medical panel was to be convened for a couple of reasons. First, she concluded that the report applied an incorrect standard for aggravation of a pre-existing medical condition on the question of causation. Secondly, she reasoned that the report of the

² Mr. Poirier's application for accidental disability retirement only states that he fell on the heater, and the Treating Physician Statement incorrectly noted that Mr. Poirier was trying to *open*, not close, the window. The medical panel repeated this error.

³ This medical panel report was based on only a partial review of the records because the panel was not provided with all the records available.

first medical panel revealed numerous factual errors, which appeared to have lead the panel to form a negative opinion of Mr. Poirier.

After reviewing the record and considering the arguments, we find that the magistrate's decision to remand this matter to a new medical panel was reasonable. The substantial evidence in the record demonstrates that the medical panel employed an erroneous standard on the question of causation. If a condition or a work-related injury aggravates a pre-existing condition, the employee is deemed to have suffered a "personal injury" and may recover from the employer for the entire disability without apportionment. *Zeroski's Case*, 385 Mass. 590 (1982); *Baruffaldi v. Contributory Retirement Appeal Bd.*, 337 Mass. 495 (1958). For Mr. Poirier to be entitled to accidental disability retirement, he needed to establish that the work-related event was a significant factor that aggravated his pre-existing condition to the point of total disability. *Campbell v. Contributory Retirement Appeal Bd.*, 17 Mass. App. Ct. 1018, 460 N.E.2d 213 (1984). While the medical panel correctly stated that Mr. Poirier suffered from problems with his knees and back prior to the accident, the panel opined that the injuries "were an exacerbation of very severe and pre-existing injuries to both of his knees and his lower back" and as a result, Mr. Poirier was disabled and the disability was likely permanent, but "not directly related to the 9/17/12 incident."⁴ Although the panel concluded that the work-related accident exacerbated Mr. Poirier's pre-existing medical conditions, the panel inconsistently concluded that there was no possibility of causation and failed to adequately explain its conclusion. We agree with the magistrate that this conclusion is confusing and contradictory. Accordingly, we conclude that the panel's opinion that the lack of a possibility of causation misapplied the legal standard explained on the certificate form, since "acceleration of a preexisting condition or injury," caused by a work accident does establish causation.

Additionally, as explained in the DALA decision, the medical panel's report contained negative remarks about Mr. Poirier, such as that he was "terminated" multiple times, that he stepped onto the heater and windowsill "for reasons unknown," and that his fall while "trying to *force open* a window" was "alleged" and "unwitnessed."⁵ However, these comments arise out of an incorrect set of facts. The record establishes that Mr. Poirier was terminated only once and left and returned voluntarily on the other occasions. Moreover, the facts underlying Mr. Poirier's

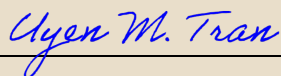
⁴ Ex. 28.

⁵ *Id.*

injury were established for the purpose of this dispute in Magistrate Forton's decision, as well as in the medical records in the panel's possession. Specifically, Magistrate Forton determined that Mr. Poirier's regular and major duties included closing classroom windows in the wake of episodes of vandalism, that disciplinary action would have been undertaken for not undertaking this task, and that Mr. Poirier acted in the most effective manner to close the window in question when the injury occurred.⁶ Additionally, the magistrate established that a co-worker found Mr. Poirier on the floor immediately after hearing him fall.⁷ We incorporate the magistrate's discussion of this issue at pages 4-5. Because the panel did not have the benefit of examining Mr. Poirier, it was incumbent upon it to carefully review those records, which contained detailed information about the accident.⁸ Despite the details noted in the medical records, such negative and inaccurate statements made in the medical panel's report calls into question the panel's ability to impartially analyze the application under the correct standard, and in our view, supports a determination that convening a new medical panel to objectively review the medical records was warranted.

Conclusion. In light of the factors discussed above, the magistrate's decision to remand this matter back to a new medical panel is reasonable. The DALA decision is affirmed. *Affirm.*
SO ORDERED.

CONTRIBUTORY RETIREMENT APPEAL BOARD



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⁶ *Poirier*, CR-15-503 (DALA Aug. 25, 2017) *3-6, 9-13.

⁷ *Poirier*, CR-15-503 (DALA Aug. 25, 2017) *12

⁸ Ex. 14, 15, and 17.

Commissioner of Department of Public Health Appointee

Date: December 30, 2024