COMMONWEALTH OF MASSACHUSETTS
Division of Administrative Law Appeals

PAUL RAWINSKI, *Petitioner*	:	Docket No. CR-22-0023
	:	Date: November 10, 2023
v.	:	
STATE BOARD OF RETIREMENT: *Respondent*	:	

Appearance for Petitioner:

John Smillie, Esq.
Law Office of Channing Migner, PC

Appearance for Respondent:

Yande Lombe, Esq.
State Board of Retirement

Administrative Magistrate:

Eric Tennen

SUMMARY OF DECISION

The State Board of Retirement properly denied the Petitioner's application for accidental disability. Although the medical panel agreed the Petitioner could not work, a majority of the medical panel did not believe the Petitioner's injury caused his disability. The doctors understood and applied the correct legal standard in their analysis. Thus, there is no reason to overturn the negative panel's conclusions.

INTRODUCTION

Pursuant to G.L. c. 32, § 16(4), the Petitioner, Paul Rawinski, timely appeals a decision by the State Board of Retirement ("SBR") denying his application for accidental disability. The Petitioner worked as a Maintenance Equipment Operator with the Massachusetts Department of Transportation ("MDOT"). Over the course of his career, he experienced several injuries at

work. After the last one in 2018, he stopped working because he had a total knee replacement. He then applied for accidental disability.

I held an in-person hearing on July 18, 2023 at the Division of Administrative Law Appeals (DALA). Mr. Rawinski testified on his behalf; the Board offered no witnesses. In the pre-hearing memorandum, the parties jointly submitted agreed upon, or stipulated, facts that I incorporate below. They jointly submitted Exhibits (1-17) which I entered into evidence at the hearing without objection. The Board provided an oral summation at the hearing; the Petitioner submitted a closing brief on October 13, 2023, whereupon the administrative record was closed.

FINDINGS OF FACT

1. The Petitioner is 56 years old. From 2006 until his retirement in 2018, he worked as a Maintenance Equipment Operator with MDOT. (Stipulated facts.)
2. Sometime around 2004, the Petitioner had a "right knee arthroscopic procedure." (Ex. 10.)
3. He has been injured five times during his work at MDOT. (Stipulated facts.)
4. Relevant to this case, on March 13, 2014, he slipped on ice and twisted his right knee. (Stipulated facts.)
5. He was seen by Dr. Stephen Desio. Dr. Desio diagnosed him with "osteoarthritis" in his right knee. X-rays following the injury showed "bone-on-bone medial joint space arthritis." The injury caused a sprained knee that added to the pain from his osteoarthritis. (Ex. 11.)
6. In 2015, he continued to have pain. Dr. Desio thought his "only surgical option going forward would be total knee replacement." However, for reasons that the record does not make clear, the Petitioner did not have the surgery. (Ex. 11.)

7. On February 22, 2018, while at work, the Petitioner twisted his right knee when he stepped in a hole (picking up litter along the highway). This is the injury that forms the basis of his disability claim. (Stipulated facts.)

8. Dr. Desio treated him again. Dr. Desio "felt [the Petitioner] had aggravated a meniscal tear and had arthritis in his knee." He gave the Petitioner a corticosteroid injection that only temporarily helped. (Ex. 10.)

9. Thereafter, Dr. Desio recommended right knee replacement surgery, which he performed in April 2019. Following that, the Petitioner maintained an "osteoarthritis" diagnosis. However, his knee ultimately felt better. (Ex. 10.)

10. The Petitioner filed for accidental disability benefits based on diagnoses of right knee meniscus tear and right knee osteoarthritis. (Stipulated facts.)

11. He was ultimately examined by a medical panel composed of three doctors specializing in orthopedics: Drs. Marc Linson, Thomas Goss, and Ryan Friedberg. (Stipulated facts; Ex. 9-11.)

12. All three doctors concluded that the Petitioner was permanently disabled. Dr. Friedberg, for example, explained that performing a physically demanding job would be ill-advised for someone who underwent a total knee replacement. (Ex. 11.)

13. However, two doctors did not believe the February 2018 injury caused his disability (Drs. Friedberg and Goss). (Stipulated facts; Exs. 10 & 11.)

14. Dr. Friedberg highlighted that the Petitioner had "end-stage osteoarthritis" prior to the 2018 fall:

> [Because of that and his obesity,] he would have needed a knee replacement whether he had fallen or not. Thus I do feel the major predominant reason for the knee replacement would be due to the preexisting condition and not the work event that occurred on February 22,

> 2018. I also feel that the major and predominant reason for his inability to work at this time is not specifically the knee replacement surgery, as his knee is actually doing very good. I do feel it is a combination of his age, his generalized deconditioned status, and generalized arthritic pain that he suffers. I cannot specifically relate any of those to a work-related injury.

Ex. 10.

15. Dr. Goss concurred with Dr. Friedberg and provided a detailed assessment:

> The torn right knee medial meniscus noted on the aforementioned MRI of 05/09/2018 could be related to the occupational event of 02/22/2018. The aforementioned severe degenerative disease involving Mr. Rawinski's right knee which resulted in his undergoing a right total knee replacement was a preexisting condition involving the articulation, i.e., unrelated to the 02/22/2018 event.
>
> As regards the right knee medial meniscal tear Mr. Rawinski may have sustained at the time of the occupational event of 02/22/2018, the usual treatment is an arthroscopic meniscectomy following which a full functional recovery with no lasting ill effects can be expected approximately three months thereafter. It is my opinion, however, that the majority of Mr. Rawinski's right knee difficulties following the occupational event of 02/22/2018 (all of his right knee difficulties three months following a medial meniscectomy had it been performed) were due to the aforementioned severe preexisting degenerative disease affecting the articulation. Having undergone a right total knee replacement to address this preexisting pathology, Mr. Rawinski is capable of using his right knee for sedentary, light, and average (at the lower end of the average spectrum) occupational/avocational activities only.
>
> I have reviewed Mr. Rawinski's job description as a Maintenance Equipment Operator I, and it is my opinion that he is permanently disabled from performing many of the requirements of his job. Had he sustained only a tear of the right knee medial meniscus, he would have been capable of returning to work on a full time fully duty basis approximately three months following a surgical medial meniscectomy. His occupation, however, involves significant physical and repetitive use of his right knee and having undergone a total knee replacement to address the preexisting degenerative disease within his knee, makes it impossible for him to perform and ill-advised for him to use his knee for such activities.

(Ex. 11.)

16. Dr. Linson disagreed, but his finding of causation was rather equivocal:

> The incident of February 22, 2018 just barely rises based on the records provided to me to the level of a major causal factor with regards to this gentleman's disability and need for knee replacement.
>
> Based on the totality of the records, it is likely that sometime during Mr. Rawinski's life he would have required cessation of work and knee replacement, even in the absence of February 22, 2018 work injury. However, it is speculative as to when and possibly if this would have occurred and therefor I find based on the records and my evaluation today, a causal relationship between the work injury February 22, 2018 and his subsequent disability and need for treatment of his knee.

(Ex. 9.)

17. The Petitioner then asked the Board to send clarifying questions to Drs. Friedberg and Goss, which the Board did. He asked if there was "any other event or condition . . . other than the claimed personal injury upon which the disability retirement is claimed, that might have contributed to or resulted in the disability claimed?" He added, if so, "is it more likely than not that the disability was caused by the condition or event described rather than the personal injury . . . which is the basis for the disability claim[.]" (Ex. 15.

18. The doctors responded and affirmed their initial opinions. (Exs. 16 & 17.)

19. The Board subsequently denied his application because a "majority of the Regional Medical Panel . . . concluded that . . . said incapacity is not the natural and proximate result of the personal injury sustained . . . on account of which retirement is claimed. (Ex. 1.)

DISCUSSION

The Petitioner has the burden of proving every element of his disability claim. *Lisbon v. Contributory Ret. App. Bd*., 41 Mass. App. Ct. 246, 255 (1996); *Frakes v. State Bd. of Ret.*, CR-21-0261, 2022 WL 18398908 (DALA Dec 23, 2022). "G.L. c. 32, § 7(I) provides for accidental disability retirement benefits if a member (1) 'is unable to perform the essential duties of his job'

and (2) 'such inability is likely to be permanent before attaining the maximum age for his group,' (3) 'by reason of a personal injury sustained or a hazard undergone as a result of, and while in the performance of, his duties,' (4) 'without serious and willful misconduct on his part.'" *Brady v. Weymouth Ret. Bd.*, CR-20-0201, *9 (DALA Jul. 15, 2022). "A condition precedent for awarding accidental disability" is that "[a] majority of the panel must conclude the applicant is permanently unable to perform his essential job duties and that there is a medical possibility of a causal relationship between the disability and a personal injury or hazard undergone while performing his duties." *Id.* at *10, *citing Lisbon, supra*.

When the medical panel issues a "negative" panel report, the Petitioner's burden is onerous:

> A negative panel report generally precludes an applicant from receiving accidental or involuntary disability retirement benefits.
>
> The general rule that a negative panel ends an application for accidental or involuntary disability retirement benefits has a few exceptions: if the medical panel did not "conform[] to the required procedure of physical examination"; it lacked "all the pertinent facts"; it used an erroneous legal standard; or the medical certificate was "plainly wrong."

Beauregard v. Fall River Ret. Bd., CR-18-0498, *2-3, 2022 WL 16921428, (DALA., Mar. 11, 2022), *citing Kelley v. Contributory Ret. App. Bd.*, 341 Mass. 611, 617 (1961).

The Petitioner's lone argument is that the panel used an erroneous legal standard. He argues that because the Petitioner suffered from pre-existing osteoarthritis, the doctors analyzed the case as "one of aggravation." However, he believes they should have used the "but for" causation standard.[1]

[1] This appears to refer to the different ways one can prove causation: that the event was "a significant contributing cause to [the] employee's disability," *Robinson's Case*, 416 Mass. 454, 460 (1993) or "[i]f an applicant suffers from an underlying condition that was aggravated by a

Imagine someone was in a car accident and broke a bone. When they went to get an x-ray, the doctor noticed a spot that turned out to be cancer. The person then received chemotherapy which caused them to miss work. No one would say the car accident led to chemotherapy and was therefore the reason the person could not work. Yet that is the argument being put forward here.

The Petitioner's argument seems to be the following. In 2015, Dr. Desio thought the only thing that would alleviate the Petitioner's pain from the osteoarthritis would be a total knee replacement. For some reason he did not get the surgery and kept working. Then, the 2018 fall caused him to tear his meniscus but also exacerbated his osteoarthritis. The typical treatment for a meniscal tear is an arthroscopic meniscectomy, which I infer is less serious than a total knee replacement. However, because that would not cure his pain since so much of it was the result of his pre-existing osteoarthritis, the Petitioner opted to have a total knee replacement. While his pain subsided, the knee replacement in effect precluded him from being able to perform the duties of his job.[2] Thus, because the meniscal tear caused by the 2018 fall is what led to the total knee replacement, and because the knee replacement effectively disabled him, the meniscal tear is what caused that disability.

There is certainly some surface appeal to this argument. But the panel doctors were well aware of the Petitioner's medical history and the intricacies of knee injuries and surgeries. Even

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work-related injury to the point of disability, that injury is compensable." *B.G. v. State Bd. of Ret.*, CR-20-0207, 2021 WL 9583594 (DALA Oct. 8, 2021).

[2] I accept this conclusion because it is irrelevant to the ultimate issue in the case. I simply note it is not unanimous. Dr. Friedberg opined the Petitioner could no longer work because of age and continued arthritic pain. (Ex. 11.) A different doctor who evaluated the Petitioner for worker's compensation explained that because he has a severe limp and ambulates with a cane, he should not return to manual labor. (Ex. 13.)

if I agreed with the Petitioner, nothing permits me to second-guess, or substitute, my opinion for that of a "negative panel" absent some legal error. *Malden Ret. Bd. v. CRAB,* 1 Mass. App. 420, 423 (1973). And I reject the Petitioner's claim that the doctors evaluated his case through an incorrect legal lens.

Drs. Goss and Friedberg wrote thoughtful reports in which they fully acknowledge what the Petitioner argues here; they just disagreed with it. Rather, they opined that the surgery would have happened sooner or later; it was necessary now, not because the Petitioner tore his meniscus, but because his osteoarthritis was too painful. The osteoarthritis was long-standing and independent of any workplace accident. The 2018 fall simply led him to see a doctor in 2018 as opposed to some other time in the future. Nothing in their reports calls into question their understanding or application of the legal standards for awarding accidental disability.

CONCLUSION AND ORDER

Accordingly, the SBR's decision denying the Petitioner's application for accidental disability is **affirmed**.

SO ORDERED

DIVISION OF ADMINISTRATIVE LAW APPEALS

Eric Tennen

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Eric Tennen
Administrative Magistrate